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FINANCE AND PUBLIC ADMINISTRATION LEGISLATION
COMMITTEE

**Reference: Parliamentary Superannuation Bill 2004; Parliamentary
Superannuation and Other Entitlements Legislation Amendment Bill 2004**

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SENATE**FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE****Monday, 31 May 2004**

Members: Senator Mason (*Chair*), Senator Murray (*Deputy Chair*), Senators Brandis, Faulkner, Forshaw, and Heffernan

Participating members: Senators Abetz, Carr, Chapman, Conroy, Coonan, Eggleston, Chris Evans, Ferguson, Ferris, Fifield, Harradine, Harris, Knowles, Lees, McGauran, Mackay, Marshall, Murphy, O'Brien, Payne, Ray, Ridgeway, Sherry, Tchen, Tierney and Watson

Senators in attendance: Senator Mason (*Chair*), Senators Brandis, Cherry, Heffernan, Sherry and Watson

Terms of reference for the inquiry:

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

Committee met at 2.02 p.m.**ANDREN, Mr Peter James, Federal Member for Calare**

CHAIR—I declare open this public hearing of the Senate Finance and Public Administration Legislation Committee. Today's hearing is part of the committee's inquiry into the proposed provisions of the [Parliamentary Superannuation Bill 2004](#) and the [Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004](#). The committee advertised its inquiry on the Internet and in the *Australian* newspaper. In addition, the committee contacted a number of organisations and stakeholders alerting them to the inquiry and inviting them to make a submission. The committee received four submissions, all of which have been published. Copies are available from the secretariat in the room today, or are able to be downloaded from the committee's web page.

I propose to structure today's hearing by first taking evidence from Mr Peter Andren, MP, federal member for Calare, followed by Senator Andrew Bartlett, the Leader of the Australian Democrats, and then the committee will call witnesses from the Association of Former Members of the Parliament of Australia. Following a short adjournment, the committee will take evidence from Mercer's Human Resource Consulting Pty Ltd, followed by the Department of Finance and Administration. Evidence given to the committee is protected by parliamentary privilege. This means that witnesses are given broad protection from action arising from what they say. The Senate has the power to protect them from any actions which disadvantages them on account of the evidence given before the committee. I also remind you that the giving of false and misleading evidence to the committee may constitute a contempt of the Senate.

The committee prefers to conduct its hearing in public. However, if there are any matters which you wish to discuss privately with the committee, we will consider your request. On behalf of the committee it is now my pleasure to welcome Mr Peter Andren, the federal

member for Calare. Thank you very much for appearing before the committee this afternoon. Would you like to make an opening statement?

Mr Andren—I wish to briefly cover a couple of the points that I put in my submission. I would say that recent moves, culminating in this legislation, have acknowledged that the scheme is super-generous, despite the denials that have come up in recent years. It took the Leader of the Opposition to shift debate on this matter. It was never going to go anywhere in my estimation while ever either one or both of the major parties and their leaders were reluctant to make a move. The original proposal of the Prime Minister, as I understand it, was to close the scheme to all MPs. Subsequently that was changed to incoming MPs, so the Prime Minister apparently thought it was possible to close the scheme to new members, despite obvious just compensation issues. What is planned is a two-tier system which I believe will create a lot of heartache and problems. You are going to have colleagues side by side on different systems and I do not think that is healthy. I believe all continuing and new members should be part of the new scheme. I think the just compensation issues can, and should, be overcome.

At the very least there should be an opt-out clause, which was the purpose of my private member's bills in recent years, or an opt-in, if you like, into the new process. It should be allowed under a whole raft of things, not the least of which is freedom of choice, which is part and parcel of the current public policy position of both major parties. Precedents exist for this, as they do for arrangements made under the 1990 Commonwealth superannuation scheme. It is quite clear that there was an opt-out process and a transfer process to the new arrangements. More recently in 1990 in Western Australia, an opt-out or opt-in arrangement, known as the Carpenter amendment, was adopted, enabling and allowing any member, if they so chose, to opt out of the existing scheme. That completes the introduction.

CHAIR—Thank you very much. We have only half an hour available for you. I have several questions, but I will kick it off with this: 'community standard' has been bandied about a lot in this debate. Do you think that the community standard is nine per cent for parliamentarians, or do you think it could be higher for the new scheme?

Mr Andren—No. We can have a debate about the adequacy of nine per cent, but the point I have made all along is that we should not be legislating a standard for our constituents while blithely continuing a scheme whose notional contribution, according to the actuary, is 69 per cent. We can have a debate about whether it should be 15 per cent.

CHAIR—That was my next question.

Mr Andren—Indeed, if we are in the process along with our constituents, I think it would facilitate and force debate on the adequacy or inadequacy of that current level.

Senator HEFFERNAN—My generation of schoolteachers are retiring in New South Wales. Some of them are retiring on 85 per cent of their finishing rate of pay. Should your proposal flow on to those schemes as well?

Mr Andren—If there is a legislated level that we are requiring for the community, I would like to think that—

Senator HEFFERNAN—Do you think that that is an unjust scheme?

Mr Andren—I am not aware of it, but I am quite happy to look at that. We have to have standards that apply right across the board, particularly when they involve the elected representatives.

CHAIR—I understand that. What you are saying to me and to Senator Heffernan is that you are not stuck on the nine per cent. You are suggesting that maybe it should be 15 per cent as it is for public servants, academics, teachers or people in the armed forces—in effect, public servants, measured broadly.

Mr Andren—I think it is quite obvious that there are dramas around the adequacy of the nine per cent, but while ever we expect that of our constituents, I believe that we should adhere to the same standard.

Senator BRANDIS—As a matter of principle, you think there should be a uniform level of contribution across all professions and occupations, whether they be private sector or public sector?

Mr Andren—In general, I would say yes.

Senator BRANDIS—Are there exceptions to that that you can see?

Senator HEFFERNAN—Judges?

Mr Andren—Judges are unelected. I would certainly look at judges. I think the key thing to look at is the standard of remuneration, the level of remuneration. I do not think we are prepared to have that debate, vis-a-vis politicians. I would like a completely independent look at the worth of politicians and put a figure out from which should only be paid the guarantee, the amount that we dictate through our legislation.

Senator HEFFERNAN—The difficulty with what is fair pay is that intellectually you could argue that you pay your politicians nothing or you pay them double. You could intellectually argue either case.

Mr Andren—There is a case to be made to look at jurisdictions and parliaments around the world. Have a look at what is being paid and put all of the entitlements and privileges of office on the table. Have a look at them and from that come up with a figure that may be \$160,000 for a backbencher and \$500,000 for the Prime Minister.

CHAIR—The opt-in clause or the opt-out clause is perhaps central to your submission. The Australian Democrats in their submission say that a list of those who have opted into the new system should be published—a system that would be cheaper for the taxpayer. What do you say to the argument that if there is an opt-in clause, in a sense that could diminish our democracy by some sort of nasty Dutch auction. In other words, you do not vote for candidate X because they are under the old system and it is costing us more. Is that really the way we should be playing democracy in this country?

Mr Andren—I have heard it described by one senior member of a party as a shame-out clause but I certainly do not see it as that. I just request and expect that there be an option. As the government's deputy treasurer, Senator Coonan, said, it is the right of everybody to determine how their superannuation should be managed. I do not know what you would do about those who choose not to opt out, but I would certainly want that right.

Senator BRANDIS—Mr Andren, I want to come back to something you said a second ago about whether or not we want to have a debate about what is the worth of a politician. Let us not talk about backbenchers; let us talk about what strikes me as being the most striking example of the lot, and that is the salary of the federal Treasurer. I think I am right in saying that the federal Treasurer earns a cabinet minister's salary, which all up is \$177,000 a year—about the level of remuneration you would expect a middle level to senior executive to be paid in a small to medium size company. The federal Treasurer, in effect, is the chief executive of the country. My question to you, taking that as a particularly striking example of an unusual rate of pay as opposed to the responsibility of the officeholder, is: can we have this debate about superannuation in isolation from the broader debate, which I understood you to be saying a moment ago we should not have, as to what a politician is worth?

Mr Andren—I do not know that I was saying we should not have a debate about anything. I was suggesting that there is a real argument for a reassessment of the salaries we pay our politicians, but let us put it all on the table, including, when applicable, the fringe benefits, the allowances, the privileges, the entitlements and so on. Out of that we should come up with a figure that would seem adequate, remembering always said that we are all volunteers in this process. I do not think, given the way that executive salaries have grown like topsy at senior level in recent years, that we would ever expect our politicians to be always matching those, but I certainly think there is a very strong argument for the Prime Minister, the Treasurer and senior officers and perhaps backbenchers to be better remunerated. My whole point in all of this is that so often I have been approached—and I cannot believe that other members have not been approached too—by people who cannot access their superannuation early, which was part of the issue before it was restricted to the age of 55, and who need to access it. Their question is, 'What about you guys?' I am saying that we should abide by the same standards.

Senator SHERRY—Mr Andren, you raised the issue of two groups of employees working side by side under different superannuation conditions, which I accept will emerge, but is that not true of the closure of any defined benefit fund? Let me give you a couple of examples. Almost every state public service defined benefit fund has now been shut, paying 18, 19, 20 per cent or more to public servants prior to the closure. The state governments are paying only nine per cent since the closure. Qantas shut its defined benefit fund on 1 July last year. I had a complaint from a steward who is in the new fund which provides for nine per cent accumulation. What we have seen in the last 10 years—with every bank and every finance institution—has been a significant closure of most defined benefit funds with a cut-off date. Although I cannot get the statistics, there are hundreds of thousands of workers in old funds working alongside literally hundreds of thousands of workers in new funds who are receiving less of a benefit.

Mr Andren—The only thing I can say in response to that is: why can we not draw a line in the sand at the end of this parliament and allow those members who have accumulated a defined benefit under the existing scheme to retain that, but from this point forward we all move on with the same contribution? In effect, you would be creating a new scheme for every member.

Senator SHERRY—I want to get to that issue, but do you accept that there are, across the private and public sectors when a DB is shut, literally hundreds of thousands of workers in that situation? It is not unusual.

Mr Andren—No, it is not unusual.

Senator SHERRY—That brings me to the next point I wanted to question you about. Are you aware of the closure of any defined benefit fund where the fund has been closed off to existing members—because I am not?

Mr Andren—No, but why should it be that we cannot set a precedent as a mark of faith with our electorate?

Senator BRANDIS—We did not know about community standards before, though. What Senator Sherry is saying to you is that there is a uniform community standard and now you are saying that we should create an exception to that.

Mr Andren—All I am suggesting is that you have created a two-tier process. My basic argument here is the opt-out. I said in my second reading speech that I was convinced by the arguments that I got from the clerks and others that it was a very difficult process to try to wind up the existing scheme, given the just compensation issues that would arise.

CHAIR—At least it is not retrospective. That was your argument in your submission. It is not retrospective.

Mr Andren—I was prepared to leave that. I understand that Senator Murray may be making some points around that and he has probably studied it in far more detail than I have. I basically just wanted to concentrate on my amendment.

Senator HEFFERNAN—Senator Sherry makes the point that the defined benefit schemes are already out there. Have you familiarised yourself with those?

Mr Andren—No, I have not.

Senator HEFFERNAN—Perhaps you should.

Mr Andren—As I said, I was interested only in the opt-in or opt-out amendment in this submission. I made that quite clear in my second reading speech.

Senator SHERRY—You can opt out; there is a method to opt out. Senator John Watson, with his expertise, explained this very well in the Senate. You can ask for payment by cheque and not cash it, and after a year has elapsed there is no longer a legal liability for the money to be paid. If an individual does not want to receive the money, they do not have to receive it.

Mr Andren—No, I am talking about the ability to opt out of the existing scheme and into the new arrangements with the Remuneration Tribunal making a determination, as it did in Western Australia and as it did in the Commonwealth scheme in 1990, where something in the order of three times the member's contribution was passed on to the new scheme and two times the contribution in the case of Western Australia. That roughly parallels the arrangements made for someone who retires inside 12 years. At the moment I think it is two and one-third times. I was arguing that a formula such as this has been applied in Western Australia and I was asking why it could not be applied at the Commonwealth level.

Senator HEFFERNAN—Why do you think that most ministers are paid a considerable amount less than the people who report to them in the departments? Why do you think that is the case? Do you think that is how it ought to be?

Mr Andren—No.

Senator HEFFERNAN—Why do you think it is the way it is?

Mr Andren—I do not know. I suppose it has been part of a process that the Prime Minister of the day, as occurred in the last few days, determined that there should be—

Senator HEFFERNAN—We are not talking about 10 per cent less. We are talking about 50 per cent less in some cases.

Mr Andren—Maybe it is the need to attract people from the public sector who are being so well rewarded these days and we have to pay that sort of money to get top advice and top heads of departments.

Senator HEFFERNAN—You do not suppose it is because, as I learned in local government, there is never a good time to refurbish the council chambers and, going back to Bob Hawke's time, there is never a good time to increase the salaries of MPs because of political intimidation, as Senator Brandis set out?

Mr Andren—This is why we have to bite this bullet and have a proper assessment. What we have tended to do is allow the other entitlements to grow as a compensation for what is regarded as an inadequate salary. I think we have to have the debate on why it is inadequate. We should put all of the long hours and all of that stuff on the table and work out a figure, but put everything on the table—including the fact that the Prime Minister may only get \$230,000, or whatever, but that the accoutrements of office are such that there is a fair fringe benefit even at that level. Maybe we will come up with a figure of \$500,000.

Senator BRANDIS—This community standards argument cuts both ways. I just do not see the logic of saying that we should apply the community standard to some part of the package but disregard it in relation to the others. If you are going to be consistent and say that members of parliament should be remunerated in a holistic global way according to the community standard, it necessarily follows that you will be saying that certainly the Prime Minister and ministers are chief executives of vast departments. I said that the Treasurer is the chief executive of the country before—perhaps I should have said that he is the chief financial officer and that the Prime Minister is the chief executive of the country. If you apply a community standard to them you will be left with the ridiculous proposition that they should be paid multiples of what they are being paid at the moment. I do not think you want that. I do not think anybody wants that, but that is where the logic of your community standard argument takes you.

Mr Andren—I disagree. I think the logic of my community standard argument is that we have a huge problem in justifying—or I do, to my constituents—why we have in place a system with a nominal contribution of 69 per cent or thereabouts when we dictate that the employer should pay on their behalf nine per cent. People should not be expected to reconcile those two numbers. We should abide by the same rules.

CHAIR—The salary, accoutrements and entitlements, et cetera, should all be transparent and above board and assessed by the Remuneration Tribunal. Just to make it clear, that is the crux of your argument, isn't it?

Mr Andren—Very much so. Witness during recent days the debate over travel. As I and others have suggested, there should be justification before and after publicly. That is just starting to happen, which is good and healthy, but I think there has been an expectation that the so-called entitlements and the fringe benefits available, which would better be called privileges of office, should be spelled out as part of the package, and a value should be put on them.

CHAIR—And in an accountable fashion.

Mr Andren—Too right.

Senator HEFFERNAN—Under the present arrangement where people in this place have qualified under the old scheme, are you saying they should move to a new scheme?

Mr Andren—Yes.

Senator HEFFERNAN—If you are talking about community standards, what will you do with the hundreds of thousands of schoolteachers and public servants in New South Wales where, for instance, the old scheme was turned off in the early 1990s? Do they move to a new scheme and all of a sudden you say to them, 'Sorry, old boys and girls, this is what you are entitled to from tomorrow.'

Mr Andren—I am talking about the parliamentary scheme initially.

Senator HEFFERNAN—But you are applying community standards here.

Mr Andren—Let us start with the parliamentarians' scheme because the state parliamentarians schemes follow the template, as I understand it. Let us start with the parliamentarians because I cannot begin to assess the worth of our justices.

Senator HEFFERNAN—Say we do that: what you think a backbencher like yourself ought to be paid? In other words, put your money where your mouth is.

Mr Andren—Funnily enough, I happen to think that, given the fact that so much of your expenses are met—you make a donation for your phone rental and so on—there are many fringe benefits in the package available. Senator, I cannot put a figure on it and I would not want to, but I think it happens to be just about right.

Senator HEFFERNAN—The present wage?

Mr Andren—Yes.

Senator BRANDIS—I understood you to be agreeing before that ministers, including the Treasurer and the Prime Minister, are not paid enough. Are you saying that the ministers, the Prime Minister and the Treasurer are not paid enough?

Mr Andren—I would say that they are not paid enough, based on their base rate, but I certainly do not agree with the superannuation arrangements that have been built into the system for the PM and the Treasurer because they are contrary to the sorts of standards that a

prime minister speaks of all the time—that we must govern for all Australians, for instance, and we must represent all Australians.

Senator HEFFERNAN—They are all very good arguments, but the issue that bothers me is how to undo the entitlements of hundreds of thousands of people who are in the defined benefits superannuation schemes.

Mr Andren—As I said, I am not sure, but the PM thought it was possible when he first suggested it.

Senator HEFFERNAN—No, no.

Mr Andren—As I understand it, he was suggesting—

Senator HEFFERNAN—I do not know where your understanding comes from.

Mr Andren—Was his original proposal not to close the PCSS for all MPs, current and future alike?

Senator HEFFERNAN—I have no idea. That is your assumption.

Mr Andren—That is as I understand it.

Senator HEFFERNAN—Where do you get that understanding from?

Mr Andren—From my staff are, from research that they have done.

Senator CHERRY—I noticed in the submission you gave us Mr Slipper's response in the other house to your comments. He refers to the government not being in the business of retrospective legislation. You discussed with Senator Sherry defined benefits schemes in other places. I might add that the defined benefits schemes closed some time ago for new entrants in every state but Queensland. I think Queensland still has theirs open, as is the Commonwealth's. The question I have relates to contract of employment. A public servant has an expectation of a contract of employment until they retire. The argument being put by some people, including by Mr Slipper and by the Association of Former Members of the Parliament of Australia, is that MPs have a contract of employment expectation until they choose to retire. Do you think that is appropriate, or do you think the expectation is that it is a three-year contract of employment?

Mr Andren—The latter, surely. This expectation of continued employment—there should be no expectation of continued employment beyond the next election. It is a three-year renewable contract as far as I am concerned.

Senator CHERRY—That is the key issue. Do you regard the changes you are recommending as retrospective?

Mr Andren—No. I am suggesting that the only amendment that I am arguing for here is—we have got onto the other debate about whether it should apply to all members—basically to argue for freedom of choice to opt in with the formula worked out by the Remuneration Tribunal, as was the case in Western Australia.

Senator CHERRY—That was my technical question because I notice that your amendment, which you have also tabled, says that there is still a fair bit of stuff to be sorted out by the Remuneration Tribunal before an opt-in could work.

Mr Andren—This was taken basically from the successful Western Australian amendment that Mr Carpenter moved through the house there.

Senator CHERRY—So it is based on the Western Australian model?

Mr Andren—Yes.

Senator CHERRY—This committee invited all 150 house MPs to provide their thoughts on the submission, and you are the only person to have responded to that. Do you have any comment on that?

Senator HEFFERNAN—My goodness, that would have been a long hearing.

CHAIR—It would have been. It would have been very appropriate because they would all have been accountable—

Mr Andren—I understand that Senator Bartlett is appearing, so it would have been 150 members of the lower house.

Senator CHERRY—Yes.

Mr Andren—I have no comment on that. I have been fairly consistent, I hope, on what I have been arguing for over the last six or seven years.

Senator HEFFERNAN—You say that an MP or the Prime Minister receives a lot of add-ons to his salary, but they actually duty-performing add-ons. You get a travel allowance because you have to do a lot of bloody travel. I do not think there is anything extraordinary about the add-on that attaches expenses to your job.

Mr Andren—For a backbencher or the PM?

Senator HEFFERNAN—For anyone—if you have to come and camp here and run two homes, or whatever. As I say, there is never a good time to refurbish the council chambers if you are a councillor. But I think you could mount an intellectual argument that the add-ons are part of the expenses that go with the job. Not everyone has a \$10,000 phone bill because they do not have to be on the phone all the time.

Mr Andren—As I say, let us put it on the table and make that argument. If that is accepted, I would imagine that the agreed amount for the PM would be \$500,000 and the other matter is tabled but not counted as part of the total package.

Senator HEFFERNAN—There is the argument that we are paying all those people who report to a minister double what the minister is paid. Public servants receive between \$300,000 and \$500,000 to attract meritorious people to the task. Is there not some force to the suggestion that the same argument could be applied to a humble backbencher?

Mr Andren—I do not think so.

Senator HEFFERNAN—If it is good enough for the PM, why is it not good enough for others?

Mr Andren—There is a fringe benefit to be paid. I filled out the details the other day on the use of the car. A car being provided is a very generous fringe benefit, as is the provision of phones at home and private calls, and so on, and, if you use it, a cab card and the availability of travel. All of these things should have a value placed on them.

Senator HEFFERNAN—The point I make in relation to the car is that I run up 60,000 kilometres a year.

Mr Andren—So do I.

Senator HEFFERNAN—But that is just doing your job.

Mr Andren—It is doing your job, but there is a fetter on its use.

Senator HEFFERNAN—Do you think that the cost of your car should come out of your salary?

Mr Andren—No. The car is available.

Senator HEFFERNAN—Do you think that the car should come out of your salary?

Mr Andren—No. The fringe benefit should be added to the value of the package that the MP gets—that is what I am saying—as would be the travel opportunities for study tours.

Senator HEFFERNAN—If you were engaged in information technology, you were in receipt of \$100,000, you worked from home, you did all your business over the Internet, you did not need a car and you had a pushbike, you could make out a case like that, but where you need a car and you use it as a legitimate part of your job, surely it should not come out of your salary.

Mr Andren—The personal benefit portion should be part of the total package.

Senator CHERRY—Do you think that some backbenchers are overpaid? I know that we have been focusing on the role of the Treasurer, but when you think of the \$102,000, plus \$20,000 for an electoral allowance, plus a car, plus a home, plus 69 per cent superannuation, do you think that some backbenchers are overpaid for the work that they are doing?

Mr Andren—I do not want to comment on that.

Senator SHERRY—Do not wander from the issue.

Senator CHERRY—It is the flip side of what we have been talking about.

Senator WATSON—Mr Andren, do you recall appearing before the Senate Select Committee on Superannuation in relation to the issue of remuneration, et cetera?

Mr Andren—In Sydney, I do. It concerned a private member's bill that I had before the house.

Senator WATSON—Yes. You appeared before that committee and, as chairman, I issued you with a challenge at the time because you were very strong on the generous superannuation retirement benefit. I issued a challenge to you that to the extent to which you thought it was generous, you had the opportunity of nominating a charity and putting it on a public declaration of interest. You declined to go ahead with that. Why, given your strong position on this sort of matter?

Mr Andren—I am not going to go into my personal arrangements except to say that I have an intention to make arrangements that will enable me to be totally consistent with everything I have ever said on the parliamentary superannuation scheme, and that is all I wish to say.

Senator HEFFERNAN—Does that apply to your family and your children, not just to you?

Mr Andren—Yes.

Senator HEFFERNAN—You are happy to cut them adrift.

Mr Andren—I am not cutting anybody adrift. I have my personal arrangements that I do not intend to share with this committee and I will do as I so choose.

Senator WATSON—This is additional to the evidence that you gave at the time.

Mr Andren—I gave you no undertaking.

Senator WATSON—You gave us no undertaking at that time and that led us to the conclusion that you are prepared to pursue a political interest but not suffer personally any consequences as a result of that. We pointed out that you were not in a position not to take the benefit, but at the same time we pointed out that you had the opportunity to nominate a selected charity which could be a beneficiary of what you regarded as the excessive amount of superannuation. Today you have told us that you have made arrangements. Perhaps you might like to use the words so I do not misinterpret your intention. You have made arrangements to do what?

Mr Andren—I am not making any further comment, except to say that I do not intend to do anything post-politics that is inconsistent with anything I have put on the public record about this scheme. Indeed, I may pass away in office and never have to worry about it.

Senator WATSON—That could happen to all of us.

Senator BRANDIS—But Senator Watson's point goes to the heart of it, doesn't it? You say that the scheme is too generous. You are a beneficiary of the scheme. You do not have to take the money. Are you going to?

Senator WATSON—He has got to take it, but he can nominate someone to be the beneficiary.

Mr Andren—You want me to answer the question?

Senator WATSON—Sure, from your credibility point of view.

Mr Andren—I think this is fairly impertinent. I have said that I do not have to sit here and nominate anybody to whom I am going to contribute any, all or part of my superannuation, should I become eligible for it. All I am prepared to say is that I intend to completely follow the tenet of everything I have put on the public record about the super-generosity of the scheme of which I am a member. That is why I am seeking the right to opt out and to have in this case the Remuneration Tribunal make a determination, as it did in Western Australia, to transfer an amount to the new scheme, alongside new members, so that I and anybody else who wants to opt out of this scheme can continue for as long as they choose, without being compromised by the scheme as it exists.

Senator WATSON—But you get the benefit of the scheme as it is at the moment on the basis of your past entitlements. What you are talking about now is a future entitlement. I am just saying that you have the opportunity, to ensure that your credibility remains high in the

public domain, to give an indication and to ensure that your good intentions are matched in some way by what you intend to do. We do not want you to nominate a particular charity.

Mr Andren—Senator, when and if I make that decision—

Senator WATSON—Here is the catch.

Mr Andren—I will answer to my electorate. I do not intend to tell a parliamentary committee what my intention is.

Senator HEFFERNAN—I applaud the intellectual argument that you are putting here. As you say, parliament should show the way on defined benefit schemes, but for argument's sake let us consider that you get your way, for some reason. As a result of that, do you expect that the hundreds of thousands of public servants and other people who are in defined benefit schemes would move to some other position as a corollary to what is happening here?

Mr Andren—No. It is not a 'would have to'; it is a choice. It is as simple as that—it is a choice. I may be the only one. I understand Mr Carpenter, MP, is the only person in Western Australia who has taken advantage of the amendment he moved, but that does not interest me. What interests me is the ability to do so. I have heard it described, as I said earlier, as a shame-out. I am not attempting to make anyone feel that they should be shamed out of it.

Senator WATSON—Our witness could get a double benefit out of this because he could get a benefit under the existing scheme and he could move across to the new scheme and, with a sufficient entitlement, he could get the add-on and probably would get more than a person who stays under the existing scheme.

Senator HEFFERNAN—I guess it is technically possible.

Senator WATSON—Of course it is technically possible.

CHAIR—Is that a question, Senator Watson?

Senator WATSON—It is a question.

Mr Andren—I can assure you that I have not sat down and worked out that process. I will certainly have a look at it, but my intention was to seek what I believe is a human right to opt out of a scheme I think is outrageously overgenerous. I would like to be hopefully in a parliament alongside people who are under the new arrangements.

Senator WATSON—As a committee, we have a responsibility to ensure that there are no unintended consequences as a result of this changeover. If this becomes an integral part of the new arrangements, I put it to the committee that Mr Andren may well be a double beneficiary as a result of such arrangements.

Senator CHERRY—Senator Watson, that may well be right but we can discuss that—during our private deliberations.

Senator SHERRY—during our private deliberations. I do not think we need to use Mr Andren as an example.

CHAIR—You are right, Senator Sherry.

Senator HEFFERNAN—But you are overpaid, under the present arrangements.

Mr Andren—Only as it relates to post-parliamentary entitlements.

Senator HEFFERNAN—The long and the short of it is that you think you are overpaid.

Mr Andren—As it relates to post-parliamentary entitlements.

CHAIR—We will leave it at that. Mr Andren, thank you very much.

[2.42 p.m.]

BARTLETT, Senator Andrew John, Leader, Australian Democrats

CHAIR—Before my colleagues ask questions, would you like to make an opening statement?

Senator Bartlett—I will make a brief opening statement. I am sure you have received our submission and I am equally sure that, as always, you have read it fully. I think the basic point is that all of us are interested parties in this legislation because it affects our own entitlements or has the potential to do so. So we felt it appropriate to present a view to the committee. I am sure we are all aware of the range of attempts at changes and the number of times this issue has been raised in parliament and the previous inquiries by the Senate superannuation committee that have looked at this issue. I do not think it is beyond dispute that the existing superannuation entitlements of federal parliamentarians are seen as overly generous by the community. The fact is that this is an opportunity to change that. That change is something we welcome, but given that the political and parliamentary opportunities to make changes in this arena are fairly rare we should take the full opportunity we have here before us to make the change as fair as possible. The simple point of our submission is that we will have an arrangement of all of the existing parliamentarians voting to dramatically reduce the entitlements, and quite appropriately, but only for future parliamentarians, not for ourselves.

I think that raises some equity concerns. It also raises an issue of significant disparity in the next parliament. We will have some people working side by side with each other with very significant disparity in entitlements inasmuch as they go to retirement. I make the broader point—and, frankly, I think this is part of why we are in the situation now where the change is being made—that entitlements are seen to be excessively beyond what is justifiable and undermines community respect for politics. I think it is a problem when community respect for the political process is significantly undermined because, without becoming too high and mighty and noble sounding about it, the democratic process and the rule of law that it underpins are fundamental. Respect for the whole process is integral to that. It is for that reason that we do not take the approach of suggesting that every entitlement that we have is unjustified or unnecessary. I recognise as much as everybody that there will always be a view among some people that politicians get paid too much. I do not want to inappropriately feed that, but there are still some areas that we think are unjustified.

We need to acknowledge community standards without falling victim to feeding the inevitable perception that politicians are always having far too many entitlements. Some in our view are unjustified. Superannuation is clearly one of them and the life gold pass and post-retirement travel are others. But, in the context of the legislation before us, I think we have the opportunity to do the job properly and ensure that the changes to make the system more in line with community standards are ones that apply to us, or at least they have the opportunity to apply to us as it will to future politicians.

Briefly, our submission presents a couple of options for how to do that. One is along the lines of what Mr Andren has put forward and the other is along the lines of basically allowing all existing MPs to reach the qualifying mark of eight years service and then transfer their

entitlements to the new scheme. Another point I would make is the suggestion that was made at around the time positions on this were being announced by the opposition and the government. The opposition announced a proposal to cap additional retiring allowances for senior ministers. We support that. We also say that there is a need to bring the Remuneration Tribunal into play in the future in this area: to have responsibility for determining superannuation arrangements in the future as part of the entire salary package, rather than having parliamentary oversight. I do not suggest improper motive, but it is another arena which, if politicians are voting on their own entitlements, obviously leaves us open to attack from the cynical among the community. These days cynicism is occasionally hard to avoid. I think it is best for us clearly to be seen to be handing the process off to the Remuneration Tribunal in this arena as well.

I make it clear that we are not talking about retrospectivity or removing entitlements that have already been earned, so to speak, but we are interested in supporting equality for all MPs in the next parliament and beyond. An argument could be advanced that after the election—it would not be feasible in a pre-election context—we should take another chance and undertake a holistic review of the whole array of politicians' entitlements. As I said, I am not of the view that all of them are unjustified. Particularly after some ill-informed attacks on some politicians in the past week or so related to travel, I think that we need to look at ways of more overtly defending the justification of entitlements. We are more easily able to do that if we effectively remove the ones that are not justifiable, and I think superannuation is clearly one of those.

CHAIR—Thank you, Senator Bartlett. Is option 1 to be preferred over option 2? Is that the way you see it?

Senator Bartlett—I think it is, yes. As set out in the submission, there are a couple of arguments that people have made to suggest that it may not be valid, but I am not convinced by those.

CHAIR—Let us go to option 1. You stated in your opening statement that you are concerned about disparity in entitlements between those in the current system and future parliamentarians coming in on the new system. Can I just read something to you from the submission from the Association of Former Members of the Parliament of Australia:

We learned also ... in that same debate that Superannuation legislation—
parliamentary superannuation legislation—

had been amended on more than seventeen occasions before the 2001 amendments and to our knowledge none of those amendments were negatively retrospective in character and implementation.

It had been amended 17 times. In many different contexts—and Senator Sherry mentioned this and before him Senator Brandis referred to this as well—we have different schemes running in the Commonwealth Public Service; at least two at the moment and perhaps a third one shortly. Senator Heffernan referred to the fact that in New South Wales there is a scheme for teachers. What is wrong in principle with having two different schemes running in tandem—or at least two schemes running in tandem? There is plenty of precedent for it.

Senator Bartlett—I think you could advance an argument that it is not ideal in principle while recognising that all principles have their limitations in terms of practical

implementation. We recognise that there are some difficulties with that, but I think the disparity will be huge between those who are on the existing scheme and those who will be on the new scheme. It is such a huge gap you really will have a situation in which the post-retirement benefits of newly elected MPs will be less than half. It is a very big gap. It is not as though it is variations on a theme: there will be enormous disparity. The committee should explore at least provide opportunities for alleviating that disparity.

CHAIR—Isn't the argument that those people who went into parliament in 1998, 2001 and 2004 went in knowing what the arrangements are? Mr Andren made the point that we are all volunteers here and we know what the arrangements are. You go in and you make personal arrangements with your family and with your profession and so forth knowing that these are the arrangements. To change the arrangements midstream is fraught with difficulty. If you do so in relation to tax, there is a hue and cry, but there are very few precedents for superannuation.

Senator Bartlett—My view is that each time you nominate for an election you are really reapplying for the job. Therefore, come the next election, people will nominate and they will make a decision as to whether or not they are still happy with the conditions.

CHAIR—Is that right? Under the old scheme, as I understand it, if you were successful in three consecutive elections, you were entitled to a parliamentary pension.

Senator Bartlett—Yes.

CHAIR—If that is right, you cannot say that you are reapplying and that new rules are appropriate because you know that under the old system you have to win three elections; you are changing the rules.

Senator Bartlett—Our proposal suggests that that would remain the same if you still needed to get re-elected to get your three terms or your eight years.

CHAIR—It only goes so far.

Senator Bartlett—It only goes so far as that, yes.

CHAIR—So you are only prepared to go that far?

Senator Bartlett—It is still a pretty significant extra benefit. I suppose the other point I want to make—obviously I cannot speak for all parliamentarians but I think it is fair enough to say—is that I do not think most of us here study the entitlements with a fine-tooth comb before we decide whether or not to nominate. I think that almost all of us are here because we are interested in being involved and in being part of the parliament for a whole range of different reasons, rather than nominating because we really like the look of the superannuation scheme.

CHAIR—It is not the sort of reason we go into it.

Senator Bartlett—No.

Senator HEFFERNAN—As I said earlier.

Senator BRANDIS—Of course that is right, Senator Bartlett, but there is the further point that a lot of people make very considerable financial sacrifices to be members of parliament. They forgo much more generous remuneration than they were earning previously in order to

have the opportunity to serve. Do you think it is a bit unfair to those people for this debate to suggest, as it does subliminally at least in the minds of some, that parliamentarians are in it for the money? I do not know any parliamentarians who are any good who are in it for the money.

Senator Bartlett—I guess I just made that point and perhaps I had picked up the subliminal, although no doubt unintended, implication from Senator Mason's question about changing conditions part of the way along disadvantaging people because they are not getting what they expected. I do not think people enter parliament for that reason. Obviously, some people get paid less for being in parliament than they might get outside. Clearly, those people who get elected from hereon in—newly elected parliamentarians—will be getting far less generous post-retirement benefits than do the current crop. I doubt there will be any decline in the number of people who will put their names forward, but I may be wrong. I guess I am one of those people who still thinks that \$100,000 a year is a fair whack. It is obviously not for people who can earn \$200,000 elsewhere, but it is only two or three per cent of the community at best who earn over \$100,000 a year. While I do not think that MPs should be paid the average wage, I also do not think that it needs to be through the roof.

Senator HEFFERNAN—Do you think you are overpaid? Does everyone else in the Democrats agree that you are overpaid?

Senator Bartlett—I did not say that I was overpaid. As I said, I am not one of those cynics.

Senator HEFFERNAN—But your argument would seem to suggest that it is part of your position. You are arguing in a vague sort of way that you overpaid.

Senator Bartlett—I do not know about that.

Senator HEFFERNAN—Or do you want an equal outcome at the end of the day with the change to the super? Do you want to have an equal outcome at the end of the day?

Senator Bartlett—I actually do not have a problem with the general assertion that we are overpaid, not in the sense that I do not think I am worth it or that we do not work hard.

Senator HEFFERNAN—Does your party consider parliamentarians to be overpaid?

Senator Bartlett—I would not want to speak for the entire membership of the party, eclectic group as they are. One of the reasons we focused on superannuation and the gold pass is not because, coincidentally, both are post-retirement benefits. I think they are areas where they are really not justified. I think the recent argument for the level of salary that we get is justifiable. I certainly would not think it should go any higher, but the generosity of the post-retirement benefits is excessive.

Senator HEFFERNAN—We had the argument earlier that the reason most ministers have a departmental secretary who is on double the minister's pay reporting to the minister is to get good people interested in those positions in the Public Service. By the way, that is the argument that judges use for their entitlements. Do you think that this should flow on to the judiciary and other areas and that if you do you would still get the calibre of persons in the judiciary?

Senator Bartlett—There are a few points about that. We are not specifically focusing on the judiciary as part of this. Given that this is a joint submission of our Senate team, I would not want to comment on that when I am speaking on behalf of all of them. One of the reasons why we believe it should be put in the arena of the Remuneration Tribunal in terms of a holistic examination of all the entitlements, including pay and other fringe benefits if you like, is to take account of the sort of question that you are raising. For reasons similar to what I mentioned before, I do not think our pay level or our entitlements are particularly linked to the quality that we get here. I think all of us could point to people whom we think are excellent people who do an enormous amount of work and a fabulous job and would be worth double the money and we could point to a few others of our colleagues and suggest that they do not really earn what they are paid. We probably have different views about who those people are.

Senator HEFFERNAN—So if you did away with the present arrangements—the car and things like that are all part of the present arrangements; some people use their car to drive 5,000 kilometres a year and some people use their car to drive 100,000 kilometres and are usually chasing around in their electorate—what do you think the Prime Minister should be paid?

Senator Bartlett—I am on record. I am not sure if the entire Senate team is on the record, but I am certainly happy to put my own view. I think he could justifiably be paid significantly more, as could a few other senior ministers.

Senator HEFFERNAN—Would you like to put some numbers around that?

Senator Bartlett—I do not think so. One of the things that I think the debate could benefit from, which goes towards what I was saying earlier, is that perhaps after the election trying to find a mechanism to examine all of the entitlements in a more holistic sense and actually start positively justifying some of them. Overseas travel is an area, for example, where you will never have politicians travelling overseas without the public saying that it is just a junket. I know, as I am sure we all know, that sometimes overseas travel is immensely valuable and is great value for money for the taxpayer. Obviously we are not going to convince everybody and have them all saying, ‘Yes, go, you should have more,’ but I do think we could do more to defend or promote the value for money for the taxpayer and the justifiable nature of some of our entitlements. But that needs to be done in a holistic sense, and in comparison with international circumstances. I do not even know what the comparable entitlements or pay scales are for people in the UK parliament or the congress, for example, so I would not want to just pluck a figure out of the air for the Prime Minister and say that we will give him an extra \$100,000.

Senator HEFFERNAN—Are you suggesting that he should be at least equal to anyone who reports to him? Do you think that people who are paid more than the Prime Minister should report to the Prime Minister?

Senator Bartlett—It is getting a bit outside the scope of the specific issue before the committee. I think it is one of those things that could be debated. Perhaps all I will say is that it would not worry me if the Prime Minister is paid more.

Senator BRANDIS—The same broad principle must apply to ministers. Leaving aside the issue of backbenchers and the appropriate level of their remuneration, do you not think it is generally true, as Senator Heffernan was saying, that when someone is a minister and must take ultimate responsibility and be accountable for decision making it is at least anomalous that the senior public servants who report to them should be paid more than they are? Leave the debate about backbenchers' salaries out of the picture for the moment. Do you not think, as you have said, that it is anomalous that the Prime Minister is paid as modestly in relative terms as he is—relative to his responsibilities, I mean? Do not think that the same role applies to ministers generally and, indeed, senior opposition members like the Leader of the Opposition, who is the alternative Prime Minister?

Senator Bartlett—Or perhaps people in other positions of significant responsibility and influence.

Senator BRANDIS—What about the Leader of the Australian Democrats? What is the answer to my question, Senator? Do you not think that general principle applies to all the ministers.

Senator Bartlett—One of the problems with even properly arguing that—and, frankly, this goes to the heart of what our submission is about, so this is a useful debate and I actually think that the political process and its integrity would benefit from having it—is that, whilst we have entitlements that are grossly unjustifiable such as our superannuation scheme is, I think it makes it harder to argue that the Prime Minister should be paid more, that a minister should be paid more or that these other entitlements are good. People say that we want all of those things, but we still have all those horrendously unjustifiable entitlements. I guess that is why we would argue, for those reasons as well, that we should take this opportunity to really fix it properly.

Senator BRANDIS—This goes to the other point we were debating with Mr Andren as to whether or not one can sensibly have this debate by isolating one aspect of parliamentarians' remuneration—that is, the superannuation scheme, which, taken in isolation, does not conform with community standards—rather than having a global debate about the remuneration of parliamentarians, including any particular ministers who have additional responsibilities beyond what members of parliament do and have people working for them with an intermediate level of responsibility who are paid a lot more money.

Senator Bartlett—You may well be right, but the situation that the Senate is in and that the committee is in is dealing with legislation that has one issue in isolation. Particularly given that it is a separate piece of legislation, unless we do farm it off to the Remuneration Tribunal and take a holistic approach, I certainly would not recommend that we should back away from making this change and send it all off to the Remuneration Tribunal to see what they come up with. Having got this far, I do not think that any of us would want to back away from proceeding with reducing what I believe there are clearly unjustified levels of generosity with the existing scheme. This is a completely new point, but I think that we have to deal with what is before us now. As I have said, there are opportunities that do not come along terribly often and we want to do as good a job as is possible while we have the chance.

Senator SHERRY—I notice in your submission you have referred to the unfunded liabilities of the parliamentary scheme. I also noted in the press at the weekend some articles by Luke McIlveen featuring Senator Cherry with photographs and comments about this unfunded liability. The sources were supposedly leaked and I am not sure whether that is true or not. Would you suggest by implication that the change is not radical enough and therefore the unfunded liability should be reduced much more quickly? Would you suggest, in respect of the Public Service and the military, where the unfunded liabilities are in the tens of billions of dollars—I do not have the exact figures but the department would be able to tell us—more radical reform in removing current public servants or public servants who will retire at some future date from the current schemes to reduce more quickly the unfunded liabilities?

Senator Bartlett—No. What we are focusing on in this submission—and I remind the committee that this submission and my presence here is a joint submission made on behalf of all Democrat senators—is the situation that is before the committee, which is parliamentary superannuation. Quite clearly, there is a significant unfunded liability there. We would certainly not remove the proposal entirely but we would reduce its impact and reduce the length of time that it would be hanging around.

Senator SHERRY—But you are not suggesting similar proposals to those you put forward here for the Public Service or the military superannuation funds, are you?

Senator Bartlett—No. The submission goes solely to the parliamentary superannuation.

Senator SHERRY—But do you agree that similar sorts of suggestions that you are making here should be made to the Commonwealth Public Service or the military superannuation funds?

Senator Bartlett—No. All I am addressing today before this committee is in relation to the parliamentary superannuation scheme.

Senator SHERRY—But if you have the opportunity to do that in the future, would you do it?

Senator Bartlett—That is a fairly hypothetical question.

Senator BRANDIS—Hypothetical, but it is simply a question of consistency.

Senator SHERRY—We have had the opportunity because we do have changes to the Commonwealth Public Service funds. So you have the opportunity to advance this principle of a radical reshaping to reduce the long-term liabilities, if you so wish, do you not?

Senator Bartlett—Those issues can be addressed in the context of those other opportunities when they are before the committee, whether this committee or another one.

Senator SHERRY—I seem to recall that, during the public debate as it emerged on this issue, the Democrats having a position that the parliamentary scheme should be brought into line with the proposed new public sector accumulation of 15.4 per cent. Is that correct?

Senator Bartlett—I do not think I would say that it is a formalised position. As happens from time to time over the years when the issue has been in the public arena and we have been putting forward options, I actually do not know if there was a specific comment by a

Democrat senator in relation to that but when you are talking about proposed options to reduce it from what it is now then they could be brought into line.

Senator SHERRY—I have been cautioned by you in the context of this debate and the debate about the closure of the DB for public servants and conversion into a 15.4 per cent accumulation. You are making some reference to that being the appropriate level for politicians. You have not mentioned that in this document, so I am just wondering what happened?

Senator Bartlett—I am pleased to know that you are following my comments so tightly. I cannot remember that one specifically, but I do not dispute that that is possible, I think, in the context of it being far more appropriate in comparison to the existing scheme. Other proposals have been put forward here and we are working with the legislation that has now been introduced into the parliament. That is what this submission addresses, and it is put forward on behalf of the whole parliamentary team to address that legislative proposal rather than an individual comment contributing to the debate while it is in a more fluid stage.

CHAIR—Thank you very much.

[3.09 p.m.]

LAMB, Mr Antony Hamilton, Immediate Past President, Association of Former Members of the Parliament of Australia

SOLOMON, Dr Robert John, President, Association of Former Members of the Parliament of Australia

CHAIR—Would either of you gentlemen wish to make an opening statement to the committee?

Dr Solomon—I will do so briefly. I hope that to some extent you are able to treat us as a double act. Mr Lamb has given you a submission which is perhaps more focused on the legislation than on the supplementary stuff I sent you after being elected president, and I might defer to Mr Lamb shortly. You are aware that the legislation we are examining now is particularly in respect of those people who are yet to come into this place as members of parliament. We represent those who have already been here and gone. In due course those who are to come will join you, and eventually will join us, so our focus has to be within that context.

It has been interesting for me to hear on a number of occasions, from your questions and agreed answers, a view that the focus of the legislation before the house is far too narrow for the general appreciation of the remuneration of parliamentarians. As you have already noted from a couple of papers which I wrote in the last few years and appended to my summary of the discussion of this matter at our recent reunion, it seems to us and to me that it is highly relevant to where parliamentarians should sit in the community spectrum. When you think of discussion and assertion in relation to ‘community standards’, that is an incredibly widely variable proposition. As the committee has already mentioned, the armed services, police services and universities are not part of this so-called community standard which we have suddenly embraced as being a political nicety.

You gentlemen would have already seen several times in the press and, indeed, in the editorial I wrote in the March edition of our journal that the Leader of the Opposition was unwise and that the Prime Minister in effect panicked in following him into this particular judgment that has been embraced by the legislation. Take for example universities that have a rate of 21 per cent beginning immediately. I presume that under the new regime people will be superannuated from the time they come here, not like me totally unsuperannuated because I was not a member for eight years or three terms, whichever is the shorter. The difference between that and the sort of thing that the public focuses on—the early retirement of, say, Bill O’Chee—are poles apart. The problem is created by responding too heavily or too quickly to public perception which clearly runs a great risk of leaving a lot of the whole matter out. So we certainly take a cautious view of all that. I think that is sufficient for my introduction. I turn to Tony Lamb to take the matter further.

Mr Lamb—First of all, in the discussion that took place between the first two witnesses, there seemed to be almost agreement on a general cutback of entitlements. However, I think it is an overreaction and an appeal to populism. As some of the questions indicated, I think we have to be more reasonable and take a look at what executive support we have and so on. That

is included in my general submission on behalf of the association. I am here mainly to argue with you and present the principle of retrospectivity. When I mentioned before that the principle of retrospectivity concerns former members, it also concerns current members, contrary to what Minister Minchin said. He said that the new superannuation arrangements will apply to new members and senators entering parliament from the next election, but it actually does apply to sitting members who do not return after the next election of the House of Representatives but return at a later time. It does not apply only to those who are elected and return at the next election. I mentioned that in my submission. It also concerns sitting members in the House of Representatives who lose their seat, through no fault of their own but, rather, by a judgment on the government and the opposition, or when their electorate is redistributed, which was the case with me in 1990. Such is the lot of sitting members. I challenge the statement that it does not apply. We press our argument on retrospectivity to apply to new members and senators who enter the parliament for the first time. That is our main argument and we emphasise that simple change.

I think this committee has the opportunity to review the matter of homosexual relationships. This may seem to be removed from the argument, but it is not. We are not talking about marriage but, rather, relationships that are characterised as parallel heterosexual relationships and apply to superannuation. Recently I have noticed in the media that homosexuals who can exhibit domestic relationships similar to heterosexual relationships will be considered for superannuation entitlements to be passed on without taxation after death. This provision should also be extended to the general range of benefits of sitting members and certainly the superannuation entitlements of members.

I cannot overemphasise how the retrospectivity principle is different as it applies to the Public Service. I met the minister a few weeks ago and discussed the retrospectivity principle with him. The discussion was all based on knowledge of his advisers of the Public Service superannuation. It does not have the special clauses which are in the parliamentary superannuation and which recognise the insecurity of being a member of parliament—that is, you come and go. In my case it was nine years between my first two terms in parliament and my second two terms in parliament; for most it is one or two elections. Added to the element of insecurity associated with being a parliamentarian, which is not in the nature of an average community job despite people citing ‘community standards’, is the fact that the qualifying period of service in the House of Representatives is not the same as it is for a normal community job, nor is the period in the Senate, which implies a longer sense of service. Being a member of parliament is not like having a normal job in the community and it is wrong to compare the two.

That is why the Commonwealth superannuation scheme from 1948 included the special clauses of being re-elected to the parliament. You should have continuity, resumption—not renewal but resumption—of your superannuation entitlements. It is an option open to you. All though our case, as you have seen there, drawing upon the debate in the House of Representatives in particular and on our own legal advice obtained from senior counsel, we argue that the principle of retrospectivity be honoured. It means a simple change to ensure that the new parliamentary superannuation scheme applies only to new members who are elected for the first time.

CHAIR—Your principal point, which is well stated in your submission, is that the bill includes a denial of the right of former members and senators to exercise an option to resume membership of the current parliamentary superannuation scheme on their return to parliament. How often does that happen? How often would the exception be likely to be taken up?

Mr Lamb—It has been taken up by quite a number of people, such as me, who skipped continuity and were returned to the parliament. They may or may not have qualified for superannuation in the first instance, but it is obvious from your question we are talking about a member who did not qualify except for a return of a multiple of their own contributions, which was so in my case. I may add in the context of the insecurity of being a member of parliament that I had four young children aged seven and under when I was returned to parliament. The knowledge that if I paid back all my money I would get superannuation made me feel secure for the sake of my children. I do not deny that.

CHAIR—Specifically, if I was elected in 1998 and again in 2001 but was defeated in 2004 and came back in 2007, are you saying that they should be able to resume membership of the scheme?

Mr Lamb—Exactly, because that is a contract of your employment. It is an understanding that you have. It is an agreement that you entered into. It is the reason why you took your money, if you did not know about it, and were coming back. I cite the Prime Minister again who uses particularly the expression ‘part of their employment’, not just a stage. In his phraseology, continuity is suggested.

Dr Solomon—There is a fair sprinkling of people across the years who have gone out of the House and have come back into the Senate—quite a few.

Senator SHERRY—Are you talking here about state members who may not qualify for the DB coming into the federal parliament or are you only talking about former federal members?

Mr Lamb—My comments are restricted to those covered by the Commonwealth parliamentary superannuation scheme.

Senator SHERRY—I am just thinking that the library could probably undertake some research on what the incidence is.

CHAIR—There would be some, wouldn’t there?

Senator SHERRY—There would certainly be some. I think there is one who will be coming in from Victoria into the Senate.

Mr Lamb—They will be No. 1 on the Liberal Senate vote as the former member for Ballarat.

Senator SHERRY—That is right.

CHAIR—From whom did you obtain legal advice in respect of section 51(xxxi) of the Constitution? You said you took advice from senior counsel. If the legal advice you have is correct, you are saying that the bill before us is ultra vires the Constitution.

Mr Lamb—I am saying that, but of course it would have to be tested; it would have to be challenged. An affected former member coming back, perhaps during the life of this current

parliament or one in the future, could take the matter to court on the basis that they were deprived of property without compensation. In this case the property would be the entitlement to continue or resume their contract for superannuation. That is the advice we got from a silk.

Senator SHERRY—That is your advice.

Senator HEFFERNAN—It is a very long bow, though.

CHAIR—Who is the silk?

Mr Lamb—I would expect another legal gentleman to argue the long bow. The argument is not with me, but with my silk.

CHAIR—Who is the silk?

Mr Lamb—No, I will not give the names. The advice was given in confidence.

Senator SHERRY—Whatever the merits of your argument, it seems to me that if you are in a defined benefits fund, whether it is public or private employment, if you cease employment, you resign, you finish and then you return to that employment, there is no automatic legal right to pick up the DB on your return to your employment. You could argue that there should be. I have been through some cases in Tasmania where female teachers had to resign from their employment, because of maternity leave in the main, and lost their DB. They went back to being employed as teachers and they ran a case, but it did not go as far as the High Court. Whatever the merits of the argument, there is a question mark over the merits of your legal advice about an automatic right, after having terminated employment, to go back and pick up the DB when you start again.

Mr Lamb—Yes. I am sorry that Senator Brandis was out of the room when I made the point. The advice to the minister was based on information from his advisers about people leaving the Public Service and coming back to the Public Service. It did not pay due regard to the specific clauses in the parliamentary superannuation scheme that provide for finishing up, coming back and the continuity of superannuation. It is a special case.

CHAIR—It is specifically provided for within the legislation that is different from other superannuation provisions.

Mr Lamb—Yes, section 20.

CHAIR—I am with it; I understand your argument.

Mr Lamb—It is not to be compared with other superannuation schemes, which is what seems to me to be a common fallacy.

Senator CHERRY—I would agree with you but from a different point of view, because I think that every term is a separate contract of employment. I think the High Court cases—and I have read them—would not apply because every term is a different contract of employment. If people do not like their terms of employment, they do not have to line up for another term in the parliament. I suspect that that is how the courts would determine it, too.

Dr Solomon—That point is covered fairly well in the discussion which I sent you as a submission. Perhaps it is an unusual one, but I thought it was worth doing because it is so recent and because it gives quite a good flavour of what public commentators in the guise of Mr Hywood, Mr Dixon and Mr Warhurst thought about a good deal of this and, indeed, a fair

sprinkling of what former members at various times have had to say about it. From that, you would have seen some appreciation of the point that Senator Cherry is making and indeed some other points, such as those from Dixon relating to the value of latitude and salary sacrifice, in what may be regarded as very poor form indeed for some former members, later as citizens and members of the public, pottering around some cheap old supermarkets because they were not properly superannuated. Even though that is an unusual submission to make, I think it would give you the flavour of what quite a number of people think of the proposition you have mentioned. It also shows roughly where parliamentarians might sit in the whole scheme of things. Of course, it would be our submission that the parliament really ought to be looking properly at that first before just whacking off a bit of a change to superannuation, which is almost out of context.

Senator CHERRY—I certainly agree that there needs to be a holistic review by the Remuneration Tribunal and part of that should include consideration of the issue of redundancy as part of the package. But, having said that, I still come back to whether these changes are retrospective. I do not think they are because the change advocated by the Democrats is that the scheme should apply to all members of parliament from the next election because it is a different contract of employment. If people do not like the contract of employment, they do not have to apply for the job at the next election.

Dr Solomon—I am sorry, but I diverted myself because I was thinking of other things. The point was made by all the speakers at the forum as to whether or not there is a considerable pool of would-be good parliamentarians, almost irrespective of their remuneration. You might have noticed that Hywood took the view that parliamentarians on the whole, and this is certainly worth noting, do a good job often under difficult circumstances and that their quality would be directly affected by any sort of dramatic reduction or change in remuneration whereas Warhurst, who is the more academically inclined, thought that it was not quite so difficult and that there was quite a substantial pool of able people who are not finding their way into the parliament through the process of selection. I am not sure where Dixon stood on that one, but there is a good range of opinion from informed people who inform the rest of the public on this matter. Although this issue has not been canvassed man to man or woman to woman among former members, I am confident that a significant reduction in remuneration would almost certainly reduce the quality of the applicants for candidature to parliament.

Senator BRANDIS—Dr Solomon, I think one of the problems here is that there are too few people who are seeking to go into parliament. Can I give you an example that struck me as very remarkable. Recently I was told by a journalist that each year there are approximately 2,000 applicants for cadetships at the *Sydney Morning Herald*. At that one quality newspaper alone, 2,000 people apply to pursue a career as journalists and they pick five or six. I do not know what the position is in other parties, but I know in the Liberal Party, not only in my state but also in other states, the average number of people who seek preselection for what are thought to be safe seats is usually half a dozen. That is part of the problem.

CHAIR—But they are all good people, though.

Senator BRANDIS—Of course, they are very good people. The problem is that, out of all the good people in the community, there are not enough people who are prepared to take on

careers as members of parliament. I am by no means persuaded, and I do not think it has been suggested to us, that the decision of people to do that has anything to do with remuneration.

Dr Solomon—I think it has very little to do with it. I think most people do not know the details until they get here. I certainly did not. I think the bigger attraction is of community service and the degree of status that goes with that. Obviously, you are in a position to wield some influence, if not something short of power, and that is attractive to some people. But it does not need to be done in penury.

Senator BRANDIS—If I can expand my example by explaining the point slightly differently, I will bet you that at this year's federal election there will be fewer people standing for parliament for all parties and independents in every electorate in Australia for the whole of the Senate than there will be applying for cadetships at the *Sydney Morning Herald*. It is ridiculous.

Mr Lamb—Yes. I just want to say a word of thanks to you, Mr Chairman, and to Senator Brandis and others. What attracts people is usually not the package you put. However, their view is focused on the retirement package when the unavoidable, the inevitable and the unthinkable happens—you are suddenly out, with no severance payment other than superannuation, no annual leave, no severance payment and no grand handshakes or payouts as we see with some high-level executives in corporations. It is purely superannuation.

Senator CHERRY—As Dr Solomon said earlier, the majority of MPs do not receive a pension when they retire or leave office. That is one of the anomalies with the current scheme. It provides an excessive benefit to a small group of retirees but a lesser benefit to probably the majority of retirees.

Senator SHERRY—But that has been a problem of any defined benefits scheme owing to the qualification.

Senator CHERRY—But this one particularly more so than most.

Senator SHERRY—Because the benefit is high.

Senator CHERRY—But, if the benefit is lumpy, it peaks between eight or 11 years service and declines as a percentage of contributions. For someone who has less than eight or 11 years service, they are looking at a much-reduced benefit.

Senator HEFFERNAN—I seek a point of clarification of your argument, Senator Cherry. Are you saying that at the next election every member of parliament is renewing their contract?

Senator CHERRY—It is my view that every election is a new contract with the Australian people. I do not think you can argue in contract law that we have a lifetime expectation of employment.

Senator HEFFERNAN—Out of that you build this proposition that there will be some harmony with whatever the scheme is from that day forward. Is that correct?

Senator CHERRY—Yes.

Senator HEFFERNAN—What do you do with the half Senate who still have half or the second part of their contract to go? Are they going to be different from everyone else?

Senator CHERRY—That is a difficult one, for that very reason. But, having said that, under the CSL case in the High Court, if they agree to the reduction in their superannuation—that is, by voting for it in the Senate—I do not think a legal case would be able to overturn that. But I agree that people halfway through their terms create a particular anomaly.

Senator BRANDIS—I think we are getting away from the point. It is not a contract of employment. I think you could describe it as an engagement.

Dr Solomon—Mr Chairman, at the risk of personalising this matter, but it is the case that I know best, it might make a nice counterpoint to what usually gets in the press with the people who retire early supposedly on \$1 million or some fraction thereof. I came to this parliament with Senator Sherry's father. I was a senior lecturer in university—there is no need to argue the point—and within one year of getting a chair, having finished a fully published PhD. I came in on a salary of \$9½ thousand, which was fractionally more than my senior lecturer's salary. I was in a dodgy seat at a dodgy time, but that was known in advance. The government had been in office for 23 years and there were no safe seats in Tasmania. But, as a matter of caution or prudence, I maintained during that time half of my university superannuation, having had to resign from university. In other words, I paid half the 10 per cent plus five per cent, or the five plus 10, that the university had for me as an insurance policy. So when I lost my seat I had that to fall back on. During that time I was paying 11.5 per cent compulsory superannuation here, 7.5 per cent of what had been my university superannuation, and I was maintaining a household and so on. That is a little different from the sorts of things that normally get into the press. I think it is worth keeping an eye on it.

CHAIR—That is the community standard argument, is it not—that public servants, people in the military, teachers and so forth, if they are not employed for life, have security of tenure.

Senator BRANDIS—And that is why people seek a career in parliament. The decision to seek a career in parliament is not an economically rational decision for anyone. Even people who are earning less outside parliament than they would be earning inside parliament would be deprived of the more secure expectations of which you speak.

Dr Solomon—That is correct.

Senator CHERRY—But the parliament is no more insecure than is any other employment. I remember looking at the figures. The average tenure of a parliamentarian in this parliament is actually higher than the average tenure of an employee in the work force as a whole.

CHAIR—But you leave voluntarily.

Mr Lamb—I refer to a point that was made earlier relating to community standards. While it is not central to my representation on behalf of former members, can I look forward and say I really do not think the nine per cent is the only community standard. We refer to it as a minimum community standard. I know that our president wants to talk about what might perhaps be an ideal percentage or package. I personally have objected to the dropping of the community standard by those who espouse it when they say that, under the new scheme, a sitting member will be able to salary sacrifice up to half of their salary and attract nine per cent through that—something which is denied to the general public. Therefore, it is not a community standard, contrary to the principle of adhering to a community standard.

As I pointed out in our submission, I believe it is discriminatory in the sense that you are not treating all members of parliament equally. Some people are in a position financially to be able to take advantage of salary sacrifice and to take the accompanying community nine per cent. Others—single parents and those bringing up a family—need every penny of their parliamentary salary, so they cannot take that extra community contribution of nine per cent on any salary sacrifice. I think it is discriminatory. That is a personal observation; it is not the observation of our association.

CHAIR—There being no further questions, thank you very much for being with us today.

Proceedings suspended from 3.37 p.m. to 3.51 p.m.

STEVENSON, Mr Carl James, Principal, Mercer Human Resources Consulting Pty Ltd

CHAIR—Would you like to make an opening statement today?

Mr Stevenson—I do not really have anything in particular to state. I think the best thing would be for me to answer questions.

CHAIR—What is your background, Mr Stevenson. What do you specialise in?

Senator SHERRY—For the record, what is your link with this issue?

Mr Stevenson—I am a qualified actuary. As to my background, of particular relevance in this particular case is that I have done the actuarial work, or at least some of the actuarial work, for the parliamentary fund in Canberra.

Senator CHERRY—I think the most recent annual report of the parliamentary scheme states that the actuarial cost of the scheme is the equivalent of 69.4 per cent of the salary budget. Would that be correct?

Mr Stevenson—No, 67.6 per cent is the correct figure.

Senator CHERRY—For what year?

Mr Stevenson—The accruing cost from the last investigation was for the period 2002 to 2005.

Senator CHERRY—A figure of 67.2 per cent?

Mr Stevenson—It is a figure of 67.6 per cent.

Senator CHERRY—What does that figure represent? How would you most correctly define that figure?

Mr Stevenson—It is the amount of money that you would need the government to put into the fund, if there was a fund in the first place, in addition to the member contributions to move it from a notional fully funded status from 2002 up to a fully funded status in 2005. In other words, all past benefits would be paid for at each of those dates. So it is the cost of the additional benefits that accrue between 2002 and 2005.

Senator CHERRY—The most recent figures that we received from DOFA were for unfunded liabilities—around \$550 million on the fund. What would you expect that to rise by on an annual basis?

Mr Stevenson—Under which scenario? I could probably answer that in fairly general terms. You would expect it, roughly, to follow increases in wages or increases in parliamentary salaries from year to year. That is working on a stationary fund type basis or a stationary population type basis.

Senator SHERRY—It is not stationary.

Mr Stevenson—It is not stationary, but if you had the fund open to new members and it continued you would expect pensioners to die and be replaced by other pensioners, and you would expect parliamentarians to leave parliament and be replaced by other parliamentarians.

So in broad terms you could say that you would expect it to go up by roughly four per cent each year.

Senator SHERRY—Senator Cherry might not want to go to this issue, but I do as it is relevant. It will peak and then gradually trail off over X number of years as there will be no new entrants to the scheme.

Mr Stevenson—That is why I said there were two answers to the question. The first one is that if the scheme was open it would go up by four per cent per year. If it was closed and the new scheme was put in place—I am not sure of the funding arrangements for the new scheme and whether or not it will be funded; I think it will be fully funded—you would expect the unfunded liability to increase for a period, then decrease and go down to zero eventually as the last person in the existing fund left the scheme.

Senator SHERRY—You have not been asked to do any actuarial work on that?

Mr Stevenson—Not at this stage, no.

CHAIR—Mr Stevenson, I am not an actuary and I have no idea of future entitlements and superannuation in general, so as a practising politician I will ask you this question: you have heard evidence that, after three election wins or eight years under the current system, parliamentarians are entitled to 50 per cent of their salary. Let us say that, at the moment, a backbencher gets \$100,000 a year. After eight years he receives half of that—\$50,000 a year. Under the proposed scheme, a nine per cent contribution scheme, how long would you have to be in parliament before you received a pension of \$50,000 a year?

Mr Stevenson—That is not a very easy question to answer. The value of the pension decreases as you get older because you have less time to live.

CHAIR—Let us say that I went into politics at the age of 35. How long would I have to be in parliament under the new scheme in order to retire on about \$50,000 a year? I am trying in my own mind to compare the two schemes.

Mr Stevenson—It is a question that I find difficult to answer just off the top of my head, but I will try to do it.

CHAIR—Just give us a ballpark figure.

Mr Stevenson—If we said that the contribution from the government was nine per cent of salary, it would probably take about six times as long.

CHAIR—Six times as long?

Mr Stevenson—That is a very rough figure. I would like to be able to do it properly at some stage.

CHAIR—So you would have to be in parliament for 48 years?

Mr Stevenson—Nine per cent of salary over 48 years.

Senator SHERRY—I know that this difficult off the cuff, but are you assuming that you would salary sacrifice to cut the 11.5 per cent that you currently have to put in as an employee contribution?

Mr Stevenson—I was thinking that the only thing you would have to put in would be the nine per cent. It would be a considerably longer period than exists currently. I could provide the figure if I had the time to go away and work it out.

CHAIR—I raised that issue because the argument was put earlier, on page 4 of Mr Andren's submission. He states, 'The current system encourages the pensioning off of non-performing members or senators after the third election.' You might argue that, when the system changes, people will not be able to leave parliament; they will hang around for a lot longer because of a lack of financial security. In effect, to obtain a worthwhile pension they will have to be here for 20 or 30 years as opposed to eight years. In other words, people leaving or remaining seem to be faced with a two-edged sword. I asked you that question simply because you might well argue that, if parliamentarians do not receive a sufficiently high pension, they will be inclined to stay longer in order to procure one.

Mr Stevenson—I could give you some sort of an indication from the experience of people leaving the parliamentary fund. Our most recent investigation indicated that about 15 per cent of people up for elections who did not have eight years service left at that election. When they get to the situation where they qualify for a pension, it is more like 40 to 50 per cent of those who are remaining. So there is an indication from those figures that people hang around long enough to be able to qualify for a pension. In fact, the comment made earlier that more people are leaving before eight years rather than after is not correct. It is more like 70 per cent of people who qualify for a pension.

CHAIR—Thank you for that; it is valuable evidence. If that is right and people are conscious of staying in parliament until they qualify for a pension could you not argue that, if pension entitlements were drastically reduced, people might stay in parliament a lot longer?

Senator CHERRY—Or a lot shorter.

CHAIR—Or they might not go in at all. That might be the worst of both worlds. People will not go into parliament at all or, if they do, they will stay forever.

Mr Stevenson—There is probably a bit of both worlds. You will have people who want to accrue a benefit in parliament and want to stay longer, but you will probably have a number of people who will leave earlier because it is too long for them to get the size of benefit that they are looking for and they will go out into the private sector to get higher paid employment and possibly accrue higher superannuation benefits.

CHAIR—I am just wondering whether that is a public policy outcome that we want.

Senator SHERRY—I do not know what the international experience is in this area. Are you aware of provisions in parliaments in other parts of the world? That would give us some indication of the behavioural response.

Mr Stevenson—Not in other parts of the world. I am aware of the Victorian parliament. The experience of the Victorian parliament is very similar to the federal parliament and the benefits are the same. So the 70 per cent rule to which I was referring before to qualify for a pension applies also in Victoria. I am also the actuary for the Victorian scheme.

CHAIR—It is a similar scheme.

Senator SHERRY—I am more interested in the behavioural response to schemes that are structured quite differently. It may be that, effectively, accumulation schemes in other parts of the world do not have as high a defined benefit and it might not cut in at the same period. If you do not have any knowledge; the department may have.

Mr Stevenson—I can give you some indication.

Senator SHERRY—It would be useful if you could.

Mr Stevenson—With parliamentary entitlements you have a cliff at eight years. There is a very rapid accrual of benefit entitlements up to eight years. The behaviour arising from this seems to be exhibited in the turnover. People do hang on for eight years. A number of them will then go out at elections, either after 12 years when they automatically qualify or, if they get defeated at an election, in the eight- to 12-year period. In schemes where you do not have that rapid accrual, levelling off and stopping of benefit accrual, you do not find that sort of behaviour and the exit rates tend to be fairly uniform over time.

Senator SHERRY—There is one issue that I wanted to raise with you. As an actuary I am assuming that you have either direct experience or knowledge of other defined benefit funds?

Mr Stevenson—I do, yes.

Senator SHERRY—What is the process generally for closure of a defined benefit fund?

Mr Stevenson—I will refer to those I have experience with. I am the actuary for the Victorian government's superannuation scheme, as it is called, which includes what is called the old revised scheme and the new scheme. One was a defined benefit pension scheme and the other was a defined benefit lump scheme. Both those schemes have been closed to new entrants and all new public servants go into an SG-style scheme called Vic Super.

CHAIR—What does the SG stand for?

Mr Stevenson—Superannuation guarantee.

Senator SHERRY—Nine per cent?

Mr Stevenson—Yes, it is nine per cent-type scheme. With the closure of each of those schemes the benefits for existing members were not changed at that point in time. So anybody who had accrued rights in those schemes maintained those rights, just as all new members were subject to the new scheme.

Senator SHERRY—So effectively in Victoria you have public servants working side by side, some in the old schemes and some in the new scheme?

Mr Stevenson—That is right, yes. There are some arrangements too which are probably worth mentioning, which you might want to take into account. Some employing authorities in the Victorian public sector have a concept of salary package. The salary package will have the cost of superannuation deducted from the package. So if you are in the defined benefits scheme and the notional employer contribution is 20 per cent that would come off the package which might be, say, \$200,000 for a public servant. If they are in the accumulation scheme, only nine per cent is deducted off their package, so their remuneration effectively is the same in total. That does not apply to all public servants, but quite a large number are on this packaging arrangement.

Senator SHERRY—It sounds like a bit of cost shifting going on against the Commonwealth?

Senator CHERRY—That would be almost impossible to calculate with a defined benefit scheme like the parliamentary scheme where the public subsidy is only really determined when the person retires?

Mr Stevenson—It would be extremely difficult in the parliamentary scheme because of this cliff sort of arrangement and the accruals being very different. The surcharge costs would probably give you some sort of idea of how the costs move because the surcharge costs recognise the different accrual rates.

Senator CHERRY—So the surcharge cost varies with years of service?

Mr Stevenson—With years of service, yes. So the surcharge costs before eight years are higher than the surcharge costs after eight years.

Senator CHERRY—Mr Andren in his evidence talked about the Western Australian scheme offering a transfer from the defined benefits scheme to the accumulation scheme and the ability to work out a value for a transfer of value across. Would that be possible for the parliamentary scheme?

Mr Stevenson—It would be possible to do something, but there are some problems with it. If somebody has enough service and they have reached their maximum benefit, you would be creating a situation where the cost for that member would be higher than it would otherwise be. One of the things that happens when somebody reaches their maximum benefit is that, if they continue in parliament—let us say that it is a backbencher rather than somebody who has a higher office—the value of their benefit is actually decreasing as time goes on because the value of the pension starts to decrease.

Senator CHERRY—My other question relates to 2000-01 when the notional employer contribution rate was calculated at 69.4 per cent. What factors do you think led to that declining to 67.6 per cent in the most recent reporting period?

Mr Stevenson—Probably the most obvious one was the introduction of deferred pension benefits in 2001.

Senator SHERRY—To 55?

Mr Stevenson—Yes. Quite clearly that was the most obvious one.

Senator SHERRY—Would that have had a greater impact over time?

Mr Stevenson—Definitely, yes. You would expect it to increase as the mix of members reflected more deferred beneficiaries as against non-deferred beneficiaries.

Senator SHERRY—You might not be able to tell me this now but you might be able to do so at a later date. If we had always had 55 for all members of the fund—which is not the community standard; it is actually 55 to 60—would that have had a big impact on the cost?

Mr Stevenson—In terms of the 67.6 per cent, I expect that you would still be seeing, I would expect, over 60 per cent.

CHAIR—Mr Stevenson, what will new parliamentarians lose in the way of pension entitlements compared with current parliamentarians? What sort of salary increase would they need to procure to make up for that?

Mr Stevenson—It is a very difficult question to answer because it depends on what value you place on superannuation as compared with a cash salary. A lot of schemes that I have been involved in, and governments when they have been dealing with these things, have found that they can probably give a lesser salary increase because individuals prefer cash to a superannuation contribution. It is all in the perception of the individual receiving the benefits, so it is a very difficult question to answer.

CHAIR—Mr Stevenson, thank you very much for coming along this afternoon.

[4.09 p.m.]

DAL SANTO, Mr Robert Nicola, Team Leader, Parliamentary Superannuation, Department of Finance and Administration

DORAN, Ms Karen Elizabeth, Division Manager, Superannuation and Governance Division, Department of Finance and Administration

WILSON, Ms Sandra, Branch Manager, Superannuation Policy Branch, Department of Finance and Administration

CHAIR—I welcome officers from the Department of Finance and Administration. I remind witnesses that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees, unless the parliament has expressly provided otherwise. I further remind witnesses that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy but shall be given a reasonable opportunity to refer questions asked elsewhere. Would anyone like to make an opening statement?

Ms Wilson—No.

CHAIR—In paragraph 28 of your submission you state:

This multiplicity of superannuation arrangements is not unusual in the public sector.

You give examples of schemes operating in the Commonwealth Public Service. You go on to state:

Australian, State and Territory Government employees and members of the defence force can have different superannuation arrangements from their colleagues depending upon the time at which they commenced their employment or certain other circumstances.

So your argument is that it is not unusual for people in the same workplace to be on different superannuation schemes. Is that correct?

Ms Wilson—That is correct, yes.

CHAIR—Are there plenty of examples of that?

Ms Wilson—Certainly in the public sector, yes.

CHAIR—Both in the Commonwealth and the state public service?

Ms Wilson—Yes. In the states particularly—except in Queensland I believe all the defined benefit schemes have been closed and new employees are joining a super guarantee accumulation scheme.

Senator SHERRY—I have tried to get figures on this and it is very hard. Do you have any figures on numbers in the pre and post closure defined benefit?

Ms Wilson—This is in the states?

Senator SHERRY—Yes, in government employment.

Ms Wilson—No.

Senator SHERRY—What about Commonwealth employment. Do you have numbers there?

Ms Wilson—There are numbers of how many people are in the CSS defined benefit and the PSS defined benefit. They are both defined benefit schemes. Some people have a choice between the PSS and the nine per cent scheme. We do not have any figures for people who are in the nine per cent scheme.

Senator SHERRY—I take it that, with the DB fund conversion into accumulation, you would be able to project a turnover rate and the number of new members that are coming each year into the accumulation scheme?

Ms Wilson—Generally that sort of work is done by the trustees. They have a look to determine what call there is on the fund and things like that.

Senator SHERRY—But you do not have figures?

Ms Wilson—No.

Senator SHERRY—It is interesting. I have been trying to find the figures. I know, anecdotally, that there are hundreds of thousands of public servants and private sector workers in old DBs and in the new accumulation sections of the fund, but you just cannot get that data.

Ms Wilson—I would have thought that the state superannuation offices would have been able to assist you. We do not have that information.

CHAIR—Have you been present throughout the committee's hearing this afternoon.

Ms Wilson—Yes.

CHAIR—You would have heard the evidence from the association of former members of the parliament.

Ms Wilson—Yes.

CHAIR—One of the issues raised by Dr Solomon and Mr Lamb related to current members of parliament losing office and returning to parliament some time thereafter. They argued that, in effect, they would resume their membership of the current parliamentary superannuation scheme and that to take away that right would be contrary to section 51(xxxi) of the Constitution. Has the department taken advice on that issue?

Ms Wilson—When the legislation was prepared the drafter took advice on the constitutional issues surrounding the bill. The advice was that there was a very low risk that there would be any constitutional issues.

CHAIR—There is an interesting point in paragraphs 50 and 51 of your submission which I have not read anywhere else. Could you explain it to me. I think there was a suggestion by Mr Latham or by the Labor Party about an additional retiring allowance for ministers and other officeholders. The argument is that, if those amendments were made, the Prime Minister, the Deputy Prime Minister, the Leader of the Government in the Senate, the Treasurer and the Leader of the House would lose that entitlement. But, according to your submission, the Leader of the Opposition, the Speaker and the President of the Senate would not because they are in effect non-ministerial senior officeholders. Has an allowance been made for that in the bill? It is an interesting point.

Mr Dal Santo—It is not what is in the bill; it is what is in the current provisions of the Contributory Superannuation Act 1948 and the way it works to calculate an additional retiring allowance.

CHAIR—For those senior officeholders?

Mr Dal Santo—Yes. Section 18(9) of that act applies a percentage separately of the salary of a minister and an officeholder who is not a minister. The act defines what a minister is and what an officeholder of parliament is by saying that they are not ministers. We are talking about ministers of state, and they are ministers of state of the Commonwealth, and they are only people in the executive government, by definition. The office of a minister of state includes the following: the Prime Minister, the Deputy Prime Minister, the Leader of the Government in the Senate et cetera. An officeholder is defined as a person who receives a parliamentary allowance, which is basic salary, and holds an office in relation to the parliament but who is not a minister of state. So those are officeholders.

CHAIR—For example, the chair of a committee?

Mr Dal Santo—That is right, the Speaker, the President, the Leader of the Opposition—all the parliamentary officeholders who are not ministers. So by expressing the provisions to apply to a minister of state those amendments are limited to ministers of state; they will not apply to officers in the parliament.

CHAIR—For example, the Speaker and the President?

Mr Dal Santo—I suppose that some of them—for example, the Leader of the Government in the Senate—perform a duty in the parliament, but they are also ministers.

CHAIR—I do not suppose they have to be, but they are?

Mr Dal Santo—They are all ministers.

Senator HEFFERNAN—What is the case if someone is a leader or the Speaker and goes from one position to the other?

Mr Dal Santo—The current provisions deal with them all equally. If you qualify for a retiring allowance, which is a parliamentary pension, you also get an additional retiring allowance in respect of holding a paid office, which is either a ministerial office or an office in the parliament, such as a chairman of a committee like Senator Mason. So any person who gets an additional salary as a minister or an officeholder in the parliament accrues an additional retiring allowance at the rate of 6.25 per cent of that additional salary paid from time to time for each full year of service in the office. But the provision actually distinguishes between ministers and officeholders. That is why the amendments will affect only ministers; they will not affect other officeholders.

Senator CHERRY—Do you have any updated figures on the current unfunded liability of the parliamentary superannuation scheme?

Mr Dal Santo—The most recent figure that has been published is the figure for 2002-03 which I think is \$551.8 million. It is in the annual report as at 30 June 2003.

Senator CHERRY—What impact will this bill have on reducing growth in unfunded liabilities?

Ms Wilson— I think Mr Stevenson addressed that issue in general terms.

Senator CHERRY—Do you have anything to add to his answer?

Ms Wilson—The unfunded liabilities relate to current retirees and current members. So it will not reduce the unfunded liabilities. It may slow their growth, but it will not reduce them because current people are not being let out of the scheme.

Senator CHERRY—I was just wondering what new MPs would represent in a likely unfunded liability into the future?

Ms Wilson— If new MPs go into a fully funded arrangement, there will be no unfunded liability for them.

Senator CHERRY—That is right. Would you have any estimate on what would be the unfunded liability for continuing MPs over the course of the next parliamentary term?

Ms Doran—Our actuary has not done any projections as such on the scheme being closed to new members, but the general expectation would be that the unfunded liability would continue to grow for a number of years before it ultimately starts to decline to zero when all existing members are off the books.

Senator CHERRY—After that would it grow at a much slower rate or at a slightly slower rate?

Ms Doran—I imagine that it would be only slightly slower. The turnover is not that substantial at each election.

Senator CHERRY—But each existing MP adds to the unfunded liabilities by being there?

Ms Doran—They do, yes.

Senator SHERRY—Do you intend to get some actuarial projections, assuming that this legislation goes through, and I do not have any doubt that it will? Will you be getting an actuarial projection on the growth, the tapering off and the decline of liabilities?

Ms Doran—It is certainly something that we could do. It is not something that we have necessarily looked at.

Senator SHERRY—I am just making a suggestion. Senator Cherry suggested earlier that somehow this huge liability could go on forever. If we put it into context, they will decline more rapidly over time than they would otherwise have done.

Ms Doran— More rapidly, certainly. I think that the time frame would still be potentially 40 years or so.

Senator SHERRY—But if you did not close the scheme, it could go on forever.

Ms Doran—That is true.

Senator CHERRY—I think you spoke in your submission about the Western Australian approach of allowing for a transfer from the old scheme to the new accumulation scheme. Would it be possible to calculate a transfer value if, say, an option like the Andrews option of opting out of the scheme were permitted? Would it be possible to do a calculation as per the Western Australian scheme?

Ms Wilson—I understand that Mr Stevenson also addressed that issue. You could calculate something, but a difficult question is whether it would be equitable or fair. It does raise the difficulties of people who either have reached their maximum benefit or have not yet qualified for a pension. How do you arrive at an equitable arrangement for the individual and also for the taxpayer? So there are complexities around calculating a transfer value for those people.

Senator CHERRY—We were talking earlier about the contract of employment issue. Does the legal advice that you sought on the issue of former MPs refer to whether the government has a continuing contract of employment with existing MPs between elections?

Ms Wilson—It is not so much a contract of employment because it is neither contractual nor employment. Parliamentarians are not employees. So it is more like statutory engagement.

Senator BRANDIS—They are appointees, appointed by the electorate for a defined period of time?

Ms Wilson—Yes.

Senator BRANDIS—Just as judges are appointees until their retirement.

Mr Dal Santo—There is no master and servant relationship.

Senator SHERRY—We pay tax; there is.

Senator BRANDIS—Sorry to interrupt, but I would not want that to lie on the record. Philosophically, there is a master and servant relationship.

Mr Dal Santo—But income is taxable, so it does not matter whether or not you are employed. The superannuation guarantee legislation deems people in situations like parliamentarians to be employees. The fact that it has to do so is an indication that they are not employed.

Senator CHERRY—Does that change the legal notion of whether a right exists on which just compensation needs to be paid?

Mr Dal Santo—Any right exists under legislation. It is fair to say that in the main—and probably all entitlements for parliamentarians derive from statute in one form or another—even when the Remuneration Tribunal determines something, it does so under statute.

Senator CHERRY—How relevant is that to an argument that a change in that statutory determination would deny a right that exists under section 51?

Mr Dal Santo—Any right is only conditional. When you leave an employer normally you do not have any further rights to anything. There is this conditional right, but there are probably two things that are important here. One is that there is only one scheme at the moment. There is nothing else to return to. So obviously you would have to return to the same scheme. Once you create another scheme, then there are issues as to what you do. Do you keep open an avenue for any person forever and a day? Employers do not work like that, do they?

Senator CHERRY—When the surcharge issue was raised in relation to the parliamentary contributory scheme and the surcharge was imposed on members of parliament, was there any discussion at the time or was any legal advice sought about whether that was a breach of the Constitution?

Mr Dal Santo—Are you asking me whether charging a surcharge is constitutionally correct?

Senator CHERRY—The question was: under the compensation provisions in the Constitution you are not entitled to take away a right without just compensation.

Senator SHERRY—It increases tax.

Senator CHERRY—In this area you increase tax by reducing the payout. That is how it is done. I was just wondering whether the issue of just compensation was raised in that discussion.

Ms Wilson—Not that we are aware of, but it was a while ago.

Mr Dal Santo—But it did apply from the commencement of the 1996 budget. So it did not affect any accruals up to that point. It only affected accruals from the 1996-97 financial year onwards.

Senator CHERRY—You would be reasonably confident that, constitutionally, you can make prospective changes to the scheme?

Mr Dal Santo—I vaguely remember that that issue did arise. I know it arose for judges, but I think the advice was always that it was constitutionally sound. We have to accept that. It is not our responsibility actually; it is a Treasury portfolio responsibility. The overall application of a surcharge comes within the Treasury portfolio.

Senator CHERRY—Your submission makes the point that the definition of ‘remuneration’ that is used in the Western Australian scheme includes electoral allowances but that this new scheme will not include electoral allowances?

Mr Dal Santo—Neither of them will or do. I think the Western Australian arrangement does not include the electoral allowance. They did compensate for that by having a higher rate.

Senator CHERRY—That was because the superannuation guarantee legislation would have included an electoral allowance if it had been an employee?

Mr Dal Santo—Up to a cap, yes.

Senator CHERRY—So this legislation is not technically in breach of SG, but it is probably slightly lower than the community standard, if SG is a community standard?

Ms Wilson—For the large majority of members, that is correct.

Senator HEFFERNAN—Where there are people with defined benefits and accrued benefits in the same employment, when the defined benefit shut down and the new employees went onto the accrued scheme was there any talk about some people being better off than others? Is there an equity issue in the workplace there?

Ms Wilson—Because it has not happened in the Commonwealth we are not really able to comment on that as yet. We do have people who are in the Commonwealth Superannuation Scheme, which is the closed scheme, and people who are in the Public Sector Superannuation Scheme, where the employer cost is considerably different. We are not aware of any issues that have been raised about that. But total employment cost packages are not that common in

the Commonwealth sector at the moment, so superannuation is more of an add-on to your remuneration.

Senator HEFFERNAN— So it is a cop-it-sweet thing.

CHAIR—There being no further questions, thank you, Mr Dal Santo, Ms Wilson and Ms Doran for your assistance. The committee thanks all those witnesses who have given evidence today.

Committee adjourned at 4.31 p.m.