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

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

Date introduced: 9 February 2012
House: House of Representatives
Portfolio: Special Minister of State

Commencement: Sections 1 to 3, Schedule 1, items 2 to 5, 9 and 10, and Schedule 2 commence on Royal Assent. Schedule 1, item 1 and items 6 to 8 commence on 1 July 2012

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The primary purpose of the Members of Parliament (Life Gold Pass) and Other Legislation Amendment Bill 2012 (the Bill) is to amend the Members of Parliament (Life Gold Pass) Act 2002 to close off the Life Gold Pass Scheme to new Members and to reduce the travel benefits available to Members who are currently eligible pass-holders other than a person who has held the office of Prime Minister.

The Bill also proposes:

- amendments to the Parliamentary Contributory Superannuation Scheme to avoid any windfall gains for Members of the scheme owing to an increase in the additional salaries of Ministers and office holders, and
- to allow the Remuneration Tribunal to identify Members holding particular offices or performing particular functions in the Parliament who may receive additional Parliamentary office holder salary.¹

Background

Following the recommendations of the Committee to Review Parliamentary Entitlements (Belcher Review) the Remuneration Tribunal (The Tribunal) conducted a work value assessment of


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parliamentary remuneration. The Tribunal released its initial report on the 15 December 2011 and made a statement outlining its recommendations. The main recommendations included:

- on the basis of a work assessment of parliamentarians, that parliamentary base salary should be set at $185 000
- the introduction of additional salaries for Shadow Ministers
- the prospective closure of the Life Gold Pass (LGP) scheme
- termination of the present Overseas Study Travel entitlement
- greatly limited severance travel entitlement
- severance of the link between pensions under the 1948 superannuation scheme and current parliamentarians’ salaries, and
- the introduction of workers’ compensation arrangements for parliamentarians.

The Tribunal has recommended that the base salary of MPs be increased from $141 910 to $185 000, but raised concerns about the flow-on impacts for former Members who receive a pension under the 1948 Parliamentary Contributory Superannuation Scheme (PCSS). The Tribunal indicated that it could not make determinations in regard to base salary and other entitlements until the Government took legislative action to change the LGP scheme and the superannuation arrangements under the 1948 PCSS Act.

The Government accepted all of the recommendations of the Tribunal and indicated that the necessary legislation would be introduced in February 2012.

Life Gold Pass

The LGP and severance travel are post-retirement travel benefits currently available to parliamentarians. Retirement travel is governed by Acts of Parliament, determinations of the Remuneration Tribunal, procedural rules and decisions of the Executive. The LGP entitlement is

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4. The Tribunal did not accept the recommendation of the Belcher Review to incorporate electorate allowance into parliamentary salary.

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governed by the *Members of Parliament (Life Gold Pass) Act 2002*. The Remuneration Tribunal determines only the qualifying period for the LGP (Determination 2006/18 Clause 7).  

Life Gold Pass has been in operation since 1918, when it was introduced as the Life Railway Pass. At the time it was in recognition of service for a specified group of office holders with a length of service qualification: Prime Ministers (one year), Presiding Officers (three years) and Cabinet Ministers (four years). In 1959 the Government agreed to the extension of the scheme to include air travel within Australia to all eligible pass-holders. Since this time it has evolved to cover spouses and widows/widowers and to be available to all Members of Parliament who meet the eligibility criteria. In 1976 the Remuneration Tribunal was given the determinative authority over LGP whereby it set the eligibility criteria for LGP. Following an Australian National Audit Office report critical of the generosity of the entitlement the Government introduced legislation in 2002 to limit the number of domestic trips available to the Prime Minister and eligible pass-holders.  

The LGP entitles eligible former parliamentarians to travel within Australia at government expense for their lifetime but not to overseas travel. The entitlement under the *Member of Parliament (Life Gold Pass) Act 2002* is summarised as follows:

- an entitlement to a cap of 25 domestic return trips annually for former eligible parliamentarians
- an entitlement to a cap of 40 domestic return trips for former eligible Prime Ministers
- travel to be "not for a commercial purpose"
- travel is by scheduled air, rail, bus, tram, ferry or vehicular service or on a combination of these scheduled services
- travel is at the class determined for serving parliamentarians, currently First or Business Class. The Remuneration Tribunal determines the class of travel for serving parliamentarians
- accrued Frequent Flyer Points to be used to offset future travel in line with government policy. Any Points used in this way will "count" against the entitlement cap, and
- serving parliamentarians who become eligible for a LGP, shall have it suspended until they retire from Parliament.

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Life Gold Pass—spouse and de-facto partner entitlement

LGP also provides spouse and de-facto partner entitlements. A spouse is defined as the LGP holder’s "legally married husband or wife". A de-facto partner includes a same sex or different sex partner. The LGP provides:

- an entitlement to a cap of 25 domestic return trips for the spouse or de-facto partner of a LGP holder. Each trip must be for the purpose of "accompanying or joining" the Pass holder, and
- an entitlement to a cap of 40 domestic return trips is available for the spouse or de-facto partner of an eligible former Prime Minister. A maximum of ten of these can be non-accompanying or non-joining trips.

Spouse or de-facto partner of a long-serving Senator or Member still sitting—additional travel

Many sitting parliamentarians qualify for a LGP long before they leave Parliament. While these parliamentarians do not receive the Pass and associated travel benefits before retirement, Part 4 Section 12 of the Members of Parliament (Life Gold Pass) Act 2002 provides an additional pre-retirement travel benefit for their spouses or de-facto partners.

If a sitting Member of Parliament has satisfied the relevant qualifying period for the issue of a LGP, then:

- the spouse or de-facto partner of the Prime Minister 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 Prime Minister
- the spouse or de-facto partner of a Member, where the Member has been Prime Minister, 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 Member, and
- the spouse or de-facto partner of a Member, where the Member has never held office as Prime Minister, 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.

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9. Acts Interpretation Act 1901, section 2D.

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Determination 2006/18, clause 7 sets out the eligibility criteria dependent on length of service:

<table>
<thead>
<tr>
<th>Office</th>
<th>Qualifying period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime Minister</td>
<td>One year</td>
</tr>
<tr>
<td>Ministers (other than Parliamentary Secretaries)</td>
<td>Six years</td>
</tr>
<tr>
<td>President of the Senate and Speaker of the House of</td>
<td>Six years</td>
</tr>
<tr>
<td>Representatives</td>
<td></td>
</tr>
<tr>
<td>Leader of the Opposition</td>
<td>Six years</td>
</tr>
<tr>
<td>Parliamentary Secretaries and Senators and Members</td>
<td>Twenty years</td>
</tr>
</tbody>
</table>

Parliamentary Superannuation

The Belcher Review identified consequential implications of raising the parliamentary remuneration on the superannuation benefits of Senators and Members, specifically members who receive benefits under the *Parliamentary Contributory Superannuation Act 1948*. Unlike the *Parliamentary Superannuation Act 2004* (which applies to members elected at and following the 2004 general election) the PCSS uses the up-to-date salaries of MPs to establish the pension levels paid to beneficiaries. Therefore any increase in the base salary of MPs would lead to an increase in the pension level paid to former parliamentarians. The Belcher Review recommended that the Government take preventative measures to prevent the flow on effects of an increase to the base salaries of MPs to the beneficiaries of the PCSS.\(^\text{10}\) The Government had partly addressed this issue through the *Remuneration and Other Legislation Amendment Act 2011* which provided the Tribunal with the authority to specify the amount of parliamentary salary to be identified for superannuation purposes.\(^\text{11}\)

Although the Tribunal can, under the current legislative provisions, draw a distinction between ‘parliamentary allowance’ and parliamentary base salary, the legislative changes allowing it to do this have not extended to allowing it to draw a like distinction to distinguish current additional salaries from the ‘additional pensions’ of retired members.

The Tribunal identified that further legislative change was necessary to address the issue.

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\(^\text{10}\) Committee on the Review of Parliamentary Entitlements, op. cit., p. 60.
\(^\text{11}\) *Remuneration Tribunal Act 1973*, section 7(1A).

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Additional salary for Shadow Ministers

Currently the Tribunal inquires and reports on alterations to ministerial salary but does not determine the salary (subsection 6 (1) of the Remuneration Tribunal Act 1973) and inquires into and determines the allowances (including allowances for the purposes of section 48 of the Constitution) of Members of Parliament (subsection 7 (1) of the Remuneration Tribunal Act 1973).12

Schedule 4 of the Remuneration and Allowances Act 1990 sets out additional salary for Parliamentary Office Holders, but as contemplated in subsection 3(2) of that Act, the Tribunal has made a determination on Parliamentary Office Holders’ additional salary that prevails over Schedule 4. Parliamentary Office Holders include the Leader and Deputy Leader of the Opposition, the President of the Senate and Speaker of the House of Representatives, parties’ Whips and Deputy Whips plus the Chairs of a range of Parliamentary Committees. Salaries of office are determined by the Tribunal and are expressed as a percentage of the base salary.13

Under Determination 2011/22 a number of Opposition office holders already receive additional salary, such as the Leader, deputy leader, Chief Whip in the House of Representatives and in the Senate. The Belcher Review recommended that the Remuneration Tribunal determine an appropriate level of additional salary for Shadow Ministers. It made this recommendation in the context of Shadow Ministers having greater responsibilities than opposition backbenchers and well defined and recognised parliamentary functions. The Tribunal supported these recommendations but indicated that as Shadow Ministers do not have the responsibilities and decision making powers of a Minister and are perhaps not as publicly accountable, it did not intend to remunerate them at the same level.14 The Tribunal proposed these office holders be paid as follows, from a date to be fixed:

• Manager of Opposition Business in the House of Representatives – 27.5% additional salary
• Shadow Cabinet Minister – 25% additional salary, and
• Shadow Minister outside Shadow Cabinet – 20% additional salary.15

In setting additional salary for Shadow Ministers the Tribunal set the following limitations:

• no group of paid Shadow Ministers will be larger than the corresponding group of Ministers in the Government of the day
• no person who is a Shadow Minister will be paid more than one additional salary

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12. The Appendix provides definitions relating to allowances, additional salaries, parliamentary allowances etc.
• the office holders paid at a higher rate for their current role will be counted as Shadow Ministers for the calculation required as a result of the decision set out in the first dot point of the limitations, and
• the Tribunal does not intend to determine additional salary for Shadow Parliamentary Secretaries.16

The current Shadow Ministry would have to be reduced by two to correspond with the current ministry. Shadow Parliamentary Secretaries will continue to not receive any additional salary for their positions.

Basis of policy commitment

The Government has indicated a strong commitment to reform of the parliamentary entitlements framework. The Government has already introduced legislation in 2011 to implement the main recommendation of the Belcher Review, that is, to provide the Remuneration Tribunal with the authority to set parliamentary salary and removing the Parliament’s power to disallow a pay increase.17 At the time the Special Minister of State indicated the Government’s support for the Tribunal’s findings and indicated his intention to introduce legislation in the next sitting of Parliament to act on the recommendations.18

Committee consideration

The Bill has been referred to the Senate Finance and Public Administration Legislation Committee for inquiry and report by 27 February 2012. Details can be found on the inquiry’s webpage.19

Policy position of non-government parties/independents

The Hon Bronwyn Bishop, Shadow Special Minister for State, has stated the Opposition’s support for the legislation.20

The Greens had previously introduced Private Members Bill to abolish LGP. In 2003 the Abolition of Gold Travel Pass for Former Politicians (Reflecting Community Standards) Bill was introduced by

16. Remuneration Tribunal, Initial report, p. 25
17. The Remuneration and Other Legislation Amendment Act 2011 received Royal Assent on 25 July 2011. As a consequence, the Tribunal's determinative jurisdiction was extended to the determination of the base pay (annual allowance) of federal parliamentarians with effect from 5 August 2011.

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Financial implications

The Explanatory Memorandum indicates that limited savings are expected from the amendments to the LGP scheme. While there are no direct budgetary impacts from the legislation there will potentially be indirect expenditure. This expenditure will result from the proposed increase to the base salary of MPs, recommended to increase from $141,910 to $185,000, and the subsequent impact on additional salaries, including the proposed payment of additional salary to members of the Shadow Ministry.\footnote{The Tribunal has recommended that severance travel be cut to a maximum of five return trips, available only in the six months after leaving Parliament.} There is scope for further savings through the abolition of overseas study travel and reduction to severance travel.\footnote{The Association in its submission to the Senate Finance and Public Administration Committee inquiry into the Bill has threatened legal action over the loss of entitlements resulting from the severing of Parliament’s role in setting the base salary and the abolition of the LGP scheme.}

Main issues


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from the curtailing of the LGP and the changes to the 1948 superannuation arrangements. The Tribunal had foreshadowed that:

6.24 Consistent with its current powers under the Remuneration Tribunal Act 1973 the Tribunal intends to formalise the difference between parliamentary allowance and parliamentary base salary at the same time as it determines base salary.

6.25 The Tribunal intends to determine that the portion of parliamentary base salary not to be taken as ‘parliamentary allowance’ for the purposes of the Parliamentary Contributory Superannuation Act 1948, will be the difference between the current value of Reference Salary A ($146,380) and the amount that the Tribunal intends to determine as parliamentary base salary ($185,000) - that is $38,620.

The Association contends, supported by legal advice from Mr Bob Ellicott QC, that these changes may breach the constitutional requirement that property only be acquired under just terms. They argue that ‘unarguably the case that the "delinking" was only ever intended to apply to allowances which are intended to be "folded in" to salary at some future time. The "delinking" was never intended to apply to salary increases...’ In addition the Association argues that any reduction in current Life Gold Pass entitlements may be found to be acquisition of property under section 51(xxxi) of the Australian Constitution and warrants alternative amelioration being provided on Pass-holders' behalf. The Association proposed options for compromise such as amending the principal legislation to limit the Tribunal’s role in determining base salary and parliamentary allowance and reducing the LGP entitlement to 17 domestic return trips rather than 10.

The Parliament may well have to seek further consideration of these issues from the Government. It should be noted however that item 10 of Schedule 1 provides for mechanisms for reasonable compensation in the event that there is an acquisition of property.

Key provisions

Schedule 1 Life Gold Pass


Item 1 and item 2 modify the Simplified Outline of the Act to change current entitlement of 25 return domestic trips for those Members eligible for Life Gold Pass to ten domestic return trips and to insert a note making it clear that new Members cannot hold a LGP.


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Item 4 inserts a new definition ensuring that the term ‘parliamentary allowance’ has the same meaning as in the Parliamentary Superannuation Act 2004, which is:

parliamentary allowance means:

(a) an allowance by way of salary under clause 1 of Schedule 3 to the Remuneration and Allowances Act 1990:

(i) as in force before the commencement of Schedule 2 (the amending Schedule) to the Remuneration and Other Legislation Amendment Act 2011; or

(ii) as continued in force by item 21 of the amending Schedule; or

(b) parliamentary base salary (within the meaning of the Remuneration Tribunal Act 1973).

Item 5 of Schedule 1 to the Bill inserts proposed section 4A into the Members of Parliament (Life Gold Pass) Act 2002. New section 4A closes the LGP to new Members. The section also provides for those instances when a Member who has left the Parliament may re-enter Parliament and also covers those instances when a Member may resign from one chamber to contest a seat in the other chamber.

Item 6 amends subsections 11(2) and table to change the number of return domestic trips for former Members and the spouse or domestic partner of a former Member (other than one who had held office as the Prime Minister) from 25 to 10.

Item 7 amends subsection 12 (2) and table to change the number of return domestic trips for the spouse or de facto partner of an eligible sitting Member (other than one who had held the office of the Prime Minister) from 25 to 10.

Item 8 reinforces the application of items 6 and 7.

Item 9 provides for a transition period for the application of the new arrangements for those Members who are eligible for the more than two domestic return trips between the commencement of the Act (or 1 April 2012) and before 1 July 2012. In this case the entitlement is reduced to two domestic return trips.

Item 10 provides for a constitutional safety net that mirrors the existing section 32 of the Members of Parliament (Life Gold Pass) Act 2002.

Schedule 2—Salary and allowances by way of salary

Parliamentary Contributory Superannuation Act 1948

Schedule 2 amends both the Parliamentary Contributory Superannuation Act 1948 (the PCSS Act) and the Remuneration Tribunal Act 1973 to allow the Tribunal to determine that a portion of additional salary that is not allowance by way of salary for the purposes of the PCSS Act. In effect this excludes these amounts from the calculation of superannuation entitlements.

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Item 4 of Schedule 2 inserts a definition of ‘additional parliamentary office holder salary’ into the *Remuneration Tribunal Act 1973*. Its effect is to allow the Tribunal to determine additional office holder salary for Members the Tribunal identifies in recognition of their holding particular offices or performing particular functions.

Concluding comments

The issue of politicians pay and entitlements is always contentious. As both the Remuneration Tribunal and the Special Minister for State have noted there is never an appropriate time for politicians to be contemplating a pay rise.32 Although this legislation does not directly link to a pay rise, its passage will ultimately result in the Remuneration Tribunal determining an increase to the base salary of MPs. Based on previous reaction to salary increases this may lead to an outcry in the media. Some of this outcry may be offset by the Tribunal reducing the severance travel entitlement and abolishing overseas study travel.33


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Appendix Definitions

The Constitution provides:

48. Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.

Remuneration and Allowances Act 1990

Schedule 3 Section 1A Definitions

allowance by way of salary has the same meaning as in the Parliamentary Superannuation Act 2004.

parliamentary allowance means parliamentary base salary (within the meaning of the Remuneration Tribunal Act 1973).

salary, in relation to a Minister of State, does not include any allowance.

Remuneration Tribunal Act 1973

Section 3 Interpretation

allowance includes, but is not limited to, an annual allowance and a travelling allowance.

parliamentary base salary means so much of the allowances determined under subsection 7(1) as:

(a) represents the annual allowance payable for the purposes of section 48 of the Constitution; and

(b) is identified in the determination as base salary.

Section 7 Inquiries and determinations by Tribunal

(1) The Tribunal shall, from time to time as provided by this Part, 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 the Commonwealth 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.

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Parliamentary Allowances Act 1952

Section 4 Allowances to Members

There are payable to Members such allowances (including allowances in accordance with section 48 of the Constitution) as are determined by the Remuneration Tribunal in pursuance of subsections 7(1) and (4) of the Remuneration Tribunals Act 1973.

Parliamentary Superannuation Act 2004

Section 3 Definitions

allowance by way of salary does not include:

(a) special allowance of office; or

(b) electorate allowance; or

(c) travelling allowance; or

(d) any allowance, or allowance included in a class of allowances, specified in regulations for the purposes of this definition.

parliamentary allowance means:

(a) an allowance by way of salary under clause 1 of Schedule 3 to the Remuneration and Allowances Act 1990:

(i) as in force before the commencement of Schedule 2 (the amending Schedule) to the Remuneration and Other Legislation Amendment Act 2011; or

(ii) as continued in force by item 21 of the amending Schedule; or

(b) parliamentary base salary (within the meaning of the Remuneration Tribunal Act 1973).

salary, in relation to a Minister of State, does not include any allowance.

Parliamentary Contributory Superannuation Scheme 1948

Section 4 Interpretation

allowance by way of salary * does not include special allowance of office, electorate allowance, travelling allowance or any allowance, or any allowance included in a class of allowances, prescribed for the purposes of this definition.

Minister of State means a Minister of State who is entitled to a parliamentary allowance.

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Office holder means a person who:

(a) is entitled to a parliamentary allowance; and

(b) holds an office in, or in relation to, the Parliament or either House, being an office in respect of which he or she is entitled to an allowance by way of salary;

but does not include a Minister of State.

Parliamentary allowance means:

(a) an allowance under:

(i) section 3 of the Parliamentary Allowances Act 1920; or

(ii) subsection 4(1) or 5(1) of the Parliamentary Allowances Act 1952, as in force at any time before the commencement of sections 169 and 170 of the Statute Law (Miscellaneous Amendments) Act (No. 1) 1982; or

(b) an allowance by way of salary under section 4 of the Parliamentary Allowances Act 1952 (other than an allowance by way of salary payable by reason of the holding of a particular office, or the performing of particular functions in, or in relation to, the Parliament or either House); or

(c) an allowance by way of salary under clause 1 of Schedule 3 to the Remuneration and Allowances Act 1990:

(i) as in force before the commencement of Schedule 2 (the amending Schedule) to the Remuneration and Other Legislation Amendment Act 2011; or

(ii) as continued in force by item 21 of the amending Schedule; or

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

Salary*, in relation to a Minister of State, does not include any allowance

*The Members of Parliament (Life Gold Pass) Bill 2012 proposes that the above definitions be repealed and replaced.

Ministers

The Constitution provides:

66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year

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**Ministers of State Act 1952**

5 Salaries of Ministers

The annual sum payable under section 66 of the Constitution for the salaries of the Ministers of State must not exceed the following amount in a financial year:

(a) $3 500 000, and

(b) if a higher amount is prescribed by the regulations—that higher amount.

6 Additional allowances to Ministers of State

There are payable to the Ministers of State, in addition to their salaries, and in addition to any allowances payable to them as Senators or Members of the House of Representatives, such respective allowances as are determined by the Remuneration Tribunal in pursuance of the Remuneration Tribunals Act 1973.

**Remuneration Tribunal Act 1973**

**Section 6 Inquiries and reports by Tribunal**

(1) The Tribunal shall, from time to time as provided by this Part, inquire into, and report to the Minister on, the question whether any alterations are desirable in the salaries payable to Ministers of State out of public moneys of the Commonwealth.

**Section 7 Inquiries and determinations by Tribunal**

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

(3) The Tribunal shall, from time to time as provided by this Part, inquire into, and determine, the remuneration to be paid to the holders of public offices other than holders of those offices who are Members of, or candidates for election to, either House of the Parliament.

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