Our Ref: SEC0002437

Ms Barbara Belcher
Chair
Committee for the Review of Parliamentary Entitlements
John Gorton Building
King Edward Terrace
PARKES ACT 2600

Dear Ms Belcher

Thank you for your letter of 15 October 2009 inviting a submission from the Department of Finance and Deregulation (Finance) to the Committee for the Review of Parliamentary Entitlements. The attached submission provides an overview of the issues for Finance in administering the current entitlements framework and suggestions for reform.

If you have any further enquiries please contact Ms Kim Clarke, Division Manager, Ministerial and Parliamentary Services, on 6215 3401.

Thank you for the opportunity to make a submission to the Review.

Yours sincerely

[Signature]

David Tune
9 December 2009
This submission to the Review of Parliamentary Entitlements has been prepared by the Department of Finance and Deregulation (Finance). It seeks to respond to a request from the Committee Chair, Ms Barbara Belcher for input into the review, specifically addressing how the current entitlements regime affects the work of the department.

**Role of Finance**

In administering the Parliamentary entitlements framework, Finance:

- processes claims for payment from Senators and Members, their staff and third parties for services and items within entitlement, such as travelling allowance and travel costs (both overseas and domestic and including for family members), materials produced under the printing and communications entitlement, telephones, BlackBerries, private-plated vehicles (PPV), publications, electorate office rent and electricity;
- establishes and administers centralised procurement contracts to provide items and services within entitlement, such as travel, electorate office IT, office requisites, property management for electorate offices occupational health and safety (OH&S) support services for staff of Members of Parliament;
- provides IT hardware, computer services and office machinery;
- provides a nation-wide car-with-driver service in the form of COMCAR;
- provides a photographic service for Senators and Members in the form of AUSPIC – a photographic unit within the Department;
- prepares and provides monthly management reports to Senators and Members on their use of entitlements;
- tables on a six monthly basis in Parliament and on the Finance internet site travel expenditure by current and former Parliamentarians;
- pays Ministerial salaries and salaries and allowances of over 1700 employees of members of Parliament;
- manages the Ministerial Wing of Parliament House;
- provides oral and written advice on entitlements use to Senators and Members;
- organises the provision, refurbishment and relocation of electorate offices and office holder offices;
- manages the Commonwealth Parliament Offices, which offer office suites and facilities for visiting Senators and Members and offices for permanent residents;
- tables on an annual basis a report on staff of members of Parliament, including number of staff, classification and cost;
- provides policy advice to portfolio Ministers;
- provides and administers an employment framework for staff of members of Parliament;
- provides OH&S services for staff of members of Parliament;
- provides a professional development program for staff of members of Parliament; and
- administers payments to the Political Party Secretariats for training purposes.
In administering the framework Finance directly delivers entitlements, facilitates the delivery of entitlements or pays third parties for the delivery of entitlements. The cost of Senators and Members entitlements amounted to over $332 million in 2008-09. The cost of administering such entitlements by Finance was $37 million in 2008-09 (including COMCAR).

Finance also has a compliance role in the administration of entitlements. While Senators and Members may certify that their use was within entitlement, Finance has a role to ensure this to be the case and for taking appropriate action when use is deemed not to be within entitlement.

The Parliamentary Entitlements Framework

Complexity

The framework is comprised of legislation, regulations, determinations, procedural rules and guidelines, conventions and decisions of executive government. It is rarely possible to understand an entitlement by referencing one source document. For instance, the car transport entitlement comprises the following elements:

- the entitlement to official cars is established under the Parliament Entitlements Act 1990 (PE Act);
- car transport for a Senator or Member, his or her spouse or de facto partner, nominee and dependent children, under a range of circumstances, is provided under Remuneration Tribunal Determination 2006/18 (Determination 2006/18);
- Determination 2006/18 provides an entitlement to private vehicle allowance to a Senator or Member his or her spouse or de facto partner, nominee and dependent children in certain specified circumstances;
- the use of a private-plated vehicle, with separate rules for Parliamentarians representing the six largest electorate and the availability of an additional vehicle for Members representing the six largest electorates, and Senators representing the Northern Territory is also provided under Determination 2006/18;
- Determination 2006/18 provides for the hire of self drive vehicles which may include the hire of an accredited driver under the separate charter entitlement; and
- responsible Ministers have issued procedural rules relating to car transport and guidelines on the provision of standard and non standard private plated vehicles.

Regulation and Rules

The framework is also highly regulated. While some amount of regulation is necessary to ensure accountability for the use of public funds, other regulation is the product of a high degree of entitlement specification and prescription about how entitlements can be accessed. It is this latter regulation which is unnecessary and inefficient and results in overly complex and detailed administration. For instance, Determination 2006/18 specifies that "a senator or member may use car transport in Canberra for the purposes of personal emergencies such as medical treatment, funerals and other compassionate circumstances and reasonable personal services such as religious services and banking when these are not available at Parliament
House” (clause 3.3). Ill defined regulations such as this also create difficulties for Senators and Members who have to navigate complex rules which do not often appear to be sensible.

Such a high degree of regulation is also resource intensive for Finance which has to interpret, provide advice on, and apply the many rules (and often subjective and imprecise terms) which differ from one entitlement to another. For example, under Determination 2006/18 a Senator or Member is entitled to the cost of parking, but only at the nearest airport, and only when travelling to Canberra on Parliamentary business. Senators and Members travelling elsewhere in Australia on Parliamentary business are not entitled to parking costs at the airport. The Remuneration Tribunal recently determined a separate parking provision in cases where a Senator or Member is only able to access transport services that include unreasonable delays from their nearest airport. In such cases, the Senator or Member may travel from the nearest airport offering reasonable transport services, and if he or she uses a private vehicle or his or her PPV to get to that airport, he or she is entitled to parking costs. This has resulted in particular parking arrangements applying in some circumstances and not in others and the use of vague terms such as reasonable, which are subjective and open to interpretation. It means that considerable time and effort is expended by Finance advising on such highly specific rules.

**Principles for Reform**

In recommending reforms to the entitlements framework to Government, Finance has relied on five principles to provide the framework for sound administration and decision making: flexibility, accountability, cost effectiveness, transparency and simplicity (also known as the FACTS principles). Specific comments about Parliamentary entitlements and their administration are made against each of these principles:

**Flexibility**

The entitlements framework has developed on an ad hoc, entitlement by entitlement basis, and as noted above, with a high degree of specificity over the entitlement including when and how it can be used. Many entitlements have also been developed to suit the needs of specific circumstances. However, this process has led to entitlements that are defined in narrow terms designed to meet the need of a particular Parliamentarian rather than cast in broader, more flexible and adaptable provisions. As an example, clause 2.13.3 of Remuneration Tribunal Determination 2009/11 provides an entitlement to Travelling Allowance to a single Parliamentarian, the Member for Bowman, and only in relation to his or her electorate business on North Stradbroke Island.

Finance favours a budget based entitlements model where there are few, if any, entitlements that have no financial limitation. Finance considers that entitlements that are provided for a clear purpose and which are accessed within budget limits, are a better model than the current system where complex rules have been developed to moderate expenditure.

For instance, car transport could be simplified through the provision of a capped allowance that covers use of hire cars, COMCAR, vehicles in the electorate and the current entitlement
for Canberra based vehicles for office holders. Alternatively, Senators and Members could be provided with a capped entitlement for domestic travel, which could be used for, among other things, car transport. Such an approach would allow Parliamentarians to use public funds in the way that best suits their needs and those of the electorate.

In establishing entitlement budgets, consideration should be given to the most appropriate budget period for each entitlement. For those entitlements where expenditure is regular and individual expenses are a relatively low percentage of the budget, a per financial year basis may be the most appropriate. For those entitlements with infrequent and/or large individual purchases, such as office equipment or overseas travel, a per Parliament or per Parliamentary term approach may be preferable.

In proposing new entitlements budgets, the current total expenditure on entitlements should not be exceeded, as the principle of the Government's current budget framework requires that any new spending proposal be fully offset by a corresponding reduction in current spending. Any changes to the framework should be designed to be cost neutral.

Accountability

Definition of Terms

The current framework places Finance in the difficult position of being responsible for the proper administration of Parliamentary entitlements, but having very little basis on which to question whether or not an entitlement has been used appropriately or to take action in relation to a Parliamentarian who has not appropriately accessed an entitlement. This is as a direct result of key terms such as Parliamentary, electorate, official, party, private and commercial business being undefined in the current entitlements legislation. Instead, the current framework relies very heavily on interpretation and judgement, mainly by the Senators and Members who access the entitlements, on whether or not their entitlement use is appropriate. Finance considers that accountability would be enhanced through the definition of key terms in any proposed new legislative framework.

In a simplified entitlements regime, it may be possible to replace the current terms Parliamentary, electorate and official business with a single term that defines the business of a Parliamentarian that may be supported by the use of Parliamentary entitlements. Sensible definitions of private and commercial could also be developed.

Certifications

Each month through the monthly management report, Senators and Members are requested to certify that their use of entitlements has been in accordance with the PE Act and relevant determinations of the Remuneration Tribunal. As well as ensuring accountability by Senators and Members, certification is an important process by which Finance is able to comply with its obligations under the Financial Management and Accountability Act 1997. The voluntary nature of the certification process has been the subject of comment during Senate estimates hearings and in its 2001-02 audit of Parliamentarians entitlements, the ANAO recommended
that the legal basis for certifications be enhanced. Finance considers that the current voluntary system of certification should be strengthened by providing a legislative underpinning for certification, and a public reporting mechanism for those Senators and Members who do not properly certify their expenditure.

*Accountability for procurement decisions*

In developing any proposed legislative framework, it will be essential that existing arrangements are considered and included where appropriate. For example, the procurement of goods and services with public funds is normally governed by the requirements of the *Financial Management and Accountability Act 1997* (FMA Act) and associated regulations. The FMA Act does not presently apply to expenditure decisions of Parliamentarians using their entitlements. Where a Parliamentary entitlement is in the nature of procuring goods and services for use by that Parliamentarian, the FMA Act would provide a sound basis for the accountability of those spending decisions. Finance would prefer that guidelines are developed where necessary to assist Senators and Members in making sound purchasing decisions, for example, in engaging an accredited driver to provide relief driving services under the electorate charter entitlement provided in clause 6.1 of Determination 2006/18.

To prevent fragmentation of the framework on how decisions to spend public money are made, a consistent approach is required. This could be achieved through using the current FMA Act requirements for those payments that fall within the scope of procuring goods or services, or adopting the principles-based approach contained in the FMA Act for inclusion in any other legislative arrangements to govern Parliamentary entitlements.

*Cost effectiveness*

Due to the way they are specified, it is not possible for Finance to administer many of the entitlements in a cost effective manner. For instance, Determination 2006/18 provides for overseas study travel and lists 15 items which fall within the entitlement, including subsistence costs for the Senator or Member and their spouse. Claims are made on a reimbursement basis, subject to the provision of receipts and statutory declarations where receipts cannot be provided. In administering this entitlement, it is not uncommon for Finance to process dozens of receipts (sometimes in foreign languages and different currencies) for a single overseas study trip and to follow up for receipts where claims have been made by a Senator or Member with no receipts provided. There were 58 overseas study tours in 2008-09 requiring the processing of many hundreds of receipts for reimbursement. Additionally, in 2008-09 Finance processed and paid expenses for 175 overseas trips by Ministers and 18 Parliamentary Delegations involving 77 delegates and 28 spouses. Finance does not consider reimbursements to be a cost effective way of administering the entitlement.

Another example of complex and costly administration arises where an entitlement includes cost recovery provisions. For instance, Determination 2006/18 provides that the costs of non entitled persons accompanying a Senator or Member on electorate charter transport will be recovered. While acknowledging that non entitled persons should not be travelling at
Commonwealth expense, this provision of the Determination means Finance is effectively a debt collector for decisions of Senators and Members. It is a low value function which detracts from Finance’s ability to perform core functions.

**Transparency**

The full public disclosure of expenditure on all Parliamentary entitlements announced by the Government on 8 September 2009 will result in greater transparency in the expenditure of public funds. Finance considers this to be an essential element of the scrutiny process – it will assist in ensuring a high degree of accountability for entitlements use.

**Changes to entitlements**

Finance considers that the process for the approval of new or additional entitlements is also in need of greater transparency. The future development of Parliamentary entitlements should occur publicly with full costs of any proposed changes known at the time the decision is taken. This is not the case currently where entitlement decisions of the Remuneration Tribunal are not costed or publicly debated before being agreed. The result is a lack of transparency and accountability for the use of public funds. This issue was raised by the Australian National Audit Office in Report No 3 2009-10 *Administration of Parliamentarians’ Entitlements by the Department of Finance and Deregulation* (pages 80-81) in the context of the Tribunal’s decision to increase electorate allowance in April 2009.

**Simplicity**

As noted above, the framework is spread over many different heads of authority and Finance devotes considerable resources to interpreting the entitlements framework and assisting Senators and Members and their employees to understand the detail. There are over 300 separate entitlements codes in Finance’s current management system to capture the range of entitlements currently available. The entitlements management system is specialised, tailored for the many entitlements and rules. Being so specialised, it is expensive to maintain compared with commercially-available accounting and reporting systems. The cost of system developments has placed the delivery of online entitlement information and transaction services to Senators, Members and their employees beyond current Departmental resources.

It is this complexity that makes entitlements difficult for Senators and Members to understand and for Finance to administer. Finance considers that the current review offers a timely opportunity to simplify the framework. The framework should be captured in the fewest possible number of separate legislative instruments to lessen the likelihood of the overlap and inconsistency that prevails under the current entitlements regime. All entitlements should have an express legislative basis. Every entitlement provided to Parliamentarians, and the expenditure against entitlement, should be on the public record, preferably online for easy public access.
Conclusion

The development of a system of Parliamentary entitlements that is more flexible, more accountable, more cost effective, more transparent and simpler than the current entitlements framework will deliver better outcomes for Senators and Members, more streamlined entitlements administration and a better use of taxpayers’ money.

Thank you for the opportunity to make a submission.

Department of Finance and Deregulation

December 2009