



# **VICTORIAN PARLIAMENTARY FORMER MEMBERS ASSOCIATION INC.**

Reg No A0094073P

## **Submission to**

### **VICTORIAN INDEPENDENT REMUNERATION TRIBUNAL**

### **REVIEW OF SUPERANNUATION ARRANGEMENTS FOR MPS**

**Peter Loney**

President

**Email:** [VicFormerMembers@bigpond.com](mailto:VicFormerMembers@bigpond.com)

**Andrew Brideson**

Secretary

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**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 185 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 our submission to the Tribunal 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. Most of our superannuant members are in receipt of a Parliamentary pension 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. It is noted that this scheme is not subject to the current review.

We also have superannuant members receiving benefits under the pre-November 2004 New Benefits Scheme established under Division 3 of the *Parliamentary Salaries and Superannuation Act 1968*, and a smaller but significant number of members covered by the post-November 2004 Accumulation Scheme. This latter group represents the fastest growing group of former MPs as it is now the only scheme available to new entrants.

This submission will make some general observations and then focus specifically on issues related to each of the superannuation schemes under review.

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### GENERAL OBSERVATIONS

#### RESPONDING TO THE ISSUES PAPER

In seeking the views of our members to prepare this submission we have had a common response – that the Tribunal’s Issues Paper is not an easy document for “lay” people to deal with. It implies some level of technical understanding of superannuation, and to respond to it adequately is difficult. Our members, in general, are dealing with personal experiences and issues which often take an emotional toll as well as a financial toll. Attempting to provide an understanding of what might be systemic inequalities or irregularities from these personal experiences has proved difficult. Notwithstanding this, and our own lack of technical resources, we have tried to bring together commonly raised issues in a way that might aid the tribunal in its considerations.

#### 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*

We particularly note, and emphasise, the reference in the Act to “**a former member**” not being disadvantaged by any outcome of the review. We take the view that “no disadvantage” cannot simply be defined as not going backward from the current position, it should be defined as maintaining the relativities that are currently in place, and submit that in looking at the two schemes before it the Tribunal cannot simply look at current members and the potential outcome for them. It **must** also consider how any additional benefit that might be recommended is passed on to former MPs in those schemes.

As an example of this, we note the determination under the VIRT’s 2019 Review of MPs Salaries and entitlements, of creating a new “basic salary portion” for the purposes of calculating pensions for MPs, or former MPs, who are members of defined benefit schemes. This is subject to annual indexation. In compliance with the “no disadvantage” test this was applied to superannuants and was not applied purely to the entitlement of those still serving.

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### THE HAZELL REVIEW – BRIDGING THE GAP<sup>1</sup>

The Hazell Review of 2013 which looked at the salary, entitlements and allowances received by MPs at that time was the mechanism used to redesign MPs superannuation schemes from the former Defined Benefit type schemes to Accumulation Schemes. His recommendation to do this was adopted through amendments to the Acts providing for MPs superannuation in 2014. Since that time, all new Members of the Victorian Parliament have become members of the accumulation scheme. It is our understanding that there are now only 18 currently serving Victorian MPs who are members of the earlier Defined Benefits schemes.

It is worth noting some of the remarks by Hazell in bringing down his report many of which remain timely. At the outset of his report he states *“MPs’ remuneration, allowances and entitlements are often viewed cynically by the public and media commentators. This is perhaps unsurprising, as the opaque and complex nature of the system creates conditions where misinformation and mischief can flourish. In the long run, such cynicism is potentially damaging to our democracy. Without fair and adequate remuneration and support, it may be difficult to attract and retain the high quality MPs the community expects, or for MPs to discharge their duties effectively. Inevitably, if this occurs, the Parliament, and our democracy, will be diminished.”*<sup>2</sup>

It is also worth noting that his comment *“Let me say at the outset that superannuation is complex, and probably requires a more detailed, expert analysis that I am able to bring in the time available.”*<sup>3</sup> comes immediately before recommending that there would be a cost benefit to government in moving to an accumulation scheme. It is also important to note that his assessment that it would result in an *“unjustifiable cost to taxpayers”* is not backed up by any actuarial calculations accompanying, or indicated, in his report. Similarly his statement that *“I am advised that opening the defined benefit scheme to current members would be likely to cost in the order of an additional \$6-7 million per annum”* provides no reference to the source of the advice or the calculation it was based on. Other public sector schemes in existence at the same time and that dealt with “unique” jobs deemed not comparable to the broader community retained defined benefit superannuation schemes that had greater benefits than the MPs “New Scheme”. For example, Victoria Police has maintained a Defined Benefits scheme which on full qualification grants a benefit of 8.4<sup>4</sup> times the average of the final two year’s salary, and which allows qualified police on retirement the option of:

- Taking it as a pension
- Electing to convert it into a lump sum
- Taking a combination of pension and lump sum<sup>5</sup>

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<sup>1</sup> Malcolm Hazell OAM, *Independent Review Of Victorian MPs’ Salary Entitlements, Allowances And Other Arrangements*, February 2013

<sup>2</sup> Ibid, p 5

<sup>3</sup> Ibid, p31

<sup>4</sup> *Police Association of Victoria, TPAV ADVOCACY PAYS OFF: A SUPER WIN FOR TPAV MEMBERS* at

<https://www.tpav.org.au/news/inbriefs-and-news-links/2019/june/tpav-advocacy-pays-off--a-super-win-for-tpav-members> as at July 1, 2020

<sup>5</sup> *SuperPlus*, Police Superannuation scheme at <https://www.stateplus.com.au/superannuation/state-super-members/police-super-scheme> as at 29 June 2000

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The Victoria Police Scheme also includes a retrenchment benefit for members retrenched under the age of 50 which is paid as a lump sum. If retrenched over the age of 50 a retirement benefit is paid.<sup>6</sup> The MPs 'New Scheme', discontinued as a result of the Hazell Review, provided what is effectively a retrenchment upon loss of seat before minimum qualification (8 years service) of 3.34 times the member's contributions. Members over 50 are treated no differently.

The VIRT Review should start from Hazell and consider a number of questions: Were Hazell's assumptions and calculations correct? Has the level of savings he indicated been achieved, and at what cost to those in the subsequent accumulation scheme? Has MPs superannuation arrangements fallen behind those of other public sector "unique" occupations?

Could a Defined Benefits scheme be both affordable and the fairest scheme for MPs as it is for other public sector "unique" occupations? According to the Hazell Review to re-open the defined benefit program would have cost \$6-7 million per annum. In comparison, the accumulation program currently costs approximately \$4.5 million per annum and will increase to at least \$5.2 million per annum, with the increases in the superannuation guarantee in the coming years. Additionally, the redundancy program for MPs which Hazell recommended adds further costs which for comparative purposes should be looked at as superannuation costs.

#### **COMPARIBILITY**

In this review, the VIRT is required to examine the comparability of two different superannuation schemes and make recommendations that bring their benefits into line. This is to ensure that the members of one scheme are not disadvantaged in comparison to members in the other. However, it is our submission that doing this with schemes that are differently based, i.e.: one is contributory and the other non-contributory, is not as simple as might be expected. If the starting points were identical, the quantum of payments identical, the calculation of what constitutes salary were identical and the taxation treatments identical, it may be mathematically straightforward. One example of these differences is that one scheme allows additional, or 'top up' payments, the other does not. These additional payments are voluntary and can be for different amounts depending on individual choice or circumstance but when made can change the final benefit considerably. Should a variable such as this be included or excluded in the VIRT's calculations, and, if so, how? How VIRT determines to make this comparison and which variables to include, or exclude, will be pivotal to the final calculations and the choices made could well produce statistical anomalies and perhaps, perverse outcomes.

There is a widespread belief that Defined Benefit schemes are vastly more generous than Accumulation Schemes. This comparison becomes difficult when considering the two Parliamentary schemes taking into account the changed basic salary now paid and that the Parliament, as employer, pays 15.5% into the Scheme with no contribution required by the member. Moreover, Accumulation Scheme members qualify upon election (subject to

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<sup>6</sup> ESSS Defined Benefit Fund Product Disclosure Statement For operational emergency services members, p16

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preservation rules) whereas New scheme members have a time qualification which many never achieve. Accumulation Scheme Members can also make additional, tax free, payments into their fund which the Defined Benefits scheme members cannot. All these differences make comparing the schemes very difficult.

### RELATIVITY

The approach that the tribunal takes with regard to relativity has the potential to significantly affect the superannuation outcomes. Relativity can be approached in a number of ways:

What was the expected outcome of the Accumulation Scheme compared with the New Scheme when it was legislated in 2004? Has that relative outcome been achieved? If not, what must be done to ensure the outcome?

What is the relative outcome for MPs superannuation schemes compared to other public sector schemes?

What is the relative outcome for MPs superannuation schemes compared to the community generally? In looking at this, attention must be paid to the remarks of the Hazell review when recommending the move to an accumulation scheme that *“MPs do not have access to employment conditions taken for granted in most of the community, such as accrued leave and redundancy arrangements”*<sup>7</sup> Elsewhere, Hazell points out the lack of sick leave and long service leave entitlements. The Tribunal must give weight to these things in its considerations as well as considering how a “unique” occupation can be made compatible with community standards and expectations fairly.

### PORTABILITY

Portability, i.e. the ability to take an employee’s superannuation entitlement to a different job without a loss of benefits, is an important aspect of our current approach to superannuation. This ability to “roll over” is a particularly important consideration to MPs, who generally come into Parliament from a different occupation and may well leave the parliament before being fully qualified to access their superannuation. This does not apply only to Members who lose at an election. Even after serving for 15 years or more a former MP may not be age qualified to access their superannuation.

We note here the different treatment for portability purposes of members in an accumulation fund and those in a defined benefits scheme. Members of accumulation style super funds are able to ‘roll over’ part or all of their super to another fund regardless of whether employer contributions will continue to be made to the fund. However, superannuation portability laws do not apply to a defined benefit super interest where the member is an employee of the employer sponsored fund.

This discrimination in the treatment of superannuation fund types has led to significant disadvantage for members of Parliamentary defined benefits schemes, particularly through

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<sup>7</sup> Hazell, op cit, p 31

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Commonwealth changes. Not least of these was the raising of the “qualification age” from 55 to 60 in 1996.

Otherwise qualified MPs now often face a significant gap between their Parliamentary career and being able to access superannuation benefits. Those who leave having not qualified effectively lose their superannuation as it cannot be transferred and have little time to build a new superannuation benefit in any new employment. Exacerbating this is the experience of many, perhaps most MPs, that post Parliamentary employment is difficult to obtain and, if found, generally not at a salary level close to a backbench salary. Consequently, and contrary to public perception, there are many former MPs who have been left without an end of employment superannuation entitlement.

### **CASE STUDIES**

#### ***Member A***

Member A lost a seat after a period of 4 years, was on the accumulation superannuation program and received a payment of 25% of the annual salary less taxes.

Prior to entering Parliament Member, A was in a Government role in education. During the four years, there were no options for personal development of the Member to continue training and staying in touch with the former role. As the Member's party was no longer in Government applications were refused for new roles for which the Member was qualified due to fear of perceptions of political influence. The Member also applied for roles in the private sector in education and was told unofficially that due to politics it was difficult to put them in certain roles. This created pressure on the Member to find work in other areas for which they are not trained.

#### ***Member B***

Member B lost a seat after one term, similar to Member A with payout options.

Member B was highly trained in the health field and was an executive in the company they worked in. Post politics Member B attempted to get back to similar level roles and was unable to achieve similar conditions as those held before entering Parliament. This is a familiar story from short term Members of Parliament.

#### ***Member C***

Member C lost after two terms, was self-employed prior to entering Parliament and has a long history of involvement in local Government.

At the completion of Parliament, Member C was unable to get work in any field, and during time in Parliament, there were no opportunities offered for personal development. In their 50's and with a majority of their life self-employed, the opportunities were limited. With the skill set of Member C, the most suited positions were within Government Relations and Corporate Affairs. However, the loss of seat coupled with being a member of the party that lost Government resulted in this former Member being overlooked for Government Relations and Corporate Affairs roles because they were perceived as “unacceptable” to the Government of the day.

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The “qualification age” and difficulty of finding employment problem also applies to former MPs in the accumulation scheme. While they are able to ‘roll over’ their Parliamentary scheme entitlements to another scheme, not being able to find employment, or finding only lower paid employment, erodes their final benefit.

This is, no doubt, a difficult issue and much of the remedy lies with the Commonwealth. However, we submit that this review must look at the issue of portability as an issue of financial security and, make recommendations to address it. Further, if the Commonwealth cannot be persuaded to end the ‘roll over’ discrimination against defined benefit scheme members then the VIRT should recommend a mechanism to the State that will ensure that they are treated equitably.

#### **THE PRE 2004 ‘NEW SCHEME’**

Until the VIRT Salaries review 2019 Victorian MPs superannuation contributions were based on a salary calculation that did not include allowances. This was despite their being considered by the Australian Taxation Office as salary for PAYG purposes. Although this was, to some extent, rectified in last year’s salary determination it still leaves members of the ‘New Scheme’ considerably worse off than they should have been had this been treated as salary from their entry into the scheme. They have arguably been treated unfairly because of the device resorted to by governments in the last decade of increasing MPs emoluments by way of allowances instead of salary in order to avoid public criticism. The Tribunal has now said clearly that these allowances were in the nature of salary and superannuation calculations since the Review have included them. There is, however, an issue of “lost” benefits for the 18 current MPs who are in this scheme, as well as for those who retired prior to the 2019 decision.

We submit that this is an issue within the scope of the current review and should be addressed by it.

#### **THE POST 2004 ‘ACCUMULATION SCHEME’**

As noted above, the current MPs accumulation superannuation scheme came directly from the recommendations of the Hazell Review. At the time, the employer contribution to superannuation under the Commonwealth Superannuation Guarantee legislation was 9.5%. Hazell recommended setting the rate for MPs at 15% and said that this would be justified because of leave and other entitlements that were available to public sector workers and the community generally but not available to MPs. In recommending a ‘bridging the gap’ mechanism, Hazell stated *“This will be provided and justified in lieu of accrued recreation and long service leave. For a ‘two-term post-2004 MP’, this increase in employer contribution would provide a benefit roughly equivalent to the long-service and annual leave entitlements that other public officials may expect to accrue over the same period.”*<sup>8</sup>

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<sup>8</sup> Hazell, op cit. p32



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This difference has been maintained since 2014, but employer contributions under the Superannuation Guarantee are to increase from July 1, 2021 and annually thereafter until 2025.

<b>YEAR</b>	<b>RATE</b>
1 July 2014	9.5%
1 July 2021	10%
1 July 2022	10.5%
1 July 2023	11%
1 July 2024	11.5%
1 July 2025	12%

If the Parliament's employer contribution is not similarly adjusted and Hazell's nexus maintained, then the 'bridging the gap' mechanism that was recommended would be considerably reduced. VIRT should, as a part of its review, determine the applicable employer contribution that should apply to MPs superannuation after each Superannuation Guarantee increase.

Finally, we thank the Tribunal for the opportunity to make a submission to the current review. In doing so we note that the actuarial modelling to be used by the Tribunal will not be publicly released until after the closing date for submissions. We therefore indicate that we may wish to make a supplementary submission after seeing the modelling.