

Victorian Independent Remuneration Tribunal makes Members of Parliament (Victoria) Guidelines No. 02/2019

On 20 December 2019, the Victorian Independent Remuneration Tribunal (Tribunal) made the Members of Parliament (Victoria) Guidelines No. 02/2019 (Guidelines). These Guidelines take effect on 23 December 2019, and replace the Members of Parliament (Victoria) Guidelines No. 01/2019.

Context

The Tribunal made the Members of Parliament (Victoria) Determination No. 01/2019 (Determination) and the Members of Parliament (Victoria) Guidelines No. 01/2019 on 16 September 2019. The Tribunal received letters from the Special Minister of State and the Clerks of the Parliament of Victoria requesting it clarify some aspects of the Guidelines.

In November 2019, the Tribunal published a Discussion Paper that set out:

- a) changes the Tribunal was considering making to the Guidelines having regard to the information before it in relation to the matters on which clarification was sought, and
- b) the matters where the Tribunal required further information in order to decide whether and how to amend the existing Guidelines.

The Tribunal invited all persons and bodies to provide feedback and additional information relating to the Discussion Paper and to suggest additional changes for the Tribunal's consideration. The closing date for making a written submission to the Tribunal was 6 December 2019.

Regulatory framework

As part of its deliberations on the requested clarifications to the Guidelines, the Tribunal gave consideration to the broader regulatory framework that the Guidelines sit within.

The Guidelines are part of a monitoring, compliance and enforcement (MCE) scheme that was introduced into the *Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic) (PSAS Act) on 16 September 2019. The MCE is designed to ensure that public resources made available to Members of Parliament (MPs) are used responsibly, transparently and in accordance with legal obligations.

The MCE scheme applies to the Electorate Office and Communications Budget (EO&C Budget) and to work-related parliamentary allowances provided to MPs, which include the:

- parliamentary accommodation sitting allowance
- travel allowance
- commercial transport allowance
- international travel allowance.

The PSAS Act provides a variety of safeguards to ensure the proper use of these resources by MPs, including (among others):

- a value for money test — an MP must provide value for money in using their work-related parliamentary allowances and EO&C Budget by ensuring the costs incurred are reasonable and proportionate to the costs of performing their public duties (s.9A)
- a dominant purpose test — an MP must not claim or use a work-related parliamentary allowance or their EO&C Budget unless it is claimed for the dominant purpose of performing their public duties (s.9B(1))
- oversight and approval requirements — claims for work-related parliamentary allowances and the EO&C Budget must be approved by the relevant Officer (relevant Clerk in relation to work-related parliamentary allowances or the Secretary of the Department of Parliamentary Services in relation to the EO&C Budget) and MPs may appeal determinations by the relevant Officers to the Compliance Officer (ss.9E to 9H)

- public reporting requirements — the relevant Officers must publish information about allowances and the EO&C Budget provided to MPs on a quarterly basis and in the annual report of the Parliament (ss.9I and 9J)
- financial penalties for non-compliance — if a relevant Officer (or the Compliance Officer on appeal) determines that an MP has misused a work-related parliamentary allowance or the EO&C Budget, the MP is required to repay the amount that was misused together with a 25 per cent penalty (ss.9G and 9H).

In the Discussion Paper, the Tribunal asked for feedback on whether additional safeguards should be introduced for the international travel allowance and the commercial transport allowance. The Clerks of the Parliament of Victoria submission stated that additional safeguards for the international travel allowance are not necessary, in light of the existing safeguards in the PSAS Act.

The Tribunal will continue to monitor and assess the need for additional safeguards as further information becomes available about MPs' use of allowances.

Changes to Guidelines

Having considered the feedback received, the Tribunal has made the following changes to the Guidelines.

1. Definition of parliamentary business

Shadow Ministers and Parliamentary Secretaries have been added to the list of office holders in the definition of parliamentary business (paragraph 3.2 of the Guidelines).

The Tribunal was persuaded by arguments raised in submissions that this change will recognise the additional duties and travel that holders of these offices are required to undertake, and support the effectiveness of the Opposition.

2. Clarification of how the travelling allowance rate is calculated

The Guidelines have been 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 6.1).

The Tribunal notes this change will help the Clerks of the Parliament of Victoria to administer the travel allowance and does not change the intended operation of the Guidelines.

3. Change to how the threshold for claiming the travel allowance is determined

MPs may now 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 6.2).

The Tribunal made this change based on feedback that the actual distance that an MP may be required to travel for parliamentary or electorate business may differ significantly depending on the available roads. The Tribunal also notes that this change will improve consistency between the travel allowance, the parliamentary accommodation sitting allowance and the commercial transport allowance.

4. Travel allowance may be claimed when there is a break of less than 10 hours between parliamentary sittings

MPs may now 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 6.3).

The Tribunal was persuaded by a submission that stated that this change will improve occupational health and safety for MPs. The Tribunal notes that the parliamentary duties of MPs occasionally require them to work late into the night and to commence early the next day. For example, this may occur when a particularly contentious or complex issue is being debated in the Parliament. In comparison, non-executive employees of the Parliament of Victoria are, wherever possible, entitled to a 10-hour break between the cessation of duty on one day and the recommencement of duty on the same or following day.

5. Use of the international travel allowance for electorate business

MPs may now claim the international travel allowance for both parliamentary business and electorate business outside of Australia (paragraph 8.1).

The Tribunal was persuaded by submissions that stated the change will support MPs to undertake electorate business overseas which is within the regulatory framework.

In its Discussion Paper, the Tribunal sought further information about whether international travel and transport costs for electorate business are more suitably claimed from the electorate allowance rather than the international travel allowance.

The Special Minister of State's submission stated that requiring MPs to use the electorate allowance for international travel would create confusion about the application of the MCE scheme (discussed above) to international travel. The Tribunal notes that while the MCE scheme applies to the international travel allowance, it does not apply to the electorate allowance.

Having considered the submissions received, the Tribunal considers it preferable that MPs claim international travel for electorate business using the international travel allowance. This will allow the protections in the MCE scheme to apply and provide greater transparency about the travel that MPs may undertake as part of their electorate business.

6. Limits on claims for the commercial transport allowance for parliamentary and electorate business

The limits on how much MPs can claim per financial year under the commercial transport allowance for each of parliamentary business and electorate business

have been removed. The overall limit in the Tribunal's Determination will continue to apply (paragraph 7).

The Tribunal was persuaded to make this change by feedback that it would support MPs to carry out their electorate business, for example, investigating policy, program or service initiatives.

In its Discussion Paper, the Tribunal asked for further information about whether transport costs for electorate business are more suitably claimed from the electorate allowance rather than the commercial transport allowance.

The Tribunal notes feedback that the MCE scheme applies to the commercial transport allowance and that it does not apply to the electorate allowance.

Having considered the submissions received, the Tribunal considers it preferable that MPs claim transport costs for electorate business using the commercial transport allowance. As discussed above, this will allow for the protections in the MCE scheme to apply to these claims and provide greater transparency about the travel that MPs may undertake as part of their electorate business.

7. Description of the purpose of the EO&C Budget

The description of the purpose of the EO&C Budget in the Guidelines has been updated to align with section 7F(2) of the PSAS Act (paragraph 4.1). This ensures consistency between the wording of the Guidelines and the PSAS Act and does not change the intended operation of the Guidelines.

8. Use of the EO&C Budget for travel

The Guidelines now clarify that the EO&C Budget cannot be used in respect of an MP's travel costs or transport costs (paragraph 4.18).

The Tribunal notes that prior to 16 September 2019, the purpose of the EO&C Budget was not specified in legislation, and rules on its expenditure were provided in the Parliament of Victoria's Members Guide. These rules permitted MPs to use up to \$10,000 of the EO&C Budget to meet the costs of airfares and international accommodation. On 16 September 2019, the purpose of the EO&C Budget was specified in legislation. Section 7F(2) of the PSAS Act now provides that the EO&C Budget is available to an MP to—

- a) fund the operating costs and maintenance of their electorate office; and

- b) communicate with their electorate in relation to the performance of their public duties.

The Tribunal considers that the use of the EO&C Budget for MPs to claim travel costs or transport costs would be inconsistent with s.7F(2) of the PSAS Act. This does not change the intended operation of the Guidelines.

9. Distance thresholds for the parliamentary accommodation sitting allowance and commercial transport allowance

The distance thresholds for claiming the parliamentary accommodation sitting allowance and commercial transport allowance have been updated to be based on the shortest practicable route, instead of the shortest route (paragraphs 5.1(c)(ii) and 7.2(b)).

The Tribunal made this change based on feedback that the shortest route by road between two locations may not be one that MPs can practicably use (e.g. requires driving on unsealed roads).

Other matters

The Tribunal expresses its appreciation to all those who made a submission.

The letters and submissions received by the Tribunal suggested several other clarifications to the Guidelines, including:

- reducing the distance threshold for claiming the travel allowance for electorate business to 28km
- adding other offices to the list of office holders in the definition of parliamentary business
- permitting MPs to use the EO&C Budget for a broader range of communications
- clarifying the timing of when MPs can claim the international travel allowance and when they are required to submit an international travel report.

The submission from the Clerks of the Parliament of Victoria recommended clarifications in relation to the international travel report are best carried out through a change to the *Parliamentary Salaries, Allowances and Superannuation Regulations 2019* (Vic). The Tribunal will consult further with stakeholders on this matter.

Having regard to the information currently before it, the Tribunal is not satisfied that it should further amend the Guidelines in the manner sought at this stage. However, the Tribunal will consider these matters as part of future reviews of the Guidelines, including a broader review of the Guidelines that the Tribunal intends to commence in 2020.

The Guidelines can be viewed on the Tribunal's website,
<https://www.vic.gov.au/victorian-independent-remuneration-tribunal>.

For further information please contact the Tribunal at
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