

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Special Minister of State

*Parliamentary Entitlements (Supplement of Capped Entitlements) Determination 2012 (No. 1)*

### **Background**

The *Parliamentary Entitlements Act 1990* (the Act) provides members of each House of Parliament (members) with a range of benefits, including those set out in Schedule 1 to the Act. Section 12 of the Act provides, in part, that the Governor-General may make regulations for the purposes of section 9 of the Act. Subsection 9(2) of the Act provides that a benefit set out in Schedule 1 to the Act may be varied or omitted by the regulations.

Regulation 3EA of the *Parliamentary Entitlements Regulations 1997* (the Regulations) provides an entitlement to supplement a member's existing capped entitlements in exceptional circumstances.

The *Parliamentary Entitlements (Supplement of Capped Entitlements) Determination 2012 (No. 1)* (the Determination) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Act or Regulations do not impose any conditions that need to be satisfied before the power to make the Determination may be exercised.

### **Purpose**

The Determination sets out certain parameters for the supplement of capped entitlements in exceptional circumstances in regulation 3EA of the Regulations (the supplement purposes, the capped entitlements and the relevant determinations). Details of the Determination are included in Attachment 1.

### **Documents incorporated by reference**

Clauses and documents incorporated by reference in the Determination include:

- (a) regulation 3AA of the Regulations;
- (b) item 7 (1) of Schedule 1 to the Act;
- (c) clause 7.2 of Remuneration Tribunal *Determination 2012/04: Members of Parliament – Entitlements*;
- (d) clauses 3.15 and 3.15.1 to 3.15.3 of Remuneration Tribunal *Determination 2012/19: Members of Parliament – Travelling Allowance*;
- (e) Determination 2012/11, *Determination regarding electorate employees – relief staff budget*, made by the Special Minister of State on 31 July 2012; and
- (f) Determination 2011/10, *Determination regarding staff travel arrangements*, made by the Special Minister of State on 23 May 2011.

The documents at paragraphs (a) to (d) are available at [www.comlaw.gov.au](http://www.comlaw.gov.au) and the documents at paragraphs (e) and (f) are available at [www.finance.gov.au](http://www.finance.gov.au).

### **Commencement, Consultation and Regulatory Impact**

The Determination commences in accordance with the table in Section 2. Any retrospective application of the Determination is in accordance with subsection 12(2) of the *Legislative Instruments Act 2003* as it does not affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) to that person's disadvantage, nor does it impose any liability on such a person.

Consultation was undertaken with all members in relation to the supplement of capped entitlements in exceptional circumstances, as included in the explanatory statement to the *Parliamentary Entitlements Amendment Regulations 2011 (No. 1)*.

The Office of Best Practice Regulation has confirmed that the preparation of a Regulation Impact Statement is not necessary, as the amendments have a nil or low impact on business or the economy or individuals, apart from the Federal Parliamentarians affected.

### **Statement of Compatibility with Human Rights**

A statement of compatibility with human rights, prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, is at [Attachment 2](#).

### **Details of the Determination**

#### **Section 1 – Name of Determination**

This section provides that the title of the Determination is the *Parliamentary Entitlements (Supplement of Capped Entitlements) Determination 2012 (No. 1)*.

#### **Section 2 – Commencement and Revocation of Previous Determination**

This section provides that the Determination commences in accordance with the table in paragraph 2(a), and that the *Parliamentary Entitlements (Supplement of Capped Entitlements) Determination 2011 (No 2)*, made by the Special Minister of State on 23 May 2011, is revoked from the day that the Determination is made.

#### **Section 3 – Definitions**

This section provides the definitions of ‘Act’ and ‘Regulations’, for the purposes of the Determination.

#### **Section 4 – Supplement Purposes**

This section provides that, for the purposes of subregulation 3EA(6) of the Regulations, the entitlement provided in regulation 3EA of the Regulations may only be used for one or more of the following purposes:

- (a) printing and communications, in accordance with regulation 3AA of the Regulations;
- (b) office requisites and stationery, in accordance with item 7(1), Part 1, Schedule 1 to the Act;
- (c) Australian flags and printed material related to national symbols, for presentation to constituents, in accordance with item 2, Part 1, Schedule 1 to the Act;
- (d) Charter transport in accordance with Remuneration Tribunal *Determination 2012/04: Members of Parliament – Entitlements*;
- (e) overnight stays in the member’s electorate, State or Territory in accordance with Remuneration Tribunal *Determination 2012/19: Members of Parliament – Travelling Allowance*.

#### **Section 5 – Capped entitlement**

This section provides what the term ‘capped entitlement’ means, for the purposes of paragraph 3EA(8)(a) of the Regulations, and includes the entitlements listed in paragraphs (a), (b), (d) and (e), above. The entitlements listed in this section are all capped by legislation.

This definition does not include ‘Australian flags and printed material related to national symbols’, as this entitlement is subject to an administrative rather than a legislative cap.

#### **Section 6 – Relevant Determination**

This section specifies the determinations made under the *Members of Parliament (Staff) Act 1984* (MOP(S) Act) that are included in the definition of ‘relevant determination’ for the purposes of paragraph 3EA(8)(b) of the Regulations. For the purposes of section 14 of the *Legislative Instruments Act 2003*, the specific reference to these determinations (which are not legislative instruments) means that the determinations are incorporated in their form as at the commencement of the Determination.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Parliamentary Entitlements (Supplement of Capped Entitlements) Determination 2012 (No. 1)**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

Regulation 3EA of the *Parliamentary Entitlements Regulations 1997* (the Regulations) provides an entitlement to supplement a member's existing capped entitlements in exceptional circumstances.

This Legislative Instrument is made under regulation 3EA of the Regulations, and sets out certain parameters for the supplement of capped entitlements in exceptional circumstances. Specifically, the Legislative Instrument sets out:

1. the purposes for which a supplement may be used;
2. the capped entitlements that can be supplemented; and
3. the relevant determinations which contain entitlements that can be supplemented.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Gary Gray AO MP  
Special Minister of State**