



Australian Government

Department of Finance

Senator James Paterson
Chair
Senate Finance and Public Administration Legislation Committee
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Dear Chair

Parliamentary Business Resources Bill 2017 and the Parliamentary Business Resources (Consequential and Transitional Provisions) Bill 2017

Thank you for the Committee's request of 2 May 2017 for the Department of Finance (Finance) to provide a submission which addresses the issues raised by the two submissions received in relation to the Committee's enquiry into the above bills. Finance provides the following information in relation to these issues.

Submission of the Department of the House of Representatives

Finance agrees with the Department of the House of Representatives' observation that the Parliamentary Business Resources (Consequential and Transitional Provisions) Bill 2017 (PBR CTP Bill) repeals the *Parliamentary Entitlements Act 1997* (PE Act) and consequently the *Parliamentary Entitlements Regulations 1997*. Finance acknowledges the important role that the Department of the House of Representatives and the Department of the Senate both play in administering some of the work expenses currently provided under these pieces of legislation.

Finance notes that the Parliamentary Business Resources Bill 2017 (PBR Bill) will replace the PE Act insofar as it provides powers to provide various work expenses (public resources) under subordinate legislation. In preparing these subordinate instruments, I can confirm that Finance's intention is to closely consult with relevant stakeholders, including the Parliamentary Departments on the aspects of administration currently undertaken by them and other Commonwealth entities.

Submission of the Association of Former Members of the Parliament of Australia

The submission of the Association of Former Members of the Parliament of Australia (AFMPA) raises a number of issues regarding amendments made to the *Remuneration Tribunal Act 1973* (RT Act) in 2011 and 2012 to 'de-link' increases in parliamentary base salary and other remuneration determined by the Remuneration Tribunal from the indexation

of pensions for former members under the *Parliamentary Contributory Superannuation Act 1948*. Set out below is some background information on these amendments and the related provisions in the PBR Bill that may assist the Committee.

2011 amendments

The *Remuneration and Other Legislation Amendment Act 2011* (ROLA Act, available at <https://www.legislation.gov.au/Details/C2011A00075>) made amendments to the RT Act to implement Recommendation 1 of the 2010 *Review of Parliamentary Entitlements*, chaired by Barbara Belcher AM (the Belcher Review, available at <http://finance.gov.au/publications/review-of-parliamentary-entitlements-committee-report/>), to:

- restore the power of the Remuneration Tribunal to determine parliamentary base salary, and
- remove the parliament's ability to disallow parliamentary remuneration determinations made by the Remuneration Tribunal.

On 23 June 2011, during the second reading debate in the Senate, Government amendments were agreed. Those amendments provided the Remuneration Tribunal with the power to determine portions of base salary that were not parliamentary allowance for the purposes of determining the pensions of current and former parliamentarians under the *Parliamentary Contributory Superannuation Act 1948* (PCS Act).

These amendments gave broad effect to Recommendation 7 of the Belcher review, which provided that the Government should *take preventative measures so that the folding-in of electorate allowance does not flow to the retirement benefits of members of the parliamentary contributory superannuation scheme established under the [PCS Act]*. This was related to a separate recommendation of the Belcher Review that the base rate of electorate allowance should be incorporated into base salary (Recommendation 6).

The supplementary Explanatory Memorandum for the Government amendments provided:

The Report of the Committee for the Review of Parliamentary entitlements recommended (Recommendation 7) that the government take preventative measures so that any folding-in of allowances does not flow to the retirement benefits of members of the PCSS.

If the Tribunal decides to incorporate, for example, electorate or other allowances into base salary, these amendments would give the Tribunal the discretion to determine that those amounts do not form part of the salary used to determine contributions of current members and benefits payable to former members under the 1948 Act.

In recognition of the overall intention of the amendments in the ROLA Act, specifically that the Remuneration Tribunal be given the power to determine remuneration for members of parliament independently, the amendments were not limited on their terms to circumstances where allowances were incorporated into base salary. Instead, they gave discretion to the Remuneration Tribunal to determine that a portion of base salary should not count for the purposes of calculating pensions under the PCS Act.

2012 amendments

In December 2011, the Remuneration Tribunal released its initial report *Review of the Remuneration of Members of Parliament* (the RT Report, available at <http://remtribunal.gov.au/offices/parliamentary-offices>). The RT Report set out the Remuneration Tribunal's decisions on certain remuneration matters and made recommendations for the Government on matters for which the Tribunal is not directly responsible. Regarding the relationship between parliamentary remuneration and pensions of former members, the Remuneration Tribunal recommended that (section 6, page 28):

1. *The pensions of retired parliamentarians cease to be indexed to the current salaries of current parliamentarians; specifically that the link in the superannuation scheme established by the [PCS Act]:*
 - a. *Between the current base salary of a current parliamentarian and the basic pension of a retired parliamentarians be severed;*
 - b. *Between the current additional salary of a current office holder in parliament and the additional pension of a retired parliamentarian be severed; and*
2. *Alternative indexation arrangements be established for both the basic pension, and the additional pension, of retired parliamentarians who derive retirement benefits from the superannuation scheme established by the 1948 Act.*

This recommendation was made in the context of the other decisions of the Remuneration Tribunal reflected in the RT Report, relevantly the Tribunal had decided to retain Electorate Allowance as a business expense (and therefore not roll this allowance into base salary as recommended by the Belcher Review) – see section 7, page 39. However, the Remuneration Tribunal indicated its intention to determine a significant increase in base salary (from \$140,910 to \$185,000), based on a work value assessment conducted by Egan Associates which noted (see page 2):

...research broadly confirmed that the role of a Backbench Member of Parliament remains similar to that described in the 1988 study, though subsequent to that time the demands on Members from 24/7 media and the level and speed of communication sponsored by the new electronic age has placed significant new demands on all Backbench members of Parliament arising from these two significant changes...

And more specifically in respect of the superannuation arrangements for parliamentarians (see page 3):

...with changes to superannuation policy generally and limits being imposed on contributions to superannuation capped at \$25,000 (this amount to be indexed annually) from the 2011-12 financial year in accordance with movement in average weekly ordinary time earnings rounded down to the nearest multiple of \$5000) two classes of participant exist in the parliament, Members serving prior to the 2004 elections who participate in a defined benefit plan and those who have joined the Parliament at or after the October 2004 elections who participate in an accumulation plan. [Egan Associates] do, however, acknowledge in this context, that Members of Parliament who have served only subsequent to 2004 are experiencing a relative detriment to their retirement benefit compared to their long serving Parliamentarian colleagues, though this detriment is paralleled in the private sector by those who have changed jobs and as a consequence lost the benefit of their participating in legacy defined benefit retirement plans. In this context I have formed the view that adjusting salary alone, which has a direct bearing on retirement

benefits and the funding cost, cannot be separated in ensuring the equitable treatment of Members of Parliament.

Acknowledging these comments in the assessment conducted by Egan Associates the Remuneration Tribunal made the following comments in the RT Report (see paragraphs 4.4 and 4.8):

... technological change has had a significant effect on the pressures on a local member over the last decade or so. Email, Facebook, Twitter and the like have increased community expectations on members as regards their availability to their constituents. It is not only the case that it is now easier to contact a local member; the expectation of a speedy response has also increased dramatically. This has also had, to some extent, the effect of increasing the member's profile in the electorate. As some members at interview noted, this means that they are now never off duty.

... The Tribunal intends to determine parliamentary base salary of \$185,000 per annum. This will be done when the superannuation question (explained in Chapter 6) is resolved.

As the Remuneration Tribunal was intending to determine a large increase in base salary, it was concerned about the effect that this would have on the calculation of pensions for former parliamentarians under the PCS Act. To address this, the Remuneration Tribunal made the recommendation extracted above, which the Tribunal explained was to avoid *an unintended windfall benefit to members of [the PCS Act] scheme* (see paragraph 1.19).

On this basis, the Remuneration Tribunal delayed determining an increase in base salary until it was satisfied that this issue had been dealt with through legislation (see paragraphs 1.19 and 6.30).

The then Government accepted the above recommendation of the Tribunal and passed the further required amendments in the *Members of Parliament (Life Gold Pass) and Other Legislation Amendment Act 2012* (available at <https://www.legislation.gov.au/Details/C2012A00004>). These amendments included additional powers for the Remuneration Tribunal in relation to determining portions of additional parliamentary office holder salary and Ministerial salary that is not included for the purposes of determining pensions under the PCS Act (part b. of the recommendation extracted above) – in effect, expanding on the amendments made in 2011. Noting this, no amendments were required in relation to part a. of the recommendation, as the 2011 amendments provided sufficient power for the Remuneration Tribunal to deal with the effect of increases in base salary on pensions under the PCS Act consistent with its recommendations in the Report.

PBR Bill provisions

The PBR Bill implements recommendations of the recent review: *An Independent Parliamentary Entitlements System* (February 2016) to establish a simplified, single piece of legislation that governs the parliamentary work expenses framework, and make clear the differentiation between remuneration and work expenses. To achieve this objective, the PBR Bill has consolidated the remuneration related provisions of various Acts, including the RT Act, the *Parliamentary Allowances Act 1952*, and the *Remuneration and Allowances Act 1990*.

The PBR Bill proposes that these provisions be brought together under one Act. However, it does not propose any substantive changes to the remuneration arrangements under the existing law and the government's policy in respect of the superannuation arrangements of parliamentarians remains consistent with the rationale behind the 2011 and 2012 amendments. In particular, clause 45 of the Bill retains equivalents of subsections 7(1A), (1B), (1C) and (2A) of the RT Act, which were inserted into the RT Act as part of the 2011 and 2012 amendments.

Paragraphs 187 to 193 of the Explanatory Memorandum for the PBR Bill reflect that the intention of including these provisions in the Bill is to retain the existing law. The reference to 'windfall gains' in paragraph 193 is consistent with the stated intention of the Remuneration Tribunal in recommending the 2012 amendments (see paragraph 1.19 of the Report), and the Explanatory Memorandum for the Members of Parliament (Life Gold Pass) and Other Legislation Amendment Bill 2012 (see the Outline and pages 6 and 7).

I trust the above information assists the Committee.

Yours sincerely

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