



Australian Government

Department of Finance

Submission by the Department of Finance

to the

Inquiry into the Parliamentary Entitlements Legislation Amendment Bill 2014

by the

STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION
Legislation Committee

On 3 October 2014 the Department of Finance (Finance) was invited to make a submission to the Finance and Public Administration Legislation Committee's (the Committee) inquiry into the *Parliamentary Entitlements Legislation Amendment Bill 2014* (the Bill). The Bill was referred to the Committee *to ensure proper scrutiny of all aspects of the legislation including compliance with the Constitution*.

OUTLINE OF THE BILL

The Bill amends the *Parliamentary Entitlements Act 1990* and the *Members of Parliament (Life Gold Pass) Act 2002* to implement changes to parliamentary entitlements announced by the Government on 9 November 2013 and in the 2014-15 Budget.

The Bill also extends the appropriation under the *Parliamentary Entitlements Act 1990* that currently provides for the cost of entitlements, in order to mitigate the risk of breaches of section 83 of the Constitution. The Bill also provides a statutory basis for costs in excess of entitlement to be recovered from the parliamentarian to whom the entitlement accrues.

Entitlements provided under Schedule 1 to the *Parliamentary Entitlements Act 1990*, the *Parliamentary Entitlements Regulations 1997* and determinations made by the Remuneration Tribunal under section 7 of the *Remuneration Tribunal Act 1973* are all covered by this cost recovery provision. Accordingly, recovery of payments made in excess of entitlement that relate to parliamentarians' entitlements and entitlements their family members access will be sought from the parliamentarian whose entitlement has been accessed.

Likewise, the Bill extends the appropriation under the *Members of Parliament (Life Gold Pass) Act 2002* that currently provides for the cost of entitlements, in order to mitigate the risk of breaches of section 83 of the Constitution. The Bill also provides a statutory basis for costs in excess of entitlement to be recovered from the person to whom the entitlement accrues.

The Bill includes the following travel entitlement changes:

- A 25 per cent loading on claims for prescribed travel entitlements that require subsequent adjustment.
- The qualifying age for travel entitlements as the dependent child of a Senior Officer (i.e. a Minister, Presiding Officer or Opposition Office Holder) reduces from under 25 to under 18.
- The *Members of Parliament (Life Gold Pass) Act 2002* is renamed the *Parliamentary Retirement Travel Act 2002* and the Life Gold Pass entitlement is renamed the parliamentary retirement travel entitlement.
- The parliamentary retirement travel entitlement for all spouses or de facto partners of parliamentary retirement travel holders is removed, other than for the spouse or de facto partner of a retired former Prime Minister.
- Parliamentarians, other than future Prime Ministers, cannot qualify for parliamentary retirement travel after 13 May 2014 (i.e. only a future Prime Minister who had not met the qualifying requirements by 13 May 2014 can qualify for parliamentary retirement travel after 13 May 2014).
- Parliamentarians, other than the Prime Minister or future Prime Ministers, who qualify for parliamentary retirement travel, must retire before 1 January 2020 in order to access the parliamentary retirement travel entitlement.

- The parliamentary retirement travel entitlement of Senior Office Holders (i.e. a Minister (other than a Prime Minister or Parliamentary Secretary) Presiding Officer, or Leader of the Opposition in the House of Representatives) who retired before 14 May 2008 is removed.
- The parliamentary retirement travel entitlement of Senior Office Holders who retired on or after 14 May 2008, is limited to 10 domestic return trips per year for the public benefit. The entitlement expires at the earlier of six years after their date of retirement, or the second end of a parliament to occur after their date of retirement.
- The parliamentary retirement travel entitlement of parliamentarians, other than former Prime Ministers or Senior Office Holders, who retired before 14 May 2011 is removed.
- The parliamentary retirement travel entitlement of parliamentarians, other than former Prime Ministers or Senior Office Holders, who retired on or after 14 May 2011, is reduced to five domestic return trips per year for the public benefit. The entitlement expires at the earlier of three years after their date of retirement, or the next end of a parliament to occur after their date of retirement.
- Future Prime Ministers who had not entered or re-entered the Parliament before 6 March 2012 are eligible to qualify for parliamentary retirement travel.
- The parliamentary retirement travel entitlement of retired former Prime Ministers is reduced from 40 to 30 domestic return trips per year for the public benefit.
- A retired former Prime Minister's entitlement to be accompanied or joined by his or her spouse or de facto partner is reduced from 40 to 20 domestic return trips per year for the public benefit.

CONSTITUTIONAL ASPECTS OF THE BILL

There are two separate Constitutional aspects to the Bill:

- acquisition of property (section 51(xxxi) of the Constitution); and
- appropriation of funds (section 83 of the Constitution).

Acquisition of property – section 51(xxxi):

Section 51 of the Constitution provides that:

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

...

(xxx) *the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.*

Clause 4 of the Bill provides a constitutional safety net ('Historic Shipwrecks' clause) equivalent to section 32 of the *Members of Parliament (Life Gold Pass) Act 2002*, that will provide a reasonable amount of compensation in circumstances where any provision of the Bill is found to result in an acquisition of property otherwise than on just terms. This clause ensures that all the amendments in the Bill are valid.

Finance considers that the reforms in this Bill will not result in an acquisition of property within the meaning of subsection 51(xxxi) of the Constitution. However, should a court decide otherwise, the Commonwealth will be required to pay compensation to the person for

the removal or limitation of their Life Gold Pass entitlements. It would be a matter for a court to determine the amount of compensation that is reasonable in the circumstances.

Finance has estimated the cost of Life Gold Pass travel in the 2014-15 to 2017-18 financial years based on entitlement expenditure in forecasting the savings from the removal of the entitlement. Should a court decide that there has been an acquisition of property, Finance would expect that a court would take travel patterns into account in determining a reasonable amount of compensation. Finance therefore would not expect that any compensation amount set by a court would exceed the savings from this measure.

Appropriation of funds – section 83:

The Bill amends the *Parliamentary Entitlements Act 1990* and the *Parliamentary Retirement Travel Act 2002* to address the risk that payments made in the course of administering these Acts may constitute a breach of section 83 of the Constitution. These mechanisms will include a statutory basis for recovering payments made outside of entitlement. Mechanisms to address the risk of breaches of section 83 of the Constitution have been included in many other acts, including via the *Financial Framework Legislation Amendment Act (No. 2) 2012*.

Section 83 of the Constitution provides that:

No money shall be drawn from the Treasury of the Commonwealth except under an appropriation made by law.

New section 10A of the *Parliamentary Entitlements Act 1990* authorises the Commonwealth to pay an amount to a recipient, purportedly as a benefit, entitlement, or amount where the Commonwealth does not otherwise have power under the *Parliamentary Entitlements Act 1990* to make a payment, and provides that such an amount is recoverable from the person receiving the benefit. This provision would have the effect that payments made, purportedly as or for benefits, but outside the boundaries of an entitlement, would attract the coverage of the standing appropriation in section 11 of the *Parliamentary Entitlements Act 1990*, thereby mitigating the risk of breaching section 83 of the Constitution.

New section 30A of the *Parliamentary Retirement Travel Act 2002* authorises the Commonwealth to pay an amount to a recipient, purportedly by way of an entitlement of a person to travel at Commonwealth expense where the Commonwealth does not otherwise have power under the *Parliamentary Retirement Travel Act 2002* to make a payment, and provides that such an amount is recoverable from the person receiving the entitlement. This provision would have the effect that payments made, purportedly by way of such travel entitlements, but outside the boundaries of an entitlement, would attract the coverage of the standing appropriation in section 31 of the *Parliamentary Retirement Travel Act 2002*, thereby mitigating the risk of breaching section 83 of the Constitution.

OTHER ISSUES RAISED IN THE SECOND READING DEBATE IN THE HOUSE OF REPRESENTATIVES OR SUBMISSIONS TO THE INQUIRY INTO THE BILL

Review and Determination by the Remuneration Tribunal:

There are no remuneration aspects to the entitlement changes contained in the Bill. Nor does the Bill impact on any parliamentary entitlements determined by the Remuneration Tribunal. For these reasons, the Government has not sought the views of the Remuneration Tribunal in relation to the Bill. The Government has, however, consulted the Remuneration Tribunal seeking its consideration of changes to the post retirement travel and severance travel entitlements in the context of the changes to parliamentary retirement travel contained in the Bill.

No Change to Post Retirement Travel:

The Bill does not increase the post retirement travel entitlement which is provided under *Remuneration Tribunal Determination 2012/04: Members of Parliament – Entitlements* from five to 10 domestic return trips. Rather, it only affects the entitlements under the *Parliamentary Retirement Travel Act 2002* for persons who qualify for parliamentary retirement travel. The Bill maintains the 10 domestic return trips currently available to Senior Office Holders, and imposes a time limit of six years or two parliaments (whichever is the lesser) on this entitlement. Retired parliamentarians who have not held office as a Senior Office Holder who qualify for parliamentary retirement travel have their entitlement reduced to five domestic return trips per year, for the lesser of three years or one parliament. Unless and until the Remuneration Tribunal determines otherwise, retired parliamentarians who do not qualify for parliamentary retirement travel will continue to be entitled, under Remuneration Tribunal Determination 2012/04, to a maximum of five domestic return trips in the six months following their retirement.

Parliamentary Retirement Travel (previously known as Life Gold Pass)

Finance understands there may be some conjecture over the Bill's treatment of parliamentarians retiring during a parliamentary term, who qualify for parliamentary retirement travel. A parliamentarian who retires during a parliamentary term may have significantly less than three or six years of parliamentary retirement travel. This section may benefit from a minor amendment to remove any ambiguity of the entitlement in this circumstance.

Cost Recovery from Ministers for Employee Travel:

The Bill does not impose any cost recovery on Ministers in relation to the travel of their employees. The cost recovery mechanism is limited to the entitlements provided under the *Parliamentary Entitlements Act 1990*, the *Parliamentary Entitlements Regulations 1997* and determinations of the Remuneration Tribunal made under section 7 of the *Remuneration Tribunal Act 1973*. The domestic travel entitlements of Ministers' employees are provided under the *Members of Parliament (Staff) Act 1984* and so are not covered by this recovery provision. The entitlement for Ministers' employees to accompany Ministers overseas is provided under executive power and is also not covered by this recovery mechanism.

The reference to recovery from a Minister for travel by a member of his or her staff in the note at the end of new section 10A (6) is incorrect, and therefore misleading. Such travel is under executive power, not the Parliamentary Entitlements Act 1990, the Parliamentary Entitlements Regulations 1997 or a determination of the Remuneration Tribunal made under

section 7 of the Remuneration Tribunal Act 1973. Accordingly, this section may require amendment to remove staff travel and note that family and spousal travel is the only travel that would be recovered from an individual parliamentarian under this section.

Public Benefit Test

The term *public benefit* is not defined in the Bill other than to clarify that in order to satisfy the public benefit test, travel must not be undertaken for a *commercial purpose* or a *private purpose*. Finance would expect that travel that is for a philanthropic purpose is unlikely to be for a commercial or a private purpose and would therefore be within entitlement.

Like travel that is provided for *parliamentary business*, *electorate business* and *official business* in other parts of the entitlements framework, it will be the responsibility of the entitlement holder to be satisfied that his or her use of parliamentary retirement travel is for the public benefit. The entitlement holder will be asked to certify, as part of the six-monthly reporting process, that his or her entitlement use was for the public benefit.

Workers' Compensation, Resettlement Allowance and Superannuation:

Workers' compensation arrangements for parliamentarians, the taxation of resettlement allowance payments, enabling self-managed superannuation funds to receive parliamentary superannuation payments, and the superannuation contribution of members of the 1948 superannuation scheme who have served for 18 or more years, are not relevant to the entitlement changes contained in this Bill.

Allegations Protocol:

The Bill does not impact on the protocol followed by Finance when there is an allegation of entitlement misuse. However, as part of the Government's entitlement changes made following its announcement in November 2013, an additional measure was included to strengthen the allegations process. The Special Minister of State may table in the Parliament the name of any parliamentarian who fails to substantially comply, in a reasonable time, with a request for further information as part of a Finance enquiry into an alleged misuse of an entitlement.

The Bill does not introduce any new processes to enquire into alleged misuse of entitlements. Nor does it impact upon or replace any of the existing arrangements for establishing that a payment has been made in excess of entitlement and that a debt is owed to the Commonwealth. The recovery mechanism by reduction of future benefits is merely an alternative method for the repayment of a debt that is owed to the Commonwealth. The discretion to recover a debt from future benefits rests with the Finance Secretary and may only be exercised following consultation with the recipient of the benefit.

Records of Advice Provided to Parliamentarians:

While not publicly available, Finance maintains records of the entitlements advice it provides to Senators, Members and their employees. In addition, Finance publishes comprehensive guidance material on the entitlements framework to assist parliamentarians and their employees to understand their entitlements. This guidance material is publicly available on the Ministerial and Parliamentary Services website.

Alignment of Car Transport Provisions:

The alignment of domestic car transport entitlement provisions for Shadow Ministers and other parliamentarians is not relevant to the entitlement changes contained in this Bill.

Applicability of Fringe Benefits Tax:

The provision of travel entitlements to former parliamentarians and their spouses or de facto partners is a reportable fringe benefit. Finance notes that in another submission a connection has been drawn between the fringe benefits of retired parliamentarians provided with parliamentary retirement travel and retired parliamentarians' employment terms and conditions. It should be noted that although reportable fringe benefits are provided by employers, and therefore may be connected with employment, the fact that a benefit attracts fringe benefits tax, does not, in and of itself, make the benefit an employment term or condition.

Retrospective Removal of Entitlements:

The Bill removes the parliamentary retirement travel entitlement from some former parliamentarians and their spouse or de facto partners on and from 14 May 2014. Immediately following the Government's 2014-15 Budget announcement to reduce and remove parliamentary retirement travel, Finance contacted parliamentary retirement travel holders advising of the entitlement changes and noting that they would be effective from Budget night. Finance is not aware of any attempt to recover payment from any former parliamentarian for travel that occurred after 13 May 2014.

Compensation for "inadequate salaries":

Finance has no involvement in the setting of salaries for parliamentarians. According to its report on the review of the remuneration of parliamentarians, the Remuneration Tribunal's decision to increase the base parliamentary salary in 2011 was informed by a work value assessment of the then roles and responsibilities of parliamentarians.

Electronically signed

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