

Members of Parliament (Victoria) Guidelines – Consultation Draft 2020

5 Overarching obligations under PSAS Act

5 (4) Compliance with these Guidelines and the relevant Officer's terms and conditions (s 9C, PSAS Act)

(c) If any term or condition imposed by a relevant Officer is inconsistent with these Guidelines, the Guidelines prevail to the extent of the inconsistency.

Given there has been some significant changes foreshadowed in the draft guidelines, there may be unanticipated or specific matters that eventuate where the guidelines are silent.

Although there is a provision for the relevant Officer to impose conditions in situations such as this, the relevant Officer may be reluctant to do so on the basis that they do not want to 'be seen to' go beyond the determinations of the Tribunal.

Consider whether there should be an alternative process in place that enables Members of Parliament and the relevant Officer, with guidance from the Tribunal, to deal with any such matters that arise where the guidelines are silent.

A possible solution is to have a sub-committee comprising the relevant Officer and a cross-party representation, that could deal with issues of interpretation not clear under the Guidelines. This sub-committee could resolve how to deal with new issues until the Tribunal updates the Guidelines. This would allow for issues to be dealt with in 'real-time' while still providing the Tribunal with an opportunity to update the guidelines annually in line with its annual adjustment determination – either ratifying the adopted interpretation or establishing a new one going forward.

This process would also deal with and emerging technologies.

7 Meaning of public duties

7 (2) (a) any of the following activities relating to matters of importance or interest to constituents (including matters that do not relate exclusively to constituents, such as matters of state importance):

(i) providing advice to constituents;

Add the provision of information in this section - providing advice or "information".

7 (2) (d) providing constituent assistance and service for the electorate.

Consider whether the words "for the electorate" are appropriate, noting many supports that Members of Parliament provide constituents go beyond the electorate – the fact is, the person is getting support from the Member because they are within the Member of Parliament's electorate, not necessarily because the issue is one with a nexus to the

electorate (eg: assistance with a federal immigration matter; assistance with a service provider dispute in another area of the state – for example, for a disabled family member with DHS.. etc).

The Member of Parliament may represent a regional area where an issue is not defined by an electoral boundary or the catchment area for a school or organisation may include your electorate although not being physically located there.

Members of Parliament would receive correspondence and requests for assistance from across Victoria on a variety of issues and legislative matters and whilst priority is given to those constituents in their electorate, the implications or outcomes flowing from these matters may have an effect, impact or relevance to constituents in their electorate.

Also, when developing legislation, it is foreseeable that, within reason, work must be done across multiple electorates to gain sufficient support to see new legislation prevail which is of significance to the electorate being represented.

7 (4) (g) developing or reviewing legislation or proposed legislation;

Consider adding – “speaking” on proposed legislation.

7 (4) (j) ADD NEW

Consider adding an additional (j) or incorporate elsewhere in this section that includes - speaking in Parliament, advocating for the interests of constituents, including in other electorates where appropriate (refer 7 (2) (d).

9 Prohibitions on party political activity

9 (1) (e) include party slogans that are connected to, or replicate, an election campaign slogan, but may include positive and non-election party slogans;

Consider whether this is workable in reality. A simpler approach is to allow a name of the Member of Parliament, their party, and whatever slogan they like (noting the above clause 9(b) stops any slogan that directs how a person should vote at an election and is thus self-regulating of any slogan used).

Definitionally this poses a great deal of complexity.

For example:

Would “Putting people first” be a slogan?

Could a Member of Parliament from another Party use the following phrase “Is this Government really *putting people first?*”

How many times, and in what form does a ‘slogan’ need to be used to bring it into prohibition?

We should not spend Members of Parliament or staff time tying ourselves in knots around such subjective matters.

There are already examples where restricting the use of slogans is problematic.

For example: The recent Victorian Government State Budget which feature the phrase 'Putting People First' which is not a political party slogan, was not permitted to be included by the Department of Parliamentary Services (DPS) in any material for printing and distribution. Despite it not being in breach of 9 (1) or (2).

If such prohibitions are to be put in place, then a register of 'slogans' should be published after each election and be available to search by Members so that any doubt is avoided, and clear guidelines developed as to how a phrase moves into the realm of 'election slogan'.

9 (1) (g) communicate attacks or make non-factual, derogative or personalised statements against political opponents;

Would this prohibit the criticism of a government/opposition/crossbench policy or of the reporting of how particular Member of Parliament or cohorts of Members of Parliament have voted in Parliament?

For example, it would place DPS in a very difficult position in the circumstance whereby they would be required to determine whether, for example, the use of the term 'debt' and the appropriate level debt is a factual statement id used by a Member of Parliament in material for printing and distribution. DPS, or any other body, should not be put into a position where they must rule on such matters, as they would immediately and rightly be described as acting politically – make the decision makers role untenable in terms of impartiality.

Denying a Member of Parliament, the ability to communicate concerns to the electorate on contested spaces in our policy is dangerously close to censorship, which I don't believe is the intent of the guidelines.

9 (1) (l) advertise an external link to materials that do not comply with these guidelines and terms and conditions imposed by the relevant officer.

Currently the relevant Officer has provided the following guidance in a DPS '*Explainer: Member of Parliament websites*' - other links that relate to political party affiliations or activities (e.g. links such as Donate, Join, etc). can be present on the Member of Parliament's website as long as those links are not on the home or landing page. Those links should be on a sub-page or under a dropdown menu accessible from a sub-page. Slogans promoting a local electorate issue or call to action can be used on the website. Examples include a charity drive, an event in the electorate or a community-wide issue.

The inclusion of 9 (1) (l) in the draft guidelines may not be intended to change the guidance provided in the DPS '*Explainer: Member of Parliament websites*', but if it does in fact represent a retrograde step, whereby Members of Parliament can no longer include such links on a sub-page or under a dropdown menu accessible from a sub-page, consideration should be given to rectify the unintended consequence.

9 (2) (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;

This adds unnecessary confusion with the Electoral Act definition adopted at 9(1)(b) which in time will develop its own jurisprudence in the Courts. That 9(1)(b) definition is all that is necessary - anymore and complexity will become overwhelming. There is no work for any other clause to do, and so (f) ought be removed.

11 Operating and maintenance costs that may be claimed

Permitted costs

11 (1) ADD NEW

Consider adding cleaning of, and cleaning supplies for electorate offices.

This is included in the Members of Parliament (Victoria) Guidelines No.02/2019 as follows: *4.5 (c) cleaning of, and cleaning supplies for, electorate offices, and cleaning of Members motor vehicles that have been supplied by Parliament.*

I assume this was removed in line with section 17 (2) in the Draft Guidelines that intends for maintenance of any equipment included as part of the standard electorate office fit out to be paid by the Parliament rather than using the EO&C Budget.

There may be an opportunity for an agreement to be reached between Members of Parliament and DPS around some aspects of the cleaning of electorate offices, however this would require further detailed discussions and agreement.

Until this occurs and any matters/concerns resolved, Members of Parliament should retain the ability to incur these expenses from their EO&C budget as well as the discretion to control who is permitted to enter into electorate offices after hours to undertake this work given the sensitive and confidential nature of documents and it should therefore not be a state-wide contracted service.

12 Communication costs that may be claimed

12 (1) (f) specialist service providers to assist with the publication and transmission of allowable communications, provided that the service provider is not engaged to assist with:

(i) content development, except where it relates to the design or visual presentation of the publication that does not involve developing the substance of the message;

**(ii) providing advice on communication strategy or engagement strategy; or
Example: Advice on which communications medium should be used to most effectively target specific audiences is prohibited.**

(iii) marketing services more broadly.

Example: Permitted specialist services would include website design, graphic design or advertisement production.

Consider whether this is necessary, in light of clause 9(1)(b) which would prohibit any such consulting spends being used for political expenditure purposes. In the modern world, where social media is the main form of communication with constituents, it seems questionable as to whether some level of consulting is not likely necessary to enable an MP to best communicate with their constituents.

Prohibited costs

12 (2) The EO&C Budget cannot be used for communication materials that imply Parliamentary support or endorsement of commercial organisations or other bodies.

Note: If a Member refers to an organisation or other body in a communication material, the presumption is that any support or endorsement that might be inferred is from the Member in their individual capacity, not the Parliament as a whole, unless it is clear that the Member seeks to imply the support or endorsement of the Parliament.

Note: If a Member publishes a communication within a publication owned by another entity (for example, in a newsletter published by a community group), or distributes material at a venue owned by another entity, this will not on its own imply Parliamentary support or endorsement for that other entity.

Can this be interpreted that you cannot imply support if you are including the Parliament of Victoria Crest but if you include a party logo, you would be able too?

For example: Could include a party logo and the words 'proudly supporting (insert club/organisation)' and it would be a compliant EO&C budget expense?

13 Authorship and identification requirements for communication materials

13 (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.

Does the use of a name or logo of a political party only relate to when using a title or can it be used in the body of the material also?

For example: Could a Labor Member of Parliament include a Labor Party logo and use Andrews Labor Government in the body of the material?

Can a Member of Parliament for one party include their party logo and reference another party in the body of their material?

For example: Could a Liberal/National Coalition Member of Parliament include a Liberal Party logo and reference the Andrews Labor Government in the body of their material?

Consider whether the answers to these questions should be included in the guidelines for clarity.

13 (4) When including the name or logo of their political party in communication materials, a Member must be aware of and comply with guidelines on the use of the parliamentary crest published by the Parliament, and any terms and conditions made by the relevant officers.

To clarify, as the Parliament of Victoria Crest Guidelines specifically says ‘the Crest should not be used with political logos’, Members will need to choose whether to include a party logo or the Crest.

If this is the case, consider whether this should be stated in the guidelines for clarity.

Also, consider specifying in the guidelines if you opt to use the Crest that you can still use the name/s of the party in whatever form you choose and depending on the answers to the questions in the examples in 13 (3) what combinations are permitted.

14 Joint communication

Consider whether additional guidance is required regarding content for joint publications.

For example: If a Legislative Council Member of Parliament and a Legislative Assembly Member of Parliament, who represent the same electorate, produce a joint publication, the content should be at their discretion, including how many times each Member of Parliament is mentioned and how many photos of each of them are included, provided the publication complies with the other guidelines.

15 Distribution of communication materials

(3) For the avoidance of doubt, a Member’s electorate is defined by the electoral boundary set by the Electoral Boundaries Commission in effect at the time the Member distributes the communication material.

Note: Communication materials cannot be distributed to prospective constituents before a redivision of electoral boundaries takes effect at the beginning of the next general election in accordance with the commencement provisions in the Electoral Boundaries Commission Act 1982 (Vic).

The existing practice has always allowed for the sitting Member of Parliament to be able to communicate the changes to the electoral boundaries once they have been finalised even though they do not take effect until the beginning of the next general election in

accordance with the commencement provisions in the *Electoral Boundaries Commission Act 1982* (Vic).

The changes resulting from the redistribution could be substantial and create a great deal of confusion for constituents and it is entirely reasonable that a Member of Parliament has the ability inform constituents about the nature of the change and what it means for them going forward.

Members of Parliament have an obligation to inform their constituents of what is happening in the local area and to oversee that responsibility in this instance, when it is directly relevant to the role they are elected to perform seems problematic.

Consideration should be given to reconsidering what communication could be permitted by Members of Parliament to any new areas included in the final electoral boundaries at the conclusion of a redistribution process and prior to them taking effect at the beginning of the next general election in accordance with the commencement provisions in the *Electoral Boundaries Commission Act 1982* (Vic).

Obviously, any communication would be in line with 9 (1) & (2) of the Draft Guidelines.

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.

Consider whether the guidelines should clarify if the provision for community groups to use a room within a Member's electorate office for a meeting includes a local branch of a political party.

Currently it is silent in the guidelines and leaves it open to interpretation.