

REVIEW OF *Parliamentary Business Resources Act 2017* and *Independent Parliamentary Expenses Authority Act 2017*

Discussion Paper

The Review

On 9 September 2021 the Minister for Finance announced the independent review of the *Parliamentary Business Resources Act 2017* (PBR Act) and the *Independent Parliamentary Expenses Authority Act 2017* (IPEA Act) to be conducted by the Hon Kelly O'Dwyer and the Hon Kate Ellis.

The Terms of Reference for the Review are available [here](#).

Purpose

The purpose of this discussion paper is to outline a number of key issues to facilitate your engagement with the Review. This paper is not intended to be prescriptive. Your submission may go beyond the issues raised in this paper if it is relevant to the Terms of Reference. See [Consultations](#) for requirements and timing for submissions.

Introduction

On 13 January 2017, former Prime Minister Malcolm Turnbull announced the establishment of an independent authority to administer travel resources and oversee the use of parliamentary business resources (travel and other work resources of parliamentarians and travel resources of their staff). The IPEA Act 2017 established the Independent Parliamentary Expenses Authority (IPEA) as an independent statutory authority on 3 April 2017 with the legislation effective from 1 July 2017. IPEA has advisory, reporting and oversight (audit and assurance) responsibilities to provide greater accountability and transparency of the use of parliamentary business resources.

The PBR Act commenced on 1 January 2018. It provides a **principles-based framework** (the PBR Framework) for parliamentary business resources. The PBR Framework consists of the PBR Act and all subordinate legislation, including the *Parliamentary Business Resources Regulations 2017* (the PBR Regulations), the IPEA Act, and various determinations made under the framework. The Minister for Finance has responsibility for the PBR Framework.

The PBR Framework is primarily administered by five agencies. The Department of the House of Representatives and the Department of the Senate administer the majority of parliamentarians' remuneration, with minor elements administered by the Department of

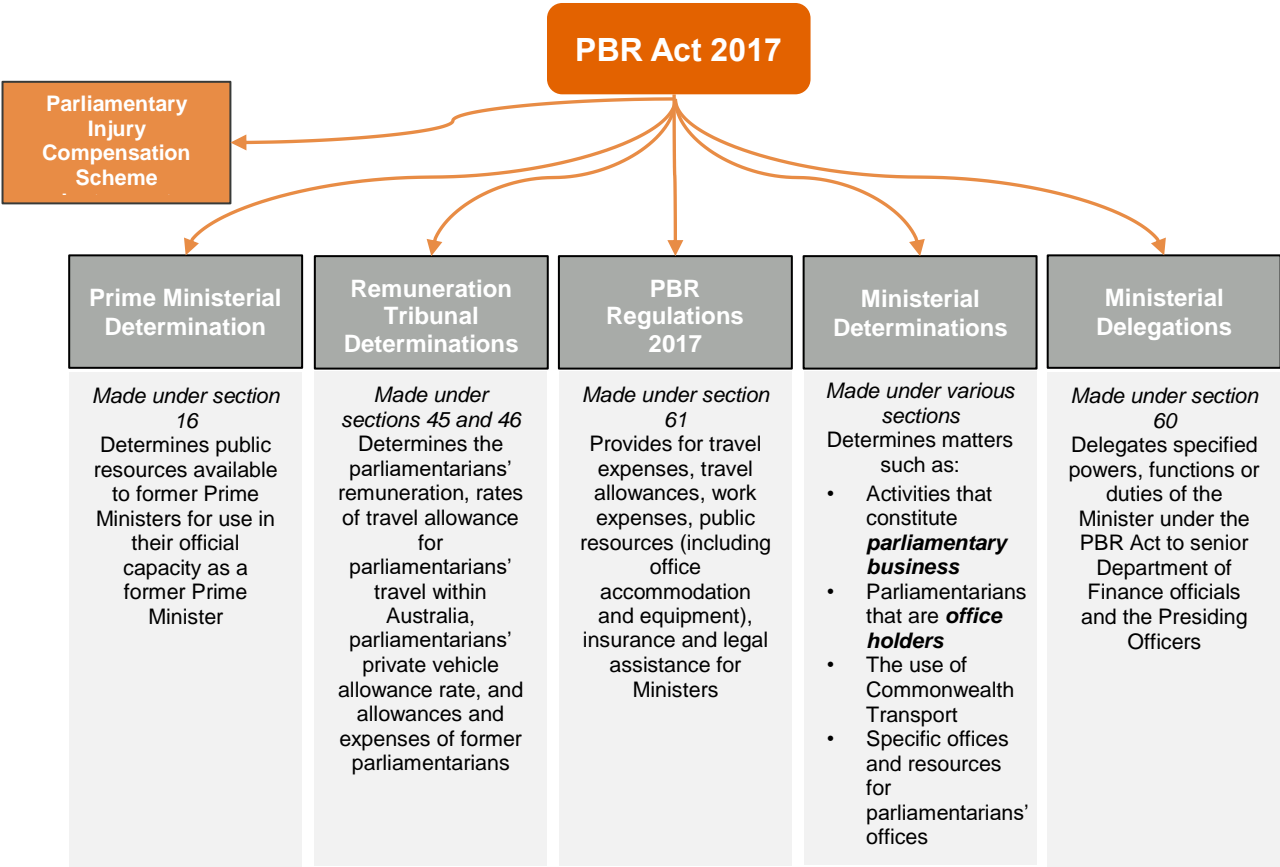
Finance (Finance). Administration of parliamentary business resources is largely split between Finance, IPEA and the Department of Parliamentary Services. The Remuneration Tribunal determines parliamentarians' remuneration (and makes recommendations to the government for specific office holders), parliamentary business resources for former parliamentarians and domestic travel allowance rates, while the government is responsible for all other parliamentary business resources including international travel.

As outlined in the Terms of Reference, the Review is to examine whether the IPEA Act and the PBR Act are meeting their objectives of improving the accountability and transparency of parliamentary business resources, and efficiently and effectively supporting the modern parliamentarian and their constituents in conducting their parliamentary business, while achieving value for money for taxpayers. This paper provides brief background and commentary concerning:

- Part 1, PBR Framework;
- Part 2, IPEA's Functions; and
- Part 3, Administration of the PBR Framework.

Figure 1: Overview of the PBR Framework

The PBR Act is the legislative head of authority, under which a number of pieces of subordinate legislation is made:



Part 1: PBR Framework

The primary purpose of the PBR Framework is to ensure that taxpayers' funds are spent appropriately.

Obligations

The PBR Framework is principles-based and established five overarching obligations on parliamentarians when claiming or using public resources for conducting their parliamentary business (ss25 – 28 PBR Act):

- Parliamentarians may only claim an expense, allowance or public resource where it is for the **dominant purpose** of conducting their parliamentary business.
- All claims made by parliamentarians must provide **value for money**, taking into account the need to conduct their parliamentary business.
- Parliamentarians are **personally responsible and accountable** for their use of public resources including being prepared to **publicly justify** their use of public resources.
- Parliamentarians must act **ethically** and **in good faith** in using, and accounting for their use of public resources.
- Parliamentarians may claim only when the **conditions** for the relevant public resources are met.

The PBR Act also includes a compliance mechanism that applies penalties should parliamentarians contravene the above obligations (s38 PBR Act).

Parliamentary business

The PBR Framework provides that parliamentarians may only claim expenses, allowances and public resources for the dominant purpose of conducting the member's parliamentary business. Section 6 of the PBR Act defines parliamentary business as comprising four core streams:

1. **Parliamentary duties** – activities that relate directly to the parliamentarian's role as a member of the Parliament
2. **Electorate duties** – activities that support or serve the parliamentarian's constituents
3. **Party political duties**
4. **Official duties** – activities that relate to the parliamentarian's role as an office holder or Minister. Office holder is defined to mean the President and Deputy President of the Senate, the Speaker and Deputy Speaker of the House of Representatives and a person whom the Minister has determined is an office holder.

Activities that fall within those four streams are set out in the [*Parliamentary Business Resources \(Parliamentary Business\) Determination 2017*](#), issued by the relevant Minister¹, which prescribes the activities that are, and are not, parliamentary business.

¹ This may include the Minister for Finance and the Special Minister of State, as applicable.

Value for money

Parliamentarians are required to achieve value for money in their use of work expenses, taking into account the need to conduct their parliamentary business. Value for money requires consideration of both financial and non-financial matters, and focusses on using public money:

- efficiently – the selected public resource isn't excessive in meeting the parliamentary business need
- effectively – the selected public resource is fit-for-purpose
- economically – the selection of the public resource avoids waste and minimises cost.

Conditions on claiming

Parliamentarians must only make a claim for, or incur expenses, if they have met all of the relevant conditions. Conditions may be set out in the PBR Regulations (e.g. limits or express restrictions on use). For example, office expenses must not be used to produce or communicate material which:

- includes an advertisement pursuing a commercial purpose
- solicits applications for or renewals of membership in a political party, or subscriptions or other financial support for a parliamentarian, political party or candidate
- solicits a vote for a person other than the parliamentarian, or provides instructions on how to complete a ballot paper.

Travel

The PBR Framework provides travel resources to parliamentarians for the conduct of their parliamentary business, including:

- domestic travel expenses and allowances
- international travel expenses and allowances
- family reunion travel expenses
- Commonwealth transport (COMCAR and Special Purpose Aircraft)
- Canberra-based self-drive vehicles (for certain office holders).

The framework also provides COMCAR for security purposes to certain parliamentarians, and travel expenses and allowances to former Prime Ministers.

The obligations and penalty scheme apply to travel resources provided for parliamentary business.

Offices, office resources and office expenses

The PBR Act confers a power on the relevant Minister to determine:

- office accommodation – including electorate offices, Ministerial and office holder offices and visiting suites at CPOs
- resources for Commonwealth-provided offices – such as, furniture, fittings, equipment and ICT, car parking, security and signage.

In addition, the PBR Regulations prescribe:

- expenses in relation to a parliamentarian's privately leased office (known as 'satellite office expenses')
- office expenses – for example, printing, production, distribution and communication, office stationery and supplies, publications, courier and freight, mobile office resources, minor office equipment and additional ICT.

The obligations and penalty scheme apply to these resources.

Mix of principles-based elements and rules

Prior to the introduction of the PBR Framework, the previous *Parliamentary Entitlements Act 1990* (PE Act) framework was rules-based, with detailed prescriptions on what public resources, allowances and expenses parliamentarians were able to claim. The rules were regularly amended to take into account specific gaps including social, economic and technological developments. This resulted in a framework that was complex, fragmented and difficult to administer.

Although the PBR Framework is principles-based, many of the prescriptive rules have been maintained in relation to how and when travel and non-travel public resources may be used (for example, in relation to office expenses under s66 of the PBR Regulations). The PBR Framework has therefore retained, to some extent, the complexity and administrative challenges experienced under the previous PE Act framework, particularly with respect to office expenses. The Terms of Reference include considering the extent to which the PBR Framework efficiently and adequately supports parliamentarians' parliamentary business and provides value for money for the Australian taxpayer.

Specific considerations

Matters for consideration concerning whether the PBR Framework efficiently and effectively supports parliamentarians in conducting their parliamentary business may include:

- changing technological capabilities and/or requirements, and how these affect, for example, means of communicating with constituents
- parliamentarians' family responsibilities
- the interaction between the dominant purpose test and the prohibition on using some resources for *any* commercial purpose
- large electorates - the Joint Standing Committee on Electoral Matters' report on the Commonwealth Electoral Amendment (Ensuring Fair Representation of the Northern Territory) Bill 2020 recommended that the Review consider the resourcing available to large electorates
- determinations to provide specified public resources in exceptional circumstances (s33(2) of the PBR Act and s77(1) of the PBR Regulations).

Part 2: IPEA's functions

Functions

IPEA was established to provide greater accountability and transparency concerning use of parliamentary business resources. It does this at arm's length from government. Section 12 of the IPEA Act outlines IPEA's key functions:

- providing personal advice to parliamentarians and their staff about travel expenses and allowances
- monitoring travel expenses and allowances claimed by parliamentarians and their staff
- preparing and publishing regular reports on parliamentarians' work expenses, travel expenses and travel allowances, and travel expenses and travel allowances claimed by their staff
- conducting audits (including a range of assurance activities) in relation to parliamentarians' work expenses, travel expenses and travel allowances, and travel expenses and travel allowances claimed by their staff
- processing claims for travel expenses and allowances by parliamentarians and their staff
- issuing rulings in respect of travel expenses and allowances under section 37 of the PBR Act.

Travel-related personal advice

IPEA provides personal advice to parliamentarians and their staff² and former members of parliament about their use of *travel* expenses and allowances.

Travel-related personal advice to parliamentarians is subject to 'safe harbour' arrangements, which protects parliamentarians from any debts that would otherwise be recoverable (s57 PBR Act) relating to the provision of travel expenses and allowances, if the parliamentarian relied on IPEA advice and the advice is incorrect (s58 PBR Act).

In addition, travel-related personal advice provided by IPEA is private and confidential. IPEA is exempt from having to provide information under the *Freedom of Information Act 1982* in relation to any travel-related personal advice IPEA has provided.

Rulings

IPEA has the power to make binding rulings in relation to travel expenses and travel allowances (paragraph 12(1)(m) IPEA Act and s37 PBR Act). Rulings are written determinations establishing whether a parliamentarian has acted in accordance with their obligations under sections 26, 27 and 28 of the PBR Act. They may be given on application by the parliamentarian to whom the ruling relates, or by IPEA's own initiative. A ruling

² Staff are employed under, and their work conditions governed by, the *Members of Parliament (Staff) Act 1984*.

determines whether a parliamentarian is liable to pay a debt to the Commonwealth in relation to claimed travel expenses and travel allowances. A debt will be payable if the ruling determines that the parliamentarian contravened the PBR Act, unless they relied on incorrect personal advice given by IPEA in relation to that claim.

Audit and assurance and reporting

IPEA's audit and assurance and reporting functions under the IPEA Act apply to *all work resources* claimed by parliamentarians under the PBR Act and the travel resources claimed by their staff. This includes resources administered by other entities such as the Department of Finance (Finance).

IPEA's approach to audit and assurance is outlined in the Protocol for [Dealing with Misuse of Parliamentary Work Expenses](#) and the [Fact Sheet - Statutory Audit Function](#).

Under Part 5 of the IPEA Act, IPEA has information-gathering powers that can be used to obtain information or a document from a person where it is relevant to the performance of IPEA's reporting or audit and assurance functions. Criminal penalties apply if a person does not comply with a request from IPEA to produce information or a document.

Certification by parliamentarians of the use of parliamentary business resources is an important accountability component of the principles-based framework. Some (e.g. printing and travel allowance) are certified at the time a claim is made. Further, parliamentarians and former parliamentarians are asked (though not legislatively required) to certify quarterly expenditure reports which include aggregated staff costs. The reports are published publicly on IPEA's website, together with a list of parliamentarians who have certified that the parliamentary business resources listed in their report are within the legislated purpose. There is no consequence (beyond public notification) for parliamentarians who fail to certify.

Part 3: Administration of the PBR Framework

Division of functions

Administration responsibilities for parliamentary business resources, including those under the PBR Act (and for staff under the *Members of Parliament (Staff) Act 1984*), are predominantly divided between Finance and IPEA, and the parliamentary departments (the Departments of the House of Representatives and the Senate, and the Department of Parliamentary Services (DPS)). Other entities have administrative roles in relation to specific aspects of the PBR Framework (refer Figure 2).

For example, most:

- travel expenses and travel allowances are administered by IPEA - with some administered by others, particularly Finance
- office expenses are administered by Finance - with some administered by DPS, including ICT.

The number of different entities providing client service functions (such as advice, guidance, training and processing) in relation to the PBR Framework, sometimes for similar functions, can result in service fragmentation and make it difficult for clients to know where to go for information.

Figure 2: Administration of parliamentary business resources under the PBR Act

Functional split	
Travel <ul style="list-style-type: none">• All advice, guidance, training and processing of domestic and international travel, other than Minister-determined travel in exceptional circumstances: IPEA• Administration of international travel costs incurred overseas: DFAT• COMCAR (including COMCAR for security purposes), Canberra-based self-drive vehicles and Minister-determined travel in exceptional circumstances: Finance• Special Purpose Aircraft: Defence	Work expenses <ul style="list-style-type: none">• All advice, guidance, training and processing of office expenses, budgets, and property: Finance• All major ICT (other than fixed-line office telephones): DPS• Fixed-line office telephones: Finance• Advice, guidance, support and processing of other parliamentary expenses: Finance, DPS and Departments of the Senate and the House of Representatives
Remuneration <ul style="list-style-type: none">• Salary and allowances: Departments of the Senate and the House of Representatives• Private Plated Vehicles: Finance• Residential telephone: Finance• Former parliamentarian travel: IPEA• Travel expenses for former Prime Ministers: IPEA• Other resources for former Prime Ministers: Finance and DPS	Transparency and oversight <ul style="list-style-type: none">• Reporting: IPEA and DPS• Compliance checks and assessment of allegations of misuse of non-travel work expenses: Finance• Compliance checks of travel work expenses: IPEA• Formal allegations: IPEA• Investigations and audit: IPEA• Publication of online guidance: Finance and IPEA

Impact of division of functions

The Terms of Reference include considering the extent to which administering entities are working in a 'joined up' way to ensure the PBR Act Framework is applied consistently. The division of functions under the PBR Framework has a number of consequences for parliamentarians, their staff and administrators. Some key examples are outlined below.

- *Advice, guidance, training and processing functions* - are undertaken by MaPS, IPEA, and the parliamentary departments (the Departments of the House of Representatives and the Senate, and DPS) depending on the nature of the parliamentary business resource, which can create inefficiencies and cause confusion for clients who may need to be redirected between agencies and have to re-explain their circumstances.
- *Personal advice* - the 'safe harbour' arrangements applicable to IPEA's personal travel-related advice do not apply to advice about other non-travel parliamentary business resources provided by other administrators including Finance and the parliamentary departments.
- *Rulings* - IPEA has the power to make binding rulings in relation to *travel* expenses and *travel* allowances. However, IPEA, Finance and other administrators cannot make rulings for *non-travel* related work expenses and allowances.
- *Protocols* - IPEA's auditing and reporting functions do not apply to non-travel related staffing matters. As such, under its *Protocol – handling of misuse of non-travel related work expenses by the Department of Finance*, Finance cannot refer such matters to IPEA for further consideration. Unlike IPEA, Finance does not have information-gathering powers.
- *Reporting* – reporting of the use of parliamentary business resources was intended to provide accountability and transparency. However, public and member accessibility to information across the entire PBR Framework is not currently integrated and it can be difficult to navigate multiple agency websites to find information.

There may be public policy and efficiency benefits in exploring synergies and functional expertise required to deliver streamlined advice and administration. Consideration of the wider inter-agency arrangements under the PBR Framework for administering and reporting parliamentary business resources, with a view to improving efficiency, accountability and transparency under the framework may benefit parliamentarians, administrators, and the public.