Chapter 2

Key Issues

2.1 The committee has identified three key issues that emerged from this inquiry: financial implications; the principle of non-retrospectivity; and compensation.

Financial implications

2.2 Very little information is available regarding the possible financial implications that will result if the bill is passed. The Explanatory Memorandum to the original 2004 legislation provided an estimate of the fiscal impact of closing the PCSS to contributing members. The estimate ranged from an annual financial saving of between $0.9–5.3 million, between 2004–05 and 2007–08. However, to extrapolate this figure to the current bill may be to significantly overstate its fiscal impact, as the bill would only apply to little over half of current MPs.[1] The committee notes that as the PCSS is now closed to new members, the number of sitting MPs that are contributing PCSS members will naturally decline over time. As a result, there will be fewer and fewer MPs entitled to the more generous PCSS, until a time is reached when there will be no more contributing members.

2.3 The Department of Finance and Deregulation provided the committee with an estimated cash cost of $317 million to close the PCSS in accordance with the approach described in bill. According to the department:

> This cost estimate was derived by Mercer [which provides actuarial advice to the department] based on the assumption that members would become entitled to a pension from the date of closing the PCSS (assumed 1 July 2010), and would receive a lump sum amount that represents the fair value of that pension to transfer to a superannuation scheme of their choice.[2]

2.4 The committee heard evidence from the Department of Finance and Deregulation that an estimate for the unfunded liability for current PCSS contributors is in the order of $220 million.[3]

2.5 The Department explained the reason for this discrepancy:

> The estimated cash cost of closing the PCSS [$317 million] is higher than the $220 million referred to in the hearings, which was based on unfunded

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1 There are currently 126 sitting MPs that are members of the PCSS. This means that 100 of a total of 226 members and senators that are now covered by the new arrangements.

2 Department of Finance and Deregulation, answer to question on notice, 11 September 2009, p. 23.

3 Mr Alan Greenslade, First Assistant Secretary, Department of Finance and Deregulation, *Committee Hansard*, 14 August 2009, p. 7.

> superannuation liability attributed to PCSS contributors, due to the different assumptions that are applied in deriving the two figures. In particular, the approach proposed in the Bill requires the value of benefits payable to existing contributors to be calculated from 1 July 2010 rather than from the expected retirement date of members. It also requires an assumption that all members receive their full entitlement as a pension from that date.[4]

Committee view

2.6 The committee acknowledges that in theory there could be some cost saving resulting from moving contributing members of the PCSS to the new arrangements, as the PCSS is a more generous scheme. However, this theoretical possibility is unlikely to eventuate because of a compensation liability that is likely to arise. As is discussed below, if the government is required to compensate contributing members on just terms for the removal of their PCSS entitlements, these potential savings will be severely eroded. If the compensation claims are sufficiently large then there will be an overall cost to the measure at the detriment of both the government and the taxpayer.

2.7 The committee also notes the actuarial advice from the Department of Finance and Deregulation that the immediate cost of closing the PCSS is in the order of $100 million greater than the current unfunded liabilities of the PCSS. It would be a perverse outcome that in order to bring the superannuation entitlements of 'pre-2004 MPs' into line with the majority of Australians, the bill would impose an initial expense to taxpayers of approximately $100 million.

2.8 The committee is also of the view that MPs' superannuation entitlements should not be reviewed in isolation of other aspects of their remuneration. As discussed below the committee supports a holistic approach to MPs' entitlements.

Non-retrospectivity

2.9 The committee first considered this issue back in June 2004 when it inquired into the originating legislation; the Parliamentary Superannuation Bill 2004. In its report, the committee expressed concerns regarding the proposition put at that time, to extend the new arrangements to all sitting MPs. The committee reiterates its earlier remarks:

> The Committee, however, is concerned that expanding coverage of the proposed arrangements to current parliamentarians may be at odds with the principle of non-retrospectivity.[5]

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4 Department of Finance and Deregulation, answer to question on notice, 11 September 2009, p. 23.

5 Senate Finance and Public Administration Legislation Committee, *Provisions of the Parliamentary Superannuation Bill 2004 and the Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004*, June 2004, p. 13.

2.10 The Minister's second reading speech for that bill, which sets out the government's rationale for not supporting its retrospective application, is also worth restating:

> The government does not support retrospective changes to accrued superannuation. Of course, retrospectivity in most circumstances is a most undesirable thing. Such changes would not be in line with the superannuation arrangements applying generally in the community, which protect accrued superannuation entitlements. Existing senators and members will have made financial arrangements and commitments based on the expectation of continued membership of the current scheme. It would be unfair and inequitable to reduce their entitlements retrospectively.[6]

Committee view

2.11 The committee reaffirms its earlier comments regarding the principle of non-retrospectivity and endorses the proposition that it would be unfair and inequitable to reduce MPs' existing superannuation entitlements retrospectively.

Compensation

2.12 The Department of Finance and Deregulation raised the potential legal vulnerabilities of enacting the changes proposed by the bill. Officials told the committee:

> There is also the issue of the legal risks. There is a risk under the Constitution about the unjust acquisition of property. Clearly members have different considerations of how valuable a pension is versus a lump sum, depending on a number of factors including lifestyle, age and length of service. But it is open that members may wish to challenge in the High Court on the fact that their property had been unjustly acquired. In the bill as it is currently drafted there is not guidance on how the pension would be converted to a lump sum and how that amount would be paid to another fund.[7]

2.13 This risk would seem to be heightened due to the acknowledgement by the department that '[t]here would be a significant change to the member’s entitlements.'[8]

6 The Hon Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Administration, *House of Representatives Hansard*, 12 May 2004, p. 28334.

7 Ms Kathryn Campbell, Deputy Secretary, Department of Finance and Deregulation, *Committee Hansard*, 14 August 2009, p. 4.

8 Ms Kathryn Campbell, Deputy Secretary, Department of Finance and Deregulation, *Committee Hansard*, 14 August 2009, p. 5.

Committee view

2.14 The committee is concerned about the prospect of exposing the Commonwealth to a potentially lengthy and expensive legal challenge over the proposed changes. Ultimately, any legal costs incurred by the Commonwealth would be borne by the Australian taxpayer. Given that the number of MPs contributing to the PCSS will naturally diminish over time, the committee sees little value in pursuing the arrangements proposed in this bill, particularly when it poses the risk of a drawn out legal battle over commuted benefits.

2.15 In closing, the committee reflects back to the conclusions of its 2004 report on this subject. In that report the committee commented:

> ...the Committee considers that assessing parliamentary superannuation in isolation from the remainder of the parliamentary remuneration package has limitations. The Committee's view is that a holistic approach to parliamentarians' remuneration is required. To ensure that the approach is transparent and accountable in the eyes of the public, the Committee considers that there is a case for referring parliamentarians' remuneration as a whole...for inquiry and report...[9]

2.16 In this regard the committee notes the recent announcement by the Special Minister of State and Cabinet Secretary, Senator the Hon Joe Ludwig, of an independent review of the entire Parliamentary entitlements framework.[10] The review will trace out the path for the next stage of reform of Parliamentary entitlements and will report to government within six months of commencement. The report and recommendations of the panel will be reported publicly and will be considered by the government as a basis for reform of the Parliamentary entitlements system.[11]

2.17 The terms of reference of the independent review specify that, amongst other things, 'the review should have regard to...remuneration and allowances...' which will clearly include superannuation entitlements. The review's terms of reference are reproduced in full at Appendix 4.

2.18 The committee supports this holistic approach to parliamentarians' remuneration and looks forward to the publication of the review's findings.

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9 Senate Finance and Public Administration Legislation Committee, *Provisions of the Parliamentary Superannuation Bill 2004 and the Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004,* June 2004, p. 13.

10 Senator the Hon Joe Ludwig, Cabinet Secretary and Special Minister of State, ' Reform of parliamentary entitlements', Press release 35/2009, 8 September 2009.

11 Senator the Hon Joe Ludwig, Cabinet Secretary and Special Minister of State, *Proof Senate Hansard*, 8 September 2009, p. 43.

Recommendation 1

2.19 The committee recommends that the Senate not pass the bill.

Senator Helen Polley

Chair