

Review of the Tribunal’s Members of Parliament Guidelines

Issues Paper

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Glossary

| **Term or abbreviation** | **Definition** |
| --- | --- |
| Compliance framework | The monitoring, compliance and enforcement provisions relating to work-related parliamentary allowances and the EO&C Budget under Division 4 of Part 6 of the PSAS Act. |
| DPS | Department of Parliamentary Services |
| EO&C Budget | Electorate Office and Communications Budget |
| MP | Member of Parliament |
| Guidelines | Members of Parliament (Victoria) Guidelines No. 2/2019 |
| Parliament | Parliament of Victoria |
| PSAS Act | *Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic) |
| Tribunal | Victorian Independent Remuneration Tribunal |
| VIRTIPS Act | *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* (Vic) |

1. Purpose of review and making a submission

The Tribunal is conducting a comprehensive review of its [MP Guidelines](https://www.vic.gov.au/sites/default/files/2019-12/Members%20of%20Parliament%20%28Victoria%29%20Guidelines%20No.%2002%202019.pdf) for the use of certain parliamentary allowances and the EO&C Budget.

The purpose of the Guidelines is to support the operation of the broader compliance framework for MP allowances by specifying how parliamentary allowances and the EO&C Budget may be used (the resources in scope are summarised at Annexure A). The Guidelines should also be informed by, and consistent with, the Statement of Principles for the use of public resources by MPs set out in the PSAS Act, as well as other guiding principles in relation to use, such as value for money and the dominant purpose test.

The review is intended to be holistic to ensure the Guidelines are modernised and designed to support the broader compliance framework within which they operate, noting that the current Guidelines adopted many of the former rules that existed at the time, and have not been comprehensively reviewed. Any opinion or proposal about the Guidelines may be considered that is consistent with the principles that underpin the framework, and ensures the entire compliance framework operates efficiently, effectively and is easily understood by all parties.

In particular, the review will aim to identify anomalies or areas of ambiguity that should be revised to ensure clarity about the purpose and use of parliamentary allowances and the EO&C Budget. The Tribunal is aware of several specific issues of concern that will be considered, which are discussed further in section 4 below.

The Tribunal invites all interested parties to make a submission to be considered as part of the review. Particular questions for consideration are set out on the following page, however these are provided as a guide only, and do not in any way limit what may be included in a submission.

**Written submissions must be made by 5pm on Wednesday, 1 July 2020** by email to [enquiries@remunerationtribunal.vic.gov.au](mailto:enquiries@remunerationtribunal.vic.gov.au)

**Those wishing to make an oral submission are to advise the Tribunal by 5pm on Wednesday, 10 June 2020** by email to [enquiries@remunerationtribunal.vic.gov.au](mailto:enquiries@remunerationtribunal.vic.gov.au)

The Tribunal intends to schedule oral submissions to be heard during the period 15 – 26 June 2020, and these may be conducted by teleconference or video conference to comply with the Government’s social distancing directions.

If you require assistance to make a submission, please contact the Tribunal Secretariat at [enquiries@remunerationtribunal.vic.gov.au](mailto:enquiries@remunerationtribunal.vic.gov.au). Further information on how to make a submission is also available on the Tribunal’s website.

All submissions will be published in full or in summary form as appropriate on the Tribunal’s website, unless the person making the submission seeks confidentiality or the submission contains information that is identified as commercially sensitive. In this instance, the submission will be published in a form which protects the confidentiality or commercial sensitivity.

Following the Tribunal’s consideration of submissions and the development of new Guidelines, the Tribunal will make the proposed Guidelines available for review, and provide a further opportunity to receive feedback.

Particular questions for consideration

Without limiting the matters on which interested parties might wish to make submissions, the Tribunal is interested in receiving submissions on the following questions:

* Given the new regulatory framework for MP allowances, are there changes required to the Guidelines to support the new framework?
* If you are an MP or a “relevant Officer”, how might the Guidelines be best designed to support your role?
* Do you have a view about how prescriptive the Guidelines should be? Should they attempt to cover every activity or expense in detail, or should they have a greater reliance on the principles set out in the legislation to allow a degree of interpretation?
* Are there areas of ambiguity in the Guidelines that should be clarified or require further detail to assist with interpretation?
* For the purposes of the EO&C Budget, what do you consider is necessary for an MP to:
  + operate and maintain an electorate office; and
  + communicate with the electorate in relation to the performance of the MP’s public duties?
* Are there any changes you would like to see made to the Guidelines?

1. The Guidelines in context

The Guidelines support the broader regulatory and compliance framework for parliamentary allowances and the EO&C Budget. A summary of relevant entities and their responsibilities in relation to the compliance framework is set out in Annexure B.

There are number of overarching principles set out in the PSAS Act that an MP must comply with in the first instance when using a parliamentary allowance or the EO&C Budget.

The purpose of the Guidelines is to provide further detail to specify how an MP may use an allowance or the EO&C Budget. This may involve defining the purpose or eligbility criteria for certain allowances, providing additional detail to aid in the interpretation or implementation of the principles, or prohibiting allowances from being used for a certain type of activity or expense.

In this way, the Guidelines safeguard the proper use of allowances and the EO&C Budget, and support MPs and administrators of the compliance framework in understanding the purposes of the public funding and the permitted reasons for claiming and approving use.

The Guidelines also assist the Victorian community to understand the ways in which MPs are permitted to use this public funding to carry out their public duties.

Principles underpinning the Guidelines

| Principle | Obligation | PSAS Act reference |
| --- | --- | --- |
| **Statement of Principles** | | |
| Fair and reasonable recompense for public duties | * A Member should receive fair and reasonable recompense for performing their public duties. * Public resources are provided to a Member to support them in performing their public duties. | s 4A |
| Good faith and integrity | * A Member must act ethically, reasonably and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties. | s 4B |
| Personal responsibility and accountability | * A Member must be responsible and accountable for their use of public resources. * A Member must be prepared for their claims to be made publicly available. * A Member must be able to publicly justify their use of public resources. | s 4C |
| **Compliance framework principles and tests** | | |
| Value for money | * A Member must provide value for money in using their work-related parliamentary allowances and Budget by ensuring that the costs incurred are reasonable and proportionate to the costs of performing their public duties. | s 9A |
| Dominant purpose test | * A Member must not claim or use a work-related parliamentary allowance or their Budget unless it is claimed for the dominant purpose of performing their public duties. * A Member can only claim or use a work-related parliamentary allowance or their Budget for the travel expenses of another individual if that individual's travel is essential to support and execute the Member's public duties. | s 9B |
| Responsible and legitimate use in connection with public duties | * A Member must claim or use work-related parliamentary allowances and the Budget provided to them responsibly and only for legitimate purposes in connection with their public duties. | s 9C(1) |
| Compliance with the Guidelines | * A Member must be aware of, and comply with, the Tribunal Guidelines and the terms and conditions that apply to the provision, claim and use of the work-related parliamentary allowances and the Budget. | s 9C(3) |

Other aspects of the compliance framework

The broader compliance framework is designed to ensure that public resources made available to MPs are used responsibly, transparently and in accordance with legal obligations.

In addition to the principles and tests set out above, the compliance framework under the PSAS Act also includes:

* the ability for the Clerks of the Parliament and the Secretary of DPS to impose terms and conditions for the provision, claim and use of allowances and the EO&C Budget (noting that the Guidelines will prevail in relation to any inconsistency) (s 9C)
* oversight and approval requirements (ss 9E to 9H)
* public reporting requirements (ss 9I and 9J)
* financial penalties for non-compliance (ss 9G and 9H).

1. History of the Guidelines

The Tribunal issued the first version of the Guidelines on 16 September 2019. These Guidelines were subsequently amended in December 2019 following a period of consultation. The current enforceable Guidelines were made on   
20 December 2019.

Guidelines No.01/2019

The Tribunal issued the first Guidelines on 16 September 2019. Prior to the making of the Tribunal’s Guidelines, the rules and conditions for using the allowances provided to MPs were either contained in regulations made under the PSAS Act or in the *Members Guide* which was published by DPS and approved by the Presiding Officers of the Parliament but not available to the public.

At the time of making the Guidelines, the Tribunal was cognisant that the operation of the VIRTIPS Act meant that in some instances, the existing regulatory framework would fall away with the intention that the Tribunal’s Determination and Guidelines would ‘fill the gap’. The Tribunal considered and drew on many of the existing terms and conditions set by regulations and also the *Members Guide* relating to many of the allowances when making the first set of Guidelines.

In particular, the Tribunal chose to adopt the rules relating to the EO&C Budget as they were written in the *Members Guide*. However, some changes were made to ensure that the Guidelines operated in the context of the Determination, including removing the terms and conditions relating to travel from the EO&C Budget and incorporating those into the guidelines for travel-related allowances.

Guidelines No.02/2019 (current)

Following the publication of the first version of the Guidelines, the Tribunal received [letters](https://www.vic.gov.au/tribunals-determination-mp-salaries-and-allowances) from the Special Minister of State and the Clerks of the Parliament requesting it clarify some aspects.

Following consultation on the issues for consideration, the Tribunal made a number of changes to the Guidelines (summarised in Annexure C) and published the second version of the Guidelines, which took effect on 20 December 2019.

The Tribunal has received several other suggestions or requests for amendment and clarification to the Guidelines. Most notably, the Compliance Officer has completed the first appeal of a decision to reject a claim under the EO&C Budget. In her [Statement of Findings](https://www.vic.gov.au/sites/default/files/2020-04/Appeal%202020-01%20-%20Statement%20of%20Findings.pdf) the Compliance Officer noted that the Tribunal may wish to consider clarifying some aspects of the Guidelines relating to the prohibition on using the EO&C Budget for political communication.

Rather than continue to consider each issue in isolation and on an ad hoc basis, the Tribunal has decided to review each allowance and the associated Guidelines comprehensively.

1. Snapshot of known issues with the Guidelines

The Tribunal is aware of several specific issues of concern based on feedback received from stakeholders. These issues and others will be considered as part of the review.

1. Restrictions on using the EO&C Budget for ‘party political communication’

Paragraph 4.10 of the Guidelines says that use of the EO&C Budget for party political communication, including party logos, is prohibited.

To provide greater guidance on that general principle, the Guidelines also include rules about what can and cannot be included in communications funded from the EO&C Budget:

* MPs may include their party name in their title as well as use their official parliamentary office title (para. 4.10)
* the EO&C Budget cannot be used to survey for voting intention, preferred leader or preferred political party (para 4.11 and 4.12)
* content must not include any oral or written content that attacks or makes non-factual, derogative or personalised statements against political opponents (para 4.12 (a))
* content may include positive and non-election party slogans that are not connected to, or replicate, an election campaign slogan (para 4.12 (b))
* content must not request donations for the Member, his or her party or other persons or organisations (para 4.12 (f)).

The first appeal heard by the Compliance Officer concerned the prohibition in the Guidelines on using the EO&C Budget for party political communication. In particular, it considered a claim that was rejected on the basis of:

* use of a party name other than in the MP’s title
* use of a non-recognised party name or official parliamentary office title.

The Compliance Officer recommended that the Tribunal clarify paragraph 4.10, specifically the meaning of the terms “party political” and “party name”.

1. Other restrictions on the use of the EO&C Budget for communications

The Tribunal has received feedback that some claims to use the EO&C Budget for communications content have been rejected because the content in question did not specifically relate to the MP’s electorate. For example, the communication may discuss a proposed event or activity (e.g. native forest logging) that does not take place in the MP’s electorate.

In addition, MPs have been unable to use the EO&C Budget for communication materials indicating support or sponsorship of community groups or sporting clubs (e.g. a sign at a sporting club that says ‘proudly supported by [name of MP]). That is as a result of the interaction of two rules in the Guidelines, which say that communication content claimed under the EO&C Budget:

* must contain the words ‘funded from Parliamentary Budget’ (subject to limited exceptions) (para 4.8)
* must not imply Parliament support or endorsement of commercial organisations or other bodies (para 4.11).

1. Use of the EO&C Budget for printing or photocopying for community groups

The Tribunal understands there is uncertainty as to whether MPs can use the EO&C Budget for printing or photocopying expenses to support community groups. The Tribunal understands that MPs are often approached by not-for-profit and non-political community groups in their electorates for assistance with small photocopying jobs (e.g. newsletters and meeting documents).

Related Guidelines requiring communications content claimed under the EO&C Budget to identify the MP as the author and to acknowledge funding from the Parliamentary budget will also be considered.

1. Clarity about expenses funded by the Parliament and through the EO&C Budget

The Parliament pays rental costs for MP electorate offices and for some other matters related to the upkeep of those offices. However, some of the costs paid for by the Parliament are automatically deducted from an MP’s EO&C Budget (e.g. air conditioning servicing costs and recycling costs, para 4.16 of the Guidelines) while other costs are not (e.g. utility costs and security equipment).

1. Use of parliamentary committee budgets for travel

The Parliament has a number of parliamentary committees made up of sitting MPs. These committees are provided with budgets that are used for staffing costs, operational expenses and in some cases travel (e.g. accommodation expenses arising from international travel).

However, the Tribunal’s Determination also provides a travel allowance, commercial transport allowance and international travel allowance to support MPs undertaking travel related to their parliamentary business, which includes committee attendances.

As a result, there is a potential overlap between committee budgets and MP allowances, and a lack of guidance as to when one source of funds should be used instead of another.

1. Distinction between the purpose of the electorate allowance, the EO&C Budget and other allowances

All MPs are provided with an electorate allowance to cover costs associated with MPs providing services to their constituents (s 17(3)(e) of the VIRTIPS Act). While the Tribunal cannot make Guidelines for the use of the electorate allowance, it is required to set the value of the electorate allowance in its Determination.

There is said to be a lack of clarity about what expenses the electorate allowance is meant to cover and which electorate related expenses should be met using other allowances provided for electorate business or the EO&C Budget.

1. Monetary limits in the EO&C Budget

The Guidelines for the EO&C Budget include some monetary limits, such as a unit price limit of $2 for promotional items, and a $25 per day remuneration limit for engaging secondary or tertiary students on work experience, which are said to be not fit-for-purpose.

1. Requirement to include a funding declaration for expenses claimed under the EO&C Budget

The funding declaration and other identifying details of an MP are said to be difficult to apply to certain methods of communication, such as on social media platforms or on small items.

1. Other jurisdictions

In conducting the review, the Tribunal intends to consider the arrangements in other Australian jurisdictions. The Commonwealth and all other states and territories have relevant frameworks that may be useful to inform the Tribunal’s development of the Guidelines.

Annexure A: Summary of resources in scope of the Guidelines

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| Resource | Purpose | Features |
| Parliamentary accommodation sitting allowance | To cover the cost of regional MPs maintaining a metropolitan residence, to help them carry out their parliamentary duties while in Melbourne. | * Available to regional MPs whose home base is at least 80km from the Melbourne centre and who maintain a second residence in metropolitan Melbourne. * Amount of allowance varies depending on office held (if any). |
| Travel allowance | To cover the cost of accommodation, meals and incidentals when MPs are required to stay overnight, within Australia, away from their home base to undertake parliamentary or electorate business. | * MPs claiming the parliamentary accommodation sitting allowance cannot claim the travel allowance for stays within the metropolitan area. * MPs may only claim costs actually incurred, subject to nightly limits which vary depending on location. * Different eligibility rules apply under the Guidelines depending on whether the MP is undertaking parliamentary business or electorate business. |
| Commercial transport allowance | To cover transport costs of travelling within  Australia to undertake  parliamentary or electorate business, in circumstances where a Victorian motor vehicle cannot reasonably  be used. | * MPs may only claim costs actually incurred, subject to annual limits. * MPs cannot claim the commercial transport allowance for parliamentary business at Parliament unless their home base is at least 80km from the Melbourne centre. |
| International travel allowance | To cover the cost of transport, accommodation, meals and incidentals for travel outside of Australia for parliamentary or electorate business. | * MPs may only claim costs actually incurred, subject to annual limits. * Under the Guidelines, nightly limits apply to accommodation costs that may be claimed, which vary based on location. |
| EO&C Budget | Available to MPs to:   * fund the operating costs and maintenance of their electorate office * communicate with their electorate in relation to the performance of their public duties. | * Allocated to MPs each financial year, except for election years where it is determined on a pro rata basis for the periods before and after the election. * For Members of the Assembly, size of the EO&C Budget varies depending on the number of voters in the electorate. * Tribunal Guidelines specify which goods and services can and cannot be purchased. |

Annexure B: Relevant entities and their responsibilities in relation to the compliance framework

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| **Victorian Independent Remuneration Tribunal** | *sets the value of salaries  and provides for allowances that MPs will receive* | * The Tribunal issues the determination that sets the value of salaries, allowances and the Electorate Office and Communications Budget (EO&C Budget). * The Tribunal may also issue guidelines regarding the *use* of ‘work-related parliamentary allowances’ and the EO&C Budget. * MPs should look to these documents to understand what they are eligible to receive or claim. |
| **Parliamentary Integrity Adviser** | *available to provide confidential advice to MPs about ethical issues, integrity matters, and parliamentary matters (including the use of entitlements)* | * The Parliamentary Integrity Adviser is available to provide advice to MPs on ethical issues and integrity matters concerning an MP’s role, as well as broader advice on parliamentary matters. This includes the application of any legislation relevant to MPs and the use of MP entitlements. * If MPs have questions about whether it would be appropriate to make a claim for a certain type of expense, or whether their conduct in relation to a claim is appropriate, and the MP does not want to raise these questions with the Relevant Officers, then they should seek the confidential advice of the Parliamentary Integrity Adviser. |
| **Relevant Officers  (Clerks or  Secretary of DPS)** | *determines whether a claim and the conduct in relation to the claim is compliant and may be paid* | * The Relevant Officers are responsible for determining whether an MP’s claim for a work-related parliamentary allowance or under the EO&C Budget, and their conduct in relation to the allowance or the EO&C Budget, is compliant and can be paid. * The Clerks of each House of the Parliament are responsible for claims for work-related parliamentary allowances, and the Secretary of DPS is responsible for claims under the EO&C Budget. * The Clerks will also determine whether an MP is ineligible to receive a separation payment as a result of committing a significant and wilful breach of the Code of Conduct while an MP. |
| **Compliance Officer** | *hears appeals from MPs about decisions made by the Relevant Officers* | * If an MP is not satisfied with a decision of a Relevant Officer they may appeal to the Compliance Officer. * The Compliance Officer will hold a proceeding to determine the appeal and may request information and written or oral statements. * Given the appeal function performed by the Compliance Officer, they are not available to offer advice like the Parliamentary Integrity Adviser or Relevant Officers. |

Annexure C: Changes made to the Guidelines No. 01/2019

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| **Guideline that was changed** |  | **Description of the change** |
| **Paragraph 3.2 -**Definition of parliamentary business |  | Shadow Ministers and Parliamentary Secretaries added to the list of office holders in the definition of parliamentary business. |
| **Paragraph 6.1 -**Clarification of how the travel allowance is calculated |  | Amended to clarify which values in the Commonwealth Remuneration Tribunal (Members of Parliament) Determination are to be used to determine the travelling allowance rate. |
| **Paragraph 6.2 -**Change to how the threshold for claiming the travel allowance is determined |  | Amended to allow MPs to claim the travel allowance if they can demonstrate that the shortest practicable route by road between their home base and the location of the stay satisfies the applicable distance threshold. |
| **Paragraph 6.3 -**Travel allowance may be claimed when there is a break of less than 10 hours between parliamentary sittings |  | Amended to allow MPs to claim the travel allowance for occasions when they stay in the metropolitan area as a result of there being a break of less than 10 hours between sittings of their House of Parliament, or when the relevant Clerk anticipated there would be a break of less than 10 hours. |
| **Paragraph 8.1 -**Use of the international travel allowance for electorate business |  | Amended to allow MPs to claim the international travel allowance for both parliamentary business and electorate business outside of Australia. |
| **Paragraph 7 -**Limits on claims for the commercial transport allowance for parliamentary and electorate business |  | Removal of limits on how much MPs can claim per financial year under the commercial transport allowance for each of parliamentary business and electorate business. The overall limit in the Tribunal’s Determination continues to apply. |
| **Paragraph 4.1 -**Description of the purpose of the EO&C Budget |  | Amended the description of the purpose of the Budget in the Guidelines to align it with section 7F(2) of the PSAS Act. |
| **Paragraph 4.18 -**Use of the EO&C Budget for travel |  | Amended to clarify that the EO&C Budget cannot be used in respect of an MP’s travel costs or transport cost. |
| **Paragraphs 5.1(c)(ii) and 7.2(b) -**Distance thresholds for the parliamentary accommodation sitting allowance and commercial transport allowance |  | Amended the distance thresholds for claiming the parliamentary accommodation sitting allowance and commercial transport allowance to be based on the shortest practicable route, instead of the shortest route. |