



Australian Government

Department of Finance

**Rosemary Huxtable PSM
Secretary**

The Hon Kelly O'Dwyer and the Hon Kate Ellis
PBR Act and IPEA Act Review

By email: Consultations@finance.gov.au

Dear Ms O'Dwyer and Ms Ellis

Thank you for the opportunity to contribute to the statutory review of the *Parliamentary Business Resources Act 2017* (PBR Act) and the *Independent Parliamentary Expenses Authority Act 2017* (IPEA Act) (the Review) and for the engagement to date on the matters before you.

The Department of Finance (Finance) has policy and functional responsibilities for both the Acts that are the subject of your Review, which together form the PBR Framework.

The PBR Framework established a modern, principles-based approach for the provision of public resources to current and former parliamentarians. Together with the creation of the Independent Parliamentary Expenses Authority, the purpose of the Framework was to empower parliamentarians to exercise good judgement in accessing public resources, embed simplified arrangements through the application of key principles and enable greater accountability. Since its inception, application of the Framework by both clients and administrators has matured.

There are opportunities to build on the success of the reform to improve and enhance the Framework and delivery of functions, consistent with its overarching objectives and building on the experience of the past four years. These are outlined in the attached Submission.

We look forward to continuing to support your consideration of these matters and to provide any further information that you require.

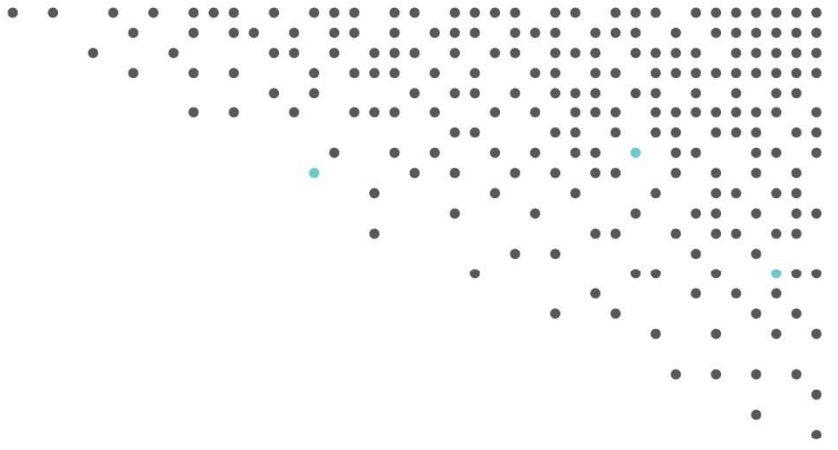
Yours sincerely



Rosemary Huxtable
Secretary
18 November 2021



Australian Government
Department of Finance



Submission to the Review of the
*Parliamentary Business
Resources Act 2017*
and the
*Independent Parliamentary
Expenses Authority Act 2017*



Framework overview and objectives

The *Parliamentary Business Resources Act 2017* (PBR Act) established a modern framework for the provision of public resources to support the work of parliamentarians.

The PBR Act introduced new obligations on parliamentarians' claims for work expenses, as recommended by the 2016 review into *An Independent Parliamentary Entitlements System*. The new framework moved away from the system of extensive rules and limitations, to one that was principles-based and provided greater flexibility and discretion to parliamentarians in their use of resources to support their parliamentary business. The PBR Act established five overarching obligations in respect of the majority¹ of resources provided under the PBR Act:

- resources must be used for the **dominant purpose** of the parliamentarian's parliamentary business
- resources used must provide **value for money** to the Commonwealth
- parliamentarians must be **personally responsible and accountable** for their use of resources
- parliamentarians must act **ethically** and in **good faith** in using, and accounting for their use of, resources
- claims for resources must **comply with all conditions** for making the claim.

These legislative obligations are intended to ensure that parliamentarians are accountable for the appropriate use of resources. The framework imposes a 25 per cent penalty if a parliamentarian's claim does not comply with the applicable obligations.

The Independent Parliamentary Expenses Authority (IPEA) was established and commenced operation on 3 April 2017 to enhance the accountability for, and transparency of, the use of parliamentary business resources.

Principles-based framework

While the policy intent of establishing a more principles-based framework and providing parliamentarians with greater discretion in the use of resources has been achieved, some of the prescriptive rules of the preceding framework have been retained. This is particularly the case with office expenses and some areas of domestic and international travel. Although continuing some of the rules from the preceding framework ensured consistent approaches to allowable and non-allowable expenses across the frameworks, their retention has tended to constrain the operation of the principles and created a degree of practical complexity. Of course, some ongoing prescription may be important to ensure the appropriate use of Commonwealth resources.

On commencement of the new framework, education sessions and extensive guidance were provided to support the transition and ensure that the new overarching obligations were well understood by parliamentarians.

¹ Parliamentarians' remuneration and resources provided under part 5 of the PBR Act, such as insurance, the Parliamentary Injury Compensation Scheme and legal assistance to Ministers, are not subject to the obligations.

Section 67 of the *Parliamentary Business Resources Regulations 2017* (PBR Regulations) provides an annual budget for office expenses and prescribes categories of claimable office expenses to inform the use of the annual budget. The expense categories broadly reflect the previous office budget rules and restrictions.

The categories range from broad in nature (e.g. *producing electronic material* and *purchasing publications*) to quite narrow and prescriptive (e.g. *conducting virtual town hall meetings by electronic communication* and *conducting interactive voice response phone surveys*). Having narrower categories means that the framework may not be able to adequately accommodate changing technology and ways of working.

Although there have not been many changes to the PBR Regulations since the framework was established, the main purpose of the seven amendments that have been made has been to provide greater flexibility regarding office expenses, mainly through the addition of new expense categories to align with changes in how parliamentarians conduct their parliamentary business in a modern context.

- An amendment to the Regulations in November 2018 to allow the Special Minister of State to approve additional office expenses provided a more streamlined method for establishing additional expense categories than amending regulations.

The PBR Regulations also have specific prohibitions relating to office expenses, such as:

- producing and placing content on broadcast television, soliciting votes, soliciting financial and non-financial support and soliciting political party memberships
- producing or distributing material that includes any advertisement that may result in a commercial benefit.

These prohibitions can lead to confusion and a difference in interpretation between parliamentarians and administrators, for example:

- even if an expense is for the dominant purpose of parliamentary business, reference to a commercial business in a publication cannot provide a commercial benefit to another person, whether or not that was the intention
- while material in support of a parliamentarian's own election is permitted, it cannot include how to vote material or material which explicitly solicits a vote for any other person or party
- where a parliamentarian may reference seeking support in a publication, e.g. a call for volunteers, it cannot unintentionally seek financial support.

In most of these examples, there is not a completely right or wrong interpretation, but rather each requires a matter of judgment taking into account overall context. One source of confusion stems from some prohibitions applying across the entire framework, while others are linked to specific resources. For example, for travel, the dominant purpose test applies (i.e. provided parliamentary business is the dominant purpose use, incidental commercial business is permitted). By comparison, electorate, ministerial and office holder offices and office resources must not be used for *any* commercial purpose.

In considering the rules applicable within the principles-based framework, Finance recognises the importance of retaining certain restrictions to ensure the appropriate use of taxpayer funded resources such as not using public resources to solicit votes for another person (e.g. a retiring member using taxpayer funds to support the election of another person).

Opportunity

There is scope to simplify the PBR Regulations, placing greater reliance on the obligations to regulate parliamentarians' use of work expenses rather than prescriptive rules. There is also scope to consistently apply across all work expenses those restrictions which ensure appropriate use of Commonwealth resources in a way that balances clarity and principles that rely on individual judgement.

Further simplification of the PBR Act framework would reflect a growing maturity of both the framework and shared understanding of administrators and clients regarding the efficient and effective use of resources to support parliamentary business.

Administration of the PBR Act framework

Responsibility for administering resources provided under the PBR Act framework is predominantly shared between the Department of Finance (Finance) and IPEA, and to a some extent the parliamentary departments and other entities. Finance also administers the separate but related *Members of Parliament (Staff) Act 1984* (MOP(S) Act) employment framework. MOP(S) Act employees play a critical role in supporting the parliamentary business of their employing parliamentarian.

IPEA has both an oversight and assurance role across all PBR Act resources, as well being the primary administrator of travel resources.

While all entities have worked collaboratively and established effective working relationships, the division of administrative functions, as depicted at [Attachment A](#), can be confusing for clients and risks an inconsistent approach. Clients and the parliament must navigate:

- advice, guidance and training provided by multiple entities with different service delivery arrangements
- unique arrangements in respect of travel provisions that do not apply to other PBR Act resources (e.g. office expenses)
- different assurance arrangements, given IPEA has legislated information-gathering powers, while other entities rely on administrative processes, such as Finance's *Protocol – handling of misuse of non-travel related work expenses by the Department of Finance*, which require the willing cooperation of participants. This protocol sets out that minor matters related to non-travel work expenses will be considered by Finance with more serious matters able to be referred to IPEA

Under the IPEA Act, IPEA's legislated information gathering and assurance powers extend to all use of work expenses under the PBR Act, and MOP(S) Act staff travel matters. However, it does not have oversight functions with respect to MOP(S) Act employee staffing matters.

The introduction of the Parliamentary Expenses Management System (PEMS) for submission of expense claims across both Finance and IPEA has provided the opportunity for parliamentarians to electronically submit and track their PBR expense claims, including travel. There are significant efficiencies to be gained by moving to 100% digital processes.

Similarly, parliamentarians can make and manage COMCAR bookings digitally using a CARS application, other than the parliamentary shuttle arrangements which are managed by the Chamber Departments. Like PEMS, there are significant efficiencies and improvements in services to be gained by moving to all bookings being managed through CARS.

In addition, resources determined by the Remuneration Tribunal as remuneration (i.e. private-plated vehicles (PPVs) or residential phones and internet services) are not subject to the overarching obligations which apply to public resources prescribed by the PBR Regulations. While all remuneration is determined by the Tribunal, administration of remuneration is disbursed among a number of entities – with salary and allowances administered by the Chamber Departments, travel-related remuneration by IPEA, and other forms of remuneration, such as residential telephones or PPVs largely administered by Finance.

The number of entities involved in the PBR framework and different legislative arrangements can result in service fragmentation, which works against seamless, efficient and client-focussed service delivery.

Opportunity

To improve client services, a more principles-based framework could allow functions to be rationalised to promote greater consistency across service delivery and assurance functions.

Greater use of PEMS and CARS provide opportunities to enhance administration and improve service delivery.

IPEA's assurance function could be broadened to encompass all allegations or complaints regarding the use of Commonwealth funded resources.

Large Electorates

There are 46 members of the House of Representatives in large electorates who are eligible for additional resources. Other than senators for the Northern Territory, senators are not provided with additional resources.

The additional resources provided depend on the size of the electorate, and can include:

- a. a higher rate of electorate allowance²
- b. an additional private-plated vehicle³
- c. additional Commonwealth funded electorate offices⁴
- d. eligibility to be reimbursed limited expenses (up to \$21,331.23 per annum for electorates in excess of 25,000km² and \$53,328.06 per annum for electorates between 3,500km² and 25,000km²) for a privately-leased satellite electorate office⁵

² Clause 2.8 of *Remuneration Tribunal (Members of Parliament) Determination 2021*

³ Clause 3.5 of *Remuneration Tribunal (Members of Parliament) Determination 2021*

⁴ Section 72 of the *Parliamentary Business Resources Regulations 2017*

⁵ Section 71 of the *Parliamentary Business Resources Regulations 2017*

- e. a higher cap on transport costs for unscheduled commercial transport for conducting electorate duties in the electorate (covering hired vehicles and chartered transport)⁶.

The two senators for the Northern Territory are eligible for an additional four-wheel-drive private-plated vehicle.

Although beyond the scope of this review, it is worth noting that members of the House of Representatives representing large electorates are also eligible for additional staffing resources and budget under the *Members of Parliament (Staff) Act 1984*.

On 16 October 2020, the Joint Standing Committee on Electoral Matters (JSCEM) released its advisory report on the Commonwealth Electoral Amendment (Ensuring Fair Representation of the Northern Territory) Bill 2020⁷. In its report, the JSCEM recommended, among other things, that:

...the Government review the existing provision of additional resourcing to MPs with large electorates, and consider whether further targeted resourcing would assist with representation by MPs of their constituents in these large electorates.

In response, the Government noted that the recommendation would be considered as part of the review of the PBR Act.

Opportunity

Consideration could be given to whether the support provided to the members representing large electorates and the Northern Territory senators, including whether the provision of a satellite office allowance is meeting parliamentary business needs.

⁶ Section 14 of the *Parliamentary Business Resources Regulations 2017*

⁷ [Advisory report on the Commonwealth Electoral Amendment \(Ensuring Fair Representation of the Northern Territory\) Bill 2020 \(aph.gov.au\)](https://aph.gov.au)

Administration of resources under the PBR Act

Functional split

Travel	Work expenses	Transparency and oversight	Remuneration
<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 	<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 House Departments 	<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 	<ul style="list-style-type: none"> Salary and allowances: House Departments 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

*Defence has a separate appropriation for administering Special Purpose Aircraft. In practice, little SPA usage is claimed under the PBR Act.