



Australian Government

Department of the Prime Minister and Cabinet

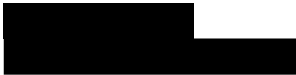
# Submission to the Parliamentary Business Resources Act 2017 and Independent Parliamentary Expenses Authority Act 2017 Review

This submission has been prepared by the Department of the Prime Minister and Cabinet (PM&C).

PM&C provides high quality advice and support to the Prime Minister, the Cabinet, Portfolio Ministers and Assistant Ministers to achieve a coordinated and innovative approach to the development and implementation of Government policies. PM&C coordinates and develops policy across the Government in economic, domestic and international issues and public service stewardship.

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## Introduction

This submission provides advice as it relates to the experiences of the Department of the Prime Minister and Cabinet (PM&C) in applying the Parliamentary Business Resources (PBR) Framework and working with other Australian Government agencies to ensure efficiency and consistency in its administration.

This submission also identifies where there may be opportunities to further improve the efficiency of the administration, transparency and accountability of the use of parliamentary business resources.

## Improvements under the PBR Act and IPEA Act

The *Parliamentary Business Resources Act 2017* and PBR Framework is a significant improvement upon the previous *Parliamentary Entitlements Act 1990*. In a majority of circumstances, it has provided greater clarity with regard to the legislative authority for decision making, as well as flexibility in providing accurate and appropriate advice on expenses to current and former parliamentarians.

Similarly, the passage of the *Independent Parliamentary Expenses Authority (IPEA) Act 2017* and the establishment of IPEA has provided a centralised function for parliamentarians, their staff and former parliamentarians to receive authoritative advice on their travel expenses and allowances. PM&C considers this has improved the clarity, transparency and accountability of parliamentary expenses which were key objectives of the IPEA reforms.

It is anticipated that further enhancements to IPEA's governance and business capabilities, including the completion of the Parliamentary Expenses Management System (PEMS), will assist to improve its operational efficiency over time. As IPEA's capabilities increase, there may be opportunities for its focus to be expanded beyond travel expenses to include other work expenses and functions governed by the PBR Framework. This would assist to further centralise the administration of parliamentary business resources by reducing the number of agencies involved, supporting the provision of more streamlined and consistent advice to parliamentarians, and enabling better integrated and accessible reporting.

Recent findings made by the Australian National Audit Office (ANAO) Performance Audit Report No.33 of 2020-21 into the [\*Administration of Parliamentary Expenses by the Independent Parliamentary Expenses Authority\*](#) consider that IPEA's administration of parliamentary expenses has been largely effective and has improved the transparency and accountability of parliamentary expenses. IPEA agreed to all four of the ANAO's recommendations to implement strategies to develop risk management and assurance frameworks, and further improve the reliability of its performance measurement approach. Noting the promise of these early findings regarding IPEA's effectiveness, coupled with the steps being taken to address these recommendations, it is anticipated IPEA will be well placed to further expand its role in administering parliamentary business resources into the future.

## Former Prime Ministers

Resources are provided to former Prime Ministers in recognition of the service they have given to the nation and to enable them to meet continuing commitments arising from their former duties.

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Prior to the introduction of the *Parliamentary Business Resources (former Prime Ministers) Determination 2017*, there was no authorising head of power establishing or regulating the arrangements. Instead, by convention, arrangements were set by the incoming Prime Minister via letter. The types of resources granted were based on a standard set of arrangements which developed over time.

Under the Determination, the current Prime Minister is still afforded the power to determine, in writing, the resources provided to the former Prime Minister, based on precedent. As a legislative instrument, the Determination provides greater transparency and accountability regarding the types of resources provided, in addition to setting clearer terms governing the conditions under which they are accessed. It achieves this by:

- enabling easy comparison of the consistency between the packages of resources provided to different former Prime Ministers and their spouses
- specifying that a former Prime Minister should only claim expenses once as relates to an activity, even if they are entitled to claim an equivalent expense under another enactment for the same activity
- specifying the definition of ‘official business’ and limiting some resources to be accessed for this demonstrated purpose only, and
- explicitly requiring the application of the value for money principle when accessing resources.

Not all resources are provided to former Prime Ministers for the purpose of official business. These generally have included access to a private-plated vehicle, the option to retain a driver on staff, and security assessment and enhancement of their principal residence. Based on past practice and as has continued under the Determination, former Prime Ministers (and their spouses, where relevant) have access to these resources indefinitely.

Over time there has been public debate on the appropriateness of maintaining these arrangements, particularly in scenarios where a significant period of time has passed since the former Prime Minister held office. This scrutiny also extends to resources made available to their spouses, particularly where they are separated, divorced or widowed from the former Prime Minister.

For example, equipment such as fixed phone lines and security systems installed in a former Prime Minister’s principal residence generally require ongoing maintenance over the period of their use, as does the running and maintenance costs of vehicles. At an operational level, security services (including assessment, installation etc.) are generally managed by the Department of Home Affairs and the Australian Federal Police.

The Determination is silent on the ability for these government agencies to make decisions related to ongoing security upgrades and maintenance for this fixed equipment, creating uncertainty as to whether this is legitimately covered by the PBR Framework. This includes situations where the residence in which the fixed equipment was installed is no longer the primary residence of the former Prime Minister. This raises questions regarding the resources made available to spouses, noting that these are provided by virtue of their being the spouse of a former Prime Minister. Under current

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arrangements there is no legislative guidance outlining grounds to withdraw these resources in the event of separation, divorce or death of the former Prime Minister. Additionally, the number of agencies involved in the administration of resources has also added to the uncertainty and complexity with regard to how they are managed over the longer term.

While instating legislative authority via the Determination has improved the transparency and consistency of these arrangements, there are benefits to be realised in considering how the Determination could be further harnessed to improve the operational administration of resources over the longer term. This could include the consideration of standard criteria and processes by which the resources may be reviewed, revised and/or withdrawn by the Government.

For example, the Determination could contemplate a specified period of time within which resources may be accessed, including listing specific events (e.g. separation, divorce from a spouse or death of a former Prime Minister) which may trigger a need to review arrangements. Similarly, it could require that the Government review resources after a specified period of time (e.g. ten years after leaving office) with a view to assessing former Prime Ministers' changing circumstances, including the level of support required to undertake official business, as well as changes to any personal matters such as family or primary residence arrangements.

Options such as these would provide a legal requirement and mechanism for the Government to work constructively with former Prime Ministers and their spouses on an ongoing basis to monitor and assess their access to resources over the longer term, further enhancing the transparency and accountability of their administration.

## Former Governors-General

The establishment of resources made available to former Governors-General (though not the pension, which is provided for in the *Governor-General Act 1974*) occurs through a letter from the Prime Minister of the day. The resources are based on a standard set of arrangements, similar to those afforded to former Prime Ministers, which has developed over time. These are then administered by PM&C in direct liaison with former Governors-General. As is the case for former Prime Ministers, these resources are intended to assist former Governors-General to meet commitments that arise from having held the office.

The arrangements for former Prime Ministers under section 6 of the *Parliamentary Business Resources (former Prime Ministers) Determination 2017* could feasibly be drawn on to establish an arrangement for former Governors-General as there are many similarities relating to entitlements. For example, by convention, some of the resources may only be accessed for the purposes of official business, that is, business undertaken in their capacity as a former Governor-General. This may include attending events at the request of the Government and events connected with organisations.

Previously, travel expenditure of former Governors-General was tabled in the Parliament on a six monthly basis under a former Prime Minister's decision. Where possible, former Governors-General are encouraged to reduce the cost of their air travel for effective and efficiency purposes (i.e. use frequent

flyer points where appropriate). Outside of these arrangements, there is no authorising head of power or legislative requirement governing these resources.

PM&C considers that the governance of resources made available to former Governors-General stands to be enhanced by aligning it with the process followed for former Prime Ministers. There are some inconsistencies with the use of staff as drivers, available to former Prime Ministers but not clearly set out for former Governors-General. Careful consideration would need to be given to whether this is best achieved via amendments to the *Governor-General Act 1974* or legislative instrument under the *Parliamentary Business Resources Act 2017*. As was done for former Prime Ministers, it may be appropriate to consider grandfathering the resources provided to all active former Governors-General to ensure a degree of consistency in the application of any new governance arrangements.

As has already been outlined in relation to former Prime Ministers, a legislative authority governing the resources made available to former Governors-General may also stand to benefit from contemplating a specified period of time within which they may be accessed. Alternatively or additionally, it could also require that the Government review or consult former Governors-General on these arrangements after a specified period of time with a view to assessing their appropriateness as former Governors-General circumstances change.

Further, establishing standard criteria and a process for assessing the ongoing need for resources, and mechanism for withdrawing them, would set clear expectations for former Governors-General and the Government, in addition to being in keeping with contemporary community expectations.

## Resources for former Parliamentarians and non-members

While the *Parliamentary Business Resources Act 2017* is in place to cover current parliamentarians, there may be merit in considering how it could also apply to former parliamentarians or other persons. This would not be unprecedented, noting resources for former Prime Ministers are already dealt with under the PBR Framework.

On occasion, former parliamentarians or other persons may be asked to undertake business on behalf, or as a representative of the Government, requiring travel and other related expenses. However, there is currently no legislative authority in place to enable payment of these expenses.

For example, under current arrangements, the Department of Defence manages the *Guidelines for the use of Special Purpose Aircraft (SPA)*. The Guidelines provide that the Prime Minister is able to approve the use of a SPA for international travel by a person who is not an ‘entitled person’ (i.e. a current office-holder) in circumstances or emergencies where the Prime Minister considers it justified. Former members of Parliament, including those undertaking official government business, are not explicitly listed in the Guidelines.

The PBR Framework could be further leveraged to provide governance for these exceptional scenarios in a number of ways. For example, the Guidelines governing use of the SPA could be included in the regulations, including the discretionary power for the Prime Minister to allocate its use for a person who is not an “entitled person”. Alternatively, the PBR Framework could make provisions to extend this

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discretionary power further, enabling the Prime Minister to allocate to non-members access to all business resources that are generally made available to Parliamentarians. This would be provided on the basis that it is appropriate for the specific purpose of the non-member undertaking government business, ensuring that the principles of the framework are applied when accessing and reporting on the use of these resources.

## Ministerial travel

Under the *Parliamentary Business Resources Regulations 2017*, international travel must be approved by the Prime Minister in order for related resources to be prescribed. The approval process is managed by PM&C in direct liaison with the Prime Minister's Office and IPEA.

While infrequent, there have been occasions when employees under the *Members of Parliament (Staff) Act 1984* (MoPS Act) have needed to travel independently of the travelling office-holder (e.g. the Prime Minister or Minister) for the purpose of undertaking official business on their behalf. The Regulations do not currently provide for MoPS employees to travel separately from their employing member, noting that access to resources is prescribed by virtue of them being a staff member of the office-holder when they are travelling on official business.

In the past, these occasions have been managed under the MoPS Act, relying on provisions which enable the Prime Minister to direct an employee. This is not a viable long-term arrangement, noting that the authority doesn't efficiently extend to cover the payment of incurred expenses, including the application of principles, and the transparency and accountability that comes with the application of the PBR Framework.

## Intersection with Caretaker Guidance

PM&C is responsible for the *Guidance on Caretaker Conventions* (November 2018) which provides guidance regarding resources for Ministers during the caretaker period, including those administered by IPEA and the Department of Finance.

The Guidance also specifically deals with claims for travel allowance, as follows:

*7.2.5 It has been a longstanding convention that Ministers do not claim travelling allowance from the day of the Prime Minister's Campaign launch to the day after polling day. The only exceptions are where Ministers travel for urgent Cabinet meetings or for the dominant purpose of their official duties, as defined in the Parliamentary Business Resources Act 2017, and prescribed in the Parliamentary Business Resources (Parliamentary Business) Determination 2017.*

PM&C considers this convention is now superseded by the *Parliamentary Business Resources Act 2017*, noting that the Act prescribes that travel by all parliamentarians, regardless of the timing, must meet the PBR Framework's overarching principles including the dominant purpose test and value for money. Further, the Act does not place any restrictions on parliamentarians' travel or travel allowance claims

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during election periods. The Act also provides for greater transparency and accountability in the reporting of these arrangements which is not possible under the Guidance.

## Prime Minister's overseas travel

While the establishment of the *Independent Parliamentary Expenses Authority (IPEA) Act 2017* has been effective at providing clarity and guidance for costs associated with the Prime Minister's international travel, there are instances where these arrangements could be improved, particularly in light of challenges experienced as a result of the COVID-19 pandemic

The pandemic has given cause to review certain existing arrangements that have proven relatively inflexible when faced with unforeseen circumstances.

For example, section 5(2) of the *Independent Parliamentary Expenses Authority (IPEA) Act 2017* outlines claimable travel expenses related to the cost of vaccinations and medical supplies essential for travel overseas, as well as the cost of medical services received in the period covered by the 'official itinerary'. As testing and quarantine arrangements fell outside of the 'official itinerary' for the Prime Minister's recent overseas trips, there was lack of clarity as to who would cover the costs of these COVID-related expenses.

To avoid any doubt in the future, PM&C suggests consideration be given to extending the definition to cover medical costs associated with the visit as an extension of the official itinerary. This of course should be considered in line with the principles outlined in the PBR framework. This flexibility will ensure there is scope to cover reasonable costs in any future unforeseen circumstances.

## Media transport

Section 44 of the *Parliamentary Business Resources Regulations 2017* provides for a range of expenses for resources reasonably required for the conduct of the Prime Minister's official duties during international travel, including hiring office space, engaging interpreters and hosting official hospitality. One expense that has presented as an issue recently is the cost of ground transport for travelling media. This challenge has become more apparent with the availability of the new, larger KC30 Government Transport and Communication jet, allowing for larger media contingents to travel with the Prime Minister. Given the tight nature of overseas programs, with each event scheduled to the minute across various locations, it is impractical for media to travel independently of the Prime Minister in private transport. Having media travel as part of secure motorcades reduces the risk of missing key events or being separated for large parts of the program. PM&C recommends consideration be given to extending the meaning of international travel expenses in relation to transport under section 35 of the *Parliamentary Business Resources Regulations 2017* to include ground transport costs for accompanying media.



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## Transition of a new Government / Minister

Ministers are provided with support from several agencies in the Commonwealth including the Department of Finance, Department of Parliamentary Services and individual portfolio departments. One aspect of these support arrangements is the provision of relief staff for personal employees of the Minister during his or her term, where the period of an employee's absence is less than 12 weeks.

While not specified, these arrangements are often met at a time of a change in government or Minister (generally following an election) and are funded by the portfolio department. The presence of a senior departmental officer as a temporary adviser in a new office can ensure the continuity of effective government. This officer can deliver policy advice and guidance during the early stages of transition while the Minister can establish his or her office and recruit ministerial staff.

While these arrangements help ensure the continuity of government (both through relief of vacancy and transition of new government), it is important to be aware that there is the possibility of these arrangements being applied unevenly by maintaining these 'relief' staff for extended periods of time. Establishing a regulated timeframe that a departmental officer can work in a Ministerial office would set clear expectations for both the Ministerial office and the portfolio department.

In relation to support provided to Ministers during transition, it should be noted that there is not one single source of guidance when it comes to creating an office (or decommissioning one, for that matter). While this is mainly managed by the relevant portfolio department, consideration could be given to having a central coordination point to ensure consistency in advice and avoid any unnecessary confusion.