



Department of Parliamentary Services

24 December 2020

Mr Warren McCann
Chair
Victorian Independent Remuneration Tribunal
Suite 1, Ground Floor, 1 Treasury Place
MELBOURNE VIC 3000

By email: enquiries@remunerationtribunal.vic.gov.au

Dear Mr McCann

Department of Parliamentary Services submission to Tribunal on draft MP Guidelines

Thank you for the opportunity to make a submission in relation to the Tribunal's draft MP Guidelines for consultation (draft MP Guidelines).

As the relevant Officer responsible for assessing Members' claims for the Electorate Office and Communications Budget ('the Budget'), my role is not to comment on items that may or may not be included as an allowable expense. On these matters I defer to the Tribunal.

This submission from the Department of Parliamentary Services (DPS) focuses on administrative matters and clarifications to the draft MP Guidelines to enable consistency in interpretation for Members and the Department. This can be achieved through:

- 1) the inclusion of clear **threshold tests** in areas that are either open to interpretation or contentious, such as party-political activity, soliciting votes and value for money on promotional items; and
- 2) **clearer definitions** and more **precise language** around key terms to avoid misinterpretation and confusion.

Through this submission further clarification is also sought on the Tribunal's intention to remove the funding declaration from all Member communications.

The matters included in the submission are the result of experience gained through assessing claims following the implementation of the new framework and current Guidelines (02/2019) since September 2019.

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As previously noted, removal of ambiguity will greatly assist in avoiding some of the challenges experienced when implementing the existing Guidelines. Our feedback seeks to ensure that MPs and the relevant Officer are able to have clarity and consistency in interpretation, thus enabling the proposed Guidelines (03/2021) to be efficiently and effectively administered.

Thank you for the opportunity to provide this submission. I welcome the opportunity to discuss these matters further in person, if that would assist the Tribunal.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Lochert', written in a cursive style.

Peter Lochert

Secretary

Department of Parliamentary Services

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Submission Reference 1

Page 7

5 **Overarching obligations under the PSAS Act**

(2) **Dominant purpose of performing public duties (s 9B, PSAS Act)**

- (b) A Member can only claim or use an allowance or their EO&C Budget for the travel expenses of another individual if that individual's travel is essential to support and execute the Member's public duties.

Confirmation is sought from the Tribunal regarding the definition of 'essential'. Is it sufficient to rely solely on the MP's judgement and certification that the travel was essential to support and execute their public duties?

Submission Reference 2

Page 8

7 **Meaning of public duties**

(4) Parliamentary business means:

- (g) developing or reviewing legislation or proposed legislation;
- (h) undertaking research, attending meetings, or administration connected with the business of the Parliament;
- (i) representing the Parliament, in accordance with an approval of the House of the Parliament, and engaging in associated activities for that purpose.

This change appears to obscure the lines between Parliamentary Advisers and Electorate Officers by suggesting that Electorate Officers can review or develop legislation and policy or undertake ministerial and shadow ministerial support duties.

Clarification is sought regarding the interpretation of 'parliamentary business' and 'electorate business' in order to establish whether the duties of an electorate officer that may be determined by a supervising Member remain consistent with the position description, instrument of employment (Electorate Officer's (Victoria) Enterprise Agreement and S30 of the *Parliamentary Administration Act 2004*).

Submission Reference 3

Page 10

8 **Provision of the EO&C Budget**

(2) The EO&C Budget cannot be used for a Member's travel costs or transport costs.

Further clarification is required as to whether the EO&C Budget can be used to pay for tolls, fines or other transport costs that are not funded through allowances and which a Member may wish to claim.

Submission Reference 4

Page 10

8 Provision of EO&C Budget

- (4) A Member must ensure that the total amount claimed under the EO&C Budget each financial year does not exceed the amount set in the Determination.

To avoid confusion, the wording of this section may need to be adjusted. If the amount set in the Determination cannot be exceeded, then Members would not be able to carry over any unspent portion of their budget from previous years. DPS suggests adding wording to include any approved carryover in this clause.

With regard to overspend, should a Member's Budget be overspent for any reason, Section 9H(10)(b) of the *Parliamentary Salaries Allowances and Superannuation Act 1968* requires that a Member must within 28 days repay the non-compliant expenditure plus 25 per cent.

If it is the Tribunal's intention that any EO&C Budget overspend is considered non-compliant expenditure, we suggest amending this section to make this clear. For example, 'For the avoidance of doubt, claims or expenditure in excess of the amount made in the Determination must be assessed as non-compliant and repaid in accordance with 9H(10)(b) of the *Parliamentary Salaries Allowances and Superannuation Act 1968*.'

If this is not the Tribunal's intention, we request that the Guidelines clarify that any expenses incurred over and above the EO&C Budget that would otherwise be considered compliant may be repaid by the Member to the Parliament in a timely manner. For example, 'Where an MP's expenditure exceeds the EO&C Budget and those expenses would otherwise be considered compliant, this may be repaid to the Parliament in full within 28 days. Repayments of overspent amounts in excess of 28 days must be recovered in accordance with 9H(10)(b) of the *Parliamentary Salaries Allowances and Superannuation Act 1968*.'

Submission Reference 5

Page 11

9 Prohibitions on party political activity

- (1) Communication materials in respect of a claim under the EO&C Budget must not:
(a) be used to solicit a vote;

Given clause 9(1)(b) specifically prohibits the EO&C Budget from being used to direct how a person should vote at an election, further clarification is sought on the meaning of 9(1)(a).

Determining whether communication is party-political or 'soliciting a vote' can be subjective and has proven to be an area of contention under the current Guidelines. We ask that the Tribunal clarify its intention by providing a clear threshold test that will enable Members and the relevant Officer to consistently determine whether a communication falls into the category of 'soliciting a vote'.

Submission Reference 6

Page 11

9 Prohibitions on party political activity

- (1) Communication materials in respect of a claim under the EO&C Budget must not:
(e) include party slogans that are connected to, or replicate, an election campaign slogan, but may include positive and non-election party slogans;

Further clarification around the threshold for ‘connected to’ and ‘replicate’ would assist in determining compliance.

For example, are Member communications allowed to include slogans that are similar to, but not exactly the same as, those used during election campaigns? This includes slogans that are only part of one used during an election campaign or differ marginally by one or two words or minor punctuation.

Can the Tribunal also clarify its intent where a slogan is developed and used prior to an election campaign and later becomes part of an election campaign?

Submission Reference 7

Page 11

9 Prohibitions on party political activity

- (1) Communication materials in respect of a claim under the EO&C Budget must not:
 - (g) communicate attacks or make non-factual, derogative or personalised statements against political opponents;

Further clarification from the Tribunal on the type of activity that this section is restricting would be useful. Does this include Members using secondary sources of ‘factual’ material against political opponents? For example, if a Member uses, quotes or shares content that is of an attacking or disparaging nature from a secondary source (such as another individual or a media outlet), does that constitute a breach of this section of the Guidelines?

Submission Reference 8

Page 12

9 Prohibitions on party political activity

- (2) The EO&C Budget must not be used for the following in relation to an election:
 - (f) the production and distribution of matter that is intended or likely to affect voting in an election which is addressed to particular persons or organisations;

Note: Without limiting the generality of paragraph (f), a matter will be taken to affect voting in an election if it contains an express or implicit reference to, or comment on, the election or an issue submitted to, or otherwise before, the electors in connection with the election.

This is closely related to 9(1)(a) ‘soliciting a vote’ (refer Submission Reference 5) and would be difficult to determine as it stands. It could be argued that every communication from an MP may, ultimately, influence voting in an election. How will the relevant Officer consistently determine what is ‘likely to affect voting’ and what is not?

To provide clarity for Members and the relevant Officer, it is requested the Tribunal establish a clear threshold test for ‘matter that is intended or likely to affect voting in an election’.

Submission Reference 9

Page 13

10 Prohibition on commercial or personal benefits

- (2) In this guideline *commercial purpose* means a purpose relating to the derivation of financial gain or reward.

Further clarification is sought on the definition of ‘commercial purpose’ specifically in relation to charitable organisations.

Under this definition a Member encouraging constituents to donate to a charitable organisation may be perceived to be contributing to that organisation’s ‘commercial purpose’ given a donation could be classified as financial gain for that entity.

If the intention of the Tribunal is that MPs be allowed to promote or advocate for local, bona-fide charities (including encouraging donations), it is requested that the Tribunal clarify this intent. For example, an MP may promote or encourage donations to a bona-fide charity registered with the Australian Charities and Not-for-Profits Commission.

Submission Reference 10

Page 13

(11) Operating and maintenance costs that may be claimed

Permitted costs

- (1) Provided the overarching obligations and other prohibitions are complied with, the operating and maintenance costs of a Member’s electorate office that the EO&C Budget may be used for include:
- (a) electorate officer expenses, such as:
 - (i) additional electorate officer salary;

We propose expanding the scope of 11(1)(a)(i) to explicitly include ‘and associated on-costs.’

Submission Reference 11

Page 14

11 Operating and maintenance costs that may be claimed

Permitted costs

- (1) Provided the overarching obligations and other prohibitions are complied with, the operating and maintenance costs of a Member’s electorate office that the EO&C Budget may be used for include:
- (d) cleaning of a motor vehicle supplied by the Parliament;

Section 4.5(c) of the current Guidelines provides that the EO&C Budget may be used for the ‘cleaning of, and cleaning supplies for, electorate offices and cleaning of Member motor vehicles that have been supplied by Parliament.’

It has been a longstanding practice that Members are able to determine their own arrangements in relation to cleaning and waste disposal independent of DPS and use their EO&C budgets for such items. This arrangement exists because each MP has different requirements for office cleaning (e.g. who they entrust to do it, when it is done, how frequently it is done, etc.).

11(1)(d) of the draft MP Guidelines makes no reference to cleaning of and cleaning supplies for electorate offices. Clarification is sought as to whether the Tribunal intends to disallow cleaning of

electorate offices and any associated expenses from the Electorate Office and Communications Budget.

Submission Reference 12

Page 15

- 11 Operating and maintenance costs that may be claimed**
Prohibited costs
- (2) Operating and maintenance costs that the EO&C Budget cannot be used for are:
- (a) purchase of food or drink items (other than costs permitted under guideline 11(1)(a) or (o));

This clause, which appears in both the current Guidelines and the draft MP Guidelines, appears to restrict Members from using the EO&C Budget to cover the costs of tea, coffee and sugar for their staff and constituents.

DPS has received a number of enquiries from Members and Electorate Officers regarding whether this will be an allowable expense. Can the Tribunal please clarify whether coffee, tea and sugar supplies are considered to be within the scope of ‘food and drink’?

Submission Reference 13

Page 15

- 11 Operating and maintenance costs that may be claimed**
Prohibited costs
- (2) Operating and maintenance costs that the EO&C Budget cannot be used for are:
- (b) taxi or cab charges or similar services (other than costs permitted under guideline 11(1)(a));

Clarification is sought as to whether the Tribunal intends the definition of ‘similar services’ to include Members’ claims for tolls and mileage costs.

Submission Reference 14

Page 15-16

- 11 Operating and maintenance costs that may be claimed**
Prohibited costs
- (2) Operating and maintenance costs that the EO&C Budget cannot be used for are:
- (c) costs for equipment that is located outside the electorate office, except for:
 - (i) mobile technology devices purchased through and with the approval of the Parliament’s IT services (for example: laptop computer; mobile telephone; tablet);
 - (ii) a maximum of two computer monitors;
 - (iii) one chair;

Note: This guideline supports the purpose of the EO&C Budget to fund a physical electorate office, while also balancing the flexible work needs of Members.

DPS proposes inserting an additional item in this section of the Guidelines to allow MPs to respond to events such as a pandemic, natural disaster or other significant event:

11 Operating and maintenance costs that may be claimed

Prohibited costs

- (2) Operating and maintenance costs that the EO&C Budget cannot be used for are:
- (c) costs for equipment that is located outside the electorate office, except for:
 - (iv) equipment that is temporarily located to support work arrangements in response to exceptional circumstances, as prescribed in the relevant Officer terms and conditions.'

Submission Reference 15

Page 17

12 Communication costs that may be claimed

Permitted costs

- (1) Provided the overarching obligations and other prohibitions are complied with, the communication costs that the EO&C Budget may be used for include:
- (g) promotional items;

Example: promotional items include bags, clothing, calendars or fridge magnets.

Note: Members must ensure that promotional items comply with the overarching obligations. For example:

- a pen valued, for example, at \$40, and displaying minimal information about the Member, might be seen less about performing public duties than seeking or providing a personal benefit.
- an item worth \$100 that only seeks to convey the MP's contact information may not be achieving value for money.

The \$2 spending threshold for promotional items specified in the current Guidelines was based on an ATO threshold for deductibility and the principle that items over that amount would be eligible for claiming under TR1999/10 as an expense against the Member's Electorate Allowance.

When assessing MP claims a set value provides the Department's Finance and Risk team and the relevant Officer with a clear test to determine compliance. Removing this threshold and the requirement for all EO&C Budget-funded communications to have a funding declaration eliminates two key controls that serve to protect the Parliament against fraudulent activity.

The compliance framework principles of 'value for money', 'dominant purpose for public duties' and 'responsible and legitimate use in connection with public duties' are subjective and do not enable a clear and consistent understanding by MPs and DPS staff assessing claims.

DPS has no view on the specific value of a threshold for promotional items allowable under the EO&C budget vs those the Tribunal expects to be funded out of the Member's Electorate Allowance. We do however, ask that the Tribunal consider providing further detail and guidance around promotional items, either by setting a monetary amount or by providing a list of items that are allowable, to assist the relevant Officer, DPS staff and MPs to understand their compliance obligations.

Submission Reference 16

Page 18

13 Authorship and identification requirements for communications materials

- (1) All communications materials claimed under the EO&C Budget must include:
- (a) the name of the Member as the author of the material; and
 - (b) at least one form of contact detail for the Member, such as a phone number, electorate office address, email address, official website address or social media account.

The draft MP Guidelines remove the requirement for all EO&C Budget-funded communication materials to clearly identify whether parliamentary funds were spent.

Requiring that Members include the funding declaration on their communications material has been a principal measure of accountability to the community for the way in which public funds are used.

The Department queries the Tribunal's intention to remove this requirement. If through this change the Tribunal is seeking to avoid implications of Parliamentary support, we believe this could still be achieved in other ways. One option would be to retain a funding declaration that does not reference the Parliament directly, for example, 'Funded from the Member's EO&C Budget' or 'Funded from <Member Name>'s EO&C Budget'.

Submission Reference 17

Page 18

13 Authorship and identification requirements for communications materials

- (3) A Member may include the name or logo of their political party in communication materials in whatever manner the Member wishes to refer to their political party.

Note: Use of the party name or logo must comply with the prohibitions on party political activity in guideline 9.

Example: A Member may refer to their political party using abbreviations or short-hand references, joint party references, or in any other way that the party is described.

This change appears to contradict the purpose of the EO&C Budget, which is provided to a Member to 'communicate with his or her electorate in relation to the performance of his or her public duties.'

Allowing the use of party logos on electorate office communication also appears to contradict section 9 of the draft MP Guidelines, which prohibits the use of the EO&C Budget for party political communication.

A communication featuring a party name and/or logo with no indication of parliamentary funding – through either the use of a crest (disallowed under 13(4)) or a funding declaration (refer Submission Reference 16) – may be indistinguishable to the recipient from a party communication.

Further, this Guideline appears to be limited to the way Members refer to their own party but does not mention how they may refer to other parties. Limiting party references in this way would allow a Liberal MP, for example, to refer to the 'Liberal-Nationals Coalition' in communications but it is unclear whether they could refer to the 'Andrews Labor Government'. Is it the Tribunal's intention that 'their party' relate only to the Member's own party?

Submission Reference 18

Page 18

14 Joint communication

- (1) A sole Member must be identified as the author of communication materials claimed under the EO&C Budget, except in the following circumstances, where a Member may join with another Member as author of the communication:
- (a) Members from the lower House and upper House of the Parliament whose electorates share the same geographic location; or
 - (b) two Members from the same House of the Parliament who have neighbouring electorates.

For clarification, is it the Tribunal's intention to limit joint advertising opportunities to Members who are in (a) and (b) only and to prohibit joint advertising by all Members outside these categories?

DPS requests that the Tribunal specify that in cases where a communication is jointly funded, that communication must relate to the public duties of all funding MPs and clearly state and identify that the communication has been jointly authored and funded.

A lack of visibility in relation to who paid for the communication material will compromise our ability to assess claims effectively and accurately.

Submission Reference 19

Page 19

14 Joint communication

- (4) If the EO&C Budget is used for a digital platform (including a social media platform) or a website, the Member is responsible for any content published on that digital platform or website, including third party content.

Note: This guideline does not prevent a Member from engaging with third parties using a digital platform, but the Member must, to the extent possible, be responsible and accountable for the material that is publicly available.

Current Guideline 4.13(a) and (b) provides that Members are responsible for ensuring that content on their social media channels and websites comply with the terms and conditions imposed by the relevant Officer.

In the draft MP Guidelines this item has been included as a sub point under Joint communication. If it is the Tribunal's intention that this requirement apply to all communications (rather than Joint communications only), we suggest that the revised Guidelines make 'digital communication' a standalone item.

Submission Reference 20

Page 20

16 Supporting the electorate

- (1) Subject to the prohibition on commercial or personal benefits in guideline 10, and provided the overarching obligations are met, a Member may allow community groups or a constituent to use their electorate office (including equipment in the electorate office) for non-commercial purposes.

Example: A Member may allow a community group to make small amounts of photocopying or use a room within the office.

A lack of clarity in the MP Guidelines in this area could cause problems for MPs in meeting some community expectations. DPS suggests that the Tribunal may wish to engage with MPs and consider whether a clearer definition of 'small amounts of photocopying' should be given. This threshold or definition will assist MPs in responding to and managing requests from local community groups.

Noting recommendation 4.1 from the 28 August 2018 report of the Legislative Council's Privileges committee (PP No 433, Session 2014-18), we seek further clarification on the definition of 'community group'.

Submission Reference 21

Page 20

17 Power for the relevant Officer to automatically deduct costs

- (1) Where costs for the following are paid by the Parliament on behalf of a Member, or are incurred in a central or shared account held by the Parliament on behalf of Members, the relevant Officer has the power to automatically deduct the cost from the Member's EO&C Budget:
- (a) use or maintenance related to additional miscellaneous equipment under guideline 11(1)(c) that is not included as part of the standard electorate office fit out, including additional telecommunications charges;
 - (b) Australia Post charges;
 - (c) photocopier copy/print charges;
 - (d) printer per page (click) print charges;
 - (e) folding machine charges;
 - (f) fringe benefits tax incurred by the Parliament due to a Member purchasing or leasing parking spaces for electorate office staff;
 - (g) motor vehicle insurance excess.

To provide greater clarity for Members DPS requests that 'telecommunications charges' be listed as a separate line item, e.g. (h) telecommunication charges, as they are in the current Guidelines under 4.16(a). This will allow the Parliament to recover the costs of, for example, mobile phone devices and charges, which are not included as part of an electorate office standard fit-out.

The draft MP Guidelines appear to remove recycling costs from automatic deductions, however these are charged to the EO&C Budget under the current Guidelines. It is requested to include recycling costs in this list, e.g. (i) recycling and waste disposal.

Where a member incurs salary or other employment costs, the Parliament is legally obligated to pay the staff member. Parliament requests that salary and associated costs for Electorate Officers incurred under Guideline 11(1) are included within 17(1) as an automatic deduction.

Submission Reference 22

Page 20

17 Power for the relevant Officer to automatically deduct costs

- (2) It is intended that the maintenance of any equipment included as part of the standard electorate office fit out will be paid by the Parliament rather than using the EO&C Budget.

Note: This will ensure equity among Members, acknowledging that each electorate office is different, despite conforming to a standard fit out.

DPS notes and endorses this in relation to equipment subject to funding being provided. For clarity, DPS understands the intention of this as being related to routine/scheduled maintenance of equipment such as air conditioners, security equipment, etc. and not relating to repair of damage or cleaning/waste disposal (refer also Submission Reference 11).