

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Finance

*Parliamentary Business Resources Act 2017*

*Parliamentary Business Resources Regulations 2017*

### **Outline**

#### *Introduction*

The *Parliamentary Business Resources Regulations 2017* (the Regulations) are made under section 61 of the *Parliamentary Business Resources Act 2017* (the PBR Act). The PBR Act establishes a new framework for providing public resources to parliamentarians for the conduct of their parliamentary business, and related matters.

The new framework's design is based on the recommendations of the review: *An Independent Parliamentary Entitlements System* (February 2016) (the Review). One of the primary recommendations of the Review was to replace a number of primary Acts and instruments related to parliamentary work expenses with a principles based system established by one primary Act (the PBR Act).

Together with the *Parliamentary Business Resources (Consequential and Transitional Provisions) Act 2017* (PBR (CTP) Act), the PBR Act establishes the high level principles of the new parliamentary work expenses framework. The PBR Act provides for subordinate instruments (including these Regulations) to detail the specific Commonwealth-provided resources that parliamentarians can access in their capacity as parliamentarians. This is consistent with recommendation 6 of the Review. The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

#### *Matters dealt with in the Regulations*

The Regulations deal with the following matters:

- Part 1 contains the general provisions of the Regulations and key definitions.
- Part 2 prescribes travel expenses, travel allowances and other related costs, including in relation to Commonwealth owned and operated transport (see sections 30, 31, 32 and 33 of the PBR Act). This Part covers travel resources that parliamentarians may claim both in respect of their own travel and, in the limited circumstances set out in the Part, for the travel of other related persons such as family members.
- Part 3 prescribes non-travel work expenses and other public resources (see section 32 of the PBR Act). These include, for example, office expenses and resources, postage, photography, and telephone services.
- Part 4 also prescribes work expenses and other public resources, which relate to the matters in Part 3 but which are to be provided in accordance with Ministerial determinations (see section 33 of the PBR Act).
- Part 5 provides authority to provide insurance for parliamentarians and (in limited circumstances) other persons, and establishes a scheme to provide legal assistance to current and former Ministers of State (see section 42 of the PBR Act).
- Part 6 contains other matters that the PBR Act provides will be dealt with in regulations, and miscellaneous provisions relating to the other Parts of the Regulations. These include:
  - prescribing office holders for the purposes of paragraph 49(1)(b) of the PBR Act (section 95)
  - setting the annual limit on the collective salaries of Ministers of State for the purposes of paragraph 55(1)(b) of the PBR Act (section 96)

- determining other persons for which the dominant purpose test does not apply under paragraph 26(2)(b) of the PBR Act (section 97)
- the method of claiming and providing information in relation to claims for public resources for the purposes of paragraph 34(a) of the PBR Act (section 98)
- determining preferred providers for public resources which parliamentarians must use in certain circumstances (section 100)
- providing the Independent Parliamentary Expenses Authority (IPEA) with the authority to prescribe a form which parliamentarians must use when requesting a ruling under subsection 37(3) of the PBR Act (section 101), and
- other administrative matters such as the calculation of rollover for budgets for unscheduled commercial transport in large electorates, and the general method of indexation for indexed amounts in the Regulations (sections 99 and 102).

More detail about the provisions of the Regulations is provided below in the notes on specific clauses and, where relevant in Part or Division overviews.

### *Framework for the Regulations*

The PBR Act operates so that resources provided under the Act are to be funded via the PBR Act appropriation (see section 59 of the PBR Act). That is, the prescribing of a matter in the Regulations, in accordance with the PBR Act, gives the Commonwealth authority to pay for it using the PBR Act appropriation.

The PBR Act also provides for accountability mechanisms for parliamentarians' access to and use of the resources prescribed in the Regulations.

In relation to these resources, therefore, the Regulations can be seen to be performing the dual roles of: authorising the Commonwealth to pay for the prescribed resources; and regulating parliamentarians' access to those resources.

### *Accountability measures for resources provided in Parts 2, 3 and 4 of the Regulations*

As an overarching matter, it should be noted that the public resources prescribed in Parts 2, 3 and 4 of the Regulations are subject to a specific accountability regime established in the PBR Act for that purpose. Part 3 of the PBR Act provides that parliamentarians' access to and use of public resources prescribed for that Part are subject to the following obligations:

- parliamentarians must be personally responsible and accountable for their use of public resources, and to act ethically and in good faith in using and accounting for their use of those resources (see section 25)
- a parliamentarian must not claim or use public resources unless it is for the dominant purpose of conducting their parliamentary business (dominant purpose test, see section 26)
- a parliamentarian must ensure value for money for the Commonwealth in incurring expenses or claiming public resources, taking into account the need to conduct the parliamentary business (value for money test, see section 27), and
- a parliamentarian must not claim resources or incur expenses if any conditions for accessing the resources have not been met (section 28).

### Dominant purpose test

The public resources prescribed under Parts 2, 3 and 4 of the Regulations are subject to the requirement that they are only claimed or used, as the case may be, for the dominant purpose of conducting the member's parliamentary business.

Consistent with recommendation 4 of the Review, a member's *parliamentary business* can include activities that fall within four core streams (see section 6 of the PBR Act):

- *parliamentary duties* – being relevant activities of the member that relate directly to the member's role as a member of the Parliament
- *electorate duties* – being relevant activities of the member that support or serve the member's constituents
- *party political duties* – being relevant activities of the member that are connected with both their political party and their membership of the parliament, and
- *official duties* – being relevant activities that relate to the member's role as an office holder (see the definition of office holder in section 5 of the PBR Act) or Minister of State.

The specific activities that fall within these four streams of parliamentary business for each member, as well as any activities that are determined to be outside the scope of 'parliamentary business', will be set out in a legislative instrument made by the Minister under subsections 6(3) and (4) of the PBR Act (the parliamentary business determination). The PBR Act also expressly excludes certain matters from the scope of 'parliamentary business' – see subsection 6(2) of the Act.

### Value for money

The PBR Act includes a key requirement that the claiming or incurring of public resources for a member must provide *value for money* for the Commonwealth, taking into account the need to conduct the member's parliamentary business.

Section 5 of the PBR Act provides that value for money will be achieved if the Commonwealth's payment of the claimed expenses or allowances, or provision of other public resources, uses public money efficiently, effectively and economically.

It would be expected that members would not only consider the monetary cost, but also the full range of relevant factors in determining whether particular costs or claims would provide value for money in respect of the conduct of their parliamentary business. For example, in relation to parliamentary business travel, a member could be expected to consider matters such as:

- the efficiencies associated with particular modes or classes of transport (e.g. the time spent travelling, ability or need to conduct business en route)
- confidentiality and security
- the time of scheduled meetings, including whether it would be reasonable for the member to undertake all travel on the same day, or whether an overnight stay away would better facilitate the conduct of the business, and
- the impact of potential travel modes, classes or itineraries on other parliamentary business the member needs to conduct.

Importantly, the value for money requirement is not intended to be a limit on a member's ability to conduct their parliamentary business. Rather, the value for money requirement ensures that the resources accessed by members to properly conduct their parliamentary business are used in an appropriately efficient, effective and economical way.

## *Consequences for breaching the overarching obligations*

### Sections 26, 27 and 28

Where a member contravenes section 26, 27 or 28 of the PBR Act in respect of a particular prescribed public resource:

- the Commonwealth is not liable to provide the public resource, and
- the member may be subject to the penalty scheme in sections 38 and 39 of the PBR Act (and see also IPEA's functions in relation to rulings about travel expenses and allowances in section 37).

The requirements under sections 25, 26, and 27 of the PBR Act reflect recommendations 4, 5, and 8 of the Review.

### Section 25

While no express consequences flow from a failure to meet the obligations imposed by section 25, a member can expect that acting inconsistently with these obligations will not meet community expectations around the use of public resources. Further, the provision has relevance in the interpretation and application of the Regulations. In the event that a provision of the Regulations is open to more than one interpretation, the preferred construction will be one that is consistent with the object and purpose of the PBR Act, of which section 25 is reflective.

### **References in this instrument**

Note that references to the following Acts and instruments in Attachment B are references to those Acts and instruments, as they existed immediately prior to the commencement of the Regulations:

- *Parliamentary Entitlements Act 1990* (PE Act)
- *Parliamentary Entitlements Regulations 1997* (PE Regs)
- *Remuneration Tribunal Determination 2017/16: Members of Parliament – Travelling Allowance* (Remuneration Tribunal TA Determination), and
- *Remuneration Tribunal Determination 2017/13 Members of Parliament – Entitlements* (Remuneration Tribunal Entitlements Determination).

### **Commencement**

The Regulations commence at the same time as the PBR Act.

The PBR Act commences on a single day to be fixed by Proclamation. However, in the absence of a Proclamation, the PBR Act commences the day after the end of a 12-month period beginning on 19 May 2017 (the day the PBR Act received the Royal Assent).

### **Consultation**

In relation to section 17 of the *Legislation Act 2003*, consultation was undertaken with the Remuneration Tribunal and IPEA – two independent statutory authorities who have responsibility for some aspects of the parliamentary work expenses framework. Consultation was also undertaken with other Commonwealth agencies and with members of the Parliament, including members of the Government, Opposition and minority parties.

Wider consultation was not considered necessary as the measures in the Regulations are designed to implement the recommendations of the Review. The Review took account of 74 submissions from both public and private individuals and organisations.

A copy of the Review is available here:

<https://www.finance.gov.au/publications/parliamentary-entitlements-review/>

### **Regulatory impact**

The Office of Best Practice Regulation (OBPR) has agreed the Regulations have no regulatory impact on businesses, individuals or organisations and therefore the regulatory costs are nil.

OBPR ID Number: 22472.

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

A Statement of Compatibility with Human Rights is included at Attachment A. The Regulations have been assessed as compatible with Australia's human rights obligations as they promote the protection of the applicable rights and freedoms.

Authority: Section 61 of the  
*Parliamentary Business Resources  
Act 2017*

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

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

### ***Parliamentary Business Resources Regulations 2017***

These Regulations are 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**

The *Parliamentary Business Resources Regulations 2017* (the Regulations) prescribe the following matters for the purposes of the *Parliamentary Business Resources Act 2017* (PBR Act):

1. travel expenses and related costs (including Commonwealth owned or operated transport) in respect of both parliamentarians and other prescribed persons (for example, spouse, dependent children, staff, other nominated or designated persons)
2. travel allowances for parliamentarians and other related persons (for example, family members, and staff or other persons assisting the parliamentarian to conduct their parliamentary business)
3. workplace expenses (including office expenses and resources, postage, photographic, telephone services)
4. the types of exceptional circumstances under which the Minister may make a determination to provide additional public resources to a parliamentarian
5. insurance coverage for parliamentarians and other persons in limited circumstances, and
6. legal assistance for current and former Ministers of State.

#### **Human rights implications**

The Regulations substantially engage the following human rights:

- right to work and rights at work (Articles 6 and 7 of the *International Covenant on Economic Social and Cultural Rights* (ICESCR) and Article 7 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW)), and
- the rights of parents and children (Article 18 of the *Convention on the Rights of the Child* (CRC)).

##### *Right to work and rights at work*

Article 6(1) of the ICESCR recognises ‘...the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.’

Article 6(2) further provides:

The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

Article 7 of the ICESCR further recognises:

...the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 7 of the CEDAW provides that:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

### *The rights of parents and children*

Article 18 of the CRC provides that:

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

### *Effect of the Regulations in enhancing human rights*

While work expenses prescribed under the Regulations are not in the nature of remuneration, providing such work expenses ensures that parliamentarians do not personally have to meet the sorts of costs that a reasonable person would expect their employer to meet. This ensures that parliamentarians continue to be fairly remunerated in respect of the work they undertake and that individuals from all parts of the Australian community can afford to enter and participate in political life.

Insurance costs, and costs in respect of the legal liabilities of Ministers met under Part 5 of the Regulations also ensure that parliamentarians have safe and healthy working conditions.

Furthermore, particular measures in the Regulations, such as the provision of family reunion travel under Division 2, Part 2, acknowledge the unique nature of parliamentary work, and ensure that parliamentarians are able to balance their family and other personal responsibilities. Similarly, section 21 is specifically targeted at acknowledging joint child-rearing responsibilities in the context of parliamentary work and will ensure that women in particular are more easily able to participate in parliamentary life.

Therefore, these Regulations promote the applicable rights and freedoms.

## **Conclusion**

This Legislative Instrument is compatible with human rights as it promotes the protection of human rights.

**Mathias Cormann**  
**Minister for Finance**



**Details of the *Parliamentary Business Resources Regulations 2017***

**Part 1 - Preliminary**

**Section 1 - Name**

1. This section provides that the title of the Regulations is the *Parliamentary Business Resources Regulations 2017* (the Regulations).

**Section 2 - Commencement**

2. This section provides that the Regulations commence in accordance with column 2 of the table in subsection 2(1).

3. Item 1 of the table provides that the whole of the instrument commences at the same time as the *Parliamentary Business Resources Act 2017* (the PBR Act). The PBR Act commences by Proclamation. However, if the PBR Act does not commence by Proclamation, the PBR Act will commence on the day after the end of the 12 month period beginning on 19 May 2017 (the date that the PBR Act and the *Parliamentary Business Resources (Consequential and Transitional Provisions) Act 2017* (PBR (CTP) Act) received the Royal Assent).

4. Subsection 2(2) clarifies that any information included in column 3 of the table in subsection 2(1) is not part of the Regulations, rather the information in that column may be edited in any published version of the Regulations in order to assist the reader.

**Section 3 - Authority**

5. This section confirms that the Regulations are made under the PBR Act.

**Sections 4, 5, 6 and 7 - Definitions**

6. These sections provide definitions to support the operation of provisions of the Regulations. The Regulations also utilise a number of terms that are defined in the PBR Act.

7. Individual definitions are explained below, in relation to the sections in which the terms are used.

## **Part 2 - Travel expenses and allowances**

### *Introduction to this Part*

8. This Part of the Regulations prescribes travel expenses and allowances, for the purposes of Part 3 of the PBR Act.
9. The Part is divided into six Divisions:
  1. Travel within Australia for members
  2. Travel within Australia for family members
  3. Cost recovered travel by unscheduled commercial transport
  4. International travel
  5. Travel by Commonwealth transport, and
  6. Miscellaneous matters that relate to the operation of provisions in this Part.

### *All prescribed resources are subject to the overarching PBR Act obligations*

10. As noted in the general outline to this document, ‘prescribing’ a particular public resource in the Regulations both:
  - provides the Commonwealth with spending authority in respect of that resource (see section 59 of the PBR Act), and
  - regulates parliamentarians’ access to and use of that resource, including by:
    - a. prescribing the specific conditions associated with eligibility for that public resources (see section 28 of the PBR Act in respect of resources prescribed for Part 3 of the PBR Act), and
    - b. bringing the provision of that resource within the broader accountability framework in the PBR Act.

### *Terms and concepts used in this Part*

11. There are a number of terms and concepts defined in Part 1 of the Regulations that relate to the travel provisions in this Part.
12. Of particular significance are:
  - terms relating to different types of transport and travel arrangements: *scheduled commercial transport* and *unscheduled commercial transport*; *private vehicle* and *private plated vehicle*; *Commonwealth transport*; *driver*, and *pilot*
  - terms relating to how people’s travel relates to the travel of others, in particular, whether a person *accompanies* or *travels with* another person
  - terms relating to the nature of claimable costs, such as *transport costs* and *travel expenses*, and
  - terms about locations: *home base* (of a member or other person); *Canberra*, and *electorate*.

### Scheduled commercial transport and unscheduled commercial transport

13. These terms are defined in section 4 of the Regulations. Together, they cover the range of transport options that would be commercially available to members.

14. The *scheduled* and *unscheduled* element distinguishes between transport services on the basis of whether they operate on a usual timetable or are made available to a person booking the service at an agreed time. In general, it would be expected that a scheduled commercial transport service (such as a bus, train, ferry, or plane) would be accessible, according to the schedule, by the public generally. By contrast, an unscheduled commercial transport service (such as a taxi, hire car, regulated ride share, limousine, chartered bus, or chartered plane) would generally be expected to be made available exclusively to the person booking the service, at a time suitable to them.

15. Both these classes of transport require that the transport be a *commercial* arrangement. This means that an arms-length financial payment will be made for the member to access the transport (such as a taxi, train, bus service or commercial airline). It is not intended to mean that members cannot access transport services run by entities that are not purely commercial entities (for example, a municipal bus service run by the local council would still be commercial transport for the purposes of the Regulations). Rather, the test is whether the transaction is commercial in nature.

16. To avoid doubt, a Note after the definition of *unscheduled commercial transport* in section 4 of the Regulations confirms that Commonwealth transport is not unscheduled commercial transport for the purposes of the Regulations. Commonwealth transport (such as COMCAR and Special Purpose Aircraft), where approved for use by the Minister, would be provided and administered separately, in accordance with a Commonwealth transport determination – see sections 62 and 63 of the Regulations and the notes on those provisions below).

### Transport costs

17. In most travel prescribed in this Part, members are able to claim *transport costs* for the relevant scheduled or unscheduled commercial service for the journey. Transport costs for commercial transport are defined in section 5 of the Regulations, and, in general, are the costs that would normally be required for a person to travel by that kind of transport. For example, for a person to travel on a scheduled commercial airfare, the person would normally need to pay both the airfare amount and the regulatory taxes that are paid as part of the ticket cost. For a charter arrangement (such as a taxi or charter flight), the charter cost would be the overall fee charged by the charter company for transporting the member to the destination, which (depending on the service) may include an amount for road tolls or airport landing fees. Where crossing a river by car ferry is necessary to get to a destination by road, the costs of that ferry would be included in the transport costs of a vehicle that the member hired to take that journey. A road toll may also be required in the same way, however, the general test in subsection 5(1) is subject to the exceptions in subsection 5(3), which expressly excludes road tolls from claimable transport costs for hired vehicles. This is for consistency with the usual scope of Commonwealth-paid costs for private plated vehicles, which may be provided under section 14 of the PBR Act.

18. As noted above, the general rule for what is a *transport cost* is varied by subsections 5(2) and (3). In particular, subsection 5(2) recognises that in relation to hire vehicles, it may in some cases be appropriate to hire a relief driver to assist with the driving (for example, where a member is driving long distances in a remote electorate) and so includes that as a claimable ‘transport cost’. Further, exclusions from claimable transport costs are prescribed in subsection 5(3), which provides that scheduled commercial fares are not claimable if they are above business class, and the transport costs of a hire car

do not include road tolls, fines, penalties, or associated administrative costs (for example, the administration fee charged by a toll company to issue a toll). These exclusions are consistent with the recommendations of the Review in respect of classes of claimable air travel, and existing policy on Commonwealth payments for hired vehicle costs.

#### Private vehicle and private plated vehicle

19. These terms are defined in section 4 of the Regulations. A member's private vehicle is a vehicle privately owned by the member or a person in the member's family. A 'private plated vehicle' is a vehicle that may be provided to the member as part of the member's remuneration under the PBR Act (see paragraph 14(4)(a)).

20. These distinctions are relevant to the eligibility for certain expenses and allowances for non-commercial transport use (see for example the private vehicle allowances in sections 12, 27, and 28, which are available in relation to private vehicles, but not private plated vehicles. By contrast, parking may be claimed for travel by either type of vehicle in accordance with sections 8(3)(a) and 26).

#### Home base

21. For members (aside from the Prime Minister) and their family members, a person's home base is the person's principal place of residence. A member must notify IPEA of their own home base, and the home bases of their family members (see the definition of home base in section 4 of the Regulations).

22. There may be some circumstances where more than one location could potentially be a person's principal place of residence (for example, where there is a shared custody arrangement, or a child resides at a boarding school for the majority of a year). In that scenario, members may make a judgment (in accordance with their good faith obligation in section 25 of the PBR Act) about which location would be appropriate to nominate, in the context of the provisions that rely on the home base nomination. These are discussed further below.

23. The Prime Minister's home bases for the purposes of the Regulations will include the official residences – that is, the Lodge and Kirribilli. In the event that another residence is provided for the Prime Minister by the Commonwealth (such as when an official residence is unusable because of building or other works), that residence will also be a home base for the Prime Minister. The Prime Minister must also nominate their principal private residence as home base for the purposes of the Regulations (that is, the residence the Prime Minister would normally return to or reside at when not residing at an official residence).

24. The home base locations are significant for identifying claimable travel journeys, and limits on claimable expenses, for family reunion travel (see for example sections 16, 19, and 29). The location of a member's home base is also relevant when determining whether travel allowance is claimable for overnight accommodation for members (see section 10).

#### Canberra

25. When used in the Regulations, Canberra means any location within a 30km radius of Parliament House (irrespective of whether the location is in the ACT or NSW) – see the definition of 'Canberra' in section 4.

### Member and electorate

26. The terms *member* and *electorate* are used in these Regulations in relation to both members of the House of Representatives, and Senators.

27. *Member* is defined in the PBR Act (see section 5) and, when used to refer to a parliamentarian generally, includes a member of the House of Representatives and a Senator. *Electorate*, when used in relation to a Senator, means the State or Territory that the Senator represents (see section 4 of the Regulations).

28. Where a provision of the Regulations needs to distinguish between the different Houses of Parliament, it will do so expressly.

### Commonwealth transport

29. Commonwealth transport means a transport service operated by the Commonwealth. Commonwealth transport may be made available to members in accordance with any Commonwealth transport determination made under the Regulations (see sections 62 and 63 of the Regulations). It is anticipated that determinations will be made in respect of COMCAR and Special Purpose Aircraft.

### Travels with and accompanies

30. The terms *travels with* and *accompanies* are explained in section 7 of the Regulations. These terms are used in a number of sections relating to members travelling in the company of third parties (such as family members, staff, or other persons), for either a particular journey or over a longer period of travel.

#### **‘Travels with’**

31. A person *travels with* the member if they travel in the same vehicle, vessel, aircraft, or other conveyance (such as a train or other relevant mode of transport).

32. The question of whether a person is ‘travelling with’ a member arises under the Regulations in relation to when a person who is accessing prescribed travel can use particular types of transport, or how costs of the person’s transport are claimed or apportioned. In particular, this arises in relation to unscheduled commercial transport costs (such as taxis and charter flights) for persons travelling with members, for example under section 9 as well as subsection 16(3).

#### **‘Accompanies’**

33. Some provisions of the Regulations require consideration of whether a person is *accompanying* a member. For example, under certain international travel provisions, a staff member may be approved to *accompany* a member on international travel (see for example sections 38 and 39 in relation to Presiding Officers and staff). The staff member’s expenses are prescribed on the basis that the staff member is *accompanying* the member. That means that if the staff member was not relevantly accompanying the member, the staff member’s travel expenses would not be claimable. Whether a person is accompanying a member is also relevant to the family travel provisions in Part 2, Division 2 of the Regulations.

34. Whether a person is *accompanying* a member in these cases is a question to be answered through consideration of the person’s overall travel purposes and itinerary. Given the ordinary meaning of ‘accompany’ (that is, to be in the company of a person), it is expected that an accompanying traveller will be travelling for the purposes of being in the company of the member, and will spend time in their company. However, given that the member must be travelling for parliamentary business in all cases

(and that the accompanying traveller may also have relevant scheduling commitments), it is not expected that the accompanying traveller would be in the presence of the member at all times.

35. For example, an accompanying family member, travelling under the family reunion provisions, may accompany the member by travelling with the member on primary travel legs (e.g. flights), but also use independent incidental transport (e.g. taxis or trains to the airport, because the member is coming from their electorate office but the family member is coming from their home or place of work or education). Alternatively, an accompanying family member could travel with the member on all transport legs, but then spend significant amounts of time independently of the member at the destination, while the member attends to their parliamentary business (e.g. sitting weeks in Canberra).

36. In summary, an *accompanying* traveller may *travel with* a member on one or more specific transport legs, but may travel independently on others, provided they can be seen to be *accompanying* the member when the overall travel is considered.

### *Travel with the member by unscheduled commercial transport*

37. As noted above, in this Part there are a number of provisions that deal with the scenario of an another person travelling with a member by *unscheduled commercial transport* (for example, a taxi, hire car or charter flight – see section 4 of the Regulations and the Overview of terms and concepts used in this Part, above).

38. The details are set out below for each provision, however, it is relevant to note at the outset that where there is an extra cost associated with another person travelling with the member on unscheduled commercial transport, that cost must be paid for either by the Commonwealth (as outlined below) or by the member (or another person) personally.

39. The Commonwealth may bear the cost if one of the following applies:

- the accompanying person is a family member, and the cost for their travel is claimable under the family travel provisions (see further information below in relation to those provisions);  
or
- the person's travel is reasonably required for the member's parliamentary business, and the conditions of section 9 are met for that travel (see the notes on section 9 below).

40. If neither of these options are available, the member (or another person) must pay the accompanying person's travel costs. In that case:

- where the member (or another person) is going to ultimately pay the accompanying person's travel costs, but the Commonwealth is going to pay the costs for that person 'upfront' (e.g. because the charter will be booked through the Commonwealth travel provider, and the member is going to repay the amount of the other person's cost to the Commonwealth), then the accompanying person's costs must be covered by a *transport costs undertaking* - see sections 31 and 32.
- if the Commonwealth is not paying the upfront costs (e.g. because the member arranged and paid for the transport upfront), the member can just submit a claim for the portion of the transport that relates to the member's own travel (that is, and not submit a claim for the amount of the accompanying person's share of the transport costs).

41. If there is no cost associated with the accompanying person's travel (e.g. because the member was travelling by taxi anyway, and it does not cost anything extra for the family member to use a spare seat), then no claim or undertaking needs to be made.

## Division 1 - Travel within Australia for members

### Subdivision A - Transport costs

#### **Section 8 - Travel within Australia**

42. This section prescribes the travel expenses that a member may claim when travelling in Australia, specifically:

- transport costs for scheduled or unscheduled commercial transport
- transport costs for Commonwealth transport, and
- certain expenses associated with use of private vehicles and private plated vehicles.

43. The meanings of *transport costs*, *scheduled commercial transport*, *unscheduled commercial transport*, *Commonwealth transport*, *private vehicle* and *private plated vehicle* are outlined above in the Overview of this Part of the Regulations. Together, they cover a wide range of possible transport options. This is intended to provide members with flexibility in how they arrange their travel in the context of the parliamentary business they need to conduct. However, this flexibility (and in particular, the claiming of expenses prescribed in this section) is subject to a number of constraints, as set out in the Regulations and the PBR Act.

44. The constraints on using and accessing these various transport options are different to those that apply under the PE Act scheme and relevant determinations of the Remuneration Tribunal. These changes are to implement the Review recommendations and, in particular, the move to the new principles based system for access and accountability in the PBR Act.

45. A significant difference between the previous and new framework is that access to chartered transport (such as chartered buses and planes), which was previously subject to the express approval of the Minister for most members, will no longer require that approval. Instead, chartered transport is now one of the various *unscheduled commercial transport* options that members can consider in respect of proposed travel.

46. In the Regulations, the operation of this section is expressly limited by:

- section 13, which imposes a reasonableness test in relation to the use of unscheduled commercial transport. This test takes into account the provision to members of a private plated vehicle (or allowance instead of a vehicle) as part of their remuneration package, and
- section 14, which caps annual expenditure on certain types of unscheduled transport use by members in large electorates (relevantly, transport that is used for the purpose of conducting electorate duties in their electorate).

47. Further limits flow from the definitions of the terms in this section (see sections 4 and 5), the arrangements for third parties travelling with members and, for Commonwealth transport mentioned in subsection 8(2), any relevant Commonwealth transport determination that is in force for sections 62 and 63 of the Regulations. This is because the costs associated with a member's use of Commonwealth transport are claimable as travel expenses only where a Commonwealth transport determination is in force, and the claiming of those journey costs is provided for under the determination. If a member accessed Commonwealth transport (such as a COMCAR) to take a journey, but that use was not in accordance with a Commonwealth transport determination, the member would be liable for the costs of that journey, just as they would be for the costs of any other transport that the member was not eligible to



claim. Depending on the circumstances, the member may also be subject to an adverse ruling or penalty in accordance with Part 4, Division 2 of the PBR Act.

### **Section 9 – Other persons travelling for the conduct of member’s parliamentary business by unscheduled commercial transport**

48. Section 9 prescribes, as a travel expense, additional transport costs for persons (other than family members) who are travelling with a member in certain circumstances. Additional transport costs are prescribed for such persons where:

- the person or persons travel with a member domestically by unscheduled commercial transport
- transport costs prescribed by the Regulations could have been claimed for the member to travel by the unscheduled commercial transport even if the accompanying persons were not travelling with the member, and
- the accompanying persons are reasonably required for the conduct of the member’s parliamentary business.

49. This provision does not enable members to take unscheduled commercial transport (eg charter instead of a scheduled flight) *in order to* bring accompanying persons. However, if the member needed to use (or could, under the Act, have claimed transport costs for) unscheduled commercial transport anyway, this provision enables them to also offer a place on that transport to other persons who are reasonably required for the conduct of the parliamentary business (and the Commonwealth will pay for the additional costs, such as an extra passenger fee or an upgrade to a maxi-taxi, for that person’s travel).

#### Subdivision B - Travel allowances

### **Section 10 - Australian travel allowance**

50. This section prescribes *Australian travel allowance* as a travel allowance under subsection 31(1) of the PBR Act. The allowance is for accommodation, meals, and incidental expenses for each night that the member stays in accommodation away from their home base (defined in section 4 of the Regulations and the explanatory text in the overview to Part 2 above). The allowance is equivalent to the travelling allowances for members set out in the Remuneration Tribunal TA Determination.

51. In order to be eligible to claim travel allowance, the travel associated with the overnight stay must be for the dominant purpose of conducting the member’s parliamentary business (in respect of which, see section 6 of the PBR Act and the Minister’s determination made under subsection 6(4)).

52. As indicated in the Note under subsection 10(1), the rate of the allowance is determined by the Remuneration Tribunal in a separate instrument, under subsections 31(2) and 45(1) of the PBR Act.

53. Subsection 10(2) sets a cap on the total number of overnight stays in each financial year for which a member may claim travel allowance where they travel for the dominant purpose of either (or both) of the following types of parliamentary business:

- party political duties at a location other than Canberra (see paragraph 6(1)(c) of the PBR Act for the meaning of party political duties. Note also that Canberra attracts a special meaning under section 4 of the Regulations and includes any location within a 30 kilometre radius of Parliament House), and

- electorate duties at places outside of the member’s electorate (see paragraph 6(1)(b) of the PBR Act for the meaning of electorate duties).

54. However, subsection 10(3) provides that any nights where a member stays overnight while in transit do not count towards the cap under subsection 10(2).

55. These arrangements are consistent with paragraph 3.8(f) and 3.11(f) of the Remuneration Tribunal TA Determination, and are also consistent with the Review which recommended maintaining the caps on travel allowance for these particular duties (see recommendation 9).

### **Section 11 - Canberra daily allowance**

56. This section prescribes the Canberra daily allowance in respect of meals and other incidental expenses for the purposes of section 31 of the PBR Act. The allowance is payable to Canberra-based members only.

57. Specifically, subsection 11(1) provides that ACT Senators and members of the House of Representatives are eligible to claim the allowance, as well as members of the House of Representatives (but not Senators) who have an electorate adjacent to the ACT (for example, the Division of Eden-Monaro) and a home base within a 30 kilometre radius of Parliament House (see note below subsection 11(1)).

58. Subsection 11(2) limits the circumstances in which the allowance is payable. Members can only claim the allowance on days in which they perform specific parliamentary business activities at a location in Canberra other than their home base or electorate office, consistent with members travelling interstate to Canberra for parliamentary business. The following activities are covered:

- attending sittings of the House of Parliament in which the member sits
- attending meetings of the member’s parliamentary political party (including meetings of its executive or committees) (note that this would not include meetings of a member’s local political party branch)
- attend meetings of a parliamentary committee of which the member is a member, and
- for certain specified office holders (as listed in paragraph 11(2)(d)) – performing their official duties.

59. The allowance is intended to mirror the allowance payable under clause 3.15 of the Remuneration Tribunal TA Determination.

60. As indicated in the Note under subsection 11(2), the rate of the allowance is determined by the Remuneration Tribunal in a separate instrument, under subsections 31(2) and 45(1) of the PBR Act.

### **Section 12 - Member’s private vehicle allowance – travel to Canberra**

61. This section prescribes *private vehicle allowance* as a travel allowance for the purposes of subsection 31(1) of the PBR Act. The private vehicle allowance is claimable where members travel between their home base and Canberra in their private vehicle (see the definition of *private vehicle* in section 4 and the notes above in the Overview to this Part of the Regulations).

62. The travel by private vehicle may be for all or only part of the journey (subsection 12(2)).

63. The allowance is intended to cover fuel and other running costs associated with the travel and mirror the private vehicle allowance previously provided under clause 5.1 of the Remuneration Tribunal Entitlements Determination.

64. *Canberra*, *private vehicle*, and the member's *home base* are all defined terms (see section 4 of the Regulations, as well as the explanatory text in relation to Part 2 above). A private vehicle in this context does not include any private plated vehicle provided to a member as part of their remuneration under section 14 of the PBR Act (see the definition of *private vehicle* in section 4). This is because the costs associated with the running of a private plated vehicle are met separately at Commonwealth expense.

65. Consistent with subsections 31(2) and 45(1) of the PBR Act the rates of allowance will be determined by the Remuneration Tribunal from time to time in a separate instrument.

### Subdivision C - Limits on use of unscheduled commercial transport

#### **Section 13 - When a private plated vehicle could reasonably be used**

66. This section imposes a limit on claimable transport costs for travel by unscheduled commercial transport under section 8.

67. It provides that unscheduled commercial transport costs are not claimable for travel within the member's electorate if the member could reasonably use the member's private plated vehicle for that journey (assuming the member had a private plated vehicle).

68. This will generally be relevant in situations where car transport is the most suitable form of transport. For example, if a member needed to travel from their electorate office to another location in their electorate (and scheduled commercial services were not available), the member would need to consider whether it was reasonable in the circumstances to take their private plated vehicle. If it was reasonable to do so, the member would not be able to instead choose to take a taxi at Commonwealth expense.

69. Private plated vehicles are provided to members for use in a range of circumstances, including, relevantly, travel in and for the service of the member's electorate. The purpose of this section 13 test is to avoid the Commonwealth paying additional commercial car transport costs for a member where an alternative car transport option (that is, the private plated vehicle, for which the Commonwealth pays fuel and running costs) is already reasonably available to the member.

70. The use of the private plated vehicle is intended to continue to be in accordance with the vehicle's provision as part of the member's remuneration package under section 14 of the PBR Act, which may include (and has traditionally included) use for the member's private purposes as well as for electorate duties and other parliamentary business.

71. The latter part of the test in subsection 13(1) (*assuming the member had a private plated vehicle*) alludes to the fact that members are generally invited to elect to receive either a private plated vehicle, or an allowance instead of a private plated vehicle, as part of their remuneration package (as contemplated in paragraphs 14(4)(a) and (b) of the PBR Act). Where a member elects to receive an allowance instead of a private plated vehicle, this part of the test operates so that the member cannot claim transport costs in circumstances where they could reasonably have used a private plated vehicle, had they elected to receive a vehicle instead of an allowance.

72. This provision does not prevent the use of other forms of car transport within a member's electorate in circumstances where it would not be reasonable for the member to use their private plated vehicle, for example where security considerations necessitated an alternative form of transport.

#### **Section 14 - Large electorates**

73. This section provides a cap on the amount of transport cost expenses claimable by certain members in a financial year. The cap applies to the expenses for unscheduled commercial transport, where the transport is taken for the dominant purpose of conducting electorate duties in the member's electorate.

74. This is intended to replicate the existing 'Transport in Large Electorates' limits for charter and car hire in the Remuneration Tribunal Entitlements Determination (Part 7), with modifications to implement the Review (see recommendation 12) and move to a principles based system. The method for reducing the cap for certain members where they have made a relevant election in respect of a private plated vehicle provided to them under section 14 of the PBR Act is also reflected in subsection 14(3).

75. The following aspects of the provision's operation are particularly significant:

- Parliamentary business travel taken in the electorate that is not for the dominant purpose of the member's electorate duties will not count towards the cap. For example, if a member that is an office holder needs to travel in their electorate for the dominant purpose of their official duties, that travel will not count towards the cap.
- Travel outside the electorate that is for the dominant purpose of conducting the member's electorate duties within the electorate (for example, due to flight path restrictions, or availability of departure locations, part of the journey may occur outside the electorate) will count towards the cap.
- Travel on *scheduled commercial transport* will not count towards the cap. That is, if a member travels by long-distance train or plane (where those services operate on a regular timetable over a fixed route), for electorate duties in their electorate, those travel expenses will not count towards the cap.
- If a member is travelling in a way that does count towards the cap, and also claims expenses for a third party to travel with them under section 9 (other persons travelling by unscheduled commercial transport for conduct of the member's parliamentary business) of the Regulations, the travel costs of that third party will also count towards the member's cap (see subsection 14(2)).

76. Members who are not given a cap under this section do not have completely unconstrained electorate duties travel. All members claiming travel for electorate duties in their electorate (whether capped or not) will only be able to do so if it is consistent with the dominant purpose and value for money tests. Members who have electorates smaller than 10,000km<sup>2</sup> – which are 'uncapped' under this provision – would not be expected to have a significant need to access unscheduled commercial transport to conduct their electorate duties within the electorate. However, to the extent they do need to travel for this purpose (and where claiming the travel would be consistent with their other obligations), they could do so in accordance with sections 8 and 13 of the Regulations.

## Division 2 - Travel within Australia for family members

### *Introduction*

77. This Division prescribes travel expenses and allowances that members can access for family travel, provided the relevant conditions are met. The types of travel available for family members include family reunion travel and, in limited circumstances, some additional types of travel for members' spouses or nominees to attend specific engagements.

### *Family reunion travel*

78. For most members, family reunion travel includes some provision for travel to Canberra and in the member's electorate (see section 16 and the annual limit on those expenses imposed by section 29), and some for travel in Australia more broadly (see section 17). Mothers of very young children can also access additional travel to assist them with caring for their infant (see section 21).

79. Because of the nature of their roles, certain senior office holders can also access additional family reunion travel for their dependent children (see sections 18 and 19 of the Regulations), and their spouse's travel is provided for separately from other members' spouses (see section 24).

### *Family travel other than family reunion travel*

80. Non-family reunion travel is provided for where the spouse or nominee is representing a member at a function (see sections 22 and 24 of the Regulations), or where the spouse or nominee has themselves been invited to attend a relevant type of function (see sections 23 and 24 of the Regulations).

### *Structure of the family travel provisions*

81. The provisions mentioned above generally prescribe travel expenses relating to the primary travel leg/s for the relevant journeys (for example, for flights or train tickets), and are done this way in order to apply relevant limits to the most costly aspects (that is, the longest journey legs) of the travel. Limits are imposed, variously, in relation to the permissible mode or class of transport, the number of fares available each year for particular types of travel, or the total expenses that may be claimed each year for particular types of travel. In particular:

- Section 29 (Limit on certain costs) imposes an annual limit for each member on the total costs claimable under sections 16 (Family reunion travel to Canberra and within local area), 22 (Travel as member's representative) and 27 (Family member private vehicle allowance). Sections 16 and 22 also provide that, where a family member is travelling independently of the member for the primary journeys, they may only travel by scheduled commercial transport (such as a bus, train or plane). (However, these provisions do not apply to spouses of senior office holders – see further below.)
- Sections 17 (Australia-wide family reunion travel) and 18 (Fares for dependent children of certain senior office holders) each contain a limit on the total number of fares that may be claimed each year under those provisions. Again, those fares must – if the family member is travelling independently of the member for the primary journey – be taken only as scheduled commercial transport fares. (These provisions also do not apply to spouses of senior office holders – see further below.)

- Sections 19 (Additional travel for dependent children of certain senior office holders) and 21 (Accompanying infants and carers) require that, where the family member is travelling independently of the member for the primary journey, they must travel by scheduled commercial transport.

82. These primary travel provisions are supplemented by sections 20, 25, 26, and 27, as follows:

- Sections 25 (Incidental transport costs) and 26 (Parking fees for vehicles used for incidental transport) prescribe costs for family members to commence or complete a primary journey (for example, to get to an airport or train station), and, in limited situations, for other incidental purposes.

The sections provide that the family member may claim certain costs for use of:

- a chartered transport car service (e.g. a taxi or other car service)
- scheduled commercial services
- Commonwealth transport, if that is made available in accordance with a Commonwealth transport determination, or
- private vehicle or private plated vehicle

for the incidental journeys.

- Section 20 (Certain fares may be exchanged for travel with member by unscheduled commercial transport) provides for primary journeys, that would otherwise be taken as scheduled commercial transport costs (e.g. train or plane tickets), to be taken as unscheduled commercial transport with the member (for example, on a charter flight).
- Section 27 (Family member private vehicle allowance) provides for family members to claim a vehicle allowance when they drive to Canberra in a private family car for family reunion purposes, instead of using scheduled commercial transport.

83. The other provisions in this Division are:

- section 23 (Travel as official invitee), which is a discrete provision containing all of the relevant prescribed travel modes and limits, and
- sections 24 (Travel as spouse of senior office holder) and 28 (Senior office holder spouse private vehicle allowance – travel to Canberra). These provisions, read together, contain the claimable travel costs for domestic travel for spouses of senior office holders, which are relevantly unlimited in respect of total expenses claimable each year.

#### *Travel with the member by unscheduled commercial transport*

84. As noted above, in this Division there are a number of provisions that deal with the scenario of a family member travelling with a member by *unscheduled commercial transport* (for example, a taxi, hire car or charter flight – see section 4 of the Regulations and the Overview of terms and concepts used in this Part, above).

85. The details are set out below for each provision, however, it is relevant to note at the outset that where there is an extra cost associated with a family member travelling with the member on unscheduled commercial transport, that cost must be paid for either by the Commonwealth (as outlined below) or by the member (or another person) personally.

86. The Commonwealth may bear the cost if one of the following applies:

- the family member is travelling for family reunion purposes and either:
  - a fare prescribed in sections 17, 18 or 19 of the Regulations is exchanged under section 20 (Certain fares may be exchanged for travel with member by unscheduled commercial transport) for the trip
  - the amount is claimed under section 16 of the Regulations and deducted from the member's family reunion travel cap (see section 29 of the Regulations), or
- the family member is the spouse of a senior office holder and is travelling in accordance with section 24 (Travel as spouse of senior office holder), or
- the family member is travelling with the member in accordance with section 21 (Accompanying infants and carers).

87. If none of these options are available, the member (or another person) must pay the family member's travel costs. In that case:

- where the member (or another person) is going to ultimately pay the family member's travel costs but the Commonwealth is going to pay the costs for the family member 'upfront' (e.g. because the charter will be booked through the Commonwealth travel provider, and the member is going to repay the amount of the family member's cost to the Commonwealth), the family member's costs must be covered by a *transport costs undertaking* - see sections 31 to 33.
- if the Commonwealth is not paying the upfront costs (e.g. because the member arranged and paid for the transport upfront), the member can just submit a claim for the portion of the transport that relates to the member's own travel (that is, and not submit a claim for the amount of the family member's share of the transport costs).

88. If there is no cost associated with the family member's travel (e.g. because the member was travelling by taxi anyway, and it does not cost anything extra for the family member to use a spare seat), then no claim or undertaking needs to be made.

#### *Overview of terms and concepts used in this Division*

##### *Family member*

89. For family travel purposes, a member's family members are (see section 4 of the Regulations):

- the member's *spouse* or *nominee*
- the member's *dependent children*, and
- the member's *designated persons* (if any).

90. See section 5 of the PBR Act for definitions of *spouse* and *dependent child*.

91. *Nominee* is defined in section 4 of the Regulations. A member can nominate a person (a nominee) to access certain travel provisions instead of, or where the member does not have, a spouse. For example, a member who is a single parent with small children might nominate a person that assists in caring for their children as their nominee. Alternatively, a nominee could be the member's partner (if they do not fit the definition of 'spouse') or another person in the member's immediate or extended family.

92. If a member has a legal spouse but nominates a different person as their nominee, the nomination will take precedence for any provisions that can only apply to one of those persons. This would mean, for example, that the family travel limit under paragraph 29(2)(a) of the Regulations would be calculated with reference to the nominee's home base rather than the legal spouse's home base. By contrast, other provisions could potentially apply to both a spouse and a nominee, should such a situation arise. This occurs in relation to travel prescribed in sections 16 and 17 of the Regulations, which may be used by any family member (which includes a spouse and a nominee), subject to the relevant caps.

93. *Designated person* is also defined in section 4 of the Regulations. The concept of designated persons is intended to take into account members' various family circumstances, and to achieve the purposes of family reunion where a member's family life relevantly includes persons other than a spouse (or nominee) and dependent children. Designated persons could include, for example, the children of the member's partner, or the member's parents, nieces or nephews, or grown-up children. In addition, the definition expressly provides for the member's family to include people who are otherwise substantially dependent on the member, and persons who have significant caring responsibilities for someone in the member's family member).

94. Nominating a designated person does not extend the amount of the family travel expenses that are available to a member (which are calculated only in respect of the member's spouse (or nominee) and dependent children). However, it provides for flexibility in who may access those expenses for family reunion purposes. The practical operation of this definition is outlined below for the relevant provisions.

#### Family reunion purposes

95. Family reunion travel, as mentioned above, means travel that is taken for *family reunion purposes*. This is an important term in the Regulations as it establishes mandatory preconditions for accessing family travel in accordance with sections 16, 17, 18, 19, 20, 25, 26, and 27.

96. *Family reunion purposes* is defined in section 6 of the Regulations. A family member is travelling for family reunion purposes where all three of the following criteria are met:

- the member is travelling for the dominant purpose of conducting the member's parliamentary business
- the family member travels to accompany or join the member, and
- the family member's travel is for the dominant purpose of facilitating the family life of the member's family in the context of their parliamentary business.

97. These criteria are not intended to require family members to access family reunion travel only if they will be in the presence of the member at all times. Further, they are not intended to require accompanying family members to remain at the place of accommodation other than when they are with the member. Both of these requirements would be unnecessarily restrictive and impractical, given the member will need to be conducting parliamentary business during the family reunion travel. However, members and their families will need to ensure that proposed family reunion travel furthers the objective of facilitating family life in the ordinary course of the family's work and other commitments, rather than being a discretionary holiday. Incorporating this test into the family travel eligibility implements the Review recommendations around tightening access to and use of family travel (see in particular paragraphs 5.57 to 5.61, and 5.65 to 5.68).

98. The elements of the test operate as follows:



(a) The member is travelling for the dominant purpose of conducting the member's parliamentary business

This is the gateway test for family reunion travel. Family reunion travel is only permissible, under the Regulations, where the member is travelling for the dominant purpose of conducting the member's parliamentary business. Broadly, this means that if a member could not claim travel expenses under Division 1 for particular travel, then they would not be able to claim family travel expenses in connection with that travel. Note that the dominant purpose of the *family member's* travel does not need to be the conduct of the member's parliamentary business; the family member's dominant purpose test (that is, the dominant purpose of 'facilitating family life') is set out in paragraph 6(c) of the Regulations, as explained further below.

(b) The family member travels to accompany or join the member

This criterion is intended to provide some flexibility in arranging family travel schedules, while highlighting that the family member needs to be travelling, predominantly, to spend time with the member. A family member may accompany a travelling member, or may travel to join a member at a location to which the member has already travelled. *Accompanying* the member can also be more flexible than travelling in the presence of the member – see the notes at Part 2 above on *accompanies* and *travels with* for section 7 of the Regulations.

(c) The family member's travel is for the dominant purpose of facilitating the family life of the member's family

This criterion requires the member to turn their mind to whether the planned family travel is consistent with the legitimate purposes of family reunion. The Review highlighted the 'non family friendly' nature of parliamentary work, noting that members' extensive travel requirements place strain on families. However, the Review also noted that family reunion travel 'should be maintained so as to facilitate family life but not constitute an indulgence' (paragraph 5.58). The Review confirmed the Belcher Review view that family reunion travel is to allow members to spend time with their families, and emphasised that the provisions are not intended to facilitate publicly funded family holidays (paragraphs 5.58, 5.65-5.69).

99. There are also other conditions for accessing family reunion travel, set out in the specific regulations in this Division. If these conditions, or the family reunion purposes test are not met, then the family member's expenses will not be payable under the Regulations (and, if expenses have been paid or incurred, may result in a debt and loading being payable by the member – see sections 28, 38, and 57 of the PBR Act).

Subdivision A - Transport costs

**Section 15 - Operation of Subdivision**

100. This section provides that travel expenses prescribed in Subdivision A are prescribed under section 30 of the PBR Act. The expenses prescribed are travel expenses for family members of a member to travel within Australia. *Family member*, in relation to a member is defined in section 4 of the Regulations, and explanatory notes provided in the overview of Division 2, Part 2 above.

## Section 16 - Family reunion travel to Canberra and within local area

101. This section translates the substance of clauses 3.13 to 3.15 of the Remuneration Tribunal Entitlements Determination into the new principles-based framework of the PBR Act. Relevantly, the section prescribes transport costs for family members to travel between any of the following places:

- the family member's home base
- the member's home base
- Canberra, and
- places in the State or Territory the member represents (for a Senator) or in which the member's electorate is located (for a member of the House of Representatives)

provided the travel is for family reunion purposes.

102. This section provides the basic eligibility for a member's family to travel to spend time with the member in the usual course of the member's parliamentary business. The provision recognises, as outlined in the Review, that the work of a parliamentarian can have a significant travel component, and this can take a toll on family life.

103. The bulk of most parliamentarians' travel would be expected to take place for parliamentary or electorate duties, and the journeys for which family travel can be accessed under this provision (relevantly, between home bases, Canberra, and places in the relevant State or Territory to which the member's electorate duties relate) reflect that.

104. The combined total expenses that can be claimed each year under sections 16, 22 and 27 is capped by the formula in section 29 of the Regulations. Within the capped amount, parliamentarians may choose which of their family member/s will travel and by what means.

105. One of the most significant conditions is that the travel is undertaken for *family reunion purposes*. That term is defined in section 6, and see the Overview of terms and concepts used in this Division, above.

106. The following costs are prescribed under this section:

- transport costs by scheduled commercial transport (subsection 16(2)), and
- additional transport costs to travel with the member by unscheduled commercial transport (subsection 16(3)).

107. Note that *travels with* is defined in subsection 7(1) of the Regulations and means that a family member must travel in the same conveyance as the member to access additional transport costs by unscheduled commercial transport. The term *family member* is also defined in section 4 of the Regulations and discussed above in the Overview of terms and concepts used in this Division.

### *Exclusions*

108. Travel expenses under this provision are not prescribed for family members of ACT members and Senators, consistent with the current Remuneration Tribunal Entitlements Determination provisions.

109. Travel expenses are also not prescribed under this provision for spouses of senior office holders. Travel for those persons is dealt with separately in the Regulations (see section 24).

## **Section 17 - Australia-wide family reunion travel**

110. In addition to the capped family travel provisions in section 16 (previously the ‘family reunion budget’), section 17 provides that family members may access three return fares for travel to or from any location within Australia. This is consistent with clauses 3.16 to 3.17A of the Remuneration Tribunal Entitlements Determination.

111. Consistent with the comments of the Review, these trips must be undertaken by the family member for family reunion purposes (as discussed above in respect of section 6), and not for the purposes of a discretionary family holiday. See paragraphs 5.59-5.68 of the Review.

112. The fares prescribed by this provision may be used for travel anywhere in Australia for family reunion purposes. If a member has exhausted their family reunion cap in section 29 of the Regulations, for example, these trips may be used for an additional trip of the kind contemplated in section 16 of the Regulations. However, they may also be used for travel between locations that are not mentioned in section 16.

113. The fares are generally expected to be taken as return fares (for example, to travel from a family member’s home base to meet the member at a destination where the member is conducting parliamentary business, and then to return home again). However, subsections 17(3) and (4) recognise that there are some cases where a return fare is not required (for example, because the family member can drive home with the member after flying to meet them, or there are other circumstances that mean the return portion of the fare is not required). In those cases, a return fare prescribed in this section may be claimed as two separate one-way fares.

114. The fares are prescribed as scheduled commercial transport fares, at no higher than business class. As an alternative, one or more of the fares may be exchanged for unscheduled commercial transport journeys where the family member will be travelling with the member, in accordance with section 20 of the Regulations (see explanatory notes below).

115. Unlike transport costs prescribed and capped under sections 16 and 29 of the Regulations, the fares in this provision are also prescribed for and claimable by ACT Senators and members.

116. However, as for section 16, this provision does not prescribe fares for the spouses of senior office holders (who are provided for separately in section 24 of the Regulations), but senior office holders may claim the fares for other family members.

## **Section 18 - Fares for dependent children of certain senior office holders for family reunion purposes**

117. The Review recommended that additional travel provision for dependent children of senior office holders be reviewed and tightened consistently with the approach to the Australia-wide family travel fares prescribed in section 17 of the Regulations (see paragraph 5.69 of the Review). Consistently with this, the Regulations now require all dependent child travel for senior office holders to be for family reunion purposes (as outlined above in relation to section 6), including travel under this section 18. Under this provision each dependent child of a senior office holder can access up to 3 return fares (in addition to the travel prescribed under sections 16 and 17 of the Regulations). The travel must be at no higher than economy class, and (as for the section 17 travel) may be taken as one-way trips where that is more appropriate, or exchanged to enable the child to travel with the member on unscheduled commercial transport under section 20 of the Regulations.

118. Section 4 of the Regulations provides that a senior office holder is:

- a presiding officer (see definition under section 5 of the PBR Act), or
- a person designated as an office holder under section 7 of the PBR Act who is also:
  - a Minister (which includes a Parliamentary Secretary), or
  - the Leader or Deputy Leader of the Opposition in either the Senate or House of Representatives.

However, Parliamentary Secretaries are excluded from eligibility for the purposes of this section.

### **Section 19 - Additional travel for dependent children of certain senior office holders for family reunion purposes**

119. Consistent with the arrangements under the PE Act, this section provides for further family reunion travel that may be accessed for dependent children of senior office holders (other than Parliamentary Secretaries). However, it has been reviewed in line with the Review recommendations and, under the Regulations, is only able to be accessed where the Minister approves the travel as reasonably necessary for family reunion purposes. See the notes on *family reunion purposes* in the Overview of terms and concepts used in this Division, above.

120. The child's travel must generally be at economy class on scheduled commercial transport, however, where the child is travelling with the senior office holder or the senior office holder's spouse, they may travel at the same class as the office holder or spouse on scheduled commercial transport (see subsection 19(3)(a)) or by unscheduled commercial transport (see section 20).

### **Section 20 - Certain fares may be exchanged for travel with member by unscheduled commercial transport**

121. This section provides for members' families to be able to use unscheduled commercial transport, in lieu of a prescribed scheduled commercial transport fare, when they are travelling with the member for the purposes of sections 17 (Australia-wide family reunion travel), 18 (Fares for dependent children of certain senior office holders for family reunion purposes), or 19 (Additional travel for dependent children of certain senior office holders for family reunion purposes).

122. Where family members travel independently of the member (for example, to meet the member at a destination for family reunion purposes under section 17 of the Regulations), they are only eligible to claim the primary travel journey where it is by scheduled commercial transport (such as a train or plane fare) – see subsections 17(2), 18(2) and 19(3). Further, when travelling *with* the member for the purposes of these sections, it is expected that taking scheduled commercial transport would often be the more appropriate option.

123. However, section 20 recognises that in some cases it will be either necessary, or more efficient, for family members and the member to travel together on unscheduled commercial transport instead of on scheduled fares. For example, in large remote electorates a charter flight can in some cases be the only feasible mode of travel to get to certain destinations. In those circumstances, where the travel is appropriate for a family reunion journey, a family member can exchange a family reunion scheduled commercial fare (under sections 17, 18 or 19 of the Regulations) for an unscheduled commercial transport journey with the member.

124. An exchange does not need to be made if there is no additional cost for the family member to travel with the member. That is, if the member was travelling by a charter flight in any event (i.e. the

member's charter travel was independently claimable under section 8 of the Regulations), and there was a spare seat on the charter flight that could be used by a family member.

125. For clarity of administration, this section provides that where an exchange is made, a return scheduled commercial fare must be exchanged for a return unscheduled commercial fare. If only a one-way journey by unscheduled commercial transport is required in the circumstances, only half of a return fare needs to be exchanged (which would mean that there would be a remaining one-way scheduled fare that could be accessed under the scheduled fare provisions, or exchanged at another time for another one-way unscheduled transport trip).

## **Section 21 - Accompanying infants and carers**

126. This section replicates clause 3.17A of the Remuneration Tribunal Entitlements Determination, for additional family travel to support members who are mothers of very young children.

127. Where a member – who is the mother of a child of up to 12 months of age – has exhausted her family reunion travel fares under section 17, she may claim additional travel under this section for the child and for another family member who travels to assist her with caring for the child.

128. The section prescribes transport costs for the child (if transport costs are required, noting that in some cases there would be no cost for the child) to travel with or join the member, and for the accompanying family member to travel. If the child and carer are travelling with the member, they may travel by the same method as the member (for example, this could be scheduled or unscheduled commercial transport, Commonwealth transport or private or private plated vehicle – see section 5 and any relevant limits that apply in the circumstances). If travelling on a scheduled service with different fare classes, the child may travel with the member, and the accompanying family member's fare must be at no higher than economy class.

129. If the child (and carer) are travelling to join the member rather than travelling with the member, the child and carer may travel by scheduled commercial transport (at no higher than economy class) or Commonwealth transport, if that is made available under a Commonwealth transport determination.

130. The section applies where the member is required to travel interstate for her parliamentary business. If the member is travelling intra-state, the usual family reunion travel provisions would be able to be used (see sections 16 and 29 of the Regulations). If a member had exhausted that cap and exceptional circumstances meant that there was a need for additional intra-state travel expenses to be borne by the Commonwealth, the member could ask the Minister to consider making a determination under subsection 33(2) of the PBR Act.

## **Section 22 - Travel as member's representative**

131. This section translates the Remuneration Tribunal Entitlements Determination provision for representational spouse travel (clause 3.20) to the PBR framework.

132. Because spouses are excluded from the dominant purpose test in subsection 26(2) of the PBR Act, this provision expressly requires that the member's travel, if the member had attended the function personally, would have complied with the dominant purpose test. That is, if the member could have claimed for the travel to attend the function, but is unable to do so because of the reasons set out in this section, the spouse will be eligible to claim travel to attend it.

133. Transport expenses claimed under this section count towards the family reunion cap in section 29. Additionally, travel under this section are limited to certain modes of transport, specifically scheduled commercial transport, unscheduled commercial car transport (such as taxi), or (where available) Commonwealth transport. The spouse could not claim expenses for other unscheduled transport arrangements such as a charter plane.

### **Section 23 - Travel as official invitee**

134. This section recognises that, because of the nature of a parliamentarian's role, there may be circumstances in which their spouse or nominee is invited to attend an official government, parliamentary or vice-regal function. The section provides for travel to a function in these circumstances to be at Commonwealth expense. If the spouse or nominee travels to the function with the member, they may travel by whatever transport means is claimable by the member (including where there is extra cost on unscheduled commercial transport). If they travel to the event separately the spouse or nominee can only access scheduled commercial transport, unscheduled commercial car services, or Commonwealth transport, if that is available in accordance with a Commonwealth transport determination.

### **Section 24 - Travel as spouse of senior office holder**

135. This section provides for the claimable travel by spouses of senior office holders. 'Spouse' is defined in section 5 of the PBR Act and includes a de facto partner.

136. The Review recognised that there are particular travel requirements for spouses of senior office holders, particularly noting the official and quasi-official roles performed by spouses, and that senior office holders often need to spend significant amounts of time away from home. In line with the Committee's comments (see paragraph 5.70 of the Review), this provision provides for the spouse of a senior office holder to claim Commonwealth travel expenses in certain circumstances.

137. Spouses of senior office holders are able to travel for family reunion purposes (see also the notes on section 5), for representational travel (see also the notes on subsection 22(1)), and to attend engagements where they have been invited to do so in the capacity as the spouse of a senior office holder. The latter may include, for example, if the spouse is invited to open an event in the electorate, or speak at a function, in their capacity as the spouse of a senior office holder. This criterion would not be met if the spouse was invited in their own personal or professional capacity (for example, if the spouse was an author and invited to speak at a writers' festival).

138. Under this section, where the spouse travels with the senior office holder, they may use whatever transport is claimable by the member (e.g. scheduled or unscheduled transport, Commonwealth transport or private transport – see section 8 of the Regulations and relevant limits on those types of transport). If travelling separately, the spouse may travel by scheduled commercial transport, car transport or Commonwealth transport (if Commonwealth transport is available in accordance with a Commonwealth transport determination – see sections 62 and 63 of the Regulations).

### **Section 25 - Incidental transport costs**

139. Where the transport costs (including fares) for travel by a family member of a member are prescribed by this Subdivision, this section allows transport costs to also be claimed in respect of travel that is incidental to that other prescribed travel (the 'covered travel').

140. Subsection 25(3) limits what is claimable incidental travel under this provision to:

- travel for the purposes of commencing or completing a journey that includes covered travel (for example, using a taxi to go to the airport to access a scheduled commercial flight for family reunion purposes under section 25) (paragraph 25(3)(a)), and
- travel by the member's spouse or nominee between the spouse or nominee's accommodation in Canberra and Parliament House (paragraph 25(3)(b)).

141. Subsection 25(4) limits the kind of transport costs that may be claimed to scheduled commercial transport, hired car, taxi, or other chartered transport car service, or Commonwealth transport (where that is in accordance with any relevant Commonwealth transport determination).

142. However, note that family members may claim parking costs for using their private vehicle for certain incidental purposes instead – see section 26.

143. *Family member, transport costs, scheduled commercial transport and chartered transport, and Commonwealth transport* are defined terms in section 4 of the Regulations. Further information is provided above in the Overview of terms and concepts used in this Part.

144. The intention of this section is to mirror the arrangements under Part 4 of the Remuneration Tribunal Entitlements Determination, which provided uncapped incidental car transport to family members in certain circumstances.

### **Section 26 - Parking fees for vehicles used for incidental transport**

145. Where the transport costs (including fares) for travel by a family member of a member are claimed under this Subdivision, this section operates to also prescribe parking fees (subsections 26(1) and (2)).

146. The parking fees covered by this section are those related to a private or private plated vehicle used by the family member for travel, for the purpose of commencing or completing the journey that includes the covered travel.

147. For example, where a family member drives their own private vehicle to the airport for the purposes of accessing a scheduled commercial flight for family reunion purposes under section 17, parking fees at the airport may be claimed under this section.

### *Subdivision B - Travel allowances*

#### **Section 27 - Family member private vehicle allowance – travel to Canberra**

148. This section prescribes a private vehicle allowance as a travel allowance for the purposes of subsection 31(1) of the PBR Act.

149. The private vehicle allowance is payable where a family member of a member travels to or from Canberra for family reunion purposes, in a private vehicle. This could include where they travel by private vehicle for all or only part of the journey (subsection 27(2)). For example, a family member could leave their home base and travel by private vehicle to an airport to fly the rest of the way to Canberra.

150. The allowance mirrors the private vehicle allowance previously provided under clause 5.1 of the Remuneration Tribunal Entitlements Determination, and is intended to cover fuel and other running costs associated with using a private vehicle for the travel. The claimed allowance will count towards the member's annual family reunion travel cap prescribed under section 29 of the Regulations.

151. If that cap is exhausted, or the member wishes to do so for other reasons, the allowance can alternatively be accessed by exchanging one of the prescribed fares under sections 17 or 18 for payment of an allowance for a journey under this section. A senator for the ACT, and a member whose electorate is in the ACT may access the allowance for their family members where an applicable fare is exchanged under subsection 27(3) (see subsection 27(6)), even though they are not able to access the allowance otherwise.

152. The rates of allowances under section 27 will be determined by the Remuneration Tribunal from time to time in a separate instrument (see subsections 31(2) and 45(1) of the PBR Act). Subsection 27(7) provides that the allowance is not payable to the spouse of a senior office holder. However, an equivalent allowance for those spouses is prescribed under section 28 of the Regulations. It is prescribed separately as it interacts with the other provisions of this Division in a different way (in particular, the spouse allowance does not count towards the family reunion cap).

### **Section 28 - Senior office holder spouse private vehicle allowance – travel to Canberra**

153. This section prescribes a private vehicle allowance as a travel allowance for the purposes of subsection 31(1) of the PBR Act.

154. The private vehicle allowance is payable where the spouse of a senior office holder travels to or from Canberra for family reunion purposes, and includes where they travel by private vehicle for all or only part of the journey (subsection 28(2)). For example, a spouse leaves their home base and travels by private car to a train station to catch the train the rest of the way to Canberra.

155. The allowance is intended to cover the same costs as the allowance in section 27 (family member private vehicle allowance – see notes above). It is prescribed separately because, consistent with other senior office holder spouse travel under section 24, there is no prescribed cap on the annual amount of the allowance claimable under this provision.

156. As for the family member private vehicle allowance, no allowance is claimable under this provision if the member's *private plated vehicle* is used for the travel.

### Subdivision C - Limit on certain costs

#### **Section 29 - Limit on certain costs**

157. This section translates the previous 'family reunion budget' provisions of the Remuneration Tribunal Entitlements Determination (clauses 3.13 - 3.15) into the PBR framework. What was previously referred to as a budget is now prescribed as an annual 'limit' (which could also be described as a 'cap') on the claimable family reunion travel expenses.

158. The cap applies to travel expenses and allowances prescribed under sections 16, 22 and 27. That means any amounts claimed under those sections count towards the annual cap.

159. Each member will have a personally calculated cap for each financial year. It will be calculated with reference to the member's *spouse* or *nominee*, and any *dependent children*, as notified to IPEA by the member.

160. The cap is calculated by adding the following amounts:



9 x [the value of a business class return airfare from the member's spouse or nominee's home base airport to Canberra]

plus

For each dependent child: 3 x [the value of an economy class return airfare from the child's home base airport to Canberra].

161. If a member had a spouse and two dependent children, there would be 15 airfare values added together to calculate the cap: nine airfares for the spouse, plus three for each child. (Note that a member may have a spouse *or* a nominee for the purposes of calculating the cap, as included in the information provided to IPEA).

162. *Home base airport* is defined in section 4 and relevantly means the airport nearest the person's home base from which the person can access a scheduled commercial flight from Canberra. However, if a family member lives within a 150km drive of Parliament House, the home base airport is taken to be Sydney for the purposes of calculating the cap.

163. The value of the relevant airfares from each family member's home base airport is determined by IPEA having regard to the reasonable cost of airfares for that route in the latter part of the previous financial year.

164. The cap will not be altered during the year. For example, if a family member moves house (so their home base airport is different), a new child is born, or a spouse ceases to be a spouse, the cap is unaffected for that year. The new circumstances would be used to calculate the cap for the following year. However, if a member becomes a member during a financial year (for example, after an election that is held part way through the financial year), the member will have a pro-rata cap calculated in accordance with section 53 of the PBR Act, based on the composition of their family at the time they become a member.

165. While the cap is calculated with reference to the home bases of the member's spouse (or nominee) and dependent children, it is not only those people who can use family reunion travel. The cap calculation is a method for determining the member's annual family reunion transport costs limit for travel claimed under section 16, 22 and 27 of the Regulations. However, the family members who can *travel* under those sections (i.e. the persons whose travel must be counted towards the cap) are all the persons listed in the definition of *family member* (i.e. spouse, nominee, dependent child, designated person).

166. Decisions about which family members travel in accordance with sections 16, 22 and 27, on what route, and by what transport method, are a matter for the member. For example, a member may have a need for a designated person to travel frequently throughout the year for family reunion purposes, but not an equivalent need for their spouse or dependent children to travel for family reunion purposes. This is permissible under the Regulations because the 'designated person' is a family member who can travel under section 16. The designated person's family reunion travel will count towards the cap in section 29 because it is travel taken under section 16 (even though the designated person is not mentioned in section 29 in relation to calculating the cap).

167. The exception to this rule is where the member is a senior office holder, in which case the people who can travel under sections 16, 22 and 27 (and therefore whose travel must be counted towards the cap) are all family members *except* for their spouse, whose travel is provided for separately in section 24

of the Regulations. However, the spouse's home base would still be used for the purposes of calculating the member's annual cap for travel by the other family members who travel under sections 16, 22 and 27. A note is included after subsection 29(2) to confirm this (i.e., that a senior office holder's cap will include an amount calculated with reference to their spouse's home base airport (in accordance with the terms of paragraph 29(2)(a)), even though that spouse's actual travel is not subject to the cap).

### *Division 3 – Cost recovered travel by unscheduled commercial transport*

#### **Section 30 - Members**

168. Where a member travels within Australia using transport costs under the Regulations, this section allows them to upgrade to use unscheduled commercial transport (for example, a charter flight) where they would otherwise be only able to claim for scheduled commercial transport (for example, a scheduled airfare), where the member undertakes to repay the difference to the Commonwealth, using a ‘transport cost undertaking’ as provided for in section 32.

#### **Section 31 – Persons travelling with members**

169. Where a member travels within Australia using unscheduled commercial transport under the Regulations, this section allows them to bring additional passengers, provided any additional costs for those passengers are covered by a transport costs undertaking under section 32. That is, the Commonwealth can pay the upfront costs for additional persons to travel with a member, provided those costs will be repaid to the Commonwealth (as set out in a section 32 transport costs undertaking). This means that the payment for the accompanying traveller will not, ultimately, be at Commonwealth expense.

170. This mechanism can be used to enable shared travel with any person (such as a family member, constituent or any other person) where that traveller’s costs are not otherwise claimable under the Regulations. This facilitates sensible group travel arrangements, of the kind contemplated by the Review (see paragraph 5.39), between members and other persons whose travel is not provided by the Commonwealth (for example, a member and a local business person splitting the costs of unscheduled commercial transport).

171. The dominant purpose test does not apply in respect of an accompanying person’s travel where that travel is covered by a transport costs undertaking (because the cost will not ultimately be borne by the Commonwealth) – see paragraph 97(c) of these Regulations.

#### **Section 32 – Transport costs undertakings**

172. This section allows a person (including a member) to undertake to reimburse the Commonwealth for transport costs associated with travel by unscheduled commercial transport in respect of the member, or another person travelling with the member (subsection 32(1)).

173. Subsection 32(2) makes it clear that a transport costs undertaking can be made even where there is no additional cost to the Commonwealth, and can cover an amount in excess of the additional cost to the Commonwealth for the travel of the person concerned.

174. Subsection 32(3) sets out some administrative matters in relation to a transport costs undertaking, providing that such an undertaking must:

- be in writing,
- include the amount of the transport costs that will be reimbursed by the person to the Commonwealth, and
- be signed, prior to the transport costs being claimed for the travel, by the person making the undertaking. This is to ensure that the claim can be processed appropriately by the resources provider, by seeking recovery of the amount from the person who entered into

the undertaking. Note that *claim* is a defined term in the PBR Act and includes the incurring of expenses that are payable by the Commonwealth.

175. Subsection 32(4) makes it clear that where a person has made a transport costs undertaking, the amount of the undertaking then becomes a debt due to the Commonwealth by that person. The debt may then be recovered by the resources provider by action in a relevant court.

### **Section 33 – Effect of undertakings on cost limits**

176. This section provides that where a member claims transport costs under the Regulations (either in respect of themselves or another person) for travel by unscheduled commercial transport and such costs are subject to a limit (for example the transport in large electorates limits set out in section 14), any amounts that are covered by a transport costs undertaking do not count towards the relevant limit.

## *Division 4 – International travel*

### *Introduction*

177. This Division prescribes international expenses and allowances in respect of international travel by members and, in the limited circumstances set out in this Division, certain other accompanying travellers. Previously, these expenses and allowances were provided through a combination of provisions set out in both the PE Act and the PE Regs, and decisions made under executive authority.

### *The meaning of ‘international travel’*

178. *International travel* is defined in section 4 of the Regulations, and means travel to or from Australia and places outside Australia, or travel between places outside of Australia.

179. *Australia* has the meaning given by the *Acts Interpretation Act 1901* (see section 4), that is, including Norfolk Island and the Territories of Christmas and Cocos Keeling Islands, but not including any other external Australian territory. This means that under the Regulations, travel from mainland Australia to Norfolk Island would not be ‘international travel’. However, travel to the Australian Antarctic Territory, or travel between the Australian Antarctic Territory and another country, would be *international travel*.

180. For the avoidance of doubt, the definition of *international travel* also expressly includes time spent outside Australia. This is to make clear that expenses and allowances under this Division are claimable during a period that a member stays at an overseas location as part of their travel (for example, spending a week in one location to attend a summit), as well as while they are travelling to and from that location.

### *Who is eligible to claim international travel expenses and allowances*

181. The international travel provisions are structured to prescribe eligibility in respect of particular classes or groups of members, as follows:

- Travel approved by a presiding officer (Subdivision B), being travel by:
  - A presiding officer (section 39), or
  - A member representing a presiding officer (section 40)
- Travel approved by the Prime Minister (Subdivision C), being travel by:
  - The Prime Minister (section 43)
  - Other Ministers (section 43)
  - Members representing Ministers (section 45), or
  - Members representing the Government or Australia (section 46)
- Travel approved by the Leader of the Opposition (Subdivision D), being travel by:
  - The Leader of the Opposition (section 48), or
  - Another member of the Opposition (section 49)
- Travel approved by the leader of a minority party (Subdivision E), being travel by:
  - The relevant minority party leader (section 52), or
  - Another member of the minority party (section 53)

- Travel approved by both presiding officers (Subdivision F), being travel by:
  - A member of a parliamentary delegation.

182. In some cases, members in these classes may be eligible to claim expenses for one or more accompanying staff members, and/or an accompanying spouse, as described in relation to the relevant provisions below. Note that unlike for domestic travel, a member cannot nominate a ‘nominee’ instead of a spouse for international travel purposes (as defined in the PBR Act); even if a nominee was approved for travel by an approver, the Regulations would not provide for the nominee’s international travel expenses to be payable by the Commonwealth.

*Condition that the member’s travel be ‘approved’*

183. With very limited exceptions, the travel expenses in this Division are prescribed subject to the condition that the member’s travel was relevantly approved by the person mentioned in the Regulations.

184. As noted above, an approver may be the Prime Minister, a presiding officer, the Leader of the Opposition and a leader of a minority party. See sections 39, 42, 47, 51 and 55.

185. The discretion to approve a member for travel lies entirely with the relevant approver; the Regulations do not purport to regulate the process of deciding who is appropriate to travel overseas in their capacity as a member of the Australian parliament. However, the existence of relevant approval is a precondition to expenses being payable under the Regulations.

186. In respect of travel approved by:

- a presiding officer
- the Leader of the Opposition, or
- a leader of a minority party,

there are annual expenses caps prescribed in the Regulations – see sections 41, 50 and 54.

187. The limit covers any travel approved by the relevant approver. Once an annual limit has been reached, this means no additional travel expenses could be claimed by a person approved to travel by that approver. (However, the Prime Minister may approve additional travel for travel otherwise approved by a presiding officer – see subsection 41(3)).

188. Approvers are, in effect, taken to have self-approved their own travel where they make a claim for travel expenses under this Division. They are not required to formally ‘approve’ their own travel.

189. The approval given by an approver for another member’s travel may, at the approver’s discretion, be quite specific about the approved travel and activities, or be more generally worded. In relation to approvals for accompanying spouses and staff members, however, there is some travel for which approval must be given expressly (that is, in relation to the specific travel plan or activity) in order for expenses to be claimable. These are any significant travel that will be independent of the member, and, for a spouse, any attendance at a spouse program.

190. This means that a generally-worded approval for a spouse to accompany a member on proposed travel would be sufficient for the purposes of subsection 38(1) (i.e. it would enable the member to claim the spouse’s travelling costs while the spouse was accompanying the member on the trip).

191. For example, if the spouse wishes to travel home to Australia on a separate flight from the member, that separate travel must be the subject of specific, express approval for the purposes of subsection 38(2). If express approval is not given, the accompanying traveller's expenses for that travel would not be claimable. Being limited to 'substantial' independent travel means that this specific approval is not required merely for the spouse to take a separate taxi to or from the airport, for example, if the member is travelling separately to or from a parliamentary business meeting.

192. For members whose accompanying spouse may be eligible for attendance at a spouse program, express approval is also required in order for any travel or other costs for that purpose to be claimable (for example, any transport to or activity fees that are associated with the spouse program). See the notes on section 35 (Meaning of international travel expenses) below in relation to what is a spouse program.

### *Claimable expenses*

193. The types of expenses that are generally claimable for international travel are prescribed in section 35. They cover the types of costs that would normally be incurred when travelling internationally for work purposes. This includes things like airfares to travel overseas, the cost of travel while overseas (for example, taxi or hired vehicle while visiting another country), and pre-travel expenses (for example, passport fees, visa costs, pre-travel medical appointments, medical supplies, meal and accommodation costs). See further the notes on section 35, below.

194. In some cases approval will also be given for a person to travel domestically in order to commence or complete the international travel, where that person is not otherwise able to claim domestic travel expenses (for example, an accompanying spouse or medical doctor) (see section 36 and the notes on that provision below). The domestic travel provisions only apply to persons other than members, because all members' domestic travel expenses (whether associated with international travel, or wholly domestic) are to be claimed in accordance with Division 1 of this Part of the Regulations.

195. Certain allowances may also be claimable in respect of international travel for both members and accompanying persons; see sections 58 – 61 and the notes on those provisions below.

### Subdivision A - Preliminary

#### **Section 34 - Purpose of Division**

196. This section is a general section confirming that the travel expenses and allowances provided under this Division are prescribed for the purposes of sections 30 and 31 of the PBR Act. The Note to this section reminds the reader that in making a claim for a prescribed expense or allowance, the dominant purpose test applies to members, but not accompanying spouses. See further the explanatory comments above in the Overviews of this Part and this Division.

#### **Section 35 - Meaning of *international travel expenses***

197. This section prescribes international travel expenses that may be claimed by members under this Division in respect of their own international travel and, in some limited circumstances, the travel of other specified persons.

198. The following expenses are prescribed:

- *transport costs* for travel by *scheduled commercial transport* (*transport costs* and *scheduled commercial transport* are defined in sections 5 and 4 respectively, and will cover things like airfares, bus and train tickets) (paragraph 35(1)(a))
- *transport costs* for travel by *unscheduled commercial transport* within and between other countries (*unscheduled commercial transport* is defined in section 4 and includes things like taxis, chartered buses, or hired vehicles) (paragraph 35(1)(b))
- *transport costs* for travel by *Commonwealth transport* in accordance with a *Commonwealth transport determination* (see sections 5, 62 and 63 of the Regulations for the meaning of transport costs on Commonwealth transport – this could include COMCAR, Special Purpose Aircraft, or any other transport owned or operated by the Commonwealth) (paragraph 35(1)(c))
- accommodation costs (but not separate accommodation for a spouse) (paragraph 35(1)(d))
- meal costs (paragraph 35(1)(e))
- pre-travel medical expenses such as vaccinations (this could also include appointments to consult a doctor for the purposes of the international travel) (paragraph 35(1)(f))
- medical supplies (such as medicine or a first aid kit) (for example, anti-malaria medication, mosquito repellent, prescription or non-prescription anti-nausea medication) (paragraph 35(1)(g))
- emergency medical, dental or hospital expenses (for example, in relation to an injury suffered while travelling overseas – note that these sorts of cost may also be met through insurance arrangements under the Parliamentary injury compensation scheme, insurance provided under sections 78 and 79 of the Regulations, or, in the case of staff members, through Comcover or under the *Safety, Rehabilitation and Compensation Act 1988* – this provision is not intended to limit those arrangements) (paragraph 35(1)(h))
- for members and staff members (noting staff member is a defined term under section 4) and for medical doctors accompanying the Prime Minister (see section 43) – official diplomatic passports (including the cost of obtaining visas and photographs for passports) (paragraph 35(1)(i))
- for members – laundry and dry cleaning (paragraph 35(1)(j))
- for *staff members* (noting the definition of *staff member* in section 4 of the Regulations), and for medical doctors accompanying the Prime Minister (see section 43):
  - premiums for insurance for baggage and personal effects up to an insured value of \$5,000, and, if a claim is made on the insurance – any excess payable in relation to the claim
  - for travel lasting at least 7 days (this could include part of a day so long as the travel spans 7 consecutive days) – laundry and dry cleaning (paragraph 35(1)(k)), and
- taxes, booking fees and other costs normally associated with expenses covered by paragraphs 35(1)(d) to (k) (paragraph 35(1)(l)). (Taxes and booking fees for costs mentioned in paragraphs 35(1)(a), (b) and (c) are otherwise covered in the definition of *transport costs* in section 5 of the Regulations).



199. Subsection 35(2) clarifies matters in relation to accessing transport costs for unscheduled commercial transport under paragraph 35(1)(b) while overseas. Specifically it excludes expenses for security vehicles (which are generally provided by the Attorney-General's Department) as well as cars already available for use at diplomatic postings (generally leased by the Department of Foreign Affairs and Trade), as the Commonwealth meets these expenses otherwise than under the PBR Act.

200. Subsection 35(3) provides that where a spouse accompanies a member on international travel, they are only able to access transport costs for travel by commercial transport (either scheduled or unscheduled) for the purposes of:

- *accompanying* the member (see the definition of *accompany* in section 6), or
- engaging in a spouse program (a spouse program is a specific travel program or itinerary that is set for official purposes. For example, attendance at the G20 by the spouse of the Prime Minister may include an official itinerary that is specific to the spouse and may include functions and events that they attend in the absence of, or with, the Prime Minister, as an official guest). This paragraph precludes a spouse of a member from accessing additional transport for personal use.

### **Section 36 - Transport costs for incidental travel within Australia**

201. Section 36 provides for transport costs for travel within Australia to be paid for persons other than members, in circumstances where the travel is required to connect the person with international travel under this Division 4 of Part 2.

202. Where domestic travel is required for the purposes of facilitating international travel (for example, using a taxi and/or domestic flight to connect with an international flight), members will be able to claim that travel in accordance with the usual rules in Part 2, Division 1 of these Regulations (Travel within Australia for members). Members' staff would also be able to claim relevant travel of this kind in accordance with the MOPS Act provisions. Consequently, this sort of domestic travel has not been included in the definition of 'international travel expenses' in section 35.

203. For other persons who might accompany a member on international travel (e.g. spouses or, for the Prime Minister, a medical doctor), incidental travel expenses associated with the international travel would not be claimable under any other provision of the Regulations. For those persons, therefore, as well as 'international travel expenses' being prescribed for their trip, 'transport costs for incidental travel within Australia' are also prescribed – see subsections 39(3), 40(3), 43(3), 43(4), 44(3), 45(3), and 46(3).

204. This section defines what is claimable as 'transport costs of incidental travel within Australia'. In summary, a person will be able to travel at Commonwealth expense for the purposes of commencing or completing their international travel, and may do so using scheduled commercial transport, taxi or other chartered transport car services, or Commonwealth transport in accordance with a Commonwealth transport determination.

### **Section 37 - Valuing first class round-the-world airfares**

205. This section provides for the valuation of first class round-the-world airfares for the purposes of this division. It gives IPEA the power to make a valuation with reference to the reasonable cost of first class airfares over a six month period preceding the beginning of the relevant financial year.

206. In doing so, IPEA will be able to consider relevant factors such as the prices between different airlines and for different routes, in peak and off-peak periods and in the context of airline discounting of fares.

207. The calculation of a round-the-world airfare is relevant to the calculation of the expenses limits for the Leader of the Opposition and a leader of a minority party under sections 50 and 54 respectively.

#### Subdivision B - Travel and approvals - presiding officers

208. Subdivision B prescribes expenses payable where a person's travel is approved (including self-approved) by a presiding officer. Section 5 of the PBR Act defines presiding officer as the President of the Senate or the Speaker of the House of Representatives.

#### **Section 38 - Requirement for approval**

209. This section is a general provision applying to all expenses prescribed under Subdivision B for a person (other than a presiding officer). Where a specified person wishes to access an expense under this section, they can only do so if their travel has been approved by either the President of the Senate, or the Speaker of the House of Representatives, as relevant. (The exception to this is approval for the purposes of subsection 41(3), in which case the required approval is the approval of the Prime Minister.)

210. Subsection 38(2) provides that where an accompanying spouse or staff member undertakes substantial travel other than with the member (noting that where they *accompany* the member they do not have to travel with them at all times – see section 6) that travel must be separately and expressly approved (by the Prime Minister or presiding officer as relevant) in order for expenses to be claimable.

#### **Section 39 - Travel by presiding officers**

211. This section prescribes international travel expenses for a presiding officer, and up to two accompanying staff members. See the notes on section 35 in relation to what costs are covered as international travel expenses.

212. Alternatively, the presiding officer's spouse may accompany the presiding officer in place of one of the staff members. In this case, subsection 39(3) prescribes both international travel expenses and transport costs for incidental travel within Australia for the spouse. See the notes on sections 35 and 36 above in relation to what expenses are claimable. Transport costs for incidental travel by staff are not required to be prescribed here as these would generally be claimable under the MOPS Act.

#### **Section 40 - Member representing presiding officer - approval by presiding officer**

213. This section prescribes international travel expenses for a member representing a presiding officer with the approval of the relevant presiding officer (see section 38).

214. Paragraphs 40(2)(b) and (c) allow the relevant presiding officer to approve international travel expenses for up to two staff members to travel with the member, unless the member is accompanied by their spouse under subsection 40(3) (as approved by the Prime Minister). Where the member is accompanied by their spouse, the relevant presiding officer can only provide approval for international travel expenses for one accompanying staff member.

215. Subsection 40(3) reflects the fact that a spouse approved to accompany a member may, in order to connect with the international travel flights, need to undertake some domestic travel (for example, transport to and from the international airport. This could include local transport (e.g. a taxi or train to

the airport) or, depending on the circumstances, a flight from a local domestic airport). See section 36, which defines ‘transport costs for incidental travel within Australia’.

#### **Section 41 - Limit on certain expenses**

216. This section sets the annual limit on international travel expenses claimable under this Subdivision at \$250,000 for each presiding officer (including, for each presiding officer, persons approved to travel by that presiding officer).

217. The limit applies to the office of the presiding officer (subsection 41(2)). This means that where there is a change in presiding officers during a financial year, the incoming presiding officer (and any persons approved to travel by the incoming presiding officer) would only be able to claim travel to the value of whatever was remaining of the \$250,000 for that year.

218. Subsection 41(3) allows expenses beyond the limit set under subsection 41(1) to be paid if they are in accordance with an approval of the Prime Minister (i.e. in the event that a presiding officer exhausts their limit, additional travel may be taken or expenses incurred, as the case may be, where the Prime Minister has approved the travel).

#### *Subdivision C - Travel and approvals - Prime Minister*

#### **Section 42 - Requirements for approval**

219. This section sets general requirements that apply to all travel undertaken under Subdivision C. Subsection 42(1) provides that travel expenses provided under this Subdivision for a person (other than the Prime Minister) can only be accessed where the travel has separately been approved by the Prime Minister. This would include, for example, the member, any accompanying staff, and an accompanying spouse.

220. Subsection 42(2) provides that where an accompanying spouse or staff member undertakes substantial travel (the independent travel) during the trip accompanying the member, travel expenses will not be payable for the independent travel unless that independent travel has also been expressly approved. This means that expenses would not be claimable if the approval for the spouse or staff member to travel was generally worded and did not expressly identify the independent travel they intended to undertake.

221. Consistent with subsection 42(2), subsection 42(3) also prescribes expenses for an accompanying spouse to attend a spouse program, where their attendance during the spouse program is also expressly approved. That is, expenses would not be claimable if the approval for the spouse to travel was worded generally, and did not expressly identify their attendance at a spouse program as also being approved. Further information about ‘spouse programs’ is included above in relation to section 35 (Meaning of international travel expenses), and about the approval requirement in the in the introductory notes to this Division.

222. Subsection 42(4) applies where the Prime Minister approves international travel under this Subdivision for the Leader or Deputy Leader of the Opposition in the House of Representatives for the purposes of representing Australia (see section 46). In these circumstances, an approval by the Prime Minister for the Leader or Deputy Leader is taken to include approval for travel by one staff member accompanying the Leader or Deputy Leader.

## **Section 43 - Travel by Prime Minister**

223. This section prescribes international travel expenses in respect of the Prime Minister (subsection 43(1)).

224. Subsection 43(2) prescribes international travel expenses for:

- the Prime Minister
- staff members accompanying, or travelling in advance of, the Prime Minister (for example, a staff member who travels ahead of the Prime Minister to be briefed by, or to brief, the host country in respect of an international visit by the Prime Minister) – note that a staff member is a defined term under section 4 and covers a person employed under the *Members of Parliament (Staff) Act 1984*
- a medical doctor accompanying the Prime Minister, and
- an interpreter accompanying the Prime Minister.

225. Subsection 43(3) prescribes, for a medical doctor accompanying the Prime Minister:

- transport costs for incidental travel within Australia in connection with the international travel (for example, the cost of a taxi to and from the airport – see section 36), and
- costs for accommodation, meals and incidentals within Australia to the extent that they are reasonably required for the medical doctor to commence or complete the journey that includes the international travel (for example, staying in a hotel the night before international travel because the person's home is not in the same city as the departure point).

226. Subsection 43(4) prescribes international travel expenses and transport costs for incidental travel within Australia for the Prime Minister's spouse when accompanying the Prime Minister. Section 36 sets out the definition of transport costs. These costs allow the spouse to access domestic transport in order to facilitate international travel (for example, transport to and from the airport).

227. Subsection 43(5) prescribes expenses for resources that are reasonably required for the conduct of the Prime Minister's official duties during international travel, which may include (but would not be limited to) the expenses listed in this subsection. A definition of official duties can be found in section 6 of the PBR Act.

## **Section 44 - Other Ministers - approval by Prime Minister**

228. This section prescribes travel expenses for a Minister (and staff members accompanying the Minister) where they are travelling with the approval of the Prime Minister (subsection 42(1)).

229. Subsection 44(3) reflects that the Prime Minister's approval may cover spouse travel for a spouse to accompany the member, including international and incidental domestic travel for that purpose.

230. Transport costs for incidental travel within Australia are set out in section 36. These costs allow the spouse to access domestic transport in order to facilitate international travel (for example, transport to and from the airport).

## **Section 45 - Members representing Ministers - approval by Prime Minister**

231. This section prescribes travel expenses for a member representing a Minister where they are travelling with the approval of the Prime Minister (see subsection 42(1)).

232. *Member* is a defined term under section 5 of the PBR Act and includes Ministers. Subsection 45(1) confirms that a Minister may claim travel expenses in accordance with this section if they have been approved to travel overseas to represent the Prime Minister or another Minister.

233. Subsection 45(3) allows the Prime Minister's approval to cover international and incidental domestic travel for the spouse of a member to accompany the member. Transport costs for incidental travel within Australia are set out in section 36. These costs allow the spouse to access domestic transport in order to facilitate international travel (for example, transport to and from the airport).

## **Section 46 - Member representing the government or Australia - approval by Prime Minister**

234. This section prescribes travel expenses for a member to represent either the government or Australia, with the approval of the Prime Minister (see subsection 42(1) of the Regulations). This section replicates the arrangements that existed under regulations 3B and 3C of the PE Regs for members representing (with the exception of a member representing a Minister, which is covered by section 45 of the Regulations).

235. Previous examples of travel that have been undertaken for this purpose include:

- travel by the Leader of the Opposition to attend an ANZAC day ceremony overseas
- travel by a member to represent the government or Australia at the funeral of a world leader, or
- travel by the Leader of the Opposition to accompany the Prime Minister during the caretaker period.

236. Where the Prime Minister has approved travel by the Leader or Deputy Leader of the Opposition, this is taken to include approval for one accompanying staff member – see subsection 42(3). Paragraph 46(2)(b) prescribes travel expenses for that accompanying staff member.

237. Where the Prime Minister approves travel by an accompanying spouse, subsection 46(3) prescribes relevant expenses in accordance with that approval.

238. Note that international travel expenses is defined in section 35 (see the notes on that section above in respect of what is a 'spouse program'). Transport costs for incidental travel within Australia is defined in section 36.

### *Subdivision D - Travel and approvals - Leader of the Opposition*

## **Section 47 - Requirement for approval**

239. This section is a general provision applying to all expenses prescribed under Subdivision D for a person (other than the Leader of the Opposition in the House of Representatives). Where a specified person wishes to access an expense under this section, they can only do so if the travel has separately been approved by the Leader of the Opposition in the House of Representatives.

240. This section provides a budget for overseas travel for the Leader of the Opposition in the House of Representatives and members of the Opposition with the Leader's approval.

#### **Section 48 - Travel by Leader of the Opposition**

241. This section provides that travel expenses are prescribed for the Leader of the Opposition in the House of Representatives and up to two staff members accompanying the Leader, where the Leader is undertaking international travel under Subdivision D.

#### **Section 49 - Member of the Opposition – approval by Leader of the Opposition**

242. This section provides that international travel expenses are prescribed under this Subdivision for members of the Opposition, and up to two staff members accompanying them, in accordance with a travel approval given by the Leader of the Opposition (see section 47).

#### **Section 50 - Limit on certain expenses**

243. Consistent with subitems 2A(2) and (5) of Part 2, Schedule 1 to the PE Act, this section replicates and simplifies the calculation of the annual limit for international travel expenses claimable for travel approved by the Leader of the Opposition.

244. Subsection 50(1) sets the annual limit at the value of four first class round-the-world airfares. The Note under subsection 50(1) links to section 37 of the Regulations, which provides the method for IPEA to determine the value of a first class round-the-world airfare (see the notes on section 37, above).

245. Subsection 50(2) provides a method of adjusting the limit where a person becomes the Leader of the Opposition in the House of Representatives because their party becomes, or becomes part of, the Opposition (for example, where there is an election and a new party forms the Opposition, or where two parties merge to form a new Opposition). In summary, the limit is pro-rated by the number of days left in the financial year. The new amount is rounded to the nearest whole dollar (subsection 50(3)).

246. This section allows the international travel expenses of one staff member accompanying a senior office holder under this Subdivision to be disregarded. The effect of this is that the international travel expenses for that staff member are still paid for by the Commonwealth (and claims for those expenses are subject to the same overarching obligations and conditions), but the costs are not debited against the annual limit set by this section.

#### ***Subdivision E - Travel and approvals - leader of a minority party***

#### **Section 51 - Requirement for approval**

247. This section is a general provision applying to all expenses prescribed under Subdivision E for a person (other than the leader of a minority party). The effect is that where a member of a minority party wishes to claim a travel expense under this section, they can only do so where the travel was separately approved by the party leader.

248. This subdivision provides a budget for overseas travel for the leader of a minority party and members of the relevant leader's party, with the relevant leader's approval.

## **Section 52 - Travel by leader of a minority party**

249. Section 52 prescribes international travel expenses for the leader of a minority party and up to two staff members accompanying the leader. Section 54 places limits on the expenses prescribed in this section.

## **Section 53 - Member of a minority party - approval by leader of the minority party**

250. This section provides that international travel expenses are prescribed under this Subdivision for members of a minority party and up to two staff members accompanying them. Access to international travel expenses by a member of a minority party under this Subdivision is subject to the approval of the leader of the relevant minority party. International travel expenses accessed under this Subdivision are also debited against the annual limit for international travel expenses for the leader of the relevant minority party, as set out under section 54 of the Regulations. Note that special rules apply in relation to travel by the leader of the relevant minority party (see section 54).

## **Section 54 - Limit on certain expenses**

251. This section provides for the calculation of an international travel expenses cap for expenses claimed under this Subdivision for travel taken and approved by the leader of a minority party.

252. Subsection 54(1) limits the expenses prescribed in this Subdivision to the total of the value of one first class round-the-world airfare for a financial year. Section 37 of the Regulations provides the method for IPEA to determine the value of a first class round-the-world airfare (see the notes on that section above).

253. Subsections 54(2) and (3) prescribe the adjustments that apply where a person becomes the leader of a minority party during a financial year (for example, following an election where the membership of the person's party increases to five, or where other members of parliament join their party during the financial year). Under these circumstances, the budget is pro-rated by the number of days remaining in the financial year, and the adjusted limit is rounded to the nearest whole dollar.

254. Subsection 54(4) allows the international travel expenses of one staff member accompanying a senior office holder under this Subdivision to be disregarded. The effect of this is that the cost of the international travel expenses for that staff member are still met at Commonwealth expense, but not debited against the limit in this section.

## **Subdivision F - Travel and approvals - parliamentary delegations**

### **Section 55 - Requirement for approval**

255. This section is a general provision applying to all expenses prescribed under Subdivision F for a member. Where a member wishes to access a parliamentary delegation travel expense under this Subdivision, they can only do so if the delegation travel has been separately approved by both presiding officers (the President of the Senate and the Speaker of the House of Representatives). Where a member wishes to utilise the travel extension option (to include travel other than as part of the delegation) in subsection 56(3), they can only do so if the additional travel has been approved by the Minister.

256. In practice, parliamentary delegation approvals are generally provided by the presiding officers as part of approving a program for delegation travel each calendar year.

## **Section 56 - Member of parliamentary delegation - approval by presiding officers**

257. This section prescribes travel expenses for members undertaking international travel as a member of a parliamentary delegation (subsections 56(1) and (2)). However, this does not include an Inter-Parliamentary Union or Commonwealth Parliamentary Association delegation – these expenses are already met by the Commonwealth separately to the PBR Act.

258. Subsection 56(3) prescribes international travel expenses for the member to cover additional travel if the conditions set out in subsection 56(5) are met.

259. Subsection 56(4) prescribes airfares, or contributions towards airfares, for the spouse of the member to accompany them if the conditions in subsection 56(5) are met.

260. Subsection 56(5) sets out the conditions that must be met in order to claim the expenses prescribed in subsections 56(3) and (4). It requires the member to make a financial saving by travelling on more economic airfares than those that would otherwise be claimed by the member for travel as part of the delegation. It also requires that the combined cost of any international travel expenses of the member's additional travel and any airfares (or contributions thereto) for the member's spouse do not exceed the saving made by the member.

261. Subsections 56(3) to (5) allows members to take a lower cost airfare than they would otherwise, and use the excess to cover the cost of an accompanying spouse's travel and/or to extend their travel. This gives members flexibility, but ensures there is no additional cost to the Commonwealth. Where the excess amount is not large enough to cover all of the costs for an accompanying spouse or for the extension of a member's travel, the member must pay the difference personally to ensure there is no additional expense to the Commonwealth.

## **Section 57 - Parliamentary delegations - meeting facilities and hospitality**

262. This section prescribes certain public resources for members undertaking international travel as part of a parliamentary delegation covered by this Subdivision, being:

- the cost of facilities and services necessary for meetings of the delegation (typically this includes things like room hire or catering for official meetings of the delegation), and
- official hospitality (which typically includes gifts, entertainment, some catering or other benefits which allow the delegation to extend or return hospitality while conducting official activities overseas).

263. The amounts for official hospitality are capped and are provided 'per delegation' (i.e. the overall delegation travel) rather than for each member who is part of the delegation, or for each destination the delegation visits. For delegations led by one of the presiding officers, the capped amount for the delegation travel is \$5,000. For all other delegations the capped amount is \$2,500.

264. Note that for a Minister who is travelling overseas otherwise than as part of a delegation, official hospitality costs are not prescribed in these Regulations (except in relation to the Prime Minister – see subsection 43(5)), however, their portfolio department may meet those costs.



## Subdivision G - International travel allowances

### **Section 58 - Operation of Subdivision**

265. This section is a general provision applying to Subdivision G. It provides that, for the international incidentals and equipment allowances prescribed under this Subdivision, the allowances will not be payable unless international travel expenses (see section 35) for the international travel concerned are payable under Division 4, Part 2 of the Regulations (International travel).

### **Section 59 - International travel incidentals allowance**

266. This section prescribes an international travel allowance for the incidental expenses of:

- a member
- a staff member (see the definition of this term in section 4 of the Regulations), and
- a medical doctor accompanying the Prime Minister (see section 43 above),

at the rates specified in subsection 59(2) when international travel expenses are payable under Division 4, Part 2 of the Regulations.

267. Subsection 59(1) further provides that the allowance is payable in respect of a day where the person is outside of Australia for either all or part of that day. For example, where a staff member intends to leave Australia on 10 November 2017 to travel overseas and return to Australia on 12 November 2017 – the staff member would be eligible to claim 3 days' worth of the daily allowance under paragraph 59(2)(b) (for the 10th, 11th, and 12th of November) – this would amount to \$120 (3 x \$40).

268. These Regulations prescribe a single daily rate for each day that a staff member is outside of Australia. All amounts are paid in Australian dollars and are not indexed.

### **Section 60 - International travel equipment allowance**

269. This section prescribes an allowance for members and their staff who access travel expenses under this Division (see subsection 58(2)), which can only be claimed once every three financial years. Subsection 60(1) clarifies that the financial years are consecutive, and will therefore apply even where there is a break in service for a member or a staff member. For example, a person is a staff member and they claim the allowance in the 2016-17 financial year. If the person then ceases to be a staff member for the 2017-18 financial year, but is re-engaged as a staff member in the 2018-19 financial year – they will become eligible to claim the allowance again, in respect of international travel, in the 2019-20 financial year.

270. This allowance mirrors the clothing and equipment allowance provided immediately before the commencement of the PBR Act under executive authority to Ministers of State, and to staff under item 9 of Part 1; and items 2, 2A, and 2B of Part 2, Schedule 1 to the PE Act. The allowance provided under this section is not indexed.

### **Section 61 - International travel meal allowance**

271. This section prescribes an international travel allowance in respect of meals for a member, or a staff member, who accesses travel under this Division (subsection 61(1)).

272. Subsection 61(2) allows IPEA to determine the amount of the international travel allowance, having regard to:

- the amount of international travel expenses provided to the person for meals for the travel
- meals provided for the person for the travel otherwise than under the Regulations (for example, a meal provided by a host country), and
- any other matters IPEA considers relevant.

## Division 5 - Travel by Commonwealth transport

### **Sections 62 and 63 - Provision of Commonwealth transport and Use of Commonwealth transport**

273. These sections enable the Minister to determine that Commonwealth transport will be made available for use by members, and the circumstances in which it will be made available. Commonwealth transport is defined in section 4 and is a transport service operated by the Commonwealth. This could include, for example, services such as COMCAR and Special Purpose Aircraft (military aircraft) transport.

274. Commonwealth transport is prescribed for subsection 33(1) of the PBR Act because the Minister is best placed to consider whether the Commonwealth should make a transport service available to members. The determination will work in conjunction with the provisions of the Regulations that contemplate Commonwealth transport being made available to members or their families for use for particular travel – see for example section 8 in relation to member travel, various family travel provisions in Division 2 of Part 2, and sections 35 and 36 in relation to international travel.

275. Where the Minister determines that Commonwealth transport is to be made available, members will be able to make a claim for that form of transport in an equivalent way to forms of commercial transport that are otherwise available under the Regulations.

276. In the relevant determination, the Minister may determine circumstances in which the transport may be made available for use by members (i.e. at the member's request) and, if appropriate, circumstances in which members *must* use Commonwealth transport (for example, there might be circumstances where this is necessary for security reasons). The determination may also provide for the provision of the transport to be subject to the approval of another Minister (for example, the Defence Minister in respect of the use of Special Purpose Aircraft).

277. The Minister may include, in the determination, rules about when the costs for use of the Commonwealth transport are to be deducted from a relevant limit, budget or cap under the Regulations (such as the family reunion cap in section 29, or a member's unscheduled transport cap in section 14), or reimbursed by the member or another person (which could occur, for example, in circumstances where there is a transport costs undertaking – see sections 30 to 33). However, the circumstances in which Commonwealth transport may be made available are not limited by other provisions in the Regulations (subsection 63(3)).

278. The determination may also deal with other matters relevant to the provision of the transport (see subsection 63(7)).

## Division 6 - Miscellaneous

### **Section 64 - Expenses for travel that spans financial years**

279. This section provides certainty, for the purposes of accounting for travel costs, in respect of the year in which the travel cost is taken to have been incurred. This will be relevant where travel is limited by a budget or other cap for a financial year.

280. The provision has the effect that:

- where a travel fare includes travel spanning two financial years, the cost for that whole fare is taken to have been incurred in the financial year in which the travel begins. This will be relevant to limits in relation to member travel (see subsection 14(1)) and family travel (see sections 16, 17, 18, 19, 22, and 29 of the Regulations). This applies whether the fare is for one-way or return travel.
- where a leg of unscheduled transport (commercial or uncommercial) is commenced in a financial year, the entire leg is taken to have been completed in that financial year. This will also be relevant to accounting for capped expenses or private vehicle allowances. It would mean, for example, that if a chartered trip (e.g. a flight or taxi journey) began on 30 June 2018 but finished after midnight on the next day, the entire journey would be taken to have been in 2017-2018 for the purposes of the caps.
- an expense or allowance for an overnight stay 30 June 2018 – 1 July 2018 is taken to have been incurred in the financial year 2017-2018. This will be relevant to caps applicable to the Australian travel allowance in subsection 10(2) of the Regulations and for caps applying to international travel expenses.
- for international travel allowances (defined in section 4 of the Regulations) for a trip, all allowances are taken to have been paid in the financial year in which the international travel commences. This reflects the fact that the allowances are generally paid at the commencement of the travel, and, for accounting purposes, are intended to be accounted for in this way (even if the allowances are paid in arrears in relation to a particular trip).

### **Section 65 - Costs relating to cancelled travel**

281. This section recognises that, due to parliamentary business, illness, or other reasons, there will be circumstances in which proposed travel will need to be cancelled or rescheduled, and that the member may incur associated cancellation fees. The fees are payable if the proposed travel would have been claimable under the PBR Act (that is, if the intervening event leading to the cancellation had not occurred, and the travel had been taken).

282. The fees are prescribed for both sections 30 and 32 of the PBR Act, to accommodate the fact that cancellation fees may be incurred both as part of a member's travel expenses (for example, itinerary change fees), and where there is ultimately no travel associated with a particular cancellation fee (that is, where a proposed journey had to be cancelled but not rescheduled). IPEA will perform relevant payment, monitoring and other related functions for cancellation fees as it does for other travel resources.

## **Part 3 - Work expenses and other public resources**

### *Overview*

283. This Part of the Regulations prescribes work expenses and public resources for the purposes of section 32 of the PBR Act. Section 32 of the PBR Act creates a positive obligation on the Commonwealth to pay the work expenses of a member, and provide other public resources, that are prescribed in the Regulations as they relate to the conduct of a member's parliamentary business.

284. The following items are prescribed under this Part:

- office expenses in respect of an office provided under Part 4 of the Regulations
- postage costs for the official duties of specified office holders
- photographic services
- chamber flags for presentation to constituents and organisations, and
- costs for a privately operated office for specified members.

### **Section 66 - Office expenses**

285. The provisions of this section includes:

- allowing some existing expenses that previously sat outside the office budget to be debited from the office budget, including:
  - the cost of transfer of bulk papers between Parliament House and the parliamentarian's electorate office (under item 1, Part 1, Schedule 1 to the PE Act) – now covered under paragraph 66(1)(n) of the Regulations
  - the cost of acquiring Australian Government publications as approved by the Presiding Officers (item 5, Part 1, Schedule 1 to the PE Act) – now covered under paragraph 66(1)(m) of the Regulations
  - the cost of flags and printed material related to national symbols (under item 2, Part 1, Schedule 1 to the PE Act) – now covered under paragraph 66(1)(h), and
- changes to language for the purposes of clarity, and also to account for updated technology, practices, or methods of communication (for example, paragraph 66(1)(n) will no longer be limited to 'bulk papers' and will allow members to transfer items between electorate offices in the event that they have more than one electorate office).

286. Subsection 66(1) prescribes the specific office expenses that are payable for the purposes of subsection 32(1) of the PBR Act. Note that section 67 below places a limit on the amount that may be spent annually on office expenses under section 66 (the budget for office expenses). See the explanatory text in relation to Part 3 above for further information on section 32 of the PBR Act.

287. The following office expenses are prescribed:

- printing on either paper (weighing no more than 700 grams per square metre – for example, pamphlets, newsletters, or business cards) or on flat magnetised material (for example, a fridge magnet) (paragraph 66(1)(a))
- producing electronic material (for example, an e-newsletter or material for a website) (paragraph 66(1)(b))

- producing and maintaining audio posters (a poster fitted with a small audio device to enable sound recordings to accompany written messages) (paragraph 66(1)(c))
- creating matter which can be included in printed or electronic material or an audio poster (for example, photographs for inclusion in a printed or electronic newsletter, artwork or audio files for inclusion in an audio poster, or the production of video and sound for inclusion on a website) (paragraph 66(1)(d))
- communicating and distributing printed and electronic material and audio posters (for example, the installation of an audio poster, the distribution of printed material through the use of a franking machine or by contracting with a service provider to provide distribution services, or the use of an email subscription service provider – however note the exclusion on stamps and pre-paid envelopes that are not provided by a Department of the Parliament established under the *Parliamentary Service Act 1999* under subsection 66(5)) (paragraph 66(1)(e))
- establishing and maintaining websites (paragraph 66(1)(f))
- printing and distributing postal vote applications in respect of a Federal election (including a reply paid envelope – however note the exclusion on stamps and pre-paid envelopes that are not provided by a Department of the Parliament established under the *Parliamentary Service Act 1999* under subsection 66(5)) (paragraph 66(1)(g))
- flags and documents related to nationhood, of kinds approved by the Minister, for presentation to constituents or organisations (paragraph 66(1)(h)) allows members to present the following to constituents and organisations for the dominant purpose of their parliamentary business:
  - flags (including the Australian National Flag, the Aboriginal flag, and the Torres Strait Islander flag)
  - printed material with information about the flag of Australia and other national symbols
  - recordings of the Australian National Anthem, and
  - portraits of Her Majesty the Queen, and Her Majesty the Queen and His Royal Highness, The Duke of Edinburgh
- office stationery and supplies (for example, pens, staplers, hand sanitiser, notepads, and tissues) (paragraph 66(1)(i))
- minor office equipment including associated accessories, consumables, repairs and maintenance (for example, portable printers and printing paper, or a Bluetooth keyboard and mouse) (paragraph 66(1)(j))
- accessories for information and communications technology (for example, storage devices, portable power banks and camera lenses for mobile devices) (paragraph 66(1)(k))
- software, including associated servicing, training, and backup services, for the software (paragraph 66(1)(l))
- purchasing publications (whether printed or electronic) (for example, Australian Government Publications, books or journal articles, newspapers and magazines) (paragraph 66(1)(m))
- courier or other freight transfer costs for transferring documents and other small items between the member's offices (paragraph 66(1)(n))
- mobile office signage (paragraph 66(1)(o)), for example, A-frames, pull-up banners, and table cloths when a member sets up a mobile office, e.g. at a local shopping centre or local

show, for the purposes of identification or directing constituents to where the member is located

- the cost of conducting virtual town hall meetings (the common name for a service that allows members to connect to a number of their constituents via telephone in a virtual town hall style discussion, allowing the member to answer questions and seek feedback from participants in real time) (paragraph 66(1)(p)), and
- incidental fees and charges associated with the provision of resources covered by the paragraphs above, such as transaction, administration and delivery fees or charges (paragraph 66(1)(q)).

288. Subsections 66(2) to (5) provide a number of exclusions relating to the office expenses prescribed under subsection 66(1). This includes that office expenses must not be used to:

- pay for the production and placement of content for broadcast on television or radio (subsection 66(2)). This does not limit content that has been produced using a member's office expenses from subsequently being repurposed for broadcast. This ensures that content cannot be produced specifically for broadcast on TV or radio, and consequently the cost of broadcast cannot be debited from the member's budget for office expenses. For example, a member may use their office expenses to have a video produced for use on their website and the video is later broadcast on a news bulletin – in this scenario a member would not be in contravention of subsection 66(2)
- produce, communicate, or distribute material that:
  - solicits any of the following:
    - a vote for a person other than the member (for example, another candidate in a Federal or State election)
    - subscriptions or other financial support (or non-financial, unless it is volunteering) for a member, political party or candidate (for example, soliciting for political party membership or donations)
    - applications for renewals of membership in a political party, or
  - provides instruction on how to complete a ballot paper (for example, how-to-vote cards) (subsection 66(3))
- produce, communicate or distribute any material that includes an advertisement pursuing a commercial purpose of the member or another person (for example, office expenses cannot be used to produce a newsletter that would contain an advertisement for a local business, or cannot feature an advertisement that has been paid for by a third party – however, this would not exclude the promotion of not-for profit organisations and groups, nor would it exclude the promotion of charity activities and events that may be sponsored by commercial businesses, for example a fun run that raises money for cancer research that is sponsored by a local business) (subsection 66(4)), and
- pay for postage stamps or stamped envelopes, other than those provided by a Department of the Parliament established under the *Parliamentary Service Act 1999* (for example, the Department of the House of Representatives, the Department of the Senate, or the Department of Parliamentary Services) (subsection 66(5)).

289. The note under subsection 66(1) makes it clear that a member is not prevented from having a cost sharing arrangement with another member to essentially split the amount attributable to their budgets where the same items under section 66(1) are being purchased, provided that the claim for each member is for the dominant purpose of their own parliamentary business. For example, two members may wish

to share the cost of photographic services to produce photos that will be used on both of their websites, or three members may wish to have the same magnets produced and will attract a discount if they order in bulk.

290. However, as noted above, the dominant purpose test applies in relation to claims for office expenses. This means that it would not be possible for a member to bestow a portion of their office budget on another member (for example, where the other member has expended all of their budget for office expenses). In this scenario, the expenses would then not be incurred for the dominant purpose of the first mentioned member's parliamentary business. This is also consistent with section 67 of the Regulations, which clearly prescribes a budget in respect of each individual member, and does not make provision for members to transfer portions of their allocated budget to other members.

### **Section 67 - Annual budget for office expenses**

291. This section sets a cap (the annual budget for office expenses) on members' expenditure on office expenses prescribed under section 66. The calculation of the budget for office expenses provides clarity to members. Consequently, members have discretion over the use of their entire budget on any of the expenses prescribed under section 66, subject to the dominant purpose test and other duties and obligations prescribed under the PBR Act.

292. The budget for office expenses of a senator is calculated under subsection 67(1). The amount for the 2017-18 financial year is set under paragraph 67(1)(a) at \$107,331.24. The amount for the 2017-18 financial year is the same amount that was prescribed under regulation 3ED of the PE Regs.

293. Paragraph 67(1)(b) then provides that the 2017-18 financial year amount is to be indexed annually in accordance with the general indexation provision of the Regulations (section 102). Section 102 provides that the amount is to be increased or decreased in line with movements in the Consumer Price Index. Subsection 67(5) also provides that the indexed amount is to be rounded up to the nearest cent.

294. The budget for office expenses of a member of the House of Representatives is prescribed under subsection 67(2). The amount of the 2017-18 financial year is the same amount that was prescribed for the member under regulation 3ED of the PE Regs. This means that under the Regulations the calculation of the budget for the 2017-18 financial year will include the additional amount previously provided in respect of the demographic rating of the relevant member's electorate as determined by the Australian Electoral Commission (see paragraph 3ED(2)(c) of the PE Regs). However, for latter financial years this additional amount will not be separately accounted for, in order to provide a consistent budget calculation method for all members. Therefore, for latter financial years the budget for a member of the House of Representatives is the sum of:

- \$134,099.34 increased or decreased annually from 1 July 2018 in line with movement in the Consumer Price Index (see section 102 for the general indexation provision), and
- \$1 increased or decreased annually from 1 July 2018 in line with movements in the Consumer Price Index (see section 102 for the general indexation provision) multiplied by the number of voters in the member's electorate.

295. The amount of \$134,099.34 reflects a rationalisation of the budgets of all members of the House of Representatives (see the above discussion in the explanatory text for section 66).



296. Subsection 67(3) provides the method for calculating the number of voters enrolled in a member's electorate:

- for an existing electorate – this is the number of enrolled voters in the electorate at the end of 31 March in the previous financial year (for example, for the 2018-19 financial year, this is the number of voters who were enrolled on 31 March 2018 within the member's electorate (noting that this will be the electoral boundaries for the member's electorate as at the last general election – therefore disregarding any redrawing of electoral boundaries which has not come into effect), and
- for a new electorate created after 31 March in the previous financial year – this is the number of enrolled voters in the electorate as at the next close of the electoral roll for that electorate.

297. Subsection 67(4) clarifies that a member who is not a senator or member of the House of Representatives (for example, a Minister of State who does not hold a seat in either House of Parliament consistent with section 64 of the *Constitution*) does not have a budget for office expenses.

298. The indexed amounts are rounded up to the nearest cent (see subsection 67(5)).

299. As the Regulations will commence part way through a financial year, the PBR (CTP) Act will allow any expenditure incurred during the 2017-18 financial year prior to the commencement of the Regulations, to be treated as if it was debited from the office expenses budget established under the Regulations (see item 3, Schedule 3 to the PBR (CTP) Act). That is, the office budget under the Regulations is effective as if it applied from 1 July 2017. This also means that the \$50,000 cap on office requisites and stationery will not apply for the 2017-18 financial year, following commencement of the Regulations.

### **Section 68 - Postage costs for official duties**

300. This section prescribes postage expenses for the following office holders in respect of their official duties:

- a senior office holder who is a member of the Opposition – this covers the Leader and Deputy Leader of the Opposition in each House of Parliament (see section 4 for the definition of senior office holder), and
- the leader of a minority party – which is a party that is not part of the Government or the Opposition; and has at least five members in the Parliament (see section 4 for the definition of minority party).

301. Postage costs are only prescribed under this section for 'official duties', which is a specific subset of a member's parliamentary business. It covers activities that relate to the member's role as an office holder and includes those activities determined for the purposes of paragraph 6(4)(d) of the PBR Act (see Note 1).

### **Section 69 - Photographic services**

302. This section prescribes photographic services for members at Parliament House as a public resource for the purposes of subsection 32(2) of the PBR Act. This public resource is equivalent to the services that were provided under item 6, Part 1, Schedule 1 to the PE Act. However, note that previously this item prescribed photographic services at Parliament House '...as approved by the Minister', whereas under the new provision the details of the services previously approved by the

Minister under the PE Act have been expressly included in the Regulations to provide for greater transparency.

303. The total cost of photographic services provided under this section is capped at \$250,000 per financial year (subsection 69(4)). Within that cap, the Department of Parliamentary Services, which administers the provision of these photographic services, must make available two sessions of photographic services per financial year to all members. Any surplus funds in the cap may be used to make additional sessions of photographic services available to members upon request to the Department of Parliamentary Services (see subsection 69(3)).

### **Section 70 - Chamber flags**

304. This section provides for the continuation of the Chamber Flag Program (the Program) and extends the Program to Senators in addition to members of the House of Representatives. The Program is an extension of the Constituent's Request Program that was provided under item 2, Part 1, Schedule 1 to the PE Act. In the Regulations the equivalent provision for the Constituent's Request Program is now located under paragraph 66(1)(h) of the Regulations – see explanatory text above in relation to section 66.

305. A Chamber flag is a flag that is hung in either House of the Parliament on a sitting day (see paragraph 70(1)(a)). Under this section these flags (including accompanying certification – see paragraph 70(1)(b)) are prescribed under subsection 32(2) of the PBR Act, as a public resource, for presentation by the member to constituents or organisations. See the explanatory text above in relation to Part 3 for further information on section 32 of the PBR Act.

306. Subsection 68(2) clarifies that these flags are subject to availability (given there are a finite number of flags that are hung during sittings in each financial year), and that the member must make a request to either the Serjeant-at-Arms or Usher of the Black Rod as relevant, to be provided with a flag. Given provision of the flags is subject to the discretion of either the Serjeant-at-Arms or Usher of the Black Rod, they may consider things such as whether a member has already claimed one or more flags under this section in a financial year, and determine to give preference to other members who have not made claims.

### **Section 71 - Leasing expenses for additional offices for certain members**

307. This section prescribes as a public resource for the purposes of subsection 32(2) of the PBR Act, costs for specified members to lease, operate, maintain, establish, or vacate a privately leased office (subsection 71(2)).

308. These costs are only able to be claimed by members of the House of Representatives who have an electorate with an area of at least 5,000 km<sup>2</sup> but less than 25,000 km<sup>2</sup> (paragraph 71(2)(a)). The following conditions also apply:

- the member leases an office in the electorate for a term of not less than six months (paragraph 71(1)(b))
- the office is, or is part of, a permanent building (this means that a member cannot lease a mobile office – for example, a caravan) (paragraph 71(1)(c))
- the member must personally lease the office (that is, it cannot be leased by the member on behalf of the Commonwealth, and it cannot be leased by another person (including a company or other organisation) for the use of the member) (paragraph 71(1)(d)), and

- the office is used for the dominant purpose of conducting the member's parliamentary business (paragraph 71(1)(e)).

309. Subsection 71(2) places a cap on the amount of costs that are able to be reimbursed to the member under this section. The cap is set at \$50,000 per year for costs (inclusive of GST) incurred by the member. The amount is indexed annually in line with the Consumer Price Index (see section 102) and is rounded up to the nearest cent (subsection 71(3)).

310. The sorts of costs that are covered include:

- lease costs (this includes rent payments as well as anything the member is liable to pay under the lease – for example costs for electricity or gas – but not for any costs that are the responsibility of the landlord under the lease – for example fees for water connections)
- operating and maintenance costs (for example, this could include costs for repairs, the provision of security services, or the rental of office furniture and equipment), and
- establishment costs and costs for vacating an office (for example, fees to hire removalists to move furniture and equipment in and out of the office).

311. Subsection 71(4) clarifies that members are not able to claim costs for any furniture or equipment that would give rise to any ownership or residual value held by the member. For example, while members can rent office supplies and furniture, they cannot purchase or hire-purchase office furniture or equipment as they would then personally own those supplies and furniture. This includes consumables like paper or toner cartridges, which would be covered as office expenses under section 66.

312. Note that while there is no restriction on the term of the lease (other than a requirement that it be for a minimum of six months), the costs provided under this section (like the provision of other public resources to members) can only be paid for so long as the member remains a member. Therefore, where a member entered into a six month lease three months out from an election and did not retain their seat, the member would only be eligible to claim costs under this provision in the three months leading up to the election. Any costs associated with the lease after the election would be the personal liability of the former member.

313. Finally, it is important to note that no amount is payable under this section if the office is used for commercial purposes (subsection 71(5)).

## **Part 4 - Resources determined by the Minister**

### *Overview*

314. This Part of the Regulations prescribes additional public resources for the purposes of section 33 of the PBR Act.

315. Subsection 33(1) of the PBR Act allows the Minister to make determinations in respect of things prescribed in regulations that relate to the conduct of a member's parliamentary business.

316. Noting the above, the following matters are dealt with under this Part in relation to subsection 33(1):

- the provision of electorate office accommodation, facilities, and equipment for members
- the provision of office accommodation, facilities, and equipment for Ministers and some office holders
- additional resources that may be provided during an election campaign, and
- mobile phone services for the use of members' staff.

317. The dominant purpose test is applied by subsections 26(3) and (4) of the PBR Act, and applies slightly differently in relation to resources provided by the Commonwealth under subsection 33(1). Where resources are prescribed under this subsection, they must be used by the member for the dominant purpose of conducting their parliamentary business, and cannot be used for *any* commercial purposes (subsection 26(4) of the PBR Act). Commercial purposes is defined in section 5 of the PBR Act, and means a purpose relating to the derivation of financial gain or reward. (For public resources prescribed under other provisions of Part 3, a member must not make a claim unless the resources are claimed for the dominant purpose of their parliamentary business, noting that parliamentary business does not include an activity carried out for the dominant purpose of commercial purposes – see subsection 6(2) of the PBR Act.)

318. Consistent with subsection 33(7) of the PBR Act, Part 4 of the Regulations also sets out specific criteria for the Minister to consider when making a determination under subsection 33(2) of the PBR Act to provide additional public resources to a member in respect of their parliamentary business where exceptional circumstances exist. For example, this may include situations where a member has exhausted their budget for office expenses under section 67 of the Regulations, but needs to access office expenses to communicate with constituents in their electorate who may be affected by a natural disaster.

319. The PBR Act provides that a determination cannot be retrospective (see subsection 33(3)), such that a determination cannot be used to retrospectively validate expenses already incurred by a member, even where exceptional circumstances exist – rather, prior approval from the Minister must be sought. The power provided under subsection 33(2) of the PBR Act reflects recommendation 3 of the Review, the intention of which is to provide discretion to the Minister to cover a member's individual special circumstances as part of an application-based approval process where they are not adequately covered by the general eligibility rules in the Regulations.

320. Determinations in respect of public resources prescribed under section 33 of the PBR Act are not legislative instruments within the meaning of section 8 of the *Legislation Act 2003* (see subsection 33(8) of the PBR Act).

## Section 72 - Electorate offices

321. This section prescribes electorate offices as a public resource for the purposes of subsection 33(1) of the PBR Act. This enables the Minister to determine, in writing, that the Commonwealth must provide a member with one or more electorate offices. An electorate office must be located in a member's electorate (in the case of a senator this means the State or Territory represented by the senator – see the definition of electorate in section 4 of the Regulations).

322. Note that while the definition of member in section 5 of the PBR Act includes:

- a Minister of State who is not a senator or member of the House of Representatives (paragraph (c)), and
- a person who is taken to be the President of the Senate or the Speaker of the House of Representatives, under the *Parliamentary Presiding Officers Act 1965* who is not a senator or member of the House of Representatives (paragraphs (d) and (e)),

these members will not be eligible for an electorate office under section 72. This is because the office must be in the member's electorate, and members will only have an electorate if they are a senator or member of the House of Representatives. However, these members may be provided with an office under section 73 of the Regulations.

323. The number of electorate offices that a member may be provided with is at the discretion of the Minister. However, the practice under the PE Act framework was:

- all members are provided with one electorate office within their electorate
- if the member is a member of the House of Representatives representing an electoral division larger than 25,000 km<sup>2</sup> – a second smaller electorate office may be provided, and
- if the member is a member of the House of Representatives representing an electoral division larger than 350,000 km<sup>2</sup> – a third electorate office (consistent with the size of the second electorate office) may also be provided.

324. Note 2 reminds the reader that the dominant purpose test applies to the member's use of their electorate office. This means that members must use their offices for the dominant purpose of conducting their parliamentary business and, consistent with subsection 26(4) of the PBR Act, must not use their offices for commercial purposes. Consequently, where a member uses their electorate office for any private commercial activities, this will be inconsistent with subsection 26(4) of the PBR Act. Similarly, where a member uses their office accommodation for predominantly personal activities, they may consider that this does not satisfy the dominant purpose test. See the explanatory text in relation to Part 4 above for further information on subsection 26(4).

325. Note 3 acknowledges that these resources are provided under subsection 33(1) of the PBR Act through a determination of the Minister.

## Section 73 - Offices for Ministers and office holders

326. This section prescribes one or more offices for Ministers (but not Parliamentary Secretaries – see section 4 of the *Ministers of State Act 1952*) and other identified office holders as a public resource for the purposes of subsection 33(1) of the PBR Act. An office or offices provided under this section may also be in addition to an electorate office provided under section 72. This enables the Minister to determine, in writing, that the Commonwealth must provide one or more offices to a Minister or relevant

office holder. See the explanatory text in relation to Part 4 above for further information on subsection 33(1) of the PBR Act.

327. Subsection 73(2) provides that an office or offices are also prescribed for the following members:

- a presiding officer (either the President of the Senate or the Speaker of the House of Representatives)
- a senior office holder who is a member of the Opposition (see the definition of senior office holder in section 4 of the Regulations which covers the Leader and Deputy Leader of the Opposition in each House of Parliament), and
- the leader of a minority party (see section 4 of the Regulations for the meaning of minority party, which covers a recognised political party with five members or more in either House of Parliament that is not part of the Government or the Opposition).

328. Offices for Ministers were previously provided through executive authority, while offices for those members listed in subsection 73(2) were previously covered under item 5, Part 2, Schedule 1 to the PE Act. This section together with section 74, effectively replicate the arrangements that existed for providing office accommodation together with services, facilities and equipment necessary to run the office under the PE Act framework.

329. Note 1 reminds members that they must use their offices for the dominant purpose of conducting their parliamentary business and, consistent with subsection 26(4) of the PBR Act, must not use their offices for commercial purposes. Consequently, where a member uses their electorate office for any private commercial activities, this will be inconsistent with subsection 26(4) of the PBR Act. Similarly, where a member uses their office accommodation for predominantly personal activities, they may consider that this does not satisfy the dominant purpose test. See the explanatory text in relation to Part 4 above for further information on subsection 26(4).

330. Note 2 acknowledges that these resources are provided under subsection 33(1) of the PBR Act through a determination of the Minister.

## **Section 74 - Resources for offices**

331. This section prescribes certain public resources to be used in members' offices for the purposes of subsection 33(1) of the PBR Act. This enables the Minister to determine, in writing, that the Commonwealth must provide these types of public resources to a member.

332. Subsection 74(2), coupled with subsection 74(3), of the Regulations provides that the public resources that may be provided at the discretion of the Minister include (but are not limited to):

- furniture and fittings (for example, office desks and chairs, or an office fitout)
- information and communications technology and services (for example, phone and internet connections and devices, or fax machines)
- office equipment (for example, computers, printers, multifunction devices, paper shredders, or notice boards)
- audio visual equipment (for example, a television, radio, or audio visual recording devices)
- car parking for the premises

- signage (for example, signage for the building that identifies the office as being the office of the member)
- security (for example, external security services, facilities, or equipment)
- post office boxes at the member's local general post office
- flag poles at the premises, and
- training (for example, training for any of the equipment installed or provided in the office).

333. Subsection 74(4) clarifies that the Minister can, as part of their determination under subsection 33(1) of the PBR Act, provide that some of the resources provided may be used in places other than an office provided at Commonwealth expense (see sections 72 and 73). For example, this may cover situations where a member is conducting their parliamentary business remotely in their electorate and wishes to use some of their office resources (such as a laptop or mobile internet device) at that remote location.

334. Note 1 under subsection 74(2) reminds the reader that the dominant purpose test applies in respect of the member's use of public resources provided under this section. Members must therefore carefully consider how they, and their staff, use their office resources. For example, where a member uses their post office box address to receive predominantly personal correspondence, or where internet and phone services are used for predominantly non-work related activities, a member may consider that the dominant purpose test is not satisfied in the circumstances. Consistent with subsection 26(4) of the PBR Act, where a member uses any of these resources for commercial purposes (that is, the derivation of financial gain or reward) the dominant purpose test will not be satisfied. See the explanatory text in relation to Part 4 above for further information on subsection 26(4) of the PBR Act.

335. Note that, as these resources are provided under subsection 33(1) of the PBR Act through a determination of the Minister. The Minister may determine to provide all or only some of the resources listed, in kinds and quantities that the Minister considers is appropriate. For example, the practice under the PE Act framework was that one car parking space was provided at Commonwealth expense (although additional spaces might, for example, be provided at no cost by a landlord as a lease incentive). The appropriateness of particular resources may also be subject to the lease conditions and local and State government laws and requirements. For example:

- a member may not be able to affix their own signage or posters to the outside of the building where their office is located due to lease conditions
- a flagpole may not be permitted at the premises due to planning restrictions, or
- signage may not be permitted on a footpath due to local by-laws.

## **Section 75 - Resources during election periods**

336. This section allows additional public resources to be provided to the Leader of the Opposition in the House of Representatives during an election period through a determination made by the Minister under subsection 33(1) of the PBR Act. Further information on subsection 33(1) of the PBR Act is provided above in the explanatory text in relation to Part 4.

337. These resources were previously provided under regulation 3F of the PE Regs, as well as under executive authority. Consistent with recommendation 6 of the Review, these resources have been

consolidated in the Regulations to reduce complexity and increase transparency in the parliamentary work expenses framework.

338. Subsection 75(1) provides that the Minister may determine that the Commonwealth will provide, for the Leader of the Opposition in the House of Representatives, facilities and equipment reasonably required for conducting the Leader's parliamentary business during an election period.

339. The provision defines 'election period' for the purposes of this section as the period that:

- for the House of Representatives:
  - commences on the day after the House of Representatives is dissolved or expires (this will include an election for both Houses of Parliament, as well as an election for the House of Representatives only – including a half-Senate election, but not a Senate only election), and
  - ends at the end of the day before polling day for the House of Representatives, and
- for the Senate:
  - commences on the day the first writ for the election is issued, and
  - ends at the end of the day before the following polling day for the Senate.

340. This means that additional public resources are only provided in respect of an election intended to determine which party will form government and are only available for use during the election.

341. The sorts of resources that would typically be provided during an election period to the Leader of the Opposition include (but are not limited to):

- additional photographic services
- ICT services or ICT equipment (for example, mobile phones, laptops, printers, internet services, and ICT technical support services)
- other electronic equipment (for example, video or voice recorders, and portable radios or televisions), and
- non-electronic equipment (for example, luggage and luggage tags, press conference stands, doorstops, and the provision of consumables like printer paper).

342. Subsection 75(2) allows the Leader of the Opposition to distribute resources provided in accordance with this section at their own discretion. This means that the Leader of the Opposition does not have to use the public resources determined under this section personally, but rather, may allow other persons assisting them in conducting their parliamentary business to use the resources. For example, distributing ICT equipment to staff members, or to other members, who are assisting the Leader of the Opposition to conduct their parliamentary business during the election period.

343. In addition to specifying the types of resources that may be provided under subsection 33(1) of the PBR Act as a consequence of this section, subsection 75(3) also allows the Minister, as part of their determination under this section, to place conditions on the use of resources. For example, a condition that the resources are only loaned, and must be returned at the end of the election period.

344. The note under subsection 75(4) reminds the reader that the dominant purpose test applies in relation to the public resources prescribed under this section. This means that the resources provided



under this section can only be used for the dominant purpose of conducting the Leader of the Opposition's parliamentary business. Note that subsection 26(4) of the PBR Act also specifically prevents these resources being used for any commercial purpose (regardless of whether or not the resources are used for the dominant purpose of parliamentary business). The Leader of the Opposition must therefore carefully consider how they, and other third parties (such as staff members, or other members), use the public resources provided under this section. For example, where printer paper is used to print flyers promoting a local business, or where a television is predominantly used for non-parliamentary business activities, the Leader of the Opposition may consider that the dominant purpose test has not been met in the circumstances.

345. It is also important to note that the activities prescribed as parliamentary business will be limited during an election period by virtue of the fact that the House of Representatives is dissolved. For example, attendance at parliamentary sittings would not occur and it is unlikely that any committee business of the House would take place during this period.

### **Section 76 - Mobile phone services for personal staff**

346. This section continues the current arrangements under regulations 3E and 3G of the PE Regs, by enabling the Minister to determine that mobile phones and mobile phone services can be given to members for use by their personal staff. 'Personal staff' are employed by members in accordance with sections 12 and 13 of the *Members of Parliament (Staff) Act 1984* and relevant determinations of the Prime Minister made for that purpose.

347. Subsection 76(2) provides that the phones and services referred to in subsection 76(1) are prescribed for distribution at the discretion of the members concerned and on the condition that:

- the Minister is provided with such information in relation to the use of the phones as they require, and
- that the phones are returned when the persons to whom they have been distributed cease to be staff members.

348. These subsections allow the members specified in subsection 76(1) to allocate phones to the staff members of other members in their party; and allow for appropriate oversight and accountability.

349. The Minister's determination may also provide for administrative arrangements in respect of the phones and services with which members must comply.

350. Consistent with subsection 26(4) of the PBR Act, these phones and phone services must be used for the dominant purpose of the relevant member's parliamentary business, and not for commercial purposes. See the explanatory text in relation to Part 4 above for further information on subsection 26(4).

### **Section 77 - Exceptional circumstances determinations**

351. Consistent with recommendation 3 of the Review, this section sets out certain matters that the Minister must take into account or may take into account when making a determination under subsection 33(2) of the PBR Act. See the explanatory text above in relation to Part 4 for further information on subsection 33(2) of the PBR Act. Note that the power provided under subsection 33(2) replaces the need to provide a supplement for capped entitlements under these Regulations. The supplement was previously provided under regulation 3EA of the PE Regs.

352. For the purposes of subsection 33(7) of the PBR Act, subsection 77(1) sets out the matters that the Minister is required to take into account when determining whether there are exceptional circumstances that justify the provision of additional public resources. These are:

- an unexpected event that has affected the member or their electorate (for example, a natural disaster, or other serious unforeseen disruption to a community or region that requires public response)
- circumstances that result in the member's needs being unable to be otherwise addressed under the PBR Act (for example, a member suffers a non-compensable injury and requires reasonable additional public resources to conduct their duties)
- the family or caring responsibilities of the member (for example, the member has a unique caring arrangement, or there is a sudden and unforeseen change in their family circumstances), and
- whether provision of public resources would represent value for money for the Commonwealth, despite the member being otherwise ineligible for that resource (for example, the member wishes to regularly use a mode of transport not currently covered by the Regulations, which would result in reduced cost to the Commonwealth in their particular circumstances).

353. Subsection 77(2) provides that the Minister may take into account any other matter that they think is relevant.

354. Public resources will only be provided in accordance with an exceptional circumstances determination where they relate to the conduct of a member's parliamentary business. Further, the public resources provided can only be used by the member for the dominant purpose of conducting their parliamentary business.

## **Part 5 - Other resources**

### *Overview*

355. This Part of the Regulations prescribes additional resources for the purposes of Part 5 of the PBR Act, and specifically subsection 42(1). Resources is defined in section 5 of the PBR Act and means the payment of expenses, or allowances, goods, services, premises, equipment or any other facility.

356. Subsection 42(1) of the PBR Act allows the Regulations to provide that resources are to be provided to members by the Commonwealth, and specifically including that they may provide a scheme in relation to:

- legal proceedings for current and some former Ministers of State (paragraph 42(2)(a)), and
- the provision of insurance to members or any other person in connection with a member (paragraph 42(2)(b)).

357. Resources prescribed in the Regulations for the purposes of Part 5 of the PBR Act are not subject to the requirements of sections 25, 26 or 27 of the PBR Act. The intention being that resources provided under Part 5 of the PBR Act would be prescribed in self-contained schemes that impose separate conditions and obligations which may not necessarily be compatible with the requirements of sections 25, 26 and 27 of the PBR Act. Noting this, this Part of the Regulations is divided into two Divisions:

- insurance, and
- legal assistance for Ministers.

358. Explanatory notes are included for each of the provisions in this part below, and outline the conditions and eligibility requirements that need to be met in order for members to access the resources provided under this Part.

## Division 1 - Insurance

### **Section 78 - Insurance cover for parliamentary business**

359. Consistent with regulations 3EB and 3EC of the PE Regs, this section requires the Commonwealth to provide insurance obtained by the Commonwealth to members and other relevant persons in respect of liabilities and losses arising from their respective roles and responsibilities. The insurance policy is intended to extend to injury to members of the public, or damage to personal property of members of the public, management activities, professional activities and employment practices, and travel.

360. Subsection 78(1) requires relevant insurance obtained by the Commonwealth to cover the persons and activities described in this section. The insurance is prescribed under subsection 42(1) of the PBR Act. See the explanatory text above in relation to Part 5 of these Regulations for further information on section 42 of the PBR Act.

361. Subsection 78(2) provides that the insurance must be in the form of a policy or policies of insurance approved by the Minister. Furthermore, in addition to specifications in this section, the policy or policies provided under this section are also subject to the terms, conditions, limitations or exclusions specified in the policy or policies. This reflects the intention that the insurance cover will be provided by a commercial insurer, and that the Commonwealth cannot necessarily dictate the terms of an insurance policy provided by a commercial insurer.

362. Subsection 78(3) sets out the types of coverage extended to members who are also members of the Parliament (noting that the term member is defined in section 5 of the PBR Act to include some office holders who may hold office for a period of time without being a member of either House of the Parliament). Coverage is provided for the following in respect of the conduct of a member's parliamentary business:

- travel
- injury to members of the public
- damage to the personal property of members of the public
- management activities
- professional activities, and
- employment practices.

363. For members who are not members of the Parliament (see section 5 of the PBR Act for the definition of member), for example:

- a Minister of State who is not a member of either House of the Parliament, or
- a person taken to be the President of the Senate, or Speaker of the House of Representatives, under the *Parliamentary Presiding Officers Act 1965* and who is not a member of either House of the Parliament,

the Minister may determine which matters listed in subsection 78(3) should be included in their insurance coverage (subsection 78(4)).

364. Subsection 78(5) allows coverage to be provided to the spouse of the Prime Minister to cover the following matters in connection with the Prime Minister's parliamentary business:

- travel
- injury to members of the public, and
- damage to personal property of members of the public.

365. Subsection 78(6) allows coverage to be provided to the spouse of a Minister (other than the Prime Minister – this is covered by subsection 78(5) above) or a presiding officer in respect of travel in connection with the parliamentary business of the Minister or presiding officer.

366. Subsections 78(7) to (9) provides for the Commonwealth's insurance to include 'additional coverage'. More specifically, subsection 78(7) allows the Commonwealth to obtain insurance that may cover additional persons, or provides coverage for the following additional activities:

- where the additional coverage is related to a matter prescribed for the person in subsections 78(3), (4), (5) or (6), and
- the additional coverage is included in a commercially available insurance policy together with the related matter.

367. Further, subsections 78(8) and 78(9) permit coverage to be extended to the spouse of a member, and a person who is assisting a member to undertake a covered activity.

368. The ability to extend coverage to related persons and activities allows flexibility in selecting a standard insurance policy or policies at competitive commercial rates. Where a customised or tailored policy were required, this would generally result in a more expensive insurance policy.

369. The ability to select a commercially available insurance policy or policies also means that persons covered under the policy or policies will liaise directly with the insurer in relation to a claim.

370. Note that consistent with the arrangements that existed under the PE Regs, approval of a policy or policies under this section by the Minister is not a legislative instrument for the purposes of the *Legislation Act 2003* as the approval is purely administrative in character.

## **Section 79 - Insurance for personal effects**

371. This section prescribes the cost of insurance for the personal effects of the Prime Minister at official residences as a resource under subsection 42(1) of the PBR Act (see the explanatory text above in relation to Part 5 for further information on section 42 of the PBR Act). This is intended to mirror the arrangements under regulation 3EC of the PE Regs. Consistent with the PE Regs, 'official residence' is not defined, but is taken to include the Lodge and Kirribilli House, or any other official residence of the Prime Minister.

372. Coverage under this section is not extended to the Acting Prime Minister.

## Division 2 - Legal assistance to Ministers

373. This Division allows for the continuation of the legal assistance scheme for current and former Ministers of State (applicants). The scheme allows for the Commonwealth to provide financial assistance to an applicant in respect of legal proceedings against them that arise as a consequence of them holding the office of a Minister. However, assistance is not available under the scheme to allow applicants to commence proceedings.

374. The scheme is equivalent to that previously provided under Part 3 of the PE Regs, which replaced previous administrative arrangements that had been in place since approximately 1984. The intention of the scheme is to provide applicants with a similar level of assistance as that provided to Commonwealth officers in respect of legal proceedings under the *Legal Services Directions 2017*.

375. However, the scheme is not intended to exclude other lawful arrangements for providing assistance to applicants through other means, for example, existing arrangements in relation to administrative law challenges to a Minister's decisions, subpoenas to a Minister relating to their current portfolio, or other lawful ad hoc arrangements which are later implemented. The initial implementation of a statute-based scheme reflected the recommendations of the 1997 report: *Payment of a Minister's Legal Costs Part 2* of the Senate Legal and Constitutional Reference Committee.

376. The scheme established under the Regulations is intended to continue the firm legal basis for providing Commonwealth assistance to applicants in relation to specific matters covered in this Division. This Division provides a transparent list of criteria and procedures that are capable of sensible, consistent, and predictable application. The scheme also allows for regular monitoring and reporting on expenditure as well as allowing the Commonwealth to exercise an appropriate level of control over proceedings covered by the scheme.

377. Broadly, the scheme:

- enables financial assistance to be given to current and former Ministers of State (who were Ministers on or after 24 May 1990 – being the commencement date for the scheme established under the PE Regs) for:
  - specific types of legal proceedings against them, whether or not they have been instituted formally (including claims for damages and other relief, as well as criminal proceedings), where the proceedings have arisen out of the performance of their ministerial duties (see sections 81, 82, and 86)
  - inquiries, where the proceedings have arisen out of the performance of their ministerial duties (but not including a court challenge to the conduct or validity of the inquiry) (see sections 81, 82, and 86)
  - legal proceedings that arise only because the applicant is, or has been, the holder of the office of Minister (generally known as 'figurehead' proceedings) – in these situations the applicant may have no involvement, responsibility or power, but is being sued as the Government's representative (see sections 81, 82, and 85), and
  - subpoenas to give evidence or produce documents relating to their portfolio in their capacity as a current or former Minister (see sections 81, 82, and 85)
- establishes relevant criteria that must be satisfied for assistance to be granted to an applicant (section 86)
- establishes who can make decisions to provide assistance (section 83), the manner in which applications should be made (section 84), the level of assistance that may be provided

(section 85 and subsection 91(3)), as well as who the approver must consult with to determine whether the criteria for accessing the scheme are met (section 86)

- provides processes for revocation of decisions to provide assistance under the scheme, as well as powers to require the repayment of moneys already paid in certain circumstances (section 87)
- addresses the relationship of the scheme with other schemes for providing assistance (section 88)
- provides general conditions on a grant of assistance to ensure transparency and integrity in the scheme, and also makes provision for the approver to impose additional conditions (section 91)
- establishes other accountability and transparency mechanisms to maintain the integrity of the scheme, including requiring the Secretary of the Attorney-General's Department to monitor strategies in legal proceedings, and to inform the approver if they consider that proposed expenditure on the proceedings is unreasonable (section 93), and
- requires the Attorney-General to report regularly to the Parliament on decisions to give assistance and to table a consolidated statement of expenditure within 3 months after the end of each financial year (section 94).

378. Applicants who access the scheme are not subject to the duties and obligations established under Part 3 of the PBR Act. This is because the scheme is prescribed under Part 5 of the PBR Act. See the above explanatory text in relation to Part 5 of the Regulations for further information.

379. Note also that previous decisions to provide assistance under the legal assistance scheme that existed under the PE Regs immediately before the commencement of the Regulations will be treated as having continuing effect under the Regulations by virtue of item 5, Schedule 3 to the PBR (CTP) Act.

### Subdivision A - Preliminary

#### **Section 80 - Operation of Division**

380. This section provides a positive obligation on the Commonwealth to pay legal assistance for the purposes of subsection 42(1) of the PBR Act, which has been approved under this Division.

#### **Section 81 - Definitions**

381. This section defines common terms used in Division 2. Of particular importance is the definition of 'proceedings' for which assistance is provided under the scheme. Proceedings covers:

- claims for damages or compensation against a Minister
- a prosecution of a Minister or a threat of prosecution
- proceedings or threatened proceedings against a Minister, in which no damages have been claimed, before bodies empowered to award damages
- a claim that the Minister is legally liable to take some action other than to pay damages, and
- an inquiry into matters involving a Minister, but not a challenge to the validity or conduct of the inquiry.

## **Section 82 - Application of Part**

382. This section replicates the existing arrangements under regulation 6 of the PE Regs.

383. This section makes it clear that the scheme only applies in relation to proceedings that are instituted and subpoenas that are received by a Minister related to their ministerial duties, in relation to matters which occurred on or after the commencement date of the original scheme established under the PE Regs (24 May 1990). Further clarification is provided in section 81, which defines an applicant Minister as a person who is, or has been, a Minister of State on or after 24 May 1990.

### *Subdivision B - Assistance*

## **Section 83 - Approving Minister**

384. This section replicates the existing arrangements under regulation 7 of the PE Regs.

385. This section prescribes the Minister who can approve an application for assistance. The default position is that the Attorney-General is the approving Minister. However, this section also ensures that the Attorney-General, or any other Minister, is not able to approve assistance under the scheme in relation to a matter in which they are involved. The exception is in a case where all Ministers are involved – in this case, the Attorney-General, as the first law officer of the Commonwealth, provides approval for all Ministers.

## **Section 84 - Application for assistance**

386. This section replicates the existing arrangements under regulation 8 of the PE Regs.

387. This section prescribes the manner in which an application by a Minister for assistance is to be made. A Minister may apply in writing to the relevant approving Minister.

## **Section 85 - Assistance to an applicant**

388. This section replicates the existing arrangements under regulation 9 of the PE Regs.

389. This section prescribes the type of assistance for which an approving Minister may approve payment by the Commonwealth. Depending on the nature of the proceedings, an approving Minister may approve payment for one or more of the categories of assistance. For example, in a damages claim against a Minister, assistance may be given for the costs of the Minister's legal representation and the cost of any damages or costs awarded against the Minister or agreed to in a reasonable settlement.

390. Subsection 85(2) provides that assistance must be paid by the Commonwealth in accordance with the approval and subject to any other conditions set out in the Regulations.

391. Subsection 85(3) provides that assistance extends to the payment of costs for an appeal against, or a review of, a decision in proceedings for which the approval is given (however, also note that approval may be revoked – see section 87).

392. Subsection 85(4) allows the approving Minister to reduce assistance if satisfied that the applicant has breached the Regulations or another condition of approval (see section 91 for additional conditions on approval).



393. Subsection 85(5) allows the approving Minister to defer a decision to approve assistance in whole or in part until the proceedings reach a point when the Minister considers it is appropriate to consider approving the payment. The purpose of this subsection is to enable a decision to be deferred until more facts become known about the matters in issue, or other information is provided by the applicant Minister. It would be open to an approving Minister to approve the payment of an applicant's legal representation costs, but to defer a decision to pay any damages to a later date.

394. Subsection 85(6) requires a decision to give assistance in respect of an indictable offence against a Minister to be limited in the first instance to the preparation and conduct of the committal proceedings. It is intended that a decision to provide any further assistance could be made after that stage of the proceedings.

395. Subsection 85(7) prevents a decision being made to pay a fine, penalty, or costs awarded against a Minister in criminal proceedings until the fine or penalty is imposed or the costs awarded (and the result of the criminal proceedings is known).

### **Section 86 - Consideration by approving Minister**

396. This section replicates the existing arrangements under regulation 10 of the PE Regs.

397. This section prescribes the criteria that an approving Minister must consider before giving approval for assistance to be provided to an applicant. The approving Minister is required to:

- consult with other Ministers in accordance with arrangements approved by the Prime Minister
- for inquiries – be satisfied that the inquiry relates to the performance of the applicant's ministerial duties and that it is appropriate for assistance to be given, and
- for other proceedings – be satisfied that the proceedings relate to the performance or non-performance of the applicant's ministerial duties and that the applicant acted reasonably and responsibly, or be satisfied that the applicant is being sued only because they are, or were, the holder of the office of Minister.

398. Subsection 86(2) prohibits assistance to be given for proceedings arising out of a motor vehicle incident where the applicant is insured or, if there is no insurance, the approving Minister considers that the liability should reasonably have been insured. For example, if the applicant uses their own private car to perform ministerial duties, it would be expected that the applicant would be responsible for arranging their own insurance.

399. Subsection 86(3) allows assistance to be refused if there has been an unreasonable delay by a Minister in applying for assistance. The purpose of this provision is to preserve the integrity of some of the measures applicable to an approval for assistance, for example, the monitoring of strategies in the proceedings (section 93) or the determination of which solicitors should act for the Minister (section 91).

### **Section 87 - Revocation of approval**

400. This section replicates the existing arrangements under regulation 11 of the PE Regs.

401. Subsection 87(1) allows a decision to give assistance to be revoked so far as it allows for the payment of future costs in an appeal or a review, or where the applicant has breached a condition of the

approval (see section 91). It is intended that costs incurred in an appeal or review up until the revocation notice was issued would be payable.

402. Subsection 87(2) allows the whole or partial revocation of a decision to give assistance where the approving Minister is satisfied that there has been a breach of a condition, and further permits the recovery of any moneys paid after the breach.

### **Section 88 - Other arrangements**

403. This section replicates the existing arrangements under regulation 12 of the PE Regs.

404. This section provides that the Regulations do not affect a Minister's eligibility for assistance under any other arrangement. It is not intended, for example, that this scheme replace arrangements where a Minister is a party to administrative law proceedings challenging decisions or conduct by a Minister.

405. However, if the Minister does receive assistance under another scheme, this is a relevant consideration that should be taken into account (see subsection 88(2)). This is intended to prevent double-dipping where a Minister is eligible under the Regulations and some other arrangement.

### Subdivision C - Conditions

### **Section 89 - Control by Commonwealth**

406. This section replicates the existing arrangements under regulation 13 of the PE Regs.

407. This section allows the Commonwealth to take control of the conduct of an applicant's defence in civil proceedings where the Commonwealth has fully indemnified the applicant for all costs.

### **Section 90 - Assistance by applicant**

408. This section replicates the existing arrangements under regulation 14 of the PE Regs.

409. This section requires an applicant Minister to give to the Commonwealth the assistance that it requests in exercising its control under section 89.

### **Section 91 - General conditions**

410. This section replicates the existing arrangements under regulation 15 of the PE Regs.

411. Subsection 91(1) allows the approving Minister to determine whether the Australian Government Solicitor or another nominated legal practitioner will represent the applicant.

412. Subsection 91(2) allows the approving minister to impose other conditions at any time.

413. Subsection 91(3) restricts expenditure for the cost of an applicant's defence to amounts certified as reasonable by the Secretary of the Attorney-General's Department (or another officer designated by the Secretary).

### **Section 92 - Recovery of costs**

414. This section replicates the existing arrangements under regulation 16 of the PE Regs.

415. Subsection 92(1) requires an applicant to take steps to recover costs awarded in their favour where the Commonwealth has paid for the defence of the applicant and to repay costs recovered to the Commonwealth.

416. Subsection 92(2) extends the approval for assistance to expenses incurred in recovering costs awarded in the applicant's favour, but only to the extent that they are certified as reasonable by the Secretary to the Attorney-General's Department (or another officer designated by the Secretary).

#### Subdivision D - Monitoring and reporting

##### **Section 93 - Monitoring**

417. This section replicates the existing arrangements under regulation 17 of the PE Regs.

418. This section requires the Secretary of the Attorney-General's Department (or another officer designated by the Secretary) to monitor strategies adopted by an applicant in legal proceedings for which assistance has been given and to inform the approving Minister if they consider that proposed expenditure on the proceedings is unreasonable.

##### **Section 94 - Reporting**

419. This section replicates the existing arrangements under regulation 18 of the PE Regs.

420. This section requires the Attorney-General to inform Parliament as soon as possible for each decision to give assistance under the Regulations including giving reasons for the decision and any limits on expenditure and, within 3 months after the end of each financial year, to table a consolidated statement of expenditure under this Division for that year.

## **Part 6 - Miscellaneous**

### **Section 95 - Office holder's salary**

421. Section 49 of the PBR Act provides for remuneration to be paid to parliamentarians after parliament has been dissolved in some circumstances. Paragraph 49(1)(b) provides, in particular, that office holders may be prescribed, with the effect that they will receive their office holder salary during certain times after parliament has been dissolved.

422. For the purposes of paragraph 49(1)(b) of the Act, section 95 of the Regulations prescribes the following office holders:

- a senior office holder who is a member of the opposition (this will mean the Leader and Deputy Leader of the Opposition in each House of Parliament – see the definition of *senior office holder* in section 4 of the Regulations)
- the leader of the third largest party in the House of Representatives (at the time of commencement of the Regulations, this is the Leader of the Nationals)
- the leader of a minority party (section 4 of the Regulations defines a *minority party* as a recognised party of five or more members in either House of Parliament, which is not part of the government or the Opposition), and
- a shadow Minister not otherwise covered above.

423. The section confirms that these office holders are prescribed such that they will receive their office holder salary as follows:

- During the time that Parliament is sitting the member will receive office holder salary for as long as they hold that office (for example, if a member held the offices for 3 months while Parliament was in session, they would receive their office holder salary for that 3 month period); and
- If they are the last person to hold that office before a general election (e.g., they hold the office at the time parliament is dissolved), they will also continue to be paid their office holder salary up until the day before polling day for that election; and
- If they are the first person to hold the office after a general election (e.g., they are the person who holds the office when parliament sits again after the election) they will be paid their office holder salary from the day of that election until Parliament is again in session.

424. This provides for continuity of office-holder salary for the prescribed office holders, consistent with the current arrangements.

425. Note that it is not necessary to prescribe Ministers of State for the purposes of paragraph 49(1)(b) of the PBR Act, as Ministers of State are not ‘office holders’ for the purposes of the PBR Act and their salary is not determined by the Remuneration Tribunal. Ministers of State receive *minister's salary* consistent with section 66 of the *Constitution* for so long as they remain a Minister of State (see section 5 of the PBR Act for the definition of minister's salary).

### **Section 96 - Annual limit on Ministerial salaries**

426. Section 55 (Annual limit on Ministerial salaries) of the PBR Act provides for a cap on the total sum payable under section 66 of the *Constitution* for the salaries of Ministers of State. This amount is set

at \$5,000,000 in the PBR Act (see paragraph 55(1)(a)), however the PBR Act provides for a higher amount, or method for working out a higher amount, to be prescribed by regulations (see paragraph 55(1)(b)).

427. Subsection 55(2) allows, despite subsection 14(2) of the *Legislation Act 2003*, the regulations to provide in relation to a matter by applying, adopting, or incorporating, with or without modification, any matter contained in any determination or report of the Remuneration Tribunal under the PBR Act as in force or existing from time to time.

428. The effect of this is that regulations made for the purposes of setting the limit on Ministerial salaries can take into account determinations and reports of the Remuneration Tribunal made after the regulations. Without this subsection this would not be possible, as determinations and reports of the Remuneration Tribunal are not disallowable under the PBR Act (reports are not legislative instruments; determinations are legislative instruments but are exempted from disallowance – see subsection 47(7) of the PBR Act).

429. Under the PBR Act, the Remuneration Tribunal is responsible for determining the base salary of members (see sections 14 and 45), and reporting to the Minister on individual Ministerial salaries (section 44).

430. For the purposes of paragraph 55(1)(b) of the PBR Act, section 96 of the Regulations prescribes a limit of \$5,500,000 for the total of Ministerial salaries for the 2017-2018 financial year (subsection 96(2)). This reflects an amendment to the cap set under the *Ministers of State Regulation 2012*, made under the *Ministers of State Act 1952*, as in force immediately before the commencement of the PBR Act, which took place after the passage of the PBR Act through the Parliament, but prior to its commencement.

431. Subsection 96(3) provides for the limit on Ministerial salaries to be increased once annually for future financial years where the Remuneration Tribunal has determined an increase in base salary under the PBR Act in the previous financial year. The result of this is that the limit on Ministerial salaries is increased by the same percentage as the increase in the base salary.

432. This ensures that the limit keeps pace with base salary, which is set independently by the Remuneration Tribunal, as historically individual Ministerial salaries have been set as an additional amount of salary calculated by reference to a percentage of the base salary.

433. Under subsection 96(4), the amount of the limit calculated through the formula in subsection 96(3) is rounded to the nearest hundred dollars.

### **Section 97 - Persons in relation to whom dominant purpose test does not apply**

434. Section 26 of the PBR Act sets out the dominant purpose test that applies to members in respect of expenses, allowances or other public resources. Some public resources may be claimed by the member in respect of a third party, such as their spouse, or dependent child (for example, family reunion travel under section 16 of the Regulations). In these situations, the third party is not required to meet the dominant purpose test, as they are not a member of parliament and therefore do not have parliamentary business of their own.

435. In addition to a member's spouse and dependent child, paragraph 26(2)(b) of the PBR Act allows the Regulations to prescribe other third parties for whom the dominant purpose test does not apply. Section 97 of the Regulations provides that the following persons are prescribed:

- a member's nominee (see the definition in section 4 of the Regulations, as well as the explanatory text in relation to Division 2, Part 2 of the Regulations above)
- a designated person in relation to a member (see the definition in section 4 of the Regulations, as well as the explanatory text in relation to Division 2, Part 2 of the Regulations above), and
- a person whose transport costs are prescribed under section 31 (travel with members covered by transport costs undertaking).

436. Note that while the dominant purpose test does not apply to these third parties, the public resources provided for these third parties will be dependent on the member claiming public resources for the dominant purpose of conducting their parliamentary business. See paragraphs 90 - 91 of the Explanatory Memorandum to the Parliamentary Business Resources Bill 2017.

### **Section 98 - Claims for public resources - providing information**

437. This section specifies things for the purposes of paragraph 34(a) of the PBR Act, which allows the Regulations to specify requirements in relation to making a claim or providing evidence in relation to expenses incurred (subsection 98(1)). Note that 'claim' is defined under section 5 of the PBR Act and includes a claim or request for public resources made to the Commonwealth, or the incurring of an expense payable by the Commonwealth.

438. The Administrator of the relevant public resource may set requirements around the information that must be provided for them to process a claim, or provided to subsequently substantiate a claim, as well as the time period within which it must be provided. The Administrator is a defined term under section 4, and means the resources provider who provides the public resources or arranges for the public resources to be provided (under section 5 of the PBR Act a resources provider is any of the following: the Secretary of the Department, IPEA, or a presiding officer).

439. *Compliance information* is defined in subsection 98(7) as meaning any information reasonably required by the administrator for determining whether or not the PBR Act has been complied with, and includes information about the way in which the Act has been complied with. This will encompass the types of information needed for making and substantiating claims, such as factual information and members' declarations about compliance.

440. Subsection 98(3) sets limits around the period that may be set by the Administrator for the provision of compliance information. Allowing some flexibility around the period within which claims must be submitted supports a phased implementation of the Review recommendations, in the context of updates to IT infrastructure and claiming processes.

441. Subsection 98(4) allows the Administrator to extend the period that the Administrator has set under subsection 98(3) for up to 3 months, at the request of the member.

442. Subsection 98(5) allows the Administrator to require the use of an approved form to process a claim. In cases where the Administrator is the Secretary of the Department, then the Minister may also approve any forms (subsection 98(6)).

443. Where a member does not comply with the requirement to provide information as required by this section, the Administrator is not obliged to process and pay the member's claim, although retains some discretion to do so if they consider it appropriate in the circumstances (subsection 98(8)).

### **Section 99 - Carry over of amounts for travel by unscheduled commercial transport for large electorates**

444. Subsection 14(1) of the Regulations sets a limit on the amount of transport costs for unscheduled commercial transport that may be incurred for certain members when travelling within their electorate for the dominant purpose of conducting electorate duties (a specific subset of parliamentary business – see the definition of parliamentary business in section 6 of the PBR Act). The limits vary depending on the size of the member's electorate.

445. This section allows those members to roll over up to 20% of their unused limit once to the following financial year. It does this by providing that the limit prescribed under subsection 14(1) is increased by the lower of:

- the difference between:
  - the amount prescribed by subsection 14(1) for the member in the previous financial year; and
  - the expenses incurred by the member for travel covered by subsection 14(1) during the previous financial year, or
- 20% of the amount prescribed under subsection 14(1) for the member in the previous financial year.

### **Section 100 - Use of preferred providers**

446. This section allows the Minister to determine particular service providers that a member must use in respect of providing, or arranging for the provision of, particular public resources prescribed in the Regulations (subsection 100(1)).

447. For example, this may include prescribing that members must book travel through the Commonwealth travel services provider in certain circumstances; or that members may only procure specific types of office facilities from a particular provider, such as software.

448. Subsection 100(2) provides that the Commonwealth will not be liable to provide public resources prescribed by the Regulations where a member has not used a preferred provider determined by the Minister for those public resources (paragraph 100(2)(a)).

449. However, the Administrator (see section 4 for the definition of Administrator) of those public resources will have a discretion to provide the public resources if it is considered appropriate to do so in the circumstances (paragraph 100(2)(b)). Such circumstances could include where a member books travel directly with an airline because it is not possible to do so through the preferred provider for reasons of urgency or availability.

### **Section 101 - Approved forms for applications to IPEA**

450. This section provides for IPEA to approve a form for making an application for a ruling under section 37 of the PBR Act. This means that members must make all applications for a ruling in the approved form. Paragraph 101(b) provides that if the approved form is not used, IPEA is not required to give a ruling on the application.

## **Section 102 - Indexation**

451. This section sets out the method of indexation for sections 67 and 71 of the Regulations. Subsections 102(1) and (2) provide that the dollar amounts in those sections will increase each financial year in line with the All Groups Consumer Price Index (CPI) as published by the Australian Statistician for the March quarter. CPI is a measure of the average change over time in the prices paid by households for a fixed basket of goods and services. The Australian Bureau of Statistics is responsible for calculating and publishing the CPI on a quarterly basis. The March quarter is used to allow members' budgets to be calculated prior to the beginning of the financial year.

452. Subsections 102(3) and (4) clarify administrative arrangements in respect of how the amounts are indexed, including that:

- the indexation factor must be calculated to three decimal places, rounding up if the fourth decimal place is five or more, and
- amounts are to be indexed using index numbers published in terms of the most recently published index reference period for the CPI. It requires that index numbers published in substitution for previously published index numbers are disregarded (except where the substituted numbers are published to take account of changes in the reference period).

453. Sections 67 and 71 specify arrangements in respect of rounding.