



Ministers of State Amendment Bill 2010

Moira Coombs
Law and Bills Digest Section

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Ministers of State Amendment Bill 2010

Date introduced: 17 March 2010

House: House of Representatives

Portfolio: Special Minister of State

Commencement: On Royal Assent.

Links: The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To amend the *Ministers of State Act 1952* to:

- increase the maximum annual sum potentially payable as salaries to Ministers of State under section 66 of the Constitution; and
- introduce a regulation-making power to enable the Governor-General to amend this maximum annual sum by regulation as and when necessary.

Background

This Bill increases the maximum amount potentially payable under section 66 of the Constitution for the salaries of Ministers (including Parliamentary Secretaries) for the current financial year and for later financial years to \$3.5 million. It is currently \$3.2 million. A Ministerial salary in this context means the ‘additional’ salary that a Parliamentarian receives (over and above their base Parliamentary salary) by virtue of being a Minister.

The Minister states the purpose for which the increase will be used:

This amount needs to be increased to \$3.5 million dollars to pay ministerial salaries at current levels for 2009-2010 (and for future financial years), and to meet any additional expenditure, such as payment of additional salary for acting arrangements.¹

It should be noted that Ministers salaries are not being increased in this Bill. The Remuneration Tribunal Report in 2009 setting out the rates per annum of the additional

1. M Kelly, ‘Second reading speech: Ministers of State Amendment Bill 2010’, House Representatives, *Debates*, 17 March 2010, p. 2719.

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salaries payable to Ministers of State has not altered from the additional salaries set out in the Remuneration Tribunal report of 2007.² However, the base pay or salary has increased from \$127 060 to \$131 040 in October 2009.

Parliamentarians' base pay

The base pay for Federal parliamentarians is governed by the *Remuneration and Allowances Act 1990*. Sub-clause 1(2) of Schedule 3 of the *Remuneration and Allowances Act 1990* provides that members of parliament's annual salary is equal to the minimum annual rate of salary payable to an SES employee with a classification of SES Band 2; or a percentage of a reference salary if the regulations so prescribe.³ Since 1999, Ministers' salaries have been linked to the Tribunal's Principal Executive Office (PEO) Structure. The parliamentary base salary is \$131 040 effective from 1 October 2009.⁴

Additional salary for Ministers and Parliamentary Office Holders

The Remuneration Tribunal is required to report to the Minister under subsection 6(1) of the *Remuneration Tribunal Act 1973*. The Remuneration Tribunal website states that:

The Tribunal is required to report to Government annually on the additional salary payable to Ministers (subsection 6(1) of the Act). Under the Constitution, the salaries of Ministers are a matter for decision by Executive Government, and do not require legislative action for implementation. The Ministers of State Act 1952, as amended, makes provisions for an annual appropriation which is apportioned in annual salaries to the Prime Minister, Deputy Prime Minister, Treasurer, Leader of the Government in the Senate, Leader of the House, other Ministers and Parliamentary Secretaries.⁵

The additional salaries payable to Ministers of State are expressed as a percentage of the parliamentary base salary. For example Ministers in Cabinet with some exceptions are 72.5 per cent of the base salary while, other Ministers are 57.5 per cent of the base salary.⁶

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2. Remuneration Tribunal, [Report on Ministers of State –Salaries Additional to the Basic Parliamentary Salary](#), Report No.1 of 2007, Canberra, viewed 14 April 2010; Remuneration Tribunal, [Report on Ministers of State –Salaries Additional to the Basic Parliamentary Salary](#), Report No.1 of 2009, Canberra, viewed 14 April 2010.
 3. Remuneration and Allowances Act 1990, Schedule 3, subclause 1(2).
 4. Remuneration Tribunal, *Parliamentarians' base pay*, viewed 7 April 2010, <http://www.remtribunal.gov.au/federalParliamentarians/default.asp?menu=Sec5&switch=on>
 5. Ibid.
 6. Remuneration Tribunal, [Report on Ministers of State –Salaries Additional to the Basic Parliamentary Salary](#), Report No.1 of 2009, Canberra, viewed 14 April 2010.

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Ministers' Additional Salary

The Australian Constitution section 66 provides:

There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

Section 5 of the *Ministers of State Act 1952* stipulates a maximum annual amount that may be appropriated from the Consolidate Revenue Fund for the purpose of paying Ministers' salaries – as mentioned that amount is currently \$3.2 million. The Bill proposes to introduce a regulation-making power to enable the Government to increase this maximum amount more easily. The Minister states:

There have been 29 amendments to the amount set under section 5 of the *Ministers of State Act 1952*, since its inception in 1952. This averages one amendment every two years. This section was last amended in 2006 and is therefore well overdue for the regular amendment. This constant cycle of amendments is not the most efficient way of dealing with this matter. Enabling the maximum sum available for salaries to be provided for by regulation obviates the need for recurrent amendments to the Act. As such regulations would be subject to disallowance, there will continue to be parliamentary scrutiny of any future changes to the amount.⁷

Note that the *Ministers of State Act 1952* is not an Appropriation Act: it does not actually authorise any appropriation. Rather, money for the purpose of paying Ministers' salaries is appropriated under *Appropriation Act (No.1) 2009-2010* and is a special administered appropriation under Outcome 3 of the Department of Finance and Deregulation. It is listed under special appropriations as *Commonwealth of Australia Constitution Act 1901 (s.66)*.⁸

Note that provision in the Bill allowing for the making of a regulation to alter the maximum total funds for Ministerial salaries set out in section 5 is not a Henry VIII clause. A Henry VIII clause is the 'inclusion in an Act of a power to amend either that Act or other Acts by regulation'.⁹ Any future regulations under this Bill do not amend the Principal Act.

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7. M Kelly, 'Second reading speech: Ministers of State Amendment Bill 2010', House Representatives, *Debates*, 17 March 2010, p. 2719.
 8. Department of Finance, *Portfolio Budget Statements 2009–2010*, p. 43, viewed 13 April 2010, http://www.finance.gov.au/publications/portfolio-budget-statements/09-10/docs/2009-10_PBS_full.pdf; *Portfolio Additional Estimates Statements 2009–2010*, p. 36–37, viewed 13 April 2010, http://www.finance.gov.au/publications/portfolio-budget-statements/09-10/docs/PAES_2009-10.pdf
 9. D Pearce and S Argument, *Delegated legislation*, 3 edn, LexisNexis Butterworths, Australia, 2005, p. 14.

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Committee consideration

The Senate Selection of Bills Committee resolved to recommend that the Ministers of State Amendment Bill 2010 not be referred to committees.¹⁰

Financial implications

The Explanatory Memorandum states that the amendment will increase the total sum available to be appropriated for ministerial salaries by \$0.3 million for the 2009-10 financial year and beyond.¹¹

Key issues

As previously mentioned, the *Ministers of State Act 1952* is not an Appropriation Act but an Act that sets the maximum amount potentially payable for Ministers' salaries in any one financial year. Any future further increase in the maximum level, where that increase is made via regulations made possible by this Bill, will be disallowable in the usual manner.

Main provisions

Schedule 1—Amendments to the Ministers of State Act 1952

Item 1 repeals and substitutes section 5. The maximum annual sum payable to Ministers as salary is increased to \$3.5 million for the current financial year and future financial years, or a higher amount if so prescribed in the regulations.

Item 2 inserts new section 7 which introduces a general regulation-making power to the *Ministers of State Act 1952* which will allow regulations to be made on matters required or permitted by the Act or necessary for carrying out or giving effect to the Act.

Item 3 enables item 1 to apply to the financial year that commenced on 1 July 2009 and to later financial years.

Concluding comments

The Bill proposes to allow the setting of the maximum amount designated for Ministers' salaries by regulation.¹² Regulations are not subject to the same level of debate as a Bill is

10. Senate Selection of Bills Committee, [Report No. 5 of 2010](#), 18 March 2010, viewed 14 April 2010.

11. Explanatory Memorandum, Ministers of State Amendment Bill 2010, p. 2.

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subject in its passage through the Parliament. However, given the number of amendments to the Act, it will make the process somewhat less cumbersome. The regulations are still subject to parliamentary scrutiny in relation to the disallowance procedures set out in the *Legislative Instruments Act 2003*.

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- 12 The *Ministers of State Act 1952* is not an Appropriation Act. It does not actually authorise any appropriations. It sets the maximum level for the annual amount to be appropriated from Consolidated Revenue for the purpose of paying Ministers' salaries.

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