Wednesday 19th April 2017

The Secretary
Senate Finance and Public Administration Legislation Committee
Parliament House
Canberra ACT 2600

Dear Sir,

Thank you for your invitation to the Association of Former Members of the Parliament of Australia to make a Submission to the Committee's Inquiry into the Parliamentary Business Resources Bill 2017 and the related Parliamentary Business Resources (Consequential and Transitional Provisions) Bill 2017. The Association appreciates the invitation and having given some consideration to the Bills, trusts that you will accept this late Submission. We also request the opportunity to appear before the Committee to elaborate on our Submission and respond to any questions or provide clarification on the important issues we raise.

With the limited time allowed for submissions to your Inquiry and limited resources available to our Association, our consideration has been limited to the issue considered in paragraphs 188 to 193 of the Explanatory Memorandum provided by you to the Association. This section deals with the powers given to the Remuneration Tribunal to (paragraph 193) "prevent windfall gains flowing from any increase in remuneration for existing members to the superannuation benefits of those covered by the PCS Act."

This paragraph 193 is blatant misrepresentation and sophistry on the part of the originators of the Bills currently before your Committee as regards the intent of the original 2011 and 2012 Remuneration Tribunal legislation to which it refers. It was never the intent of that legislation to prevent gains from "any increase in remuneration" but quite reasonably from "windfall gains" in the quite specific circumstances described below.

That legislation in 2011 and 2012 quite rightly restored the power of the Remuneration Tribunal to determine parliamentarians' remuneration. However, it was amended during the Committee stage in the Senate to give the Tribunal the added power to "delink" from parliamentary salaries, the parliamentary pensions for retirees elected before 2004. Pensions previously had been a fixed percentage of salary, depending on years of service and for ministerial retirees, additional salary.
The Tribunal had indicated an intention to "roll in" to salaries previously separate payments, such as Electorate Allowance, etc. The "delinking" amendment had the quite specific and we agree, reasonable, purpose of preventing a windfall gain to retirees from this "roll in" effect on salaries flowing through to pensions.
We request that Members of the Senate Finance and Public Administration Committee look at both the Explanatory Memorandum and then Minister Arbib's Senate speech at the time of introducing the "delinking" amendment

to see that this specific purpose was stated clearly and that was how many Senators voting for it understood its purpose.

Subsequently, the Remuneration Tribunal decided not to "roll in" to the salary the Electorate Allowance, etc. because they said it was more complicated to do so than they anticipated.

However, the Tribunal granted a substantial salary increase based on a work value study and the need for a "catch up" on recommended salary increases previously foregone when successive governments and Prime Ministers in particular, for political reasons, chose to reject Tribunal determinations. Those rejections occurred on eleven occasions between 1975 and 1990. Between 1990 and 2011 parliamentary salaries were linked to the public service and the Tribunal had no role in them. However, the public service-linked increase also was rejected in 2008.

Lest there be any misunderstanding, it needs to be re-emphasised that the 2011 and subsequent salary increases for Members and Senators are completely unrelated to any "rolling in" of expenses, which has not occurred.

Nevertheless, quite contrary to the stated purpose of the legislation, the Tribunal "delinked" these salary increases from 1948 PCS Act pension entitlement calculations, despite the fact that current Members and Senators and retirees who were elected before 2004 have made their own compulsory contributions to this superannuation scheme, contributions which were not tax deductible and therefore came from after tax income. The practical consequence of this unjustified decision is that parliamentary superannuants have been denied an increase in pension, to which they are morally entitled.

The moral justification arises because the salary now being received by parliamentarians, instead of being received by way of one large increase in 2012 but for those political interventions of past Prime Ministers to overturn previous Remuneration Tribunal determinations, would have been received progressively over a number of years. Thus many current retirees would have received higher salaries than was the case during their periods of parliamentary service and quite rightly, would also have passed through to recipients of 1948 PCS Act pensions.

In relation to the portion of the 2011 and 2012 legislation relating to "delinking" parliamentary salary from the 1948 PCS Act superannuation scheme, it is also important to note that both the Remuneration Tribunal in its Submission to the Belcher Review and that Review itself, which gave rise to that legislation, recommended that such delinking, allowing a discounting of superannuation paid to parliamentary retirees under the 1948 scheme, should occur only in the possible future circumstances of and related directly to the Electorate Allowance and like expenses being folded in to an all up, global salary. We reiterate that this has not occurred but the

delinking legislation has been used to discount substantially that superannuation.

In summary, the Remuneration Tribunal in its submission to the Belcher Inquiry, the Belcher Report following that Inquiry and the Government of the day by way of the Explanatory Memorandum and Minister Arbib's speech in relation to the legislation in 2011 and 2012 arising from the Belcher Report, all stated unequivocally that "delinking" or discounting of pension calculations relating to the 1948 PCS Act superannuation scheme should/would occur only in the circumstance of the Electorate Allowance, etc, being "rolled in" to a global parliamentary salary.

It is quite unconscionable that, despite this clear intent, in every salary determination since 2011, the Remuneration Tribunal, without any explanation or justification and contrary to its own recommendation above, has discounted the pensions payable under the 1948 PCS Act by approximately one-third to the unfair detriment of retirees. Retirees have been "double dudded," in that the Tribunal's recommendations under its earlier responsibilities were overturned on eleven occasions by politically motivated Prime Ministers, thereby denying salary to parliamentarians of those eras and now are denied some recompense for that by way of their superannuation because the much overdue increase of 2012 does not flow through to their superannuation.

The Explanatory Memorandum to the current legislation before your Committee makes reference (paragraph 192) to the recent High Court case initiated by several retired parliamentarians in relation to this issue. The Association wishes to point out that the fact that those parliamentarians lost that case has no negative bearing on the above facts or submission. That case dealt with the
Constitutional issue of whether 1948 PCS Act pensions are a "property right," requiring compensation if changed. Legal advice was that this was the only basis on which legal action could be taken on the matter by retirees. Although the Association and our learned legal counsel take issue with the High Court's negative decision on the constitutional property right aspect, we are bound to accept it.

However, it should be emphasised that the High Court made no judgement on whether the pension calculation should have been changed, save in error by one Justice who, briefly, wrote that it was understandable that the "delinking" should occur to prevent a windfall gain from the rolling in of Electorate Allowance to the parliamentary salary, apparently completely ignorant of the fact that this has never occurred. This was despite the fact that Counsel for the retirees had referred to that very fact in his summing up at the hearing.

The Association has no issue with the Electorate Allowance, etc, being discounted from 1948 PCS pensions, if ever it is rolled in to a global parliamentary salary. We do take strong issue with what has occurred – the

discounting of pension calculations from the current parliamentary salary, the level of which is a much-belated recognition of earlier prime ministerial intervention preventing an appropriate level of salary at the time, to the unfair detriment of current retirees when they served and which they are now further denied in retirement.

Therefore, we request that the Senate Finance and Public Administration Legislation Committee restore fairness by proposing an amendment to the legislation to limit the powers of the Remuneration Tribunal to "delink" or discount the basis of calculating parliamentary pensions payable under the 1948 PCS Act to only if and when and to the extent that the Electorate Allowance or any other current separately paid expense-type allowances are rolled in to the parliamentary salary in the future, as was very clearly the intent of the 2011 and 2012 legislation. It is time for the Committee to stand up for the Parliament against the Executive's scant regard for the principle that legislation should not affect people retrospectively to their detriment.

Submitted on behalf of the Association of Former Members of the Parliament of Australia.

Grant Chapman
President

John Haslem
Secretary