

Chapter 2

Key issues and committee view

2.1 The Selection of Bills Committee Report asked the committee to 'interrogate the definitions of "parliamentary business" and "dominant purpose" to ensure community expectations are met.'¹ The committee received no submissions in relation to these issues.

Key issues

Definition of parliamentary business

2.2 As recommended by the Review, the bill includes the definition of parliamentary business. It provides that parliamentary business includes activities that fall within four core streams:

- Parliamentary duties: covering activities that relate directly to the member's role as a member of the Parliament;
- Electorate duties: covering activities that support or serve the member's constituents;
- Party political duties: covering activities that are connected with both their political party and their membership of the Parliament;
- Official duties: covering activities that relate to the member's role as an office holder or Minister of State.²

2.3 The specific activities which fall within these streams are to be set out in a legislative instrument made by the Minister. The instrument also allows the Minister to specify particular activities that are not parliamentary business.³

2.4 The Explanatory Memorandum (EM) explains the need for the instrument and why it would not be disallowable:

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 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.⁴

1 Senate Selection of Bills Committee, *Report No. 4 of 2017*, Appendix 4, http://www.aph.gov.au/~media/Senate/committee/selectionbills_ctte/reports/2017/rep0417.pdf?la=en (accessed 30 March 2017)

2 EM (PBR), p. 3.

3 EM (PBR), p. 3.

4 EM (PBR), p. 12.

Definition of dominant purpose

2.5 As recommended by the Review, the bill introduces a 'dominant purpose test' which members must apply when claiming expenses, allowances or other 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.⁵

2.6 The phrase 'dominant purpose' is undefined and attracts its ordinary meaning.⁶ The Review sought to clarify the meaning by:

...referring to its application in cases where a court must determine whether 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.*⁷

2.7 The EM goes on to say:

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.⁸

Other issues

House of Representatives

2.8 The Department of the House of Representatives (the department) outlined the services and facilities provided to support members in Canberra, including stationery, newspapers for some parliamentary office holders and the administration of the COMCAR shuttle, which are provided through the department's annual appropriation. In addition, the department:

...also administers some of the entitlements currently provided to Members under the Parliamentary Entitlements Act 1990 (the PE Act) and associated regulations - a postage allowance for use in Parliament House and the transfer of bulk papers from Parliament House to electorate offices. Under the postage allowance arrangements, Members may elect to draw \$450 per quarter for printing and communications from their office budget to redeem at the Parliament House Australia Post outlet.⁹

5 EM (PBR), p. 3.

6 EM (PBR), p. 22.

7 EM (PBR), p. 22.

8 EM (PBR), p. 22.

9 Department of the House of Representatives, *Submission 1*, p. 2.

2.9 The department indicated that it has a 'formal third party relationship with the Department of Finance (Finance) to draw down from the Official Public Account when needed to make these payments'.¹⁰ It was further noted that as the PBR (CTP) bill will repeal the PE Act:

Regulations made under the PBR Bill when enacted will determine whether the work expenses which Members can claim in future will be similar to the entitlements authorised currently under the PE Act. That may affect whether the department continues to administer postage allowance and bulk postage arrangements from Parliament House for Members. In any event, a new third party agreement will need to be struck with the Department of Finance under the PBR Act to enable the department to continue to have drawdown rights to provide for existing or new work expenses.¹¹

Association of Former Members of the Parliament of Australia

2.10 The Association of Former Members of the Parliament of Australia (the Association) raised concerns with amendments made to the *Remuneration Tribunal Act 1973* (RT Act) in 2011 and 2012 to 'de-link' increases in parliamentary base salary and other remuneration determined by the Remuneration Tribunal (Tribunal) from the indexation of pensions for former members under the *Parliamentary Contributory Superannuation Act 1948*.¹²

2.11 Finance provided background information on the 2011 and 2012 RT Act amendments and the related provisions in the PBR Bill.¹³

Committee view

2.12 The committee supports the intention of the bill to create a new framework for the use of public resources by members of Parliament in connection with parliamentary business. The committee agrees with streamlining the legislative and administrative framework for parliamentarians' work expenses which was one of the Review's key recommendations. The committee is also supportive of the increased transparency and accountability that will be facilitated by the simpler framework.

2.13 The committee notes that the Senate Standing Committee for the Scrutiny of Bills is yet to report on this bill but that the committee has regularly taken the view that removing parliamentary oversight, by making a legislative instrument exempt

10 Department of the House of Representatives, *Submission 1*, p. 2.

11 Department of the House of Representatives, *Submission 1*, pp 2–3.

12 *Submission 2*. Referring to paragraphs 188 to 193 of the EM which refer to proposed subclauses 45(3) to (5) of the PBR Bill which deal with determinations made by the Tribunal in relation to members' remuneration. .

13 *Submission 3*, pp 1-5.

from disallowance, is a serious matter and that a comprehensive justification for it should be provided.¹⁴

2.14 As noted earlier, the EM has provided an explanation for the non-disallowable legislative instrument, which will set out the specific activities which fall within the four streams of parliamentary business. However, the committee notes that this approach means that the 'central concept to the Bill' will not be subject to parliamentary scrutiny. As the committee received no evidence on this provision, the committee draws the provision to the attention of Senators and leaves the appropriateness of this to the Senate as a whole.

2.15 The bill indicates that it is compatible with human rights,¹⁵ however, the Parliamentary Joint Committee on Human Rights is also yet to report on the bill.

2.16 The committee notes that Finance intends to 'closely consult with relevant stakeholders, including the Parliamentary Departments on the aspects of administration currently undertaken by them and other Commonwealth Entities'.¹⁶

2.17 The committee acknowledges the independence of the Tribunal. It notes that the PBR (CTP) bill includes amendments to the RT Act to account for the new framework and indicates that the PBR bill may confer additional functions on the Tribunal.¹⁷ The committee does not accept the arguments made by the Association in its submission, noting they are based on amendments to the RT Act in 2011 and 2012. The committee notes advice from Finance that the PBR bill 'does not propose any substantive changes to the remuneration arrangements under the existing law and the government's policy in respect of the superannuation arrangements for parliamentarians remains consistent with the rationale behind the 2011 and 2012 amendments'.¹⁸

14 Senate Standing Committee for the Scrutiny of Bills, *Fourth report of 2016*, 16 March 2016, Australian Citizenship Amendment (Allegiance to Australia) Bill 2015, pp 271–274; Senate Standing Committee for the Scrutiny of Bills, *Tenth report of 2014*, 27 August 2014, Public Governance, Performance and Accountability Amendment Bill 2014, p. 467; Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 9 of 2010*, 17 November 2010, Radiocommunications Amendment Bill 2010, pp 11–12.

15 EM (PBR), p. 51.

16 *Submission 3*, p. 1.

17 EM (PBR (CTR)), p. 12.

18 *Submission 3*, p. 5. In particular, clause 45 of the bill retains equivalents of subsections 7(1A), (1B), (1C) and (2A) of the Remuneration Tribunal Act which were inserted into that Act as part of the 2011 and 2012 amendments.

Recommendation 1

2.18 The committee recommends that the Senate pass the bill.

Senator James Paterson

Chair

