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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PARLIAMENTARY BUSINESS RESOURCES BILL 2017

EXPLANATORY MEMORANDUM

(Circulated by authority of the Special Minister of State, Senator the Hon Scott Ryan)

PARLIAMENTARY BUSINESS RESOURCES BILL 2017

OUTLINE

The Parliamentary Business Resources Bill 2017 (the Bill) replaces the parliamentary work expenses framework under the *Parliamentary Entitlements Act 1990* (PE Act) based on recommendations from the recent review: *An Independent Parliamentary Entitlements System* (February 2016) (**the Review**). The Review recommended reform of Australia's parliamentary expenses system, through the introduction of a principles-based approach, the establishment of a new legal framework and enhanced guarantees of transparency.

As recommended by the Review, the primary purpose of this Bill is to ensure that taxpayers' funds (referred to in this Bill as 'public resources') are spent appropriately and in accordance with strengthened rules relating to the work expenses of parliamentarians and their staff. As such, this Bill empowers parliamentarians to exercise good judgment in respect of accessing public resources, within a simplified system and enhanced accountability framework.

The Bill recognises that members of Parliament should be able to access public resources for reasonable costs incurred in conducting their parliamentary business, but that they have obligations to the public in how they use those resources.

Structure and main coverage of the Bill

The Bill is comprised of 7 Parts as follows:

- Part 1 sets out general provisions for the Bill and contains definitions, including the definition of parliamentary business, which is a key element of the new framework established by the Bill.
- Part 2 sets out the remuneration for members, and the resources that may be provided to former members after they leave Parliament.
- Part 3 contains the core provisions relating to work expenses for current members, which includes powers for the regulations to prescribe the public resources to which members will have access to support them in conducting their parliamentary business. This part also contains the obligations on members in their use of public resources.
- Part 4 sets out the compliance and enforcement scheme applying to public resources used by members under Part 3. This includes the ability for the Independent Parliamentary Expenses Authority, as established by the *Independent Parliamentary Expenses Act 2017* (IPEA Act), to make rulings in relation to travel expenses and allowances; and a penalty scheme that imposes a 25% loading in circumstances where public resources have been used outside of the requirements of the Bill.
- Part 5 provides power for schemes to be established that provide resources to members, including: the Parliamentary Injury Compensation Scheme; insurance for members; and legal assistance to Ministers of State.
- Part 6 sets out the functions of the Remuneration Tribunal under the scheme.
- Part 7 includes miscellaneous provisions, including relating to: when remuneration is payable to, and resources are to be provided to, a member; the setting of the annual limit for the total salaries of Ministers of State for the purposes of section 66 of the *Constitution*; and independent review of the Bill every 3 years.

Core terms and obligations

Definitions

The Bill sets out a number of core terms that are applicable to the new work expenses framework, including in relation to the obligations on members, such as:

- Parliamentary business
 - As recommended by the Review, the Bill provides that parliamentary business includes activities that fall within 4 core streams: **parliamentary duties** (which covers activities of the member that relate directly to the member’s role as a member of the Parliament); **electorate duties** (which covers activities of the member that support or serve the member’s constituents); **party political duties** (which would cover activities of the member that are connected with both their political party and their membership of the Parliament); and **official duties** (which covers activities that relate to the member’s role as an office holder or Minister of State). The specific activities which fall within these streams will be set out in a legislative instrument made by the Minister to ensure clarity for members in claiming expenses, allowances and other public resources. Importantly, the instrument also allows the Minister to specify particular activities that are not parliamentary business.
- Public resources
 - These are the work expenses, and include expenses, allowances, and any goods, services, premises, equipment or facility that is available to support a member in conducting parliamentary business. This is designed to cover the full ambit of work expenses that a member may access, for example, travel and accommodation costs and allowances; or the provision of an electorate office.
- Dominant purpose test
 - As recommended by the Review, the Bill introduces a ‘dominant purpose test’ which governs when a member may access public resources. The test provides that public resources may only be accessed where it is for the dominant purpose of conducting the member’s parliamentary business.
- Value for money
 - The Bill requires that members use public resources in a way that achieves value for money. The Bill defines value for money as the requirement to use public money efficiently, effectively and economically, consistent with the obligations on the proper use of public resources by Commonwealth officials under the *Public Governance, Performance and Accountability Act 2013*. Imposing a requirement to achieve value for money in the use of work expenses was a core recommendation of the Review.

Clear delineation of remuneration and work expenses

Consistent with the Review, the Bill provides a clear split between remuneration (which is provided to members in return for their work) and work expenses (i.e. public resources, which are provided to support a member’s work, with their use subject to obligations including the dominant purpose and value for money requirements).

Remuneration

Remuneration and allowances

Part 2 of the Bill provides a power for the salary and other remuneration type expenses and allowances, to be determined by the Remuneration Tribunal in a non-disallowable legislative instrument (consistent with the arrangements under the old work expenses framework). This power covers the following:

- parliamentary base salary
- electorate allowance

- office holder's salary
- provision of a vehicle to members, or an allowance in lieu of a vehicle
- severance travel and allowances for former members, and
- expenses, equipment/facilities provided to former Prime Ministers (previously provided through executive power).

The Bill also sets the total capped amount from which additional salary for Ministers of State is paid. This was previously provided in the *Ministers of State Act 1952* (MOS Act) as at March 2017 and will be repealed and relocated to Part 7 of the Bill to further streamline the work expenses framework.

Salary sacrifice

The Bill will also deal with salary sacrifice arrangements for members who have choice of fund (those members who became members for the first time after 2004). These matters are currently dealt with under the *Remuneration and Allowances Act 1990* (RA Act) as at March 2017 and will be repealed and relocated to the Bill to further streamline the work expenses framework.

Work expenses

Obligations in relation to the use of public resources (work expenses)

Part 3 of the Bill sets out the work expenses principles, which were recommended in the Review. In order for members to access public resources, the Bill specifies that:

- public resources must be accessed in good faith, and
- members must take personal responsibility and be accountable for their use of public resources.

Consistent with the Review, the obligation to ensure value for money is set out as a separate overarching principle in Part 3.

Prescribing public resources

In addition to setting out the requirements around accessing public resources, Part 3 provides powers for the regulations to prescribe specific work expenses, including on the access to those work expenses. Work expenses may be provided under the following broad categories:

- travel expenses (for example, travel costs)
- travel allowances (for example, an allowance paid in respect of an overnight stay)
- other work expenses or public resources (for example, stationery and other office supplies, as selected by the relevant member), and
- public resources determined by the Minister (for example, the provision of an electorate office, or the provision of other public resources in exceptional circumstances).

Compliance framework

Rulings

Part 4 of the Bill confers powers on IPEA to provide rulings in respect of whether a member's use of travel expenses and allowances was in accordance with the rules of the new work expenses framework. Where a member has been found to have incurred or claimed travel expenses and allowances outside of the rules they will be required to repay the amount and the penalty loading scheme will apply. The rulings scheme will take into account any advice that the member received from IPEA that was relied upon in their use of work expenses, so that they would not be liable to pay a debt or penalty where they relied on incorrect advice (see Part 7 of the Bill).

Penalty loading scheme

Part 4 of the Bill includes a penalty scheme that is consistent with the scheme that applied under the PE Act as at March 2017, with expanded coverage to all work expenses under Part 3 of the Bill (as recommended by the Review).

The penalty loading scheme applies where a claim is made for work expenses in breach of the obligations in the Bill. Where this occurs the amount of the work expense and a 25 per cent loading is a debt due to the Commonwealth by the member. No loading is payable if repayment of the work expense amount is made within 28 days of the claim being made, or if the overpayment is attributable, to any extent, to an administrative error within the Commonwealth.

As part of the scheme, the Bill will provide recovery powers to the paying authorities (either the Department of Finance, IPEA or the presiding officers), which will include the power to offset against future payments of work expenses to a member.

Other schemes in the work expenses framework

Part 5 of the Bill will provide legislative authority for the following schemes provided in the old work expenses framework to be made under the new framework:

- the Parliamentary injury compensation scheme (as at March 2017 set out in a legislative instrument formulated under the PE Act) – which provides an injury compensation scheme for members and the spouse of the Prime Minister, consistent with the scheme established for Commonwealth public servants under the *Safety, Rehabilitation and Compensation Act 1988*, and
- the legal assistance scheme for current and former Ministers of State (currently provided in the *Parliamentary Entitlements Regulations 1997*) – which provides current and former Ministers with assistance in meeting the cost of legal proceedings and inquiries against them that arise out of their Ministerial duties.

These schemes are not subject to the dominant purpose and value for money requirements like the public resources provided under Part 3. Rather, these self-contained schemes set out their own accountability obligations. The Bill allows for other self-contained schemes to be established under Part 5.

Powers of the Remuneration Tribunal

Part 6 of the Bill will provide a new authority for the Remuneration Tribunal to deal with matters in respect of members such as:

- determining the remuneration of members (excluding salary for Ministers of State)
- determining rates of domestic travel allowance, and
- reporting on domestic work expenses that must be included in regulations made under the Bill.

The Bill will also allow the Minister to seek recommendations from the Remuneration Tribunal in respect of other work expenses under the Regulations.

Other miscellaneous provisions

Part 7 of the Bill also contains a number of miscellaneous provisions, which support further recommendations of the Review, such as:

- clarifying the period that remuneration is payable in respect of certain members. The *Parliamentary Allowances Act 1952* (PA Act) as at March 2017 clarifies the period during which members and office holders receive salaries and allowances. The Bill replicates the relevant provisions and repeals the PA Act, consistent with the recommendations of the Review to streamline the work expenses framework.

- providing a mechanism for periodic review. Consistent with the Review, the Bill provides for the Minister to cause an independent review of the operation of the Bill (including recommendations for amendments) to be conducted and tabled every 3 years.

FINANCIAL IMPACT STATEMENT

This Bill will have no direct financial implications, arising from the proposed legislative amendments to the parliamentary work expense framework.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A Statement of Compatibility with Human Rights has been completed in relation to the Bill and assesses that the amendments are compatible with Australia's human rights obligations. A copy of the Statement of Compatibility with Human Rights is at [Attachment A](#).

Abbreviation or common terms and phrases	Full term or description
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Abbreviation or common terms and phrases	Full term or description
Acts Interpretation Act	<i>Acts Interpretation Act 1901</i>
ADA	<i>Age Discrimination Act 2004</i>
APS	Australian Public Service
Belcher Review	<i>Review of Parliamentary Entitlements: Committee Report</i> (April 2010) (available at: http://www.finance.gov.au/publications/review-of-parliamentary-entitlements-committee-report/docs/review-of-parliamentary-entitlements-committee-report.pdf)
CEO	Chief Executive Officer
CRF	The Consolidated Revenue Fund established by section 81 of the <i>Constitution</i>
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1982</i>
ITA Act 1936	<i>Income Tax Assessment Act 1936</i>
ITA Act 1997	<i>Income Tax Assessment Act 1997</i>
IPEA	The Independent Parliamentary Expenses Authority
IPEA Act	<i>Independent Parliamentary Expenses Authority Act 2017</i>
IPEA (CA) Act	<i>Independent Parliamentary Expenses Authority (Consequential Amendments) Act 2017</i>
Legislation Act	<i>Legislation Act 2003</i>
MOPS	a person employed under Parts III or IV of the <i>Members of Parliament (Staff) Act 1984</i>
MOS Act	<i>Ministers of State Act 1952</i>
OPC	Office of Parliamentary Counsel
PA Act	<i>Parliamentary Allowances Act 1952</i>
PBR Bill	Parliamentary Business Resources Bill
PBR (CTP) Bill	Parliamentary Business Resources (Consequential and Transitional Provisions) Bill
PCS Act	<i>Parliamentary Contributory Superannuation Act 1948</i>
PE Act	<i>Parliamentary Entitlements Act 1990</i>
PE Regs	<i>Parliamentary Entitlements Regulations 1997</i>

Abbreviation or common terms and phrases	Full term or description
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PICS	Parliamentary injury compensation scheme
PS Act	<i>Parliamentary Superannuation Act 2004</i>
PRT Act	<i>Parliamentary Retirement Travel Act 2002</i>
RA Act	<i>Remuneration and Allowances Act 1990</i>
Review	<i>An Independent Parliamentary Entitlements System Review Report</i> (February 2016)(available at: http://finance.gov.au/sites/default/files/independent-parliamentary-entitlements-system-review-feb-2016.pdf)
RT Act	<i>Remuneration Tribunal Act 1973</i>
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SMOS	The Special Minister of State
SRC Act	<i>Safety, Rehabilitation and Compensation Act 1988</i>
The old work expenses framework	The PE Act and other relevant legislation as at March 2017
The new work expenses framework	The new legislative framework established under the PBR Bill

NOTES ON CLAUSES

Part 1 – Preliminary

Division 1 – General provisions

Clause 1 – Short title

1 Clause 1 is a formal provision specifying the short title of the Bill. Once enacted, the short title of the Bill will be the *Parliamentary Business Resources Act 2017*.

Clause 2 – Commencement

2 Clause 2 provides for the commencement of the provisions in the Bill. Subclause 2(1) provides that the provision of the Act specified in column 1 of the table commences in accordance with column 2.

3 The table in subclause 2(1) contains one item which sets out that the whole of the Act (column 1) commences on a single day to be fixed by Proclamation, so long as the *Parliamentary Business Resources (Consequential and Transitional Provisions) Act 2017* (PBR (CTP) Act) has received Royal Assent (column 2).

4 However, in the event that the provisions do not commence within the period of 12 months beginning on the later of:

- the day this Bill receives Royal Assent, and
- the day the *Parliamentary Business Resources (Consequential and Transitional Provisions) Act 2017* (PBR (CTP) Act) receives Royal Assent

the Bill commences on the day after the end of that period (column 2). This delayed proclamation is necessary to ensure that the commencement of the PBR Bill can align with either the start of a calendar or financial year for the purpose of calculating work expenses and allowances payable when transitioning from the old parliamentary work expenses framework.

5 The effect of the references to the PBR (CTP) Act in column 2 is that the Bill cannot commence unless passage of the PBR (CTP) Act is also secured. This is necessary as the PBR (CTP) Act makes important consequential and transitional arrangements in respect of the repeal and replacement of the old parliamentary work expenses framework. Without the PBR (CTP) Act, both the new and old parliamentary work expenses frameworks would operate concurrently.

6 Subclause 2(2) provides that any information in column 3 of the table is not part of this Bill. In any published version of this Bill, information may be inserted in this column, or information may be edited.

Clause 3 – Objects of this Act

7 Clause 3 sets out the objects of the Bill. The objects articulate the goals of the Bill and the overarching imperatives for members making decisions about using public resources. This supports an effective and clear system for parliamentary work expenses. Work expenses are broadly referred to as public resources in the Bill, which aims to recognise that the funds used to support parliamentarians do not belong to them, but rather belong to the people of Australia.

8 Subclause 3(1) sets out the main objects of this Bill. These are:

- That members should be remunerated, and provided with resources for being a member (paragraph 3(1)(a)). This acknowledges that members have a right to be remunerated and supported in performing their work as elected representatives. This object recognises that it is in the public interest to provide support to parliamentarians.
- That members should be able to use public resources for reasonable costs incurred for the dominant purpose of conducting parliamentary business (paragraph 3(1)(b)). This recognises that parliamentarians should be able to use public resources to support their work in undertaking parliamentary business. They should not be required to fund these costs at their own expense, or refrain from undertaking their business, as they choose, in order to avoid criticism for using public resources. This reflects one of the principles in recommendation 5 of the Review.
- That members have overarching obligations in relation to the use of those public resources (paragraph 3(1)(c)). This reflects that, although members should be able to be supported in their work, through the use of public resources, members have obligations to ensure that these resources are used appropriately. The proper use of those public resources may be determined by having regard to a variety of factors, including whether the expenditure represents value for money. This also reflects the principles in recommendation 5 of the Review.

9 Subclause 3(2) sets out ancillary objects of this Bill. These are:

- that on retirement, former members are provided with limited resources to facilitate their ceasing to be a member (paragraph 3(2)(a)).
- that reasonable resources are provided to former Prime Ministers to support their continuing contribution to public life beyond their parliamentary service (paragraph 3(2)(b)).

10 Specifically providing for limited resources for former parliamentarians (including former Prime Ministers) in the Bill increases transparency, and is consistent with the recommendations of the Review, which recommended limited support after a person leaves parliament (see, for example recommendation 21). In particular, the Review recommended ongoing support for former Prime Ministers as ... *[t]hey remain public figures for the rest of their lives, subject to frequent calls on their time for public purposes. It is in the community's interests to facilitate drawing on their experience.*

Clause 4 – Simplified outline of this Act

11 Clause 4 provides a simplified outline of this Bill. Simplified outlines are included to assist readers to understand the substantive provisions of the Bill. The simplified outline is not an operative provision and readers should rely on the substantive provisions of the Bill.

Division 2 – Definitions

Clause 5 – Definitions

12 Clause 5 provides definitions to support the operation of provisions of the Bill.

13 Some relevant definitions are discussed below, however many of the definitions are discussed in the coverage of other clauses in the Explanatory Memorandum – where they are relevant to the operation of a particular clause.

14 *Constituent* – the definition of constituent provides that it is a person who is either a person enrolled or resident in a senator's State or Territory (for senators), or a person who is enrolled or resident in a member's electorate (for members of the House of Representatives).

15 *Dependent child* – the Bill provides for a definition of dependent child that differs from the definition of the old work expenses framework in order to meet the recommendations of the Review (see recommendation 18). The definition provides for a maximum age of 18 for a dependent child, unless the child is in secondary education, with other criteria applying if the child is younger than 16 (member legally responsible for day-to-day care, welfare and development), or between 16 and 18 (financially dependent).

16 *Member* – a member under the Bill includes senators and members of the House of Representatives, as well as persons who are not currently such senators or members – Ministers of State who are not a member of either House (as is provided for under the *Constitution*), and presiding officers that are taken to be a presiding officer under the *Parliamentary Presiding Officers Act 1965*. This expanded definition ensures that persons who are not members of either House are eligible to access public resources for their role (although they are not eligible for remuneration under the Bill as a senator or member of the House of Representatives).

17 *Office holder* – office holders are listed in the definition as the President of the Senate, the Speaker of the House of Representatives, the Deputy President and Chair of Committees of the Senate, the Deputy Speaker of the House of Representatives, and a person who is determined by the Minister under clause 7. Listing the positions that are office holders under the Bill will provide certainty regarding the persons who are eligible for work expenses for official business as an office holder.

18 *This Act* – this definition makes it clear that references in the Bill to ‘this Act’ includes regulations and other legislative instruments made under or for the purposes of the Bill.

19 *Travel expenses* – without limiting the ordinary meaning of travel expenses, this definition provides for certain activities that are included as travel expenses for the purposes of the Bill, including travel by another person relating to the member.

20 *Value for money* – value for money is the overriding obligation for access to work expenses under Part 3 of the Bill. Consistently with the PGPA Act, value for money is defined to occur where public money is used efficiently, effectively and economically. The PGPA Act also includes a requirement for money to be used ethically – this is covered separately in the Bill under clause 25 in the obligation to act in good faith.

Clause 6 – Meaning of *parliamentary business*

21 Clause 6 establishes a definition of parliamentary business that is consistent with the Review. The Review recommended that a definition of *parliamentary business* should be adopted as a purpose-based eligibility requirement for all work expenses (recommendation 4). The inclusion of an overarching definition of parliamentary business clarifies the *complex patchwork* of different purpose-based eligibility requirements that existed under the old work expenses framework.

The definition in clause 6 sets out four core streams of business that a member may undertake to fall within the purview of parliamentary business:

- **parliamentary duties** (intended to cover activities that relate directly with a member’s membership of, and participation in, the Parliament) (paragraph 6(1)(a))
- **electorate duties** (intended to cover activities that are connected with the member’s support or service of their electorate) (paragraph 6(1)(b))
- **party political duties** (intended to cover activities that are connected with the member’s membership of their political party where there is also a connection with their membership of the Parliament) (paragraph 6(1)(c)), and

- in the case of office holders and Ministers – **official duties** (intended to cover activities that are connected with an office holder’s role as an office holder or Minister of State but that which might not be directly connected to proceedings in the Parliament) (paragraph 6(1)(d)).

22 For the avoidance of any doubt, subclause 6(2) expressly carves out the following activities that do not fall within the purview of parliamentary business:

- an activity that is carried out for the dominant purpose of either or both of the following:
 - providing personal benefit to the member or another person (which would include, for example: travel for the purpose of a family holiday, or the purchase of office stationery or equipment that is primarily for personal use or enjoyment)
 - pursuing commercial purposes of the member or another person (which is defined in clause 5 as *the derivation of financial gain or reward*), or
- activities that are prescribed in a non-disallowable instrument made by the Minister for the purpose of subclause 6(3) (see also subclause 6(6) concerning disallowance).

23 To provide certainty and clarity, the Minister will determine specific activities that fall within, and those that fall outside, the four core streams through a non-disallowable legislative instrument (see subclauses 6(4) and (6)).

24 Subclause 6(5) provides that without limiting subsection 33(3A) of the Acts Interpretation Act, a legislative instrument made under subclauses 6(3) or (4) can specify that particular activities are parliamentary business as they relate to members, office holders, or Ministers of State; either individually, as a class, or generally. For example, some activities that fall under official duties might only be performed by some office holders, such as the duties of the presiding officers in relation to the opening of Parliament – in this case the instrument is capable of specifying that these duties are only the official duties of the presiding officers rather than all members.

25 One of the objectives of the Review was that the new work expenses framework define the concept of parliamentary business by which members could access certain work expenses, allowances and other public resources. The concept of parliamentary business is therefore central to the new work expenses framework and the operation of many of the provisions in the Bill is dependent on the definition.

26 By allowing an instrument to clarify the particular activities that fall within the meaning of parliamentary business, the definition has the necessary flexibility to account for the changing and future nature needs of members’ roles. However, as a central concept to the Bill, it is also appropriate that such an instrument is not subject to disallowance so as to provide members with certainty about what activities are covered at any particular time.

Clause 7 – Meaning of *office holder*

27 Clause 7 provides that the Minister may determine that the following are office holders:

- a member who holds a specified position in, or in relation to, the Parliament or either House of the Parliament, or
- a member who performs functions of a kind specified in the determination in, or in relation to, the Parliament or either House of the Parliament.

28 Positions prescribed by the Minister are in addition to the positions included in the definition of *office holder* in clause 5 of the Bill.

29 As at March 2017, this is consistent with the definition of Parliamentary office-holder in the PE Act and the determinations made by the Remuneration Tribunal under subsection 7(1) of the RT Act. Although the full range of positions were not specified in those Acts, determining them in this way in the new work expenses framework will add clarity, but is equivalent to the effect of the terms in the old work expenses framework.

30 Accordingly, the offices determined by the Minister may include a member who occupies the position of Leader of Government Business, or Shadow Ministers.

31 A determination made under this clause is a legislative instrument for the purposes of the Legislation Act, and section 42 (disallowance) of that Act applies to the determination.

Clause 8 – Meaning of *complying superannuation fund*

32 Clause 8 is equivalent to item 1B of Part 1 of Schedule 3 to the RA Act (as at March 2017). It provides that for a fund or scheme to be a complying superannuation fund, it must be both a superannuation fund as defined by subsection 6(1) of the ITA Act 1936, and must also be a complying superannuation fund within the meaning of the ITA Act 1997 at the relevant time.

33 Subsection 6(1) of the ITA 1936 provides that a superannuation fund is:

- a scheme for the payment of superannuation benefits upon retirement or death, or
- a superannuation fund within the definition of *superannuation fund* in section 10 of the SIS Act (which includes a public sector superannuation scheme; or a fund that is an indefinitely continuing fund which is also a provident, benefit, superannuation or retirement fund).

34 Section 995.1 of the ITA Act 1997 defines a ‘complying superannuation fund’ as one within the meaning of section 45 of the SIS Act - essentially a regulated superannuation fund.

35 Subclause 8(2) further provides that a fund or scheme cannot be a complying superannuation fund for the purposes of the Bill unless there is in existence at the relevant time, a notice under the SIS Act that it is a complying superannuation fund in the terms of that Act. It also ensures that a notice under the SIS Act that a scheme or fund is not a complying superannuation fund in the terms of the SIS Act will not have retrospective effect for the purposes of the SIS Act.

Clause 9 – Expenses incurred in connection with travel

36 Clause 9 provides various examples of expenses incurred in connection with travel. This clause is illustrative of situations where travel expenses may arise and, as such, where the Commonwealth may be liable to provide resources to members. The examples are not intended to be exhaustive and do not limit the regulations that may be made relating to travel (subclause 9(3)).

37 Subclause 9(1) lists several examples of expenses in connection with travel (e.g. the cost of fares; the cost of taxis and other local transport in connection with travel; the cost of the provision of charter services; the cost of accommodation; the cost of meals; the cost of incidentals).

38 Subclause 9(2) lists several examples of expenses incurred in connection with travel overseas (e.g. the cost of vaccinations and medical services).

39 This clause is equivalent to section 5 of the IPEA Act and ensures that IPEA can perform its travel related functions under the Bill.

Division 3 – Other Matters

Clause 10 – Act binds the Crown

40 Clause 10 provides that the Bill binds the Crown in right of the Commonwealth.

Clause 11 – Extension to external Territories

41 Clause 11 provides that the Bill will have the same operative effect in every external Territory.

Clause 12 – Extra-territorial operation

42 Clause 12 provides that the Bill applies to things both inside and outside Australia. This provision recognises that some of the activities covered by the Bill may occur overseas (for example, travel on an international delegation).

Part 2 – Remuneration etc. for members and former members

Division 1 – Simplified outlined of this Part

Clause 13 – Simplified outline of this Part

43 Clause 13 provides a simplified outline of this Part. Simplified outlines are included to assist readers to understand the substantive provisions of the Bill. The simplified outline is not an operative provision and readers should rely on the substantive provisions of the Bill.

Division 2 – Remuneration etc. for members and former members

Clause 14 – Remuneration of members

44 Clause 14 sets out the remuneration that is payable to members under the Bill. The remuneration provisions are consistent with those applying under the RT Act and PA Act as at March 2017 and with the division of responsibilities outlined in the Review (recommendation 3). These provisions have been incorporated into the PBR Bill, as the Review recommended establishing *remuneration* and *work expenses* as the two streams of support provided to parliamentarians (recommendation 6).

45 Remuneration is defined in clause 5 as any remuneration determined for the purposes of subsections 14(2), (3) or (4) of the Bill.

46 Subclause 14(1) provides that where a person is a senator or member of the House of Representatives, they are to be paid remuneration as determined by the Remuneration Tribunal under clause 45 (see clauses 49, 50 and 51 for when remuneration is payable). The Remuneration Tribunal must determine the amounts of remuneration annually and subclauses 14(2) to (4) set out different components that may make up the remuneration determined by the Remuneration Tribunal.

47 This clause does not apply to Ministerial salaries which are payable under section 66 of the *Constitution* and is not determined by the Remuneration Tribunal (Note 1 in subclause 14(1)). This Bill only provides for the setting of the cap on total Ministerial salaries for the purposes of section 66 (see clause 55).

48 Subclause 14(2) provides that the remuneration must include an annual allowance payable for the purposes of section 48 of the *Constitution* known as *base salary*. This is equivalent to the concept of *parliamentary base salary* as defined in the RT Act as at March 2017.

49 Subclauses 14(3) and (4) provide that remuneration may also include any or all of the following:

- an amount determined as *electorate allowance* (previously provided under Part 2 of the *Remuneration Tribunal Determination 2012/04 – Members of Parliament – Entitlements* as at March 2017 (paragraph 14(3)(a))
- if the member is an office holder (as defined in clause 7) – an amount determined as *office holder’s salary* (paragraph 14(3)(b)) (previously provided under *Remuneration Tribunal Determination 2016/06: Members of Parliament – Base Salary, Additional Salary for Parliamentary Office Holders, and Related Matters* as at March 2017)
- a determination that the member is to be provided with a private plated vehicle (this is equivalent to the provision of a Commonwealth leased vehicle under Part 6 of *Remuneration Tribunal Determination 2012/04 – Members of Parliament – Entitlements* as at March 2017) (paragraph 14(4)(a))

- a determination of an allowance that is payable in lieu of a private plated vehicle (this is equivalent to the provision of additional electorate allowance under Part 6 of *Remuneration Tribunal Determination 2012/04 – Members of Parliament – Entitlements* as at March 2017) (paragraph 14(4)(b)), and
- a determination that an allowance or expenses are payable in relation to internet or telephone services provided to the private residence of the member (this is equivalent to telephone and data services covered under Part 2 of Schedule 1 to the PE Act as at March 2017; as well as Part 6 of *Remuneration Tribunal Determination 2012/04 – Members of Parliament – Entitlements* as at March 2017) (paragraph 14(4)(c)).

50 The list in subclauses 14(3) and (4) does not limit the types of remuneration that the Remuneration Tribunal has the power to determine under clause 45.

51 The remuneration set out in Part 2 of the Bill is not subject to the obligations in Part 3 of the Bill (including the dominant purpose test and achieving value for money), as remuneration is provided to members in return for their work, the same as with a person who is an employee.

52 Base salary provided under subclause 14(2) is a Constitutional allowance and therefore the Remuneration Tribunal can only exercise discretion in determining the amount of the allowance (see section 48 of the *Constitution*). However, the components of remuneration covered by subclauses 14(3) and (4) are entirely discretionary and non-exhaustive, in that the Remuneration Tribunal can determine:

- whether the component should be provided
- the amount or conditions around the provision of the component, or
- if other types of remuneration should be payable to members.

53 This ensures that the Remuneration Tribunal retains their independence in determining the remuneration of senators and members of the House of Representatives. Consistent with arrangements under the RT Act as at March 2017, a determination of the Remuneration Tribunal in respect of remuneration for a senator or member of the House of Representatives is a legislative instrument but is not subject to disallowance (see subclause 47(7)).

Clause 15 – Allowances and expenses etc. for former members

54 Clause 15 provides that a former member is to be paid allowances and expenses connected with their cessation as a member as determined from time to time by the Remuneration Tribunal under clause 46. This provision is consistent with recommendations 3 and 21 of the Review and is intended to allow the Remuneration Tribunal to determine allowances and expenses (where appropriate) provided to former members for a period after they cease being a member.

55 The old work expenses framework allowed former members to travel at Commonwealth expense for a limited number of trips within the first six months of leaving the Parliament (see the *Remuneration Tribunal Determination 2012/04 – Members of Parliament – Entitlements* as at March 2017). Travel under the old work expenses framework was limited to travel between a former member's home base and either Canberra, or their former electorate office(s). Such travel allowed former members to personally attend to matters relating to their cessation.

The Bill provides the Remuneration Tribunal with the discretion to determine, where appropriate, that such allowances and expenses are provided under the new work expenses framework. This power is limited to allowances and expenses that relate to the person ceasing to be a member.

Clause 16 – Goods and services etc. for former Prime Ministers

56 Clause 16 provides that former Prime Ministers is to be provided with any goods, services, premises, equipment or any other facility determined, in writing, by the current Prime Minister.

57 Subclause 16(2) makes it clear that such a written determination can impose limits or conditions or apply to former Prime Ministers generally, a class of former Prime Ministers, or a particular former Prime Minister. This is included for the purposes of subsection 33(3A) of the Acts Interpretation Act, to make it clear that a determination can be limited to a class that only contains one person.

58 Subsection 33(3A) of the Acts Interpretation Act also operates to allow the determination to provide only some of the items set out in subclause 16(1) (i.e. goods, services, premises, equipment or any other facility).

59 Consistent with recommendation 6 of the Review, as well as the Belcher Review, clause 16 seeks to establish a legislative authority in respect of matters that were previously provided under executive power, to increase transparency and certainty regarding these arrangements.

60 Under the old work expenses framework outgoing Prime Ministers were provided with resources to support and recognise the continued public nature of their role as well as their ongoing contribution to the community, including:

- office accommodation and facilities
- ICT and postage
- staff, and
- car transport.

61 Under the old work expenses framework these goods, services, premises, equipment and facilities were provided through executive power to an outgoing Prime Minister upon the decision of the incoming Prime Minister. Clause 16 provides a statutory basis for this arrangement.

62 Subclause 16(3) provides that a determination under subclause 16(1) is a non-disallowable legislative instrument. This is considered appropriate given the power typically resided in the realm of executive power and should remain under executive control rather than being subject to the political process.

Division 3 – Salary sacrifice

Clause 17 – When may a person elect to salary sacrifice?

63 Clause 17 is equivalent to item 1C of Part 1 of Schedule 3 to the RA Act as at March 2017. It provides that a person who is a member of the House of Representatives may make an election to salary sacrifice during a new scheme contribution period or, in the case of a Senator-elect, or person appointed to fill a casual vacancy in the Senate who is not yet receiving base salary (the annual allowance payable in respect of subclause 14(2) of the Bill), the election can be made before that time. This provision ensures that the person may salary sacrifice from their first pay period.

64 *New scheme contribution period* is defined in clause 5 as having the same meaning as in the PS Act. As at March 2017, section 6 of the PS Act provides that a new scheme contribution period is the period that starts at the *new scheme entry time* for that person (section 5 of the PS Act sets out the different circumstances that a person would begin to be eligible to receive base salary – that being the new scheme entry time for that person). The new scheme contribution period ends when the person ceases to be eligible to receive base salary.

65 Clause 17 therefore has the effect that a person may only make an election during a time they are eligible, or are about to be eligible, to receive base salary.

Clause 18 – The nature of the salary sacrifice election

66 Clause 18 is equivalent to item 1D of Part 1 of Schedule 3 to the RA Act as at March 2017. It sets out the effect of a person’s election to salary sacrifice under Division 3 of Part 2 of the Bill. It provides that in making an election a person forgoes a percentage or an amount of their base salary in order to have additional employer contributions (*additional contributions*) paid to a specified fund (the *additional contributions fund*).

67 Subclause 18(2) provides that the additional contributions fund must be a complying superannuation fund or a Retirement Savings Account (RSA) (within the meaning of the *Retirement Savings Account Act 1997*) (clause 5). This means they cannot be paid to a self-managed superannuation fund.

68 Subclause 18(3) provides that there may only be one additional contributions fund at any particular time.

Clause 19 – How to make an election

69 Clause 19 is equivalent to item 1E of Part 1 of Schedule 3 to the RA Act as at March 2017. It describes the process that a person must follow to notify the administering authority (defined in clause 5 as the Clerk of the house of which the person is, or will be, a member) of the salary sacrifice election for it to be effective. The election must be in writing and signed by the person; must specify a percentage or amount of base salary that is forgone; must include specified details of the fund to which the salary sacrificed amount is to be paid; and the date of effect of the election.

70 The election must also be made in respect of a new scheme contribution period before the person becomes eligible to be paid base salary for that period (currently base salary is paid on the last business day of a calendar month). Paragraph 19(2)(d) provides that the regulations may also specify other information that must be provided as part of the notice of election.

71 Subclause 19(4) further requires that the person must provide evidence that the fund will accept the contributions, unless the additional contributions fund is the default basic contributions fund or the chosen basic contributions fund (that is, the choice fund of the person under the PS Act).

Clause 20 – Duration of an election

72 Clause 20 is equivalent to item 1F of Part 1 of Schedule 3 to the RA Act as at March 2017. It provides that a salary sacrifice election commences from the date of effect of the election as specified in the election notice under clause 19, and continues until revoked, or until the additional contribution for the month in which the member ceases to be eligible to receive base salary has been paid.

Clause 21 – Effect of an election

73 Clause 21 is equivalent to item 1G of Part 1 of Schedule 3 to the RA Act as at March 2017. It provides that if a person makes a salary sacrifice election, the amount of base salary to be salary sacrificed must be deducted from the base salary and the Commonwealth must pay that amount forgone as additional employer superannuation contributions to the additional contributions fund.

74 Subclause 21(3) places a cap on the amount of a person’s base salary that they can salary sacrifice (the *maximum reduction*). This is 50% of the sum of:

- base salary (see subclause 14(2))

- Ministerial salary (see clause 5), and
- office holder's salary (see paragraph 14(3)(b)).

75 The effect of subclause 21(5) is that if the additional contributions fund ceases to exist; ceases to accept additional contributions; ceases to be a complying superannuation fund or an RSA; or it becomes a self managed superannuation fund; or the member dies before the additional contributions in respect of a month are paid; the base salary for that month will not be reduced and no contribution will be paid in respect of that month.

Clause 22 – Variation of an election

76 Clause 22 is equivalent to item 1H of Part 1 of Schedule 3 to the RA Act as at March 2017. It provides that a person may vary an election made under clause 19 to salary sacrifice to:

- change the additional contributions fund to another eligible fund;
- change the specified percentage or amount of base salary to be salary sacrificed, or
- change the start date to a later date provided the original start date has not passed (i.e. it is not possible to retrospectively vary an election).

77 Subclause 22(3) – (5) provides that there are similar notice requirements to those set out in clause 19 in order to effect an election to vary.

78 Subclause 22(6) provides that the election to vary takes effect in relation to the calendar month following the election.

Clause 23 – Revocation of an election

79 Clause 23 provides that a person may revoke an election to salary sacrifice made under clause 19. The revocation must be in writing signed by the person and given to the relevant administering authority.

80 Subclauses 23(2) and (3) provide that the revocation takes effect on the date specified in the notice, so long as that date is the first day of a future calendar month following the giving of notice (i.e. a person cannot retrospectively revoke an election).

Part 3 – Work expenses, allowances and other public resources

Division 1 – Simplified outline of this Part

Clause 24 – Simplified outline of this Part

81 Clause 24 provides a simplified outline of this Part. Simplified outlines are included to assist readers to understand the substantive provisions of the Bill. The simplified outline is not an operative provision and readers should rely on the substantive provisions of the Bill.

Division 2 – Obligations in relation to the use of public resources

Clause 25 – Obligations in relation to the use of public resources for conducting parliamentary business

82 Clause 25 sets out a number of broad obligations that apply to a member's use of public resources for the purposes of conducting parliamentary business. *Public resources* is defined in clause 5 to mean expenses or allowances paid under this Part, or any goods, services, premises, equipment or any other facility provided under this Part. This term is used to capture the sorts of work expenses and allowances that are provided under the old work expenses framework the access of which will be subject to new obligations under the new work expenses framework.

83 The Review recognised that the new parliamentary work expenses ... [s]ystem should ensure that the relationship between the public and their representatives is one of respect and mutual support. The Review proposed the implementation of a principles-based system which allowed parliamentarians to exercise judgement, choice and personal responsibility, in a way that promoted transparency and public accountability.

84 The obligations set out in clause 25, when read with clause 3 (Objects of this Act), clause 26 (Dominant purpose test) and clause 27 (Obligation to ensure value for money in incurring expenses or claiming allowances or other public resources), give effect to the principles espoused in recommendation 5 of the Review.

85 Specifically clause 25 provides that members:

- are personally responsible and accountable for their use of public resources in the conduct of their parliamentary business
- must be prepared to publicly justify their use of public resources for conducting their parliamentary business, and
- that members must act ethically and in good faith in using, and accounting for the use of public resources in the conduct of their parliamentary business.

86 Members must have regard to these obligations when using public resources for the purposes of their parliamentary business. While no express consequences flow from a failure to comply with these obligations under the Bill, a member can expect that acting inconsistently with these obligations will not meet community expectations around the use of public resources.

87 Some examples of how a member might consider these obligations in the context of their use of public resources are provided below:

Example 1 – Application of obligation of personal responsibility and accountability

In accessing public resources under Part 3 of the Bill, a member should consider the public perception of their use of public resources in the particular circumstances. Specifically, a member should consider how they would explain how their use of public resources in the circumstances meets the requirements of clauses 26 and 27 – that is, how their use was for the dominant purpose of conducting parliamentary business (including what the parliamentary business was) and how it represented value for money to the taxpayer.

If that member were later publicly questioned over their use of public resources, they would be expected to publicly account for their use. A member can expect that simply stating that their particular use in the circumstances was consistent with the Bill will not be enough to meet the obligations of clause 25.

Example 2 – Application of obligation of good faith

Acting in good faith goes to the core of the requirement that members claim or use public resources for the dominant purpose of conducting their parliamentary business (clause 26).

Specifically, the Review provided that members must not seek to disguise their personal or commercial business as parliamentary business. Acting in good faith would require that members act honestly and consider the subjective reasons for claiming or using public resources in the circumstances, and account for their claim or use of those public resources with sufficient candour. This is similar to the requirements of public officials under section 26 of the PGPA Act.

A member can expect that where an activity is not clearly for the dominant purpose of conducting parliamentary business, and instead is a dual-purpose activity that falls within the grey area between parliamentary and personal business, this may not be enough to satisfy the obligation of good faith.

Clause 26 – Dominant purpose test

88 Clause 26 establishes the ‘dominant purpose test’ that members must apply when claiming expenses, allowances or other public resources (consistent with recommendation 4 of the Review).

89 In relation to incurring expenses and allowances under Part 3, subclause 26(1) provides that a member must not claim work expenses or allowances covered by this Part unless they are for the dominant purpose of conducting their parliamentary business.

90 However, subclause 26(2) clarifies that where an expense is incurred, or allowance or other public resource is claimed in respect of another person for whom an expense is provided for under the regulations, then the dominant purpose test does not apply to that person’s use (although it would apply to the member where the use of the other person is dependent on the member’s purpose).

91 For example, the old work expenses framework provided for a member’s spouse to accompany a member on travel to Canberra for parliamentary business (e.g. sittings of Parliament) (see the *Remuneration Tribunal Determination 2012/04 – Members of Parliament – Entitlements* as at March 2017). If a similar expense was covered under the new work expenses framework, in this situation the spouse does not conduct the travel for the purpose of conducting parliamentary business as they are not a member. However, the member’s trip is subject to the dominant purpose test, so that if the member’s travel did not meet that test, the Commonwealth would not be liable to pay both the member’s and spouse’s travel expenses (which may result in a debt and a loading being payable by the member – see clauses 38 (Loading in respect of contraventions of section 26, 27 or 28) and 57 (Recoverable payments)).

92 In relation to using public resources provided by the Commonwealth under subclause 33(1), subclauses 26(3) and (4) provide that:

- a member must not use public resources provided by the Commonwealth other than for the dominant purpose of conducting their parliamentary business (subclause 26(3)), or
- a member must not use public resources provided by the Commonwealth for commercial purposes (subclause 26(4)). Commercial purpose is defined in clause 5 to mean *a purpose relating to the derivation of financial gain or reward*.

93 In the event that a member acts inconsistently with clause 26, then there will be a debt to the Commonwealth relating to the public resources in question. For example:

- where a member incurs an expense or allowance other than for the dominant purpose of parliamentary business – the value of the expense or allowance will be a debt to the Commonwealth, or
- where a member uses public resources provided by the Commonwealth (for example, the member may be provided with an electorate office at Commonwealth expense) and that use is inconsistent with the dominant purpose test – the value relating to the misuse will be a debt to the Commonwealth.

94 Consequently, the member may also be liable to pay a loading under clause 38 (Loading in respect of contraventions of sections 26, 27 or 28).

95 The phrase *dominant purpose* is undefined and attracts its ordinary meaning. The Review sought to clarify the meaning of the phrase by referring to its application in cases where a court must determine whether a communication between a lawyer and their client attracted legal professional privilege, commenting that ... *[a]n activity would fall within the scope of 'parliamentary business' where undertaken for the 'ruling', 'prevailing' or 'most influential' purpose of conducting parliamentary business*.

96 The test in the context of the Bill would be whether, but for the parliamentary business, the member would have undertaken the activity; or incurred or claimed the expense, allowance or other public resource. Where they would have taken the same action without the parliamentary business, the test is not satisfied.

97 The Review also provided the following guidance for applying the test:

...[a] parliamentarian should not seek to disguise as parliamentary business an activity whose dominant purpose is personal or commercial. For example, in assessing travel expenditure to attend a party-sponsored event, consideration should be given to whether the parliamentarian was invited to attend because of its relevance to his or her ministerial portfolio responsibilities, his or her electorate, or the party's platforms on matters of parliamentary business.

Indicators might be who issued the invitation, whether the parliamentarian performed a speaking role about a policy issue, the composition of attendees, the scale of the event and any fundraising activities, and the situation of the event in the electoral cycle.

Ultimately, the characterisation of an activity and its associated expense as falling within the parliamentarian's public roles is a matter of common sense, based on the circumstances.

Clause 27 – Obligation to ensure value for money in incurring expenses or claiming allowances or other public resources

98 Clause 27 provides that where a member incurs expenses, or claims allowances or other public resources, for the purpose of conducting parliamentary business, a member must also ensure

that they achieve value for money in the circumstances (which includes the need to conduct the member's parliamentary business). This is additional to the general obligations and requirements under clauses 25 and 26.

99 In the event that a member claims or incurs an expense or allowance and it does not provide value for money in the circumstances, the amount claimed or incurred will be a debt to the Commonwealth (see clause 57), and the member may be liable to pay a loading under clause 38 of the Bill (in addition to repaying the debt amount).

100 The definition of *value for money* in clause 5 specifies that expenses and allowances paid by the Commonwealth provide value for money where they use public money *efficiently, effectively and economically*. This is generally consistent with the expectations placed on the use of public resources by Commonwealth officials under the PGPA Act.

101 Clause 27 reflects recommendations 5 and 8 of the Review that value for money be an overarching principle of the new work expenses framework. In seeking to apply clause 27, the Review provides the following guidance (page 63):

Value for money – overarching principle

1. *In utilising public resources and expending public funds, parliamentarians are to have regard to whether their expenditure represents value for money. Parliamentarians are to consider, in particular, whether their expenditure, or proposed expenditure, represents an efficient, effective and ethical use of public resources.*
2. *In assessing whether expenditure or proposed expenditure represents value for money, parliamentarians are to consider matters such as:*
 - a. *Whether the expenditure is commensurate with the scale and scope of the relevant parliamentary business to which it relates. (For example, is the mode and cost of travel to attend an event proportionate to the benefit or value in attending that event, particularly in terms of the perceived importance or the activity, and its duration?)*
 - b. *Whether there are other ways of meeting the need, and the relative costs and benefits of each alternative.*
 - c. *If the work expense relates to goods, consideration of the whole-of-life costs of the assets (such as the up-front, after-purchase and disposal costs).*
3. *Parliamentarians are to be prepared to justify publicly how their expenditure represents 'value for money'.*

Clause 28 – Obligation not to make claims or incur expenses in breach of conditions

102 Clause 28 makes it clear that a member must not make a claim or incur expenses under the Bill if conditions that apply to the claim have not been met. The definition of claim in clause 5 provides that a claim can relate to a request for public resources, or the incurring of an expense that is payable by the Commonwealth.

103 Conditions relating to the provision of public resources may be prescribed by the regulations (see clause 34).

104 Where a member has not met the conditions for a claim to access public resources they may be liable to pay a loading under clause 38 in addition to repaying the value of the resources. The conditions on each expense and allowance will be set out in the regulations that prescribe them.

105 Subclause 28(2) clarifies that where public resources are claimed or incurred and the claim does not meet all the conditions of the claim, this does not necessarily prevent public resources from being provided in relation to the claim or expenses. This might occur when a member inadvertently submitted a claim for an allowance they were not eligible to claim, but instead met the conditions for a different allowance. Subclause 28(2) will allow the member to be paid the allowance that they were eligible to claim for rather than the allowance they submitted their original claim for.

Clause 29 – Commonwealth not liable to provide resources if there is a contravention

106 Clause 29 provides that where a member’s claim or use of public resources:

- is not for the dominant purpose of conducting their parliamentary business (clause 26)
- does not provide value for money (clause 27), or
- does not satisfy the conditions in relation to the provision of the public resources (clause 28),

the Commonwealth is not liable to provide those public resources to the member.

107 This clause does not prevent public resources being provided, for example if the contravention of the obligations was only identified after the resources were provided. These circumstances would be covered under clause 57 (Recoverable payments).

Division 3 – Work expenses, allowances and other public resources

Clause 30 – Commonwealth must pay travel expenses

108 Clause 30 creates a positive obligation on the Commonwealth to pay the travel expenses of a member as prescribed in the regulations.

109 The Remuneration Tribunal is responsible for reporting on some travel expenses that must be prescribed by the regulations (see clause 35) (see also recommendation 3 of the Review).

110 Regulations made for the purposes of this clause could provide, for example, that the travel expenses of a member relating to travel to attend sittings of the Parliament must be paid by the Commonwealth.

111 Any expenses incurred by the member under this clause are covered by the obligations in clauses 26 (Dominant purpose test), 27 (Obligation to ensure value for money in incurring expenses or claiming allowances or other public resources) and 28 (Obligation not to make claims or incur expenses in breach of conditions).

112 The note in this clause clarifies that a member will only be eligible to be provided with public resources under Part 3 if they are eligible to receive base salary, office holder’s salary, or Ministerial Salary (see clauses 14 and 52). This ensures that a person must be a current member, office holder or Minister of State in order to claim work expenses, allowances and other public resources under Part 3 of the Bill.

Clause 31 – Commonwealth must pay travel allowances

113 Clause 31 creates a positive obligation on the Commonwealth to pay the travel allowances of a member as prescribed in the regulations (subclause 31(1)).

114 The Remuneration Tribunal is responsible for reporting some travel allowances that must be prescribed by the regulations (see clause 35), and for determining the rates (or a method of determining the rates) of the allowances for domestic travel under subclause 45(1) (subclause 31(2))

(see also recommendation 3 of the Review). Determinations in respect of the rates of allowance by the Remuneration Tribunal are not disallowable (see subclause 47(7)).

115 Regulations made for the purposes of this clause could provide, for example, that a member is to be paid an allowance (at a rate determined by the Remuneration Tribunal for domestic travel) for each overnight stay away from their home base that is occasioned for the dominant purpose of conducting their parliamentary business. Any allowance claimed under this clause is subject to the obligations in clauses 26 (Dominant purpose test), 27 (Obligation to ensure value for money in incurring expenses or claiming allowances or other public resources) and 28 (Obligation not to make claims or incur expenses in breach of conditions).

116 Regulations made for the purposes of this clause can incorporate the rates of allowances for domestic travel that are determined by the Remuneration Tribunal under clause 45 from time to time.

Clause 32 – Commonwealth must pay work expenses and provide other public resources

117 Clause 32 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 that relate to the member's conduct of parliamentary business.

118 Regulations made for the purposes of this clause could provide, for example, the cost of commercial services for printing, or the purchase of office requisites or stationery.

119 This clause differs from clause 33 in that the expenses to be incurred, or other public resources to be provided, are at the discretion of the member (although the regulations may include a condition that the public resources that may be selected by a member are from a list of such resources approved by the Minister, e.g. specific stationery items – see clause 34 for the powers of regulations).

120 Any expenses incurred or public resources claimed under this clause are subject to the obligations in clauses 26 (Dominant purpose test), 27 (Obligation to ensure value for money in incurring expenses or claiming allowances or other public resources) and 28 (Obligation not to make claims or incur expenses in breach of conditions).

Clause 33 – Commonwealth must provide public resources determined by the Minister

121 Clause 33 creates a positive obligation on the Commonwealth to provide public resources that are determined by the Minister. There are two different types of determinations that the Minister can make under this clause.

Determinations as prescribed by the regulations

122 Subclause 33(1) allows the Minister to make determinations in respect of things prescribed by the regulations that relate to the conduct of a member's parliamentary business. For example, under the old work expenses framework the Minister could determine that a member be provided with an office in their electorate, for parliamentary or electorate business. The power in this clause would provide an equivalent mechanism for the Minister to approve such public resources.

123 Regulations made for the purposes of this clause would provide for the Minister to determine that specified public resources listed in the regulations will be provided to a member. This differs from clause 32 (Commonwealth must pay work expenses and provide other public resources), which covers expenses and other public resources that are at the discretion of the member.

124 These powers are separated in the Bill to reflect the differing application of the obligations in clauses 26 (Dominant purpose test), 27 (Obligation to ensure value for money in incurring expenses or claiming allowances or other public resources) and 28 (Obligation not to make claims or incur expenses in breach of conditions) – see further below.

One-off determinations in exceptional circumstances

125 Subclause 33(2) provides a separate power for the Minister to make one-off determinations in exceptional circumstances to provide members with public resources that are not otherwise covered by the Bill and any subordinate instruments.

126 This power is included based on recommendation 3 of the Review. The intention is to provide discretion 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. This might include:

- where the member has unique caring responsibilities for a member of their family and requires special travel arrangements,
- where a member suffers an illness or disability not covered by the PICS and which requires alternative travel arrangements or additional office facilities, or
- where a member wishes to claim expenses for a mode of transport not covered by public resources provided under Part 3 of the Bill, but which represents value for money to the Commonwealth *in their individual circumstances*, so long as the member does not also derive a personal benefit.

127 The regulations may make provision in relation to determinations under this clause, which may include the application process as well as the criteria for assessing a case of exceptional circumstances (subclause 33(7)).

128 Subclause 33(3) makes it clear that the power in subclause 33(2) is not designed to be exercised retrospectively. This means that a member must make an application and be approved before engaging in any conduct that would, without the approval of the Minister under this subclause, not be covered by Part 3 of the Bill or regulations made under that Part.

129 Where a member does not obtain prior approval, subclause 33(2) would not give the Minister the power to retrospectively validate expenses or other public resources that a member has claimed or used outside of that provided by Part 3, which would be a contravention of clauses 26 (Dominant purpose test), 27 (Obligation to ensure value for money in incurring expenses or claiming allowances or other public resources) or 28 (Obligation not to make claims or incur expenses in breach of conditions), and so a debt and loading may be payable by the member, see clauses 38 (Loading in respect of contraventions of section 26, 27 or 28) and 57 (Recoverable payments).

Application of obligations

130 Consistent with the requirement that members achieve value for money in accessing and using public resources (clause 27), in making a determination under this clause the Minister must ensure that expenses incurred, or public resources provided by the Commonwealth provide value for money in the circumstances (subclause 33(5)). For example, where the Minister is making a decision on office space to be leased by the Commonwealth and provided to a member as an electorate office, although the needs and preferences of the member will be a relevant consideration, the Minister must ensure that value for money is achieved.

131 This requirement for value for money on the Minister's decision is consistent with the requirements that applied under the old work expenses framework. Although this was not a requirement under the PE Act, section 71 of the PGPA Act (approval of proposed expenditure by a Minister) applied to decisions of the Minister under the PE Act.

132 As an equivalent obligation is now imposed under the PBR Bill, subclause 33(6) provides that section 71 of the PGPA Act does not apply in relation to a determination of the Minister under this clause.

133 Subclause 33(8) is included to assist the reader as it clarifies that a determination under this clause is not a legislative instrument within the meaning of section 8 of the Legislation Act, and is merely declaratory of the law.

Division 4 – Powers of regulations

Clause 34 – Powers of regulations

134 Consistent with recommendation 3 of the Review, clause 34 clarifies a number of matters in relation to the powers to make regulations for the purposes of work expenses, allowances and other public resources under Part 3 of the Bill.

135 Without limiting the power of the regulations to deal with matters in Part 3, clause 34 provides that the regulations may:

- Specify requirements in relation to making a claim for public resources, or evidence in relation to expenses incurred (paragraph 34(a)). This might include, for example, requiring a member to provide receipts for expenditure, or to complete a specific claim form or certification form.
- Impose limits and other conditions on the payment or provision of public resources to persons (paragraph 34(b)). This might include, for example, capping the amount of printing for parliamentary business that a member can claim as an expense; requiring that a spouse may only travel to join a member where that member is undertaking parliamentary business; or to make the specific items (such as stationery) that may be purchased and claimed as an expense subject to the discretion of the Minister.
- Provide for a method for increasing or decreasing amounts of expenses and allowances that are payable (paragraph 34(c)). This might include, for example, providing that an annual budget for postage is adjusted in line with the change in the number of enrolled voters in an electorate, or for an allowance to increase annually in line with the Consumer Price Index.
- Provide that public resources (including travel allowance) can be provided to a person other than the member (paragraph 34 (d)). This might include, for example, travel resources provided to the spouse or staff of a member.
- Provide that costs may be recovered by a specified person or entity from a person other than a member or any other person (paragraph 34 (e)). This would allow for the relevant resources provider (defined in clause 5 as being either the Secretary of the Department, IPEA, or a presiding officer) who has provided an expense or allowance to also recover that expense or allowance in the event of overpayment or non-compliance with a condition on the payment. The expense or allowance may be recoverable, for example, from a person other than the member in circumstances where the expense or allowance was paid directly to another person (see paragraph 34(d)).
- Provide public resources in respect of particular members or office holders, as well classes of members or office holders, and members or office holders more generally (paragraph 34(f)) (see clause 5 for the definition of an office holder). This might include specifying that some public resources are only available to presiding officers, a particular Minister of State, all Ministers of State, or all members generally.
- Provide conditions relating to the making of a determination under subclauses 33(1) and (2) (paragraph 34(g)). This is consistent with subclause 33(7) which allows the regulations to make provision in relation to determinations of the Minister that public resources are payable in accordance with the regulations, or on account of exceptional circumstances.

Clause 35 –Remuneration Tribunal inquiries into matters

136 Consistent with recommendation 3 of the Review, clause 35 provides the Remuneration Tribunal with the function of inquiring into and reporting to the Minister on some public resources that must be included in regulations made under Part 3. This is in addition to the Tribunal’s role in determining remuneration (clause 14), allowances and expenses for former members (clause 15), and rates of allowance for domestic travel under clause 45.

137 Clause 35 provides this function in relation to:

- a. travel expenses and allowances for domestic travel (other than travel on special purpose aircraft) under clauses 30 and 31 (referred to as relevant domestic travel matters) (subclause 35(1)), and
- b. any matter requested by the Minister (including relating to relevant domestic travel matters) (subclause 35(2)).

138 Where the Remuneration Tribunal reports under either subclause 35(1) or (2) that regulations should be made or amended for the purposes of this Part, its report must contain recommendations in relation to the content of those regulations or amendments (subclause 35(3)). This allows the Remuneration Tribunal to set the policy in respect of the work expenses, allowances and other public resources it can inquire into and report on.

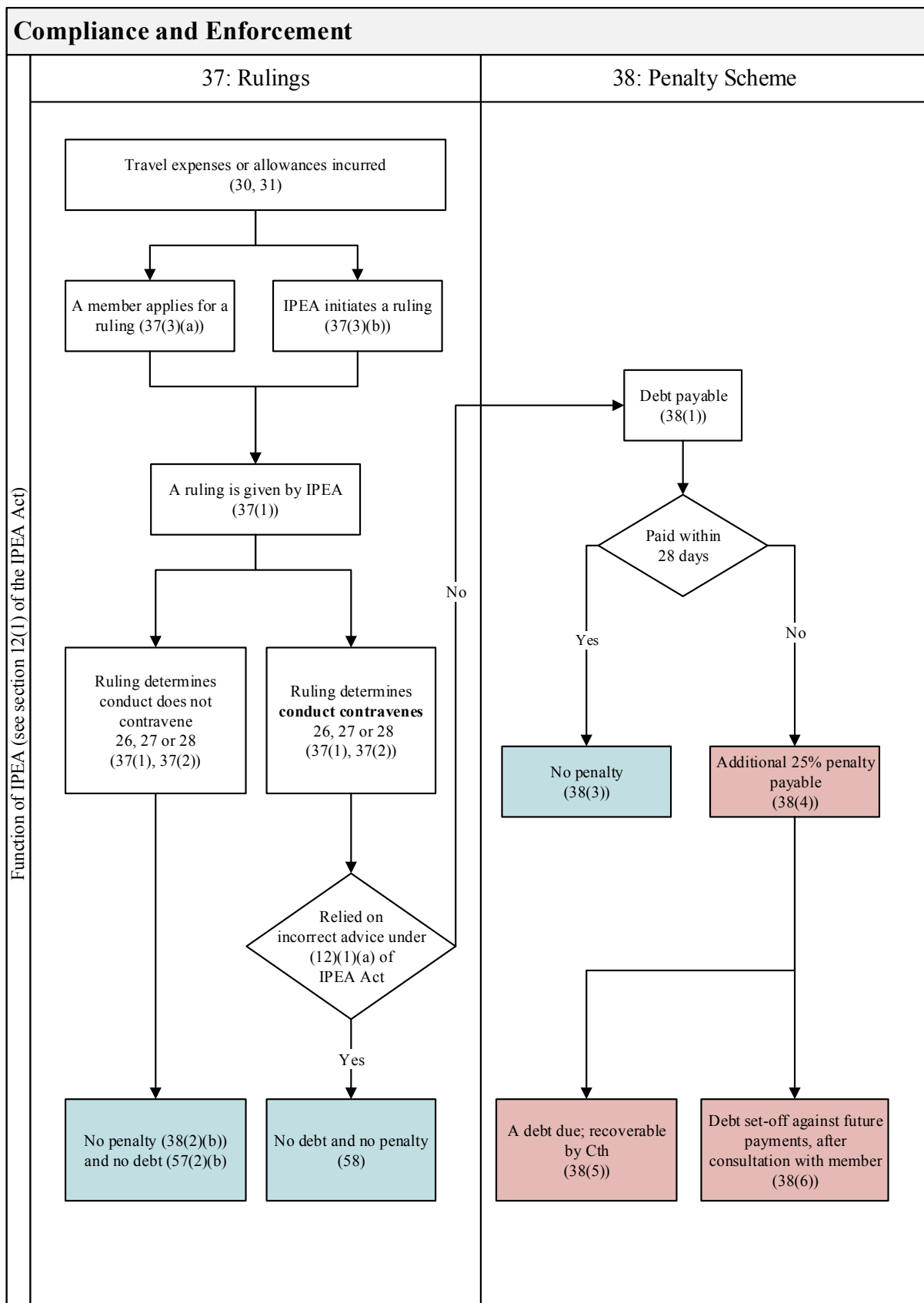
139 Subclause 35(4) provides that where the Remuneration Tribunal makes recommendations in relation to a matter under subclause 35(1) or (2), regulations must be made or amended to give effect to the recommendation/s. This preserves the independence of the Remuneration Tribunal while allowing all public resources that are provided to members under the Bill to be in a single instrument. This will simplify the system and support the aims of the Review to avoid the fragmentation that has caused a *complex patchwork* of different pieces of legislation. This will also ensure that members do not have to consult several legislative instruments to understand the work expenses framework and provides clear heads of authority for each work expense, allowance and other public resource provided under the framework.

140 Subclause 35(5) provides that while regulations must be made or amended to give effect to a recommendation in a report of the Remuneration Tribunal under subclause 35(1) or (2) – this does not prevent the regulations from later being amended or repealed without a report from the Remuneration Tribunal (with the exception of a relevant domestic travel matter, which is exclusively the responsibility of the Remuneration Tribunal).

141 Regulations made under the Bill will be legislative instruments and section 42 (Disallowance) of the Legislation Act will apply to all regulations (including ones that deal with recommendations of the Remuneration Tribunal). This will ensure that all work expenses and other public resources for members will be treated consistently and subject to Parliamentary scrutiny.

Part 4 – Compliance with and enforcement of Part 3

142 Part 4 of the Bill provides for compliance with, and enforcement of, Part 3. The following decision-tree explains the operation of the key compliance and enforcement mechanisms in this Part.



Division 1 – Simplified outline of this Part

Clause 36 – Simplified outline of this Part

143 Clause 36 provides a simplified outline of this Part. Simplified outlines are included to assist readers to understand the substantive provisions of the Bill. The simplified outline is not an operative provision and readers should rely on the substantive provisions of the Bill.

Division 2 – Rulings in relation to travel expenses and travel allowances

Clause 37 Rulings in relation to travel expenses and travel allowances

144 Clause 37 provides that IPEA may give a ruling determining whether conduct engaged in was a contravention of clause 26 (Dominant purpose test), 27 (Obligation to ensure value for money in incurring expenses or claiming allowances or other public resources), or 28 (Obligation not to make claims or incur expenses in breach of conditions). A ruling can only relate to travel expenses and travel allowances. The ruling may be relied on to determine that a loading is payable under clause 38, and may relate to the conduct of a member or any other person. A ruling may be given on IPEA's own initiative or at the request of the member to whom the ruling relates (see subclause 37(3)). This clause is consistent with recommendation 33 of the Review (assurance and audit).

145 Subclause 37(2) provides that a ruling may determine a number of matters, including, but not limited to whether:

- a member's travel expenses were or were not incurred for the dominant purpose of conducting the member's parliamentary business (see clause 26) (paragraph 37(2)(a))
- a member's travel allowance was or was not claimed for the dominant purpose of conducting the parliamentary business (see clause 26) (paragraph 37(2)(b))
- a member's incurring of travel expenses, or claiming of travel allowance, did or did not provide value for money (see clause 27) (paragraph 37(2)(c))
- particular conduct of a member or other person (for example a spouse or dependent child) did or did not breach a condition relating to the provision of travel expenses or travel allowances (see clause 28) (paragraph 37(2)(d)), or
- if a member was given personal advice under paragraph 12(1)(a) of the IPEA Act that the member or any other person intended to engage in —the personal advice was or was not correct (paragraph 37(2)(e)).

146 Subclause 37(4) provides that a ruling is conclusive evidence of the matters stated in the ruling. This applies unless the member can establish the contrary, or where the CEO of IPEA can establish that the ruling was based on false or misleading information (subclause 37(5)). A ruling is not designed to set a precedent in any circumstance (whether in respect of the member concerned or other members generally), rather, the rulings are designed to provide certainty to members and the community regarding the member's use of public resources in individual cases. Should the member not agree with a ruling of IPEA, they have the right to challenge the ruling under the *Judiciary Act 1903*.

147 The CEO of IPEA has the right to challenge a ruling where it was given on the basis of false or misleading information (paragraph 37(5)(b)). False or misleading information may cover situations where, for example, a member requests advice but fails to provide relevant facts or provides incorrect facts to IPEA upon which the advice is then based. The member does not have to intend that the advice be false or misleading for it to be covered by paragraph 37(5)(b). This ensures that members must provide full and frank disclosure to IPEA in seeking advice, should they then wish to rely on the 'safe harbour' mechanism under clause 58.

148 IPEA may also make another ruling in relation to conduct engaged in if the ruling ceases to be conclusive evidence under subclause 37(5) (subclause 37(6)). This is in addition to the general powers for IPEA to repeal, rescind, revoke, amend, or vary a ruling under section 33(3) of the Acts Interpretation Act.

149 Subclause 37(7) provides that a ruling given under this section is not a legislative instrument. This subclause is included to assist the reader, as the instrument is not a legislative instrument within the meaning of section 8 of the Legislation Act, and is merely declaratory of the law.

150 Subclause 37(8) provides that the regulations may make provision in relation to rulings. This might include, for example, setting out the process for requesting a ruling, or time limits on providing a ruling.

Clause 38 – Loading in respect of contraventions of section 26, 27 or 28

151 Clause 38 applies a 25% penalty loading to amounts paid in contravention of clauses 26, 27 and 28. This measure is consistent with the arrangements under the PE Act as at March 2017, but expands the coverage of the penalty to all public resources provided under Part 3, in line with recommendation 35 of the Review.

152 The application of a penalty loading to the repayment of public resources claimed in contravention of this Bill is intended to provide a compliance incentive and send a strong public message about the responsibility and accountability expected of parliamentarians in their use of public resources.

153 Clause 38 makes it clear that the penalty scheme applies where the Commonwealth provides public resources (the *resource amount*) to a member, and the member's claim or use of the public resource is in contravention of this Bill. In other words, that it is:

- not for the dominant purpose of conducting their parliamentary business (clause 26)
- does not represent value for money (clause 27), or
- does not satisfy relevant conditions in relation to the claim (clause 28).

154 Subclause 38(2) clarifies the interaction between this clause and the rulings of IPEA under clause 37. It provides that where IPEA makes a ruling that a member has contravened the obligations in the above section then this clause applies to make a loading payable (paragraph 38(2)(a)). If, however, IPEA makes a ruling that the member did not contravene the obligations, this clause will not apply, and no loading will be payable (paragraph 38(2)(b)). This subclause is not exhaustive, and may also apply where no ruling has been made by IPEA (including for public resources that IPEA does not have the power to make rulings in relation to).

155 Subclauses 38(3) and (4) provide that a penalty loading of 25% applies to any part of the resource amount that is not repaid within 28 days of the day that the claim was made, or the day the expense was incurred. For clarity, the loading is calculated at 25% of the resource amount that is outstanding after the 28 day adjustment period and is considered a penalty for the contravention of clause 26, 27 or 28.

156 No loading is payable where there was an overpayment made due to an administrative error within the Commonwealth, as in this case there would be no contravention by the member of the relevant obligations. This is clarified in Note 2 under subclause 38(4).

157 Subclause 38(5) is a provision in respect of liability. It provides that the penalty amount is a debt due to the Commonwealth by the member. However, a debt does not arise under this clause

where the member relied on incorrect personal advice from IPEA under paragraph 12(1)(a) of the IPEA Act (see Note 1 under subclause 38(4)).

158 Debts arising under this clause may be recovered by the relevant resources provider (as defined in clause 5) by either:

- a. action in a relevant court (as defined in clause 5) (subclause 38(5)); or
- b. reduction of future payments of public resources (subclause 38(6)), after consultation with the member (subclause 38(7)).

159 The reduction of future payments covers resources that are payable directly to the member, such as any travel allowance prescribed under clause 31, but does not cover remuneration.

160 Subclause 38(8) clarifies that this clause continues to apply to a former member in relation to loadings arising from contraventions relating to the use of public resources when they were a member.

161 The following examples illustrate the scope of the loading provisions in clause 38:

Example 1

A member is eligible for a travel allowance, relating to 2 overnight stays away from their home base, but submits a claim for 3 overnight stays. A travel allowance in relation to 3 overnight stays is paid. No repayment is made within 28 days of the claim. A loading of 25% would apply in this situation, as the member will have contravened the obligation in clause 28 to not make claims in breach of conditions (assuming a condition of the payment is for there to be an overnight stay for parliamentary business). The value of the loading will be 25% of the payment for 1 night of the travel allowance, as this is the portion of the payment that related to the breach of condition.

Example 2

A member is eligible for a travel allowance relating to 2 overnight stays away from their home base, but submits a claim for 3 overnight stays. Travel allowance in relation to 3 overnight stays is paid. The member makes a repayment within 28 days of the claim relating to the night that they were not eligible to claim. No loading will be payable as the adjustment was made within 28 days.

Example 3

A member submits a claim for a prescribed travel allowance as a non-Minister. The travel allowance is paid in error to the member at a higher rate that applies to Ministers. The loading would not apply in this situation, as the overpayment did not result from a breach of any obligations on the claim by the member.

Clause 39 – Loading in respect of voluntary repayments

162 Clause 39 deals with circumstances where a person has received public resources and makes a voluntary repayment in circumstances where it has not been found that they contravened any of the obligations in clause 26, 27 or 28 (i.e. clause 38 does not apply – paragraph 39(1)(e)).

163 In these circumstances, a loading equivalent to 25% of the voluntary repayment is imposed, ensuring consistent treatment of all members when making repayments. The loading amount may be deducted, as determined by the relevant resources provider after consultation with the member, consistently with subclauses 38(6) and (7) (subclauses 39(2) and (3)).

164 The loading does not apply where the overpayment relating to the resources is as a result of an administrative error within the Commonwealth (paragraph 39(1)(d)) or if the repayment is made within 28 days after the claim (paragraph 39(1)(c)).

165 Subclause 39(4) makes it clear that where the whole or part of the loading amount is voluntarily paid to the Commonwealth, the loading amount is reduced by the repayment.

Part 5 – Other resources

Clause 40 – Simplified outline of this Part

166 Clause 40 provides a simplified outline of this Part. Simplified outlines are included to assist readers to understand the substantive provisions of the Bill. The simplified outline is not an operative provision and readers should rely on the substantive provisions of the Bill.

Clause 41 – Parliamentary injury compensation scheme

167 Clause 41 provides a power for the Minister to determine, by legislative instruments, an injury compensation scheme for members (the PICS). This is consistent with the power in section 9A of the PE Act as at March 2017.

168 As at March 2017, the PICS covers members for loss, injury, or disease that occurs in connection with the conduct of parliamentary business; or the aggravation of an injury or disease that occurs in connection with the conduct of parliamentary business. In the case of the spouse of the Prime Minister, the PICS covers, loss, injury or disease that occurs in connection with the conduct of official duties as the spouse of the Prime Minister; or the aggravation of an injury or disease that occurs in connection with the conduct of official duties as the spouse of the Prime Minister.

169 The coverage afforded by the PICS mirrors the scheme applying to Commonwealth public servants under the SRC Act to the extent that it is appropriate. Like the SRC Act Scheme, the PICS is administered by Comcare.

170 Subclause 41(2) provides a power to establish an injury compensation scheme in the same form as is established under the *Parliamentary Injury Compensation Scheme Instrument 2016* made under section 9A of the PE Act. This instrument will be preserved through the PBR (CTP) Bill, so as to ensure continuous coverage for members.

171 Subclause 41(3) is equivalent to subsection 9A(2) of the PE Act and provides for the powers and functions of the PICS. Specifically:

- Paragraph 41(3)(a) – allows the scheme to confer functions on Comcare for administering the PICS. When read with subclause 41(4), this will allow the PICS instrument to confer functions on Comcare for the purposes of paragraph 69(g) of the SRC Act. Comcare currently administers the PICS (other than the provision of work health or safety services,

facilities and equipment) and it is expected that Comcare will continue to do so under the new work expenses framework.

- Paragraph 41(3)(b) – allows the PICS to provide for conditions that must be complied with for a person to receive and continue to receive a benefit under the PICS. This would include conditions such as requiring a person to undergo rehabilitation or medical examination. These powers are necessary in order for Comcare to effectively assess claims and address injuries and diseases covered by the PICS. These powers are consistent with the SRC Act scheme, for example, section 57 of the SRC Act allows Comcare to require that a person undergo a medical examination.
- Paragraph 41(3)(c) – allows the PICS to provide benefits or compensation for persons who received or are eligible to receive benefits or compensation under the scheme and subsequently suffer an injury or disease, or an aggravation of an injury or disease, in connection with an activity engaged in in accordance with the scheme. This would allow the scheme to provide benefits, for example, to former members who are injured when complying with a condition under the scheme such as attending rehabilitation or a medical appointment in connection with a claim they made under the PICS when they were a member.

This is consistent with the SRC Act scheme which treats an injury as having arisen out of or in the course of employment in situations where it was sustained while undergoing a rehabilitation program, or obtaining a medical certificate, in accordance with the requirements of the SRC Act (see section 6 of the SRC Act).

- Paragraph 41(3)(d) – allows the PICS to provide that compensation or other benefits may be payable to persons other than members. This is to allow certain benefits to be paid directly to people who provide services under the PICS, for example medical services or funeral services. It will also allow benefits to be paid to dependants or directly to the spouse of the Prime Minister, where appropriate.

This is consistent with the way Comcare administers payments under the SRC Act, for example section 17 of the SRC Act provides for compensation to be paid to dependants of an employee who suffers an injury that results in their death, and section 18 provides for compensation to be paid in respect of funeral expenses (which may be paid to the person who carried out the funeral).

- Paragraph 41(3)(e) – allows the PICS to provide for an amount of money paid under the scheme to be repaid in certain circumstances. This would include where a person has received the benefit of compensation for an injury under the scheme and subsequently receives compensation or damages in relation to the same injury from another source (such as through legal proceedings against a third party). Allowing the scheme to require monies to be repaid in these circumstances will ensure that a person covered by the scheme is not compensated more than once for the same injury, disease, or damage, and that Commonwealth funds are not used to provide compensation where a third party has a legal liability to compensate the claimant. This is consistent with the SRC Act scheme (section 48 of the SRC Act) which provides for a person who has received compensation under the scheme to repay monies where that person has recovered damages from another source in respect of the same matter.
- Paragraph 41(3)(f) – allows the PICS to provide Comcare with the power to recover, set-off, write-off or waive debts arising under the scheme. This is complementary to the matters set out in paragraph 41(3)(e), and would allow any debts arising under those circumstances to be recovered as a debt to the Commonwealth. This is consistent with Comcare's debt recovery powers under sections 114C and 114D of the SRC Act, and reflects that compensation and other benefits will be paid from the CRF rather than money held by Comcare.

- Paragraph 41(3)(g) – allows the PICS to require a person to produce information or documents to Comcare for the purposes of the PICS. Including this power in the PICS instrument allows Comcare to effectively administer the PICS and determine benefits, by requiring a person to produce all information and documents relevant to determining their claim. The inclusion of such a provision in the PICS is consistent with the SRC Act scheme where section 58 of the SRC Act provides for Comcare to request information or documents from a person making a claim, and allows Comcare to refuse to finalise a claim until the information or documents are provided.
- Paragraph 41(3)(h) – allows the PICS to require a person to notify Comcare of a matter or event set out in the PICS. This includes matters that Comcare may not become aware of through other means, such as the receipt by the person of compensation from a third party for the same injury or disease. This is necessary to ensure that Comcare can effectively administer the scheme and accurately calculate the compensation that persons are entitled to receive.

Requiring a person to notify Comcare of a matter is consistent with the SRC Act scheme. For example, section 48 of the SRC Act requires a person who has received damages from another source, in relation to an injury or disease they have received compensation for under the Act, to notify Comcare of the recovery of damages within 28 days.

- Paragraph 41(3)(i) – allows the scheme to prescribe penalties for offences relating to failing to notify Comcare of matters or events set out in the PICS. These penalties must not exceed 10 penalty units. There are currently offences contained in the SRC Act relating to failure to notify Comcare of certain things (see sections 46, 47, 48 and 120 of the SRC Act). It is intended that the scheme will include the same offences as the SRC Act in order to ensure that Comcare is able to obtain the information that it requires, as a way of effectively administering and maintaining the integrity of the PICS.
- Paragraph 41(3)(j) – allows the PICS to provide for the review of decisions under the PICS including allowing for jurisdiction to be conferred on the Administrative Appeals Tribunal with any necessary modifications specified in the scheme. This ensures that persons covered by the scheme have appropriate rights to seek merits review of any decisions regarding their eligibility for compensation and other benefits under the scheme.

This is consistent with the rights that are available to Commonwealth employees under the SRC Act (see Part VI of the SRC Act) which invokes the jurisdiction of the Administrative Appeals Tribunal and also allows for Comcare to internally review its decisions. The SRC Act makes some modifications to the operation of the *Administrative Appeals Tribunal Act 1975* (AAT Act) to assist in the efficient administration of claims by Comcare and provide costs to applicants in certain circumstances (see sections 65, 66 and 67 of the SRC Act). It is considered appropriate that the PICS is capable of providing the same benefits and obligations available to claimants under the SRC Act scheme. The Attorney-General's Department was consulted on the modifications to the operation of the AAT Act made by the *Parliamentary Injury Compensation Scheme Instrument 2016* and would be consulted on any future proposed modifications to the operation of the AAT Act in respect of the PICS.

- Paragraph 41(3)(k) – allows the PICS to provide for:
 - (a) limitations on the right of a person to bring an action or other proceeding for damages in relation to an injury or other circumstance covered by the PICS;
 - (b) Comcare to make a claim for damages in the name of a person, or take over the conduct of an action or other proceedings, in relation to an injury or other circumstance covered by the PICS; and

- (c) Comcare to require any damages paid or to be paid to a person in respect of an injury or other circumstance covered by the scheme to be paid to the Commonwealth.

Providing a power for these inclusions in the PICS enables Comcare to effectively administer and maintain the integrity of the scheme by reducing the cost to the Commonwealth in circumstances where a third party has liability for an injury or other circumstance covered by the scheme. In these cases, Comcare may be given the power to take action for damages in the name of the person and require that any damages be paid directly to the Commonwealth. In circumstances where the Commonwealth may have some liability for damages other than under the PICS, this will also allow the PICS to limit the person's right to seek damages from the Commonwealth where the person is entitled to payments under the PICS. Such powers are currently included in the SRC Act scheme (see sections 44, 50 and 51 of the SRC Act).

These powers also allow the PICS instrument to give Comcare the power to take over the defence of an action or other proceeding relating to an injury or other circumstance under the scheme. There is provision for this under the SRC Act scheme, which allows Comcare to take over the conduct of a matter for an employer where its employee makes a claim against it for non-economic loss relating to an injury covered by the scheme (see section 52A of the SRC Act). This section also allows Comcare to take over the conduct of a matter for an employee covered by the scheme, where another employee (the second employee) has taken action against them for non-economic loss relating to an injury suffered by the second employee that is covered by the SRC Act scheme. Including the ability for the PICS instrument to prescribe such powers for Comcare will ensure that the PICS is consistent with the SRC Act scheme, to the extent relevant.

- Paragraph 41(3)(l) – allows the Minister to make a legislative instrument for the purposes of the PICS. The SRC Act currently contains powers for the Minister for Employment to make instruments in respect of a number of aspects under the SRC Act scheme. For example, under subsection 7(1) of the SRC Act, the Minister for Employment may specify certain employment types that are taken to have contributed significantly to the development of a specific disease, and subsection 16(6) of the SRC Act allows the Minister for Employment to specify a particular rate for each kilometre travelled to obtain medical treatment that is compensable.

The PICS currently incorporates any relevant instruments made for the SRC Act scheme. However given the differences in the nature of the employment of parliamentarians and Commonwealth public servants it is considered that not all legislative instruments made by the Minister for Employment in relation to the SRC Act scheme will be easily applied to the PICS without the need for extensive modification. It is therefore considered prudent to provide the Minister responsible for this Bill with the power to make instruments under the PICS to ensure that all relevant instruments can be incorporated into the scheme.

172 Subclause 41(4) provides for a function conferred on Comcare by the PICS to be taken to be conferred on Comcare by this Bill. This is for the purposes of the SRC Act, which allows additional functions to be conferred on Comcare by another Act. This power is necessary to allow the instrument to confer the function of administering the PICS on Comcare.

173 Subclause 41(5) allows the Bill to establish the PICS with application to events occurring on or after 1 January 2016. This is consistent with section 9A(4) of the PE Act as at March 2017, and the application of the *Parliamentary Injury Compensation Scheme Instrument 2016*. This ensures continuity of coverage for the scheme under this Bill.

Clause 42 – Other resources

174 Clause 42 allows the regulations to provide that other expenses, allowances, goods, services, premises, equipment or any other facility are to be provided to a member by the Commonwealth. Where any of these items are provided under this clause they will not be subject to the requirements of clause 25 (Obligations in relation to the use of public resources for conducting parliamentary business), 26 (Dominant purpose test), or 27 (Obligation to ensure value for money in incurring expenses or claiming allowances).

175 The intention of this clause is to allow the self-contained schemes under the old work expenses framework to be made under the new framework (such as insurance for members and legal assistance for Ministers). The power is included under Part 5 of the Bill, which is outside the application of the obligations in Part 3, as these self-contained schemes would contain their own requirements which may not be completely compatible with the obligations in Part 3. However, it is expected that conditions would be imposed under the schemes to ensure appropriate requirements are placed on the eligibility for these resources.

176 Subclause 42(2) specifically provides (without limiting the sorts of expenses, allowances, goods, services, premises, equipment, or other facilities that can be provided under the clause) that the regulations may provide for a scheme in relation to:

- providing legal assistance to current and former Ministers of State (paragraph 42(2)(a)),
or
- providing insurance to members and other persons in respect of a member (paragraph 42(2)(b)).

177 Subclause 42(3) clarifies a number of matters in relation to the powers to make regulations for the purposes of providing other expenses, allowances, goods, services, premises, equipment or any other facility for the purposes of clause 42. These are consistent with the powers of the regulations under Part 3 (see clause 34).

Part 6 – Functions of the Remuneration Tribunal

Clause 43 – Simplified outline of this Part

178 Clause 43 provides a simplified outline of this Part. Simplified outlines are included to assist readers to understand the substantive provisions of the Bill. The simplified outline is not an operative provision and readers should rely on the substantive provisions of the Bill.

Clause 44 – Inquiries and reports by Tribunal on Ministerial salaries

179 Consistent with recommendation 3 of the Review, clause 44 provides that the Remuneration Tribunal must inquire into, and report to the Remuneration Tribunal Minister (currently the Prime Minister) on the question of whether any alterations are desirable in the salaries payable to Ministers of State out of public money of the Commonwealth.

180 This is not a determination as the salaries of Ministers of State are payable through executive power up to the total capped amount provided under section 66 of the *Constitution*, as otherwise provided by the Parliament in this Bill (see clause 55). This power is equivalent to the power of the Remuneration Tribunal to make recommendations regarding Ministerial salaries under the old work expenses framework (subsection 6(1) of the RT Act as at March 2017).

181 Subclause 44(2) requires the report of the Remuneration Tribunal to include recommendations on the nature and extent of alterations, where the Tribunal considers that alterations are desirable.

182 Subclause 44(3) provides that the Remuneration Tribunal Minister (currently the Prime Minister) must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is received by the Remuneration Tribunal Minister.

Clause 45 – Inquiries and determinations by Tribunal on members' remuneration and rates of domestic travel allowances

183 Clause 45 provides the Remuneration Tribunal with powers in respect of inquiries and determinations of remuneration, and rates of travel allowances for domestic travel under the Bill.

184 Subclause 45(1) imposes a positive obligation on the Remuneration Tribunal to inquire into, and determine:

- the remuneration under clause 14 to be paid by the Commonwealth to members and office holders, and
- the rates of domestic travel allowances that can be paid in accordance with the regulations (see clause 31). These rates can be determined using a dollar amount, or as part of a formula (for example, a dollar amount as indexed in line with the Consumer Price Index).

185 Subclause 45(1) also provides that the Remuneration Tribunal must inquire into and determine these matters annually. This does not mean that the Remuneration Tribunal cannot determine these matters more frequently, nor does it mean that it must determine that there should be a change in the amounts annually. Rather, this requirement is designed to ensure that the Remuneration Tribunal considers these matters at regular intervals.

186 For the avoidance of doubt, subclause 45(2) makes it clear that:

- (a) The scope of remuneration determined under subclause 45(1) includes allowances payable to members in accordance with section 48 of the *Constitution* (base salary—see subclause 14(2)) (paragraph 45(2)(a)).

- (b) However, paragraph 45(2)(b) provides that Ministerial salaries payable under section 66 of the *Constitution* (referred to as Ministerial salary – see clause 5 of the Bill) are excluded from the scope of operation of subclause 45(1) in that the Remuneration Tribunal cannot determine amounts of Ministerial salary (rather this is reported on under clause 44). This is because the power to determine amounts of Ministerial salary belongs to the executive.

187 Subclauses 45(3) to (5) replicate subsections 7(1A), (1B), (1C) and (2A) of the RT Act as at March 2017.

188 Paragraph 45(3)(a) is equivalent to subsection 7(1A) of the RT Act, and provides that the Remuneration Tribunal may determine that a portion of base salary determined under clause 45 is not a *parliamentary allowance* for the purposes of calculating superannuation benefits of members under the PCS Act.

189 Paragraph 45(3)(b) is equivalent to subsection 7(1B) of the RT Act, and provides that the Remuneration Tribunal may determine that a portion of office holder's salary is not *allowance by way of salary* for the purposes of calculating the superannuation benefits of a member under the PCS Act.

190 Subclause 45(4) is equivalent to subsection 7(1C) of the RT Act, and provides the Remuneration Tribunal with the power to deal with situations where the superannuation benefits payable to a former member who held various parliamentary offices are calculated taking into account the different amounts of additional office holders salary payable in respect of those different parliamentary offices. Subclause 45(4) essentially provides the Remuneration Tribunal with the power, in relation to a determination under paragraph 45(3)(b), to specify that different portions of additional office holders salary, depending on the office held, are not to flow through to the benefits payable to the former office holders under the PCS Act. The amount to be disregarded can be up to 100 per cent of the additional office holder's salary payable and the determination can specify the particular circumstances in which the different portions are to apply.

191 Subclause 45(5) is equivalent to subsection 7(2A) of the RT Act, and provides, consistent with paragraphs 45(3)(a) and (b), that the Remuneration Tribunal may also determine a portion of Ministerial salary that is not salary for the purposes of the PCS Act, and therefore cannot be taken into account when calculating the superannuation benefits of a member under the PCS Act.

192 Any modifications to style and terminology in these clauses are only intended to simplify the provisions and are not intended to affect the meaning of these provisions, which were considered in *Cunningham & Ors v Commonwealth of Australia & Anor* [2016] HCA 39 (see section 15AC of the Acts Interpretation Act).

193 By allowing the Remuneration Tribunal to continue to determine such portions, the Remuneration Tribunal can prevent windfall gains flowing from any increase in remuneration for existing members, to the superannuation benefits of those current and former members covered under the PCS Act.

Clause 46 – Inquiries and determinations into allowances and expenses for former members

194 Clause 46 places a positive obligation on the Remuneration Tribunal to annually inquire into and determine the expenses and allowances to be paid out of the public moneys of the Commonwealth to former members. This requirement covers expenses and allowances to be paid to former members under clause 15, and the requirement is consistent with the obligation on the Remuneration Tribunal in relation to the equivalent expenses and allowances it determined under the RT Act as at March 2017. This requirement is also consistent with recommendations 3 and 21 of the Review.

Clause 47 – Requirements for determinations

195 Clause 47 sets out a number of requirements on the Remuneration Tribunal’s power to determine matters under Part 6 of the Bill. This includes:

- that the determination must be in writing (subclause 47(1))
- the determination may impose one or more limits or other conditions (for example, the Remuneration Tribunal might determine that where a person holds more than one office, that they are only able to receive additional office holder’s salary for one, not both, of those positions – see note in subclause 47(2))
- that the determination can apply to members, office holders, and Ministers of State generally; but also including particular classes of members, office holders, and Ministers of State even where a particular class only applies to one person (subclause 47(2)) (for example the Remuneration Tribunal might determine that only Ministers of State may claim travel allowance in particular circumstances, or that the Prime Minister can receive a higher rate of travel allowance in particular circumstances)
- subclause 47(3) which clarifies that subclause 47(2) does not limit the functions of the Remuneration Tribunal under Part 6, nor does it limit section 33(3A) of the Acts Interpretation Act, which deals with how to construe a power to make, grant or issue such a legislative instrument
- a determination may come into effect on a specified day or on the occurrence of a specified event (subclause 47(4))
- the Remuneration Tribunal must provide the Remuneration Tribunal Minister (currently the Prime Minister) with a copy of the determination (subclause 47(5))
- the Remuneration Tribunal must publish its reasons for making the determination on its website and notify the Remuneration Tribunal Minister (currently the Prime Minister) (subclause 47(6)), and
- the determination is a legislative instrument, but section 42 (disallowance) of the Legislation Act does not apply to the determination (subclause 47(7)). By making instruments in respect of the remuneration of members non-disallowable, this effectively continues the arrangements under subsection 7(8AA) of the RT Act as at March 2017. It ensures that determinations of the Remuneration Tribunal in respect of the remuneration of members remain independent of government and the Parliament. It is appropriate that members are unable to disallow instruments that directly affect their own remuneration, as this would otherwise undermine the independence of the Remuneration Tribunal in determining such matters.

Part 7 - Miscellaneous

Division 1— Simplified outline of this Part

Clause 48 – Simplified outline of this Part

196 Clause 48 provides a simplified outline of this Part. Simplified outlines are included to assist readers to understand the substantive provisions of the Bill. The simplified outline is not an operative provision and readers should rely on the substantive provisions of the Bill.

Division 2— When remuneration and public resources are to be provided

Clause 49 – When remuneration is to be paid to senators and members of the House of Representatives

197 Clause 49 provides for the period when remuneration is to be paid to senators and members of the House of Representatives, as determined by the Remuneration Tribunal under clause 45 of the Bill. This clause is equivalent to relevant provisions of the PA Act as at March 2017, updated to cover all scenarios regarding when a person would commence and cease to be paid remuneration. Although additional scenarios are covered under the Bill, compared with the PA Act, there is no change to the period that remuneration is payable to persons compared to the old work expenses framework, other than to ensure equal treatment of State senators and Territory senators at a double dissolution election.

198 This clause applies to remuneration under clause 14 for senators and members of the House of Representatives (other than office holder’s salary), and office holder’s salary for persons who are prescribed by the regulations (subclause 49(1)). The effect of this is that all senators and members of the House of Representatives will be paid remuneration in their capacity as a member of the relevant House as set out in this clause. However, only office holders (other than certain presiding officers and deputies) that are prescribed by the regulations will continue to receive office holder’s salary for the same period (other office holders are covered by subsequent clauses – see clause 50 for certain presiding officers and deputies, or clause 51 for other office holders).

199 The overall result of this clause is that a person who is a senator or member of the House of Representatives, or an office holder prescribed by the regulations, will be paid remuneration from the commencement time specified in Table 1, to the cessation time specified in Table 2.

TABLE 1	
Circumstance	Commencement of payment
A person who is: <ul style="list-style-type: none"> • a State senator chosen after the first election after a dissolution of the senate (i.e. not at a half Senate election) • a Territory senator chosen at an election (this occurs at the same time as elections for members of the House of Representatives), or • a member of the House of Representatives. 	The day of his or her election (paragraph 49(2)(a)).
A State senator chosen to fill a place that is to become vacant in rotation (i.e. at a half Senate election).	The first 1 July after his or her election (paragraph 49(2)(b)).
A State or Territory senator chosen to fill a casual vacancy.	The day of his or her choice or appointment (paragraph 49(2)(c)).

TABLE 2

Circumstance (for a senator or member of the House of Representatives immediately before an election)	Cessation of payment
State senators	<p><u>Expiry of term</u></p> <p>State senators are paid until the end of the last day of their term of service as a senator, unless their term ends earlier (for example, due to a dissolution of the Senate or their resignation) (subclause 49(3)).</p>
	<p><u>Dissolution of Senate</u></p> <p>Where the Senate is dissolved, the period that a person is paid for will depend on whether they are a candidate for the election:</p> <ul style="list-style-type: none"> • seeking re-election – up to the day before the polling day for the election (paragraph 49(4)(a)), or • not seeking re-election – up to the end of the day that the Senate is dissolved (paragraph 49(4)(b))
<ul style="list-style-type: none"> • Members of the House of Representatives and Territory senators 	<p>Members of the House of Representatives and Territory senators hold their positions until the House of Representatives is dissolved or expires.</p> <p>The period that a person is paid for will depend on whether they are a candidate for the election, and if they are re-elected:</p> <ul style="list-style-type: none"> • Seeking re-election <ul style="list-style-type: none"> ○ Re-elected – up to the end of the day before his or her election (paragraph 49(5)(a)) ○ Not re-elected – up to the end of the day before polling day (paragraph 49(5)(b)) • Not seeking re-election – up to the end of the day that the House of Representatives expires or is dissolved (paragraph 49(5)(c))

200 Subclause 49(6) contains a definition for when a person is elected for the purposes of this clause. It provides that a person is elected on:

- a. the polling day for an election, where they are elected as a result of polling (which covers persons who are returned as elected after an election); or
- b. the day a person is declared duly elected if their election was not as a result of polling (which covers circumstances where a person could be declared duly elected in other circumstances, for example under section 179 of the *Commonwealth Electoral Act 1918*).

201 The period for which a person is eligible for remuneration under the Bill is relevant to resources under the Bill, as people are eligible to be provided with resources where base salary, office holder's salary or Ministerial Salary is payable to them (see clause 52).

Clause 50 – When office holder's salary is to be paid to certain presiding officers and deputies

202 Clause 50 covers when office holder's salary is payable to a person who is:

- a. deemed to be a presiding officer during a particular period under the *Parliamentary Presiding Officers Act 1965* (subclause 50(1)), or
- b. Deputy President and Chair of Committees of the Senate, or Deputy Speaker of the House of Representatives, in circumstances where the person holding the position is re-elected (subclause 50(2)).

203 Subclause 50(1) provides that a person who is deemed to continue to be a Presiding Officer under sections 3 to 7 of the *Parliamentary Presiding Officers Act 1965*, is eligible to be paid office holder's salary under Part 2 of the Bill provided they are not also eligible to receive office holder's salary as Deputy President and Chair of Committees of the Senate, or Deputy Speaker of the House of Representatives (paragraph 50(1)(b)(ii)).

204 Where a person is eligible to receive office holder's salary under this section they will also be able to use public and other resources for activities conducted in their role as an office holder during this time (see clause 52) (for example, costs incurred for travelling to attend the Parliament to preside over debates).

205 Subclause 50(2) applies to the Deputy President and Chair of Committees of the Senate, and the Deputy Speaker of the House of Representatives. This subclause provides for a person who held one of these positions as the incumbent prior to an election to continue to be paid office holder's salary up until the end of the day before his or her successor is chosen.

206 As at March 2017, this clause is equivalent to section 6 of the PA Act.

Clause 51 – When office holder's salary is to be paid to certain office holders

207 Clause 51 provides, for the avoidance of doubt, when office holder's salary is payable to office holders (other than those covered by clauses 49 or 50). It specifies that a person is only eligible to be paid office holder salary so long as the person is an office holder (unless they are prescribed by the regulations for the purposes of paragraph 49(1)(b) or covered by clause 50).

208 Public and other resources are provided to the person in their role as an office holder during this period (clause 52).

Clause 52 – When public resources are to be provided

209 Clause 52 provides that when a person is eligible to receive any of the listed types of remuneration (for example, base salary, office holder's salary and Ministerial salary), the person may be provided with public and other resources (such as work expenses) for the dominant purpose of conducting their work (i.e. parliamentary business).

210 For circumstances when a person is eligible to receive base salary or office holder's salary see clauses 49, 50 and 51. Ministerial salary is payable in accordance with section 66 of the *Constitution*, and would be payable while a person holds office as a Minister (whether or not they are also eligible to receive base salary).

Division 3— Annual amounts of resources

Clause 53 – Annual amounts reduced if a person begins to be a member during a year

211 Clause 53 provides for annual amounts to be reduced on a pro rata basis if a person becomes a member part way through the year. This clause clarifies the quantum of what is provided; making it clear that the annual amount payable to a member will be reduced if he or she becomes a member part-way through a calendar or financial year. This clause applies to public and other resources in cases where they have an annual financial limit. The clause also applies to remuneration.

212 Subclause 53(2) contains a formula that sets out that the amount that the member is eligible for, in relation to the remainder of the year, is a proportion of the full amount for that year, based on the number of days left in the year. The net effect of this clause is that a member will be remunerated and have access to public and other resources according to the proportion of days they are a member (pro rata) during a year.

213 For example, if a member is eligible for a work expense under Part 3 (Work expenses, allowances and other public resources) that is subject to an annual financial cap (such as printing and communications costs under the old work expenses framework), the value of the cap will be reduced in accordance with the formula in subclause 53(2) for the remainder of the relevant year. If the annual cap for the work expense was \$50,000, a person who became a member with 100 days left in a year would be eligible for the work expense for the remainder of that year, up to a cap of \$16,699 (as rounded under subclause 53(3)).

214 Subclause 53(3) is a general rounding rule, which makes it clear that rounding provisions apply to amounts under this clause to produce a whole dollar amount.

Clause 54 – Using full annual limits

215 Clause 54 makes it clear that a member may use the full limit of any remuneration or other resources provided under the Bill before the end of the relevant year. This would apply, for example, where a work expense prescribed for the purposes of clause 32 (Commonwealth must pay work expenses and provide other public resources) is a capped amount for a financial year. This clause provides, for the avoidance of doubt, that the member can use the full amount of the relevant work expense at any time before the end of a financial year – it is up to the discretion of the relevant member how they choose to use their work expense, provided they meet the obligations for its use (including the dominant purpose test and value for money test) (see clauses 26 and 27, respectively).

216 However, this clause does not allow a member to incur additional expenses under a work expense in a financial year when they have exhausted the limit. In this case, the member will not have further access to that work expenses until the next financial year.

Clause 55 – Annual limit on Ministerial salaries

217 Clause 55 provides that the salaries of Ministers of State must not exceed \$5,000,000 in a financial year, or if a higher amount (or a method for working out a higher amount) is prescribed by the regulations, that higher amount. This clause is made for the purposes of section 66 of the *Constitution*, which allows the Parliament to otherwise provide a total amount for the salaries of Ministers.

218 The amount in paragraph 55(1)(a) is equivalent to the amount prescribed under the MOS Act as at March 2017 (under the *Ministers of State Regulation 2012*).

219 The power to make regulations under this clause is consistent with how the cap on total Ministerial salaries for the purposes of section 66 of the *Constitution* (the cap) could be set under section 5 of the MOS Act as at March 2017. However, the power to make regulations has been modified to allow regulations to prescribe a method for calculating a higher amount. This has been

included to give the regulations the power to include a formula for calculating the cap in a financial year.

220 This addition is necessary so that the cap can be allowed to keep pace with: increases in base salary determined independently by the Remuneration Tribunal (as was the case under the old work expenses framework and is continued under clause 45 of the Bill), or increases in the amount that is recommended by the Remuneration Tribunal for Ministerial salaries (as was the case under the old work expenses framework and is continued under clause 44 of the Bill).

221 This method is required to ensure that there are sufficient funds available to pay ministerial salaries at current levels (and for future financial years), and to meet any additional expenditure, such as payment of additional salary for acting arrangements.

222 Regulations made setting an amount for the cap, or method for working out the cap, will be subject to disallowance. Therefore, there will continue to be parliamentary scrutiny of any future proposed amounts.

Division 4 - Other miscellaneous provisions

Clause 56 – Independent periodic review of this Act

223 Clause 56 provides for the Bill to be independently reviewed every 3 years.

224 The establishment of this new scheme marks a significant reform to the administration and oversight of parliamentary work expenses. Consequently, it is important that an independent review of the Bill is conducted periodically to ensure that it continues to meet its objectives of improving the accountability and transparency of parliamentary work expenses.

225 This approach is consistent with the transparency, oversight and accountability recommendations of the Review (see recommendation 7). It also complements section 62 of the IPEA Act, which provides for independent review of the Authority to be undertaken as soon as practicable after the end of 3 years from commencement of section 62 of the IPEA Act.

226 Clause 56 requires:

- **Independent review** – the Minister to ensure that an independent review of the operation of this Bill is conducted every 3 years (subclause 56(1)).
- **Written report** – the review to produce a written report (subclause 56(2)).
- **Tabling within 15 sitting days** – after the report is given to the Minister, the report to be tabled in each House of the Parliament within 15 sitting days of that House (subclause 56(3)).

Clause 57 – Recoverable payments

227 Clause 57 provides a mechanism to address the risk that payments made in the course of administering the Bill may constitute a breach of section 83 of the *Constitution*. This mechanism reflects those introduced in other Acts, including via the *Financial Framework Legislation Amendment Act (No. 2) 2012*, to address this risk. This clause is also consistent with the mechanisms under the old work expenses framework (see section 10A of the PE Act and section 16A of the RT Act).

228 This clause authorises the Commonwealth to pay an amount of money purportedly under the Bill in cases where the Commonwealth would not otherwise have power to do so under the other provisions of the Bill, and creates a corresponding debt due to the Commonwealth. This could occur,

for example where the Commonwealth makes a payment of a work expense to, or in relation to, a person under clause 32 (Commonwealth must pay work expenses and provide other public resources), where the person was not eligible for that work expense due to a breach of clause 26 (Dominant purpose test), 27 (Obligation to ensure value for money in incurring expenses or claiming allowances or other public resources), or 28 (Obligation not to make claims or incur expenses in breach of conditions).

229 By authorising the payment, this clause ensures that payment is covered by the standing appropriation in clause 59, thereby mitigating the risk of breaches of section 83 of the *Constitution*.

230 Subclause 57(2) makes it clear that the arrangements in respect of recoverable payments apply in relation to public resources that are the subject of a ruling by IPEA under subclause 37(4) (a conclusive evidence ruling) of the Bill where the member has contravened clause 26 (Dominant purpose test), 27 (Obligation to ensure value for money in incurring expenses or claiming allowances or other public resources), or clause 28 (Obligations not to make claims or incur expenses in breach of conditions) of the Bill – but not where no contravention is found. However, this clause will also apply in other circumstances, including for resources that IPEA does not have power to give rulings in relation to.

231 This clause does not, however, extend the boundaries of any remuneration or public or other resources that a person is eligible to receive or have paid by the Commonwealth under the Bill. Paragraph 57(3)(c) ensures that the amount paid by the Commonwealth under this clause is a debt due to the Commonwealth by the person who received the payment, or that the payment was made in relation to (i.e. the relevant member).

232 Subclause 57(4) provides that the reference in subclause 57(1) to the Commonwealth not having the power to pay remuneration or public or other resources includes where the Commonwealth only has the power to pay such payments at a lower cost. This ensures that the mechanism in this clause will apply where a payment is made to, or in relation to a person, but that payment was greater than what they were eligible for under the Bill. In these circumstances, the difference in value between the payment that was made and the payment that should have been made is recoverable from the member.

233 Subclause 57(5) provides for an alternative means of recovery of a debt under paragraph 57(3)(c). It gives the resources provider (defined in clause 5 as the Secretary of the Department, a presiding officer or IPEA) the power to direct that a debt may be recovered from an amount that is payable to the recipient under the Bill (subject to consultation with the person before deducting any amounts – see subclause 57(6)).

234 Where the debt relates to a payment of remuneration under Part 2, it may be recovered from future payments of remuneration (paragraph 57(5)(a)). However, where the debt relates to public or other resources provided under Parts 2, 3 or 5 of the Bill, the debt may only be recovered from future payments of those resources (i.e. not remuneration under Part 2) (paragraph 57(5)(b)).

235 Subclause 57(5) specifically only applies to amounts payable to the recipient. This allows the deductions to be made from future amounts that are payable to the person, but not amounts that are payable to third parties. This would not allow, for example, a reduction in the value of a capped budget where payments are only made directly to a service provider.

236 Subclause 57(7) clarifies the application of the clause in relation to activities of another person. This would cover circumstances where public or other resources are provided to a member that relate to the activities of another person (such as family travel, if such an expense is prescribed by the regulations for the purposes of clause 30). In these circumstances this subclause makes it clear that it is the member who is liable for the debt where the activities relate to another person, unless the other person is a member of staff.

237 In circumstances where the other person is a member of staff, the member would not be liable for any debt. Any debt that results from the activities of a staff member will be recovered from the staff member, consistent with the practice under the old work expenses framework, through the debt recovery arrangements under the MOP(S) employment framework.

238 The notes under subclause 57(3) clarify how this clause relates to other provisions in the Bill. Specifically Note 1 confirms that a loading may also apply under Division 3 of Part 4 of the Bill, in relation to any payments of public resources that are covered by this clause.

239 Note 2 confirms that there is no liability for any debt relating to a payment where a member relied on incorrect personal advice given under paragraph 12(1)(a) of the IPEA Act (see clause 58).

Clause 58 – No debts arise as a result of incorrect personal advice given by IPEA

240 Clause 58 provides protection for members where they rely on personal advice given by IPEA under its functions (see paragraph 12(1)(a) of the IPEA Act, as amended by the PBR (CTP) Bill), and the advice is incorrect.

241 In circumstances where a member has received personal advice from IPEA prior to engaging in conduct that resulted in the Commonwealth providing public resources to the member, the member will not be liable for any debt where they relied on that advice, even if it turned out to be incorrect and that by engaging in the conduct the member would have otherwise breached the obligations in clause 26 (Dominant purpose test), 27 (Obligation to ensure value for money in incurring expenses or claiming allowances or other public resources) or 28 (Obligation not to make claims or incur expenses in breach of conditions).

242 This clause is intended to ensure that members are not unfairly penalised for relying on incorrect advice. However, this clause only applies to the extent that IPEA provided the advice on the basis of complete and accurate information from the person who sought the advice (paragraph 58(1)(e)). Where the advice was given on the basis of information that was later found to be false or misleading, a debt would be payable by the person (including a loading under clause 38). This situation would arise where advice was sought on a certain set of facts and then the circumstances of the conduct changed such that the advice did not cover the new circumstances. It does not indicate any wrongdoing on the part of the member or other person who sought the advice or provided information. Accordingly, this clause is intended to ensure that members are not unfairly penalised for relying on incorrect advice.

Clause 59 – Appropriation

243 Clause 59 provides an appropriation for making payments under, or for the purposes of the Bill, and for making other payments in the course of administering the Bill. This ensures that any payments made under the Bill are by a standing appropriation for expenditure from the CRF established by section 81 of the *Constitution*. This is a constitutional requirement as amounts cannot be expended from the CRF without an appropriation (see section 83 of the *Constitution*).

244 The commitment of a valid appropriation, and the application of public monies generally, ultimately aides this Act to achieve its purposes, consistent with recommendations of the Review, to provide remuneration and public resources (including work expenses) to members for performing their duties as elected representatives.

245 Consistent with the appropriation in section 11 of the PE Act as at March 2017, paragraph 59(b) allows payments to be made in good faith in the course of administering the Bill. This paragraph addresses the risk of breaches of section 83 of the *Constitution* in circumstances where there is an inadvertent or mistaken payment of an amount that does not result in a member receiving public or other resources to which he or she is not eligible under the Bill. Examples of such situations

would be an inadvertent or incorrect payment to a service provider by the Commonwealth. This complements clause 57, which addresses the risk of section 83 breaches in circumstances where a member has been provided with public or other resources which they were not eligible for.

246 Although paragraph 59(b) does not refer to recovery of amounts (unlike clause 57), any amounts paid under this paragraph would be recovered from, for example, the service provider using the Commonwealth's rights under contract or common law.

247 This paragraph only provides protection for breaches of section 83 of the *Constitution*, it does not allow other costs to be paid from the appropriation, such as departmental expenses incurred in administering the Bill.

Clause 60 – Delegations

248 Clause 60 allows for persons with powers, functions or duties under the Bill to delegate those powers, functions or duties to other persons (subject to any written directions – see subclause 60(5)). However, consistent with paragraph 34AB(1)(b) of the Acts Interpretation Act, this does not include the power to delegate.

249 Clause 60 provides that the following persons may, by written instrument, delegate any of their powers, functions or duties under the Bill:

- (a) the Minister (subclause 60(1))
- (b) the Secretary of the Department (subclause 60(2))
- (c) the President of the Senate (subclause 60(3)), or
- (d) the Speaker of the House of Representatives (subclause 60(4)).

250 Subclause 60(1) allows the Minister to delegate to: the President of the Senate (paragraph 60(1)(a)), the Speaker of the House of Representatives (paragraph 60(1)(b)), the Secretary or a Deputy Secretary of the Department (paragraph 60(1)(c)), an SES employee or acting SES employee in the Department (paragraph 60(1)(d)).

251 Subclause 60(2) allows the Secretary of the Department to delegate to a Deputy Secretary of, or an SES employee or acting SES employee in, the Department.

252 Subclause 60(3) allows the President of the Senate to delegate to a Deputy Secretary of, or an SES employee or acting SES employee in, the Department of the Senate.

253 Subclause 60(4) allows the Speaker of the House of Representatives to delegate to a Deputy Secretary of, or an SES employee or acting SES employee in, the Department of the House of Representatives.

254 The ability to delegate to other office holders and senior officials, as the case may be, is necessary because some of the functions might involve high volumes of administrative work (for example, the provision of public resources of a routine nature and a low value) or may be administrative matters of a relatively minor nature (for example, debt recovery of a small amount).

255 Subclause 60(5) allows for the person delegating power to provide written directions that must be followed by the delegate.

Clause 61 – Regulations

256 Clause 61 confers powers on the Governor General to make regulations to prescribe matters:

- (a) required or permitted by the Bill, or

(b) necessary or convenient for carrying out or giving effect to the Bill.

257 Matters required or permitted by the Bill to be prescribed include:

- (a) clause 30 (travel expenses of a member payable by the Commonwealth)
- (b) clause 31 (travel allowances for a member payable by the Commonwealth)
- (c) clause 32 (work expenses payable, and other public resources to be provided, by the Commonwealth)
- (d) clause 33 (Minister may determine that public resources, as prescribed by the regulations, are to be provided)
- (e) clause 42 (other resources to be provided by the Commonwealth)
- (f) clause 49 (office holders that are eligible for office holder salary in circumstances covered by that clause), and
- (g) clause 55 (annual sum payable under section 66 of the *Constitution* for Ministerial salaries).

258 Consistent with recommendation 6 of the Review, the Bill sets out the fundamental elements of a coherent work expenses framework that applies to all Parliamentarians. The Bill contains the main principles and obligations on members in using public and other resources. The Bill will be supported by regulations that provide further detail on the work expenses and other resources that members will be able to access to assist them in performing their duties as a parliamentarian.

259 Any regulation made under the Bill will be a legislative instrument for the purposes of the Legislation Act, and will be subject to disallowance by the Parliament (see section 42 (disallowance) of the Legislation Act).

260 For the powers of the regulations see clause 34.

Statement of Compatibility with Human Rights

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

Parliamentary Business Resources Bill 2017

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

Overview of the Bill

The *Parliamentary Business Resources Bill 2017* (the Bill) will establish new rules governing parliamentary work expenses. The rules mark a clean break from the old ‘entitlements’ based work expenses system consistent with recommendation 2 of the review: *An Independent Parliamentary Entitlements System* (February 2016) (**the Review**).

The Bill recognises that, in performing their day-to-day functions as elected representatives, parliamentarians incur a range of business costs and work expenses for which they should be fairly remunerated. It recognises that parliamentarians are a key part of our democracy and it acknowledges that a package of remuneration and resources is necessary to support the work of elected representatives.

The Bill provides a single legislative head of authority for the remuneration and work expenses of parliamentarians and consequently consolidates much of the existing parliamentary work expenses framework (including providing continuing authority for the Parliamentary injury compensation scheme) while imposing enhanced transparency and accountability measures. Essentially the Bill is designed to support the same types of work expenses covered by the old work expenses framework, but subject to greater obligations concerning the proper use of public resources.

Human rights implications

This Bill engages the following rights and freedoms:

- right to work in Article 6 of the *International Covenant on Economic Social and Cultural Rights (ICESCR)*; and
- right to just and favourable conditions of work in Article 7 of the ICESCR.

Right to work

Article 6 of the ICESCR recognises:

1. ‘... the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts ...’
2. ‘The steps to be taken ... to achieve the full realisation 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 freedoms to the individual.’

Right to just and favourable conditions of work

Article 7 of the ICESCR recognises:

1. ‘ ... 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 ... ;
 - (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 Bill in enhancing human rights

Consistent with Articles 6 and 7 of the ICESCR, the Bill ensures that parliamentarians continue to be fairly remunerated and insured in respect of the work they undertake as elected representatives. This ensures that individuals from all parts of the Australian community can enter and participate in political life as they will be able to claim public resources that are reasonably incurred in conducting their parliamentary business. This would not be the case if parliamentarians were required to finance their own costs incurred in conducting parliamentary business.

Conclusion

The Bill is compatible with human rights because it enhances and promotes the protection of human rights.

The Special Minister of State, Senator the Hon Scott Ryan