

Members of Parliament (Life Gold Pass) and Other Legislation Amendment Bill 2012

Introduction

1.1 On 9 February 2012, on the recommendation of the Selection of Bills Committee, the Senate referred the Members of Parliament (Life Gold Pass) and Other Legislation Amendment Bill 2012 (the Bill) for inquiry and report by 27 February 2012.

Conduct of the inquiry

1.2 The inquiry was advertised in *The Australian* and through the Internet. The committee also invited submissions from interested organisations and individuals.

1.3 The committee received 2 submissions relating to the Bill and these are listed at appendix 1. The submissions may be accessed through the committee's website at http://aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fapa_ctte/index.htm

1.4 The committee did not hold a public hearing for this inquiry.

Background to the Bill

1.5 The Bill seeks to amend the *Members of Parliament (Life Gold Pass) Act 2002*, the *Parliamentary Contributory Superannuation Act 1948* and the *Remuneration Tribunal Act 1973*.

1.6 The *Members of Parliament (Life Gold Pass) Act 2002* (LGP Act) provides for post-retirement travel for Members of Parliament. The Life Gold Pass entitles eligible former parliamentarians to travel within Australia for 'non-commercial' purposes funded by the Commonwealth. The current entitlement for former parliamentarians is as follows:

- up to 25 domestic return trips annually for former eligible parliamentarians;
- up to 40 domestic return trips annually for former eligible Prime Ministers;
- travel is by scheduled air, rail, bus, tram, ferry or vehicular service or on a combination of these scheduled services; and
- travel is at the class determined for serving parliamentarians.

1.7 The qualifying period for the Life Gold Pass is determined by the Remuneration Tribunal. Currently, the qualifying periods range from one year for Prime Ministers to six years for ministers (other than parliamentary secretaries), the President of the Senate, Speaker of the House of Representatives and Leader of the Opposition. Parliamentary secretaries, senators and members qualify for a Life Gold Pass after 20 years or the life of seven Parliaments.

1.8 The LGP Act also provides for entitlements for spouses and de facto partners; entitlements for widows and widowers; and disqualification of a person convicted of a corruption offence.

1.9 The *Parliamentary Contributory Superannuation Act 1948* (1948 Act) establishes the Parliamentary Contributory Superannuation Scheme (PCSS). This scheme was open to parliamentarians serving in Parliament prior to the 2004 general election. Senators and members elected at the general election held in October 2004 are eligible for benefits under the Parliamentary Superannuation Scheme established by the *Parliamentary Superannuation Act 2004* (2004 Act).

1.10 Under the Parliamentary Contributory Superannuation Scheme, former parliamentarians gain an entitlement to a pension (the Retiring Allowance), if they meet the minimum eligibility requirements set out in the Act. The Retiring Allowance of eligible members and senators is expressed as a percentage of the parliamentary allowance paid to current members of parliament. Former ministers or other office holders of the Parliament are entitled to additional pension.

1.11 At the rate of parliamentary base salary ('parliamentary allowance' being then identical to parliamentary base salary) prevailing at 1 July 2011 (\$140,910), the achievable basic pension amounts were as shown in the following table.¹

Table 1.1: Retiring Allowance under the Parliamentary Contributory Superannuation Scheme at 1 July 2011

Years of Service	Pension percentage of Parliamentary Allowance (%)	Pension amount
8	50.0%	\$70,455
9	52.5%	\$73,978
10	55.0%	\$77,501
11	57.5%	\$81,023
12	60.0%	\$84,546
13	62.5%	\$88,069
14	65.0%	\$91,592
15	67.5%	\$95,114
16	70.0%	\$98,637
17	72.5%	\$102,160
18 or more	75.0%	\$105,683

Source: Remuneration Tribunal, *Review of the Remuneration of Members of Parliament*, December 2011, p. 29.

1 Remuneration Tribunal, *Review of the Remuneration of Members of Parliament*, December 2011, p. 29.

1.12 As noted in the committee's report on the Remuneration and Other Legislation Amendment Bill 2011, reviews of the parliamentary entitlements framework have been undertaken. The first, the Belcher Review, was made public by the Government in March 2011. Recommendations of the Belcher Review included that:

- the Government request the Remuneration Tribunal to undertake a work-value assessment of federal parliamentary remuneration and incorporate the base rate of electorate allowance into parliamentary salary; and
- preventative measures be taken by the Government so that the folding-in of electorate allowances does not flow to the retirement benefits of members of the Parliamentary Contributory Superannuation Scheme.²

1.13 On 25 July 2011, the *Remuneration and Other Legislation Amendment Act 2011* received Royal Assent. The Act expanded the jurisdiction of the Remuneration Tribunal to determine the base salary of parliamentarians and the remuneration of departmental secretaries and other offices. The Act also gives the Tribunal the discretion to determine amounts that do not form part of the salary used to determine contributions and benefits payable to former members under 1948 Act. Those amounts would form part of the salary for superannuation purposes of members elected at the October 2004 and subsequent elections.³

1.14 The Remuneration Tribunal's initial report on the review of entitlements of members of parliament was released in December 2011.⁴ The Tribunal concluded that the base salary of a member of the Australian Parliament should be \$185,000 per annum. It also recommended that:

- the pensions of retired parliamentarians cease to be indexed to the current salaries of current parliamentarians, specifically that the link in the Parliamentary Contributory Superannuation Scheme between the current base salary of current parliamentarians and the basic pension be severed as well as additional salary of current office holders; and
- alternative indexation arrangements be established for both the basic pension, and the additional pension, of retired parliamentarians who derive retirement benefits from the Parliamentary Contributory Superannuation Scheme.⁵

2 Committee of the Review of Parliamentary Entitlements, *Committee Report*, April 2010, p.13.

3 Remuneration and Other Legislation Amendment Bill 2011, *Supplementary Explanatory Memorandum*, p. 1.

4 Remuneration Tribunal, *Review of the Remuneration of Members of Parliament*, December 2011.

5 Remuneration Tribunal, *Review of the Remuneration of Members of Parliament*, December 2011, p. 32.

The Bill

1.15 The provisions contained in the Bill propose to implement recommendations of the Remuneration Tribunal's initial report, *Review of the Remuneration of Parliamentarians*, released on 15 December 2011.

1.16 The measures proposed in Schedule 1 amend the LGP Act to close the Life Gold Pass scheme to persons who enter or re-enter the Parliament at or after the commencement of the Bill, and to reduce the entitlement of:

- existing LGP holders, who have never held office as Prime Minister, and their spouse or de facto partner; and
- the spouse or de facto partner of a sitting member who has qualified for a LGP,

from 25 to 10 domestic return trips per financial year (with a transitional provision for the balance of the 2011–12 financial year), as recommended by the Remuneration Tribunal in its initial report, *Review of the Remuneration of Members of Parliament*, dated 15 December 2011.⁶

1.17 Schedule 2 of the Bill amends the *Remuneration Tribunal Act 1973* and the *Parliamentary Contributory Superannuation Act 1948* to:

...give the Remuneration Tribunal the power to determine portions of additional Parliamentary office holder salary and additional salary in relation to a Minister of State that may be excluded from the calculation of superannuation benefits payable to current and former Ministers of State and parliamentary office holders who are members of the scheme under the 1948 Act (1948 Act scheme).

By determining such portions the Tribunal can prevent windfall gains flowing from any increase in salary for parliamentary office holders or Ministers of State to superannuation benefits under the 1948 scheme.

These powers build upon a similar power conferred on the Remuneration Tribunal by the *Remuneration and Other Legislation Amendment Act 2011*, which granted the Tribunal the power to determine a portion of parliamentary base salary that would not flow to members of the 1948 scheme from any future increase in parliamentary base salary that the Tribunal might determine.⁷

6 Members of Parliament (Life Gold Pass) and Other Legislation Amendment Bill 2012, *Explanatory Memorandum*, p. 1.

7 Members of Parliament (Life Gold Pass) and Other Legislation Amendment Bill 2012, *Explanatory Memorandum*, p. 1.

Issues

Transparency of Remuneration Tribunal process

1.18 In his submission to the committee, Senator Nick Xenophon commended the Remuneration Tribunal for the work undertaken in its review of entitlements. However, he submitted that there should also be a requirement for the Tribunal to hold public consultation. The consultation should call for submissions from members of the public and key stakeholders (including MPs, unions, employer groups and other interested parties). In addition, the Tribunal should also hold at least a one-day public hearing in Canberra to take evidence from these groups. He also recommended that the Government consider introducing specific transparency requirements for the Tribunal, including release of information to the public. Senator Xenophon went on to state that he would introduce an amendment to the Bill in the Senate to require these steps.⁸

Life Gold Pass

1.19 The Association of Former Members of the Parliament of Australia (AFMPA) argued that, while the prospective abolition of the Life Gold Pass scheme is a matter for the current Parliament to decide, the reduction from 25 to 10 trips 'clearly has a quasi-retrospective impact' for those with current entitlements. The AFMPA went on to state that:

This is recognised in the Bill itself, which provides for reasonable compensation if the Bill is found to result in the acquisition of property under paragraph 51 (xxxi) of the Constitution. The Association believes this acquisition to be the case, potentially prompting a legal claim for compensation, if this drastic reduction in entitlement is implemented.⁹

1.20 The AFMPA also noted that in 2002 the Howard Government introduced a limit on the Life Gold Pass to 25 trips a year; this was regarded as reasonable and acceptable at the time. However, the AFMPA submitted that the current Government has provided no detailed justification as to why the 2002 limit is no longer acceptable 'beyond saying that the previous limiting has not prevented ongoing criticism that the provision exceeds community standards'.¹⁰

1.21 In response to criticisms of the use of the Life Gold Pass, the AFMPA commented that it has been acknowledged by the Government that some former members use the Life Gold Pass for the benefit of the community. The Government's comments about inappropriate use of the Life Gold Pass also drew a response from the AFMPA:

8 Senator Nick Xenophon, *Submission 2*, p. 1.

9 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 6.

10 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 6.

The Association submits that the entitlement has always had rules relating to its use, to determine what is and is not, appropriate. For example, use for commercial purposes or personal financial gain is not allowed. Any inappropriate use, therefore, should be prevented by proper enforcement of these rules, rather than penalising those who abide by them.¹¹

1.22 The AFMPA also argued that the Life Gold Pass could be considered as compensation for the additional compulsory superannuation payments of 5.75 per cent for those members and senators who have served beyond 18 years, as there is no additional allowance paid beyond the maximum rate under the 1948 Act.¹²

1.23 The AFMPA also argued that the pro rata calculation limiting trips between April and June 2012 to only two is 'grossly unfair' as there may be people who have many unused trips who may have planned more than two trips in that three month period. As such, AFMPA recommended that the pro rata limits for the balance of the financial year be removed and that any changes apply only from 1 July 2012.¹³

1.24 The AFMPA concluded that a 'reduction in existing beneficiaries is unjustified'. However, the AFMPA proposed a compromise:

- to reduce the number of trips to 17 rather than 10 (a 33 per cent rather than the 60 per cent reduction proposed by the Bill); or
- provide for 10 return trips in accordance with existing guidelines and up to 10 additional trips only where the user specifically identifies the purpose of the trip in relation to a specific community benefit/not for profit organisation involvement.¹⁴

1.25 Both the Committee for the Review of Parliamentary Entitlements (the Belcher Review) and the Remuneration Tribunal recommended that the current entitlement of Life Gold Pass be reduced from 25 to 10 domestic return trips per financial year. The Belcher Review indicated that current Life Gold Pass holders should be permitted to retain a reduced entitlement to travel on the basis that former and current senators and members entered the Parliament with the understanding that post-retirement travel formed part of their benefits.¹⁵

1.26 The Special Minister of State, the Hon Gary Gray AO MP, in his announcement of reform of members' entitlements stated that 'long-standing expensive travel entitlements will be scrapped or slashed, including the Life Gold Pass, overseas study travel and post-service travel'. The Minister noted that Life Gold Pass travel cost

11 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 7.

12 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 6.

13 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 7.

14 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 7.

15 Senator Kate Lundy, Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Immigration and Multicultural Affairs, *Senate Hansard*, 9 February 2012, p. 34.

taxpayers \$1.3 million in 2010–11. While existing holders or members who have qualified for the pass will be eligible for 10 trips annually, access to the Life Gold Pass will not be available to those who enter Parliament at or after the next federal election.¹⁶

1.27 The need to ensure a more transparent system of entitlements was highlighted in the second reading speech, with the Parliamentary Secretary for the Prime Minister, Senator the Hon Kate Lundy, stating that 'the closure of the Life Gold Pass scheme to new members and the reduced entitlement will contribute to a more transparent and, in the end, a more simplified parliamentary entitlements framework.'¹⁷ In relation to the limiting of trips to two for the remainder of this financial year, the Parliamentary Secretary noted that:

As the Tribunal recommended that the entitlement for Life Gold Pass travel be reduced now, the bill includes a transitional provision which limits the number of domestic return trips for the remainder of 2011–12 to a maximum of two. The transitional provision will apply from the later of the day on which the bill receives the Royal Assent or 1 April 2012.¹⁸

Parliamentary Contributory Superannuation Scheme

1.28 On 15 December 2011, the Remuneration Tribunal indicated that the base annual salary for federal parliamentarians will increase from \$140,910 to \$185,000 in 2012. The Tribunal made its decision after completing a comprehensive work-value study. On the same day, the Special Minister of State, the Hon Gary Gray AO MP, announced that the increase will become effective only after Parliament passes further legislation to prevent windfall gains by current and former members belonging to the Parliamentary Contributory Superannuation Scheme.¹⁹

1.29 In its review of parliamentary entitlements, the Remuneration Tribunal considered superannuation arrangements. The Tribunal noted that it did not determine superannuation arrangements that apply to parliamentarians. However, under the 1948 Act and the 2004 Act, contributions to the superannuation schemes are paid on an amount referred to as parliamentary allowance. This amount is linked by statute to parliamentary base salary as determined by the Tribunal and thus the Tribunal 'effectively "determines" the amounts of contributions payable under each Act'.²⁰

16 The Hon Gary Gray, Special Minister of State, 'Government to reform MPs' entitlements', *Media Release*, 15 December 2012.

17 Senator Kate Lundy, Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Immigration and Multicultural Affairs, *Senate Hansard*, 9 February 2012, p. 34.

18 Senator Kate Lundy, Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Immigration and Multicultural Affairs, *Senate Hansard*, 9 February 2012, p. 33.

19 The Hon Gary Gray, Special Minister of State, 'Government to reform MPs' entitlements', *Media Release*, 15 December 2012.

20 Remuneration Tribunal, *Review of the Remuneration of Members of Parliament*, December 2011, p. 30.

1.30 The Tribunal went on to indicate that, consequent to the enactment of the *Remuneration and Other Legislation Amendment Act 2011*, the Tribunal is now able to distinguish the amount of parliamentary allowance from parliamentary base salary. The Tribunal stated that:

The Tribunal intends to determine that the **portion** of parliamentary base salary not to be taken as 'parliamentary allowance' for the purposes of the *Parliamentary Contributory Superannuation Act 1948*, will be the difference between the current value of Reference Salary A (\$146,380) and the amount that the Tribunal intends to determine as parliamentary base salary (\$185,000) – that is \$38,620.²¹

1.31 As noted above, the amendments proposed by the Bill provide similar powers to the Tribunal in relation to additional parliamentary office holder salary and additional salary in relation to a minister.

1.32 The AFMPA raised issues in relation to the Parliamentary Contributory Superannuation Scheme. First, the AFMPA stated that over the years certain non-cash benefits (e.g. motor vehicle allowance, home telephone connection, spouse travel) have been provided to parliamentarians 'as an alternative to more politically sensitive salary increases recommended by the Tribunal'.²² While not attracting income tax, these payments attract Fringe Benefits Tax (FBT). They are also added to gross salary for the purpose of calculating other taxes and charges such as the Medicare Levy and the now discontinued Superannuation Surcharge. The AFMPA went on to comment that the allowances have been excluded from the calculation of superannuation.²³

1.33 The AFMPA provided the committee with an opinion on this matter from the Hon Bob Ellicott QC and concluded that:

Issues arising from this opinion make it clear that there are strong doubts over the Department's analysis of the legislation both legally and morally in excluding Fringe Benefits...from the so called Base Salary (a term Ellicott did not find in the Act). It is therefore the opinion of our Association that, since at least the introduction of the Fringe Benefits Tax, all superannuation payments made to retired parliamentarians have been underpaid to the extent that such Fringe Benefits have been declared.²⁴

1.34 The second matter raised was the 'delinking' of 'base salary' from 'parliamentary allowance'. As noted above, the Government implemented the Belcher Review's recommendation in relation to delinking through the *Remuneration and Other Legislation Amendment Act 2011*. The current Bill seeks to apply the same measure to additional salary of ministers and parliamentary office holders.

21 Remuneration Tribunal, *Review of the Remuneration of Members of Parliament*, December 2011, p. 31.

22 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 2.

23 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 3.

24 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 3.

1.35 The AFMPA responded to this arrangement by arguing that:

...it is incontrovertibly, unarguably the case that the "delinking" was only ever intended to apply to allowances which are intended to be "folded in" to salary at some future time. The "delinking" was never intended to apply to salary increases relating to a fair or work value assessment and Determination by the Remuneration Tribunal of what the parliamentary salary should be without any folding in.²⁵

1.36 The AFMPA went on to comment that it supported the concept that Parliamentary Contributory Superannuation Scheme retirees should not receive 'an unjustified' windfall gain from the folding in of allowances. The AFMPA agreed that these folded in components should be "delinked" as 'these amounts of money are provided to cover expenses incurred in doing the job. By and large, those expenses cease when one is no longer a parliamentarian'.²⁶ However, the AFMPA argued that this was not the case with a salary increase relating to work value and stated that delinking of this type of increase is not referred to in the Belcher Review, the Explanatory Memorandum or the second reading speech.

1.37 In relation to the proposed increase of \$45,000 to the base salary for parliamentarians, the AFMPA stated that it is 'is clearly a warranted salary increase, whether determined by work value alone or a work value thirty-five year catch up combined. There is no element of Business Expense folded in to that increase.' In addition, the AFMPA stated:

...quite apart from the proposed \$45,000 increase not being a "windfall" in the terms of the "parent" or this legislation, neither is it a "windfall" in moral or ethical terms. On the contrary, it is a deferred payment, well and truly overdue, now to be received as superannuation.²⁷

1.38 The AFMPA concluded that:

(1) the stated intention of the Remuneration Tribunal to make a Determination which includes "delinking" most of the proposed \$45,000 salary increase for determining superannuation under the 1948 Act is ultra vires and if persisted with, warrants action being undertaken on behalf of retirees;

(2) the treatment of certain provisions for parliamentarians as Fringe Benefits by the Department of Finance and Deregulation, their potential definition as a form of salary and their inclusion in the superannuation surcharge and in determining other levies and eligibility for benefits, gives rise to a claim for underpayment of superannuation to current retirees and warrants action being taken on their behalf.²⁸

25 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 4.

26 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 4.

27 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 5.

28 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 8.

1.39 The AFMPA therefore recommended that:

(1) an amendment be included in this Bill amending the "parent" legislation to limit the capacity of the Remuneration Tribunal to "delink" Base Salary from Parliamentary Allowance only to the extent of any "Business Expenses" folded into the parliamentary salary and that all work value/cost of living or such related salary increases are not to be "delinked" from calculating 1948 Act superannuation entitlements; and in particular, the proposed current \$45,000 increase flows through in full to those calculations or in the alternative that the Committee obtain an irrevocable undertaking from the Remuneration Tribunal that they will interpret the legislation in this way, as the documentation makes clear, to pass on the full \$45,000 and any future like increases for superannuation calculation purposes.

(2) the Ministerial/office-holder "delinking" in this Bill be deleted as superfluous.²⁹

1.40 The AFMPA also suggested that a similar provision to that in the Bill regarding the vested entitlements of holders of a Life Gold Pass be inserted to apply with respect to the provisions of Schedule 2 relating to superannuation to ensure its constitutional validity.³⁰

1.41 The committee notes that the *Parliamentary Contributory Superannuation Act 1948* provides a definition of 'parliamentary allowance'. The definition at paragraph (c) references to an allowance by way of salary under clause 1 of Schedule 3 of the *Remuneration and Allowances Act 1990*. This clause relates to salary only, and does not include other allowances or non-cash benefits. With the passage of the *Remuneration and Other Legislation Amendment Act 2011*, and following a determination of by the Remuneration Tribunal, 'parliamentary allowance' for the purposes of the 1948 Act will be in accordance with paragraph (d) of the definition:

(d) parliamentary base salary (within the meaning of the *Remuneration Tribunal Act 1973*), less any portion determined under subsection 7(1A) of that Act.

This relates to base salary and does not include other allowances or non-cash benefits.

1.42 The Belcher Review examined parliamentarian's superannuation arrangements. The Review commented, in relation to the Parliamentary Contributory Superannuation Scheme, that '[e]lectorate and other allowances such as travel allowances are excluded from superannuation member contributions and the committee considers they should remain so'. However, it was noted that if any entitlements were folded into salary it 'would have the potential to increase the retirement benefits provided under the PCSS. The decision to close down the PCSS

29 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1*, p. 8.

30 Association of Former Members of the Parliament of Australia (AFMPA), *Submission 1, Supplementary Submission*, p. 1.

and establish new superannuation arrangements for incoming senators and members from the 2004 federal election was related to a perception that the PCSS was too generous.³¹

1.43 The Review also commented that if folding in increased the level of parliamentary salary, members of the Parliamentary Contributory Superannuation Scheme would receive benefits that members of the Parliamentary Superannuation Scheme (the 2004 scheme) did not.³² The Belcher Review therefore recommended:

That the government take preventative measures so that the folding in of electorate allowance does not flow to the retirement benefits of members of the parliamentary contributory superannuation scheme established under the *Parliamentary Contributory Superannuation Act 1948*.³³

1.44 The recommendation was also supported by the Remuneration Tribunal which stated that:

The Tribunal is strongly of the view that base and additional salaries for current parliamentarians should not define payments to retired members.³⁴

Conclusion

1.45 The committee notes that the amendments proposed to the Life Gold Pass and superannuation arrangements for retirees under the Parliamentary Contributory Superannuation Scheme are based on the findings and recommendations of extensive reviews of entitlements conducted by the Belcher Review and the Remuneration Tribunal. The committee therefore recommends that the Bill be passed.

Recommendation 1

1.46 The committee recommends that the Members of Parliament (Life Gold Pass) and Other Legislation Amendment Bill 2012 be passed.

Senator Helen Polley Chair

31 Committee of the Review of Parliamentary Entitlements, *Review of Parliamentary Entitlements*, April 2010, p. 61.

32 Committee of the Review of Parliamentary Entitlements, *Review of Parliamentary Entitlements*, April 2010, p. 61.

33 Committee of the Review of Parliamentary Entitlements, *Review of Parliamentary Entitlements*, April 2010, p. 13.

34 Remuneration Tribunal, *Review of the Remuneration of Members of Parliament*, December 2011, p. 32.

