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No. 4 2002–03

Members of Parliament (Life Gold Pass) Bill 2002

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Members of Parliament (Life Gold Pass) Bill 2002

Chris Field and Leanne Manthorpe
Law and Bills Digest and Politics and Public Administration Groups
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Members of Parliament (Life Gold Pass) Bill 2002

Date Introduced: 26 June 2002

House: House of Representatives

Portfolio: Special Minister of State

Commencement: Either on Royal Assent or 28 days after that date.

Purpose

To codify the entitlements of former members of Parliament, their spouses and widows/widowers to travel entitlements where they are eligible to hold a Life Gold Pass.

The Bill also provides that former Parliamentarians convicted of a corruption offence will cease to be eligible to hold a Life Gold Pass.

Background

Current Entitlements

The [Parliamentary Entitlements Act 1990](#) entitles Members of Parliament to benefits listed in [Schedule 1 Part 1](#) of the Act. The Act also allows benefits in the Schedule to be 'varied or omitted' by Determination of the Remuneration Tribunal or by regulations pursuant to the Act. Where the regulations and determinations are inconsistent, the regulations prevail and the determination is void to the extent of the inconsistency.

[Section 7](#) of the [Remuneration Tribunal Act 1973](#) says that the Tribunal shall 'inquire into, and determine' allowances paid to MPs, Office Holders and Ministers.

The entitlement to a Life Gold Pass is specified in Clause 7 of Determination 1998/26.

Eligible retiring parliamentarians are entitled to travel within Australia (excluding the external territories) at government expense for non-commercial purposes up to a maximum of 25 return trips a year (former MPs, including former Prime Ministers, who held, or were eligible to hold, a Life Gold Pass prior to January 1994 are entitled to unlimited travel for non-commercial purposes). Travel may be on scheduled

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commercial/commuter air services, mainline rail services and other government services, or by motor coach or other vehicles operating as regular carriers. Other features are:

- the class of travel is the same as that determined for a sitting senator or member – currently first or business class, whichever is appropriate for the mode of transport used
- pass holders are entitled to be accompanied by their spouse
- pass holders must use accrued frequent flyer points to reduce the cost of future travel under the life gold pass provisions
- widow/widower retains an entitlement for 12 months after a parliamentarian's death.

Qualifying periods are specified in clause 7.2 of Determination 1998/26

Office	Qualifying Period
Prime Minister	One year
Ministers (other than Parliamentary Secretaries)	Six years
President of the Senate	Six years
Speaker of the House of Representatives	Six years
Leader of the Opposition	Six years
Parliamentary Secretaries and Senators and Members	Twenty years or the life of seven Parliaments

- a person who has served as Prime Minister for less than one year, or a Minister, presiding officer or Leader of the Opposition who has held office for less than six years, shall have that period trebled in determining their eligibility for a Life Gold Pass by way of 20 years service as a senator or member
- periods of broken service may be accumulated
- for the purpose of this entitlement the life of six parliaments plus a further period of three years service, none of which is part of the life of those six parliaments, may be taken as the equivalent of the 'life of seven parliaments'.

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Since 1991, those entitled to Gold Pass travel have also been able to use Comcar services to travel to and from the place where their Gold Pass travel commences and ends.

Recent Review

In 2001, by resolution of the Senate, the Australian National Audit Office (ANAO) undertook a performance audit on parliamentary entitlements. In [Audit Report No 5 2001-2002 Parliamentarians' Entitlements: 1999-2000](#), the Auditor-General made 28 recommendations to the Presiding Officers to 'improve the administration of Parliamentarians' various entitlements.' The Report found a number of problems with the current arrangements, including:

- Gold Pass holders could travel for any non-commercial purpose, for example holidays, while sitting MPs entitlement to travel was restricted to reasons connected with their position
- Pre 1994 Gold Pass holders entitled to unlimited travel may incur significant expenditure, with one, excluding their spouse, taking more than 100 return trips at a cost of \$95 654 in 1999–2000
- Spouses issued with a Gold Pass prior to 1976 are also entitled to unlimited travel, with one taking more than 70 trips at a cost of \$50 944 in 1999–2000
- The legality of the use of Comcar and similar services was doubtful. Quoting legal advice the Report stated:

The only transport services which are subject to Life Gold Pass are those provided on a scheduled or regular basis. We consider that as COMCAR, hire car, self-drive vehicles and taxi transport are not provided on a regular or scheduled basis, but are rather provided on demand, that these services are outside the scope of the Life Gold Pass under the Determinations as presently drafted.¹

Government Response

In a [press release](#) of 27 September 2001, the Prime Minister responded to the ANAO Report with an announcement of changes to print and travel entitlements, including to Life Gold Pass travel. Changes announced were:

- Life Gold Pass holders, excluding former Prime Ministers, to be limited to 25 domestic trips annually
- Future former Prime Ministers to be limited to 40 domestic trips annually

The Government indicated that 40 trips reflects 'a legitimate level of travel consistent with the many civic and community events former Prime Ministers are expected to attend'.

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- Travel expenditure by Life Gold Pass holders, severance travel beneficiaries and the spouses of deceased parliamentarians will be publicly disclosed.

Comcar

As noted above, the ANAO received legal advice questioning the provision of Comcar and similar services to Life Gold Pass holders. It was reported on 21 May 2002 that the Department of Finance and Administration had written to Life Gold Pass holders informing them that the entitlement to use Comcar would be withdrawn from 1 July 2002. A spokesman for the Minister was reported as stating:

Life Gold Pass holders since 1991 have been able to use the Comcar services to get from their home to an airport or to a railway station...

That was a decision made by the Minister at the time.

We got further [legal] advice and there was also some question about the legality of it, and so for safety's sake we have decided to terminate it from June 30 [2002].²

The spokesman indicated that former parliamentarians could submit to the Remuneration Tribunal seeking that the entitlement be provided under a determination.

It was also reported that the use of Comcar cost \$97 708 in the first 6 months of 2001.³

Severance Travel

Retiring MPs not eligible for a Life Gold Pass entitlement are eligible for the severance travel benefit. The key differences between the severance travel and Life Gold Pass entitlements are:

- severance travel after one parliamentary term is capped at 12 return trips for six months
- the entitlement is capped – it is only available for the period specified; and
- severance travel does not extend to the spouse of a parliamentarian.

The qualifying periods are specified in clause 8.1 of Determination 1998/26.⁴

Corruption Offences

Currently, legislation exists for a former parliamentarian to lose entitlement to employer superannuation contributions if they are convicted of a 'corruption offence' (see below). However, there is no similar ability to remove eligibility for the Life Gold Pass. On 5 June

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2002 the Prime Minister is reported to have indicated that the Government would examine this situation 'very carefully'.⁵

In a Media Release dated 11 June 2002 the Special Minister of State announced that the Government would legislate to fix the anomaly, stating:

If an MP is found guilty of a corruption offence and they lose their superannuation, then there is no reason why they should retain their Life Gold Pass or any Severance Travel.

I propose to close the current loophole by making the loss of the Life Gold Pass (or Severance Travel) automatic with any superannuation order issued under the *Crimes (Superannuation Benefits) Act 1989*.

This measure is contained in the Bill.

A history of the Life Gold Pass is contained at Appendix 1.

Main Provisions

Clause 4 of Part 1 of the Bill contains a number of definitions, including those for:

- Commercial purpose: a purpose relating to the derivation of financial gain or reward
- Domestic return trip: a return trip which is wholly within Australia, is not for commercial purposes and is on a scheduled transport service or a combination of scheduled transport services (to be wholly within Australia each stop-over must be in Australia – **clause 7**)
- Scheduled transport service: a scheduled air, rail, bus, tram, ferry or vehicle service (this will exclude charter and Comcar services)
- Spouse: the entitled person's legally married husband or wife (this excludes de-facto spouses as well as members of a same sex couple)
- Year: the financial year commencing 1 July 2003 and later financial years.

If a member dies while a member and would have satisfied the qualifying period for a gold pass at that time had they retired, they will be deemed to have retired at the time of their death (**clause 6**).

A stop-over in a return trip will not affect the continuity of the trip (**clause 8**). However, if the stop-over is for more than 24 hours it will generally count for an additional half of a domestic return trip unless the regulations specify otherwise (**Part 7**).

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Determining in which year a trip is taken in is dealt with in **clause 9**. For pass holders, other than widows and widowers, this will be the year in which the trip commences. For widows and widowers, if they are entitled to the pass in the year in which their spouse died and all later years, the trip will also be deemed to have commenced in the year in which it is begun. For widows and widowers who are entitled to the pass in the year in which their spouse died and the next year only, the trip will be deemed to be in the year in which it ends (and so not covered by the entitlement if it ends after the end of the later year).

Former Prime Ministers and their spouse will be entitled to 40 return domestic trips per year and for the spouse no more than 10 of these trips can be for purposes other than accompanying or joining the Prime Minister. The widow or widower of a former Prime Minister will be entitled to 10 such trips for the first five 12 month periods commencing on the death of the former Prime Minister and 5 for each succeeding 12 month period. The entitlements will be subject to the pro-rata rules (see below) (**clause 10**).

Former members entitled to a gold pass and their spouse will each be entitled to 25 return domestic trips per year. All of the spouse's trips must be for the purpose of accompanying or joining the former member. Widows or widowers of such members will be entitled to 10 domestic return trips in the 12 months following the member's death and 5 in the next 12 months. These entitlements will also apply to the widow or widower of an entitled member who died within 12 months of the commencement of the section, with the entitlements beginning from commencement. However, if the former member retired before 1 June 1976, held a gold pass at the time of their death and died before the commencement of this section, their widow or widower will be entitled to 10 domestic return trips in the five 12 month period beginning at the commencement of this provision and 5 such trips in each successive 12 month period. The entitlements will also be subject to the pro-rata rules (**clause 11**).

Entitlements for sitting members eligible for a gold pass are dealt with in **clause 12**. The spouse of the Prime Minister or a sitting former Prime Minister is entitled to 40 domestic return trips to Canberra per year so long as the trip is for the purpose of accompanying or joining the Prime Minister/member. For other members the number is 25 for the same purpose. Pro-rata adjustments may apply.

Pro-rata adjustments are dealt with in **Part 5** of the Bill. Adjustments will apply where the former member retires from Parliament during a year, a member becomes entitled to a gold pass during a year or a person becomes their spouse during a year. The pro-rata formula will reduce the number of trips available to reflect the proportion of the year in which the person is entitled under one of the eligibility provisions (**clauses 13 and 14**).

Corruption Offences

The *Crimes (Superannuation Benefits) Act 1989* applies to Commonwealth employees and specifically to members of Parliament (section 7). Where a person is convicted of an

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offence and the Attorney-General is of the opinion that the offence is a corruption offence,⁶ the Attorney-General may authorise the Director of Public Prosecutions (DPP) to seek an order under the Act (section 16). If the person has been sentenced to a term of imprisonment longer than 12 months, the DPP must apply to an appropriate court for an order (section 17). If the court is satisfied that the offence for which the person has been convicted is a 'corruption offence', it must make an order. The effect of the order will be that the convicted person will forfeit their employer's contributions to their superannuation but retain their employee contributions (section 19). The order will come into effect once any appeal against the conviction or sentence has been finalised (section 20). On the order coming into effect,⁷ all benefits cease to be payable to the person and any employer benefits already received can be recovered as a debt due to the Commonwealth (section 21).

Where an order is made under the *Crimes (Superannuation Benefits) Act 1989* on or after 11 June 2002, the conviction relates to an offence committed while the person was a member and the order has not been revoked, the DPP is to notify the Minister of the making of the order. If an order is made before the commencement of Part 6 of the Bill, it will be deemed to have been made immediately after commencement (**clause 16**).

The effect of the making of the order will be that if the person was the holder of a gold pass, the pass will be cancelled. If the person had not received the pass but has satisfied the qualifying period, they will be deemed not to satisfy this condition. Similarly, if they do not satisfy the qualifying period they will be deemed never to be capable of satisfying that requirement. If the person is not the holder of a gold pass they will also not be entitled to severance travel (**clause 17**).

If the order is subsequently revoked (ie where their conviction is quashed or sentence reduced to 12 months or less) the above effects will be reversed (**clause 18**). In addition, a former member and their spouse will be entitled to such additional domestic return trips as the Minister considers to be fair recompense for the initial action (**clause 19**).

Part 8 of the Bill deals with miscellaneous matters, including:

- The class of travel will be that determined by the Remuneration Tribunal (**clause 26**)
- Frequent flyer points accrued where the Commonwealth has paid for the flight and later used for a domestic return trip to which the traveller would have been entitled under this Bill, the use of the points is to be taken as the use of an entitlement provided under the Bill (**clause 29**)
- **Clause 30** provides that a determination of the Remuneration Tribunal has no force to the extent to which it is inconsistent with this Bill (the Remuneration Tribunal will, amongst other matters, still determine eligibility for the Gold Pass).

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Transitional

There will be a transitional period commencing on the 28th day after the Bill receives Royal Assent and ending 30 June 2003. **Schedule 1** of the Bill provides that during the transitional period the yearly limits proposed by the Bill will be subject to a pro-rata adjustment for the period between commencement and 30 June 2003, so that their entitlement will reflect the period of the year during which the proposed Act is operational.

Concluding Comments

The Bill does not prohibit the 'double dipping' of entitlements. In a situation where a person would be entitled to Gold Pass benefits as both a former MP and as a spouse/widow/widower of a former holder the Bill contains no provision restricting their entitlement to the greatest available entitlement. There would appear to be no reason why a person would not be able to take advantage of both entitlements.

Endnotes

- 1 [Audit Report No 5 2001-2002 Parliamentarians' Entitlements: 1999-2000](#), pp. 168 and 169.
- 2 The Herald Sun, 21 May 2002.
- 3 *ibid.*
- 4
 - (i) service in one Parliament - six months;
 - (ii) service in two Parliaments - one year;
 - (iii) service in three Parliaments - two years;
 - (iv) service in four Parliaments - three years;
 - (v) service in five Parliaments - four years;
 - (vi) service in six Parliaments - five years.

Periods of broken service shall be accumulated. However, where a member has utilised this entitlement, and is re-elected to the Parliament, any future entitlement shall be reduced by the amount utilised.

8.2

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Travel in accordance with 8.1 shall be up to a maximum of:

(a) in the case of the period specified in clause 8.1(i) - 12 return trips; and

(b) in the case of any other specified period - 25 return trips per annum.

5 AAP: Govt examining gold travel pass for convicted MPs: Howard 5 June 2002.

6 The term 'corruption offence' is not defined by reference to certain offences, such as taking bribes, but is defined in section 2 of the Act as:

corruption offence means an offence by a person who was an employee at the time when it was committed, being an offence:

(a) whose commission involved an abuse by the person of his or her office as such an employee; or

(b) that, having regard to the powers and duties of such an employee, was committed for a purpose that involved corruption; or

(c) that was committed for the purpose of perverting, or attempting to pervert, the course of justice.

7 There may be some doubt as to section 21 comes into action. While section 20 deals with when the order comes into force and it may be presumed that the order has no effect until it comes into force otherwise section 20 would be irrelevant, section 21 refers to 'where a court makes an order' rather than when an order comes into effect.

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Appendix 1

History of the Life Gold Pass

There is little historical documentation available to provide a detailed history of the entitlement. It is believed that the Life Gold Pass began on a limited basis following the 1918 Premiers' Conference. A Gold Pass provided free rail travel to sitting MPs and a Life Gold Pass extended the privilege to retired MPs. Qualification periods were 1 year for the Prime Minister and 3 years for a Minister, the Speaker or the President of the Senate. Gold Pass enabled free travel to sitting members and senators over all government railways and tramways in the Commonwealth. Rules and guidelines governed qualification and eligibility. However, prior to 1976, final decisions on eligibility for the entitlement rested with executive government.

Some of the major changes to the entitlement over time are summarised as follows:

1925

The Pass was extended to sitting Members of Parliament after 25 years continuous service.

1929

Qualification was extended to the Leader of the Opposition after 6 years' service.

1935

The Pass was extended to sitting Members of Parliament after 25 years aggregate, not continuous, service.

1952

Report of the *Committee of Enquiry into the Salaries and Allowances of Members of the National Parliament*.

The Committee recommended that no further Gold Passes be issued and all travel arrangements to be made by warrant. This recommendation was not immediately adopted.

1956

Report of the *Committee of Inquiry into the Salaries and Allowances of Members of the Commonwealth Parliament*.

Gold Passes were withdrawn and replaced with warrants and vouchers for rail and air travel. Life Gold Passes continued, but the Pass did not extend to air travel. Existing qualifying periods were retained. All allowances were again subject to taxation laws in the normal way. The Committee recommended that Life Gold Passes not be issued until the recipient leaves Parliament. This recommendation was not immediately adopted.

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1959

Report of the *Committee of Inquiry into the salaries and allowances of Members of the Commonwealth Parliament*.

The report stated that Harold Holt, when Leader of the House 'in the last Parliament' intimated to MPs that a review of remunerative matters 'should be made early in the life of each new Parliament (Report 1959 page 1).

Life Gold Passes extended to apply to air travel. Qualifying period for the Leader of the Opposition reduced to 3 years.

1965

- Qualifying period for members was reduced to 20 years or the life of 7 parliaments.

1973

Minister for Services and Property directed that wives or widows would be eligible for travel on the same basis as the Life Gold Pass holder in recognition of the fact that wives share the burden of political life.

1976

The Remuneration Tribunal, which was established in 1974, first dealt with the Pass in 1976 when this matter was referred to it by the Minister for Administrative Services. The arrangements in place when the Tribunal commenced the 1976 review were:

- The Prime Minister qualified after 1 year.
- A minister, the Speaker, the President of the Senate and the Leader of the Opposition qualified after 3 years.
- Members qualified after 20 years or 7 Parliaments.
- Unrestricted travel on scheduled services for members and their spouses, widows, widowers and nominees.

1976 Review. Determination of Salaries, Allowances and Entitlements of Members of Parliament 1976/6. Features of this determination were:

Qualifying period

- 20 years for Senators and Members
- 6 years for Ministers (an increase from 3 years)
- 1 year for Prime Minister.

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- Time as an office-holder or minister would be doubled to determine eligibility as a Senator or Member.

Entitlement

- Prime minister entitled to first class travel
- Other eligible Pass Holders entitled to economy class air travel and first class travel on all other modes of transport
- Spouse permitted to travel with the Life Gold Pass holder.
- Allowed the spouse's use to continue for only 12 months after the death of the pass holder.

Importantly, the determination changed eligibility for the Life Gold Pass so that, in addition to completing the required length of service, the member must have retired from the Parliament and 'not, as at present, on the completion of the required length of service' (Remuneration Tribunal 1976 Review Determination of allowances payable to Ministers of State page 30)

1977

Remuneration Tribunal Annual Review.

The Tribunal further modified the qualifying conditions by determining that service as a Minister or office holder should be **trebled** in determining eligibility as a Senator or Member.

Between 1977 and 1993 no changes were made to the entitlement by the Tribunal.

1994

Prior to 1993 the Life Gold Pass entitled holders to unlimited travel at government expense for non-commercial purposes. Following criticisms of the open-ended nature of the entitlements, the government's submission to the Remuneration Tribunal recommended that the entitlement be reduced to 25 trips per annum. The Tribunal accepted this advice and accordingly *Determination No 18 of 1993* reduced the entitlement to a maximum of 25 trips per annum with effect from 1 January 1994.

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