09/19929

27 November 2009

Barbara Belcher
Chair
Parliamentary Entitlements Review Committee
Department of Finance and Deregulation
John Gorton Building
King Edward Terrace
PARKES ACT 2600

Dear Ms Belcher

Parliamentary Entitlements Review

Thank you for your letter dated 15 October 2009 inviting me to provide a submission to the Parliamentary Entitlements Review Committee on matters of interest to the Attorney-General’s Department.

The Department welcomes the establishment of the Review and the focus the Review will bring to arrangements supporting provision of Commonwealth parliamentary entitlements. While the review will no doubt cover a range of issues, the apparent vagueness of printing entitlements, in particular, has recently come to our attention. We are not in a position to undertake any systematic consideration of all relevant advice. However, it would appear in some cases at least that the question whether a particular document comes within a specific entitlement may not admit of any clear cut legal answer.

It would also seem that, while Members and Senators may actively seek guidance as to their entitlements, the range of sources of ‘guidance’ apparently available – whether in the form of Senators’ and Members’ Entitlements Handbooks, ‘Guides’ to the Entitlements of Senators and Members or various Ministerial and Finance Circulars – may be confusing. In some cases, these sources would appear to be at least one remove from the legal foundations of the entitlements in question.

I have on that basis considered that the resulting policy question – whether the current statutory regime is problematic in failing to provide meaningful guidance to those who must work with it – has warranted further attention.

While the Attorney-General’s Department has not identified any matter in relation to which it would be appropriate to make a formal submission at this stage, departmental officers would of course be available to assist by way of consultation on relevant policy issues. That might occur
directly between the policy areas of the Department and your Inquiry, or through the departmental representative on the Inquiry secretariat.

I note in this regard that the Department has policy interests in a several areas which may conceivably be relevant to the Committee.

In particular, under current arrangements, the Department performs a range of functions under the *Parliamentary Entitlements Regulations 1997* relating to assistance to Ministers involved in legal proceedings. I hold a delegation from the Finance Minister enabling me to approve payments relating to Ministers’ legal expenses from a fund administered by the Department of Finance and Deregulation. The approval process for legal assistance to Ministers has recently been streamlined to reduce, where possible, the number of Ministers involved in the approval process.

More generally, the Department’s constitutional policy interest may also be relevant. You would be aware that the outer limits of the Commonwealth Parliament’s power under s.48 of the Constitution to make provision for benefits having a pecuniary interest to parliamentarians are not entirely clear. In *Brown v West* (1990) 169 CLR 195 the High Court made comment in relation to potential constitutional constraints. Whether those constraints might flow from section 48, or the separation of legislative and executive powers, was not then made clear and has not since been clarified. In any event, the question of the limits of the Parliament’s capacity to confer on the executive a discretion in relation to the provision of benefits has remained to some extent open. Relevant departmental officers would certainly be available to discuss this and related constitutional issues and to assist, if necessary, in obtaining legal advice on any specific proposals developed by the Committee.

Yours sincerely

Roger Wilkins AO