

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance

Parliamentary Business Resources Act 2017

Parliamentary Business Resources Amendment (2017 Measures No. 1) Regulations 2017

Outline

The *Parliamentary Business Resources Amendment (2017 Measures No. 1) Regulations 2017* (the Regulations) are made under section 61 of the *Parliamentary Business Resources Act 2017* (the PBR Act). The PBR Act together with the *Parliamentary Business Resources Regulations 2017* (the Principal Regulations) establishes a framework for providing resources to parliamentarians in respect of their parliamentary business.

The Regulations amend the Principal Regulations to:

- facilitate the provision of a Canberra-based self-drive vehicle to members in appropriate circumstances
- enable the Commonwealth to provide additional Commonwealth transport for members where there is security reason to do so, and
- make other minor amendments to the Principal Regulations for consistency with existing drafting and policy.

A Statement of Compatibility with Human Rights is included in Attachment A. Details of the Regulations are included in Attachment B.

Commencement

The Regulations commence immediately after the commencement of the Principal Regulations.

Consultation

Consultation about these regulations was undertaken with the Remuneration Tribunal and the Independent Parliamentary Expenses Authority. Wider consultation was not considered necessary as the measures are a continuation of the implementation of the recommendations of the review: *An Independent Parliamentary Entitlements System* (February 2016) (the Review), following on from the introduction of the PBR Act and the Principal Regulations. 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.

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 Amendment (2017 Measures No. 1) 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 Amendment (2017 Measures No. 1) Regulations 2017* (the Regulations) amends the *Parliamentary Business Resources Regulations 2017* to:

- facilitate the provision of a Canberra-based self-drive vehicle to members in appropriate circumstances
- enable the Commonwealth to provide additional Commonwealth transport for members where there is security reason to do so, and
- make other minor amendments to Principal Regulations for consistency with existing drafting and policy.

Human rights implications

The Regulations substantially engage the human rights of the right to work and rights at work (Articles 6 and 7 of the *International Covenant on Economic Social and Cultural Rights* (ICESCR)).

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.

Effect of the Regulations in enhancing human rights

While the 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. The addition of making Commonwealth transport available for use where the Minister is satisfied it will ensure physical safety of a member, supports the relevant members by providing for safety arrangements in respect of their work.

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 Amendment (2017 Measures No. 1) Regulations 2017*

Section 1 - Name

1. This section provides that the title of the Regulations is the *Parliamentary Business Resources Amendment (2017 Measures No. 1) Regulations 2017* (the Regulations).

Section 2 - Commencement

2. This section provides that the Regulations commence immediately after the commencement of the *Parliamentary Business Resources Regulations 2017* (the Principal Regulations). This means that the Principal Regulations have effect, from commencement, as amended by these Regulations.

Section 3 - Authority

3. This section confirms that the Regulations are made under the *Parliamentary Business Resources Act 2017* (PBR Act).

Section 4 – Schedules

4. This section provides that each instrument specified in the Schedule to these Regulations is amended or repealed as set out in the items in that Schedule, and that any other item in the Schedule has effect according to its terms.

Schedule 1 – Amendments to the Principal Regulations

Item 1 – Section 4 (new definition *Canberra-based self-drive vehicle*)

5. Item 1 inserts a new defined term ‘Canberra-based self-drive vehicle’ into section 4 of the Principal Regulations, and provides that this term has the meaning given by new paragraph 63A(a) of the Principal Regulations (as inserted by another provision of these Regulations – see item 4 and the notes on that item below).

Item 2 – Section 4 (at the end of the paragraph (b) of the definition of *private vehicle*)

6. Item 2 amends the definition of ‘private vehicle’ in section 4, to add at the end of paragraph (b) of that definition the words ‘or a Canberra-based self-drive vehicle’. This clarifies that references in the Principal Regulations to private vehicle do not include a reference to a Canberra-based self-drive vehicle. This amendment is also relevant to the amendments contained in item 4 (detailed below).

Item 3 – Paragraph 27(6)(b)

7. Item 3 amends paragraph 27(6)(b) to insert after ‘of a member’ the words ‘of the House of Representatives’. This is for consistency with the drafting style in the Principal Regulations more generally, and does not affect the meaning of that paragraph.

Item 4 – After Division 5 of Part 2

8. Item 4 inserts new Division 5A (Canberra-based self-drive vehicle) after Division 5 of Part 2, of the Principal Regulations. This Division contains new sections 63A (Provision of a Canberra-based self-drive vehicle), and 63B (Use of a Canberra-based self-drive vehicle).

9. New section 63A prescribes, for the purposes of subsection 33(1) of the Act, the following public resources:

- a ‘Canberra-based self-drive vehicle’, being a vehicle without a driver provided for use by a member in and around Canberra (paragraph 63A(a)), and
- expenses for the usual costs of maintaining and operating the Canberra-based self-drive vehicle (paragraph 63A(b)); including fuel, servicing, parking and insurance.

10. Because these resources are prescribed for subsection 33(1) of the Act, they can only be provided to a member in accordance with a determination made by the Minister for the purposes of that subsection, and in accordance with the requirements for such a determination in subsection 33(5) of the PBR Act.

11. This section is intended to facilitate Canberra-based self-drive vehicles continuing to be provided to members who are currently provided with such vehicles by the Department of Finance, in accordance with arrangements under the *Parliamentary Entitlements Act 1990* and relevant Remuneration Tribunal instruments made for that purpose. (It does not replace the current arrangements for Ministers, whose Portfolio Departments may also arrange for a vehicle to be provided for use by Ministers during their time in Canberra.) ‘Canberra’ is a defined term in section 4 of the Principal Regulations.

12. Section 63B sets out, for the purposes of subsection 33(7) of the PBR Act, indicative matters that may be dealt with in a subsection 33(1) determination made by the Minister made for the purposes of providing a Canberra-based self-drive vehicle to a particular member, or a class of members. These may include:

- which other persons may drive or travel in the Canberra-based self-drive vehicle, and in what circumstances (for example, a staff member may be authorised to use the vehicle for parliamentary business purposes in particular circumstances);
- arrangements or conditions of garaging the vehicle;
- security measures to be taken in relation to the vehicle;
- financial contributions that would be required from the member towards usage costs of the vehicle in particular circumstances;

as well as any other matters that the Minister thinks appropriate in relation to the use of the vehicle.

13. Subsection 63B(3) confirms that the determination may also set out conditions (including restrictions) on use of other forms of travel, travel expenses or allowances prescribed by the Principal Regulations in circumstances where the member could reasonably use the Canberra-based self-drive vehicle. A condition of this kind may be relevant to ensuring the provision of the vehicle to a member would be value for money for the Commonwealth, as mentioned in subsection 33(5) of the Act. Subsection 63B(4) provides that if a condition of this kind is imposed, the Administrator may refuse approval of a claim for other forms of travel if they consider it appropriate. ‘Administrator’ is defined in section 4 of the Principal Regulations, in relation to particular public resources, as the resources provider who provides the public resources or arranges for the public resources to be provided.

14. Subsection 63B(5) clarifies that section 63B does not limit the matters that may be dealt with by the determination.

Item 5 – After paragraph 66(1)(p)

15. Item 5 amends subsection 66(1) of the Principal Regulations to prescribe:

- the additional communication methods of: conducting interactive voice response phone surveys (new paragraph 66(1)(pa)); and short messaging service (SMS) broadcasting and survey services (new paragraph 66(1)(pb)), and
- information and communications technology and services provided by the Department of Parliamentary Services (new paragraph 66(1)(pc),

as expenses that may be claimed for the conduct of a member's parliamentary business. The claimable costs of these services are subject to the annual budget for office expenses in section 67 of the Principal Regulations.

16. Any information and communications technology and services claimed by a member under new paragraph 66(1)(pc) would be in addition to any such goods or services provided under a determination of the Minister for use in relation to a member's office (see section 74 of the Principal Regulations).

Item 6 – Paragraph 66(1)(q)

17. Item 6 amends paragraph 66(1)(q), to omit '(p)' and substitute '(pc)'. This amendment is consequential to the insertion of new paragraphs 66(1)(pa), (pb) and (pc) by item 5 above, as it ensures that the incidental fees and charges associated with these new expenses are also prescribed.

Item 7 – At the end of Part 5

18. Item 7 inserts a new Division 3 (Use of Commonwealth transport for security purposes) at the end of Part 5 of the Principal Regulations.

19. This new Division supplements the existing arrangements for providing members with access to Commonwealth transport that are contained in sections 62 and 63 of the Principal Regulations. In the new Division, section 94A enables the Commonwealth to provide additional use of Commonwealth transport (such as COMCAR) to members in circumstances not covered by the section 62 Commonwealth transport determination, where there is a relevant personal safety reason to do so.

20. New subsection 94A(1) provides that this section applies if the Minister is satisfied that, to ensure the personal safety of a member, the member should be able to use Commonwealth transport. When determining whether a member should have access to Commonwealth transport under this section, the Minister may take into account any relevant considerations, which may include a security assessment for a member conducted by a security agency.

21. Where the Minister is satisfied that a member should be able to use Commonwealth transport for the personal safety of the member, subsection 94A(2) provides that for the purposes of subsection 42(1) of the PBR Act (Other Resources), the Commonwealth is to provide the Commonwealth transport.

22. New subsection 94A(3) provides that the Minister may specify conditions for provision of the Commonwealth transport, including such conditions as the circumstances in which the transport may or

must be used (including in relation to whether other types of transport are available) (paragraph 94A(3)(a)) and who may travel with the member in the Commonwealth transport (paragraph 94A(3)(b)). New subsection 94A(4) clarifies that the conditions that the Minister may specify are not limited by paragraphs 94A(3)(a) and 94A(3)(b).

23. Because the Commonwealth transport mentioned in this section is prescribed for section 42 of the Act, it can enable the Minister to authorise access to COMCAR in circumstances where the member is not directly conducting parliamentary business, but where there are relevant security reasons that mean the member should travel by COMCAR instead of by another means of transport.

Item 8 – Paragraph (95)(1)(d)

24. Item 8 repeals paragraph 95(1)(d) of the Principal Regulations, and substitutes new paragraphs 95(1)(d) and 95(1)(e) to prescribe:

- the Manager of Opposition Business in the House of Representatives, if the Manager is also a shadow Minister, and
- each other shadow Minister,

as office holders for the purposes of paragraph 49(1)(b) of the PBR Act.

25. Section 49 of the PBR Act deals with when remuneration is to be paid to senators and members of the House of Representatives. This amendment clarifies that the Manager of Opposition Business in the House of Representatives will continue to be paid during the relevant periods where that person is also a shadow Minister, consistently with the arrangements for other Shadow Ministers. This ensures continuity of the remuneration arrangements that applied under the *Parliamentary Allowances Act 1952* as in force immediately before the commencement of the PBR Act.

Item 9 – Paragraph 97(c)

26. Item 9 repeals paragraph 97(c) of the Principal Regulations and substitutes new paragraph 97(c), which provides for a person other than a member whose additional transport costs for travel by unscheduled commercial transport are prescribed under sections 30 or 31. Sections 30 and 31 deal with recovery of travel costs by unscheduled commercial transport by members and certain persons travelling with the member. This amendment clarifies that the dominant purpose test from section 26 of the Act does not apply to the travel expenses of persons specified in paragraph 97(c) in respect of travel under either sections 30 or 31 of the Principal Regulations.

27. This means that where a person's travel costs are paid up front by the Commonwealth, but are not ultimately going to be borne by the Commonwealth because they will be recovered under a transport costs undertaking (see section 32 of the Principal Regulations), the dominant purpose test does not apply in relation to the incurring of those upfront costs. This ensures that members are able to enter into sensible cost sharing arrangements with third parties in selecting their mode of transport for the conduct of their parliamentary business, consistent with the recommendations of the Review, as third parties will be able to share the cost of travel with members even when the third party is not travelling to assist the member in conducting the member's parliamentary business.

Items 10 and 11 – Section 99

28. Item 10 amends section 99 of the Principal Regulations, and its associated Note, by replacing a general reference to section 14 with a specific reference to subsection 14(1). This is for consistency with the drafting in the remainder of that section.