Submission to

VICTORIAN INDEPENDENT REMUNERATION TRIBUNAL

RE:

Determination of Setting the Value of the ‘Basic Salary’ and ‘Additional Salaries’

For Members of the Victorian Parliament, among other matters.

Peter Loney
Acting President

Andrew Brideson
Secretary

Email:

18th August 2019
PREFACE

The Victorian Parliamentary Former Members Association Incorporated (VPFMA) is a legally incorporated association in the State of Victoria under the provisions of the Associations Incorporation Reform Act 2012.

The VPFMA has a membership of over 190 former members of the Victorian Parliament and has among its objectives -

a) to maintain and to extend the rights and privileges of former Members of the Parliament and their dependants
b) to advance the welfare of former Members of the Parliament and their dependants

This submission to the Independent Remuneration Tribunal is made on behalf of its membership and in pursuit of its objectives as outlined above.

It is also made in addition to the oral submission made to Tribunal Chairman, Warren McCann on Wednesday, August 14, 2019 by the Acting President, Peter Loney and Secretary, Andrew Brideson.

VPFMA IS THE COLLECTIVE VOICE OF FORMER MEMBERS

Our first submission to the Tribunal is that VPFMA should be recognised as the collective voice of former Members of the Victorian Parliament.

Our membership captures the vast majority of former Members including those belonging to various forms of the Parliamentary Superannuation Fund. These members are affected by determinations related to salaries and entitlements to serving Members of Parliament (MP) as pension entitlements under the Fund have been tied to that of a backbench MP.

This applies for all former MPs in receipt of a Parliamentary pension entitlement, but particularly so for superannuants under the pre-1996 defined benefits scheme referred to in the Parliamentary Salaries and Superannuation Act 1968, Division 2 and the Miscellaneous Acts (Omnibus Amendments) Act 1996, S.30 as the Existing Benefits Scheme.

VPFMA is the only group that can speak on behalf of superannuants covered by both the Existing Benefits Scheme and the New Benefits Scheme established under Division 3 of the Parliamentary Salaries and Superannuation Act 1968.
Advice received by VPFMA from the Emergency Services and State Superannuation Scheme (ESSS) which now administers the previous Parliamentary schemes is that the number of beneficiaries who could be affected by determinations of the IRT is as follows:

1. Former Members who are in receipt of a pension from the fund = 163
2. Current sitting Members of Parliament who are members of the fund = 18
3. Spouse/partners who are in receipt of a pension from the fund = 44

All superannuants will necessarily be of an older age, those who are still covered by the existing Benefits Scheme include many who are now quite elderly with many in the 80–90+ age group. To expect that this group will continue to monitor and respond to legislation and reviews that could affect their entitlements is unrealistic.

It is therefore our submission to the Tribunal that a submission by VPFMA should be considered to be a submission on behalf of all of these superannuants and that there should not be a requirement to make individual submissions, although the opportunity for those who wish to do so should not be removed.

NO DISADVANTAGE

Part 3 S17. 3(d) of the Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019 (hereinafter referred to as The Act) requires of the Tribunal that, when conducting a review and making a determination, it must (our highlighting):

“ensure that individual Members are in an overall position that is no less favourable than the arrangements that are in place before the making of the Determination, taking into account the basic salary, additional salary, the Budget, work-related parliamentary allowances and superannuation and pension arrangements;”

Further, in Part 5, S39. (2) with regard to the conduct of a review into superannuation arrangements for Members, the legislation directs the Tribunal that

In conducting the review under subsection (1), the Tribunal must not consider any option that would result in an existing Member or a former Member being in an overall position that is less favourable than before the making of the report.
VPFMA submits that these clauses provide evidence of the Victorian Parliament’s intention that both current Members and superannuants should not, in any way, be in a less favourable position following the IRT review and determinations that currently exist.

We further submit that, as there is a direct relationship between salaries paid to serving members and the superannuation entitlements of former members, the combined effect of these clauses obligates the Tribunal to take account of the position of superannuation contributors and pensioners prior to commencing any review of salaries and allowances and that this is not a matter purely to be considered in the prospective superannuation review.

The IRT starting point for this should be to establish the existing nexus or relationship to parliamentary salaries and entitlements as defined in the Acts currently covering Parliamentary superannuation, and to then ensure that if there is no increased benefit as a result of the review then, at a minimum, that nexus or relationship is maintained.

It is noted that the “Existing Benefits Scheme” explicitly provided that after eight years continuous service as a member of Parliament the employee would be entitled to an indexed pension of a minimum of 50% of the salary of a back bench Member of Parliament and that this would grow by a prescribed amount for each additional year of service. This entitlement was then adjusted for additional years of service and for holding a prescribed Parliamentary Office such as Whip, Committee Chairman et al. They were also entitled to take part or all of their benefit as a lump sum.

Given the above, it is submitted that as a result of IRT determinations on salary, superannuants could suffer a consequential disadvantage if, for example, there was a significant change to what constitutes “basic salary” and what constitutes “allowances” in such a way that allowances formed a higher proportion of total salary than is currently the case. If there was a shift to lower the proportion of basic salary in favour of higher allowances, then we would submit that this is unfavourable to superannuants.

Whilst it could be argued that this would not alter the nexus provisions of the superannuation scheme, a change such as this would clearly be detrimental to beneficiaries and thus would not comply with the legislative intent as stated in The Act.

This “no disadvantage” test should be applied to every aspect of the Tribunal’s review and an explanation of how it was interpreted and applied should be a key part of its report.
“UNIQUENESS” MUST BE TAKEN INTO ACCOUNT

VPFMA submits that the IRT, when assessing the correct level of remuneration for current Members should, in addition to the factors normally considered in determining remuneration, give weight to the unique nature of Parliamentary service. It differs from other careers and jobs in a number of significant ways:

a) **Performance and competence** does not protect a Parliamentarian from arbitrary dismissal. The Member of Parliament is subject to the will of the electorate and their individual performance as a Member carries lesser weight than the electorate’s view of the performance of the Government or political party of which they may be a member. In the 2018 Victorian election the large swing removed Members who were hard working, dedicated to their electorate and Parliamentary duties and, in some cases, held senior positions. There is no discrimination between new and long serving Members when such a swing occurs. This is not a rarity. Previous “landslide” elections in 1992 and 2002 saw many Members “sacked” due primarily to the unpopularity of the political Party they represented. MP’s have no “unfair dismissal” provisions to fall back on, and while in recent years, there has been the introduction of a form of retrenchment pay they remain subject to an arbitrary dismissal that applies in no other employment. Added to this, former MPs often have considerable difficulty finding work after leaving Parliament and their political career can be a factor against them.

**CASE STUDY***

A former Member entered the Parliament from a career in company administration in which he had risen to a senior position which involved considerable responsibilities. During this service he served in several departments acquiring a variety of administrative and financial skills. He held tertiary qualifications in Business Studies and had worked as a Computer Programmer/Systems Analyst, a Contracts Analyst, and a Superannuation Fund Counsellor. He also had significant community involvement in a number of organisations. After serving in the Victorian Parliament for 10 years and being defeated in an election he sought work in the area for which he was qualified and experienced. He applied for a number of positions and approached a number of companies but was continually rejected. Eventually, after seeking explanation of this he was advised that he could not expect a position because of his involvement in politics. He gave up and has not had any meaningful employment since.

*Details which may identify this person have been omitted, but the facts are as stated.*
Given that the recent trend is for Members to enter and leave Parliament at a younger age than in the past many have a substantial gap between leaving and being able to access their superannuation, if they are qualified, and need to find employment.

b) **There is no defined career structure** through which to advance. While there are prescribed higher offices which do attract greater responsibility and higher remuneration, these cannot be accessed in a similar way to those in other professions. Performance and additional qualifications do not necessarily improve the opportunity to access these positions as they are essentially the gift of the political party which might consider other factors such as regional representation, factional balance, or the House of Parliament in which the Member sits in allocating the post. A talented backbencher may remain in that position throughout their career because of these competing factors. A hard-working Minister could lose their position in order to maintain “balance” within a Cabinet. Similarly, there are no real “stepping-stones”. Becoming a Parliamentary Secretary does not necessarily put a Member on a promotion list for the Ministry.

c) **Work value** is not universally recognised in salaries. While the table of higher offices recognises many Parliamentary, Government and Opposition offices for increased remuneration because of the nature and responsibilities of those positions, there is an anomaly.

Shadow Ministers are recognised in the *Parliamentary Salaries and Superannuation Act 1968*, Division 2—Salaries, work-related parliamentary allowances and other allowances, but unlike others including Parliamentary Committee Chairs, Whip of the third Party in the Assembly, Chairs of Select Committees, and Secretaries of Parliamentary Parties who receive additional salary to reflect their higher workload, Shadow Ministers receive only an increased allowance but no additional salary. VPFMA submits that, as Shadow Ministers are recognised in the relevant Act as a higher office, have a considerably increased workload in performance of their duties and many serve in these positions for a number of years, the IRT should carry out a work value assessment of this position with a view to determining an appropriate additional salary and removing the current anomaly.

d) **The balance between risk and reward.** As submitted in a) above, being a Member of Parliament can be a perilous career choice subject to sudden, arbitrary dismissal. This is a factor in deterring many potentially good candidates from seeking election to Parliament. It is true that there are Members who could earn significantly higher remuneration outside of Parliament, but it is equally true that there is a strong
disincentive for others to take the risk of disrupting their current career for the prospect of a much less secure position and lower salary in the Parliament.

It is our submission that the IRT should consider to what extent the level of remuneration is a disincentive and whether a better balance can be achieved.

FREQUENCY OF ADJUSTMENT

VPFMA submits that the frequency of salary adjustment through mechanisms such as CPI increases can have a significant effect on maintenance of real salary levels. Consequently, as a part of its review, the IRT ought to consider both the effects of past indexation on maintaining real salary levels and the frequency of future adjustments.

CASE STUDY

Superannuation in Australia has been subjected to Commonwealth Legislation since 1987. The Occupational Superannuation Standards Act 1987 (OSSA) was replaced in 1993 by the Superannuation Industry Supervisor Act 1993 (SIS) which came into force 1st July 1994. SIS Regulation were proclaimed in 1994.

Under Regulation 17 (1) (d) of OSSA members’ accrued benefits and entitlements are protected save for any changes in taxation legislation. The Regulation was transcribed in SIS Regulation 13.16(1). The SIS regulations allow for a benefit reduction only if 2/3 of the fund members agree.

In 1993, the Victorian Government varied the timing of indexation increases from 6 months to 12 months. The matter was referred to the OSSA Director who issued an order that the Victorian Government legislation was contrary to OSSA and if the benefit was not restored, the then State Super Fund would lose the Taxation concession applying to Super Funds and would be taxed as a unit trust. The Victorian Government was forced to reinstate the benefit.

Leading up to the establishment of SIS, there was significant debate after the above matter if States Sovereignty (Public Sector Schemes) was being compromised by National Legislation. A compromise was reached to create an exempt Public Sector category provided the fund observed the spirit and intent of SIS.

This can be interpreted that there was agreement that Reg, 13.16(1) applied and continues to apply.
VPFMA thanks the Tribunal for the opportunity to make this submission and would be pleased to clarify or expand anything in it should the tribunal desire.

Peter Loney  
Acting President

Andrew Brideson  
Secretary