ASSOCIATION of FORMER MEMBERS
of the PARLIAMENT OF AUSTRALIA

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Tuesday 9th May 2017

The Secretary,

Senate Finance and Public Administration Legislation Committee

Parliament House

Canberra, ACT 2600

Dear Sir,

RE: SUBMISSION FROM DEPT OF FINANCE TO SENATOR PATERSON, 5 MAY 2017

The incontrovertible point that AFMPA makes, without any fear of contradiction, is that irrespective of whatever the Remuneration Tribunal determined in 2011 and 2012 regarding discounting pensions for beneficiaries of the 1948 PCS superannuation scheme and its dubious justification for such action, it was never the intent of the June 2011 legislation for it to be used for discounting in any circumstance other than if and when expenses were "rolled into" salary. Minister Arbib's speech at the time and the Explanatory Memorandum make this patently clear, as do comments to us from several Senators of the time who voted for the legislation on that understanding.

There is no reference or comment from the Government of the day, in or out of Parliament, during consideration of that legislation that it had a wider discounting purpose. If it did, then the Government of the day is guilty of the heinous crime of misleading Parliament.

Therefore, it is clear that the legislation before the Committee does not reflect the intent of the previous legislation and it is misleading sophistry to claim that it does. There is no legislation or reference in previous legislation or Ministerial parliamentary speeches which reflects the use of the words of the current legislation. The 2011 legislation has been hijacked for a new purpose, unintended by that 2011 legislation, seeking retrospectively to justify an unconscionable decision of the Tribunal, to the unfair detriment of 1948 scheme beneficiaries.

The Finance Department's comments in its letter on the Submission from AFMPA compound the sophistry evident in the current Explanatory Memorandum which, of course, also came from the Finance Department, as the author of the legislation.

Page 2 of the letter correctly refers to the purpose of the "delinking" being related to discounting the proportion of parliamentary salary increases attributable to a future "rolling in" of expenses for the purposes of calculating 1948 superannuation scheme pensions.

The last paragraph of page 2 correctly says that the "delinking" amendment was not limited because of the intent to give the Remuneration Tribunal independence.

- this ignores that the reason for giving this independence was that, when the Tribunal previously had responsibility for determining parliamentary salaries, its determinations were capable of being disallowed and on 11 occasions between 1975 and 1990 Prime Ministers, for reasons of political opportunism, reduced the salary determinations of the Tribunal; this occurred also in 2008, during the 1990 to 2011 period, when salaries were linked to the Public Service, not determined by the Tribunal;
- it was never dreamed by Senators voting for this independence and voting for the "delinking" provision that they would be used to the detriment of retirees when the purpose of the independence was to prevent Prime Ministers disadvantaging parliamentarians
- Several Senators of the period have confirmed that it was their clear understanding in voting for the "delinking" component of the legislation that it had the quite specific purpose expressed in the Explanatory Memorandum and Minister's speech and never would have expected it to be misused by the Remuneration Tribunal in the way it has been.

Page 3 of the letter refers to the Tribunal's 2011 Report and its reason for the substantial increase – the Egan Work value Study – but acknowledges that the last work value study was in 1988 i.e. 23 years earlier. Clearly, work value did not suddenly increase in 2011 but progressively over those 23 years. The progressively increasing work value was not recognised by related salary increases while salaries were fixed to the Public Service and also previously during the period that Prime Ministers overruled the Tribunal, during which they generally only kept pace (and even then, not always) with inflation, rather than increased work value. Hence, by 2011 – 12, the salary increase was a warranted catch up, as much due to parliamentarians who had served in those previous years as to those in office in 2011. As a "back of envelope" calculation, over that previous extended period, salaries should have increased by approximately $3,000 more each year than actually occurred. There was a general view among parliamentarians that at some future point there would be a large "catch up" increase. It is recalled that Tribunal comments at the time referred to a "catch up." The only way the catch up can be received by retirees, who should have received higher salaries while in Parliament, is through their superannuation and the discounting is denying them this.

Sophistry is evident also in the Tribunal's 2011 Report, in that it quotes, in the 2011 legislation Explanatory Memorandum, the "delinking" discretion given to it but completely omits the qualifying context of intent relating to the "rolling in" of expenses.

The Tribunal is quoted in the Finance Department's letter as apparently justifying its unintended way of using the "delinking" by referring to the Egan study's comments on the relevant superannuation situations of pre- and post-2004 parliamentarians. However, Egan merely noted the point, and said it had happened also in the private sector when defined benefit schemes had been abandoned. However, there was no consequent "delinking" in the private sector, in which defined benefit

recipients retained their full entitlement and new employees the new terms of accumulation schemes. Importantly, Egan did not recommend ”delinking,” as mandated by the Tribunal for 1948 scheme parliamentarians.

However, interestingly, Egan did make two recommendations ignored by the Tribunal (a) the longer a parliamentarian serves, the higher the salary they should receive, compared with those elected more recently and (b) the salary increase he recommended in 2011, the lower end of which was adopted by the Tribunal, should not flow through to State parliamentarians.

In fact, the higher salary has been taken up by State parliamentarians, who continue to set their salaries slightly below the $199,040 Federal salary. This has created the grossly unfair anomaly that, for example, in South Australia, parliamentarians retiring at the election in March 2018, most of whom qualified for their old defined benefit scheme before it was abandoned, will receive pensions calculated on that higher salary, approximately $197,000, without any “delinking” discounting, while current Federal retirees and those to come in 2019, on our old 1948 defined benefit scheme, will languish on pensions calculated from a discounted mid-$150,000’s notional salary, despite the “work value” view of experts like Egan that Federal parliamentarians’ work value is higher.

Post-2004 Federal parliamentarians have complained of their disadvantage compared with those pre-2004 beneficiaries of the 1948 scheme. That may be the case, especially at the shorter end of periods of service i.e. three terms which gave retirees under the 1948 scheme a 50% pension. It seems to be the justification used by the Tribunal for its decisions. Never-the-less, parliamentarians accepted being elected to Parliament on that basis, just as previous parliamentarians accepted election on the basis of the 1948 scheme being linked to actual parliamentary salary, not a lesser, arbitrarily selected fictional salary.

However, it would be interesting to see a proper actuarial comparison of the two schemes at the longer end, which may not show such disadvantage. This is especially the case, given that maximum pension is reached at 18 years service under the 1948 scheme. Whether one serves 25, 30 or more years, the pension percentage remains fixed, whereas for the post-2004 scheme, contributions continue to be made by the government so long as one remains in Parliament. Furthermore, if post-2004 scheme members added the 11.5% after tax contribution (which was compulsory for 1948 scheme members) to the government’s 15.4%, it would add considerably to their retirement fund and reduce considerably the relative disadvantage, irrespective of years of service. Also, Shadow Ministers now receive additional salary, which flows through to the government’s contribution to post-2004 superannuation, which salaries and consequent superannuation benefit was not received by 1948 scheme beneficiaries.

The claim of the Department of Finance letter in the middle of page 4 that the Tribunal withheld the 2011 large salary increase “until it was satisfied that this issue (i.e. that salary increase not flowing through to 1948 Superannuation scheme pension calculations) had been dealt with in legislation” is demonstrably untrue.

The Tribunal had determined already that the flow through would not occur under its determination via the unintended consequences of applying to the “delinking” provision, its untrammelled power.

The Tribunal's reference to the "issue" was not to that aspect at all but to the fact that, having made that unintended (by the June 2011 legislation) determination, the June 2011 legislation applied only to "delinking" backbench salaries for pension calculations and not the additional salaries received by Ministers and other office-holders. What the Tribunal was demanding, indeed holding the Parliament to ransom by not ratifying the salary increase until Parliament did so, was to give it the same "delinking" power in relation to those additional salaries.

This is a smokescreen from the Department to obscure the truth of the stated purpose in June 2011 of the "delinking" provision, which was corrupted by the subsequent Tribunal determination.

Hence, AFMPA rejects the claims contained in the Finance Department letter and reinforces the requests of its original Submission.

Yours sincerely,

On behalf of AFMPA,

Grant Chapman — President

John Haslem — Secretary