REMUNERATION TRIBUNAL

John C Conde AO
President

Ms Barbara Belcher
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Dear Ms ~~Belcher~~ Barbara

Thank you for agreeing in November 2009 to an extension of time for the Tribunal to lodge its submission to the Review.

I am pleased to attach the Tribunal's submission. The Tribunal advocates a 'two stream' approach (remuneration or personal reward, on the one hand, and business expenses, on the other) and, in the light of the Tribunal's particular responsibilities, focuses on how remuneration might best be structured.

We will provide some additional research material on certain parliamentary benefits in the next couple of weeks, but that additional material will not change our submission.

Thank you, once again, for inviting the Tribunal to make a submission to the Review. Should the Committee see benefit in having the Tribunal's input on any specific aspects of current Tribunal determinations, I would be happy to provide this.

Yours sincerely

John C Conde AO
President
17 December 2009

Submission to Review of Parliamentary Entitlements

1. Overview

The Remuneration Tribunal thanks the committee for inviting it to make a submission to the current review. In brief the Tribunal's submissions are that:

- the approach adopted at the time of the making of the *Remuneration and Allowances Act 1990* (the R&A Act) and the *Parliamentary Entitlements Act 1990* (the PE Act) - namely separating 'entitlement delivery' into two streams - was soundly based in logic and principle, and should continue to be the basis of the expression and delivery of parliamentary entitlements;
- the 'two streams' should be:
  - payments in the nature of remuneration, or which provide, at least in part, a personal financial benefit to the parliamentarian and which would be so understood by the community; and
  - funds made available for the business expenses of parliamentarians to enable them to fulfil their function and which do not provide, and cannot be converted to provide, a personal financial benefit;
- the remuneration elements of the current parliamentarian's 'package' be rationalised and consolidated:
  - express parliamentarian's remuneration as a 'total remuneration' amount, including the present 'base salary', consistent with contemporary remuneration practice; and
  - there should be few, if any, benefits of a personal nature outside this 'total remuneration' amount;
- the remuneration of parliamentarians should be determined independently and by an examination of the roles and responsibilities of a parliamentarian, rather than determined by the Parliament itself based on some linkage to non-parliamentary offices;
- for the sake of transparency, the remuneration package should be published in a consolidated and clear form; and
- transition to such arrangements should be effected on a 'no additional cost' basis.

2. Background - Role of the Tribunal and Outline of 'Allowance' History

Parliamentarians have been remunerated for their membership of the Australian Parliament since federation. For the first seventy-odd years pay was set, initially, by the Constitution and then by the Parliament itself under the auspices of the Constitution.

Prior to the Tribunal's establishment, an independent authority of some sort for setting parliamentary pay and entitlements had been mooted for many years. For example, the Melbourne Argus of 6 July 1920 reported that Mr Prowse MHR considered that 'an impartial tribunal should be established'. However, the Remuneration Tribunal was not created until the establishing legislation was passed in 1973. The final impetus for this was the 1971 Report entitled "Salary and Allowances of Members of the Parliament of the Commonwealth" by Mr Justice Kerr.

Justice Kerr, having 'canvassed various methods by which the salaries and allowances of members might be reviewed', recommended the establishment under legislation of a 'three-man tribunal', which would make recommendations as to basic salary and allowances for parliamentarians, including additional salary for ministers and office holders.

Notwithstanding that Justice Kerr recommended that the proposed Tribunal should make 'recommendations', and that Cabinet papers show that this was the path that the McMahon Government intended to follow before losing power, the *Remuneration Tribunal Act 1973* ('the RT Act'), as it was enacted, gave the Tribunal the following powers, and indeed obligations:

(7) (1) The Tribunal shall, from time to time as provided by this Act, inquire into, and determine, the allowances (including allowances in accordance with section 48 of the Constitution) to be paid out of the public moneys of Australia to members of the Parliament by reason of their membership of the Parliament or by reason of their holding particular offices, or performing particular functions in, or in relation to, the Parliament or either House of the Parliament.

(2) The Tribunal shall, from time to time as provided by this Act, inquire into, and determine, the allowances to be paid to Ministers of State out of the public moneys of Australia.

(3) (Not relevant to MPs)

(4) Where the Tribunal inquires into, and determines, a matter referred to in sub-section (1), (2) or (3), the Tribunal may also inquire into, and determine, any matter that is significantly related to the first-mentioned matter.

While s 7(1) gives the Tribunal the power to determine additional salary for a range of parliamentary office holders, the Tribunal has only ever had the power to report on, rather than determine, ministerial additional salary (s 6(1) of the RT Act). The reason for this is not entirely clear, but is understood to be because of a constitutional provision (section 66) which sets a fixed amount representing the total appropriation for ministerial salary. This limits the final additional salary for individual Ministers – something that would be difficult, if not impossible, for the Tribunal to take into accurate consideration were it to determine ministerial salary, considering that the number of ministerial positions is not set constitutionally.

Such determinations as the Tribunal makes are, and have always been, disallowable instruments. That is to say, the determinations are tabled in each House of Parliament and either House can pass a resolution that makes the determination effectively null. If this occurs the terms of the Tribunal's previous determination on the relevant matter take effect once more.

The provisions regarding the Tribunal's powers in relation to parliamentary entitlements have continued in almost identical form to those quoted above since the passage of the original Act. The only change of wording is that s 7(4) has been changed from an objective test to both an objective and subjective test. Rather than allowing the Tribunal to inquire into, and determine, a matter 'that is significantly related', the clause now says that the Tribunal can inquire into a matter 'that is, *or is considered by it to be* (emphasis added), significantly related…'. This gives the Tribunal broad power in relation to parliamentary entitlements.

There have, however, been changes effected by other legislation, limiting the bounds of the power. Provisions of the *Remuneration and Allowances Act 1990* (the R&A Act) mean that the Tribunal no longer has the power to determine the base salary of parliamentarians, although s 7(1) of the RT Act has not been amended. The lack of amendment to the RT Act means that the Tribunal still has a legislated, if nugatory, power to make determinations on parliamentary base salary. Any such determinations would be of no effect, because of the provisions of the R&A Act.

The second limitation on the Tribunal's power is contained in the *Parliamentary Entitlements Act 1990* (the PE Act). This sets out a range of business assistance

provided to parliamentarians. It also notes that where the PE Act, including Regulations made under it, clash with a Tribunal determination, or intend to 'cover the field' on a subject, any Tribunal determination on a similar matter is of no effect.

The Tribunal's powers to set entitlements for parliamentarians are also limited by a number of Acts such as the *Members of Parliament (Life Gold Pass) Act 2002*, Acts providing for parliamentary superannuation, and the *Members of Parliament (Staff) Act 1984*.

The wording of the RT Act provisions has always presented challenges for the Tribunal. The use of the term 'allowances' is problematic, as contrary to the normal principles of statutory construction, 'allowance' appears to have more than one meaning in the RT Act. 'Allowance' is the term used in section 48 of the Constitution to signify basic parliamentary remuneration – possibly because, to the drafters of the Constitution, membership of Parliament was not envisaged to be the member's primary source of income. This term will remain as one meaning of allowance in this context. The R&A Act clarified this matter somewhat by making a legislative reference to parliamentary base salary, with the same meaning as the term annual allowance used in the Constitution. The base salary is the component of parliamentary remuneration common to all members. Additional salary represents an amount payable to those who fill specific offices or perform particular functions in the Parliament.

On the other hand the everyday meaning of 'allowance' has a connotation now of an additional component of a remuneration package to cover some specific personal qualification or set of circumstances. In the normal employment context, an example is a First Aid Allowance, where a person is given a certain amount of money with their salary to be available to provide first aid services where necessary. So in the parliamentary context, allowance can either mean base or additional salary. This has led to the common usage of a 'base salary' for parliamentarians, which is readily understood, if inaccurate in a black letter law sense.

In the provision of parliamentary entitlements, a further meaning of 'allowance' has developed, in cases such as Charter Allowance. In comparison to normal usage this is not an allowance at all. The parliamentarian in question has no access to the allowance as money. The 'allowance' is in fact a set appropriation for a certain function, and the parliamentarian can run up bills over a set period to a maximum of that appropriation, with the bills then paid by the Commonwealth. At no stage can the parliamentarian convert the allowance to remuneration.

3. The Future

The last time that major changes were made to the structure (and delivery) of pay and entitlements of parliamentarians was in 1990. At that stage the Parliament passed two Acts, the R&A Act and the PE Act.

The Tribunal considers that the rationale adopted at that time in separating 'entitlement delivery' into two streams was soundly based in logic and principle, and should continue to be the basis of any review of the delivery of parliamentary entitlements.

The two streams are:

- The range of payments made to parliamentarians for the services they provide in fulfilling their role as the representatives of an electorate (including senators whose 'electorate' is a state or territory). Basically these are payments in the nature of remuneration, or which provide, at least in part, a personal financial

benefit to the parliamentarian and which would be so understood by the community; and

- The range of funds made available for the business expenses of representatives to enable them to fulfil their function. While these might assist a member to gain an intangible benefit in the promotion of their reputation, they do not provide a financial benefit.

Typically for office holders within its jurisdiction, such as full-time and part-time holders of public office, the Tribunal's focus is on the first stream. In setting the financial rewards for a full-time office the Tribunal, except in certain defined cases such as Judges, also expresses total remuneration as a cash figure rather than separating out a salary figure and a list of benefits. In the general scheme of things, the provision of funds for business expenses which do not amount to personal recompense are left to the office holder's 'employer'.

The Tribunal considers that the provision of entitlements for parliamentarians should continue to be provided on similar lines, and that this is consistent with the intent of the RT Act. The Tribunal's focus should be on determining those entitlements which confer an actual or potential financial benefit to the member. A useful guideline might be that the Tribunal's jurisdiction should extend to all of those elements of a parliamentarian's package which he or she would have to fund personally were he or she not a member of parliament.

Against this, amounts which are clearly set aside for business expenses should be handled separately. A number of these items (such as, for example, the printing allowance) are covered currently under the PE Act and its Regulations, and this may continue to be an appropriate method of delivery.

3.1 The employment conditions of a parliamentarian

Parliamentarians are sometimes criticised for having entitlements like no other worker; but the Tribunal considers that they have 'employment' like no other worker.

For general purposes parliamentarians are not employees at all[1]. They have no recourse to settling disputes before Fair Work Australia, they have no entitlements to leave of any sort, and they have no legal right to workers compensation coverage. They can of course take time off when ill for example, but this is as the result of act of grace-type provisions, rather than an entitlement. There has also been a scheme mirroring workers compensation entitlements for parliamentarians, but this scheme is again of an act of grace nature, and is not rooted in legislative rights for parliamentarians.

One consequence of not having leave entitlements is that parliamentarians cannot accumulate the value of those entitlements. Normally a person leaving a job, for whatever reason, will receive a payout of some sort, even if it is simply payment in lieu of their accumulated annual and possibly long service leave. When a parliamentarian leaves they are entitled to no such payments. This is in part why the Tribunal introduced a limited separation payment for parliamentarians. However, this still does not apply to members who leave of their own volition.

Parliamentarians have little security of tenure, and can lose their job through no individual failing, but rather because their 'brand' of politics is out of favour at any

[1] Tax ruling 1999/10 notes at paragraph 36 that 'Members are not common law employees. None of the usual indicia of an employee/employer relationship, such as an express or implied contract of employment, ability to direct activities or exercise control over the employee, apply to Members. There is clearly no employer, although in a sense a Member owes duties to the Parliament, constituents and probably his or her party organisation.'

given time. Even for those in relatively safe seats, the seat tends to be safe for the party rather than for the individual member. On top of this parliamentarians have a job as representatives of an electorate in which, as journalists have wryly pointed out, around fifty per cent of their constituents generally dislike them on principle.

One historical element of remuneration in the Australian Parliament is that the base salary of all members of each House is the same. There is a logical underpinning to this – each member has, in theory at least, equal responsibility in representing a geographically defined section of the Australian community and each member has one vote on the floor of the Parliament. It would be undesirable to differentiate one segment of Australia from another based on differences in the parliamentary base salary of their representatives. Where there are differences in entitlements between members, these should represent genuine differences in the business cost of providing the same service in different locations.

3.2 Should payments continue as at present?

Parliamentary remuneration is a subject of legitimate public interest. However, it is often discussed in negative terms only. This is nothing new – the 1955 Richardson Review into parliamentary remuneration, quoted at paragraph 17 in the later 1959 Richardson Report, noted:

> that the general public, without full information and often in complete ignorance of the facts, tended to offer unreasonable opposition to any alteration in parliamentary allowances; that little attempt was made to inform the public or for members of the public to seek accurate information; and that much of the publicity given to the matter was deliberately distorted.

The Tribunal considers that the same comment, perhaps expressed in less acerbic terms, retains elements of truth. This is not necessarily to put blame on the 'general public'. Parliamentary entitlements are complex and not readily understood.

They are also in many aspects anachronistic – representing a remuneration structure that has developed over many years without being adapted to modern practices. In a meeting with the Tribunal this year a senior office holder in the Parliament, a member of many years standing, confided to the Tribunal that he did not understand fully what he was entitled to.

For the sake of transparency, the Tribunal considers that it is most desirable for there to be a rationalisation of the remuneration elements of a parliamentarian's package so that they can be readily understood, both by the member him- or herself and by an outside observer.

It has become common practice in business, including in the Senior Executive Service (SES) of the Australian Public Service (APS) and in the Tribunal's Principal Executive Office structure, both of which have been used as guides to parliamentary remuneration, to express remuneration, including benefits, in monetary terms as a package and to allow the recipient to decide how to use it. The Tribunal submits that this is also an appropriate course to follow in the case of parliamentarians.

It would be desirable, and transparent to the public, for parliamentary remuneration to be expressed as a specific figure, with very few if any additional benefits, and then only if those benefits were incapable of being expressed as a dollar figure. A changeover from the current arrangements to the preferred arrangement would be achieved by cashing out various benefits and, at the same time, ceasing to provide them as separate benefits. Business expenses for parliamentarians should continue to be provided as at present – with the parliamentarian having the capacity to expend funds, to predetermined levels, on behalf of the Commonwealth.

In regards to the cashing out of certain benefits, these benefits are discussed separately in later sections of this submission. Five of these benefits are the subject of attachments to the submission, setting out their history.

3.3 Tribunal procedures

Another complaint about parliamentary remuneration is that it is settled without scope for public submissions and is therefore a private matter. While the Tribunal certainly does not accept the 'private matter' view, it accepts that the view exists.

The view that the Tribunal settles parliamentary pay as a private matter is inconsistent with the fact that the Tribunal does not set the principal element of remuneration - base salary - and has not done so for 19 years. The underlying issue may well be that the components of the package are not readily identifiable or are not, like Electorate Allowance, "accountable". It is also possible that some entitlements ring false in the public view because there is no (or no longer) any ready parallel in contemporary agreement-based pay and conditions arrangements.

The Tribunal has always acted within the parameters of its establishing legislation, which gives it wide discretion in how to decide matters. Section 11 of the RT Act states, among other provisions, that the Tribunal can inform itself in such manner as it sees fit and is not required to conduct any proceeding in a formal manner. It remains desirable that the Tribunal has this discretion, as a formula setting out how the Tribunal should act would be likely to be unnecessarily restrictive. For example, informal discussions with office holders have proven to be an invaluable source of information to the Tribunal.

In setting aspects of remuneration the Tribunal invites, and indeed welcomes, submissions from parliamentarians, usually through their party structure in the Parliament. It is the case, however, that such submissions as the Tribunal receives tend to be few in number and often lacking in detail. In the view of the Tribunal, parliamentarians rarely wish to be seen as making submissions for increasing their personal emoluments.

In the past, the Tribunal has sought public submissions in the course of reviewing parliamentary remuneration. As to the possible nature and extent of greater public engagement in the process in future, the Tribunal invites the views of the Review Committee.

We now turn to a consideration of the various items that make up a parliamentarian's remuneration.

3.4 Base Salary

At this stage, pending a proper review, the Tribunal does not submit that the base salary of parliamentarians should be altered, other than through the cashing-out of various items. The reasons for this are primarily twofold:

- it is not a primary focus of the current review, and
- the Tribunal could not at this time suggest what a different base salary for a parliamentarian should be, without undertaking a full review of the role.

The second point above may arouse interest coming in a submission from the Remuneration Tribunal, which is widely viewed, even by many parliamentarians, as setting the base salary for parliamentarians. In its 2007 Annual Report, the Tribunal stated that:

> It is not clear to the Tribunal that the current means of setting a parliamentarian's base salary is well understood.

In the Tribunal's view, this remains the case.

In fact, the Tribunal does not set the base salary for parliamentarians. The Tribunal determines a classification structure for Principal Executive Offices, as part of which the Tribunal determines a number of reference salaries, including Reference Salary A. By a Regulation made by the Parliament under the *Remuneration and Allowances Act 1990*, parliamentary salary is set at a percentage of Reference Salary A. For some years until 2008 the parliamentary salary was 100% of Reference Salary A. Owing to the pay freeze announced by the Prime Minister in 2008, the Regulation setting parliamentary base salary at 100% of Reference Salary A was varied to:

> the percentage is the percentage of the reference salary which, when applied to the reference salary, reduces the reference salary by the amount (in whole dollars) by which the reference salary was increased by the Remuneration Tribunal for the financial year commencing on 1 July 2008

Considering the current wording of the Regulation, to say that the method of setting the base salary of a parliamentarian is opaque perhaps understates the matter. The current base salary for a parliamentarian is $131,040. However, if this figure were not published as a matter of interest on the Tribunal's website, it would be almost impossible for a member of the public to discern it. This being the case simply highlights the perception that the entitlements of parliamentarians are, at least, diffuse and difficult to find. The Tribunal considers that, ideally, all entitlements that may reasonably be construed as remuneration should be set out in a single readily available document. The Prime Minister's determination of the remuneration and conditions of departmental Secretaries is a useful example of such a single, consolidated, statement of entitlements.

Derivation of Parliamentary Base Salary

Historically there have been a number of methods of deriving parliamentary base salary. Prior to the establishment of the Tribunal in 1973, salary was set by the Parliament itself. To assist the Parliament a number of independent reviews were undertaken – in 1952, 1955, 1959 and 1971. These reviews tended to be root and branch reviews, particularly the 1971 one, in which the work of a parliamentarian and the issues relating to that work were closely examined.

From the establishment of the Tribunal until 1990, the Tribunal determined parliamentary remuneration, although not without a significant amount of direct parliamentary involvement. Tribunal determinations were disallowed or varied by legislation in 1975, 1979, 1981, 1982, 1986 and 1990, prior to the passage of the *Remuneration and Allowances Act 1990*, which took away the Tribunal's power to determine parliamentary base salary *per se*.

Since that time parliamentary pay has been linked, firstly, to one pay level in the SES of the APS, then another, and from 1999 to a figure determined by the Tribunal for the Principal Executive Office structure. In its 2006/07 Annual Report the Tribunal noted that, since the linkage with the SES had been broken, the base salary of parliamentarians and the pay of SES had diverged markedly, to the detriment of the parliamentarians. The Tribunal noted further in its 2007/08 Annual Report that there was much evidence that parliamentarians, especially Ministers, were not paid appropriately for the work and responsibilities of office, and that the pay of parliamentarians had declined relative to public offices in particular and to general remuneration.

While the use of an external reference point has proven useful in some respects over the years, particularly as a means of increasing salary in line with general increases

in the higher levels of the public sector, the point remains that parliamentary salary is set by using a figure determined for another purpose.

In 1974 the Chairman of the Remuneration Tribunal, Mr W. B. Campbell, noted that:

> … we concur in the view that there is no reason to believe that the activities of Members of Parliament are similar in any way to the work of second division officers of the Australian Public Service. (*predecessors of the SES*)

Nevertheless, comparators such as these have been used since 1990 to set parliamentary remuneration. It was only in 1999, when the Tribunal made its recommendation to vary the reference salary used, that any significant examination of the work of a parliamentarian occurred. This means that it is now 10 years since parliamentary base salary was examined by specific reference to the work of a parliamentarian.

In its recently released Statement on remuneration in the federal courts system, the Tribunal noted that it considered that remuneration should reflect the attributes of the work value of individual offices, and that the Tribunal did not set remuneration for one office by a nexus to another. Yet this is exactly what Parliament does, by Regulation, in the case of parliamentarians.

It is the view of the Tribunal that remuneration for a public office should be clearly stated and readily understood, and be set by reference to the specific roles and responsibilities of the office. There appears an even more compelling case for this when remuneration for an office moves at a different rate to general movements in other public remuneration, as occurred with parliamentarians when they received no increase in 2008.

Determining Parliamentarians' "Base Salary"

The Tribunal submits that it would be appropriate for the determination of parliamentary base salary to be returned to the jurisdiction of the Tribunal, and for that base salary to be expressed as a figure in its own right. An appropriate date for this change might be 1 July 2010, the commencement of the next financial year.

The method of achieving this would appear to the Tribunal to be simple enough – an amendment to the R&A Act would suffice, by an extension to the current section 3(2) of that Act. The Tribunal still has a residual power to determine parliamentary base salary in its own Act.

It is worthy of note that Tribunal decisions are expressed formally in determinations, instruments that are disallowable by the Parliament, so that under the current provisions Parliament would retain the final word on the matter.

The Tribunal submits that if Parliament wishes to rely on a truly independent view it may be appropriate to remove this provision – to make Tribunal determinations on this matter not disallowable. In the view of the Tribunal the disallowances in the 1976 to 1990 period were largely political in nature, rather than being based on sound evidence that the Tribunal had erred. With the benefit of hindsight, the undesirability of these disallowances is apparent.

The temptation for any Government, or indeed any hostile Senate, to make political manoeuvrings on this matter remains real, and is contrary to the principle of an independent tribunal making evidence-based decisions. Disallowability of a Tribunal's determination need not be an essential feature of it; indeed disallowability may be at odds with the perception of independence. Determinations of the Western Australian Salaries and Allowances Tribunal on remuneration of the parliamentarians of that state are not disallowable; nor is the Prime Minister's determination, under section 61 of the *Public Service Act 1999*, of the remuneration of departmental Secretaries in the APS.

Of course, even were determinations not disallowable, the Parliament would retain its general legislative power and could overturn Tribunal decisions by Act of Parliament. If this occurred, at least the intentions of the Parliament would be clear to all.

3.5 Additional Salary

The Tribunal reports on, but does not determine, additional salary for Ministers of State. These additional salaries are expressed as a percentage of the base salary. The Tribunal does determine salary for parliamentary office holders (such as Presiding Officers, Whips, Committee Chairs etc), which are also expressed as a percentage of the base salary. The Tribunal has recently issued a Report and Determination on these matters, preserving the previous percentages.

The Tribunal is of the view that this method of setting salary for various offices is efficacious, and has no specific submission to make on this matter other than that the status quo should be preserved.

The Tribunal would, however, like to note a couple of issues in this context. The Tribunal has, over recent times, been conducting a major review into the role and remuneration of departmental Secretaries. While the report on this matter has not yet been released, the Tribunal has noted in its research that the remuneration of Secretaries over time has increased markedly in comparison to that of ministers.

The Tribunal considers that there is a good case that ministerial remuneration now lags behind the appropriate remuneration for such demanding offices.

It is also the case that shadow ministers are not paid any additional salary. This has always been so, but should not necessarily continue to be so. It has perhaps never been a high priority issue for governments, as it is obviously of more interest to oppositions than governments.

However, the Tribunal considers that there is a strong case for setting additional remuneration for shadow ministers. These individuals have greater responsibilities than a general opposition backbencher and well defined parliamentary functions. In the Tribunal's view it is anomalous that a shadow minister, having the significant challenge of preparing to assume the onerous responsibilities of a minister, should be paid at the same rate as a backbencher.

The Tribunal is of the view that it has the power under s 7(1) of the RT Act to determine additional salary for shadow ministers. It has already, for example, determined additional travel provisions for these parliamentarians. The Tribunal notes that it regards this aspect of parliamentary remuneration arrangements as being linked to the additional remuneration of ministers - a matter about which the Tribunal has set out its views in its Annual Reports.

3.6 Life Gold Pass

At the present time, the Tribunal's only power in respect of Life Gold Passes is the setting of the appropriate qualification periods. The provisions for actual usage are contained in the *Members of Parliament (Life Gold Pass) Act 2002*.

There is possibly no single issue on which there is such a disconnect between parliamentarians and their constituents as the Life Gold Pass (and its 'cousin' severance travel). From informal discussions with parliamentarians the Tribunal understands that members value the LGP highly, more for the recognition of long service that it symbolises than for its face value in travel entitlements. Against this, the public view of actual LGP usage seems to be one of derision.

One argument for the LGP is, and has always been, that former parliamentarians possess invaluable experience and the LGP assists them to make this experience available to various groups. Were this the extent of LGP usage it would be an arguable proposition that it might be retained.

However, by its nature, it provides a broader entitlement than this. Members can use the LGP at their own discretion, up to specified limits for numbers of trips, for any purpose that is not related to business activities. Their surviving spouses also retain LGP entitlements, albeit to a lesser number of trips.

This is, in the modern era, inconsistent with normal business practice. It is far more common now to provide employees or the like (members not being 'employees' in the legal sense) with an appropriate level of reward during their time of service rather than delayed benefits, as is an LGP.

The Tribunal submits that it would be appropriate now to mark a line in the sand and stop the issuing of new LGPs. Owing to legal uncertainties there may be no capacity to change the LGP entitlement of those who have already qualified.

Instead an estimated value of the pass would be included in future in the member's salary. For the purposes of using a member's parliamentary experience, separate budget provision could be made by the Government of the day to enable former Prime Ministers, for example, to undertake community responsibilities, at no cost to themselves, within defined and public parameters.

3.7 Severance travel

Severance travel was introduced in the early days of the Remuneration Tribunal and the qualification provisions for it have remained unchanged for the last 30 years. The original rationale for the entitlement was as stated for Life Gold Passes – to allow former members who did not qualify for an LGP to use their experience for the benefit of the community for a limited period of time.

Inasmuch as it is used for the benefit of the Australian community, such an entitlement is unexceptional. However, like the LGP this is not the sole purpose for which it is used, and its use, when reported, cannot be said to do anything to improve the standing of members and former members in the eyes of the community. This is the case whether or not the disapprobation is deserved.

Recommendation

From the point of view of the Tribunal, severance travel and the LGP, in their present form, are benefits which have had their day.

The Tribunal submits that there be a two-pronged approach to their removal. First the current benefit should be cashed out. The benefit of severance travel, in round terms, is that for each term of Parliament served, a member establishes a Severance Travel 'credit' of between one half and five-sixths of a year's travel, depending on length of service[2]. Once the former member has left Parliament, the maximum travel in a year is 25 return trips.

The Tribunal considers that a reasonable buy out value of the severance travel benefit should be calculated and applied as increased salary.

On top of this a separate and specific budget provision could be made to which former members could apply for the costs of domestic travel to meet community needs which are, objectively, in the interest of the Commonwealth.

[2] The actual entitlement, which is dependent on length of service in the Parliament, is set out in Clause 8.1 of Tribunal Determination 2006/18.

This proposed increase in remuneration would also compensate for the withdrawal of the LGP. A member would receive the additional remuneration from the commencement of their service – at which time, of course, there would be no indication as to whether the person would ultimately qualify for an LGP under the current provisions. Indeed the provision of the additional salary would be contingent on the cessation of access to an LGP, as the member would otherwise be being compensated for the loss of an entitlement that they later received.

It may be that special consideration is required for those who have already qualified for an LGP because there are benefits accruing to the spouses/partners of those parliamentarians while they remain in the Parliament. Perhaps such parliamentarians should have the option of opting out of that qualification in return for the additional remuneration or, if they so choose, to keep the LGP entitlement, subject to any further amendments to provisions for future usage, and forego the additional remuneration proposed in the previous paragraphs.

3.8 Family Travel

The Tribunal's determination provides access to Family Reunion travel, up to nine trips per year to Canberra for a spouse/partner, and three trips a year for each dependant child. This again is a provision of long standing, which recognises that the role of a parliamentarian is a demanding and unusual one that necessitates considerable time away from the member's home base.

However, the provision deserves re-examination. A study of travel claims by members themselves demonstrates that most members fulfil their Canberra commitments on a 'fly in/fly out' basis. When Parliament is sitting for two weeks – Monday to Thursday and then Monday to Thursday – a member will typically return home for the intervening period. Thus while a member can be away from home for a considerable number of nights in the course of a year, they do not seem generally to be away from their home base for long individual periods. This formula does not necessarily apply to Ministers, whose responsibilities can cause them to be away from their home base for longer periods.

This raises the question, for backbenchers in particular, of the necessity of a 'family reunion' entitlement, and particularly to an entitlement of nine trips per year. It would perhaps be difficult to remove or decrease a provision viewed as family assistance. The Tribunal considers that further inquiry into this matter is required to ensure that the provision remains relevant and set at an appropriate level. If one purpose of the provision is to assist members with young families, for example, it seems a strange outcome that there is a difference in the level of entitlement between spouses/partners and dependant children.

The Tribunal also notes that there are provisions in Schedule 1 of the PE Act, which provide additional family reunion travel for the families of the holders of 'Senior Offices', as defined in that Act[3]. The Tribunal is of the view that these are entitlements which confer, at least in part, a personal benefit on these office holders.

For the sake of consistency of approach and transparency, the Tribunal considers that all family reunion provisions for parliamentarians, including holders of various offices, should be centralised in one instrument. As these are provisions conferring a personal benefit, it would seem appropriate that they should be placed into the remuneration stream. The Tribunal would welcome the Committee's views on this matter.

[3] Senior Offices are Ministers in the Government and the Leader and Deputy Leader of the Opposition in each House of Parliament

Recommendation

Whatever the outcome of the review, this is a provision which it would be difficult to cash out in the parliamentary context. The provision provides, basically, for travel from a home base to Canberra. The provision is thus the same for all members as regards the number of trips, but varies widely from member to member in the cost to the Commonwealth.

Working on the basis that the base salary for all members should be the same, any attempt to cash out an item of such variable cost would either benefit members in the Sydney-Melbourne corridor unduly, or else be a detriment to those members whose home base is more remote from Canberra.

The Tribunal proposes that the Review Committee examine the continuing rationale for this entitlement. In this regard, the Tribunal notes that 'fly in/fly out' arrangements have become increasingly common in some industries and that it is not uncommon for executives to be domiciled in one city while working, primarily, in another.

3.9 Accommodation in Canberra

Members currently receive $230 for each night that they spend in Canberra, with some exceptions such as members normally resident in the vicinity of Canberra and the Prime Minister, who has housing provided. The only qualification for payment is nights spent in Canberra, which is made regardless of the individual member's accommodation circumstances in Canberra. The $230 payment is within the Australian Taxation Office's reasonable limits for travel entitlements, so that the Tribunal understands the amount is received by members tax free without the need to prove expenditure.

The quantum of the payment is a discount on the standard rate for Canberra set by the Tribunal for public office holders coming to Canberra. The Tier 2 rate (equivalent to what Members receive for travel to other locations) in the Tribunal's travel determination is $312 per night. While the complete history of the setting of the Canberra travel rate for members is unclear, the rate is discounted because of the ability of members to make more advantageous arrangements owing to the large aggregate period that they spend in Canberra in the course of a year.

This allowance is one that frequently attracts unfavourable comment. The Tribunal does not necessarily consider this to be a problem. It is hard to imagine that any 'employee', whose role requires them to work in two separate locations, would not in these circumstances receive assistance from their 'employer'.

Public office holders, for example, receive an allowance to meet the cost of accommodation for each night upon which they are absent from home on official business. In circumstances in which an office holder works in a location different from their principal place of residence, the Tribunal may determine an accommodation allowance to enable the person concerned to make longer-term accommodation arrangements.

The circumstances of parliamentarians are not dissimilar. In providing financial support to meet costs, it is not as though members are being provided with housing by somebody other than themselves and then receiving an allowance. Even those members who enter into lease arrangements, or purchase property, do so presumably to organise their life as members efficiently and at not inconsiderable expense to themselves. The Tribunal considers that it is reasonable to continue to provide financial assistance in respect of expenses that they incur in spending time

away from their principal place of residence without discriminating between any forms of accommodation arrangement that a parliamentarian may make.

However, the current method of payment does evoke some cynicism in the community and for the sake of transparency, and of setting a clearly understood entitlement, the method of delivering assistance could be altered. A review of a sample of published data about nights spent in Canberra indicates that, in 2008, backbenchers spent around 70 to 80 nights, parliamentary office holders such as the Presiding Officers and Whips somewhat more, and Ministers considerably more, approaching 150 nights in Canberra in some cases.

The advantage of the current system is that it equates the level of allowance with the actual number of nights spent in Canberra. However, the question arises as to whether this is essential, if it is a fact that members make more settled arrangements. Assuming that this is the case, their costs may well be much the same regardless of the exact number of nights that they spend in Canberra in a year.

In respect of public office holders for whom the Tribunal has determined an accommodation allowance, the amounts vary, according to geographic location, from $20,000 up to $32,000.

Recommendation

The Tribunal submits that a similar allowance could be instituted for members' Canberra accommodation assistance.

The Tribunal submits that this should be retained as a separate allowance and not included in any specification of "total remuneration".

3.10 Electorate Allowance

The history of Electorate Allowance dates back to 1952. The Nicholas Report noted that members were called on frequently with requests for money, to the extent that some members were struggling to make ends meet. An allowance was instituted to cover these unspecified costs.

The 'unspecified costs' nature of the Electorate Allowance has always been one of its features. It is not possible to define precisely what the allowance is to be used for, because it has always been the intention that it is a catch-all payment that meets those expenses of members that cannot be spelt out in advance. It is true that since the allowance was originally determined, other sources of funding, particularly in relation to private transport and electorate office expenses, have increased.

The base allowance is now $32,000 per annum. An additional allowance is set for members with larger electorates. This has been on the understanding that members with larger electorates have additional expenses. It may be that modern improvements in communications and private vehicle transportation have made this assumption more difficult to sustain, except in the case of the largest electorates.

Electorate Allowance is currently paid to Members monthly. Members do not have to acquit the expenditure of their allowance to the House Departments which pay it. They retain the money themselves and are liable to income tax for any portion of the allowance about which they cannot demonstrate, to the satisfaction of the Commissioner of Taxation, expenditure on allowable items. Simply put, if a member spends none of the allowance on allowable items they can retain the whole amount as personal income.

This appears to be perceived by members of the public as merely an income supplement. Parliamentarians who speak on the matter generally state that they spend all of their allowance on their electorate, although members seem always to

hear anecdotes of others who do not. The only people who really know how much of the allowance is spent on legitimate items of expenditure are the members themselves and the Commissioner of Taxation.

Recommendation

The Tribunal considers that the time has come when, for the sake of transparency and public confidence, the base electorate allowance should be rolled into the salary of members. The members will still be able to claim items of allowable expenditure as taxation deductions.

One consequence of this in the short term is that members will have less money at their disposal. The current monthly advances of the Electorate Allowance (of around $2,667) to members do not attract PAYG tax – members only incur a tax liability for any portion of the allowance at the end of the financial year. If the amount is included in base salary, the amount will become subject to PAYG tax, probably at a rate of 39.5 cents (including Medicare levy) or higher. This could decrease the amount immediately available to members from $2,667 per month to around $1,614, which may disadvantage members who spend the entire allowance on tax deductible items.

Of course, those members would get this amount back at the end of the financial year, establishing a 'bank' for future years. The Tribunal believes that the proper operation of the taxation system should not be allowed to be a barrier to what would be a sensible realignment of parliamentary remuneration.

The additional electorate allowance for members of larger electorates is not an allowance which the Tribunal considers should be rolled into base salary, to retain the principle that the base salary of all members should be the same. The Tribunal's view is that in future what is now termed 'additional electorate allowance' should be provided on a 'use it or lose it' basis. Rather than any leftover amount being retained as income, it should be forfeited.

3.11 Overseas Study Travel

The Tribunal's Determination provides each member with the entitlement to travel to the value of one overseas study trip at Commonwealth expense for each term of parliament that the member serves. The provision for 'one trip' relates to an estimated value of that trip. A member can make more than one actual trip so long as expenditure falls within the limits set.

This is another entitlement which is the subject of frequent adverse public comment.

This provision is not the only avenue for overseas travel by a member. There is also the opportunity to travel as part of a parliamentary delegation or as a representative of the government or a minister. The Tribunal considers that these entitlements, spelt out in the PE Act, are appropriate and should be retained.

The overseas study provision was instituted on the main presumption that it was desirable for members to broaden their horizons. It was, arguably, reflective of the time of its introduction when personal overseas travel was less frequent than it now is. It was also reflective of a time when it was not possible to view developments in most parts of the world instantaneously through the internet or through a number of dedicated news channels and other media.

The provision is now often viewed in the media as a perk of office – a paid holiday as it were – rather than being a provision which improves the decision making of the Parliament and its members. While a member has to report to the Parliament on

their overseas study, such reports can be treated, not least by other parliamentarians, with some cynicism.

Recommendation

The Tribunal is no longer convinced that the value of this provision for the development of members outweighs its negative effect on the reputation of those members. The Tribunal considers that this should be paid out – the separate entitlement should be replaced by an equivalent increase in the value of base salary.

The Department of Finance and Deregulation, which administers the scheme, has most recently costed the value of the scheme to individual members as $25,421 in the life of a Parliament.

The Tribunal submits that the provision should be removed and in its place base salary be increased. The Tribunal considers that this still would provide members with the capacity to undertake a reasonable level of travel at their own expense over the course of a Parliament.

3.12 Private Vehicle Entitlement

Section 5 of the Tribunal's entitlements Determination provides a senator or member with the entitlement to a private plated vehicle at Government expense. Members of the largest electorates have an enhanced entitlement.

However, the Determination also provides that a member who does not take a vehicle will instead be entitled to additional electorate allowance of $19,500. This provision has demonstrated that the cashing out of the private vehicle entitlement is practicable.

Recommendation

The Tribunal considers that it would now be appropriate to make the 'cashing out' provision the standard provision. In accordance with modern practice the Tribunal submits that it would be appropriate to increase parliamentary base salary by a relevant amount, with members having the ability to use salary sacrifice arrangements to lease cars, or to make and pay for such other arrangements for travel, particularly around their home electorate, as they see fit.

As with submissions on other entitlements in this paper, this would present a more open account of parliamentarians' packages and provide members with the capacity to organise their arrangements in the way that best suited their own circumstances from time to time.

3.13 Other Entitlements - Vehicles

As stated, members of large electorates have other entitlements in relation to vehicles. Because of the extensive nature of the travel involved in servicing those electorates, the Tribunal considers that the provision of additional vehicle entitlements to those members is more in the nature of meeting a legitimate business expense rather than a personal reward.

Recommendation

The Tribunal recommends that, rather than being retained as a provision in its own right, the entitlement to additional car transport for the large electorates should be included with Charter Allowance, or a similar provision.

Charter Allowance would continue to be delivered in its present form, a form that the Tribunal considers appropriate for legitimate expenses of running the 'business' of

being a parliamentary representative. As now, the Charter Allowance will represent a sum of money up to which limit a member can spend on specific items. There will remain no question that a member can access this allowance as cash.

4. Summary of Recommendations

The Tribunal considers that in future parliamentary salary should incorporate the following elements:

- Current base salary; and
- Additional salary amounts in lieu of*:*
    - Entitlement to Electorate Allowance:
    - Entitlement to Vehicle:
    - Entitlement to Study Travel:
    - Entitlement to post-separation travel:

On receipt of the base salary, a member would have no further separate entitlement to:

- Electorate Allowance
- a government provided private plated vehicle
- government funded overseas study travel
- general severance travel and Life Gold Pass travel benefits; and
- any further entitlement to accommodation allowances for any stay in Canberra.

As well, an additional annual allowance covering all costs of any necessary residence in Canberra for those whose principal place of residence is elsewhere may be instituted, instead of the current per diem figure.

As any increase to the base salary of parliamentarians would occur on the basis of the cancellation of equivalent benefits, the new amount would not, in relation to backbenchers, incur any additional cost to the Commonwealth. Indeed moving from a benefits-based approach to a cash salary approach would ensure that the individual member administered their 'benefits' personally, with likely significant cost savings to the Commonwealth.

4.1 Superannuation

A final issue regarding any increase to the base salary concerns superannuation. When the 1948 scheme was closed to new members after 2004, the benefits of the existing members were preserved. In general these benefits far outweigh the superannuation benefits of the post 2004 members. Both schemes are based on calculations using the salary of members. Reorganising the delivery of parliamentary entitlements by increasing the base, and thus presumably the superannuation, salary for pre 2004-members would provide those members, and indeed retired members, with a windfall profit which could not possibly be justified in the circumstances.

The Tribunal considers that it would be essential to amend the definition of 'parliamentary allowance' in the *Parliamentary Contributory Superannuation Act 1948.* The basic superannuation salary for members of that scheme should remain at $131,040 per annum. In future years the $131,040 figure would be adjusted by the same percentage as the annual percentage increase determined by the Tribunal for public offices.

4.2 Timing

The transition from a benefits-based system of remuneration to a declared cash system will require careful and sensitive management. It is assumed, for example, that members have current arrangements in relation to privately plated vehicles that could not be broken at short notice. Members may also have legitimate, and possibly legally enforceable, expectations in relation to benefits, such as overseas study travel, that they have accumulated during the current Parliament.

Considering that 2010 will be an election year, it may be appropriate to announce any intention to make changes to the present mix of salary and entitlements that confer a personal benefit at the earliest possible juncture, subject to new arrangements coming into effect from the commencement of the next Parliament. This will ensure that members could make new arrangements from that time.

APPENDIX TO SUBMISSION

Following are five attachments, each summarising the history and development of specific benefits to parliamentarians that have been determined by the Tribunal. The subjects covered are:

LIFE GOLD PASS

Tribunal Comment

The Life Gold Pass has a long history, being originally introduced as the Life Railway Pass in 1918. It has not, however, always represented an identical entitlement for an identical group of people – rather the entitlement to the pass itself, and to the travel entitlements that it makes available, has developed over time, reflecting current views at various points in time.

Setting aside superannuation, it is now common practice to provide 'employees' (noting that this term is used loosely in relation to parliamentarians) with full remuneration while they remain in employment, rather than to provide them with post-employment benefits in recognition of past service. In this, the LGP has become an anachronism – it is hard to envisage any other employer structuring a remuneration package so as to provide travel entitlements to an ex-employee, other than for travel in which the employer has a direct interest.

It is true that there may be calls on former parliamentarians to fulfil public commitments after they have left office. Such calls may fall particularly on former holders of high office. If these calls on former parliamentarians necessitate travel, which is clearly in the interests of the Commonwealth, then it remains reasonable that the Commonwealth meet the costs of that travel. However, any funding of travel other than this represents a scheme of post-employment remuneration that no longer reflects contemporary standards.

Options

There are a number of possible options regarding the future of the LGP including: abolishing the entitlement; further restricting eligibility, tightening the rules regarding the type or amount of travel that can be undertaken; or capping the expenditure per year on individual pass-holders.

The LGP is clearly not in the nature of 'a support to meet business costs'. Rather it should be regarded as a deferred benefit. Each of the options other than abolishing the entitlement comes up against the same problem as set out above – it still confers an anachronistic deferred benefit, albeit at a different level to that now enjoyed.

Recommendations

The recommendation here should be read in conjunction with the severance travel recommendation. Parliamentary remuneration should be increased and the possibility of entitlement to Life Gold Pass should concurrently be abolished. Please note that the Tribunal is not recommending one figure in recognition of the abolition of the Life Gold Pass and a separate additional figure in respect of the abolition of severance travel.

As a first step, legislation, including subordinate legislation in the form of Tribunal Determinations setting eligibility periods, would need to be amended so that new members of Parliament, including members returning to Parliament after a break,

should have no expectation of qualifying for a Life Gold Pass, and should have no entitlement to it in the future.

The legal position of current and former parliamentarians who may have some expectations, and indeed some rights, in relation to the Life Gold Pass should be analysed. Any member who retains a current or future entitlement to a Life Gold Pass should have their remuneration reduced from the new level. This somewhat convoluted process is recommended because the new salary including the additional amount would become the standard – those retaining an entitlement to post employment travel would have their pay reduced from the new standard to fund their travel.

For the majority of parliamentarians who will not in future qualify for post separation travel (e.g. parliamentarians other than those who retain an entitlement to Life Gold Pass), a new appropriation should be made available for travel that is clearly in the interests of the Commonwealth. The power to decide whether such travel is in the interests of the Commonwealth could reside with the Special Minister of State, who would be able to delegate the power.

LIFE GOLD PASS

RECOGNITION OF LIFE RAILWAY PASSES ISSUED TO FEDERAL AND STATE MINISTERS

"Resolved - That life passes issued to Prime Ministers or Premiers who have held office for one year, Presidents of the Senate, and Speakers of the House of Representatives, Presidents of the Legislative Councils and Speakers of the Legislative Assemblies who have held office for three years, Cabinet Ministers who have held office for four years in the aggregate, shall be recognised over Federal and State Railways by the issue of gold passes, available over all lines, to such persons."

Conferences of Premiers and Ministers of the States of the Commonwealth of Australia
Progress Report No. 8 – on action taken under the authority of decisions reached at the Conferences held in Sydney in May 1918 and Melbourne in July 1918 and January 1919.
Presented at the 1920 Conference of Premiers

The Life Gold Pass (LGP) entitles eligible former parliamentarians, their spouses and widows/widowers to travel within Australia for non-commercial purposes at Commonwealth expense.

CURRENT FEATURES

The Remuneration Tribunal determines qualifying periods and related matters for the LGP. The relevant provisions in *Remuneration Tribunal Determination 2006/18 Members of Parliament – Entitlements* are as follows:

"**7.1** A senator or member who, on retirement from the Parliament, has completed the qualifying periods set out in 7.2 shall be issued with a Life Gold Pass.

7.2 The following qualifying periods shall apply to eligibility for the issue of a Life Gold Pass:

(i)

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

(ii) 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;

(iii) periods of broken service may be accumulated;

(iv) 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'.

7.3 A Life Gold Pass issued to a sitting senator or member shall be suspended until he or she retires from the Parliament.

7.4 Frequent flyer points accrued as a result of travel at Commonwealth expense should only be used to reduce the cost of future travel under the provisions of the *Members of Parliament (Life Gold Pass) Act 2002* by the person who accrued the points. Wherever possible and practicable, a person should ensure that frequent flyer points accrued by him or her are used to cover the cost of life gold pass entitlements.

7.5 Details of the usage of frequent flyer points accrued as a result of travel at Commonwealth expense and used under the *Members of Parliament (Life Gold Pass) Act 2002* must be reported to the Special Minister of State in accordance with guidelines developed by the Special Minister of State."

Determination 2006/18 also provides (under the heading Family Reunion Travel – Additional Travel):

"**2.20** In addition to the entitlement of a senator or member under clause 2.9, the following travel shall be at Commonwealth expense:

…

(b) travel to Canberra by the spouse of a sitting senator or member who has satisfied the qualifying periods for the issue of a Life Gold Pass, where the travel is to accompany or join the senator or member."

The *Members of Parliament (Life Gold Pass) Act 2002* sets out the entitlement for retired parliamentarians who satisfy the qualifying periods determined by the Remuneration Tribunal. These are currently as follows:

- a former Prime Minister is entitled to a maximum of 40 domestic return trips per year;
- other pass-holders are entitled to a maximum of 25 domestic return trips per year;
- travel must not be for a commercial purpose i.e. a "purpose relating to the derivation of financial gain or reward, whether as a board member, an office-holder, an employee, a self-employed person or otherwise";
- travel must be on a scheduled transport service i.e. by air, rail, bus, tram, ferry or vehicular service, or on a combination of these services;
- the class of travel is to be the same as determined by the Remuneration Tribunal "from time to time" for serving parliamentarians (i.e. business class or economy, unless exceptional circumstances apply);
- travel undertaken using Frequent Flyer Points accrued "as a result of travel at the expense of the Commonwealth" is counted against the entitlement.

The *Members of Parliament (Life Gold Pass) Act 2002* also deals with travel by the spouses or de facto partners of pass-holders, deceased pass-holders, or of sitting members who have satisfied the qualifying period for the issue of an LGP. In these cases, the current entitlements are as follows:

- the spouse or de facto partner of a former Prime Minister, where the former PM has retired from Parliament and is a pass-holder, is entitled to a maximum of 40 domestic return trips per year, "so long as no more than 10 of those trips are non-accompanying/joining trips";
- the spouse or de facto partner of a former PM is entitled to a maximum of 10 domestic return trips in the first 12 months after the former PM's death; a maximum of 10 domestic return trips in each of the next four years, and a maximum of five domestic return trips in each subsequent year;
- the spouse or de facto partner of an eligible current PM, or an eligible sitting member who has held office as PM, is entitled to a maximum of 40 domestic return trips to Canberra per year, so long as each trip is for the purpose of accompanying or joining the PM/member;
- the spouse or de facto partner of a former member who is a pass-holder is entitled to a maximum of 25 domestic return trips per year, "so long as each trip is for the purpose of accompanying or joining the former member";
- the spouse or de facto partner of an eligible member who has not served as PM is entitled to a maximum of 25 domestic return trips to Canberra per year, "so long as each trip is for the purpose of accompanying or joining the member";
- the surviving spouse or de facto partner of a pass-holder is entitled to a maximum of 10 domestic return trips in the 12 months after the pass-holder's death and a maximum of five domestic return trips in the following year. This entitlement may vary according to when the member retired from the Parliament and the date of his/her death.

HISTORY

Sometime after 1927, the term “Life Gold Pass” replaced references to the original “Life Railway Pass” introduced in 1918. For the purposes of this paper, the term “Life Gold Pass” (LGP) is used to refer to all such travel entitlements.

Although it is difficult to provide a comprehensive history of the entitlement (there being little historical documentation available), the Tribunal’s Secretariat has established the following chronology:

1918

The LGP’s predecessor – the Life Railway Pass - was introduced following an agreement at the May 1918 Premiers’ Conference. The original entitlement was to railway travel over Federal and State railways for life, with the following qualifying periods:

Prime Minister Premier	1 year in office;
President of the Senate President of the Legislative Council Speaker of the House of Representatives Speaker of the Legislative Assembly	3 years in office;
Cabinet Minister	4 years in office.

Initially, service in a State Parliament and service in the Commonwealth Parliament could be added together in order to determine the qualification. This persisted at least into the late 1950s.

In cases where a person qualified entirely by service in one Parliament and also qualified by later service in another Parliament, the cost of the LGP was borne by the Parliament where the person first qualified. In cases where a person qualified partly by service in a State Parliament and partly by service in the Commonwealth Parliament, payment for the LGP was apportioned *pro rata* between the particular State and the Commonwealth.

1920

At the Premiers’ Conference held that year, the qualifying period for Cabinet Ministers was reduced from four to three years.

1922

On 17 October 1922, Cabinet decided that ex-Ministers and pass-holders resident in Tasmania were entitled to four trips per year to Melbourne at government expense. According to a 1959 Cabinet submission, this was done to allow these persons to enjoy the benefit of some free travel on the mainland railways. It is not clear whether the additional cost of the concession was shared or borne solely by either the Commonwealth or Tasmanian Governments.

1925

On 24 November 1925, Cabinet decided to issue the LGP to Commonwealth members and senators after 25 years of continuous service.

1929

The LGP was extended to the Leader of the Opposition after a qualifying period of six years service.

1935

Cabinet agreed to amend 25 years continuous service to 25 years aggregate service for Commonwealth members and senators.

1946

The Cabinet decision of 1922 regarding ex-Ministers and pass-holders resident in Tasmania was expanded to include travel by air, although it is not clear whether this was restricted to trips to and from the mainland. The Commonwealth bore the costs of this concession.

1956

The 1955 *Committee of Inquiry into the Salaries and Allowances of Members of the Commonwealth Parliament* recommended, amongst other things, that the LGP be issued on retirement only. This recommendation was not accepted at the time.

1959

Following the recommendations of the 1959 *Committee of Inquiry into the Salaries and Allowances of Members of the Commonwealth Parliament*, the Government agreed to the extension to pass-holders of air travel within Australia. To this point, except for pass-holders resident in Tasmania, only sitting members and senators were able to travel by air at Commonwealth expense.

The Government also agreed to reduce the qualifying period for the Leader of the Opposition from six to three years.

The Committee of Inquiry had also reiterated the 1956 recommendation that the LGP be issued on retirement only. It appears that this recommendation was being progressively applied, as contemporary documents list a number of sitting members and senators who had already qualified for the LGP but who would not be issued with passes until their retirement.

1965

The qualifying period for members was reduced from 25 to 20 years, or service in seven Parliaments.

1973

The Minister for Services and Property directed that spouses or widows/widowers of an LGP holder would be eligible to air and mainline rail travel on the same basis as the LGP holder, reportedly in recognition of the fact that they shared the burden of political life.

In addition, Cabinet agreed to modify the LGP qualifying periods to:

Prime Minister	1 year or the life of 1 parliament;
President of the Senate Speaker of the House of Representatives Minister Leader of the Opposition	3 years or the life of 1 parliament;
Member/Senator	20 years or service in 7 parliaments.

1975

The Minister for Services and Property directed that the LGP be issued upon eligibility. Later that year, following a change of government, the pre-1973 qualifying periods were restored:

Prime Minister	1 year;
President of the Senate Speaker of the House of Representatives Minister Leader of the Opposition	3 years;
Member/Senator	20 years or service in 7 parliaments.

1976

The Remuneration Tribunal was given determinative jurisdiction over the LGP. In its Review Statement published that year, the Tribunal noted that the LGP was "a special reward for long and faithful service and for holding the highest elected offices in Australia". It also noted that the LGP recognised "the residual demands involving time and travel placed on public figures after they cease to hold office".

The original provisions of the Tribunal's *Determination 1976/6* were as follows:

"**2.28** A senator or member, on retirement from the Parliament, shall be eligible for the issue of a Life Gold Pass entitling the holder to travel at official expense for non-commercial purposes within Australia on scheduled commercial/commuter air services, mainline rail services and other government services, or by motor coach or other vehicles operating as regular carriers.

2.29 The following qualifying periods shall apply to eligibility for the issue of a Life Gold Pass:

(i)

Office	Qualifying Period
Prime Minister	one year
Ministers President of the Senate Speaker of the House of Representatives Leader of the Opposition	six years
Senators and members	twenty years or the life of seven Parliaments

(ii) 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 doubled in determining his eligibility for a Life Gold Pass by way of service as a senator or member;

(iii) periods of broken service may be accumulated.

2.30 A Life Gold Pass holder who has served as Prime Minister shall be entitled at official expense, to first class travel.

2.31 A Life Gold Pass holder who has not served as Prime Minister shall be entitled at official expense to:

(i) first class travel on all modes of transport other than air travel; and
(iii) economy class travel on air flights.

2.32 The spouse of a Life Gold Pass holder shall be entitled to accompany the holder at official expense at the class of travel determined in 2.30 and 2.31, as appropriate.

2.33 A widow or widower, as the case may be, of a Life Gold Pass holder shall be entitled to travel at official expense for a period of twelve months from the death of the Pass holder.

2.34 The Life Gold Pass holder issued to a sitting senator or member shall be suspended until he retires from the Parliament."

1977

Following its 1977 Annual Review, the Tribunal further modified the qualifying period for the LGP by determining that "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 his eligibility for a Life Gold Pass by way of service as a senator or member" (*Determination 1977/9*).

In addition, the provisions regarding class of travel were amended to ensure that persons utilising the entitlement were entitled to the same class of travel as determined from time to time for sitting senators or members for travel within Australia. (At the time, senators and members were entitled to first class air and rail travel.)

1980

The Tribunal determined that "the spouse of a sitting senator or member who has satisfied the [LGP] qualifying periods … shall be entitled to accompany the senator or member on return visits at government expense to Canberra, when the senator or member is travelling at government expense". The entitlement was additional to any other spousal entitlement and was not transferable (*Determination 1980/8*).

1981

The Tribunal determined that the life of seven parliaments could also include the life of six parliaments plus a further period of three years service (*Determination 1981/13*).

1984

The Tribunal tightened the wording of the clauses relating to qualifying periods in order to prevent possible misinterpretation (*Determination 1984/18*). In addition, it made two changes to the entitlements of spouses:

- excluding travel by spouses on "metropolitan rail, bus and tram services"; and
- providing that the widow or widower of a "senator or member who dies in office and who has at the time of death qualified for a life gold pass" is also entitled to travel at government expense for a period of 12 months from the death of the senator/member.

1991

The Minister for Administrative Services agreed that persons with a LGP entitlement could use the Commonwealth car-with-driver service (COMCAR) for travel to and from the airport nearest their home and to and from the point of destination in the city being visited. This approval also appears to have extended to travel to and from railway stations as well as parking costs if a pass-holder used his or her car instead of the COMCAR service.

1993

Following the excessive use of the LGP by a small number of pass-holders and in line with a submission from the Government, the Tribunal introduced a limit of 25 return trips per annum to apply to future pass-holders, applicable from 1 January 1994 (*Determination 1993/18*).

1998

The Tribunal determined that frequent flyer points accrued using the LGP should only be used to reduce the cost of future LGP travel by the person accruing the points. Related guidelines, including a provision that made it mandatory to report details of the use of frequent flyer points to the Special Minister of State, were also inserted into the relevant Determination (*Determination 1998/1*).

The Tribunal also determined that travel "within Australia" should exclude the external Territories (i.e. Christmas Island, Norfolk Island and the Cocos (Keeling) Islands).

Elsewhere in *Determination 1998/1*, the Tribunal determined that when travelling within Australia by air or rail at government expense, sitting senators or members would now be entitled to "either first class or business class, whichever is appropriate for the mode of transport used". As pass-holders were entitled to the same class of travel as sitting senators and members, this change also affected pass holders.

In its January 1998 *Statement on Members of Parliament – Remuneration and Allowances*, the Tribunal noted that the Government had sought its view on whether periods of broken service, for which severance travel had already been claimed, could be counted again for eligibility for a LGP. The Tribunal's view was that "double counting should not occur".

2000

The Tribunal amended the provisions of the entitlement to provide that Parliamentary Secretaries qualified for the LGP on the same basis as senators and members. In addition, the Tribunal specified that the entitlement now extended to enabling a spouse to travel for the purposes of "joining" (not just accompanying) the pass-holder.

The latter change was also applied to the spouse of a sitting senator or member "who has satisfied the qualifying periods for the issue of a Life Gold Pass", with respect to his or her additional entitlement to travel to Canberra at Commonwealth expense (*Determination 2000/02*).

2001

The Auditor-General's report on *Parliamentarians' Entitlements: 1999-2000*, released in August 2001, found that the parliamentary entitlements framework was poorly structured, too complex and not sufficiently transparent. Particular criticisms relating to the LGP included:

- the generosity of the entitlement compared to the travel entitlements of sitting senators and members and their spouses;
- information systems and administrative procedures which did not provide a sound basis for managing the entitlement;
- grandfathering provisions which made administration problematic; and
- uncertainty concerning the legal basis for some of the privileges provided.

On 27 September 2001, the Prime Minister issued a press release which announced that:

- future expenditure by pass-holders would be publicly disclosed on a six monthly basis;
- legislation would be introduced to limit all future former Prime Ministers to 40 publicly funded domestic trips a year and all pass-holders (and certain spouses who qualified under previous arrangements) to 25 domestic trips a year.

2002

The *Members of Parliament (Life Gold Pass) Act 2002* received Royal Assent on 2 December 2002. The Act established a uniform set of arrangements for all pass-holders, their spouses and their widows or widowers. (It also provided a mechanism for withdrawing the benefit of travel from pass-holders following conviction of a "corruption offence" as defined in the *Crimes (Superannuation Benefits) Act 1989.*)

As a corollary of the above development, the Tribunal retained determinative jurisdiction only in relation to qualifying periods for the LGP and to principles associated with general travel (such as frequent flyer point requirements) where these were not inconsistent with the Act.

The ability to use COMCAR for trips connected with the LGP entitlement was also withdrawn by the Government from 1 October 2002 (except with respect to former Prime Ministers). This was based on adverse comment by the Auditor-General in his 2001 report as well as advice that cast doubt on the legality of providing the service to some pass-holders via the exercise of Ministerial prerogative.

2004

In its April 2004 *Statement – Annual Review of Parliamentary Allowances for Expenses of Office* - the Tribunal recommended that, as a general principle, pass-holders should certify in writing that their travel was for non-commercial purposes. In this context, the Tribunal noted the need for "greater accountability and transparency of former parliamentarians" in relation to the use of the LGP entitlement.

The Tribunal also made a change to the class of travel determined for senators and members (via *Determination 2004/22*) as follows:

"**2.6** When a senator or member is travelling by air, rail or sea at government expense, the fare shall not exceed the cost of a business class air fare for the most reasonable and usual route, between the departure and destination points. Where a business class air fare is not published for the destination point, the cost to the Commonwealth of travel by air, rail or sea must not exceed the economy class air fare for the most reasonable and usual route, between the departure and destination points. The Special Minister of State may approve payment of the full cost of the fare for travel on an alternative mode of transport where a senator or member provides a medical certificate which states that he or she is unable to travel by air."

As the *Members of Parliament (Life Gold Pass) Act 2002* applied the same class of travel to pass-holders as determined by the Tribunal from time to time for serving parliamentarians, this change also affected the LGP entitlement.

2008

The *Members of Parliament (Life Gold Pass) Act 2002* was amended by the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws - General Law Reform) Act 2008* which, amongst other things, extended the LGP travel entitlements to include the de facto partners ("whether of the same or a different sex") of pass-holders.

2009

The Members of Parliament (Life Gold Pass) Regulations 2002, which prescribe the kinds of circumstances which constitute "exceptional circumstances" for the purposes of Part 7 of the *Members of Parliament (Life Gold Pass) Act 2002*, were amended to bring them into line with the new de facto partner provisions in the Act.

SEVERANCE TRAVEL

Tribunal Comment

In introducing an entitlement to severance travel in 1976, the Tribunal noted that 'after a senator or member completes his term of office there is usually a period in which he is invited to public functions, asked to give talks and is involved in servicing requests from his former constituents'.

At the present day there remains, at best, a tenuous connection between this reasoning behind the introduction of severance travel and the way that the entitlement has developed. Travel is not simply for 'good works', but is at the discretion of the former member, so long as he or she certifies in writing that the travel is for 'non-commercial' purposes.

The ban on travelling for commercial purposes means that former parliamentarians cannot use the severance travel entitlement for business which would provide them with financial gain or reward (this definition of 'commercial purposes' is in the *Members of Parliament (Life Gold Pass) Act 2002*). Other than that exclusion, the former parliamentarian can use the travel for any purpose.

The way that an individual's severance travel entitlement is calculated – increasing periods of entitlement for members who have served more terms of Parliament – appears to demonstrate that there is clearly an element of reward for service in this entitlement. While this would, in the past, have seemed reasonable, it is inconsistent with modern employment practice, which is that an employee should receive full reward while employed, rather than receiving delayed reward after separation from employment.

The Tribunal submits that it is now anachronistic to fund any travel after separation from employment, other than travel that is clearly in the interests of the former employer – in this case the 'employer' being the Commonwealth.

Options

There are three options:

- Maintain the current arrangements
- Abolish the current arrangements
- Vary the current entitlement, either as regards length of entitlement or number of trips, or both.

In the view of the Tribunal, the first option is unsustainable, and the third would be at best a partial solution to the problems outlined above. Nevertheless the Tribunal considers that some post-separation travel (for example between the parliamentarian's electorate and Canberra in the immediate aftermath of defeat at an election) may be appropriate, but that the decision on which travel should be funded out of the revenue should not be the former member's to make. The decision should be made elsewhere.

Recommendations

The recommendation here should be read in conjunction with the Life Gold Pass recommendation. Parliamentary remuneration should be increased and the possibility of entitlement to severance travel should concurrently be abolished. Note that the Tribunal is not recommending additional income for abolition of severance travel as well as compensation for withdrawal of the Life Gold Pass. A single additional figure is intended to cover both items.

No member of Parliament, whether or not they receive this additional amount (some effectively may not receive it - see the proviso in the Life Gold Pass recommendation), would accrue any further entitlement to severance travel.

The possibility of transitional arrangements for current members, who will have served a number of terms without being paid the additional salary recommended in lieu of severance travel, may need to be considered. If they are found to have retained a right to an entitlement of some sort, their 'terms of parliament' served for calculating the retained entitlement would be capped at the figure calculated at the time that the new provisions are introduced – probably at the end of the current parliament.

As remarked in relation to the Life Gold Pass, for parliamentarians who would no longer have access to post-separation travel funded by the Commonwealth (i.e. not for those who may retain an entitlement to a Life Gold Pass), a new appropriation should be made available for travel that is clearly in the interests of the Commonwealth. The power to decide whether such travel is in the interests of the Commonwealth could reside with the Special Minister of State, who should be able to delegate the power.

SEVERANCE TRAVEL

SEVERANCE TRAVEL ENTITLEMENT

"After a senator or member completes his term in office there is usually a period in which he is invited to public functions, asked to give talks and is involved in servicing requests from his former constituents. Indeed, some senators and members considered that the period immediately following retirement could be very fruitfully used in passing on one's experiences and in counselling new and aspiring politicians."

Remuneration Tribunal
1976 Review

The Severance Travel entitlement allows former parliamentarians who do not qualify for a Life Gold Pass (LGP) to travel for a limited time within Australia at Government expense for non-commercial purposes. The entitlement does not extend to spouses or de facto partners.

CURRENT FEATURES

The entitlement is provided for in *Remuneration Tribunal Determination 2006/18: Members of Parliament – Entitlements*, as follows:

"**8.1** A senator or member, not qualifying for a Life Gold Pass on retirement, shall, from the date of retirement from the Parliament, be eligible to travel at government expense for non-commercial purposes within Australia but excluding the external Territories on scheduled commercial/commuter air services, mainline rail services, or by motor coach or other vehicles operating as regular carriers, for the following periods:
(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 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.

8.3 Severance travel shall be at the class of travel determined from time to time for a sitting senator or member.

8.4 Severance travel does not extend to the spouse of a senator or member.

8.5 In undertaking severance travel in accordance with clauses 8.1 to 8.4, a senator or member shall certify in writing that the travel be used for non-commercial purposes, in accordance with guidelines developed by the Special Minister of State."

HISTORY

1973

The Government introduced a system entitling former senators and members with at least eight years' parliamentary service to unrestricted travel within Australia for the same number of years as they had served in Parliament. The entitlement was abolished in 1975.

1976

The Remuneration Tribunal noted in its *1976 Review* that "after a senator or member completes his term of office there is usually a period in which he is invited to public functions,

asked to give talks and is involved in servicing requests from his former constituents". Accordingly, the Tribunal determined, via *Determination 1976/6*, as follows:

"**2.35** A senator or member, not qualifying for a Life Gold Pass on retirement, shall be eligible to travel at official expense for non-commercial purposes within Australia on scheduled commercial/commuter air services, mainline rail services, or by motor coach or other vehicles operating as regular carriers, for the following periods:

- service in one Parliament – travel for a period of six months from the date of retirement from the Parliament;
- service in two Parliaments – travel for one year from the date of retirement from the Parliament; and
- service in three or more Parliaments – travel for a period of two years from the date of retirement from the Parliament.

2.36 A former Prime Minister shall be entitled at official expense to first class travel.

2.37 A senator or member who has not served as Prime Minister shall be entitled at official expense to:

(i) first class travel by mainline rail; and

(ii) economy class travel on air flights.

2.38 Severance travel does not extend to the spouse of a senator or member."

1977

The Tribunal varied the period of travel to apply from the date of retirement for those with service in more than three Parliaments as follows:

- service in four Parliaments – three years;
- service in five Parliaments – four years;
- service in six Parliaments – five years.

In addition, the Tribunal amended the provisions regarding class of travel to ensure that all persons (including former Prime Ministers) utilising the entitlement were permitted the same class of travel as determined from time to time for sitting senators or members (*Determination 1977/9*).

1978

The Tribunal determined that periods of broken service could not be accumulated for the purpose of establishing the entitlement (*Determination 1978/9*).

1979

Following a number of submissions from senators and members, the Tribunal reversed its 1978 decision concerning the accumulation of broken periods of service, subject to any future entitlements being reduced by the amount already utilised (*Determination 1979/10*).

1993

In line with similar changes made to the Life Gold Pass (LGP) entitlement, the Tribunal introduced a cap of 25 return trips per annum for members and senators with service in two or more Parliaments. For those with service in only one Parliament, travel was capped at 12 return trips (*Determination 1993/18*).

1998

The Tribunal determined that frequent flyer points accrued as a result of severance travel could only be used to reduce the cost of future severance travel by the person accruing the points. Further guidelines, including the provision that details of the use of frequent flyer

points must be reported to the Special Minister of State, were also inserted into the relevant Determination (*Determination 1998/1*).

The Tribunal also determined that travel "within Australia" should exclude the external Territories (i.e. Christmas Island, Norfolk Island and the Cocos (Keeling) Islands).

In its January 1998 *Statement on Members of Parliament – Remuneration and Allowances*, the Tribunal noted that the Government had sought its view on whether periods of broken service, for which severance travel had already been claimed, could be counted again for eligibility for a LGP. The Tribunal advised that "double counting should not occur".

2001

The Auditor-General's report on *Parliamentarians' Entitlements: 1999-2000*, released in August 2001, found that the parliamentary entitlements framework was poorly structured, too complex and not sufficiently transparent. The criticisms of severance travel were similar to those made regarding the LGP entitlement. They related, in the main, to information systems and administrative procedures which did not provide a sound basis for managing the entitlement.

On 27 September 2001, the Prime Minister issued a press release which announced, amongst other things, that future expenditure by severance travel beneficiaries would be publicly disclosed on a six monthly basis.

2003

The Tribunal moved the provisions regarding frequent flyer points to another part of the relevant Determination (*Determination 2003/14*).

2004

Referring in its April 2004 *Statement – Annual Review of Parliamentary Allowances for Expenses of Office* to the need for greater accountability and transparency of former parliamentarians in relation to their use of the severance travel entitlement, the Tribunal included a provision requiring those undertaking severance travel to certify in writing that their travel was for non-commercial purposes "in accordance with guidelines developed by the Special Minister of State" (*Determination 2004/10*).

OVERSEAS STUDY TRAVEL

Tribunal Comment

The notion that it is preferable to have well-informed parliamentarians is inarguable. However, it is not necessarily the case in the modern world that an overseas study provision is an essential part of forming a well informed parliamentarian.

Since this provision was introduced, overseas travel has become the norm, particularly amongst well educated, high achieving individuals, which is hopefully the cohort from which parliamentarians are drawn. Reports over recent years[4] have assessed around one million Australians, or nearly 5% of the population as living overseas at any one time. It is now a common experience for Australians, especially young Australians, to have a wide range of experiences before settling into a career. It is likely to be the case that very few people entering Parliament will not already have some breadth of experience.

As well, since the original introduction of overseas study provisions, the material available in Australia through various media has expanded at what would have been previously an almost unthinkable rate. The internet has become a part of everyday experience, so that views from around the world can be considered in real time. Other media, such as international television networks, which represent a variety of points of view and political positions, provide up to date news and discussion of issues 24 hours a day.

While there remains value in personal experience, it is hard to argue the case that a specific provision which encourages parliamentarians to travel serves any essential purpose. Indeed, a perception may exist in some parts of the community that parliamentarians avail themselves of overseas study provisions because they can, rather than for any other reason.

In the modern environment it may be preferable to allow a parliamentarian to decide how they want to inform themselves, and give them additional salary to allow this, rather than having a provision specifically aimed at overseas travel.

Options

The options are:

- Maintenance of the provision
- Cashing out the provision, or
- Some variation to the provision to allow parliamentarians more flexibility in its usage.

In reality, the third option can be best accomplished by adopting the second option. Trying to restructure the existing scheme to provide more flexibility would be likely to

[4] For example the Australian Chamber of Commerce and Industry, at http://www.acci.asn.au/text_files/issues_papers/Emigration/Australians%20Living%20Overseas%20_December%202004_.pdf

create a bureaucratic nightmare for both parliamentarians and those charged with its administration.

Recommendations

The Tribunal recommends cashing out this provision. The individual parliamentarian will then have access to funds in the form of additional salary, which the member can use as he or she sees fit.

For parliamentarians who have accrued an entitlement to study travel in the current parliament, the entitlement to travel should perhaps be retained, so long as all travel available is used within a reasonable period after the next election – perhaps 18 months.

OVERSEAS STUDY TRAVEL

The Overseas Study Travel entitlement enables senators and members to travel overseas for the purpose of undertaking studies and investigations of matters related to their duties and responsibilities as a member of parliament. Spouses may join or accompany parliamentarians utilising this entitlement.

CURRENT FEATURES

The entitlement is provided for, currently, in *Remuneration Tribunal Determination 2006/18: Members of Parliament – Entitlements*, as follows:

"**9.1** A senator or member shall be entitled to financial assistance from the Government for travel outside the Commonwealth of Australia for the purpose of undertaking studies and investigations of matters related to their duties and responsibilities as a member of parliament under the following conditions:

(a) the initial entitlement accrues when the senator or member has completed three years service in Parliament, such service to be deemed to have commenced from the date on which he or she is first entitled to receive salary and allowances. For qualification for this entitlement broken service may be counted provided that the re-election occurs within 6 years of leaving Parliament;

(b) a further entitlement accrues to a senator or member once only in the life of each subsequent Parliament;

(c) each entitlement shall be equivalent to the value of a scheduled commercial round the world first class air fare (home base-London-home base) via Eastern Hemisphere Route and Atlantic-Pacific Route) calculated as the cost of the said air fare on 1 July of the year that the entitlement is first used;

(d) the entitlement is available for use on more than one overseas study journey but may only be used for the cost of:

(i) fares for the senator or member, including charter and hire transport charges, but not the cost of ship cruises;
(ii) fares of a spouse accompanying or joining the senator or member on an overseas study journey;
(iii) accommodation and subsistence costs actually incurred for the senator or member or spouse,
(iv) departure tax, health and baggage insurance, inoculations and passport and visa fees for the

senator or member and for an accompanying or joining spouse;

and for the senator or member:

(v) conference and/or seminar fees;
(vi) mobile phone hire;
(vii) interpreter and translation services;
(viii) internet connection fees / internet cafes;
(ix) faxing of documents back to Australia; and
(x) expenses for study items posted / couriered back to Australia.

(e) an entitlement, or part thereof, which has not been used by an eligible senator or member during the life of one Parliament, or before the commencement of the next Parliament in accordance with clauses 9.10 and 9.12 may be carried forward to be used by the senator or member during the life of the next Parliament, provided that the maximum amount which may be carried forward is one half of the cost of the air fare as defined in 9.1(c).

9.2 A senator or member shall be permitted to draw upon the entitlement available for overseas study purposes upon submission to the Special Minister of State of a statement in writing:

(a) prior to embarking upon the overseas journey, stating

(i) the purpose or purposes of the journey,
(ii) the period of the visit and a detailed proposed itinerary, and
(iii) whether or not the senator or member will be accompanied or joined by their spouse; and

(b) within 30 days upon return from the overseas journey, reporting

(i) confirmation of the purpose or purposes of the journey and the itinerary, including any changes to the purpose or purposes and itinerary
(ii) key meetings and the main findings or outcomes, and
(iii) conclusions drawn relating to the relevance of the tour to the senator's or member's parliamentary responsibilities.

9.3 The statement required as set out in clause 9.2 may, in exceptional circumstances and with the approval of the Special Minister of State, be submitted to the Special Minister of State as soon as is practicable after commencing an overseas journey.

9.4 A senator or member who fails to submit a statement in accordance with clause 9.2 will not be permitted to draw upon the entitlement for overseas study purposes until such time as that statement is received by the Special Minister of State.

9.5 Copies of statements referred to in clause 9.2 may be obtained from the Special Minister of State upon request by any member or senator. The statements may be tabled in the Parliament at the discretion of the Special Minister of State.

9.6 A claim for reimbursement of expenses incurred by senators or members must be submitted within 90 days from the date the travel is completed. Upon receipt of a written request from a senator or member within the 90 day period, the Special Minister of State, or his or her nominee, may approve an extension of time to submit a claim. Where a claim is submitted after the 90 day period has elapsed, and where the Special Minister of State, or his or her nominee, has not approved an extension of time, payment of a claim will not be made.

Where a claim is made under this provision, a senator or member is not entitled to claim or receive reimbursement from any other source for the same benefit.

9.7 Reimbursement of expenses as provided in clause 9.6 is subject to the provision of receipts for major expenses, certification for minor expenses and a statutory declaration of expenses where receipts cannot be produced.

9.8 The entitlement of a senator or member to travel at government expense within Australia on parliamentary or electorate business and the entitlement of a spouse to travel within Australia at government expense shall not be used to offset the cost of overseas study travel.

9.9 The entitlement to overseas study travel shall cease when a person is no longer a member of Parliament.

9.10 No overseas travel is to be commenced following the dissolution of Parliament, other than by a senator who is not required to be re-elected at the consequent election.

9.11 A senator who does not seek re-election but whose term does not expire for a period beyond the date of an election following the dissolution of Parliament may not commence overseas travel following that dissolution.

9.12 A senator or member may commence overseas travel from the declaration of a poll re-electing the senator or member to the Parliament. However, the Special Minister of State shall have a discretion to be exercised only in special circumstances to allow overseas travel to be commenced by a senator or member from the date of the poll and prior to the declaration of the poll.

9.13 For the purpose of clauses 9.1 – 9.12, the entitlements available in relation to the 'spouse' of a senator or member may be available instead to a nominee, at the discretion of the Special Minister of State."

HISTORY

Late 1960s onwards

According to a Cabinet submission prepared in 1972, senators and members were able to apply travel entitlements within Australia, Australia's external Territories and New Zealand, towards the cost of overseas travel. The submission referred to decisions made by Cabinet in 1967 and 1968 confirming the entitlement.

1973

The incoming Government introduced a system whereby senators and members, in the life of a Parliament, could convert travel entitlements to Australia's external Territories and New Zealand towards the cost of an overseas trip. At the time, the maximum value of this conversion was $2,100. A spouse of a senator or member could also convert the costs of the entitlement to an interstate trip (then $400 per annum) towards the cost of an overseas trip when accompanying the senator or member. In each case, any credits could only be carried over to the following Parliament. The system was suspended in 1975.

1976

The Remuneration Tribunal indicated in its *1976 Review* that it had decided to reinstate an overseas study travel entitlement for parliamentarians "because of Australia's geographical isolation and the benefits to be gained by senators and members of the Federal Parliament from seeing at first hand the social and political trends and developments in other countries".

Accordingly, in June 1976, the Tribunal made its first determination in respect of overseas study travel (via *Determination 1976/6*), as follows:

"**2.47** A senator or member shall be entitled to financial assistance from the Government in order to enable him to travel outside the Commonwealth of Australia for the purpose of undertaking studies and investigations of matters related to his duties and responsibilities as a member of the Parliament.

2.48 The conditions upon which such financial assistance may be obtained and used are as follows:

(i) there is no entitlement until a senator or member has completed three years' service in the Parliament. For this entitlement service in the Parliament shall be deemed to commence from the date on which a senator or member is first entitled to receive salary and allowances;

(ii) after becoming eligible for the entitlement a sitting senator or member shall be credited with an amount of money equal to the cost of a round-the-world (Canberra to Canberra) first class air fare, which credit may then be drawn upon by the senator or member for overseas study travel pursuant to these conditions;

(iii) a credit equal to the cost of a round-the-world (Canberra to Canberra) first class air fare shall be made to an eligible sitting senator or member once only in the life of each Parliament. The cost of the round-the-world air ticket, for the purpose of the calculation of the credit, shall be the cost at the date of the first use of the credit by the senator or member in the life of the Parliament in which the credit falls due;

(iv) this credit may be used by a senator or member for the cost of fares only and shall not be used for accommodation, living expenses and incidental matters nor for any part of the cost of a 'package' tour other than the fare component;

(v) this credit is available for use on more than one overseas study journey during the life of a Parliament;

(vi) this credit may be used towards the cost of the fares only of a spouse accompanying the senator or member on an overseas study journey, and shall not be used towards the cost of accommodation, living expenses and incidental matters incurred by the spouse, nor for any part of the cost of a 'package' tour other than the fare component; and

(vii) a credit, or part thereof, which has not been used during the life of one Parliament by an eligible senator or member may be carried forward to be used by a sitting senator or member during the life of the next Parliament, provided that an unused credit may be carried forward to be used only during the life of that next Parliament, and provided further that the maximum amount of the unused credit which may be carried forward is one-half of the cost of a round-the-world (Canberra to Canberra) first class air fare.

2.49 A sitting senator or member shall not be permitted to draw upon the credit available to him for overseas study purposes unless and until he has submitted to the Minister for Administrative Services, prior to his embarking upon the overseas journey, a statement in writing setting out fully:

(i) the purpose or purposes of the journey,
(ii) a detailed itinerary of the places intended to be visited,
(iii) the names and positions of persons with whom it is intended that discussions be held; and

(iv) whether or not the senator or member will be accompanied by his spouse.

(A copy of the above statement may be obtained from the Minister upon request by any member of either House of the Parliament and the statement may be tabled in the Parliament at the discretion of the Minister.)

2.50 The entitlement of a senator or member to travel at official expense within Australia on parliamentary or electorate business shall not be used to offset the cost of overseas study travel.

2.51 The entitlement of a spouse to travel within Australia at official expense, shall not be used to offset the cost of overseas study travel.

2.52 The entitlement to overseas study travel shall cease when a person is no longer a member of Parliament and no travel is to be initiated following the dissolution of Parliament. No travel shall be initiated by a senator after the writs for an election for his seat have been issued unless and until he is subsequently re-elected to the Senate."

Determination 1976/6 also contained a provision restoring credits applicable to overseas travel as at 11 November 1975 "up to the limit set by the new system for accumulation from one Parliament to the next".

1977

The Tribunal determined that the written statement to be provided to the Minister for Administrative Services prior to travel must include information concerning the length of the proposed visit. The requirement that it should also list the names and positions of persons with whom meetings would be held was omitted (*Determination 1977/9*).

1978

The Tribunal clarified the provisions regarding the initiation (or commencement) of travel by senators around the time of an election. It also determined that senators or members may "initiate travel from the declaration of a poll re-electing the senator or member to the Parliament" (*Determination 1978/9*). In addition, the Minister for Administrative Services was provided with the discretion, in "special circumstances", to allow travel to be initiated by a senator or member from the date of the poll and prior to the declaration of the poll.

1980

A provision allowing carried forward credits to be "adjusted at the time of any subsequent use … in accordance with the percentage movement in the cost of the said air fare since the latest use of the entitlement by the senator or member" was inserted into *Determination 1980/8* by the Tribunal.

1981

The Tribunal specified that a round-world (Canberra to Canberra) airfare meant a "Canberra-London-Canberra via Eastern Hemisphere Route and Atlantic-Pacific Route" airfare (*Determination 1981/13).* In addition, the cost of fares was expanded to include "charter and hire transport charges".

1982

The use of the entitlement to pay for "ship cruises" was proscribed by the Tribunal (*Determination 1982/11).*

1984

Following a submission from the Government, the Tribunal extended the entitlement for a spouse to accompany a senator or member to include a "nominee" with whom the senator or member had "established a bona fide stable domestic relationship" (*Determination 1984/18*).

The Tribunal also decided that some actual accommodation and subsistence costs could be covered by the entitlement "up to a maximum of one third of the cost of fares, including charter and hire transport charges".

1986

All references to a "nominee" in relation to the overseas study travel entitlement were removed from the then current determination (*Determination 1986/11*) by the *Remuneration and Allowances Alteration Act 1986*, the main object of which was to lower the salary increase determined in that year by the Tribunal for members of Parliament. The amendment relating to nominees was put forward by Senator Brian Harradine.

1992

The Tribunal inserted a new provision into the relevant Determination noting that for the purpose of the overseas study travel entitlement, "spouse" in relation to a senator or member was "as defined in the *Parliamentary Entitlements Act 1990*" i.e. "a person who is living with the [senator or member] on a genuine domestic basis although not legally married to the [senator or member]" (*Determination 1992/10*).

The Tribunal also decided to increase the limit on reimbursement of accommodation and subsistence costs from one third to half the cost of the fares for the visit. This was in line with the Government's submission that the balance between the two cost components had become distorted as airfares "have tended to become more flexible and on occasion reduce as a result of structural changes within the airline industry", while accommodation and subsistence costs "have tended generally to increase and to be subject to great variation around the world".

1998

The Tribunal, via *Determination 1998/1*, made a number of major modifications to the entitlement including:

- changing the qualification period so that broken service could be counted "provided that the re-election occurs within 6 years of leaving Parliament";
- removing the limit on reimbursement of accommodation and subsistence costs actually incurred, within the overall limit specified in the provisions;
- requiring the submission within 30 days of return of a post-study travel statement outlining any changes to the purpose and itinerary for the visit, main findings or outcomes, and the relevance of the tour to the senator's or member's parliamentary responsibilities;
- banning the use of the entitlement where the senator or member did not submit a pre- or post-study travel statement; and
- mandating that frequent flyer points accrued as a result of overseas study travel could only be used to reduce the cost of future travel under the provisions of the Determination by the person accruing the points and that the details of such usage should be reported to the Special Minister of State.

The changes regarding travel statements were proposed by the Government. The other changes were made for consistency with other entitlements or were made to ensure that senators or members could "design their study tours to maximum effectiveness in line with the purpose of the visit".

2003

The Tribunal decided to make a number of changes to the overseas study travel entitlement, via *Determinations 2003/14* and *2003/20*, including:

- extending the range of reimbursable items, within the overall limit specified in the provisions;
- providing the flexibility for spouses to join, rather than to just accompany, senators and members travelling overseas;
- enabling senators and members in exceptional circumstances, with "the prior approval of the Special Minister of State", to submit pre-study travel statements after travel has commenced;
- moving the provisions regarding frequent flyer points to another part of the determination;
- introducing a time limit for the lodgement of claims for reimbursement of overseas study travel costs.

Many of the changes were based on submissions invited over previous years from senators and members, the Government and the Opposition. The new provision regarding the commencement of travel recognised a number of instances where the previous requirement had proven to be restrictive in its application - for example, when senators and members already overseas on a parliamentary delegation wished to use their entitlement to extend their trip. The time limit on lodgement of claims was consistent with the Tribunal's domestic travel provisions.

2004

The Tribunal, reflecting its intention to allow overseas study travel to be granted in exceptional circumstances to a senator or member while already overseas, removed the reference to "prior" in relation to the approval to be given by the Special Minister of State (*Determination 2004/10*).

2006

The Tribunal determined that the value of the overseas study travel entitlement was henceforth to be calculated on the basis of a scheduled commercial round the world first class air fare "home base-London-home base", instead of Canberra-London-Canberra as previously specified. It also determined that the value of the entitlement would be calculated on "1 July of the year that the entitlement is first used" (*Determination 2006/18*).

Accountability arrangements were also tightened and types of expenses clarified. In addition, the Tribunal made it clear that where a claim is made for reimbursement of expenses under the entitlement, "a senator or member is not entitled to claim or receive reimbursement from any other source for the same benefit".

Later that year, the Tribunal determined that the entitlements available to a "spouse" of a senator or member might be "available instead to a nominee, at the discretion of the Special Minister of State" (*Determination 2006/20*).

2008

The definition of "spouse" referenced in the Tribunal's determination was amended via the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008* to mean as follows: "spouse of a member includes a de facto partner of the member within the meaning of the *Acts Interpretation Act 1901*". The current definition of "de facto partner" in the *Acts Interpretation Act 1901*, which was also amended in 2008, encompasses partners of the same or a different sex.

ELECTORATE ALLOWANCE

Tribunal Comment

Electorate allowance has been paid as a separate allowance for a long period of time. However, as the attached history shows its presumed purpose has changed over the years. It is also the case that other sources for providing assistance to parliamentarians – for example, private plated vehicles – have developed over the life of the allowance.

While the Tribunal accepts that parliamentarians still have varying levels and types of necessary expenditure in maintaining their roles as representatives, the question that is raised is whether an electorate allowance remains an essential method of delivering that funding to the parliamentarians.

Indeed, the Tribunal understands that for taxation purposes electorate allowance is regarded, at the time of parliamentarians submitting their tax returns, as income. All of the allowance that is not expended on allowable deductions attracts income tax. In the long run, it may be the case that the allowance, as it is currently structured, attracts unmerited criticism to parliamentarians without providing them with any inappropriate advantage.

The Tribunal is of the view that a re-examination of this would be in the interests of the parliamentarians themselves. In line with the principle of openness expressed in the current review, it may be appropriate to declare the allowance as the income it is. The Tribunal has been advised that this will have no effect on the ultimate tax treatment of amounts spent by parliamentarians on deductible items.

The Tribunal also notes that there have been three rates of electorate allowance, based on electorate size, since 1986, a time prior to the introduction of private plated vehicles. It may not be the case that there is any continuing rationale for middle-sized electorates to receive an amount additional to the basic amount. Any case that is made for an additional amount in respect of certain classes of electorate (for example, the very large ones) should be based on a sound business case demonstrating necessary expenditure on specific items.

In this case, additional allowance should be considered a business expense and be fully accounted for.

Recommendations

The basic allowance, which is the same for each parliamentarian, should be clearly included in the salary package.

Additional electorate allowance, where it remains an appropriate entitlement, should be included with some other form of provision for business expenditure, such as charter allowance, and should be subject to the same rigours as other business expenses – that is, it should be accounted for and not convertible to salary.

ELECTORATE ALLOWANCE

The Electorate Allowance is an expense of office allowance for senators and members to provide them with funding for costs necessarily incurred in providing services to their constituents. It is paid monthly with the member's salary. The allowance is not taxed on a 'Pay As You Go' basis, but must be declared to the Australian Taxation Office as taxable income from which certain expenditure may be allowed as deductions for taxation purposes.

CURRENT FEATURES

The entitlement is provided for currently, in *Remuneration Tribunal Determination 2006/18: Members of Parliament – Entitlements*, as follows:

"**1.1** A base rate of electorate allowance of $32,000 per annum is payable to each Senator and Member of the House of Representatives.

1.2 A supplementary electorate allowance of $6,000 per annum, in addition to the base rate of electorate allowance, is payable to a Member of the House of Representatives representing an electorate of between 2,000km² and 4,999km² inclusive.

1.3 A supplementary electorate allowance of $14,000 per annum, in addition to the base rate of electorate allowance, is payable to a Member of the House of Representatives representing an electorate of between 5,000km² or more."

HISTORY

Prior to 1952

A member of parliament received a salary (or parliamentary allowance) out of which he or she paid all expenses except those reimbursed by stamp and travelling allowances. Some travel and telephone facilities were also provided.

The whole of the member's salary was included in assessable income for taxation purposes, but the Commissioner of Taxation allowed some deductions for expenses incurred.

1952

The *Committee of Enquiry into the Salaries and Allowances of Members of the National Parliament*, chaired by Mr Justice H S Nicholas, was announced by the Prime Minister in 1951 and made its report on 14 January 1952.

It recommended, amongst other things, that each parliamentarian should receive, in addition to his or her salary, "an annual sum not liable to taxation or to statutory deduction [in respect of the weekly contribution to the member's retiring allowance fund] which would supersede any deduction for expenses now made by the Commissioner for Taxation".

For senators, the Committee recommended "that the sum payable be £550 per annum" (approximately $1,100).

With respect to members of the House of Representatives, the Committee recommended that the electorates be divided into five groups and that each member should be paid "the amount tax free set out below, opposite the number of the group in which his electorate is included":

Group I	£400 (approximately $800)
Group II	£500 ($1,000)
Group III	£600 ($1,200)
Group IV	£750 ($1,500)
Group V	£900 ($1,800)

Group I included mainly urban electorates and the Australian Capital Territory. Group V comprised the electorates of Darling, Kennedy, Leichhardt, Maranoa, Grey, Kalgoorlie and Northern Territory, some of which are still amongst the largest electorates today.

The groupings were the same as those then adopted by the Commissioner for Taxation and were based on factors such as the size of the electorate, the travel facilities available in it, the location of its principal towns and industries, and the number of electors.

The Committee noted that, under the *Income Tax and Social Services Contribution Assessment Act 1936* as in force at the time, allowable deductions for the purposes of a member of parliament's income tax included:

- electorate allowance "covering expenses for travelling, entertainment, etc, incurred by a member, in his electorate, in the performance of his parliamentary duties";
- expenses incurred by a member, including the cost of accommodation, in attending at the Australian Capital Territory for Sessions of Parliament;
- election expenses to the extent that they are borne by the member and are not reimbursed or met by some other person or organisation;
- depreciation in respect of a motor car or office equipment (including libraries), to the extent to which the car or equipment is used by a member in connection with parliamentary duties;
- contributions to the Parliamentary Retiring Allowances Fund;
- donations to institutions or funds in the category of public institutions, public benevolent institutions, public war memorials etc.

In support of its conclusions, however, the Committee also noted evidence "that in a number of instances the amount available to a member or senator after taking account of the expenses necessarily or actually incurred in the performance of his duties was less than half his nominal salary and in some instances was less than the basic wage".

Regarding the amount set for senators, the Committee observed that "a senator, although he represents the State as one electorate, is not faced with the same calls nor is he so closely in contact with his constituents as a member of the House of Representatives".

The Committee's recommendations were adopted via the *Parliamentary Allowances Act 1952*, which received Royal Assent on 13 March 1952.

1956

On 8 August 1955, the Prime Minister announced the setting up of a *Committee of Inquiry into the Salaries and Allowances of Members of the Commonwealth Parliament*, to be chaired by Sir Frank Richardson. The Committee's report was tabled in Parliament on 18 April 1956.

The Committee recommended, amongst other things, that the allowance for "electorate and other parliamentary expenses" should be paid to all senators and members as follows:

Members whose electorates are classified under Group I (approximately $1,200)	£600 per annum
All other Members	£800 per annum ($1,600)
All Senators	£700 per annum ($1,400)

Electorates under Group I, as before, included urban electorates and the Australian Capital Territory.

The Committee noted that it had questioned the justification behind the six classes of allowance that were adopted in 1952. Its final recommendation, while acknowledging that expenses differed widely not only in different classes of electorates but within the same type of electorate, was based on the view that there was "a difference between the expenses of a city Member who travels his electorate and returns home every evening and a country

Member or Senator who has hotel bills and extra travelling expenses to meet". In addition, it considered that "all Members representing country electorates should be paid the same rate of electorate allowance".

The Committee also recommended the removal of the tax free status of the allowance as it considered "that no section of the community should receive as an allowance for their expenses any sum of money which is statute barred from income tax".

The Committee noted that it sought to achieve two things by its recommendations: to "reimburse a Member for what he spends in legitimate expenses" and to "minimise the number of points of entry into the public purse – by making the electorate allowance as all-embracing as possible". In this context, the Committee observed that it had made some provision in its recommended electorate allowance for car and other travelling expenses, stamps, and some telephone expenses.

The above recommendations were adopted by Parliament and consequent changes made by the *Parliamentary Allowances Act 1956*, which amended the *Parliamentary Allowances Act 1952* with effect from 1 July 1956.

1959

The Prime Minister announced on 17 January 1959 that the Government would set up another independent *Committee of Inquiry into the Salaries and Allowances of Members of the Commonwealth Parliament*, to be chaired once again by Sir Frank Richardson.

The Committee recommended, amongst other things, that "the *Parliamentary Allowances Act 1952-1956* be amended so that allowances for the reimbursement of electorate expenses shall be payable as follows:

(a) to a Senator £800 [$1,600] a year;
(b) to a Member of the House of Representatives for an electorate specified in the Schedule hereto £850 [$1,700] a year; and
(c) to a Member of the House of Representatives for an electorate not so specified £1,050 [$2,100] a year".

The composition of the urban electorate group specified in the Schedule changed slightly from previous years (i.e. the Shortland and Hunter electorates were regraded as country electorates).

In support of its recommendations, the Committee noted evidence that the financial position of many parliamentarians was "growing worse each year and they are eating into their savings or falling into debt". It observed that the electorate allowance rates recommended were, in the Committee's opinion, "no more than sufficient to ensure that Members shall have available for the maintenance of themselves and their families, for the upkeep of their homes, for the education of their children, and for the outgoings normally paid by persons in private employment out of their remuneration, the full amount of their parliamentary salaries (less, of course, the compulsory Retiring Allowance contributions)".

The Committee also noted that the expenses which it expected to be covered by the electorate expense allowance included:

- postage;
- travelling within the electorate by the senator or member's own car, public transport, hire-cars and taxi cabs, "with some provision for car depreciation and repairs";
- donations, subscriptions, etc. (such as expenditure at annual balls, fetes and other functions);
- telephone rental and local calls from home;
- accommodation and living expenses associated with interstate tours and visits to the Territories;

- for country senators and members, travelling expenses for accommodation on trips within the electorate;
- obligatory entertainment expenses within the electorate and in Canberra.

The above recommendations were adopted via the *Parliamentary Allowances Act 1959*, which amended the *Parliamentary Allowances Act 1952-1956* with effect from 1 March 1959.

1964

The *Parliamentary Allowances Act 1952-1959* was amended by the *Parliamentary Allowances Act 1964* to put in place the following rates of electorate allowance:

Senators	£1,050 [$2,100]
Members: city electorates	£1,100 [$2,200]
Members: country electorates	£1,300 [$2,600].

1968

The *Parliamentary Allowances Act 1952-1966* was amended by the *Parliamentary Allowances Act 1968* to put in place the following rates of electorate allowance:

Senators	$2,650
Members: city electorates	$2,750
Members: country electorates	$3,350.

1970

The *Parliamentary Allowances Act 1952-1968* was amended by the *Parliamentary Allowances Act 1970* to bring the rate for senators up to the rate for city members (with no change to that rate). In addition, the composition of the urban electorate group was changed to reflect the 1968 distribution of electorates.

1971

On 16 September 1971, the Prime Minister announced that an inquiry would be held into the *Salaries and Allowances of Members of the Parliament of the Commonwealth*, and that it would be undertaken by Mr Justice John Kerr.

Mr Justice Kerr reported his findings in December 1971. With respect to the electorate allowance, he recommended that "the present classification of electorates into city (or urban) and country electorates continues and that the electorates categorised as those attracting the lower rate be those currently listed in the schedule to the Parliamentary Allowances Act". He also proposed that "the annual rate of electorate expenses allowance for Senators be $3,200, for Members representing city (or urban) electorates be $3,200, and for Members representing country electorates be $4,100".

During his investigations, Mr Justice Kerr noted that although the allowance was generally accepted "as proper in conception and soundly based", there were suggestions from some senators and members that the allowance "was inadequate, that some items not currently taken into account should now be included, that some items now covered in the allowance – such as expenditure on stamps – should be treated separately and separate allowances be provided for them, that the number of categories of allowance should be increased, and that the allowance for Senators should be increased to that provided for country electorates".

In response, Mr Justice Kerr noted that:

- he was not persuaded that there was a strong enough case to justify any change in the approach to the electorate expenses system;

- the line between parliamentary expenses which may be charged against the allowance and direct political expenses which may not (e.g. expenditure on elections and contributions to political parties) was sometimes blurred but the distinction should be kept and had been taken into account when fixing the recommended amount of the allowance;
- the recommended allowance took into account cost increases with respect to travel, postage and telephone charges etc.;
- the general levels of the allowance should not "be set at the highest limits of actual individual expenditure" … a figure "which is not niggardly but not over-generous operates as a kind of sanction or aid to self-discipline to keep expenditure within bounds";
- if a senator or member made a decision to "exceed the allowance by way of expenditure then, if properly vouched, more than the allowance can be claimed for tax purposes";
- items such as the provision of staff and office machines were appropriate for decision administratively by those responsible for staff and office services for parliamentarians;
- although there was evidence of increased activity by senators in comparison with earlier years, they "did not have the same commitments that a Member has in his own electorate" and the creation of a new category of allowance or an allowance equal to that for country electorates was not warranted;
- some "administrative examination" might be appropriate regarding large and remote electorates and the issues of charter aircraft and travel by spouses.

Finally, Mr Justice Kerr recommended the establishment of a tribunal authorised by legislation to review the salaries and allowances of senators and members and to report at regular stated intervals. He noted that this tribunal could look at the electorate allowance "including the number of categories of the country allowance, where the line between categories should be set, what should be the allowance for Senators in relation to other categories of allowance and what should be the principles in accordance with which distinctions should be made".

Cabinet documentation from the time shows that though the Government broadly accepted Mr Justice Kerr's recommendations, it thought it desirable to "give a lead in moderation and restraint in the field of wage and salary increases" (Decision No. 621(M)). The recommendation regarding the tribunal was progressed, however, leading to the establishment of the Remuneration Tribunal.

1973

Amendments to the *Parliamentary and Allowances 1952-1970* set a single rate of electorate allowance for all senators and members of $4,100 per annum.

1974

In its first determination on the electorate allowance, made on 19 July 1974, the Remuneration Tribunal maintained the rate set the previous year, i.e. $4,100 per annum. In its publication *Remuneration Tribunal Act: Reports and Determinations: July 1974*, the Tribunal acknowledged, however, that "there may well be a strong case for the re-introduction of two (or more) levels of the allowance but the material available to us did not persuade us to make such a decision at this time".

The Tribunal described the allowance as being fixed at a "reasonable amount to reimburse Members for expenses incurred in the performance of their duties". It also reported its impression that the allowance was "dispersed largely by way of motor car expenses, overnight accommodation expenses within the electorate, and donations and subscriptions to associations, clubs and institutions".

It should be noted that the Tribunal also determined a separate stamp allowance of $300 per annum for all senators and members.

On 25 July 1974, the Senate disapproved all the initial determinations made by the Tribunal on salaries and allowances for parliamentarians.

1975

On 3 March 1975, the Tribunal made a determination which again set the electorate allowance at $4,100 per annum for all senators and members.

1976

The Tribunal, via *Determination 1976/6*, increased the rate of electorate allowance and, based on electorate size, reintroduced two levels of allowance for members of the House of Representatives. The relevant provisions were as follows:

"**1.2** Electorate Allowance:

(i) A senator shall receive an electorate allowance at the rate of $5,400 per annum.

(ii) A member of the House of Representatives shall receive the following electorate allowance:

- electorate of less than 5,000 square kilometres
  - at the rate of $5,400 per annum
- electorate of 5,000 square kilometres or more
  - at the rate of $6,750 per annum."

In its *1976 Review*, the Tribunal noted that it was "satisfied that the rate of electorate allowance should be increased, primarily because of the escalation in costs since the present rate was set". It also noted that "while the items covered by electorate allowances vary from State to State, an imbalance has developed between the Federal and State Parliaments", i.e. most State parliamentarians had higher electorate allowances than senators or members.

With respect to the introduction of the two levels of allowance, the Tribunal considered it appropriate to make this change as "expenses necessarily incurred by members of the Parliament from large electorates exceed those of members from the geographically smaller electorates due to dispersal of population over large areas". However, it "conformed to past practice in relating the electorate allowance for senators to the lower rate".

It should be noted that, in response to a request from the Minister for Administrative Services, the Tribunal also inquired into a number of matters not previously reviewed. As a result, it determined (also via *Determination 1976/6*) the following entitlements for senators and members:

- travel at official expense on electorate business within Australia on scheduled commercial/commuter air services, mainline rail services, or by motor coach or other vehicles operating as regular carriers;
- a mileage allowance at the then "current Public Service rates up to the equivalent cost of commercial air, rail or motor coach fares which would otherwise have been an official expense" when the senator or member's private vehicle was used to undertake a journey;
- a two tier system of charter transport allowance for members with electorates over 30,000 sq km in area and senators from the Northern Territory;
- the carriage of an additional piece of luggage at official expense when travelling by air;
- most costs associated with supplying a telephone service in the senator or member's private residence;
- a telephone card for trunk calls and phonograms within Australia;
- 12,000 postage pre-paid (within Australia) official Parliament House envelopes, to be posted only from Parliament House;
- a franking machine for use in the electorate office.

The Tribunal also determined an additional travelling allowance, in respect of up to twelve overnight stays per annum, payable to all members and to senators from the Northern Territory for travelling within their electorate on parliamentary or electorate business provided that, amongst other things, he or she was at least 150 kilometres from his/her home base.

It appears that a number of these entitlements were previously provided by alternative means (further research would be required to establish a clearer picture).

1977

The Tribunal increased the lower rate of electorate allowance to $6,000 per annum and the higher rate to $7,500 per annum (*Determination 1977/8*). In its *1977 Review*, it noted that this was broadly in line with the movement in the Consumer Price Index (CPI) (excluding hospital and medical services) over the period since the last review.

The Tribunal also determined that the higher rate would apply to a member representing an electorate with a population of 120,000 persons or more. This followed on from the receipt of submissions arguing that electorates with relatively large populations imposed additional burdens on members, often related to large non-elector populations of children and migrants.

In related developments, the Tribunal varied its previous determination by determining that the cost of installation and rental of a telephone service in the private residence of a senator or member would be at his or her own expense (*Determination 1977/9*). All calls from that service, however, would now be at government expense.

1978

The Tribunal increased the lower rate of electorate allowance to $9,000 per annum and the higher rate to $13,000 per annum (*Determination 1978/8*). According to the *1978 Review*, this was in line with submissions received which contained "persuasive evidence on costs of transport within the electorate (usually by private car), the cost of accommodation when the entitlement of twelve overnight stays in the electorate is exceeded, the cost of accommodation when travelling within Australia on party committee business and the need for some further items of office equipment".

The Tribunal also noted that it now expected the electorate allowance to "meet expenditure for the following: a major part of travel within the electorate, in particular private vehicle running expenses, and any accommodation within the electorate in excess of the existing entitlement; accommodation expenses when travelling within Australia on party committee business; entertainment expenses within the electorate and in connection with parliamentary duties elsewhere in Australia; donations and subscriptions including those to clubs, and associations; office equipment and supplies additional to the standard supply, such as repetitive typewriter, subscriptions to journals and telephone services and postage in addition to the entitlements determined".

The Tribunal also removed the references to the population size of the electorate from the relevant provisions of the Determination. This was based on electoral re-distributions, which meant that disparities between electorates had been greatly reduced.

In related developments, the Tribunal (via *Determination 1978/9*) decided to:

- abolish the mileage allowance in relation to travel using the senator or member's own private vehicle (except for trips to or from Canberra);
- provide telephone answering equipment at government expense; and
- expand the charter transport entitlement.

1979

The Tribunal was not persuaded that there should be any changes to the electorate allowance since the last annual review.

1980

The Tribunal increased the lower rate of electorate allowance to $11,500 per annum and the higher rate to $16,750 per annum (*Determination 1980/6*). In its *1980 Review*, the Tribunal noted that it had determined the increase to "take reasonable account of higher costs, predominant amongst which is the higher cost of running a vehicle since the last review".

1981

By *Determination 1981/10*, the Tribunal increased the lower rate of electorate allowance to $12,600 per annum and the higher rate to $18,400 per annum. According to the *1981 Review*, this reflected "higher costs including motor vehicle running expenses and accommodation expenses".

The Tribunal also noted its view that "accommodation and associated expenses, such as those incurred whilst travelling on party Committee business and for a major part of electorate travel, should continue to be met from the electorate allowance".

1982

The Tribunal, via *Determination 1982/8*, reintroduced a rate of electorate allowance based on the population size of the electorate. The new rates, which according to the *1982 Review* "applied the increase in the consumer price index (10.7%)", were as follows:

"**2.** Electorate Allowance:

(i) A senator shall receive an electorate allowance at the rate of $14,000 per annum.

(ii) A member of the House of Representatives shall receive the following electorate allowance:

- electorate of less than 5,000 square kilometres
  - at the rate of $14,000 per annum
- electorate of population of 140,000 or more
  - at the rate of $17,000 per annum
- electorate of 5,000 square kilometres or more
  - at the rate of $20,300 per annum.

3. Population

For the purpose of this determination, 'population' means population as given in the preliminary Census of Population and Housing, 30 June 1981, Australian Bureau of Statistics, as shown at Appendix G."

The *1982 Review* also included the Tribunal's statement that electorate and special allowances "are not intended to be extra remuneration for members: they are intended to reimburse expenses which, in the ordinary performance of their electorate and parliamentary duties, will be incurred". The Tribunal added "the evidence before us suggests that, in general, these allowances are no more than is adequate for their purposes".

1983

The *Salaries and Wages Pause Act 1982*, which came into operation on 23 December 1982, prevented the Tribunal from making any enquiries or determinations except in very reduced circumstances.

The Act was repealed on 7 September 1983 and the Tribunal subsequently made a new Determination covering basic salary and electorate allowance (*Determination 1983/9*). The provisions regarding electorate allowance were, however, substantively the same as in the previous Determination.

1984

In April 1984, the Tribunal increased the lowest rate of electorate allowance to $16,100 per annum, the middle rate to $19,550 per annum, and the highest rate to $23,350 per annum (*Determination 1984/7*). In an accompanying Statement, the Tribunal noted that since the allowance was last adjusted, the CPI had increased by 18 per cent. The increase determined by the Tribunal, having regard to the Wage Principles established by the Australian Conciliation and Arbitration Commission as it was required to do, was a more modest 15 per cent.

The *Remuneration and Allowances Act 1984*, which was assented to on 25 June 1984, subsequently modified the Determination to reduce the electorate allowance rates to: $15,200 per annum (lowest rate), $18,460 per annum (middle rate), and $22,040 per annum (highest rate). In his second reading speech on the related Bill, the Hon Senator Arthur Gietzelt, then Minister for Veterans' Affairs, noted that the Government thought it appropriate to limit the electorate allowance increase, amongst other things, "to that which would flow from the two national wage case decisions which have been handed down since the end of the salaries and wages pause".

The modified rates were reflected in the Tribunal's new *Determination 1984/15*, signed on 29 June 1984.

1985

Once again, the Tribunal removed the references to population size from the relevant provisions of the Determination (now *Determination 1985/8*) and reverted to two rates of electorate allowance.

The new rates were $15,869 (for all senators and members representing electorates of less than 5,000 square kilometres) and $23,010 per annum (for members representing electorates of 5,000 square kilometres or more). These represented a 4.4 per cent adjustment to the highest and lowest rates, respectively. According to the Tribunal's *1985 Review*, this matched the movement in the CPI since the last relevant adjustment was made.

In related developments, the Tribunal made adjustments to charter and travelling allowances based on surveys of relevant cost movements conducted by the Tribunal's Secretariat.

1986

As a result of a review of electorate allowance expenditure initiated in 1985 in order to update the Tribunal's understanding of "current expenditure patterns and to assess the changes resulting from the 1984 electoral re-distribution", the Tribunal (via *Determination 1986/8*) split the existing lower tier for members into two tiers as can be seen below:

"**3.** A senator or member shall receive an electorate allowance as follows:

	Rate per annum of electorate allowance $
senator	17,329
member - electorate of less than 2,000 square kilometres	17,329
- electorate of 2,000 square kilometres or more but less than 5,000 square kilometres	20,605
- electorate of 5,000 square kilometres or more	25,127."

According to the *1986 Review*, the change was made in response to submissions received from members claiming that additional costs were involved in servicing electorates of 2,000 to 4,999 square kilometres when compared with electorates under 2,000 square kilometres, "the vast majority of these latter electorates being urban or city electorates with a minimum country influence". The Tribunal accepted that this argument had substance.

The Tribunal also adjusted the rates of allowance to reflect cost movements since the 1985 adjustment.

In addition, the Tribunal indicated in its *1986 Review* that one of the significant facts arising from the expenditure review "was the impact the fringe benefits tax is having, or may have, on the dollar value of the electorate allowance". In this context, it "accepted that certain items of expenditure expected to be met from such allowance will no longer be tax deductible".

In wider developments, changes to income tax legislation which came into effect from 1 July 1986 permitted deductions to be claimed for employment-related expenses only if the claim could be substantiated by receipts or other specific records. The Australian Taxation Office noted that expenditures met by Members of Parliament out of electorate allowances were subject to the new statutory requirements.

1987

The consultancy firm Cullen Egan Dell Limited was enlisted by the Tribunal to help conduct a special review into pay and allowances for members of parliament. The review was requested by the Australian Government, parliamentarians, the Australian Council of Trade Unions and the Confederation of Australian Industry at a conference held in late 1987 to discuss parliamentarians' remuneration. (The conference was convened by the Tribunal at the request of the Minister for Industrial Relations.)

In the meantime, the Tribunal increased the lowest rate of electorate allowance to $18,958 per annum, the middle rate to $22,542 per annum, and the highest rate to $27,489 per annum (*Determination 1987/14*). As stated in the Tribunal's *1987 Review*, these adjustments were made in accordance with "movements in the eight capital cities consumer price index".

1988

On 18 November 1988, the Tribunal increased the lowest rate of electorate allowance to $21,005 per annum, the middle rate to $24,977 per annum, and the highest rate to $30,458 per annum, with effect from 1 January 1989 (*Determination 1988/15*). These adjustments were again made in accordance with CPI movements in the eight capital cities.

The consultancy firm Cullen Egan Dell's *Report on Pay and Allowances for Members of Parliament* was finalised in November 1988. It recommended, amongst other things, that all members and senators "irrespective of their electorate size, should be given an annual electorate allowance of $10,000. This allowance will be provided to cover electorate expenses other than transport, accommodation, and communication" which would be provided for in a different way.

The Tribunal noted in its *1988 Review* that "further adjustments of the electorate allowance and other entitlements will be discussed with government and with Members during the 1989 year and appropriate decisions will be made in respect of the matters referred to in the consultant's report".

1989

In November 1989, as an interim measure following various delays, the Tribunal increased the lowest rate of electorate allowance to $22,685 per annum, the middle rate to $26,975 per annum, and the highest rate to $32,895 per annum (*Determination 1989/14*). These adjustments were made by reference to CPI increases.

Separately, the Government, by executive action, increased the postal entitlement available to members (not senators) above that last set by the Tribunal (in 1988). The Minister for Industrial Relations also advised the Tribunal at the time that "in the Government's view" it would be "more convenient" for postal entitlements to be determined by Minister for Administrative Services. The entitlement was subsequently omitted from the relevant determination (*Determination 1989/17*).

1990

No change was made to the rates or structure of the electorate allowance via *Determination 1990/13*, which came into effect on 1 July 1990. However, following Government representations as well as developments regarding the provision of vehicles to high level public service employees, the Tribunal determined that a senator or member should be given, at his or her request, a standard private plated vehicle for the purpose of carrying out parliamentary duties and for other usage. Recourse to the new entitlement meant a consequent adjustment to salary/electorate allowance of $6,000 per annum as well as the possible loss of other entitlements (*Determination 1990/14*).

In its May 1990 Statement, the Tribunal noted that "in formulating this adjustment, the Tribunal has taken account of the cost of the service to the Government, based on the information available to it and costings made available to the Tribunal".

In its later *Statement on Private Plated Commonwealth Vehicles for Use by Members and Senators*, the Tribunal noted suggestions put to it that, under the *Income Tax Assessment Act 1936*, parliamentarians who took up the option of a standard private plated vehicle would be taxed on the amount of the electorate allowance which they would have received had they not chosen to have such a vehicle, notwithstanding that the effective rate of the electorate allowance had been reduced by the amount attributed to the vehicle. In order to prevent this from occurring, the Tribunal varied the electorate allowance provisions in September 1990 to specify the actual (reduced) electorate allowance rates for those who took up the option of a standard vehicle (*Determinations 1990/23 and 1990/24*).

The new electorate allowance provisions were as follows:

"Electorate Allowance

(a) Where a Senator or Member is not provided at his or her request with a Commonwealth owned private plated vehicle pursuant to Clause 4.1 of Determination Number 24 of 1990 (or such subsequent determination as the Tribunal makes) a Senator or Member shall receive an electorate allowance as specified in Column 1 of Clause (c).

(b) Where a Senator or Member is provided at his or her request with a Commonwealth owned private plated vehicle pursuant to Clause 4.1 of Determination Number 24 of 1990 (or such subsequent determination as the Tribunal makes) a Senator or Member shall receive an electorate allowance as specified in Column 2 of Clause (c).

(c) Rates of electorate allowance:

		Column 1 Rate per annum annum of electorate allowance $	Column 2 Rate per of electorate allowance $
Senator		22,685	16,685
Member:	electorate of less than 2,000 square kilometres	22,685	16,685
	electorate of 2,000 square kilometres or more but less than 5,000 square kilometres	26,975	20,975

electorate of 5,000 square kilometres or more	32,895	26,895."

In wider developments, the High Court of Australia ruled in March 1990 that the Government could not, by executive action, supplement the postal entitlement set by the Tribunal (*Brown v West* [1990] 169 CLR 195). The decision also placed in doubt the provision to members and senators of benefits having a pecuniary value unless these were provided by or under legislation.

The Government subsequently took legislative action, via the *Parliamentary Entitlements Act 1990* assented to on 24 May 1990, to provide for a range of benefits including (but not limited to): the cost of postage in relation to Parliamentary or electorate business, the transfer of bulk papers to and from Parliament House and the electorate office; personalised letterhead stationery; photographic services; office accommodation in the electorate together with the equipment and facilities necessary to operate the office; travel within Australia for purposes related to Parliamentary or electorate business; the use of official cars; and travel overseas as a member of a Parliamentary Delegation.

The Act, which is still in operation today, also provides that senators and members are entitled to the benefits set out in the Act itself and, secondly, to the "additional benefits" determined by the Tribunal. It allows the benefits set out in the Act to be varied or omitted by determination of the Tribunal or by regulations pursuant to the Act. However, where the regulations and determinations are inconsistent, the regulations prevail and the determination is void to the extent of the inconsistency.

1991

Following the enactment of the *Parliamentary Entitlements Act 1990*, the Minister for Industrial Relations asked the Tribunal to determine the postal entitlements of members and senators "excluding Ministers and Parliamentary Office-holders". In May 1991, the Tribunal determined "that each senator or member shall be entitled to the cost of postage in relation to Parliamentary or electorate business, but excluding party business, not exceeding in total an annual amount of $22,000", with effect from 1 July 1990 (*Determination 1991/13*).

In the statement accompanying *Determination 1991/13*, the Tribunal noted that "the electorate allowance now given to each Member is intended to provide, amongst other things, for the cost of communication by Members insofar as the cost exceeds the allowance currently provided for the purpose". It also noted that it "would be open to the Tribunal to take this factor into account by reducing the amount of the electorate allowance". It was not satisfied that this was the appropriate course, however, and no change was made to the electorate allowance at that time.

1992

In April 1992, following a comprehensive review of parliamentary entitlements, the Tribunal increased the lowest rates of electorate allowance to $17,819 and $23,819 per annum, the middle rates to $22,324 and $28,324 per annum, and the highest rates to $28,540 and $34,540 per annum (*Determination 1992/10*).

In its *1992 Review*, the Tribunal noted that it had had ongoing discussions with individual members and senators regarding the matters for which the electorate allowance was given. Based on these discussions and other evidence, it was "satisfied that since 1978 the services which Members are expected to provide, in particular to their constituents in their electorate, have expanded very substantially".

Conversely, the Tribunal noted that since 1978, when it had described typical expenses covered by the electorate allowance, there had been significant changes such as "the option of a private plated vehicle to assist the Member in travel within the electorate and otherwise". In addition, the facilities provided by the Government were greater than in 1978 and other

matters which the electorate allowance had previously covered were now "specifically provided for".

The Tribunal also observed that "it was not possible or practicable to define with precision the expenditures which a Member may be expected to make … and for which he should be reimbursed". It noted that the circumstances of electorates varied greatly and that the expenditure of individual parliamentarians might also change from year to year.

It concluded that the provision of a lump sum electorate allowance was still warranted based on "the undesirability of close supervision, by Government or the Tribunal, of the manner in which a Member chooses to serve his electorate: this is a matter which, in principle, and within appropriate limits, a Member is entitled to determine for himself". In this respect, it regarded the necessity to demonstrate electorate allowance expenditure for income tax purposes as a useful "check on what is expended".

1993

The Tribunal, in accordance with the Government's submission to the 1993 annual review and the then current link between a parliamentarian's base salary and the salary of Senior Executive Service (SES) members of the Australian Public Service (APS), determined that it would be appropriate to apply the same conditions to the provision of standard private plated vehicles to senators and members as applied to members of the SES (*Determination 1993/18*).

As noted in the Tribunal's *1993 Review*, SES members who were provided with a private plated vehicle at that time paid an annual contribution from salary of "$500-$700 according to the size of the vehicle".

The provisions relating to the electorate allowance were therefore amended: the two rates of allowance within each category depending on whether the option of a private plated vehicle was taken up were removed (also *Determination 1993/18*).

The Tribunal also increased the lowest rate of electorate allowance to $24,558 per annum, the middle rate to $29,202 per annum, and the highest rate to $35,611 per annum. As in previous years, this was in accordance with cost movements since the last review.

1994

The Tribunal made no changes to the electorate allowance rates, stating in its *1994 Decisions and Reports* that it was satisfied that the allowance "adequately covers existing expenses of Members".

It noted that during the course of the 1994 annual review it had received claims for other entitlements. The Tribunal responded that "claims for other entitlements should normally be considered in terms of general remuneration rather than through the provision of new expense entitlements".

1995

The Tribunal increased the lowest rate of electorate allowance to $25,540 per annum, the middle rate to $30,370 per annum, and the highest rate to $37,035 per annum (*Determination 1995/22*). The increases were in line with changes to the CPI.

The Tribunal also noted in its *1995 Decisions and Reports* that the electorate allowance was intended to reimburse senators and members "for the various expenses incurred by them in meeting the official and unofficial obligations associated with the discharge of their functions" and that "such expenses are comparable to those reimbursed as a normal practice in the private sector".

It also observed that, "in relation to the design of entitlements, the Tribunal's view continues to be that accountability is best served by the public knowing the purpose for which funds are available to Members, recognising the distinction between provisions directed to a member's individual benefit and those expenses which are incurred in the discharge of electorate functions, and appreciating the justifications, controls and accounting attaching thereto".

1996

Taking into account movements in the CPI, the Tribunal increased the lowest rate of electorate allowance to $26,076 per annum, the middle rate to $31,008 per annum, and the highest rate to $37,813 per annum (via *Determination 1996/19*).

1997

Commencing in September 1996, the Tribunal undertook a detailed review of parliamentarians' remuneration and allowances. According to its *Statement – Members of Parliament – Remuneration and Allowances*, the Tribunal's guiding principle was "to provide greater flexibility where this sits comfortably with accountability and transparency of purpose, but not to make major changes constituting a greater call-down of overall taxpayer resources needed to fund the operations of parliamentarians".

The changes made to the electorate allowance as part of this exercise were minimal: in accordance with CPI movements the lowest rate of electorate allowance was increased to $26,467 per annum, the middle rate to $31,473 per annum, and the highest rate to $38,380 per annum (via *Determination 1998/1*).

The Tribunal noted that "submissions were received requesting that the Tribunal consider wider gradations than the present three levels of allowances to take account of the wide geographical and demographic differences between electorates". It was also submitted that "the basic amount currently payable to Senators should be increased to equate to that payable to Members of medium-sized electorates". The Tribunal was not, however, persuaded by the arguments put forward in these submissions. It noted the purpose and evolution of the allowance, previous changes to the facilities and allowances provided by the Commonwealth and the Tribunal, and the "current nature and range of parliamentary and representational duties".

The Tribunal also reiterated that it was not practicable to specify comprehensively all the legitimate expenses which might be covered by the electorate allowance. It noted, however, that many expenses were readily identifiable and covered in advices from the Australian Taxation Office. These included:

- attendance at functions in the electorate (e.g. tickets, donations, purchases at fetes, prizes presented);
- donations to appeals and organisations including churches and political parties;
- expenses associated with being the patron of an organisation;
- presentations for school speech days, sporting clubs, senior citizens awards etc and gifts (e.g. flowers for elderly citizens, books to schools);
- additional telephone and postage costs beyond those met by the Commonwealth;
- subscriptions to newspapers, magazines and periodicals beyond those provided by the Commonwealth;
- subscriptions to organisations (e.g. political and parliamentary groups and professional organisations);
- replacement of, or cost of capital additions to, equipment for use in discharging parliamentary or electorate duties where these were not provided by the Commonwealth (e.g. personal tape recorder, home computer and software);
- replacement of, or cost of additions to a professional library;

- replacement of home office facilities (e.g. furniture, fittings, proportion of costs for electricity) in a room set aside for official duties, and lighting and heating of a home office;
- additional full-time, part-time or casual secretarial assistance and wages to spouse for electorate duties performed from time to time;
- accommodation and meals while travelling on business throughout the electorate;
- spouse costs when representing a member at official functions in special circumstances (e.g. due to illness) and specifically allowable functions;
- additional fares, accommodation, meals and transport associated with official overseas travel other than where these were included in costs provided by the Commonwealth; and
- referendum campaign and election expenses or expenses in contesting an election.

1998

The Tribunal determined that, in addition to the rates of electorate allowance payable in accordance with *Determination 1998/1*, a Member of the House of Representatives would be entitled to be reimbursed up to a maximum amount of $6,000 for eligible expenditure directly incurred within an electorate during the period 1 June 1998 to 26 February 1999 in the promotion and administration of the Federation Community Projects Program (*Determinations 1998/20 and 1998/25*).

1999

No changes were made to the electorate allowance.

2000

The Tribunal, referencing CPI movements, adjusted the electorate allowance by 3.1 per cent with effect from 1 January 2000. The lowest rate was increased to $27,300 per annum, the middle rate to $32,450 per annum, and the highest rate to $39,600 per annum (*Determination 2000/2*).

In its *Statement – Parliamentary Remuneration – Review of Electorate Allowance and Charter Transport Reimbursement Arrangements*, released in September 2000, the Tribunal announced it was "not disposed to increase the size of the [electorate allowance] in the near to medium future".

The above pronouncement followed a comprehensive review of the allowance in which the Tribunal found that, consistent with the purpose of the allowance, many senators and members utilised it "to fund unofficial offices or to support organisations within the electorate or to top up staff relief and staff travel budgets". It noted that, in line with undertakings provided to individual senators and members, the Tribunal had referred to the Special Minister of State matters raised by submissions that were outside its jurisdiction, "including relief staff and staff travel budgets and electorate office facilities and the number of offices provided in the larger electorates".

2001 - 2002

No changes were made to the electorate allowance.

2003

In the Tribunal's *Statement - 2002 Annual Review of Parliamentary Allowances for Expenses of Office*, released in June 2003, the Tribunal noted that it had received submissions seeking funds to cover venue hire and conference expenses. The Tribunal considered these items covered by the electorate allowance.

Despite receiving submissions calling for increases to the amount of electorate allowance and for “changes to the manner in which it is administered”, the Tribunal decided to make no changes to the relevant provisions.

2004 - 2008

No changes were made to the electorate allowance.

2009

The provisions regarding electorate allowance were instituted in their current form via *Determination 2009/04*, which amended the Principal Determination, *Determination 2006/18*.

The amendments provide a standard base amount of electorate allowance plus supplementary amounts for those members of the House of Representatives whose electorates exceed 2,000 square kilometres in size.

According to the *Remuneration Tribunal Statement on Electorate Allowance*, dated 24 April 2009, the amounts specified represent a cumulative increase of approximately 2 per cent per annum since the allowance was last adjusted in 2000. The Tribunal noted that “this means that the value of the allowance is now over 20 per cent less, in real terms, than it was in 2000”.

The Tribunal also noted in its Statement that the electorate allowance “enables members to make modest provision for expenditure at their discretion to address differing needs in their respective electorates”.

PRIVATE PLATED VEHICLES

Tribunal Comment

In the attached history of the provision of private plated vehicles, the Tribunal notes that the 1976 consideration of this entitlement followed representations that parliamentarians should be allowed to follow practice in commerce and industry and in the public service.

In fact, practice in those areas now appears to have developed beyond the practice for parliamentarians. It is also the case that while vehicle provision was aligned in 1993 with that of provision of vehicles to the Senior Executive Service of the Australian Public Service, the latter has now changed so that the two are no longer aligned.

The provision of a vehicle by an employer has generally given way to the provision by the employer of the financial means for the employee to organise the provision of their own vehicle. In a situation such as where a vehicle is provided by way of a novated lease, it is true that the employer remains a party to the contract. However this is in major part simply a means of provision of the vehicle to the employee who also has obligations under the contract. The employer has no practical interest in the vehicle itself.

The current provision of an alternative funding source for parliamentarians for intra-electorate travel – specifically an additional amount of electorate allowance – will become unsustainable should the Tribunal's recommendations on electorate allowance (provided elsewhere) be adopted. In line with the expressed principles of the Committee's review, the Tribunal's recommendation below provides a single source of funding for private travel for members.

Options

Apart from maintaining the status quo, the major option is to provide an allowance to members to use as they wish for the provision of transport in servicing their electorate.

Recommendations

The current provisions should be modernised to provide parliamentarians with the financial means to organise themselves in such a way as to meet their own transport needs. It should also be recognised that such provision does, or can, entail a private benefit to the parliamentarian and the allowance would fall on the remuneration side of the remuneration/business expenses divide.

The amount of the allowance should take into account the current provision by the Tribunal of larger vehicles for those with specific transport needs – notably members representing the largest electorates.

PRIVATE VEHICLE ENTITLEMENT

The Private Vehicle Entitlement enables a senator or member, at his or her request, to be provided with a private plated vehicle at Commonwealth expense. The vehicle may be used for parliamentary, electorate or official business, family travel and private purposes, but not for commercial purposes.

CURRENT FEATURES

The entitlement is provided for currently, in *Remuneration Tribunal Determination 2006/18: Members of Parliament – Entitlements*, as follows:

"**5.1** (a) A senator shall, at his or her request, be provided with an Australian made, private plated standard vehicle, as advised by the Special Minister of State.
(b) A member representing an electorate of less than 300,000 km^2 shall, at his or her request, be provided with an Australian made, private plated standard vehicle, as advised by the Special Minister of State.
(c) A member representing an electorate of 300,000 km^2 or more shall, at his or her request, be provided with a private plated standard vehicle, as advised by the Special Minister of State, or a four wheel drive motor vehicle.

5.2 A senator or member, at his or her request, may be provided with a private plated non-standard vehicle (such as a four wheel drive vehicle) instead of a standard vehicle under subclauses 5.1(a) and 5.1(b).

5.3 The Special Minister of State may develop guidelines for the purposes of clauses 5.1(c) and 5.2.

5.4 In addition to clause 5.1, a member representing an electorate of 300,000 km^2 or more and the Senators representing the Northern Territory (while the total representation from the Northern Territory in both Houses does not exceed the present level of four) shall, at the request of the senator or member, be provided with a Commonwealth-leased private plated, four wheel drive motor vehicle.

5.5 Where a senator or member is provided with a non-standard vehicle under clause 5.2, his or her charter transport entitlement or electorate allowance shall be reduced by the difference between the lease cost of a non-standard vehicle and the lease cost of a standard vehicle.

5.6 Where a senator or member is provided with a four wheel drive vehicle in accordance with 5.4, his or her charter allowance entitlement or electorate allowance shall be reduced by the lease cost of the four wheel drive motor vehicle.

5.7 A senator or member provided with a private-plated vehicle may use the vehicle for parliamentary, electorate or official business, family travel and private purposes, but not for commercial purposes.

5.8 Where a senator or member is provided with a vehicle under clause 5.1 or 5.2 he or she shall meet the personal cost contribution and other provisions specified in guidelines issued by the Special Minister of State.

5.9 Where a senator or member is provided with a private-plated vehicle, the Commonwealth shall meet all costs of operating and maintaining that vehicle. Accordingly, when that vehicle is used:

(a) for travel to which a senator or member (or eligible family member, nominee or designated person) is otherwise entitled by the provisions of this Determination, (such as under clauses 2.1, 2.9, 3.1, 3.10, 3.11, 3.14 to 3.16) the other entitlements are voided; and
(b) likewise no private vehicle allowance is payable.

5.10 When used for private purposes, the vehicle is to be driven only by the senator or member, or a person or persons nominated by the senator or member.

5.11 Where a senator or member elects not to be provided with any private plated vehicle under clauses 5.1, 5.2 or 5.4 he or she will be entitled to an additional $19,500 per annum of electorate allowance in lieu of the private plated vehicle to meet the costs of transport within and for the service of the electorate.

5.12 For the purposes of clause 5.11, transport within and for the service of the electorate includes transport provided by commercial providers such as taxis, hire cars and public transport (for example buses, trains, trams and ferries).

5.13 For the purposes of clause 5.11, a member or senator may elect to vary his or her entitlement from, or to, a private plated vehicle or additional electorate allowance in lieu of the private plated vehicle once per annum, provided that no additional administrative or other expenses (e.g. lease cancellation fees) are incurred by the Commonwealth as a result of the election to so vary these entitlements."

HISTORY

1976

In response to "numerous representations" relating to the increasing cost of transport within an electorate and "on the basis of practice in commerce and industry and the Government's own practice in the Public Service", the Remuneration Tribunal noted in its *1976 Review* that there appeared to be "a prima facie case for the allocation of a self-drive vehicle to each senator and member at official expense and for the Government to bear the running and maintenance costs".

The Tribunal also noted that the introduction of such an entitlement would need to be accompanied by an adjustment to the electorate allowance. It proposed to examine the issue further at a later date.

1977

The Tribunal indicated in its *1977 Review* that, although it was still of the view that the provision of a vehicle "would be an economically sound way of meeting many of the transport needs of members", it was not the appropriate time to make such a change. This was in the general context of Australia's economic climate, including high unemployment, high (though falling) inflation and calls for wage restraint.

1987

The consultancy firm Cullen Egan Dell Limited was enlisted by the Tribunal to help conduct a special review into pay and allowances for members of parliament. The review was requested by the Australian Government, parliamentarians, the Australian Council of Trade Unions and the Confederation of Australian Industry at a conference held in September 1987 to discuss parliamentarians' remuneration. (The conference was convened by the Tribunal at the request of the Minister for Industrial Relations.)

1988

The Cullen Egan Dell *Report on Pay and Allowances for Members of Parliament*, dated November 1988, recommended, amongst other things, that all members and senators "should be provided with a car for use in carrying out their electorate and parliamentary duties". This vehicle should be "fully insured, registered, fuelled and maintained by the Parliament".

The report also recommended that the vehicle should be made available for use by the staff of a senator or member as well as his/her spouse. "Substantial private use" of the vehicle by senators, members, their spouses, or staff was, however, not recommended.

Other recommendations included:

- the provision of a four wheel drive vehicle to senators and members resident in non-urban electorates, and senators in the Northern Territory, Western Australia and Queensland; and
- for those who chose not to accept a self-drive vehicle, the payment of a "private vehicle allowance" additional to that already in place for travel to or from Canberra.

The recommendations were based on the view that parliamentarians should not be financially disadvantaged in carrying out their duties.

The Tribunal noted in its report on the review, attached to its *1988 Review*, that it would "consider the views of government and of Members and determine to what extent the arrangements now made for reimbursement of expenses should be varied in accordance … with the recommendations of the consultants".

In the meantime, the Tribunal incorporated a provision in *Determination 1988/18* in respect of four wheel drive vehicles as follows:

"**4.1** A member for the electorates of Maranoa, Grey, Northern Territory, Kalgoorlie and Kennedy shall, at the request of the member, be provided with a Commonwealth-owned, private plate, four wheel drive motor vehicle.

4.2 The cost of fuel and oil shall be met by the member. All other costs of maintaining the vehicle shall be met by the Commonwealth.

4.3 The charter allowance entitlement as provided in clause 5.2 of a member who requests to be provided with a motor vehicle as provided in clauses 4.1 and 4.2 shall be reduced by $5,000 p.a."

1989

The Tribunal added the Riverina-Darling electorate to the list of the largest electorates where the option of a four wheel drive vehicle could be taken up (*Determination 1989/17*).

1990

Following Government representations as well as developments regarding the provision of vehicles to high level public service employees, the Tribunal determined in May 1990 that a senator or member should be given, at his or her request, a standard private plated vehicle for the purpose of carrying out parliamentary duties and for other usage. Recourse to the new entitlement meant a consequent adjustment to salary/electorate allowance as well as the possible loss of other entitlements.

The relevant provisions in *Determination 1990/14* were as follows:

"**4.1** A senator or member shall, at his or her request, and subject to a contribution by the Senator/Member from salary/electorate allowance of $6,000 per annum, be provided with an Australian-made, Commonwealth-owned, private plated vehicle for use on parliamentary, electorate and private business.

4.2 This entitlement shall not extend to vehicles other than those standard vehicles available through the panel period contracts of the Transport and Storage Group, as advised by the Minister for Administrative Services.

4.3 All running and maintenance costs shall be met by the Commonwealth.

4.4 When used for private purposes the vehicle is to be driven only by

- the senator or member, or
- a person nominated by the senator or member.

4.5 When used for travel to which the senator or member (or eligible family member/nominee) is otherwise entitled by the provisions of this Determination (such as by clauses 1.1, 1.10, 1.11, 1.12, 1.15, 1.20, 2.1, 2.2 – 2.4, 2.5, 2.6) the other entitlements are voided. Likewise, no private vehicle allowance is payable under clause 3.1 – 3.5 for travel by private plated Commonwealth vehicle."

The clauses mentioned in clause 4.5 related to travel on scheduled commercial transport; car transport at government expense; and travel by a spouse, dependent child or the nominee of a senator or member.

The earlier provisions regarding four wheel drive vehicles were also retained in the Determination, meaning that some members could request both types of vehicle.

In its later *Statement on Private Plated Commonwealth Vehicles for Use by Members and Senators*, the Tribunal noted suggestions put to it that, under the *Income Tax Assessment Act 1936*, parliamentarians who took up the option of a standard private plated vehicle would be taxed on the amount of the electorate allowance which they would have received had they not chosen to have such a vehicle, notwithstanding that the effective rate of the electorate allowance had been reduced by the amount attributed to the vehicle. In order to prevent this from occurring, the Tribunal varied the electorate allowance provisions in September 1990 to specify the actual (reduced) electorate allowance rates for those who took up the option of a standard vehicle (*Determinations 1990/23 and 1990/24*).

1992

In line with representations from the Government, the Tribunal determined that the Commonwealth would meet "all running and maintenance costs" - including the cost of fuel and oil - in respect of private plated four wheel drive vehicles provided to members. In addition, as also suggested by the Government, the Tribunal increased the reduction to the charter allowance entitlement for these members from $5,000 to $8,000 per annum (*Determination 1992/10*).

1993

The Tribunal, in accordance with the Government's submission on this matter and the then current link between a parliamentarian's base salary and the salary of Senior Executive Service (SES) members of the Australian Public Service (APS), determined that it would be appropriate to apply the same conditions to the provision of standard private plated vehicles to senators and members as applied to members of the SES (*Determination 1993/18*).

As noted in the Tribunal's *1993 Review*, SES members who were provided with a private plated vehicle at that time paid an annual contribution from salary of "$500-$700 according to the size of the vehicle".

1995

For those members provided with a four wheel drive vehicle, the Tribunal increased the reduction to the charter allowance entitlement from $8,000 to $8,320 per annum (*Determination 1995/22*).

1998

The Tribunal clarified that private plated Commonwealth vehicles could not be used by the senator or member "for commercial purposes".

The Tribunal also determined that non-standard vehicles (including four wheel drive vehicles) could now be provided "on approval by the Special Minister of State" so long as the full additional leasing costs, over and above those of a standard vehicle, were met by the requesting senator or member through a reduction in his or her charter transport entitlement or electorate allowance. The Government had made a submission in favour of this particular change, noting that there were strong arguments for acceptance of such requests if they were based on greater operational suitability or on medical grounds.

In addition, the Tribunal changed the eligibility requirements for the automatic provision of a four wheel drive vehicle by including the senators from the Northern Territory "while the total representation from the Northern Territory in both Houses does not exceed the present level of three". It also determined that those availing themselves of this part of the entitlement would have their charter allowance "reduced by the lease cost of the four wheel drive vehicle as determined from time to time by the Special Minister of State". According to the Tribunal's *1997 Decisions and Reports*, this was done in order to "maintain existing levels and

relativities of allowances and in recognition of the transport difficulties experienced in servicing the large electorates" (*Determination 1998/1*).

Later in 1998, the Tribunal (via *Determination 1998/26*) modified the clauses relating to the provision of private plated cars by dropping the references to a "Commonwealth-owned" vehicle - presumably reflecting the privatisation of DASFLEET, the Commonwealth's leasing, fleet management and car rentals business, which had taken place the previous year.

The Tribunal also made it clear that members and senators who took advantage of the entitlement to a standard vehicle, or a non-standard one in accordance with guidelines developed by the Special Minister of State, were required to meet the personal cost contribution contained in the then current APS Executive Vehicle Scheme (EVS) Guidelines, which also applied to SES members. However, they were not required to reimburse the Commonwealth for the cost of fuel and maintenance while on holiday, as provided by the APS EVS Guidelines, as they did not have access to APS recreation leave entitlements.

For those members and senators automatically provided with a four-wheel drive vehicle on request, the Tribunal also determined that there was an option to reduce the electorate allowance rather than the charter allowance entitlement.

2000

In May 2000, the Tribunal specified that the private plated vehicle entitlement could encompass family travel. Minor changes were also made to the wording of the provision concerning the EVS Guidelines, reflecting the recent introduction of the *Public Service Act 1999* (*Determination 2000/02*).

Later that year, the Tribunal determined that members representing electorates of 300,000 square kilometres or more could request a four wheel drive vehicle under the standard private plated vehicle entitlement (*Determination 2000/11*). According to the accompanying Explanatory Statement prepared at the time, this meant that "where a member requests a four wheel drive vehicle in accordance with this entitlement, the Commonwealth will meet … the difference between the lease cost of an Australian made, private plated standard vehicle and a four wheel drive vehicle".

2001

In order to provide consistency with the size criteria specified elsewhere in the entitlement, and to reflect changes to electoral representation in the Northern Territory, the Tribunal amended the clause relating to eligibility for the automatic provision of a four wheel drive vehicle (*Determination 2001/25*).

2003

The Tribunal replaced the reference to the APS EVS with a reference to guidelines developed by the Special Minister of State (*Determination 2003/14*).

2006

Following a submission from a representative of an inner city electorate and subsequent wider consultations, the Tribunal determined that if a senator or member elected not to be provided with a private plated vehicle, he or she would be entitled to an additional $19,500 per annum of electorate allowance to "meet the costs of transport within and for the service of the electorate" (*Determination 2006/02*). "Transport" included taxis, hire cars and all forms of public transport.

Such an election would be made once a year "provided that no additional administrative or other expenses (e.g. lease cancellation fees) are incurred by the Commonwealth as a result".