Senate Finance and Public Administration Committee
Parliament House
Canberra

24 July 2023

Governor General Amendment (Cessation of Allowances in the Public Interest) Bill 2023

Dear Chair

Thank you for the opportunity to provide a supplementary submission to the Committee.

Specifically, I write in response to incorrect statements (errors of fact) contained in a submission (No 8) from dentist Samuel Lawrence.

I prefix this by acknowledging and confirming deep respect for the democratic process and the right of any stakeholder to hold an opinion and to express that opinion. This supplementary submission addresses and corrects factual errors in submission No 8 and does so for the benefit of the Committee who otherwise might be misled if the factual errors were not addressed. No disrespect of any kind is intended toward the author of Submission No 8.

As well, this submission will, for the benefit of the Committee, seek to address and allay some of the concerns about the bill raised by Submission No 8.

<u>Correction of factual errors</u>

Peter Hollingworth has been subject to four inquiries into his misconduct.

- The ”Brisbane Inquiry” in 2003 made adverse findings that his conduct was “untenable” for a Bishop.

- Royal Commission Case Study 34 made adverse findings including:

    - Dishonesty, finding that Peter Hollingworth had made knowingly false public statements, about material matters (falsely claiming victims had not reported the abuse of an offender, when he knew that they had);

    - Allowing a senior church official, known to have concealed abuse, to be promoted to a position with responsibility for the church’s responding to reported child abuse;

    - Ignoring the evidence of victims in relation to complaints of concealment of abuse by a headmaster of a school.

- Royal Commission Case Study 36 made adverse findings including:
    - knowingly allowing false or misleading evidence to be provided to a formal inquiry;
    - retaining known child molesters in ministry against formal professional advice;
    - ignoring and dismissing the credible evidence of victims of abuse.
- The Anglican Church Professional Standards Board found Peter Hollingworth guilty of six counts of **misconduct**, including:
    - Retaining known child molesters in ministry;
    - Making 'dangerous' appointment to a position of trust and authority with responsibility for children;
    - Making false statements.

As well, Royal Commission Case Study 52 found that the Anglican Diocese of Brisbane (where Peter Hollingworth had been Archbishop and perpetrated the misconduct) was responsible for more sexual abuse of children than any other Anglican Diocese in Australia.

When Peter Hollingworth's successor, Archbishop Phillip Aspinall, took over he immediately conducted an examination of the reported sexual abuse and documented this in the Synod year book:

131 perpetrators
217 victims
6 clergy licenses immediately revoked for proven sexual misconduct
5 clergy licenses suspended pending investigation into alleged sexual misconduct

Peter Hollingworth appointed two 'Archbishop's Chaplains' (a senior position of close confidence and influence to an Archbishop) in his time, both of whom were found guilty of sexual assault:

- Rev McAuley who was found guilty by the Committee for Complaints of Sexual Abuse (CCSA) of sexually assaulting a parishioner, and also later, a person made further allegations of having been sexually assaulted as a child (publicly documented in the media);
- Barry Greaves, who was convicted of sexually assaulting a child.

It is understood that there are allegations of abuse occurring *after* Peter Hollingworth had retained a known child molester in ministry. So it is not accurate for Submission No 8 to state that this has not occurred.

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It is incorrect to state that Peter Hollingworth has never refuted the testimony of survivors. He has done this many times, privately and publicly (media records) and was found guilty of doing exactly this:

- By the Royal Commission Case Study 34, who found he knowingly lied in publicly denying that victims had reported an offender, when in fact he knew that they had;

- By the Royal Commission Case Study 36, that Hollingworth repeatedly and unreasonably refuted the reporting of abuse by victims of sex offender Rev John Elliot;

- By the Professional Standards Board in denying the offences against survivor Beth Heinrich.

As well, there are further publicised examples where Hollingworth has dismissed, minimised or denied the truth of child abuse including in the media, such as in relation to abuse at Toowoomba Preparatory School, denying the extent of abuse and ignoring evidence written by the offender and evidence from police and doctors. There are many further privately canvassed examples of Peter Hollingworth allegedly dismissing complainants who have reported child sexual assault.

It is not correct to assert that Peter Hollingworth relinquished his Permission to Officiate this year "as an act of good faith towards survivors". The author of Submission No 8 may like to apprise himself of the facts and context to that action.

Context including that Peter Hollingworth dragged survivors through procedural hell for 5 years fighting the charges against him and denying any wrongdoing. The Professional Standards Board found him guilty. That is not consistent with insight, remorse or any form of 'sincere' apology.

Upon being found guilty of misconduct by the Professional Standards Board, Peter Hollingworth issued a press release with made numerous false or inaccurate statements – all of which appeared designed to minimise his apparent culpability. This had a predictably deleterious impact on survivors. Again, this conduct is not consistent with insight, remorse or any form of 'sincere' apology.

Peter Hollingworth surrendered his Permission to Officiate when it became known that the Professional Standards Committee were on the verge of seeking formal deposition from holy orders in response to the Report of the Professional Standards Board. This submission is not attributing causality nor claiming to know the mind of Peter Hollingworth or the reasons for Peter Hollingworth's actions – only Peter Hollingworth can speak to that. The author of Submission No 8 equally cannot know Peter Hollingworth's mind or reason for the action and is wrong to attribute a noble reason where no reason is known and where there is evidence supporting an alternative and more self-serving reason.

Peter Hollingworth giving up his Permission to Officiate afforded him two protections:

- It avoided the potential embarrassment of formal deposition from holy orders;

- It avoided the obligation that he directly apologise to two victims who the Professional Standards Board found he had directly harmed (including by refuting their testimony). The Professional Standards Board had ruled that a condition of retaining his Permission to Officiate was that he apologise to these victims. Instead of apologising he resigned his Permission to Officiate.

It is factually incorrect for the author of Submission No 8 to write that Peter Hollingworth has not been found to have engaged in serious misconduct by the Royal Commission and this is refuted by a simple reading of the relevant Royal Commission reports.

The level of unawareness of these basic facts evidenced in Submission No 8 should be taken into account by the Committee when considering Submission No 8's relevance to the decision making of the Committee. The same caution should apply to any submission based on a similar lack of awareness of the evidence and the facts.

Any opinions formed in Submission No 8 have been formed in the absence of proper awareness of the facts and the full body of evidence. If opinions properly arise from an appropriate examination of the evidence, then it is reasonable to conclude that had the author of Submission No 8 been properly aware of the facts, then they may likely have formed a very different opinion from the one they have express.

Addressing the concerns about the bill

Submission No 8 lists 5 dot-pointed concerns with the bill. These concerns are addressed here. Further discourse is encouraged.

Concern about definition of misconduct or serious misconduct.

It may well be that the Parliament prefers to amend the bill to include a definition of such terms as a condition of passing the bill. That is a matter for the Parliament.

However, it should be noted that from a legal perspective it is not necessary to do so.

Submission No 8 cites an inappropriate example of a speeding fine as being serious misconduct; however this ignores decades of statute and common law including areas of administrative law which establish the meanings of 'misconduct' and the meaning of qualifiers such as 'serious'.

This existing body of law provides a framework for the examination of any conduct to determine whether or not it meets the relevant threshold. The same applies to the question of whether or not an omission to take an action constitutes misconduct, which is measured against the individual's obligations and duties to act in any particular role.

If a definition is preferred by the Parliament, it should not be overly prescriptive (this is the advice of experienced legislative drafters) and, as a matter of policy, it should not be too high a bar, noting that the consequence is nothing more than the ceasing of an 'allowance'.

Incorrect reference to measure as "punitive"

It is misleading to refer to the ceasing of a tax-payer funded allowance as 'punitive'. It is administrative. There is no punishment. There is no loss of liberty (eg jail), there is no fine or seizure of assets. It is merely the ceasing of the payment of an allowance.

Section 4 of the *Governor General Act 1974* clearly identifies the payment as an "allowance". It is not a pension. It is a stand alone allowance that has been artificially created by the Parliament.

For such an allowance, which has been commenced by the Parliament, to then be ceased by the Parliament is not punitive.

Concern that the power overrides the justice system

This is not correct. Parliament have created this allowance; they should be allowed to cease it. There are existing mechanisms to ensure due process that do not need to be duplicated.

As another submitter has made clear, the allowance after leaving office is not a salary being earnt while in office. The individual ex-Governor General is providing no service to the country in exchange for the allowance. The individual continues to be in receipt of their alternative superannuation from a previous career (eg ADF). The Allowance was created in 1974. Prior to that there was no legislated allowance to be paid to a former Governor General after they left office. Payment after they leave office is entirely an artificial construct. They were paid while in office only (the Constitution of Australia at section 3 makes mention of £10,000 remuneration).

There exists a range of processes to ensure fairness, including: the Minister is not necessarily the decision maker as to whether or not misconduct has occurred. The misconduct may have been found to have occurred by a formal body of inquiry, for example including:

- a Professional Standard Board;
- a Commission of Inquiry;
- a Royal Commission;
- and other examples.

Each of these formal bodies of inquiry will:

- be properly constituted;
- afford due process and natural justice as per established procedures;
- ensure the individual have representation and right of reply;
- apply accepted rules of evidence including Briginshaw.

Either such a formal finding of fact (misconduct) would already exist and this would be brought before the Minister; or if a complaint were brought to the Minister in the absence of such an existing finding of fact, then the Minister could institute a relevant Commission of Inquiry as is standard and common practice.

So there is no need to create cumbersome bureaucracies within the *Governor General Act 1974* which when that Act is read by a Submitter it will be seen to be a very thin piece of legislation created solely to pay public money to Governors General (for life) will no oversight or accountability.

As well, it has been identified by other Submitters that any affected individual would likely have recourse to appeal any cessation decision to the Administrative Appeals Tribunal.

So, existing, long-standing, robust and well established structures provide sufficient safeguard to the application of the proposed power without the need to reinvent the wheel or worse, create new and untested structures or processes.

Concern about 'Denial of natural justice'

This is addressed above; there is no denial of natural justice as this is afforded via the existing structures and mechanisms.

Also, the ultimate outcome of any cessation decision is nothing more than the stopping of an Allowance that has been unearned, is excessive, and is out of step with modern standards.

This is merely an administrative matter, not a judicial matter, and so administrative law standards, processes and thresholds are appropriate.

Concern that bill is alleged to target an individual

The reform proposed by the bill applies to any and all individuals who have previously held the office of Governor General, currently and into the future.

There is no reason to think that only Peter Hollingworth has committed relevant misconduct.

There exists the potential that other former Governors General, now or into the future, may be found, if investigated by a properly constituted board of inquiry, to have committed relevant misconduct.

Noting the prevalence of military persons appointed to the office and noting multiple recent inquiries into misconduct in the ADF (eg Brereton Inquiry into war crimes; ADF inquiry into sexual assaults; Royal Commission into ADF suicides, etc) or fraud or misappropriation investigations. To be clear this is not be misinterpreted by any reader as implying any military former Governor General has been implicated in misconduct through those or any other inquiry. It is merely highlighting the obvious universal application of the bill, for the benefit of Submitter No 8 and for the benefit of the Committee.

It is correct that Peter Hollingworth has been formally found guilty of committing misconduct (six counts) and so it is a legal fact that Peter Hollingworth is guilty of misconduct.

Peter Hollingworth's misconduct relates to offences such as retaining known child sexual abuse perpetrators in ministry, making a "dangerous" appointment to a position of trust and associated offences including dishonesty in statements (such as public statements, statements to victims and families, and evidence supplied to formal inquiries).

Whether or not a person guilty of such actions and omissions is deserving of ongoing unearned allowance for life from the tax payer (in addition to their church pension) is a matter for each tax payer to consider.

The fact that Peter Hollingworth's misconduct has been so egregious that it has shone a light on the excessive allowance paid to former Governors General and brought public attention to question the appropriateness or otherwise of these perks in 2023 does not mean the bill is 'targeting' Hollingworth.

From a plain reading of the bill it clearly applies equally to all former Governors General.

Concern that bill gives unreasonable power to the Minister

This has been mostly addressed above, noting the existing legal structures for properly gathering evidence and making inquiry.

The Minister, in acting on the findings of a properly constituted body of inquiry, would merely be taking a routine administrative action, not actually making the determination about whether or not misconduct has occurred.

The power proposed by the bill is consistent with Ministerial powers already existent in a range of legislation across many portfolios from Home Affairs to Environment, from Health to Finance. There is nothing novel about the proposed power.

Thank you, and I remain available to the Committee to present supporting evidence on an *in camera* basis.

Yours sincerely

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