

Senate Standing Committee on Economics  
ANSWERS TO QUESTIONS ON NOTICE  
Treasury Portfolio

**Inquiry into Treasury Law Amendment (Better targeted Superannuation Concessions and Other Measures) Bill 2023 and a related bill**

**Department:** Department of the Treasury  
**Topic:** Legal advice  
**Reference:** Spoken 18 April 2024  
**Senator:** Nick McKim

**Question:**

Senator McKIM: I will put some questions on notice to save time. I anticipate that you may wish to take this question on notice, which is, of course, fine. You have said that legal advice was sought around the constitutionality of this. I understand that privilege accrues to legal advice. That doesn't necessarily mean that that advice can't be released publicly, by the way, but that's not your decision. I'm asking whether there is a view that the changes are not diminishing the remuneration, merely increasing taxation, or is the view that it's constitutionally permissible to do what this legislation is doing based on the fact that the judges actually receive the benefit while they are not in office?

Mr Hawkins: I might have to take you up on your offer to take this question on notice because it does go to some of the details of the legal advice itself.

**Answer:**

In designing the *Better Targeted Superannuation Concessions* measure, Treasury received legal advice on the constitutionality of the proposal (including the requirement in section 72(iii) of the Constitution, which prevents remuneration of Commonwealth judges from being diminished during their continuance in office).

It would not be appropriate to comment further on the specifics of the legal advice as the Commonwealth intends to maintain privilege over the advice. Treasury, having regard to the advice it has received, is confident that the legislation as drafted and presented to Parliament is legally effective.