18 November 2009

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

Dear Ms Belcher

Thank you for the opportunity to make a submission to the Review of Parliamentary Entitlements.

The Department considers the review is a very important one.

I am pleased to provide a submission. The Department would welcome the opportunity to discuss the submission in more detail with the review team or to provide any other information that might be required.

The first point of contact in the Department is Mr David Elder, Serjeant-at-Arms, who can be contacted on 6277 4444 or david.elder.reps@aph.gov.au

Yours sincerely

IC HARRIS
Clerk
Review of Parliamentary Entitlements Framework

Submission from the Department of the House of Representatives

Background

As background to the Department’s submission it is worth referring to the existing framework for parliamentary entitlements.

There are two elements to the framework which will have to be addressed by the review:

- the framework for the entitlements themselves; and
- the framework for the administration of the entitlements.

Both these elements are complex in themselves, but their interaction adds further complexity.

In relation to the entitlements, they are provided for in a number of formal and informal ways. The main formal ways in which entitlements are provided for are *The Constitution*, the *Parliamentary Entitlements Act 1990* and associated Regulations, the *Parliamentary Allowances Act 1952*, the *Remuneration Tribunal Act 1973* and the Determinations of the Tribunal, the *Remuneration and Allowances Act 1990*, the *Parliamentary Contributory Superannuation Act 1948*, the *Parliamentary Superannuation Act 2004*, the *Members of Parliament (Staff) Act 1984*, and, for Ministers, the *Ministers of State Act 1952*. Among the more informal ways for the provision of entitlements there are the various guidelines and rules issued by the Special Minister of State (SMOS), other decisions made by the Prime Minister and other Ministers, the decisions by Ministers’ home departments about the provision of additional services and facilities for Ministers and Parliamentary Secretaries and the decisions of the Presiding Officers and the parliamentary departments for the provision of services and facilities in Parliament House.

As a starting point, it needs to be clear that the purpose of these ‘entitlements’ is to enable parliamentarians to effectively perform their respective parliamentary, constituency and ministerial duties. The ‘entitlements’ take two forms. Some are quite clearly in the form of remuneration and benefits of a personal nature to parliamentarians eg salaries, superannuation entitlements etc. Others are clearly facilities and services to enable parliamentarians to perform their electorate and parliamentary roles eg office accommodation in their electorates and Parliament House, computers and other equipment in these offices etc. Others overlap between these two forms to the extent that the
The electorate allowance is not spent on providing services to their constituents, it is treated as, and taxed, as additional salary. This is an important distinction to make as there can be a tendency to see and portray all parliamentary entitlements as ‘perks’ of office, when in fact most so called ‘entitlements’ are reasonably regarded as essential services, facilities and expenses to enable parliamentarians to perform their roles. They are the necessary tools of trade which any person would need to undertake these responsibilities. An important principle is that payments in the form of remuneration (salary and superannuation) be clearly separate from payments in respect of expenses of office.

Given the complexity of the entitlements framework, it is not surprising that the administrative framework is also complex, with a number of agencies involved. The principal executive agency is the Department of Finance and Deregulation which is responsible under the Administrative Arrangements Orders for:

- the entitlements and services relating to electorate offices;
- the staff of parliamentarians, travelling allowance, communications allowance and transport services;
- the additional salary and entitlements of Ministers and Parliamentary Secretaries;
- the accommodation for Ministers in Parliament House and State capitals; and
- superannuation arrangements under the Parliamentary Contributory Superannuation Act 1948.

The Chamber departments pay the salaries and electorate allowances of parliamentarians, additional salaries of parliamentary office holders and the superannuation entitlements of parliamentarians under the Parliamentary Superannuation Act 2004. In addition, the parliamentary departments provide services and facilities to support parliamentarians in Parliament House including office accommodation, computing and other equipment, telephones, newspapers and stationery. The Chamber departments also administer some of those entitlements provided under the Parliamentary Entitlements Act 1990 – a postage allowance for use in Parliament House, the transfer of bulk papers from Parliament House to electorate offices and the administration of the COMCAR shuttle in sitting weeks.

Portfolio departments provide a range of services and facilities to their Ministers and Parliamentary Secretaries. These include matters such as:

- the cost of official cars for the Minister and spouse;
- the provision of departmental liaison staff;
- additional stationery, office requisites, furniture and equipment in Ministers’ and Parliamentary Secretaries’ Parliament House Offices and their home State offices;
- official hospitality; and
- a range of other services.
The complex entitlement and administrative framework as described above creates a number of issues:

- there are issues of overlap, duplication and potential inconsistency both in the entitlements themselves and the way they are administered;

- parliamentarians are not provided with a seamless and consistent service. To illustrate this point, Members and Senators seem to regard their Electorate and Parliament House Offices as a single office, but each is provided with different equipment, software and support services;

- there are problems of transparency as not all expenditure is publicly reported in detail and it is difficult, if not impossible, to identify the total expenditure on parliamentarians entitlements and all the ‘entitlements’ that parliamentarians might have. This creates problems both for parliamentarians in accessing entitlements and the various agencies in administering the entitlements. Also there is not a broader transparency as some of the ‘entitlements’ are buried in obscure decision making and are not always clearly articulated; and

- there are issues of accountability as the myriad of entitlements and the number of agencies providing services create multiple lines of accountability and differing bases for providing accountability.

Having set the overall context of the entitlements framework, the submission will now address the specific terms of reference of the review.

**Developing a single principles-based legislative basis that authorises the provision of specified entitlements, identifies who is eligible to access these entitlements and in what circumstances, and the purposes for which these entitlements may be used**

In 1990, with the passage of the *Parliamentary Entitlements Act 1990*, there was an endeavour to capture a number of the entitlements of parliamentarians in a single piece of legislation (noting that this did not include remuneration, electorate allowance or superannuation amongst other entitlements). The Parliamentary Entitlements Act was passed as a result of concerns raised by the High Court’s decision in *Brown v West* (1990) CLR 195 that there needed to be a legislative basis to the provision of any entitlements to parliamentarians that were in the form of a pecuniary benefit.
Since then, the decisions of various Ministers and the Remuneration Tribunal have varied the benefits such that the Schedule in the Parliamentary Entitlements Act does not reflect well the actual benefits provided to parliamentarians. Also, the Parliamentary Entitlements Act was essentially a schedule of entitlements, and while it provided the necessary legislative basis it did not identify the logic or purpose of the benefits provided.

There would be considerable benefit in consolidating the major elements of the framework for the provision of entitlements to parliamentarians into a single piece of legislation. It should be recognised that some will presumably remain outside the single framework eg the services and facilities provided to individual Ministers and Parliamentary Secretaries by their departments and the services and facilities provided in Parliament House to parliamentarians by the parliamentary departments.

This consolidation would aid considerably the transparency of the framework and would give it a better formal legal basis. There would also be benefit in making the framework more principles-based and identifying the eligibility for, and purpose of, entitlements. This would assist in removing the impression that entitlements are simply a schedule of benefits for parliamentarians and would relate entitlements more to how they enable parliamentarians to effectively perform their duties and responsibilities.

There would also be benefit in having a single independent authority to determine, and review, entitlements within the framework that is established. Currently the Remuneration Tribunal determines the additional salary of office, electorate allowances and a number of other allowances for parliamentarians. The Tribunal does not have the power to determine parliamentarians’ base salary which is a matter for Government, although the Tribunal does set the salary point which is used as the reference basis for the salary of parliamentarians. Many of the other entitlements are determined by the Special Minister of State. With an adaptation of its role and a broader focus, the Remuneration Tribunal could take responsibility for determining the salaries, allowances and other major entitlements of parliamentarians. The level of parliamentarians’ base salary has increased only marginally in recent years and, on this basis, warrants independent review and determination. The determinations of the independent body should be accepted as it would be making its decisions with the total framework in mind.

**Recommending framework changes that remove instances of overlap, duplication, inconsistency and gaps in the provision of entitlements**

As has been noted, the entitlements framework has developed in a fragmentary way. This has created overlaps, duplication and, in some cases, gaps in the entitlements themselves. There are also overlaps and duplication created by the involvement of a range of agencies in
the administration of the entitlements. The involvement of a single independent authority to determine the majority of entitlements should address problems in the entitlements framework. It will also be important to simplify the administration.

It should be noted that, over time, some overlap and duplication has been identified and has been removed. For example, the Department recently discontinued its printing service for Members, recognising that Members have a printing entitlement administered by the Department of Finance and Deregulation. These resources have been redirected into other support areas facing high demand.

The Department is aware that Members increasingly treat their Electorate and Parliament House offices as a single seamless office and they find the overlap and duplication frustrating. Recently an attempt has been made to rectify at least one of the causes of frustration by transferring responsibility for the administration of electorate office information technology (IT) from the Department of Finance and Deregulation to the Department of Parliamentary Services which provides IT support in Parliament House. This matter is still continuing.

While it is important to simplify the entitlements framework, it will be important to ensure that parliamentarians retain a degree of flexibility in their entitlements. There is not a single fixed schedule of entitlements that would suit all Members. Their needs differ and the system needs the flexibility to enable these differing needs to be met.

One approach, adopted in some jurisdictions (or elements of it adopted in some jurisdictions), is sometimes described as the ‘bucket of money’ approach. Under this approach, parliamentarians are provided with a funding cap from which they can then choose which facilities, services and staffing they wish to have. This approach can be radical, in that virtually all entitlements are captured in the funding cap, or it can include only some entitlements, such as office equipment, requisites or other components in the cap.

Some elements of this approach are captured in our entitlements framework through the electorate allowance provided to parliamentarians. The electorate allowance can be used legitimately for a wide range of purposes to support the work of parliamentarians, including supplementing other entitlements.

The ‘bucket of money’ approach has some advantages. The major advantage is that it provides flexibility to parliamentarians in determining the facilities, services and equipment they choose to purchase with their funds. This allows them to cater quite specifically for their own circumstances. In its ultimate form it is also very simple in that there are not a myriad of entitlements to administer.
However, there are also a number of disadvantages. If parliamentarians were able to purchase equipment, services and facilities of their choosing it is likely they would choose many different services and facilities. The Commonwealth might not be able to exercise the commercial leverage it currently has in the bulk purchase of items. It would not be possible cost effectively to provide support to a wide range of different equipment. Parliamentarians would have to make their own support arrangements and that would be inefficient and they often would not receive the level of support they require. If the ‘bucket of money’ approach were adopted then the procurement of such items would presumably still have to comply with the Government Procurement Guidelines. Parliamentarians would require administrative support to comply with these guidelines and costs would be incurred. There are significant advantages in parliamentarians having the same equipment, facilities and services. There are economies of scale in purchasing and it makes training, support and servicing much easier.

There are also issues of transparency and accountability with the ‘bucket of money’ approach. Whilst it is able to be spent on a wide range of facilities and services without approval, audit or transparency, there will be concerns about such an approach and compliance and administration costs could be high. Parliamentarians would have to comply with set guidelines, these would need to be specific but allow sufficient flexibility – this could be achieved by setting limits on the amounts that could be spent on groups of items, eg stationery and office supplies. It appears that one of the concerns of parliamentarians with aspects of the current arrangements is the administrative burden faced by their offices in relation to the use of facilities and benefits, and the impact of a variation of the ‘bucket of money’ approach on workloads in the broadest sense would need to be assessed.

The Department would nevertheless support a system where there was a clear determination of a range of entitlements, particularly in terms of equipment and facilities for parliamentarians (see also comments in relation to the next term of reference). However, it would also support some flexibility so that parliamentarians, with appropriate transparency and accountability, had some discretion about their spending on activities, services and facilities to support their work in their constituencies. This could take the form of a pool of funds or a number of smaller pools of funds which could be used for particular purposes, with the necessary accountability and transparency.

It should also be noted that there have been gaps in the provision of entitlements to parliamentarians. For example, the Chamber departments recently agreed to extend their counselling services, available to departmental staff, to parliamentarians. Previously there had not been any access to such a service by parliamentarians, a service which is considered an important responsibility for any employer to provide to its employees.
Significantly, parliamentarians do not have access to an employer sponsored workers compensation system should they become injured whilst performing their duties. The provision of such a system is seen as a basic obligation of an employer for its employees.

**Defining, in regulations and/or legislative instruments, key terms and the scope and any limits on entitlements use**

There would be value in defining the key terms in entitlements and ensuring that the scope and any limits on entitlements are clearly spelled out. Further clarity will be of benefit to parliamentarians, to those administering entitlements and to the broader public in terms of transparency of entitlements. A number of entitlements are currently limited to parliamentary or electorate purposes, but tighter definition or underpinning of terms by key principles, would seem appropriate.

One entitlement that would benefit from some clearer definition is electorate allowance. Parliamentarians currently rely on a tax ruling (TR1999/10) to provide them with information on the acceptability of certain expenditure. Currently parliamentarians are paid electorate allowance on a monthly basis. They must declare expenditure to the Australian Taxation Office annually and be able to substantiate it, or incur a taxation liability. A matter for consideration is whether there are alternatives to the electorate allowance (see earlier comments for example relating to possibility of a pool or pools of funds to be spent on specified purposes). Regard would have to be had to the issue of overall cost to the community and the matter of proportionality of any alternatives, recognising that it may result in greater transparency.

**Improving transparency in the use of taxpayer-funded parliamentary entitlements**

The Department supports transparency in the use of parliamentary entitlements. There is evidence that the general community expects that there will be transparency for the use of taxpayer funds, and presumably the use parliamentary entitlements is no different. Transparency of entitlements would be of benefit to parliamentarians as it would enable them to demonstrate that their use of taxpayers’ funds had been appropriate. It would also give the general community the assurance that entitlements had been used for the purposes for which they are provided. It is noted that there is already considerable transparency for a number of entitlements such as travel and travelling allowances. Transparency could be enhanced by a requirement for an annual report to Parliament on parliamentarians’ usage of all the different categories of their entitlements.
Whilst supporting transparency, the Department notes that there may be circumstances where it is appropriate not to identify publicly the personal circumstances of parliamentarians, and care needs to be taken that any disclosure takes into account protection of personal information.

**Enabling accountability processes to be mandated**

The Department supports processes to enable the proper accountability for the use of taxpayer funded entitlements. As with transparency, the general community would be entitled to expect that there would be processes that are required of those who make use of taxpayers’ funds to account for the use of those funds. It would however be important that accountability requirements are proportionate to the use of an entitlement.

**Recommending possible improvements to the protocol for handling allegations of misuse of entitlements**

Allegations of misuse of entitlements inevitably raise sensitive issues and it is important that there is a clear protocol for handling allegations, including recognising that allegations of misuse can arise from political or other motivations. It is difficult for those involved in administering entitlements also to be responsible for handling allegations of misuse. In many such cases there will be an interaction between the alleged misuse and the way the entitlement has been administered. The Department would support the identification, or establishment, of an independent agency to undertake the audit of, and investigation into allegations of misuse, of entitlements. The agency would determine and promulgate the protocol for investigating allegations of misuse. The agency responsible for investigating allegations of misuse also could be separate from the body (as suggested in relation to an earlier term of reference) that administers entitlements. Again the issue of overall cost to the community, and the matter of proportionality, would be important.

The Department notes that, in the United Kingdom, an independent authority (the Independent Parliamentary Standards Authority) is to be established to determine and administer the salaries and allowances of members of the House of Commons. The authority will provide the staff to a Commissioner for Parliamentary Investigations who will be responsible for investigating allegations of misuse of entitlements. The authority is to be created under a Statute that has passed the UK Parliament. It should be noted in passing that a provision with the potential to impinge on parliamentary privilege (relating to the admissibility of evidence drawn from parliamentary proceedings) was defeated in the House of Commons, and should the recommendation be made to follow a similar course in Australia, hopefully an error of including a provision similar to the clause defeated in the UK
will not be duplicated. The Department also notes that the recent report from the UK Committee on Standards in Public Life has recommended that the Commissioner for Parliamentary Investigations be abolished, and that the investigatory function be vested in the independent authority.

In any case, however, it is important to note that the context in Australia is different. Among the options for performing the role of auditing entitlements and investigating complaints, the Remuneration Tribunal, as the body proposed to determine entitlements, could have a separate arm as the agency to undertake investigations. However, there may be value in having it quite independent of the determination of entitlements and so it could be a role taken on by the Australian National Audit Office (ANAO). Given the existing expertise of the ANAO, it may be the better option.

**The development of a new simplified framework**

As noted in the introduction to this submission the framework for both the entitlements themselves, and their administration, is complex. There is considerable scope to simplify both the entitlements and their administration.

While the Department supports a simplified framework, it should be understood that there will inevitably be some complexity to the provision of entitlements and services to parliamentarians. They will continue to have an Electorate Office and a Parliament House Office, and while they have a strong desire to treat these as a ‘single’ office, the requirements for each of the offices are different. It is also important that support for their offices is delivered by those who have an understanding of their requirements (see comments below regarding entitlements provided at Parliament House).

**Appropriate use of entitlements during election campaigns**

The expectation of the broader community is likely to be that the use of public funds for election purposes (such as the funding currently provided under the *Commonwealth Electoral Act 1918*) should be explicit, transparent and limited as far as possible to the formal framework for the public funding of elections. As a general principle, it is not appropriate that entitlements provided to parliamentarians to assist them in performing their duties and responsibilities as parliamentarians should be able to be used to support re-election activities as such entitlements are not available to others seeking election.

Having noted the general principle, it would be difficult, and in a practical sense almost impossible, to regulate the use of some of the ‘entitlements’ of parliamentarians such as computers, telephones, faxes, photocopiers and their staffing resources to ensure they were not used for election purposes.
The inter relationship with the Members of Parliament (Staff Act) 1984 employment framework

The Department has little comment on this matter. However, the appointment of additional staff to parliamentarians under the MoPS Act has implications at Parliament House in that it increases the demand for office space for parliamentarians and can increase the demand for equipment and other office and building services more generally.

Entitlements provided at Parliament House

Only a small number of the formal entitlements of parliamentarians, as provided under the Parliamentary Entitlements Act, relate to Parliament House. The specific entitlements that relate to Parliament House are:

- the transfer of bulk papers to and from Parliament House to a parliamentarian’s electorate office;
- transport shuttle for sittings or special parliamentary or state events;
- Parliament House specific postage allowance;
- the cost of acquiring government publications as approved by the Presiding Officer; and
- photographic services provided in Parliament House, as approved by the relevant Minister.

The Department’s perception is that these entitlements continue to assist parliamentarians in performing their responsibilities in Parliament House.

The parliamentary departments provide a range of other ‘entitlements’ to parliamentarians within Parliament House. These are perhaps better described as facilities and services that assist parliamentarians to perform their parliamentary duties. These facilities and services include:

- office accommodation, furniture and equipment;
- general building services and facilities, like catering and meeting facilities;
- stationery for use within Parliament House;
- information sources (eg newspapers and some subscriptions);
- information technology development, support and training; and
- communications.

These ‘entitlements’ do not have an explicit legislative basis. They are determined by the parliamentary departments and, where appropriate, the Presiding Officers are involved. It is clear that they have a proper basis in law because of the specific responsibilities of the
parliamentary departments. If however these ‘entitlements’ were to be given an explicit legislative basis, it should only be in very general terms such as ‘facilities and services at Parliament House, as determined by the Presiding Officers, to enable parliamentarians to fulfil their parliamentary duties and responsibilities’.

Unlike many of the other entitlements provided to parliamentarians a number of these entitlements at Parliament House are funded from departmental operational funds rather than special appropriations or administered funding, although staff administration of these entitlements is funded from departmental funds. Thus the funding to meet those entitlements is subject to the continuing efficiency dividend, eroding the capacity of the parliamentary departments to adequately meet the needs of parliamentarians in Parliament House. As part of its response to managing the efficiency dividend, the Department has not ‘quarantined’ any particular area of expenditure. The entitlements that the Department supports are subject to ongoing review to the same extent as any other departmental activity.

The provision of facilities and services to parliamentarians in Parliament House should continue to be within parliamentary control. To have these facilities and services determined, and provided, by another body other than one under the control of the Presiding Officers would be quite inappropriate.

There would be considerable benefit in the funding of a number of facilities and services to support parliamentarians at Parliament House coming from administered rather than departmental funding. It would mean the funding would not be eroded by the efficiency dividend when there is no capacity to achieve efficiency savings on such funding. It would also enable parliamentarians to receive the same level of support and service and not be subject to the constraints of the budgets of the parliamentary departments.

**Remuneration and allowances (including the current electorate allowance)**

As noted earlier, the Department considers that there should be a single independent authority to determine the salaries, allowances and other entitlements of parliamentarians. The submission has also commented on the electorate allowance and the value in parliamentarians having some flexibility in the way they can use at least some elements of their entitlements.

The Department pays the salaries and electorate allowances of Members by drawing on funds which are available as Special Appropriations within the Departments of Finance and Deregulation and Employment, Education and Workplace Relations portfolios. The Department’s perception is that Members value the service provided by the Department. It is also noted that it would not be appropriate for the salaries of parliamentarians to be paid by an Executive Government agency.
Private-plated vehicles

The Department has no comments on this matter.

Overseas study travel

The Department has no comments on this matter.

Entitlements to Life Gold Pass and severance travel

The Department has little comment on this matter. However, it notes that the entitlement to severance travel can be important for Members who are defeated in elections in enabling them to return to Canberra to make the necessary arrangements to leave their offices.

Entitlements of former Prime Ministers (including a head of authority to provide any entitlements), Governors-General and former Parliamentarians

The Department has little comment other than to note that it does not consider it has the authority to provide entitlements to former Members. However, a modest level of administration support is provided to the Association of Former Members of the Parliament of Australia.

Production of postal vote applications under the printing entitlement

The Department has no comments on this matter.

Other matters considered relevant to the review

The Department has no comments on this matter.

Department of the House of Representatives

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