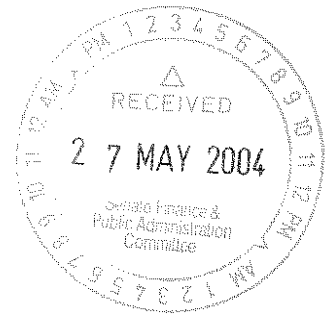




PARLIAMENT OF AUSTRALIA - THE SENATE

SENATOR LYN ALLISON

Australian Democrat
Senator for Victoria



May 27 2004

Mr Alistair Sands
Secretary
Senate Finance and Public Administration Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Sands,

Parliamentary Superannuation Bill 2004 and the Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004

On behalf of the seven Australian Democrats Senators, I make the following submission to the Committee for the *Parliamentary Superannuation Bill 2004* and the *Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004* ('the Bills').

Executive Summary

The Australian Democrat Senators consider that the existing parliamentary superannuation entitlements are overly generous and way beyond community expectations. We have been arguing for them to be changed for the past ten years.

The Australian Democrats support reform to the existing Parliamentary Superannuation Scheme. However, because the proposed changes outlined in the Bills only apply to future Members and Senators (MPs), current MPs will continue to accrue superannuation entitlements based on the old rules.

We believe it is hypocritical for current MPs to impose lesser entitlements on future MP's whilst maintaining and increasing their own excessively generous superannuation entitlements.

Accordingly, the Australian Democrat Senators make the following recommendations:

Option 1:

1. ***The Parliamentary Superannuation Bill 2004*** should be amended to ensure that from the date of the next election, all MPs are only entitled to 9% employer sponsored superannuation contribution in relation to their future salary. However, MPs should be permitted to top up their own contribution by salary sacrificing.

2. **Current MPs that do not have 8 years service could continue to be members of the current scheme until they have completed 8 years service or lose office (whichever is earlier) at which time their entitlement shall be determined under the current scheme and all subsequent service should be under the new scheme.**

Option 2:

1. **Alternatively, current MPs should at least have the option of moving to the new parliamentary scheme after the next election. These MPs should be named in the scheme's annual report to allow electors to know which MPs are acting in accordance with community expectations.**
2. **We support the Australian Labor Party's proposal to cap the additional retiring allowance for Senior Ministers but believe that all office holders should only be entitled to the 9% scheme.**
3. **The Remuneration Tribunal should have responsibility for determining politician's superannuation arrangements in the future rather than Parliament, as part of the entire salary package.**

Comments on the existing parliamentary superannuation scheme

The precise entitlement of an existing MP to a retirement pension (referred to in the legislation as a 'retiring allowance') depends on when they entered parliament, how long they have been in Parliament, whether they retired voluntarily or involuntarily, and their salary. Based on the existing rules, a backbencher in parliament for more than 8 years will retire with an indexed pension of at least 50% of their salary for life, accessible from age 55. Depending on when they entered Parliament, this means that they are entitled to \$51,380 or more a year, indexed for the rest of their life, or a substantial sum commuted to a lump sum.

An additional retirement allowance is payable for office holders, such as Ministers. This accrues at the rate of 6.25% of the additional salary for each year the office is held, up to a maximum of 75%. It means that senior members of the Government could retire this year with a pension of over \$110,000 a year for life.

Upon the death of a retired politician, their spouse¹ is entitled to 5/6^{ths} of the retirement allowance/pension. The Democrats also note that retired politicians and their spouses receive generous travel entitlements.

¹ The Democrats have continually argued that there are partners of MPs in genuine de facto relationships who do not have access to this because they are same-sex.

The Democrats point out that most Australians receive employer superannuation contributions based on 9% of their salary, but, under the existing scheme, politicians' superannuation works out to be about, on average, 69% of their salary. This is the 'notional employer contribution' as calculated by the Government Actuary, being the effective cost of the PCSS benefits as a percentage of the total salaries of scheme members.²

The Australian Democrats have long argued that this is unacceptable and should be reduced for all MPs to a level more in line with the rest of the community. Our amendments previously moved in the Senate to reduce the generosity of the Parliamentary Superannuation Scheme were defeated by Labor and the Coalition.

The Democrats discovered in a recent Senate Estimates Committee hearing that the unfunded liability for the existing Parliamentary superannuation scheme is \$551million.³

This means that there are no assets that support the obligation to pay the politicians' superannuation into the future. This means these obligations will be paid from consolidated revenue, that is, from future taxation revenue. To pay this superannuation commitment and subsequent pensions to past politicians, it will have to be met by taxation revenue from future generations of Australian taxpayers. We do not believe that in years to come future tax payers should pay for over-generous pensions to the politicians of today.

Recent amendment to the scheme

In 1997, following a Democrat reference, the Senate Select Committee on Superannuation reported on the *Parliamentary Contributory Superannuation Scheme and the Judge's Pension Scheme*. The Committee then concluded:

*"The Committee consider that change to the Parliamentary Contributory Superannuation Scheme is desirable. The scheme is out of step with superannuation practice in the wider community. There is convincing evidence that it is excessively generous to a small group of retiring politicians."*⁴

Unfortunately, the Committee could not reach agreement on reforms. The Coalition and Labor Senators recommended that super should be considered as part of the parliamentary remuneration determined by the Remuneration Tribunal rather than by the Parliament.

The Democrats went further and recommended that the scheme should be extensively overhauled, and that the level of public subsidy to the scheme was excessive and needed

² As report in the Senate Select Committee on Superannuation "Report on the Parliamentary Contributory Superannuation Scheme" Sep 1997 p. 15

³ Senator Andrew Murray questioning of Mr Geoff Painton, Department of Finance and Administration, 11 November 2003

⁴ Senate 1997 report p.41

to be substantially reduced. It also recommended that any changes should apply to existing as well as new MPs in respect of future service.⁵

Following the report, as from July 1 1999, it required the preservation of future contributions to the superannuation scheme to be preserved until age 55, unless taken as a pension.

From the last election, further changes were introduced, picking up further recommendations from the 1997 report. The most important of these changes meant that for new MPs, super could not be accessed until the age of 55. They also limited the amount that could be taken as a lump sum. The Democrats proposed more significant amendments⁶ to the Scheme but Labor and the Coalition voted to ensure that no substantive change was made to the actual scheme payment amounts, and no change was made for politicians who entered parliament prior to the 2001 election.

The changes proposed by the Parliamentary Superannuation Bill 2004

The 2004 Bills close the existing Parliamentary superannuation scheme to new members. All new MPs would receive a 9% contribution towards an accumulation scheme. The change will not apply to existing MPs who will continue to accrue entitlements based on the old rules.

Based on the young age of some current MPs, maintaining the existing system could mean its survival for at least another 50 years.

The Australian Democrats support reducing the contribution to 9% but believe the new scheme should apply to all MPs in respect of future service.

In February, Labor Leader, Mark Latham broke from a long and trenchant history of Labor defence of the Parliamentary superannuation scheme, and said he '*can't defend the current scheme*' and that:

"I think politicians need to recognise that a lot of public distrust and cynicism about modern politics is about double standards. And when people see a parliamentary super scheme that's way out of line, far more generous than the community standard, well it's hardly surprising the public makes a grievance about it." (Mark Latham AAP 4/2/2004)

Yet in a breathless piece of hypocrisy and double standards, every Labor MP from Mark Latham down is set to vote to maintain their excessively generous super scheme while imposing changes only on future MPs. It means that, should Mark Latham become our next Prime Minister and hold that office for a significant period of time, he, like his predecessor will still retire with an indexed pension of around \$200,000 a year.

⁵ Senate 1997 report, Democrat remarks p. 3, 7

⁶ The Australian Democrats amendments would have allowed MPs to opt-out of the super scheme and reduce the benefits payable to those that didn't.

We are also concerned that the changes will mean that a newly elected MP will be paid 55% less than an existing MP⁷. The Democrats hold the view that it is not acceptable in any employment situation for one worker to be paid 55% more than another worker for the same job.

The Australian Democrats proposals

The Democrats proposals would apply the 9% superannuation contribution rules to all MPs from the date of the next election.

To ensure fairness, all benefits under the old superannuation scheme would be grandfathered. Transitional rules would ensure that those MPs that were likely to qualify for the retiring allowance will do so. This rule, originally proposed by coalition backbench committee chaired by Senator Alan Ferguson, was suggested to reduce backbench opposition to the changes and increase the number of MPs transferring to the new scheme. Around 80 MPs will have less than 8 years service as at December 2004.

Based on our best estimates, the existing scheme costs taxpayers about \$18 million a year for the existing 226 MPs.

If all members prospectively moved to a 9% accumulation scheme for all MPs, this would save at least \$15 million a year. If this proposal were to be accepted this saving could be redirected to funding the presently unfunded parliamentarians superannuation fund liability.

The proposed amendments in the Parliamentary Superannuation Bill 2004 will only save the taxpayer around \$2-3 million a year depending on the number of newly elected MPs⁸. If the Democrats reforms are not accepted by the Parliament, the unfunded liability of the PCSS will rise by at least \$45 million over the course of the next term, adding to the \$510 million existing unfunded liability.

Potential difficulties with our proposal

Some commentators have questioned the constitutional legality of our proposal⁹.

It has been suggested that section 51 (xxxix) that gives the Commonwealth the power to make laws with respect to '*the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has the power to make laws.*'

⁷ A new MP will get the \$102,760 salary plus 9% super = \$112,008 package. The old MP package is \$102,760 plus 69% super = \$173,664. The old MP is \$61,656 (or 55%) a year better off. This is not adjusted for the income tax effects.

⁸ Around 30 MPs usually leave the Parliament at each election – a scheme cost saving of around \$2 million. If it is a landslide change of Government election, this number rises.

⁹ Based on an interpretation of the High Court decision in *Smith v ANL Limited 2000 HCA 58*.

The lawyers, and there are a lot of them in Parliament, have argued that by taking away future rights to get even more superannuation we would be acquiring 'property'. We dispute this for a number of reasons:

1. Any entitlement that has accrued to a current politician will be maintained, ie we are not taking away what they have already 'earned'; and
2. It is their decision to recontest their seat in the 2004 election which constitutes a new 'contract of employment' with the Australian people. If they lose, they remain entitled to their existing entitlement. If they win, they will keep their existing entitlement up to 2004 plus 9% of their salary after 2004. If MPs don't like these terms and conditions they do not have to apply for a new position.

While the parliament has the power to put in place retrospective legislative to change the scheme, retrospectivity is very rarely imposed and it is something that the Australian Democrats do not support. Although parliamentarians' superannuation has for many years been significantly out of step with standards across the rest of the community, we cannot support historical changes to these arrangements.

The alternative— an optional change

The optional change proposal takes on board the principles that are within the legislation proposed by Peter Andren MP, and avoids the complex web of constitutional issues.

An optional scheme would allow every parliamentarian the opportunity to 'grandfather' their existing entitlements and move to the new 9% accumulation scheme.

The Remuneration Tribunal should look at the allowances and wages that are provided to parliamentarians. Currently they are not required to take into consideration individual superannuation in their calculations for increases in or creation of entitlements for parliamentarians. This would have to change under this proposal.

Those parliamentarians that do not choose to move across into the new scheme would have their individual superannuation entitlements considered whenever salaries and allowances are reviewed by the Remuneration Tribunal. Options for the Remuneration Tribunal would be halting wage increases, electorate allowance increases and other entitlements determined by them.

Further, at the beginning of each new parliament the Minister should be required to table the current superannuation arrangements for all parliamentarians. This will show whether or not a parliamentarian has moved away from the existing excessive scheme.

Those that do choose to move across will not have their superannuation considered by the Remuneration Tribunal when it looks at entitlements and allowances. New parliamentarians will be moved into the Commonwealth PSS upon their entry into parliament. They will have available to them the same scheme that is on offer for all other commonwealth public servants.

Holistic Review also needed.

The *Members of Parliament (Life Gold Pass) Bill 2002* was recently considered by this Committee. The Australian Democrats made a number of remarks in our Additional Comments report that are useful with respect to this submission.

Over time, the Australian Democrats, along with other MPs have called for a number of major changes to parliamentarians' entitlements.

The Senate has consistently expressed reluctance to take a policy position on these matters, claiming that these are the province of the Remuneration Tribunal.¹⁰

There are essentially three categories of entitlements afforded to MPs. These are

1. their 'salary package',
2. other entitlements needed to do their job, and
3. their 'retirement package'.

The first includes matters such as salary and fringe benefits (car and other benefits). The second includes electorate allowances, office expenses, and staff allocations.

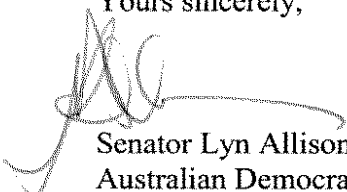
While the first two are essentially determined by the Remuneration Tribunal, the third, including superannuation and retirement travel benefits, are determined by Parliament. This means that existing MPs determine their own retirement packages. The Australian Democrats believe this is absurd and that the Remuneration Tribunal should be involved in determining the three categories of entitlements from a holistic approach.

As for any employee, the salary package of a parliamentarian should be assessed, first, in terms of the work a parliamentarian does ('work value'), and second, in terms of each member's specific personal responsibilities.

The Australian general public does not assess a parliamentarian's salary package in isolation from their other entitlements. Neither should the Remuneration Tribunal.

If you so desire I would be pleased to give evidence on behalf of all Australian Democrats' Senators at a public hearing.

Yours sincerely,



Senator Lyn Allison
Australian Democrat Whip

On behalf of Senator Andrew Bartlett, Senator John Cherry, Senator Natasha Stott Despoja, Senator Aden Ridgeway, Senator Brian Greig, Senator Andrew Murray

¹⁰ For instance, the Hansard debate of the 13th March 2002 – see Senator Murray and others.