



200601879

CURIOUSER AND CURIOUSER: THE FEDERAL REMUNERATION TRIBUNAL

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Paul Kelly (1994), in *The End of Certainty*, popularised the contention that Australia's Deakinite settlement had been largely abandoned under the neo-liberal policy changes adopted initially by the Hawke-Keating governments. Notably amongst these changes was the decline of compulsory arbitration, mainly manifest in the shift to more decentralised bargaining. Since coming to office, the Howard government has further eroded the authority and role of the Australian Industrial Relations Commission (AIRC), a change which it is seeking to accelerate with the changes to the *Workplace Relations Act, 1996* packaged under the highly contestable 'WorkChoices' moniker. Despite the government's rhetoric over the need to curtail third party intervention in employment relations, it has been silent on the need to reform the Tribunal which makes recommendations over the remuneration of Parliamentarians, federal judicial officers and senior public servants. This body, the longstanding federal Remuneration Tribunal (RT) – it celebrated its thirtieth anniversary in 2003 – has attracted little academic interest and, despite the populist media treatment of many of the Tribunal's determinations, much of the Tribunal's character and methods of operation remains arcane.

This article seeks to demystify the key features of the Remuneration Tribunal; first by providing an overview of its structure and operation and second through a comparative analysis with the character and practices of the AIRC. In the final part, the article considers the justifications for the ongoing operation of Remuneration Tribunal despite the disbanding of other specialist federal tribunals, such as the Flight Crew Officers' Industrial Tribunal.

Given the complexity of the arrangements across all the states – New South Wales, for instance, has a tribunal established under the *Parliamentary Remuneration Act 1989 (NSW)* – the analysis concentrates on the operations of the federal Remuneration Tribunal. Other Commonwealth agencies, such as the Defence Force Remuneration Tribunal established under section 58G of the *Defence Act 1903*, have also been excluded from the discussion.

The Remuneration Tribunal: an Historical Overview

Total remuneration entitlements of Members of Parliament are derived from four principal sources; a base salary, an additional loading if an MP holds one of the numerous Offices of Parliament such as Speaker of the House of Representatives or President of the Senate; an electorate allowance (dependent of the geographical size of the Member's electorate) and benefits from a superannuation scheme. They also have extensive travel entitlements and other related conditions. Most, but not all of the entitlements fall within the complex arrangements of the Remuneration Tribunal and its underpinning legislation. Some benefits are established under other legislation including the *Ministers of State Act 1952*, the *Parliamentary Contributory Superannuation Act 1948*, the *Parliamentary Entitlements Act 1990*, the *Members of Parliament (Life Gold Pass) Act 2002* and the *Members of Parliament (Staff) Act 1984*. The constitutional authority for these laws stems from sections 48 and 66 of the Australian Constitution.

Up until 1973, increases in parliamentary salaries and benefits were implemented through legislation by the Parliament, sometimes, but not exclusively, based on the recommendations of committees of inquiry. Following an inquiry conducted by the then Justice John Kerr in 1971, the Whitlam Labor government decided to establish an independent statutory agency with the intention to construct a clearer separation between Parliamentarians and the determination of their entitlements. The subsequent *Remuneration Tribunal Act* came into operation in 1973. Under section 4(2) members of the Tribunal were appointed by the Governor-General on the advice of the executive. As well as Parliamentarians the Remuneration Tribunal also covered the

departmental heads of the Australian Public Service (APS), various other Commonwealth public office holders and the Commonwealth judiciary (Department of the Parliamentary Library: 2000). The Tribunal does not set remuneration levels: rather Section 5(2C) of the Act specifies that the Tribunal's role is to provide advice to the government in the form of reports tabled in the Parliament which the government may choose to accept or reject – or 'disallow' in the language of the Act.

Not all aspects of Members of Parliament (MPs) entitlements were allocated to the Remuneration Tribunal. For example, the executive has retained control over non-financial aspects of Parliamentarian's work, including the general provision and equipment of their electorate offices and staffing levels commensurate with the Member's status and responsibilities.

Much of the work of the RT remained unchanged until the Hawke Labor government initiated an assessment in 1988 of the 'work value' of MPs. The review was conducted by the Tribunal, assisted by the remuneration management consultants Cullen, Egan and Dell. The review had followed a particularly turbulent time two years earlier when the Parliamentary Salaries Tribunal of South Australia controversially recommended that the State Parliamentarians receive an 18.9% wage increase. According to Romeyn (1986:13), this attracted extensive media coverage and was 'viewed as a threat to centralised wage fixation'. In response to the controversy, the Prime Minister, Bob Hawke, advised that all states should adopt specialist remuneration tribunals which would 'have regard to Federal Commission wage fixation principles' (*ibid.*: 14).

In the work value review, the Remuneration Tribunal found substantial salary increases were justified but, because of the on-going contentiousness over the levels of parliamentary remuneration, the increases were deferred. As a strategy to further depoliticise the issue, the government responded by deciding to phase-in the increases by adjusting MPs salaries to equate with the APS Senior Executive Service (SES) Band 1. Because the SES rate was the result of negotiations with the public sector unions, it provided a neutral linking point for MPs remuneration. To give effect to this decision the *Remuneration and Allowances Act 1990* was passed. It significantly reduced the Remuneration Tribunal's powers, restricting it to the determination of

electorate allowances and the salaries of Parliamentary office-holders. Later, the *Industrial Relations Amendment Act (No 2) 1994* altered the *Remuneration and Allowances Act 1990* raising the minimum MPs annual salary to that of the SES Band 2. Once again, this was phased-in, with the change finalised in October 1996.

This strategy of depoliticising increases in Parliamentary remuneration by linking pay rates with federal public servants was severed with the changes introduced by the *Workplace Relations Act*. The Act enabled salaries and remuneration to be set either through individually negotiated Australian Workplace Agreements (AWAs) or in separate agency bargaining agreements. Importantly, this severed the nexus, leaving no common public sector standards on which parliamentary salaries could be based (Department of Parliamentary Library: 2000). The uncertainty ceased with the enactment of the *Public Employment (Consequential and Transitional Provisions) Amendment Act 1999* which provided that, *inter alia*, an MP's annual base salary was payable at the SES Band 2 level or at a percentage of a 'reference salary'. Plus, the Tribunal was given scope to establish a classification structure for Principal Executive Officers (PEO).

Following the enactment of this legislation the RT conducted another extensive review of MPs remuneration, publishing its report in December 1999. Assertively, the Tribunal contended that (Remuneration Tribunal, 1999a:1):

There is no reason to deny Parliamentarians access to pay increases that are available to other sectors of the community. Indeed, it is the Tribunal's job to ensure that Parliamentarians are properly paid for the work that they do and properly resourced to perform their public functions.

In effect, the review replicated the 1988 Cullen, Egan and Dell work value analysis. Framing its 1999 recommendations, the Tribunal, in summary, took into account (Remuneration Tribunal, 1999a: 2):

- work value - the complexity of MPs work, their responsibilities and accountabilities and 'their contribution to a better governed and more prosperous nation';

- productivity - 'the quality and quantity of the various key outputs that they deliver, including legislative, executive and management outputs';
- total remuneration - the full extent of the MPs remuneration package; and
- community wage and salary movement - especially in the public sector.

In evaluating allowances for the expenses of office, the RT was concerned that the allowances would (Remuneration Tribunal, 1999a: 3):

- be sufficiently flexible in recognising differing needs between MPs;
- meet normal standards of accountability that applied to the expenditure of public funds;
- be structured 'to preclude any real or imputed favour to any particular parliamentary group or party';
- provide quality services to the MPs constituents; and
- be structured to support MPs in achieving a better work family balance especially given their 'frequent and prolonged absences from their family homes'.

The Tribunal repeatedly pointed to Parliamentarians not having received an increase in their remuneration for three years - since October 1996 - despite general community rates moving between 14 and 17 per cent during the same period. Such an increase though, as the Tribunal noted, would encounter expectations that MPs should be models of restraint to the rest of the community (*ibid.*: 4). After weighing these factors, the RT advised the government that, in its view, a 9.95% increase for Parliamentarians was appropriate - the figure being the change to Average Weekly Ordinary Time Earnings (AWOTE), as published by the ABS, from October 1996 to October 1999.

At the same time, but separately, the Tribunal established a five level Principal Executive Officer classification structure, ranging from Band A (lowest) to Band E (highest). (PEO positions were created in 1988 when government business enterprises were first established.) There are in the order of 94 Principal Executive Officer positions, which include, for

example, the Australian Industrial Registrar, the Office of the Employment Advocate, the Director of the National Gallery and the Managing Director of Medicare Private. The Act allows for existing holders of public office to apply for the regrading of their positions due to changes in workloads, skills or qualifications, accountabilities and the like.

Relying on the advice of the Tribunal, the new PEO structure enabled the government to re-establish the salary adjustment nexus with the APS. Initially, the reference salary was set at \$8,000 less than the PEO Band A classification, or (then) \$90,000. In its report, the Tribunal noted the salary reference point equated with, generally, a 'middle ranking senior executive' (Remuneration Tribunal, 1999a: 3). The salary reference point aligned MPs with PEOs, for example, who held the position of the Director of the Office of Australian War Graves and the Northern Territories' Australian Electoral Officer. Full parity with the PEO rate was achieved through two phases and finalised in July 2000. The government's decision to phase in the increases was contrary to the Remuneration Tribunal's advice which was 'not attracted' to the phasing-in approach because 'it extends unreasonably the period that parliamentarians are required to exercise significant wages restraint' (*ibid.*: 4).

The Remuneration Tribunal's Procedures

There are three part-time Tribunal members - one is appointed as President. In 2005 the office of President was held by John Conde AO. A businessman, he was also the Chairman of EnergyAustralia and the Medical Benefits Fund of Australia and a Director of Lumley General Insurance. Janet Grieve and John Allen were the other Tribunal members. Their biographies on the Tribunal's website detail their considerable links with industry and government boards. Allen, for example, is also the Chairman of the Australian Government Solicitors Advisory Board and the Council of Leadership Victoria (Remuneration Tribunal, 2005). The Tribunal is responsible to a number of government Ministers, including Finance and Administration, Employment and Workplace Relations and the Special Minister of State, and it is

supported by a secretariat which is located in the Department of Employment and Workplace Relations.

As explained earlier, the functions and processes of the RT derive from the *Remuneration Tribunal Act*. Sections 5, 6 and 7, in summary, state that the Tribunal is empowered to inquire into and report to the Minister on terms and conditions of employment for PEOs, salaries payable to Ministers and other office-holders, travel and other allowances. The RT makes principal determinations which cover a specific category of those within its jurisdiction or which relate to a specific entitlement, for example travel allowances. These determinations remain on-going until amended. They are 'disallowable instruments' in that the Act provides that either House of Parliament, within fifteen days of the determination being tabled by the Minister for Employment and Workplace Relations, may pass a resolution rejecting the Remuneration Tribunal's determination. This process is designed to facilitate public comment. Each determination is allocated a number and is dated by year and all are publicly available on the Tribunal's website. Measured by the number of published determinations, the Tribunal's workload has plateaued since the year 2001 dealing with, on average, 24 matters per year (Remuneration Tribunal, 2005).

Sometimes, the government may request the RT to inquire into and report on a matter referred to it by the Minister under section 7(4)(b) of the Act. In August 2003, for instance, the Tribunal was required to inquire into a redundancy-type benefit for new Senators and Members. The subsequent two-page report is instructive as to the manner of the RT's deliberations. The Tribunal recommended that a one-off lump sum equivalent to eight weeks of the basic parliamentary salary be paid to those MPs who joined the Parliament after the November 2001 election and who subsequently 'retire involuntarily' or, in other words, were not re-elected (Remuneration Tribunal: 2003a). The benefit, badged as a 'resettlement grant' (approximately \$15,760), was considered by the Tribunal as appropriate in facilitating the former MPs to re-establish themselves in the community – updating professional libraries, preparing job applications and resumes and the like. However, as a *quid pro quo* it recommended that Parliamentarians' severance travel entitlements (as prescribed in Determination 2003/14) should be reduced from twelve

return trips within Australia over six months for those who had served one parliamentary term to two return trips to Canberra only. It believed these trips 'would enable affected Senators and Members to finalise clearance of their Parliament House offices' (*ibid.*). No detailed reasoning based on evidence supported the report's advice to the Parliament, as would be the expectation of a decision or recommendation of the AIRC – the RT merely noted that it was 'at this time disposed to support a modest redundancy-type benefit' (*ibid.*). A passing reference was made to 'redundancy benefits available more generally in the community' (*ibid.*).

After the release of this report in October 2003, one government Senator spoke in support of the proposal, highlighting the circumstances of a colleague whose job search had been difficult after he had lost office – he had 'looked very hard for a year and it was devastating for their family'. She claimed, accordingly, that his case demonstrated that 'they needed the money' (ABC: 2003). Simon Crean, the then Leader of the federal Opposition, stated that the ALP would argue against the Remuneration Tribunal's proposal (Davis: 2003).

The Remuneration Tribunal and the AIRC

Comparisons with the Australian Industrial Relations Commission are not favourable to the Remuneration Tribunal. First, the Tribunal is not tripartite in the sense that its members have not been drawn from a wide constituency. This is quite unlike the AIRC whereby governments have generally sought to make balanced appointments from senior representatives of both capital and labour. Plainly, and without canvassing a detailed analysis of the jurisprudential nature of tribunals, the perceived independent authority of a tribunal is enhanced if its membership is widely representative. The AIRC, certainly, has satisfied this test.

More importantly though, the two tribunals perform their functions very differently. Sections 10 and 11 of the *Remuneration Tribunal Act* set out the meeting procedures of the RT and how it shall conduct inquiries. Apart from requirements over voting and the quorum, the Act provides

considerable latitude to the Tribunal. This distinguishes it markedly from the AIRC. While the AIRC is not required under the *Workplace Relations Act* to comply with the strict rules of evidence or other legal technicalities, in practice, a strong onus is maintained on those who appear before the Commission that appropriate procedural formality is observed. Alternatively, the Remuneration Tribunal has more the character of a private agency. Section 11(1) states that in the execution of its functions, the Tribunal:

- may inform itself in such a manner as it thinks fit;
- may receive written or oral statements;
- is not required to conduct any proceedings in a formal manner; and
- is not bound by the rules of evidence.

Under the Act and the RT's Determination 1999/15, the Tribunal is obligated to review the maximum total remuneration of the PEO bands annually with any changes automatically (subject to the Parliament's approval) 'flowing on' to MPs. Clause D3 of the Determination prescribes (Remuneration Tribunal, 1999b:7):

The maximum total remuneration for each Band in Table 1 shall be adjusted on and from 1 July each year in proportion to factors as determined by the Tribunal closer to that date, including but not restricted to appropriate wage and remuneration indicators.

The Tribunal has subsequently explained that clause D3 has the purpose of ensuring that the PEO Bands generally 'keep pace with current market remuneration trends' (Remuneration Tribunal, 2002:1). More specifically, the RT has indicated that in making its determinations, it takes into account a number of factors – key economic indicators, the ABS Average Weekly Earnings surveys, the Consumer Price Index, and wage outcomes in the public and private sectors (*ibid.*). It must have regard to the National Wage Case and other wage determination principles of the AIRC (section 5(1) of the Act).

The Tribunal's amending determinations are often issued as statements, standardised from one year to the next, in which it specifies the changes, usually incorporating the phrase 'that after taking into account the

relevant indicators the Tribunal has determined that . . . '. No detailed explanation is provided. For example, in *Determination 2003/12 Review of Judicial and Related Offices' Remuneration*, the Tribunal merely stated (Remuneration Tribunal, 2003b):

The Tribunal has determined a four per cent increase for judicial and related offices as part of the 2003 annual review, with effect on and from 1 July 2003. The increase takes into account factors provided for under the Act, including (but not limited to) indices such as the Australian Bureau of Statistics' Wage Cost Index, executive remuneration data in both the public and private sectors and broader economic indicators. The Tribunal's determination also incorporates the outcomes of the 2002 review.

To gather data and opinion, the RT may invite submissions from interested parties and the wider public, especially in major 'cases'. For the 2002 annual review of parliamentary allowances, the President of the Tribunal wrote to all federal Senators and Members. In its 2001 review of remuneration for Judicial and Related Offices (the first since 1994) and which was finalised in November 2002, the RT gave notice of the inquiry in all the major newspapers and sent notices to the courts and Bar Associations and sought submissions from the government. The Tribunal also circulated a discussion paper, following comments from the federal Attorney-General and representatives of the Tribunal's counterpart remuneration Tribunals in the States and Territory.

Most submissions are made in writing although oral 'evidence' can be taken, except the Tribunal does not hold hearings in which witnesses are examined and a transcript made of their evidence. The extent of the information provided to the RT can be limited. Using the two matters referred to above as examples, thirty and fifteen submissions respectively, were made to the RT. Few were from the general public.

As a general rule, the submissions to the Tribunal are not disclosed to any other party. Unions have expressed concern with this lack of transparency. The Australian Council of Trade Unions (ACTU) chided the Commonwealth government over the secrecy of its submissions to the Tribunal. Jennie George, the then ACTU President, issued a press statement complaining that it was the government's submission which

had led the RT to recommend substantial salary increases for the Senior Executive Service. George was riled that the submission had been kept confidential. The ACTU drew the comparison between the procedural protocols of the Australian Industrial Relations Commission with its public hearings and, oppositely, the *in camera* deliberations of the Remuneration Tribunal. George explained '... that submission remains a secret. In contrast, all submissions to the AIRC in Living Wage proceedings are available for public scrutiny' (Field: 1999). For the ACTU this secrecy demonstrated that there 'was one standard for the rich and powerful and another for ordinary workers' (*ibid.*).

Potentially, parties can exercise rights under the *Freedom of Information Act 1982* (FOI) to gain access to submissions made to the Tribunal - subject to the relevant public interest requirements set out in the legislation. The specific extent of this access was tested when an FOI decision of the RT was referred to the Administrative Appeals Tribunal (AAT) in August 2002. Deputy President Forgie overturned the decision of the Tribunal to refuse access to a *Herald and Weekly Times* journalist to see submissions relating to the RT's inquiry into remuneration for Judicial Offices (see *Robinson v Department of Employment and Workplace Relations [2002] AATA 715*). Particular sensitivity was attached to the inquiry over the relationship between judges' salaries, private-sector incomes and performance measures. The journalist had been denied access to the submission of the judicial members of the Federal Court of Australia. The case is instructive because it provides a review of the general manner of the proceedings of the RT. Forgie D.P found that (*Robinson*, 2002:13) 'the tension in this case, then, would seem to be between the public interest in the public's being informed on the processes of the Tribunal . . . and the public interest in its being able to carry out its functions properly.'

As to the factors against disclosure, the RT submitted, *inter alia*, that the possibility of release would 'inhibit the frankness and candour of those who want to make submissions to the Tribunal' (*ibid.*:10). A witness for the RT gave evidence which explained (*ibid.*: 8) '... the Tribunal prefers that there not be a public debate about the issue before it has made its determination . . . It is not a Tribunal in the sense of a quasi-judicial body and always conducted its operations away from the glare of publicity.'

Deputy President Forgie related many of these issues to the 'interesting analogy' of the AIRC. Despite recognising differences between the tribunals, for example that the AIRC's responsibilities are much wider and that the Commission has higher levels of formality, she was unconvinced that disclosure of information, in this case, would hamper the functioning of the RT. Moreover, the Deputy President reiterated the requirement for remuneration to be determined 'according to proper principles . . . equally important to the lowest paid as to the highest paid person' especially given that the Senior Executive Service are paid 'from the public purse' (*ibid.*:15). Overall, and with Forgie's judgement at pains to acknowledge the integrity of the members of the RT, her decision does suggest the RT is vulnerable to claims of excessive secrecy, particularly, again, when compared with the AIRC.

Comparative Outcomes

The quantum of parliamentarians' salaries has been an obvious target of the tabloid media's opprobrium – 'fat cats', 'perks', 'snouts in the trough' – with the discovery of any miscreants 'abusing their entitlements' serving to reinforce the strong negative stereotypes held by many Australians towards their elected representatives. Trade unions, especially, have complained that improvements in parliamentarians' remuneration should be subject to demonstrable progress against 'productivity benchmarks'. The Public Service Association (PSA) suggested these measures could include the number of constituents assisted by MPs and the amount of infrastructure which had been brought into each Member's electorate. Mischievously, the PSA added that they could readily identify many MPs, who, if paid on performance, would 'barely earn enough for a sandwich' (West: 2001). Also, the RT's determinations have not always been consistent with the wage settlements typically experienced by workers reliant on the mainstream industrial relations jurisdictions. Using the 1999 Living Wage Case as an illustration, the ACTU had made a claim of \$26.60 per week to raise the federal minimum wage to \$400 per week. At the same time, the RT recommended salary increases of between 25 to 40 per cent for the SES to increase their salary packages to nearly \$304,000 a year, up from

\$248,000 (Field: 1999). In another case, the RT recommended in November 2002 that federal judges receive a 17 per cent pay rise over three years. This meant, for example, an additional \$17,100 for the Chief Justice of the Family Court, taking the annual salary of the position to \$260,900. Additionally, other benefits including non-contributory superannuation, use of a private-plated Commonwealth car, travel entitlements and the like were valued at between \$15,500 and \$17,000 annually (Merritt: 2002).

As discussed earlier, the Tribunal itself has commented on this difficult interplay between the RT's determinations and community cynicism. To some extent, the character of the Tribunal's pronouncements over these expectations of restraint suggests the Tribunal contends it has a role in championing what it perceives as appropriate wage justice for its constituency. Indeed, as illustrated in the Tribunal's 1999 report to the Parliament, the Tribunal expressed what could be characterised as some puzzlement over the resistance to remunerate MPs at a level consistent with their responsibilities. The Tribunal stated (Remuneration Tribunal, 1999a: 1):

Past increases in parliamentary remuneration and allowances have been greeted with harsh criticism by some sectors of the community. They have attracted a level of publicity that is usually reserved for major events. The persistence of such attitudes seems to be a curious feature of Australian political life. We expect our politicians to work hard over long hours for the public good, to be astute leaders and legislators, and to manage the affairs of the nation with vision and the highest integrity. Yet there is often adverse reaction when asked to remunerate them at an appropriate level.

How has the level of remuneration for Parliamentarians changed, particularly in terms of wage movements elsewhere? This is a difficult question given the complexity of their remuneration packages – electoral allowances, travel arrangements and the like – plus determining which one or series of data would be most reliable comparator. Nevertheless, it is possible to compare a MPs base salary with changes to the federal minimum wage. As table 1 shows, over the period from the introduction of the Safety Net (as part of the requirements placed on the AIRC

through the changes enacted by the Howard government with the *Workplace Relations Act*) until the latest Safety Net adjustment, both the minimum wage and an MPs base salary have increased by around 35 per cent.

Table 1: Comparison Between MPs Base Salary and the Federal Minimum Wage

	1997	2005	Percentage Change
MPs base salary	\$81,856	\$111,150	35.7
Federal minimum wage	\$18,688	\$ 25,188	34.7

Sources: AIRC 1997 and 2005, Safety Net Decisions and Remuneration Tribunal

The Remuneration Tribunal and Other Specialist Tribunals in Australia

Several specialist tribunals have operated in the federal industrial relations system; the most notable examples being the Flight Officers and the Coal Industry Tribunals. Romeyn (1986:19) argues that there were a number of reasons for the establishment of these tribunals, particularly, the desire of the state to bring a small number of 'recalcitrant groups more squarely into the tribunal framework'. The parties were in 'some way different and deserving of special treatment'. Bennett (1995:97) argues a similar set of reasons, including:

the containment of worker organisation and stamping out of unions; the production of fundamental change to the pattern of industrial relations within a particular industry; the strengthening of the position of workers as against their employers and the improvement of particular groups such as women.

Unlike the Remuneration Tribunal, these tribunals have been disbanded. The 1985 Hancock Committee of Review into Industrial Relations Law and Systems recommended the dismantling of the specialist tribunals, claiming that (Committee of Review, 1985: 417 in Lee, 1989) 'there does not appear to be any general justification for continuing with a multiple tribunal structure according special attention to certain segments of

employment or industry.' However, while the Committee recommended that all federal specialist tribunals should be absorbed into the AIRC, they made an exception in the case of the Remuneration Tribunal. In essence they found that unlike the other specialist tribunals, the unique purposes of the RT mean that the grounds for its maintenance remained compelling.

Drawing on Romeyn's work (1986:17), three principal arguments have been articulated for the retention of the Remuneration Tribunal. First, the Tribunal acts as a device to deflect public criticism over remuneration levels for MPs and senior public sector employees - 'otherwise controversy and embarrassment might be created for government forced to make such decisions themselves'. Second, a conflict of interest plainly arises if members of the AIRC have a role in the determination of their own conditions of appointment. Third, the Remuneration Tribunal provides an appropriate degree of separation between the executive, the legislature and the judiciary. In the case of the AIRC and similar bodies, as Romeyn, puts it, the Remuneration Tribunal achieves 'the desirability of maintaining the independence of the Commission from Parliament' (*ibid.*). However, as the material referred to in this article demonstrates, considerable scope exists for the Tribunal to adopt practices which far more clearly delineate the reasoning for its determinations and which lift its often excessive cloak of secrecy.

Conclusion

The federal Remuneration Tribunal has significant agency across Australian industrial relations, perhaps, not so much in terms of the total number of Members of Parliament, senior public servants and judicial officers which fall within its jurisdiction, but for the impact of its decisions on the wider polity. Certainly, the case for the abandonment of the tribunal is weak. Recognising the limitations of alternative mechanisms to determine MPs' pay - especially individual contracting arrangements made between an MP and their electorate - Davis and Gardner (1993: 296) concluded that 'we are likely to attract better candidates, and be better served, by MPs with salaries linked to SES grades, or determined by a remuneration tribunal, than by

Parliamentarians who must engage in a public auction for their seat at the end of each term'. However, even accepting Davis and Gardner's argument, the RT's processes do not appear to satisfy the tests of justice being done and being seen to be done. Questions over the Tribunal's methods, as highlighted in the judgement of the Administrative Appeals Tribunal, are difficult to avoid. Comparing the procedures of the AIRC with the RT, a reasonable person may conclude that the decisions of the Tribunal lack authoritative, detailed reasoning supported by objective and tested evidence.

Finally, with the executive government seeking to influence wages, labour costs and productivity through a number of macro policy instruments and 'industry' policy (witness the push make funding to universities dependent, in part, on their willingness to offer AWAs to staff) and given that the fundamental rationale of enterprise bargaining is the rejection of comparative wage justice (bargains should reflect the unique, individual circumstances of each organisation), can an assertion that Parliamentarians, federal court judges, members of the SES and the like are beyond the reach of these policy objectives be sustained? Further, with the Howard Government seeking to establish the Australian Fair Pay Commission to determine future minimum wages for awards and various classifications (a move widely seen as constraining wages growth) it seems likely that this contrast between those privileged by the special arrangements of the Remuneration Tribunal and the Australian workforce will become much starker.

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References

- ABC (2003) 'Failed MPs could get adjustment payouts', 14 October, www.abc.net.au
- Bennett, L. (1994) *Making Labour Law in Australia*, The Law Book Company, Sydney.
- Davis, G. and Gardner, M. (1993) 'What Enterprise? Whose Bargain? Politicians Face their Principals', *The Economic and Labour Relations Review*, Vol. 4, No. 2, 279-298.

Davis, M. (2003) 'Redundancy pay for MPs', *The Australian Financial Review*, 15 October.

Department of the Parliamentary Library (2000) *Remuneration of Members of the Parliament of Australia*, www.aph.gov.au/library/pubs/rp/1999-2000/2000rp30.htm

Field, N. (1999) 'ACTU pushes hard on bureaucrats' wage rises', *The Australian Financial Review*, 25 January.

Kelly, P. (1994) *The End of Certainty*, Allen and Unwin, St Leonards.

Lee, M. (1988) 'The Coal Industry Tribunal: the case for its retention', *Australian Bulletin of Labour*, Vol. 15, No. 1, December.

Merritt, C. (2002) 'Judges win 17pc pay rise', *The Australian Financial Review*, 28 November.

Remuneration Tribunal (1999a) *Report on Senators and Members of Parliament, Ministers and Holders of Parliamentary Office - Salaries and allowances for Expenses of Office*.

Remuneration Tribunal (1999b) *Determination 1999/15*.

Remuneration Tribunal (2002) *Determination 2002/16*.

Remuneration Tribunal (2003a) *Report of the Remuneration Tribunal into Members of Parliament 'resettlement grant'*.

Remuneration Tribunal (2003b) *Determination 2003/12*.

Remuneration Tribunal (2005) <http://www.remtribunal.gov.au/aboutus/default.asp>, accessed 20 September.

Robinson v Department of Employment and Workplace Relations [2002] AATA 715.

Romeyn, J. (1986) 'The Role of Specialist Tribunals', *Journal of Industrial Relations*, Vol. 28, No. 1, 3-23.

West, A. (2001) 'Call for MPs to earn pay rise', *Sun Herald*, 16 September.

