

ANNUAL REPORT AND DETERMINATION OF ADDITIONAL
ENTITLEMENTS FOR MEMBERS OF THE PARLIAMENT OF NEW
SOUTH WALES

by the

PARLIAMENTARY REMUNERATION TRIBUNAL

pursuant to the

Parliamentary Remuneration Act 1989

4 DECEMBER 2000

PARLIAMENTARY REMUNERATION ACT 1989
REPORT PURSUANT TO SECTION 13(1) OF THE ACT

INTRODUCTION

On 13 November 2000 the Parliamentary Remuneration Tribunal (“the Tribunal”) issued a draft determination as to the provision of additional entitlements for Members of the Parliament of New South Wales. The draft determination incorporated proposed additional entitlements arising from the annual determination for the year 2000. The draft determination had the effect of varying the initial determination made by the Tribunal on 20 December 1999. The Statement which accompanied the draft determination was as follows:

Section 11 of the Parliamentary Remuneration Tribunal Act 1989 (“the Act”) prescribes that the Parliamentary Remuneration Tribunal (“the Tribunal”) shall make an annual determination as regards to additional entitlements for Members and recognised office holders (as defined under the Act) on or before 1 June in each calendar or on such later date as the President of the Industrial Relations Commission of NSW determines.

Section 13 (1) of the Act requires that the Tribunal make a report to the President of the Industrial Relations Commission of NSW for each determination made by the Tribunal. The President is then required as soon as practicable after receipt of the report to forward it to the Minister (see section 13(2)).

On 6 March 2000 the Tribunal commenced proceedings in relation to the annual determination required for the year 2000. After preliminary hearings it was determined that an extension should be sought for the making of the annual determination. That extension was granted by the President of the Industrial Relations Commission of NSW pursuant to section 11(2) of the Act on 17 April 2000. The time for the making of the annual determination was extended to 1 August 2000.

Following the commencement of hearings in relation to the annual determination, and having regard to the nature of the submissions made by persons and groups interested in the making of the annual determination, a further extension of time was sought from the President of the Industrial Relations Commission of NSW. The President determined to further extend the time for the making of the annual determination to the period “on or before 4 December 2000”. This determination was made on 31 July 2000 and gazetted in the NSW Government Gazette on 4 August 2000.

The submissions received by the Tribunal during hearings concerning the annual determination were extensive and wide ranging. The unusual nature of submissions received during the annual determination proceedings arose partially because the proceedings concerned, in substance, a review of the initial determination of additional entitlements for members of the Parliament of New South Wales made by the Tribunal on 20 December 1999 (“the initial determination”). Additionally, the proceedings involved an unusually complex array of issues. The parties to the proceeding debated a range of legal issues as to the construction of the Act and other issues concerning the legal obligations of Members and the financial management of such entitlements. In part, the considerations involved an opinion expressed by the Crown Solicitor which had been taken into account in the Tribunal reaching its initial determination. The Tribunal was also provided with actual drafts of the annual

determination for the Tribunal's consideration. Suggestions were also made as to legislative reform (although in all cases as alternative submissions).

During the course of the proceedings it was argued on behalf of a number of persons or groups appearing before the Tribunal that it would be desirable for the Tribunal given the complexities of the issues raised before it, to issue a draft determination which may be the subject of further submissions by those persons participating in the hearings before the Tribunal.

Furthermore, the Tribunal advised during the course of the hearing that it may seek a further opinion from the Crown Solicitor as to the legal issues raised and that, in such an event, it would permit a further opportunity for submissions in the light of any opinion provided by the Crown Solicitor.

Having considered the submissions raised by persons or groups before the Tribunal in the course of the annual determination hearings, and having now received a further opinion from the Crown Solicitor, it is appropriate, in the view of the Tribunal, that a draft determination be issued so that further submissions may be received from those persons or groups who made submissions during the course of the annual determination proceedings. It is also appropriate that the Tribunal provide its preliminary observations as to the submissions received by it, and an opportunity to make submissions regarding any further opinion received from the Crown Solicitor. The Tribunal's preliminary observations are directed to the preparation of a report in due course which would accompany the annual determination (pursuant to section 13 (1) of the Act).

The Tribunal has decided to adopt this course for the following reasons:

1. It has had regard to the common position of those appearing before it as to the desirability of such an approach;
2. The Tribunal may well be assisted by further submissions having regard to the scope and complexities of the issues raised in the proceedings;
3. The Tribunal would be particularly assisted by submissions as to the detail of the draft determination and legal issues raised in the proceedings. It is not intended that the further submissions received would be merely by way of repetition of previous submissions so that the efficiency of the conduct of the proceedings would not be diminished by adopting this course.
4. As a matter of fairness it is appropriate that the Tribunal give an opportunity to the parties to make any further submissions they may wish with respect to the further opinion received from the Crown Solicitor (which opinion is set out, in terms, in this statement) and the Tribunal's preliminary observations with respect to the same.

The following sections of this statement shall contain preliminary observations by the Tribunal. The statement has attached to it a draft determination. Submissions are invited from those persons who made written or oral submissions to the Tribunal earlier in these proceedings and the Public Service Association as to those matters raised in its correspondence to the Tribunal dated 7 March 2000. Those submissions are to be received by the Executive Officer for the Tribunal by **4pm Friday 24 November 2000**. Submissions will not be accepted after this date unless special grounds are established for an extension of time for the making of submissions. It is emphasised that the further submissions should, so far as possible, avoid repetition of earlier submissions made.

The Tribunal would be particularly interested in receiving submissions as to:

1. The further opinion of the Crown Solicitor;
2. Particular points of concern as to the proposed terms of the draft determination. In this later case it will be necessary to identify the particular provision to which the submission

is directed and a statement of reasons for the proposed change expressed in succinct terms. In the case of the Public Service Association ("PSA"), the submissions should be limited to the issues raised in its correspondence in the context of the draft determination. In other words, the PSA submission should be directed to the proposed terms of the draft determination with respect to the issues raised in it.

PRELIMINARY OBSERVATIONS OF THE TRIBUNAL AS TO ANY ANNUAL DETERMINATION FOR THE YEAR 2000 (AND THE REPORT AS TO SUCH DETERMINATIONS)

The initial determination

The initial determination introduced significant changes to the additional entitlements afforded Members and recognised office holders including changes which fundamentally altered the conditions for the provision of such additional entitlements. In some significant areas the determination was made having regard to opinions received from the Crown Solicitor as to the operation of the Act.

The initial determination was made pursuant to section 3 of the Parliamentary Remuneration Further Amendment Act 1998. It took effect on and from 1 January 2000. However, on 7 February 2000, the Hon Bob Carr MP Premier of NSW directed, pursuant to section 12(1) of the Act, that the Tribunal make a special determination in relation to the date of implementation of the initial determination. Having regard to the scope of the initial determination, the various financial and budgetary considerations relating to it and the intended review of it within the annual determination process the Tribunal determined that the operation of the initial determination would be varied. As a result of that special determination (which was made on 11 February 2000) the date of operation of the ID was varied to 1 July 2000, subject to any variation in consequence of the year 2000 annual determination.

During the course of the annual determination proceedings the Tribunal advised that it intended to determine, as part of the annual determination process, that the initial determination's date of operation would be varied to coincide with the date of operation of the annual determination. In consequence, the Members and recognised office holders have continued to receive the additional entitlements determined in accordance with the 1999 annual determination. This approach is entirely consistent, in any event, with the operation of section 11(3) of the Act.

The Tribunal will now turn to consider the principal submissions made by persons and groups made during the course of the annual determination proceedings and the preliminary views of the Tribunal in relation to those submissions (which preliminary reviews are reflected in the draft determination attached to this statement).

Evidence and Submissions presented to the Tribunal.

The Tribunal had the opportunity to read the statements of Members and also hear oral testimony given by some Members. The evidence did not become part of the formal record of the Tribunal but has been taken into account in the preliminary observations in the statement and the draft determination (and will be taken into account in the Tribunal's final report).

It should be noted the submissions were received both in writing and orally. The following sections of this Statement refer to some points of those submissions, as would assist the discussions of the issues raised, but are not intended to exhaustively summarise the submissions. All submissions have been taken into account in the preliminary observations expressed in this statement and draft determination (and will be taken into account in the Tribunal's final report).

Broadly, the submissions received as part of the annual determination proceeding sought changes to the initial determination in three broad areas:

1. The provisions concerning financial management provisions and accountability;

2. The provisions relating to the repayment of the unspent portion of allowances;
3. Other miscellaneous changes including submissions seeking increases in the rates determined for the various entitlements as well as an expansion of entitlements to cover newer aspects of parliamentary duties.

Changes in the financial management provisions (ie less rigid provisions)

The initial determination provided for an electoral allowance and a Sydney allowance. Further, the initial determination provided Members with an allocation referred to as “additional entitlements in the nature of fixed allocations”. This allocation shall hereafter be referred to as the “additional entitlements account”. This account was divided into four broad sub-accounts ie communications (electronic and non electronic), transport and printing and stationery. A monetary amount was allocated to each entitlement, and Members were restricted to drawing upon each sub-account in a manner consistent with the designated purpose of that account. The initial determination precluded the transfer of funds between allocations. Further, no transfer was permitted from the electoral allowance to subsidise the items contained in the additional entitlements accounts.

Whilst the Tribunal accepted that greater flexibility was desirable from the previous system of allowances, but considered that it should not erect a system of accounts which essentially established a global budget with respect to any item in the additional entitlements account.

The adoption of this approach was predicated upon advices which had been received from the Crown Solicitor by the Tribunal (as previously constituted) concerning an earlier draft determination. This earlier draft determination was discussed at length in the initial determination. That discussion will not be repeated here, but has been considered in the preliminary observations.

The opinions earlier expressed by the Crown Solicitor as to the earlier draft determination were consolidated into a single document constituting a summary of the advices received by the Tribunal from that source (and considered in preparing the initial determination) and distributed to persons and groups desiring to make submissions. The summary was as follows:

In my advice I expressed concern that in determining amounts to be divided into two sub-accounts having the features of the then draft Determination there would be a failure to “determine” additional entitlements within the meaning of s.9(1)(a) of the Parliamentary Remuneration Act 1989 (“the Act”) and a failure to “fix” the classes, terms and other incidents of additional entitlements within the meaning of s.10(2).

In the case of the capital sub-account it seemed a member did not acquire a specific entitlement. An allocation of a global sum was to be made other than by the Tribunal between line items and that allocation could be varied. It was not said on what basis a member could draw against a line item.

In the case of the operating sub-account a Schedule was to set out the apportionment of a global sum between accounts for individual members and the member was to be free to allocate the sum between entitlements.

Essentially, it was the extent to which allocation of the global sums and the incidents of the additional entitlements were left to the discretion of others which caused my concern that there would be a failure by the Tribunal to determine the additional entitlements.

That such would not be a determination as intended by the Act appeared from the Second Reading speech of 23 June 1998 for the Parliamentary Remuneration Amendment Bill 1998 and in particular, the following comments by Mr Martin on behalf of Premier Carr:

“The main purpose of the bill is to ensure that an independent tribunal makes final and binding entitlements at arms length from the beneficiaries.”

“It will provide for a single independent and final authority on parliamentary entitlements, and will allow the creation of a single clear set of rules for the application of these entitlements.”

“This bill removes any control by members over their own entitlements and grants it to the judicial officer who has experience in the fixing of wages and entitlements.” (Debates, p.6316.)

These comments were particularly applicable in the case of the operating sub-account where the determination would have conferred on the members the discretion to allocate the global account among entitlements.

I pointed out that in order to test the adequacy of the determination, if one were to stand in the shoes of a member it would not be an easy matter to know at any point in time the precise entitlement conferred in each case.

I did suppose that the capital sub-account was less subject to attack on the basis of uncertainty as to the content of each entitlement than the operating sub-account. On the basis that there was an entitlement in members to the physical and human resources set out in the Schedule (the provision of them being dependent upon application of the global sum) and on the basis the Presiding Officers would divide the global sum on an impartial and consistent basis regardless of the standing of the member and the order in which members applied for expenditure, the form of each entitlement and the total amount of money available to provide all entitlements would be known. I said it could be argued that the discretions which would be conferred on the Presiding Officers, such as, presumably, determining the standard of each entitlement provided did not necessarily invalidate the determination. I thought it arguable that a determination as to an entitlement to be provided with a physical thing can leave to a third person the discretion to determine the standard of the thing to be provided having regard to a known total sum determined by the Tribunal available to provide all such entitlements.

While I accepted it could be argued the allocation by other than the Tribunal of a global sum to specified entitlements to physical things and resources for each member had sufficient certainty to enable it to be said the entitlements had been determined by the Tribunal, I did not think such an argument was available in the case of the operating account. The draft Scheme in relation to the operating account remained that individual members would allocate a global sum between all entitlements. To take an extreme example, it was possible for a member to allocate all of the sum to only one of the entitlements. The failure to specify the amount of each entitlement or a certain standard by the application of which the amount could be calculated or ascertained definitely meant I thought that there would be no determination and I referred to *Fraser Henleins Proprietary Limited v Cody* 70 CLR 101, at p.128, and *Rizzi v Graziers Co-operative Limited* 153 CLR 669, at p.675.

The State Parliamentary Labor Party (“the Labor Party”) contended for a different construction of the legislation. It argued that the legislation permits considerably more flexibility than that suggested by the Crown Solicitor. In their submission it was put that:

Upon a proper construction of the relevant provisions, therefore, the Tribunal's approach to the determination of Members' additional entitlements need not be attended by the rigidity apparent in the Initial Determination. The act permits considerably more flexibility than the advice of the Crown Solicitor suggests.

1. The Crown Solicitor identifies the matters as to which his advice was sought, namely whether:
 - (i) the Tribunal could determine a "capped" money budget for all members collectively, in the case of additional entitlements which provide capital and infrastructure, and separately for each member, in the case of operating expenses; and
 - (ii) a member may receive any private benefit from additional entitlements.

2. However, these questions reflect a view that there need to be separate, individual classes of additional entitlement, each relating to a particular head of expenditure. This view is reinforced in the Tribunal's observation [Initial Determination p.30]:-

"These doubts and perception of risk were based on the view there would be insufficient certainty in relation to each entitlement to enable it to be said it had been "determined" or "fixed" within the meaning of the Act and that was because the size of amount of each entitlement during the period of the determination was left to the discretion of Members in the case of the operating entitlements..."(emphasis added).

3. The Crown Solicitor's advice appears to have adopted as its premise the requirement that Members' additional entitlements ought be classified separately. But, as a matter of power, this need not be so. It is open to the Tribunal to provide for a single class of additional entitlement (involving a single allocation of money) to cover a broad range of identified types of expenditure, rather than creating a number of additional entitlements each applying to a separate head of expenditure. In this way, no question arises as to the transfer of money between entitlements, or of Members having a discretion with respect to the amount of each additional entitlement. Members would simply spend the money allocated to them within a single class of additional entitlement, but on a range of relevant expenses.
4. This approach is supported by s.8(c) of the Interpretation Act 1987. In s.10(1) (and elsewhere in the Act) "additional entitlements" may be read as a reference to the singular; likewise, where s.10(2) refers to "the classes" of additional entitlements, that can also be read in the singular. Therefore, the Tribunal may, if it considers it appropriate, "fix" by way of determination a single class of additional entitlement.
5. Even if the additional entitlement is in the form of an allowance, there need not be any degree of particularity in identifying the class of expense to which it is directed. The example of "electoral allowances" contained in s.10(3)(a) would certainly seem to involve compensation or reimbursement for a wide variety of different types of expenses.
6. This proposition may be illustrated as follows. The Initial Determination [pp.39, 83-85] established four different categories of additional entitlements: Transport; Communication - electronic; Communication - non-electronic; and Stationery and Printing. Each category contains a number of sub-items of expenditure; for example, "Communication - electronic" includes home phone, facsimile, mobile phone and Telecard expenses. Members cannot transfer money between each category, but within each category Members have the flexibility to prioritise their expenditure [p.85.5]. The Tribunal clearly regarded this approach as within power and consistent with the Crown Solicitor's advice.
7. Had it thought it appropriate, the Tribunal could have disaggregated these classes further (so that, for example, mobile phones had a separate allocation from home phones). According to the Crown Solicitor's advice, money from the allocation for home phones could not then be transferred to that for mobile phones, or vice versa. But the Tribunal has clearly considered that it is within power to aggregate different types of telecommunications expenses into a single class of additional entitlement. Equally, all communications expenses, both electronic and non-electronic, could be aggregated into a single class of additional entitlement. Members could then expend their allocation upon different modes of communication, without the need for transfer of funds between entitlements.
8. Taking this approach a step further, the Tribunal has the power to determine a single class of additional entitlement covering all transport, communications and printing and stationery expenses, provided that the Tribunal determined the amount of the single entitlement. The Tribunal could then, if it wished, fix terms and other incidents of the

entitlement (by reference to at least the types of expenditure covered by it). All of this would be within the ambit of s.10.

9. The Crown Solicitor did not address the above matters. Thus, while his conclusion as to a potential "failure to specify the amount of each entitlement" [Summary, p.2.8] may in a strict sense be correct (as far as it goes), it is not determinative of the course which the Tribunal ought take.

The Liberal Party submission argued along similar lines, although raised doubts as to just how far the Crown Solicitor's advice had travelled as to the question of jurisdiction. The relevant components of that submission were as follows:

23. The ID has prescribed four additional entitlements in the nature of allowances as follows:-
 - Electoral allowance (P128);
 - Sydney allowance (P130);
 - Committee allowances (P133);
 - Additional entitlements in the nature of fixed allocations (P134 - 147);
24. It does not appear to us that the Crown Solicitor has given precise advice on the matter of the additional entitlements in the nature of fixed allocations.
25. Looking at the nature and purpose of the allocations generally, and per sub-accounts, it seems clear that these are directed to logistic or support facilities to be made available to members with the decision on take-up and application of the facilities being made by the Member. In those circumstances, if these particular entitlements were re-nominated as logistic/support allowance and became one of the four allowances within additional entitlements in the nature of allowances, the real intention of the Act would be fulfilled. The scheme would not be contrary to the Act. Indeed, in our submission it would not be contrary to the Crown Solicitor's advice, because there would be a clear standard of a logistic/support allowance fixed at an amount which would presumably be the addition of the four amounts relating to transport, communications (e), communications (non-e) and printing and stationery.
26. It could not have been the intention of Parliament to produce the unworkability which has come about from the ID. The Parliament must have intended the Act to work in a coherent and relatively simple manner. A simple system would enable annual reviews to be undertaken on the basis of submissions from members without necessarily members having to obtain legal representation.
27. It is submitted that both a literal and a purposive construction of the Act support our propositions.
28. As to the literal interpretation there is no reference in the Act to specific additional entitlements in the nature of fixed allocations. Section 9 sets out the functions of the Tribunal, including to make determinations of additional entitlements that are to be available to a Member or recognised office holder.
29. Section 10(1) sets out the overall principle of providing additional entitlements for the purposes of facilitating the efficient performance of the Parliamentary duties of Members or recognised office holders. An unworkable system must mitigate against efficient performance of Parliamentary duties.

30. Section 10 requires the Tribunal to give effect to certain principles in making determinations regarding additional entitlements. Section 10(2) states the Tribunal may, by determination, fix the classes of additional entitlements. Section 10(3) provides that determinations may provide for additional entitlements in any form, including but not limited to payment of additional allowances in terms of allowances, fees and other emoluments payable in money (including, for example, electoral allowances, travel allowances, travel expenses and committee allowances).
31. Section 10(3) does not mandate specific sub-accounts. It merely sets out examples of certain types of allowances. The ID already provides for two of those allowances in terms, i.e., electoral and committee allowances. The other examples in Section 10(3) are travel allowances and travel expenses. Presumably, allowance means an amount fixed in advanced which the Member can use while expenses means reimbursable expenditure. However, there is nothing to suggest that “other emoluments” needs to be split up into individual lines for determination.
32. As to purposive construction of legislation, see *Kingston v Keprose Pty Limited* (1987) 11 NSLWR 404, especially McHugh JA at 418 - 424. See also *Dahlia Mining Co v Collector of Customs* 90 ALR 193. A purposive, rather than literal approach to construing the relevant legislation was adopted in that case. Giles J stated, at 198:-
- “In construing the Act I must adopt a purposive rather than literal approach, seeking the intention of the legislature by starting with the grammatical meaning of the words used, but able to depart therefrom if the operation of the statute on a literal reading does not conform to the legislative intent as ascertained from the provisions of the statute, including the policy which may be discerned from those provisions.”*
33. The removal of the requirement for audit and certification provides flexibility for members, places appropriate trust in members and avoids an otherwise intolerable administrative burden.
34. The Crown Solicitor suggests that transferability would mean the act of members transferring amounts between different classifications of additional entitlements would destroy the integrity of the Tribunal’s power to determine the amounts allocated to those classifications and seems to rely on the Parliamentary debates. However, the debates do not support this restrictive proposition.
35. Further, the statement that “if one were to stand in the shoes of a member it would not be an easy matter to know at any time the precise entitlements conferred in each case” belies the fact that whether there are sub-accounts or an Electoral Allowance or a combined total Allowance any member, especially if paid in advance must of necessity know the precise state of his accounts at any and every time.
36. Members have a real concern that the Crown Solicitor’s advice may imply that if an FA sub-account is fully used, Members will not be able to thereafter use the Electoral Allowance for any FA functions, e.g., to supplement postage. This could not possibly have been the intention of Parliament.

Submissions from numerous Members also sought greater flexibility in the ability to transfer funds between accounts. The following general comments are typical of the points made by Members:

- Full transferability be allowed between each category of allowance.
- The quantum of electoral allowances should be increased to reflect increased numbers of electors.
- Members should be permitted to use their electoral allowances to make up any shortfall in their other allowances.

- Members should be allowed to transfer money between expenditure categories and from their electorate allowances to cover additional expenses.
- support increased flexibility between the sub-accounts of the fixed entitlements account. Supports legislative change if this is required.
- Supports the “globalisation” of the four fixed sub-accounts to provide greater flexibility.

The Independent Commission Against Corruption (ICAC) also broadly supported the notion of a global allocation. The ICAC suggested that if there was noted that if there was to be any legislative review of the Act then consideration should be given to enabling the following recommendation from its 1998 Report.

Recommendation 25

All entitlements should, to the extent practicable, be globalised on an annual basis. Under this system, Members would be given an annual monetary allocation for each entitlement. The PRT would determine the classes and amounts of entitlements. Members would be personally responsible for managing these funds to meet their parliamentary and electorate needs. Any proposal to globalise entitlements must be underpinned by an acceptance of the conditions specified by the ICAC as the principles that should attach to all entitlements and allowances.

Both major Parties recommended that the four additional entitlement sub accounts should be collapsed into a single global Allowance named the Logistic Support Allocation. The Liberal/National party Submission best summarises these views;

To ensure effective use of entitlements identified in the Initial Determination it is proposed that an account known as a Logistic/Support Allowance be created in which travel, communications (both electronic and non-electronic), and printing and stationery would be three components. Within the Logistic/Support Allowance the air travel component would be covered by the warrant system with a single monetary amount available for other travel such as taxis and hire cars, communications, printing and stationery. This would provide Members with maximum flexibility to manage their account for greatest effectiveness.

Both major parties also argued for the retention of the electoral and Sydney allowances in essentially the form proposed by the Tribunal (although there were submissions put as to the quantum of the allowances and whether members could draw upon the electoral allowance to meet shortfalls in the “additional entitlements account”).

In the intervening period a further opinion was received from the Crown Solicitor in the light of the submissions made by the parties to the proceedings. The opinion indicated that on certain bases there may be power in the Tribunal to allow for some merging of sub-accounts and thereby greater flexibility in allocations.

Having regard to the legal submissions received from the Liberal and Labor Parties, and having further sought the opinion of the Crown Solicitor in relation to those submissions and terms of the initial determination, the Tribunal considers that it has jurisdiction and power to make an allowance which would have the effect of providing a single allocation of additional entitlements to Members for the purposes previously designated for the four sub-accounts in the “additional entitlements account”. It is unnecessary to consider whether the Tribunal would have the power under the Act to create a single or total global budget for all additional entitlements (thereby creating a single allowance in lieu of all present allowances) as no person or group in the proceedings argued for such an outcome.

In these circumstances, it falls to the Tribunal to decide the appropriate system of additional entitlements entirely as a question of merit. In this respect there would appear to be no reason for the Tribunal to depart from the views earlier expressed by it in the making of the initial determination. That is, so far as possible, and subject to the accountability and auditing requirements, the Tribunal should establish entitlements which comprehend the different circumstances affecting Members in their respective electorates. It should be noted that this was the view expressed, subject to legal restrictions, by the Tribunal as previously constituted in the earlier draft determination.

The Tribunal will collapse the four sub-accounts (namely Transport, Communication - Electronic, Communication - Non Electronic and Printing and Stationery) found in the “additional entitlements account” into a single additional entitlement to be titled “Members Logistic Support Allocation.” The Allocation will be used to meet Members’ costs associated with transport, communications and printing and stationery as previously designated within the scope of the four sub-accounts. The exception will be electorate to Sydney and return travel for country Members. Members will continue to be issued with warrants for this form of transport. All other transport costs including intrastate, interstate and spouse travel are to be met from the Members “Logistic Support Allocation.” The quantum of the entitlement and the conditions applicable to it are given as a preliminary outline in the draft determination.

The Tribunal also proposes to determine that Members may use their electoral allowance to cross subsidise the Logistic Support Allocation as and when required; provided that the electoral allowance may only be utilised where the Logistic/Support Allocation has been exhausted. Furthermore, the electoral allowance may only be drawn upon in these circumstances for those purposes to which the Logistic Support Allocation may be applied.

It should be emphasised that the Tribunal intends to ensure that there is established a proper system of accountability for the expenditure of public monies used in the provision of additional entitlements to Members. To that end the Tribunal will maintain systems of accountability and auditing where appropriate in relation to claims for reimbursement of expenses and like considerations such as travel by Members.

Changes to the Repayment Provisions

A significant change introduced by the initial determination was the requirement that Members had to repay the unused portions of their additional entitlements to the Legislature for re credit of the Consolidated Fund. This requirement effectively altered the traditional way Members acquitted their entitlements.

With respect to this matter the opinion of Crown Solicitor was as follows;

My advice was to the effect that there is no provision in s.10 or elsewhere in the Act for additional entitlements to be provided for a purpose other than facilitating the efficient performance of parliamentary duties. The determining of an additional entitlement for a private purpose would not constitute the provision of an additional entitlement for the purpose of facilitating the efficient performance of the parliamentary duties of members and recognised office holders, as required by s.10(1)(a).

While I advised that the Tribunal cannot determine an additional entitlement on the basis that it be for a private purpose, I did suppose that an additional entitlement determined in accordance with the Act could, because of the unique nature of the role of a member, result in the member enjoying in fact an incidental private benefit. I illustrated this by saying that if an additional entitlement is determined to enable members to attend functions as the parliamentary representative that would, presumably, facilitate the performance of parliamentary duties but it would also result in the member enjoying incidental private benefits in the form of entertainment, travel, food etc.

As earlier mentioned this opinion concerned the earlier draft determination issued by the Tribunal as previously constituted.

The submission from the Labor Party while acknowledging the principal intent of the allowances is to reimburse expenses suggested that the electoral allowance was also to compensate;

...members for the inconvenience and social disability associated with providing a proper service to the electorate as well as provide for electorate associated expenses.

The Labor Party further submitted:

The primary source of the Tribunal's powers to determine additional entitlements is s.9 of the Act. Sub-section (1) permits the Tribunal –

"(a) to make determinations of additional entitlements that are to be available to a member or recognised office holder...".

S.10(2) is merely facultative and does not itself confer any separate power.

10. The power conferred by s.9(1) is broadly expressed. It affords the Tribunal the capacity to make a determination as to entitlements of Members, beyond the salaries and allowances provided by ss. 4, 5 and 6. Any constraint upon the exercise of the powers conferred by s.9 is to be found in s.10(1) as follows:

"In making determinations, the Tribunal is to give effect to the following principles:

(a) additional entitlements are to be provided for the purpose of facilitating the efficient performance of the parliamentary duties of members or recognised office holders".

S.10(1)(a) is consistent with the purpose of the Act identified in s.2A(1)(d).

11. There appears to have arisen a suggestion that the Act effectively confines the Tribunal's role to one of "fixing" categories (indeed, narrow categories), or sub-categories, of expenditure, with little or no flexibility as to allocation of expenses within categories, and so that Members are required to repay any part of such allowances not so expended (lest such part be treated as "private income"). In fact, there is no warrant in the terms of the legislation to support that view:-

7.1 S.10(2) *permits* but does not *oblige* the Tribunal to "fix" the classes and terms of the additional entitlements.

7.2 The language of s.10 does *not* confine additional entitlements to items of actual expenditure only, as it might easily have done. To the contrary, s.10(3):-

- permits a determination providing for additional entitlements "in any form"
- provides clear recognition, in its use of the expression "including but not limited to", that, whilst paras. (a) and (b) identify various forms of additional entitlement, the additional entitlements are not confined to those categories specifically identified
- demonstrates that the entitlements are not confined to provable expense items alone: see, for example, the contrasting expressions "allowances, fees and other emoluments"
- further establishes this flexibility by the very examples provided - e.g. contrast "travel allowances" and "travel expenses", and note "electoral allowances" and "committee allowances"; the ambit of these expressions demonstrates a Parliamentary intention that additional entitlements are intended to compensate Members, not just for moneys actually spent, but also for the inconvenience and social disabilities associated with, for example, travel, attending extra-Parliamentary meetings or functions, attending to electoral needs and the like.

7.3 S.10(4) reinforces this construction. Again, the Tribunal may, but need not, specify a requirement for substantiation of payments, and/or reimbursement (in whole or part). Thus, it is perfectly open to the Tribunal to grant an additional entitlement which does not require or necessitate either any actual expenditure or substantiation, let alone repayment if it is not actually expended.

12. The language of ss.9 and 10 is to be construed in its statutory context - *Project Blue Sky Inc and Ors v Australian Broadcasting Authority* (1998) 194 CLR 355 at p.381 per McHugh, Gummow, Kirby and Hayne JJ. That context provides for the determination of Parliamentary salaries, additional salaries and expense allowances by application of ss.4, 5 and 6 (and, in the case of recognised office holders, Schedule 1). Otherwise, additional entitlements are to be determined by the Tribunal. No provision of the Act confines such entitlements to payment of expenses necessitating substantiation, nor repayment of unexpended amounts. Simply, the Tribunal's powers are not so limited.
13. Rather, the additional entitlements provide remuneration or allowances so as to compensate Members for the additional burdens undertaken in the performance of their parliamentary duties. Such duties extend to attending functions and meetings, listening to the concerns of and making representations on behalf of the people, investigating and resolving problems, and developing and implementing policies. Using the example of the "travel allowance" referred to in s.10(3)(a), the efficient performance of a Member's parliamentary duties would be facilitated by assisting him/her to travel within the State (and, on occasion, inter-state), not only by ensuring that the actual expenses of travel are met, but also that the Member is compensated for the disabilities associated with such travel (such as spending the night away from home).
14. Whilst the need for public accountability is acknowledged, a regime whose focus centres upon reimbursement of expenses outlaid, and remission of unexpended allowances, must inevitably entail an extensive bureaucratic and administrative network (as the Initial Determination records - see pp.33-4). Members will be required to devote considerable time and effort to paper work-type administrative duties. These features of the proposed rearrangements are unlikely to facilitate the efficient performance of parliamentary duties (*contra* the purpose of the Act stated in s.2A(1)(d), and the principle identified at s.10(1)(a)). It is improbable that the Parliament intended by the language of ss.2A, 9 and 10 an outcome which is costly and inconvenient, let alone one whereby the efficient performance of parliamentary duties by members is impaired (rather than enhanced) by the award of additional entitlements: *Cooper Brookes (Wollongong) Pty. Limited v Federal Commissioner of Taxation* (1981) 147 CLR 297 at 320....

The Labor Party submission concluded that:

21. The Crown Solicitor's invocation of notions of "Private Benefit" is, with respect, misplaced. It is of course correct that the purpose of entitlements remains that of facilitating the efficient performance of parliamentary duties. But the relevant question is not whether a "private benefit" (whatever that means) might accrue, incidentally or otherwise, in the receipt of the allowance (nor, by the way, is it a question of the extent, if any, to which the Australian Taxation Office will treat as a deductible expense, or as income, any part of the entitlement). Rather, the issue concerns the nature of the activities which might legitimately attract the determination of an additional entitlement under the Act.
15. The responsibilities and activities of Members today are far-reaching. The nature and extent of the demands and reliance of the community upon them have changed markedly [see Initial Determination p.23]. Members as a matter of course will all be required to attend political, communal and even occasionally private meetings and functions in their capacity as Members; they will receive representations, public and private (and at all hours of the day and night); they undertake the broad range of activities acknowledged in the Guidelines [Initial Determination pp.122-5], and do so at very significant personal and social inconvenience and disadvantage.
16. The Electoral Allowance at least ought be structured so as to reflect these factors. Whilst the principal use of these entitlements will always be for the payment of expenses, the requirements imposed by the Initial Determination with respect to certifying expenditure and refunding unexpended moneys will necessitate burdensome bureaucratic and administrative impositions having the potential to impair the ability of Members to perform efficiently their parliamentary duties. Accordingly, the Tribunal

might appropriately determine that the electoral allowance compensate Members for the inconvenience and social disability associated with providing a proper service to the electorate, as well as provide for electorate-associated expenses. In this way, any portion of the allowance not used for expenses might be retained by the Member as compensation in the way described. For the reasons explained above, such a course is within the power of the Tribunal, and also commends itself on the merits as more likely to facilitate the efficient performance of parliamentary duties.

The Liberal and National Parties' submission also address this matter in the following terms.

- 14.
- (ii) Electoral and Sydney Allowances to be paid in advance with that portion of the allowance not recognised as tax deductible being therefore subject to taxation. The FA to be available in advance with members being able to elect to have them paid by the Legislature from their account or reimbursed on the presentation of invoices and receipts.
 - (iii) The Tribunal to assume that Members will expend all of their allowances. There are at least three categories of expenditure which require consideration;
 - (a) That which the Australian Taxation Office allows to be deductible for the purposes of calculating assessable income;
 - (b) That which the Act specifically contemplates as being within Parliamentary Duties but which may not be recognised for taxation purposes;
 - (c) That which Members are compelled to expend by the circumstances of their electoral, community and Party obligations but which may not be allowed as deductions by the ATO and which may not be specifically referred to in the Act.

The last mentioned is often essential to the Member's future as a continuing Member of Parliament. Members may fully expend their allowances on matters legitimate to their Parliamentary role without some of that expenditure being an allowable deduction, or receiving specific reference in the Act. It is important to note that all legitimate expenditure that is not recognised as deductible by the ATO attracts the full rate of tax. Neither these expenses nor the tax payable on them should be allowed to erode the Member's base salary which is recognised as being exclusively available for private purposes. It will always therefore be impossible to accurately assess whether the Member has fully expended all allowances except for those which relate to specific outgoings such as telephones, stamps, printing, stationery, travel and so on. To the extent that any portion may be unused, in the eyes of the ATO, the taxation laws will apply thereto. It will be a matter between the Member and the ATO as to what amount of the allowances will be treated as income.

15. The Crown Solicitor's advice seems to suggest:-

- (a) The Act requires certification/substantiation for all allowances;
- (b) The Act prevents cross-application between assumed sub-headings.

In our submission there is nothing in the Act which requires such restrictions. Indeed such restrictions mitigate against the promotion of the efficient performance of Parliamentary duties.

16. ... there is no section of the Act that expressly or impliedly requires certification or substantiation. This appears to be the first time that such restrictions have been required. The previous law and practice never included such restrictions. Without specific legislative mandate there is no warrant for interpreting the Act as requiring same. Indeed

such a significant and substantial change is not, in our submission, to be imported without express words or necessary implication. The restrictive regime is also inconsistent with the system that operates in all other States and in the Federal sphere.

17. The Crown Solicitor refers to a concept of “private benefit”. As pointed out above, the salary relates to the Member’s ordinary private life. The electoral allowance in particular is historically designed to take account of the fact that Members of Parliament are on duty virtually 24 hours per day. They have to be available to constituents at their office, their home, by telephone, fax or message machine at any time. They are also required to attend a vast array of community functions. These will include shire or municipality, mayoral and similar activities, educational, community and ethnic events, attendances at local schools and hospitals, and the like. Many Members will be patrons of local organisations and will be expected to turn up at functions and presentations. The spouses of Members often fulfil a very active role in this regard. The lifestyle of a Member is continually open to public scrutiny. There is little real privacy.
18. The Electoral Allowance has traditionally been intended to provide some degree of assistance in relation to expenditure on a myriad of different activities. However, it has historically also included an acknowledgment of the onerous nature of the public office including the above-mentioned disruptions, dislocations and sacrifices involved.
19. A requirement for certification and substantiation runs completely counter to the traditional approach which, it is submitted, was sound. Especially where there is no express or necessarily implied legislative warrant for change, it is submitted that the Tribunal should not depart from the historical position.

The Presiding Officers, on behalf of the Legislature obtained independent financial advice on the repayment of the unspent portions of the electorate (and other) allowances. Their advice was as that the new Electoral Allowance would in fact be a reimbursement for income tax purposes (rather than an allowance) and as such would shift the burden of taxation from the Members to the Legislature in the form of FBT. Depending on their individual circumstances, it may also be more costly to the Member. For simplicity and cost, the Electoral Allowance should take the form of an allowance. The financial advice obtained for the electoral allowance is repeated in full, hereunder.

The Electoral ‘Allowance’ as provided for in the Determination is paid on a calendar monthly basis to the Members of Parliament (“the Members”) by the Parliament of New South Wales Legislative Assembly (“the Legislature”). The amount payable each month is one-twelfth of the annual Electoral ‘Allowance’ and this sum is paid in arrears.

At the end of the financial year, the Members are required to certify that all expenditure incurred in that year was incurred in connection with the performance of their parliamentary duties as set out in the Determination. The Members will be audited annually to ensure compliance with these regulations.

The Members will be able to carry forward the unspent amount of the monthly Electoral ‘Allowance’ during the year, but any unused funds are to be returned to the Legislature at the end of the financial year. In other words, the whole of the Electoral ‘Allowance’ is to be accounted for on an annual basis.

The nature of a reimbursement

A benefit is a *reimbursement* when the recipient (in this case, the Member) is to be compensated exactly (as opposed to approximately) for an expense incurred by that person. The requirements that a member must vouch their expenses, and refund unexpended amounts to the Legislature, both indicate that the payment should be characterised as a reimbursement rather than an allowance.

On the other hand, a payment is an *allowance* for income tax and fringe benefits tax purposes if it is a definite predetermined amount to cover an estimated expense, which may, or may not be incurred.

Conclusion

The Electoral 'Allowance' possesses the necessary characteristics of a *reimbursement*. The Members are required to vouch their expenses each year, refund the unexpended portion of the 'allowance' to the Legislature and are compensated exactly for their expenses incurred. Consequently, the Electoral 'Allowance' will be classified as a *reimbursement* and not an allowance. On this basis, the payment will be a fringe benefit.

The recoupment provisions of the Income Tax Assessment Act 1997 do not operate to include an amount in the member's assessable income when the payment is, in the first instance, a reimbursement.

The implications for the Legislature

The implications for the Legislature of the Electoral 'Allowance' falling within the definition of a fringe benefit are:

Taxation implications

- The Electoral 'Allowance' falls under the Fringe Benefits Tax Assessment Act ("FBT Act") as an *expense payment fringe benefit*. This means the Legislature will pay FBT on the taxable value of the fringe benefit.
- The taxable value of the fringe benefit in each Member's case will be the amount reimbursed to the Member by the Legislature reduced to the extent that the Member could have claimed a tax deduction had the expense not been reimbursed. Please refer to Attachment 1 for a list of deductible and non-deductible expenses. Many expenses will be wholly otherwise deductible and, therefore, not give rise to any FBT liability.

An example of a reimbursement expense which will create an FBT liability is a payment to a Member for grooming expenses. A more complicated situation may arise where a member uses his or her Electoral 'Allowance' to lease a car. The Legislature may require certain substantiation from the Member in order to determine the proportion of the expense which is otherwise deductible.

- The first six months of the Electoral 'Allowance' paid to the Members also falls under the *loan fringe benefit rules*. This means the Legislature will pay FBT on the taxable value of the loan fringe benefit. A loan fringe benefit arises because the FBT Act requires advances for work related purposes to be accounted for within six months of the time it is provided. If it is not so accounted, the advance becomes a loan fringe benefit.
- The taxable value of the loan fringe benefit will be the difference between the statutory benchmark interest rate in relation to the loan (which for the year ended 31 March 2000 is 6.5%) and the amount of interest that has accrued on the loan, which is nil.
- For the purposes of the Goods and Services Tax ("GST") the Legislature will be entitled to input tax credits when reimbursing the Members for the expenses they incur in connection with the performance of their parliamentary duties, provided the Legislature collects the receipt (tax invoice) from the Member and the actual expense was a taxable supply.
- The FBT liability will be calculated by grossing up the taxable value by 2.129189 where an input tax credit is available to the Legislature (or by 1.9417 where an input tax credit is not available) and multiplying that amount by the FBT rate of 48.5%.

Administrative implications

- The Legislature will need to collect receipts from the Members for the purposes of:
 - ensuring it claims the total input tax credits available;

- determining whether each expense incurred by the Member would have been partly or wholly deductible or not as provided by the Commissioner of Taxation (“the Commissioner”);
- determining whether the relevant expense incurred has the necessary connection with parliamentary duties as provided by The Determination;

We note that, The Determination makes no provision or mechanism for the Members to provide receipts to the Legislature.

- If the total taxable value of all reportable fringe benefits provided to a Member by the Legislature in the FBT year ending 31 March exceeds \$1,000, the Legislature will be required to include the grossed up value of those fringe benefits on the Member’s group certificate for the succeeding income year ending 30 June.
- The Members are not required to refund the unspent portion of the Electoral ‘Allowance’ until 30 July at the latest. However, the Legislature is required to calculate the reportable benefits provided to the Members in the year ended 31 March and issue their Group Certificates by 14 July.
- The Legislature would be required to amend a Member’s group certificate, if upon an audit, an expense previously reimbursed was disallowed under The Determination.

The implications for the Members

The implications of the Electoral ‘Allowance’ falling within the definition of a fringe benefit are:

Taxation implications

- The Electoral ‘Allowance’ will be exempt income in the hands of the Members and therefore will not be included in the Members’ assessable income.
- The Members will not be able to claim the expenses as deductions from their assessable income.
- The Electoral ‘Allowance’ will therefore have no taxation impact upon the Members for income tax purposes.
- From 1 April 1999, if the total taxable value of certain fringe benefits provided to a Member exceeds \$1,000, the grossed up value of the benefits will be included on the Member’s group certificate. These are known as reportable fringe benefits. The fringe benefits taxable value calculation is discussed below.
- The grossed up value of the Member’s reportable benefits will be accumulated with the taxable income of the Member for the purposes of determining the extent of any liability to various surcharges and payment obligations.
- The result may affect a Member’s liability to the Medicare levy surcharge, superannuation surcharge, superannuation rebates and deductions, child support payments, HECS payments and for the financial year ending 30 June 2001, Family Allowance, Childcare Allowance and Youth Allowance.

Administrative implications

- The Members must be able to substantiate their expenses in case of an audit by the legislature.
- The Members will be required to calculate the exact amount of the Electoral ‘Allowance’ that needs to be refunded to the legislature before the end of the financial year.

- The Members will need to provide certain expense payment fringe benefit declarations to enable the legislature to reduce the taxable value of fringe benefit. These declarations will require the Member to determine the extent to which the member would have been entitled to an income tax deduction had the expense not been reimbursed.

Preferred option

Current form of benefit

The Electoral 'Allowance' is currently provided to the Members in the form of an allowance. The Members are not taxed at the time of the payment but are required to acquit their expenditure to the Australian Taxation office ("ATO"). If a Member has not spent all of his or her allowance or has spent some amount on non-deductible items, the Member is required to pay income tax on that amount.

Reimbursement or allowance?

The new Electoral 'Allowance' will shift the burden of taxation from the Members to the Legislature in the form of FBT. To reduce the taxation liability and comply with the reportable fringe benefits requirements, the Legislature is forced to undertake several onerous administrative processes. These processes rely on the cooperation of the Members in providing adequate information about their expenses.

The advantage of the Legislature being able to claim input tax credits on the expenses incurred by the Members may not outweigh the liability to pay FBT. An input tax credit would amount to a 10 percent credit on the expense whilst FBT payable is 48.5 percent of the taxable value of the benefit, albeit reduced by the deductibility of the expense to the member. As expenses allowed by The Determination are significantly broader than the expenses allowed as deductions by the Commissioner, it is hard to predict what proportion of a Member's taxable fringe benefits will be reduced by the 'otherwise deductible rule'.

In theory, the new reportable fringe benefits requirement should not affect the Members differently than receiving an allowance. The addition of grossed up fringe benefits to a Member's taxable income for surcharge and payment obligation purposes would be the same as including the unspent or non-deductible portion of the allowance as income, as required currently.

In practice, however, there may be a greater burden or cost to the Member if the Member does not provide all the necessary substantiation to the Legislature. In that case, the Legislature will be technically required to pay FBT and potentially report on group certificates.

Recommendation

The Electoral 'Allowance' as a reimbursement will place a higher taxation burden on the Legislature than providing an allowance, and depending on their individual circumstances, it may also effectively be more costly to the Member.

The proposed structure of the Electoral 'Allowance' will also prove more costly to the Legislature because of the time and resources needed to carry out the complex administrative tasks required.

We recommend that for simplicity and cost, the Electoral 'Allowance' should take the form of an allowance.

Members generally were not in favour of the reimbursement provisions because of the additional administrative burden it would impose on them, and because it would place them at a disadvantage viz a viz Members in other States and the Commonwealth. More specifically, Members were:

- Not in favour of reimbursement. Favoured retaining the payment of electoral allowances in accordance with the 1999 Annual Determination. In favour of carry over and members being accountable to the ATO for their electorate expenditure.
- Noted that other States treat electorate allowance similar to salary. NSW politicians will be disadvantaged in terms of salary parity for their Federal and interstate colleagues.

- Against the annual audit requirement.
- Any determination should consider the impact of the GST.

Having regard to the submissions received as to the construction of the Act (and legislative reform that may be desirable on one approach to construction) and the divergence of the submissions as to the construction of the Act from opinions earlier expressed by the Crown Solicitor (in relation to the draft determination) the Tribunal provided to the Crown Solicitor the various submissions and raised four questions. The questions posed and the Crown Solicitor's response to each question are set out hereunder in full.

In conference on 1 September 2000 you asked me to advise on the following questions:

1. Assuming no determination is made by the Tribunal requiring the repayment of the unused portion of an additional entitlement does the legislation by its own operation prevent members from retaining the unused portion of any additional entitlement (in particular the electoral allowance) or require the repayment or same.
2. Having regard to 1, does the legislation prevent the Tribunal from determining that the unused proportion of an additional entitlement may be retained by a Member (for whatever reason).
3. Is there any impediment in the legislation to the Tribunal leaving silent or unanswered the question of the repayment of the unused portion of allowance in any further determination (if any is made).
4. If the attached legislative changes would be insufficient to remove any limitations, as advised, with respect to the above questions, what other amendments might be made?"

The "attached legislative amendments" referred to in question 4 derive from legislative reforms suggested by persons appearing before the Tribunal and were in the following terms:

- (i) the definition of "parliamentary duties" being amended as follows:

"Parliamentary duties of a member or recognised office holder means the duties that attach to the office of a member or recognised office holder, and includes the duties that a member or recognised office holder is ordinarily expected to undertake, including participation in the activities of recognised political parties, **and includes the general responsibilities attaching to the office and status of, and all incidents associated with being a member or recognised office holder**, and includes any duties prescribed as being within this definition, but does not include any duties prescribed as being outside this definition" (the words in bold within the definition would be added by the amendment);
- (ii) the principle in s. 10(1)(a) to which the Tribunal is to give effect in making determinations being amended as follows:

"(a) additional entitlements are to be provided for the purpose of facilitating **and/or compensating** for the efficient performance of the parliamentary duties of members or recognised office holders"(the words in bold would be added by the amendment); and
- (iii) the addition to s.10(1) of the following new principle (para (c)) to which the Tribunal is to give effect in making determinations:

- “(c) Application of electoral and Sydney allowances as all-incidents-of-employment allowances in recognition of the wide range of functions addressed by members within the community and for the inconvenience and erosion of privacy to which members are subjected.”

The Crown Solicitor’s opinion in relation to the questions raised was as follows:

1. Advice as to question 1

- 1.1 The *Parliamentary Remuneration Act 1989* (the legislation) does not address the retention or repayment by members of the unused portion of any additional entitlement.
- 1.2 The legislation does make provision with respect to the reversion of payments of additional allowances (which I take it are additional entitlements in the form of allowances as referred to in s. 10(3)) not drawn upon by members. Section 15(6) provides that any payment of additional allowances to which a person is entitled under the legislation, or any part of any such payment, not drawn by the person or on the person’s behalf within 28 days after the payment becomes due and payable reverts to the Treasury and becomes part of the Consolidated Fund.
- 1.3 The legislation is so drafted that it is open to the Tribunal to provide for what is to happen in relation to the unused proportion of an additional entitlement. A determination may fix conditions on which an additional entitlement is to be provided (and may specify the form of the substantiation (if any) that is required for particular kinds of additional entitlements) (s. 10(4)(a)). Additional allowances are payable in such manner, and subject to such provisions, as may be specified in a determination that is in force (s. 15(2)).
- 1.4 An additional entitlement is not paid as personal income (contrast statutory salaries and statutory additional salaries which s. 2A(1)(a) and (b) expressly recognise are paid as personal income). It is an entitlement determined by the Tribunal giving effect to the principle that it is provided for the purpose of facilitating the efficient performance of the parliamentary duties of members (s. 10(1)(a)). Members are only entitled to additional entitlements in accordance with the provisions of applicable determinations (s. 10(8)). As the statutory entitlement is to an allowance, service etc for the specific purpose of facilitating the performance of parliamentary duties, there was, presumably, seen to be no need for the legislation to make express provision precluding use for other purposes and providing for unexpended amounts. It would, of course, as I have said, be open for a determination to fix appropriate conditions to provide for what is to happen to amounts which are not expended by a member to facilitate the efficient performance of parliamentary duties. However, a member does not acquire an entitlement to use such amounts for some other purpose because a determination does not in fact fix conditions relating to unexpended amounts. A member who chooses to retain unexpended amounts and expend them for some other purpose would do so without any statutory entitlement and would be at risk of civil proceedings for recovery of such amounts and, in some circumstances, could commit a criminal offence in doing so.

2. Advice as to question 2.

- 2.1 In my opinion, the legislation does prevent the Tribunal from determining that the unused proportion of an additional entitlement may be retained by a member (for whatever reason). By this I take it you mean to ask whether the Tribunal may determine that an amount not expended to facilitate the efficient performance of parliamentary duties in accordance with a determination may be retained by a member and expended for some other purpose, including, presumably, a private purpose of the member.

2.2 At present, in making determinations, the Tribunal must give effect to the principle that additional entitlements are to be provided for the purpose of facilitating the efficient performance of the parliamentary duties of members (s. 10(1)(a)). As presently defined, “parliamentary duties” would not include private activities and such activities have not been prescribed to be parliamentary duties (whether a regulation could validly prescribe such activities to be parliamentary duties would be a matter for the Parliamentary Counsel to advise upon). Furthermore, as I have said, s. 2A(1) recognises that, unlike statutory salaries and statutory additional salaries, additional allowances and other entitlements are not “paid as personal income”. That being the case, I consider that the legislation does prevent the Tribunal from determining that an amount not expended to facilitate the efficient performance of parliamentary duties in accordance with a determination may be retained and expended by the member for some other purpose.

3. Advice as to question 3

3.1 The legislation does not expressly require the Tribunal to make provision in a determination for the repayment of amounts not expended to facilitate the efficient performance of parliamentary duties in accordance with a determination. While it would be open to the Tribunal pursuant to s. 10(4)(a), as a matter of discretionary power, to fix appropriate conditions on which the additional entitlement is to be provided, the legislation appears to impose no obligation or duty upon the Tribunal to do so. As I have said, the fact that no such conditions are fixed does not alter the nature of the entitlement conferred upon a member.

4. Advice as to question 4

4.1 The scheme of the legislation is to provide additional entitlements ie allowances and services etc for the purpose of facilitating the efficient performance of “parliamentary duties”. Clearly, an additional entitlement is not provided for some other purpose. Putting to one side possible prescription of parliamentary duties by regulation, the present definition of “parliamentary duties” confines such duties to duties which attach to the office of a member or recognised office holder and duties they are ordinarily expected to undertake, including participation in the activities of recognised political parties. Generally speaking, such duties would not include activities of a private nature.

4.2 The first proposed amendment would amend the definition of “parliamentary duties” to add “the general responsibilities attaching to the office and status” of and “all incidents associated with being” a member or recognised office holder. Transposing these elements, the result would be that additional entitlements could also be determined to facilitate the efficient performance of such general responsibilities and incidents. However, such general responsibilities are those “attaching to the office and status” of a member or recognised office holder and such incidents must be “associated with” being a member or recognised office holder. Again, generally speaking, such general responsibilities and incidents would not include activities of a private nature, although there may be greater room to argue that a particular activity which has both a private aspect and some connection with parliamentary activities is such a general responsibility or incident. One could not, however, proceed on the basis that as a result of the proposed amendment an unexpended proportion of an allowance could be expended as if it were in the nature of personal income.

4.3 The second proposed amendment would provide an additional or alternative purpose for which additional entitlements may be provided. In addition, or as an alternative, an additional entitlement could be provided for the purpose of “compensating” for the efficient performance of parliamentary duties (such duties being as defined as a result of the first proposed amendment). Providing an additional entitlement for the purpose of compensating for the efficient performance of parliamentary duties involves different considerations to those which apply where the purpose is to facilitate such performance. The Tribunal would have to determine an amount (or

perhaps something in kind) which appropriately compensates a member or recognised office holder for efficient performance of parliamentary duties. While it is not entirely clear, that presumably contemplates an examination of what are the “costs” to a member in achievement of efficient performance of parliamentary duties and assessing appropriate compensation. The amendment does not indicate what costs involved in achieving efficient performance are to be compensated and presumably it would be left to the Tribunal to determine the costs to a member and assess appropriate compensation. If the Tribunal is able to determine the costs and they are not confined to costs involving actual expenditure on performance related matters (the amendment would seem to be unnecessary if it is simply designed to enable reimbursement of performance related expenditure), then there would be scope for the Tribunal to determine additional entitlements which have regard to a broad range of “costs” to members or recognised office holders in the achievement of efficient performance of parliamentary duties. However, the Tribunal could only determine additional entitlements it was satisfied would compensate for “efficient performance” and that efficient performance must be of the “parliamentary duties” as defined.

- 4.4 The third amendment appears to be intended to enable the Tribunal to determine “electoral and Sydney allowances” which can be applied (by members) as “all-incidents-of employment allowances”. The idea seems to be that a member could expend an entitlement determined on this basis as if it were personal income, being in the nature of remuneration for the incidents of the employment. An entitlement assessed on this basis is not expressed to be for a particular purpose, such as facilitating efficient performance of parliamentary duties, and it is not expressed to be compensation for efficient performance. It is said to be able to be applied as an “all-incidents-of-employment” allowance “in recognition of the wide range of functions addressed by members within the community and for the inconvenience and erosion of privacy to which members are subjected”.
- 4.5 There is no impediment to the Legislature legislating to alter the basis upon which additional entitlements may be determined by the Tribunal. Whether the proposed amendments would be successful in enabling members to retain and expend additional entitlements to the extent desired by those who have suggested the amendments is another matter.

The first and second proposed amendments, in expanding the definition of “parliamentary duties” and providing for compensation for efficient performance of parliamentary duties would be subject by their terms to the limitations I have identified in 5.2 and 5.3 above. While the range of parliamentary duties the performance of which can be facilitated may be increased by the first amendment, it is unlikely to be significant and certainly will not result in a member being free to expend unexpended payments for any purpose. While the second amendment would result in members being provided with an additional entitlement to compensate them for efficient performance, which, presumably, they could expend for any purpose, that compensation must be for efficient performance and that efficient performance must be of parliamentary duties as defined.

The third amendment in providing for electoral and Sydney allowances to be applied as all-incidents-of employment allowances would appear to achieve the result that such allowances determined by the Tribunal could be expended by members for any purpose; such allowances would not be provided for a particular purpose and would be in the nature of remuneration having regard to the incidents of the employment. I think the enactment of the third amendment (and the second amendment) would be taken to impliedly amend to the extent necessary any command implicit in s. 2A(1) that additional allowances are not paid as personal income. However, it seems to me to be desirable that any amendment of the legislation intended to have the result that an additional allowance could, in effect, be treated as personal income should specifically address s.2A(1).

The Tribunal discussed the history of “entitlements” for Members in the initial determination (at 14-26). In addition to that discussion, there are a number of additional considerations in relation to the history of the payment of salaries and allowances to Members that may be relevant in the present context:

1. The *Constitution Act, 1902* provided for the payment of an allowance to Members as a “reimbursement for expenses” incurred by the Member in the “discharge of Parliamentary duties”.
2. That allowance continued in that form (although adjusted as to quantum) until the passage of the *Parliamentary Allowances and Salaries (Amendment) Act, 1966* which provided Members with a salary for the first time (and an expense allowance) in lieu of the former allowance provisions.
3. The introduction of a salary in 1966 appears to have derived from the Matthews Report in which it was concluded that the allowance formerly provided under the *Constitution Act, 1902* had become “anachronistic” and that it should be discarded in favour of a “salary”.
4. The basis for these conclusions in the Matthews Report is not entirely clear. However, one factor which seems to have been taken into account was the grant of an “electoral allowance” to Members in 1956 which the Report describes as having been provided to Members for the “legitimate expenses incurred in connection with their electorate responsibilities”.
5. In 1971, in the Goodsell Report, “family costs” were taken into account in the assessment of electoral allowances.
6. *The Parliamentary Remuneration Act, 1989* (Act No. 160) commenced in 1990 (“the 1989 Act”). That Act provided that members would receive a “basic salary” (which was established by reference to the salaries of Members of the Commonwealth Parliament) and “allowances” (which would be established by the Tribunal). Examples of allowances were provided in s. 9(a) as being electoral allowances, travelling allowances and expenses and committee allowances. The Act did not contain any provision concerning the objects of the legislation and did not circumscribe the Tribunal’s discretion as to the determination of allowances save as to some presently irrelevant matters in s. 10(2), and perhaps, to the extent the examples of such allowances referred to in the sub-section could be construed as indicating the nature of allowances, the provisions of s. 9(a). Additionally, section 15(5) of the Act provided:

Any payment of remuneration to which a person is entitled under this Act, or any part of any such payment, not drawn by the person or on the person’s behalf within 28 days after the payment becomes due and payable reverts to the Treasury and becomes part of the Consolidated Fund.

A provision in similar terms operated with respect to the salaries allowance payable to Members under the *Constitution Act, 1902* (and may be traced to, at least, the 1956 version of that Act).

7. The *Parliamentary Remuneration Amendment Act, 1998* (Act No. 84) (“the 1998 Amendment Act”) introduced significant changes to the scheme of the 1989 Act as follows:
 - (a) A provision was made for the making of an initial determination by the Tribunal;
 - (b) S.2A was inserted and thereby the purposes of the Act were identified, including relevantly sub-sections (a) and (d) which were in the following terms:

- (a) All members are provided with statutory salaries (the basis salary) that are paid as personal income for the performance of their parliamentary duties as members
- (d) all or some members and all or some recognised office holders be provided with additional allowances and other entitlements for the purpose of facilitating the efficient performance of their parliamentary duties as members or recognised office holders.
- (c) The Tribunal's functions were designated as including the making of additional entitlements. The additional entitlements were described in the Act as including additional allowances and the provision of services, facilities and equipment (but the definition of additional entitlements was, by the operation of s. 10(3), not exhaustive.)
- (d) The Tribunal was required to give effect to certain principles including in s. 10(1)(a) which was in the following terms:

Additional entitlements are to be provided for the purpose of facilitating the efficient performance of the parliamentary duties of members or recognised office holders.

8. The Second Reading speech for the 1998 Amendment Act was delivered by Mr Martin, Minister for Mineral Resources and Minister for Fisheries, on behalf of the Premier, on 23 June 1998, and contained the following passages.

The historical absence of a clear distinction between salary and allowances has its legacy today. Confusion persists in the minds of members of the public as to what amount is received by members of Parliament as their salary and what other amounts are paid to cover the business costs of members of Parliament. This bill makes it clear that the basic salary of a member of Parliament and the additional salary of a recognised office holder are paid as personal income for the performance of their parliamentary duties. The bill does not otherwise deal with the salaries of members of Parliament and recognised office holders, which will remain to be calculated by the existing method. Since the nineteenth century the role of members of Parliament has changed from that of part-time legislators to full-time representatives of the people.

Members not only are expected to perform their legislative duties in the Parliament but also are expected to represent their constituents and serve the State as a whole by listening to the concerns of the people, attending functions and meetings, making representations on behalf of people, investigating and resolving problems, developing policies and, where possible, implementing them. To perform these functions efficiently, members must be able to communicate, travel and have access to office facilities, staff and research facilities. These costs are similar to those involved in running a business. It is these costs that are covered by the additional allowances and entitlements which will be set by the Parliamentary Remuneration Tribunal.

This bill makes it clear in new subsections 2A(d) and new subsection 10(1) that additional allowances and entitlements are to be provided for the purposes of facilitating the efficient performance of the parliamentary duties of members or recognised office holders....

The early history of Member's entitlements demonstrates that Members did not receive, for a significant period, a "salary" per se. However, custom and practice in relation to the receipt and expenditure of such allotments seems to have converted the expenses payments into "a salary" paid de facto to the Member. This transformation was impliedly recognised by the creation of an electoral allowance in 1956, and expressly so, by the creation of a salary prescribed by statute in 1966.

The 1989 Act seems to have drawn more sharply the distinction between salary and allowances but did little to prescribe the circumstances under which an allowance may be paid. It did not appear to confine the grant of the allowance to a reimbursement for expenses (save perhaps for any findings as to the construction of the Act that may be drawn from the nature of the examples of such allowances provided in s. 9(a)). Nor did it confine the Tribunal's determination of such an allowance to circumstances where Members were carrying out particular functions or activities. It did not confine the determination of the allowance by reference to any particular purpose or object specified in the Act. The Tribunal observes that, in industrial parlance, the payment of monies as an allowance does not, of itself, indicate that any such payment (or the determination that such payment be made) is derived from or related to the reimbursement of expenses. Allowances may simply constitute special rate and relate to an incident of and compensate for the performance of a particular aspect of work carried out by an employee.

However, it would appear that the Parliament chose by the 1998 Amendment Act, to circumscribe the determination of the additional entitlements of Members by the Tribunal. The extent and reasons of those Reforms has been the subject of much discussion in these proceedings and earlier proceedings. The 1998 Amendment lies essentially at the heart of the present difficulties of construction of the Act.

Members have, historically, received electoral allowances to, at least in substantial part, meet the costs of servicing their electorates. There has never been a definitive list as the types of expenses that could or could not be met from the electoral allowance. This has been a matter for determination by the Australian Taxation Office. Tribunals, have determined amounts which, in the view of the Tribunals, are sufficient to meet estimated expenses. Because of the number on electorates involved the Tribunal has grouped similar electorates and provided an average electorate allowance amount for each group of electorates. Members are then required to substantiate expenditure against the allowance to the Australian Taxation Office.

It is reasonably clear from the evidence provided to the Tribunal that, by the time of the passage of the 1989 Act, and certainly by the passage of the 1998 Amendment Act, electoral allowances were treated by Members as a combination of an expense allowance and special rate or allowance in the nature of salary.

It should be noted that it is the current practice that, so far as the electoral allowance is concerned, no Member of any Parliament in Australia is required to return any unexpended funds to their respective legislatures. It has been the longstanding practice that Members acquit this allowance to the Australian Taxation Office and this continues to be the case today.

An Allowance as defined by the Australian Taxation Office is one where a Member

...is paid a definite predetermined amount to cover an estimated expense. It is an amount contributed towards an expected expense, and is made regardless of whether the Member incurs the expense. The spending of the allowance is at the complete discretion of the Member.

An issue which arises in these proceedings is whether the Parliament sought to alter these arrangements, practices or conventions. A further question which arises is whether the Parliament intended to constrain the Tribunal from making a determination as to additional entitlements which would effectively, in part, constitute a salary (or equivalent thereof). This question concerns the discretion of the Tribunal to fix such a payment as payment or compensation for the performance of some services by Members.

The competing contentions advanced to the Tribunal as to the construction of the statute raise difficult questions. The resolution of them is finely balanced. The adjudication of the legal issues has significant implications for Members, and on one view of the statute would, by the operation of the statute per se (that is independently of any determination made), fundamentally alter the nature of entitlements as have applied, at least by custom, over a considerable period.

One view of the respective contentions as to the construction of the Act received by the Tribunal is that the Tribunal may not determine an allowance which would have the effect of compensating a Member for the performance of duties as Member where the expenditure by that Member was in the nature of the performance of personal service as opposed to the expenditure of monies to facilitate the carrying out of a such personal service or duty.

The Crown Solicitor has made clear that the obligations which arise with respect to Members use of electoral allowances derives directly from the Act, without any requirement or particular need for the Tribunal to regulate the question by determination. Having regard to that opinion, and given the somewhat vexed legal issue arising in these proceedings there is much to be said for the Tribunal not providing any interpretation of the statute as may be ordinarily contemplated in proceedings for declaratory relief. Rather the statute itself will speak to the obligations of Members. The Tribunal should regulate allowances for Members by prescribing the circumstances under which the allowances may be used. The draft determination reflects such an approach. It is an approach which will ensure that any obligations as to repayment of the unspent portion of allowances falling on Members will be confined to those specifically deriving from the statute. The Tribunal did not intend in its initial determination, and will now avoid by this approach, any superimposed (and additional) obligations arising out of any determination made by the Tribunal over those created by statute (which may have the potential of creating unintended adverse consequences).

In these circumstances the conditions for the payment of electoral allowances have been reviewed and the allowances simply adjusted from its present levels having regard to the cost of living and any other relevant considerations (which considerations were discussed in the initial determination).

Any further inquiry into the electoral allowances, and in particular, as to whether Members should be compensated for any special features of their work should be reviewed in later determinations depending upon the terms of the current legislative scheme.

The Tribunal reiterates for the assistance of the Parliament, those legislative changes proposed by various persons or groups during the proceedings which were directed to the issue of the repayment of unspent allowances. The Tribunal also notes the observations made by the Crown Solicitor with respect to those proposals. Clearly, if the legislature moves upon such changes the Tribunal will reassess any determination or proposed determination in the light of the amended legislative scheme. As to the legislative reform the Tribunal also notes its previous observations regarding the unsatisfactory aspects of s. 13(5) of the Act. The areas recommended by the parties as requiring particular attention are as follows:

- (1) Amendment to the definition of Parliamentary duties in the Act to include in the definition, reference to include reference to the general responsibilities attaching to the office and status of, and all incidents associated with being a Member or recognised office holder,
- (2) Amendment to section 3 of the Act to include a definition of “to fix” which includes specifying up to a nominated amount
- (3) Amendment to section 10(1) of the Act to indicate that additional entitlements are provided to facilitate and/or compensate for the efficient performance of parliamentary duties of Members or recognised office holders
- (4) An amendment to section 13(5) of the Act to allow the Tribunal to have regard to the financial implications of any decision made. The Tribunal should receive, and take into account, submissions from the Secretary of the Treasury in relation to the financial implications of its decisions (which should be included as an annexure to any determination made or set out in any report made).

OTHER MISCELLANEOUS CHANGES INCLUDING SUBMISSIONS SEEKING INCREASES IN THE RATES DETERMINED FOR THE VARIOUS ENTITLEMENTS AS WELL AS AN EXPANSION OF ENTITLEMENTS TO COVER NEWER ASPECTS OF PARLIAMENTARY DUTIES.

Submissions

The principal area for submissions concerned the sub-accounts in the “additional entitlements account”. There were a number of other particular matters, the subject of submissions, which will also be discussed in this section.

Travel

Nearly all submissions received expressed the view that the quantum of the allowances should be increased. It was vigorously submitted that in respect of travel electorate to Sydney trips should be removed from the financial allocations and a warrant system restored.

The State Parliamentary Labor Party view was as follows.

“The SPLP Members have submitted that in the translation of travel entitlements from the warrant system to monetary amounts, an actual reduction of the effective entitlement has occurred. The primary position of the SPLP Members is that the most effective way to remedy this would be to return to the warrant system. This avoids the complexities associated with trying to assess the dollar value of existing travel entitlements for persons located throughout the State.”

The Liberal/National party submission expressed similar views

“Provision of travel entitlements

The primary position of the Coalition is that there should be a return to the warrant system. This is based on the equity as between Members that this system provides. It also overcomes the difficulties which attend any attempt to quantify air travel entitlements in monetary terms, given there is a considerable difference in the cost of air travel within New South Wales and between interstate destinations traditionally available to Members under the warrant system. It is believed the warrant system is the easiest for accounting purposes as the Member automatically certifies the use of the entitlement for Parliamentary duties and the Legislature maintains a simple and effective running audit on expenditure.

The submission from the Presiding Officers, on behalf of the Legislature was that the Tribunal should establish a separate electorate to Sydney and return travel entitlement for country-based Members of Parliament.

Members raised the following general matters:

- Reinstatement of the former system of travel with Members being allocated a set number of flights.
- Travel entitlements should continue to be allocated to Members based on a number of trips to be taken in the life of any parliament. Tribunal should consider the capacity for recognised office holders and Members in Government to secure other sources of public funding for their travel costs.
- Intrastate should be unlimited provided it is on Parliamentary business as happens in the Federal jurisdiction.
- Home and return travel should be treated as a discrete entitlement. Global allocation only for inter and intra state travel.
- recognition for travel requirements for Members of committees.

The Liberal/National party submitted that there should be formal recognition of Shadow ministers.

In respect of the quantum of the various allowances the Presiding Officers requested that the Tribunal have regard to the following points

- The allowances have not been increased since 1 July 1997
- Following the March 99 General Election each Legislative Assembly Member is representing a larger number of constituents following the reduction of 6 seats.
- Most Members of the Legislative Council has been assigned duty electorates through out the State to service, based on Legislative Assembly electorate boundaries.
- Members will incur additional costs as a result of the introduction of a Goods and Services Tax (GST) on 1 July 2000. They are not entitled to claim back this GST cost as an input tax credit, hence allowances will need to be increased by approximately 10% to maintain the same purchasing power obtained by Members, prior to 1 July 2000.

Individual submissions from Members also sought changes to the additional entitlements account.

Communication

Generally comments from individual Members on the Communications sub-account revolved around two broad areas, the quantum of the entitlement and transferability. The types of matters raised are as follows.

- Calculations are not sufficient to cover annual expenditure. The figures used by the Tribunal do not include a cost for e-mail and internet use.
- electronic communication for home offices be unlimited for Members of the LC.
- Allowance for mobile phones be increased to \$3,000 p.a..
- The ID does not reflect significant STD call charges and the use of internet and e-mail facilities.
- Members would like to use electoral allowance to “top up” communication allowances as they are insufficient.

The Presiding Officers made the following recommendations in respect of the communication account.

- An increased electronic communication entitlement for Members of both Houses to reflect the level of current entitlements provided and the communication requirements of the current technological age, for example Internet, e-mail and e-commerce.
- Restoration of recognised office-holders entitlement to reimburse the cost of overseas telephone calls (for official business purposes).
- There are no entitlements for recognised office holders in Schedule 3, which appears to be an error.
- There should be flexibility to allow the Parliament to meet the cost if the Member agrees. For example, the Legislative Council has been able to negotiate 1 account for all Legislative Council Members by placing mobile phones on a cost plan.

Printing and Stationery

The views expressed by Members were as follows

It is considered unreasonable that country Members should be expected to pay for printing and stationary freight charges from this allowance. Country Members are disadvantaged against their city counterparts who would not necessarily need this service.

The Presiding Officers' views were as follows

- Consideration by given to granting a larger allocation to Legislative Assembly Members located in category 3-8 electorates to compensate them for freight costs when receiving supplies through the Parliament's printing and stationary store.
- Members should be permitted to purchase stores and stationery of the Internet with recognised Government contractors.

A number of other miscellaneous matters were raised with the Tribunal. These are discussed below:

Recognised Office Holders

The following matters were raised by Members and the Presiding Officers.

- Should also recognise "Standing Committees" in addition to "Select, Joint Standing and Public Accounts Committees".
- The roles of Party Leaders and Deputy Leaders of the Opposition should be recognised as equal in both the LA and the LC. This disparity occurs with both Transport and Communication non-electronic allowances.
- An increase to the additional transport entitlement for the Presiding Officers, Leader of the Opposition and Deputy Leader of the Opposition to rectify current anomalies.
- PRT recognise the additional electronic communication needs of Recognised Office-Holders.
- Entitlements should be the same for both Houses, ie Deputy Leader of the Opposition in the Legislative Council.
- Should be recognition for Leader of Third Party (National Party) in the Legislative Council, where there are at least 10 Members of the party over both Houses.

Committee Allowance

The Presiding Officers have sought the following changes

- An entitlement for all Select, Joint and Statutory Chairpersons to receive a daily Chairpersons allowance (if not in receipt of a salary of office) irrespective of the House in which they belong, subject to the current restrictions ie; non sitting day meetings, etc.

In addition the Tribunal received submissions seeking recognition of parliamentary groups such as the Asia Pacific Friendship Group and recognition of Members' participation in the activities of these groups as parliamentary and electorate business.

Definition of Parliamentary Duties

In its submission to the Tribunal of 31 May 2000 the State Parliamentary Labor Party argued that the Tribunal expand its definition of parliamentary duties to encompass the full range of legitimate party activities.

The Labor Party later provided an expanded definition of parliamentary duties in its further submission to the Tribunal of 30 June 2000. Changes were suggested to the following

paragraphs from the guidelines regarding the “circumstances upon which the additional entitlements may be used for parliamentary duties” as contained in the Tribunal’s initial determination:

- 1.1.2 Performing electorate work for a Member’s electorate and participation in official and community activities to which the Member is invited because of the Member’s status as a Parliamentary representative.
- 1.1.7 Attending official functions to which a Member is invited because of the Member’s status as a Parliamentary representative, eg. receptions and other community gatherings hosted by Members of the diplomatic corps, educational and religious institutions, community and service organisations, business associations, sporting bodies or other special interest groups.
- 1.1.8 Participation in the activities of recognised political parties, including participation in national, State and regional conferences, branch meetings, electorate council meetings, executive meetings, committee meetings, and meetings of the Members of the Parliamentary political party, its executive and committees.
- 1.1.11 Participation within Australia in the activities of the Commonwealth Parliamentary Association as well as activities outside Australia organised by the Commonwealth Parliamentary Association provided such activities arise directly from membership of the New South Wales Branch and officially endorsed by the Branch (exclusive of air travel).

The Liberal and National Parties, in their joint submission to the Tribunal of 5 June 2000, originally argued for the removal of restrictions on the meaning of parliamentary duties.

...No prescription of or restriction on the meaning of Parliamentary duties. Members of Parliament are in the best position to determine their duties. In the event of any requirement for ad hoc or occasional overview there are more than enough agencies available e.g. ICAC, Auditor General.

...In our submission the words “*facilitating the efficient performance*” provide very wide scope for the application of additional entitlements and imply that a discretion lies with the member as to how best both the local and the wider constituency should be dealt with in respect of the demands of parliamentary duties.

However, in its further submission to the Tribunal of 5 July 2000 the Liberal and National Parties submission indicates support for the suggested changes as outlined in the Labor Party submission above.

Shadow Ministers

The Liberal and National Parties, in their joint submission to the Tribunal of 5 June 2000, outlined the role of Shadow Ministers in the Parliament and advised of the payment of such allowances to office holders in the Federal Parliament.

The Liberal and National Parties further submission of 5 July 2000 submitted that:

... a category of Member be established called a “Nominated Members” to cover Shadow Ministerial positions which do not currently have the status of “Recognised Office Holder..

It was suggested that the Leader of the Opposition would nominate any number of persons as Shadow Ministers provided such number does not exceed the number of Ministers appointed by the Government, and that additional allowances would be paid to Shadow Ministers in recognition of the additional publicly recognised responsibilities of their position.

It was recommended that each “Nominated Member” (Shadow Minister) shall receive:

- A salary loading equal to 25% of the Ministerial allowance
- One additional staff member, at the salary level of an Electorate Officer Grade 2, as a dedicated research and policy adviser
- An electorate allowance loading equivalent to 20% of a Grade 1 electorate;
- Ten (1) additional intrastate and four (4) additional interstate warrants per year, accumulative over the four year term of the Parliament.
- A 20% loading for the communication allowance
- A 20% loading for the printing and stationery allowances; and
- Reimbursement of overnight accommodation expenses outside the Sydney Region at the same rate as Ministers while attending official duties associated with their portfolio responsibilities.

Consideration

The Tribunal’s conclusions as to these submissions are reflected in the draft determination. It is proposed for present purposes to make only brief preliminary observations as to some of the more significant matters raised under this heading.

Electorate to Sydney Travel

Given the essential nature of this travel for country based Members, the Tribunal will determine that non-transferable warrants be provided to Members for electorate to Sydney travel. The amounts previously included in the initial determination for such travel have been removed from the “additional entitlements account” and the amount now provided in the Members Logistic Support Allocation will cover all other types of travel ie inter/intrastate travel for the Member and spouse, taxi travel etc.

The Tribunal has added a modest increase to the rates set in the initial determination to cover cost of living adjustments.

Other minor adjustments have been made where the submissions made have been adopted by the Tribunal.

Other Matters

The Tribunal considers that it is appropriate that additional entitlements be granted (upon conditions) to Shadow Ministers and the Asia Pacific Friendship Group (and similar groups). Shadow Ministers do serve a critical function in a parliamentary democracy and it is the Tribunal’s view that they should be eligible for additional entitlements to carry out the extra workload inherent in such positions.

As to Asia Pacific Friendship Group, the Tribunal would be prepared to consider additional entitlements for this Group. Because of legislative constraints, the Tribunal will need to be satisfied that any additional entitlements provided apply strictly to the domestic activities of the Group, and are in not used to support international activities. The Tribunal has yet to receive the additional information it sought from the Group. This additional information and any accompanying submissions received from the Group in response to this Statement will need to be received from the Group if it is to be considered by the Tribunal in the annual determination

Parliamentary Duties Definition

The changes proposed in the proceedings included the recognition of “community” activities, activities of the Commonwealth Parliamentary Association, and various additional activities of recognised political parties in the definition of parliamentary duties. On the basis of these submissions the Tribunal has adopted the suggested changes.

Shadow Ministers

The Tribunal has considered the submissions received in regard to the provision of additional entitlements and allowances to Shadow Ministers. As a general proposition, no case has been established, in the Tribunal’s view, for Shadow Ministers to be granted entitlements above those of the category of “Other Recognised Office Holders” in Schedule 3 of the draft determination.

Hence, the Tribunal does not consider it appropriate that Shadow Ministers be granted a communications loading or an electoral allowance loading as these concessions are not made available to that category of Recognised Office Holders in Schedule 3. Similarly, the Tribunal does not provide any entitlement for additional staff to Recognised Office Holders and thus, it has not acceded to the submission that additional staff should be provided for Shadow Ministers. Historically, the provision of additional staff to Recognised Office Holders has been a matter for Government.

In regard to additional interstate and intrastate travel warrants, the Tribunal has made a draft determination that Members will not be provided with warrants for such travel. The Tribunal does not approve the provision of a salary loading to Shadow Ministers given that such an approach would be inconsistent with the existing statutory scheme for salaries.

However, the Tribunal has determined that there is merit in the provision of some additional allowances for Shadow Ministers namely travel allowances and the Logistic Support Allocation. As to the quantum, the Tribunal has determined that Shadow Ministers shall receive an amount equivalent to Recognised Office Holders, (other than Ministers, the Speaker, the President, Leaders and Deputy Leader of the Opposition and other recognised political party, and the Chairman of Committees).

These allowances/Allocation, and the conditions governing their use, are specified in the draft determination.

Quantitative Changes to Entitlements

Electoral Allowance

Electorate allowances have been increased by 3.2% to reflect the increase in the CPI for the 12 month period to 30 June 2000.

Sydney Allowance

The Sydney Allowance has been increased by 3.2% to reflect the increase in the CPI for the 12 month period to 30 June 2000.

Committee Allowances

Historically these allowances have been adjusted in line with increases in Members’ salaries. It is proposed that future adjustments reflect these current arrangements.

Committee Allowances have been increased by 10% to reflect the recent 5% + 5% increase in Members’ salaries.

Logistic Support Allocation (Additional Entitlements in the Nature of Fixed Allocations)

The draft determination proposes that the four sub-accounts of the former additional entitlements allowance be merged into one Logistic Support Allocation. Members will be able

to spend this allowance on specified items, in accordance with the conditions applying in the attached draft determination. In determining the quantum of the Logistic Support Allocation the Tribunal has given consideration to the level and format of entitlements formerly available to Members, the allowances proposed in the initial determination, and advice and data received from Members and the Presiding Officers of Parliament.

Members will be required to meet expenditure on communication, printing and stationery expenses as specified in the draft determination. The Tribunal has determined these allowances on the basis of those amounts calculated for the initial determination and increased them by a factor which takes into consideration population increases, inflation and GST. These adjustments reflect advice received from Members and the Presiding Officers of the Parliament in regard to the quantum of these allowances.

In determining the quantum of the transport component of the Logistic Support Allocation the Tribunal gave careful consideration to comments received from Members and the Presiding Officers of the Parliament. These submissions called for either an increase in the quantum of the allowance or, alternatively, a return to the warrant system. A number of submissions sought a differentiation between Sydney/electorate transport and other transport.

The Tribunal has considered the evidence given by Members (particularly country Members) to the effect that the incorporation of a monetary amount in the Additional Entitlements Account created a significant anomaly for some Members due to the averaging that is required in order to provide for monetary entitlements (even if the allowance is graded or scaled in a group or zone basis). Country Members, in particular, were disadvantaged as amounts proposed in the initial determination proved insufficient to cover electorate to Sydney travel for some Members. Upon the evidence now available to the Tribunal, the Tribunal considers that these submissions are well made and will revert to a warrant system for electorate to Sydney travel. It is proposed that the pre-existing levels for warrants should be restored. Eligible Members will receive 104 single journey entitlements.

All other forms of transport, including interstate travel, intrastate travel and spouse travel, are to be funded by Members from the Logistic Support Allocation. In calculating the quantum of the transport component of this allowance, the Tribunal gave consideration to actual expenditure by Members in 1997/98, the levels determined by the Tribunal in its initial determination, advice from Members and sample costings received from the Presiding Officers of the Parliament.

Given particular consideration were the sample costings received from the Presiding Officers of the Parliament in regard to the level of likely expenditure on these items. The Presiding Officers of the Parliament recommended that each Member should receive \$9,500. These costings were based on the number of interstate, intrastate and spouse travel warrants currently available to Members and estimated additional costs for taxis and parking. The Presiding Officers of the Parliament estimate assumes that every Member will use the full allocation currently available to him or her. This assumption is not supported either by the documentary evidence provided to the Tribunal or other evidence provided as part of this review process. Nor is it supported by the historical data considered by the Tribunal at the time of preparing the initial determination. This is particularly the case for Group 1 electorates. The Tribunal has therefore decided to discount the figure recommended by the Presiding Officers of the Parliament to more accurately reflect actual historical usage.

However, the Tribunal acknowledges that there still exists an absence of comprehensive data with respect to actual usage of transport by Members, notwithstanding the evidence placed before the Tribunal. The Tribunal would encourage Members to address any concerns as to the quantum of the transport allowance in any further submissions made by them (although such submissions will only be of real assistance if accompanied by data as to usage).

The Tribunal has decided not to introduce a warrant system for transport other than Sydney to electorate travel. The principal reason for this approach is that the determination endeavours to introduce greater flexibility in the Members use of the allowance to meet expenses. This approach is facilitated by the incorporation of that part of transport expenses which attracts

less difficulties associated with averaging than Sydney to electorate travel. Furthermore, the transport component of the Logistic Support Allocation involves elements which are less likely to attract the use of warrants in any event.

In the draft determination the Tribunal provides that the Logistic Support Allocation will include a transport component of \$4,000 per Member for Group 1, Zone 1 and Zone 2 electorates and \$6,000 per Member for all other electorate Groups and Zones

Electorate charter transport for members of the Legislative Assembly

Electorate charter transport allowances for members of the Legislative Assembly have been increased by 3.2% to reflect the increase in the CPI for the 12 month period to 30 June 2000.

Travelling allowance for recognised office holders

Travelling allowances for recognised office holders have been increased by 3.2% to reflect the increase in the CPI for the 12 month period to 30 June 2000.

Equipment and facilities

The Tribunal does not specify a sum of money to be allocated for the provision of these entitlements. The Tribunal specifies items of equipment, staff etc which are to be provided. The Parliament makes arrangements with NSW Treasury for the funding of these items. There is no change proposed to the initial determination; subject to any further submission concerning this matter.

Draft Determination

The Tribunal now issues the attached draft determination for the purposes of receiving further submissions, as earlier discussed in this Statement.

SUBMISSIONS

The Tribunal received further submissions in writing from the following persons, bodies or organisations in response to the Statement and draft determination:

1. The Hon Ian Armstrong MP
2. The Hon George Souris MP, Leader National Party of NSW
3. NSW Parliament Asia Pacific Friendship Group, Mr Jeff Hunter MP & Hon. Janelle Saffin MLC
4. Ms Clover Moore MP
5. Mr Andrew Fraser MP
6. Mr Daryl Maguire MP
7. Joint submission from the State Parliamentary Liberal and National Parties
8. The Hon Lee Rhiannon MLC
9. The Hon Helen Sham-Ho MLC
10. NSW Treasury
11. The Presiding Officers of Parliament (“the Parliament”)

12. Mr David Barr MP
13. State Parliamentary Labor Party
14. The Public Service Association
15. The Hon Duncan Gay MLC

It is not feasible to summarise the entirety of these submissions. The Tribunal has, however, made reference to specific aspects of the submissions, as required in this Report and has incorporated the entirety of some more substantial submissions in the Appendices to this Report. The submissions received from the Presiding Officers of the Parliament, the joint submission from the State Parliamentary Liberal and National Parties and the State Parliamentary Labor Party are attached in appendices in this Report and are numbered respectively Appendices 1, 2 & 3.

Additionally, a precis of the contentions raised by submissions appears below. All submissions have been carefully read.

Precis of Contentions Raised in Submissions

As noted above, the Tribunal shall briefly discuss some of the main points raised by the submissions. However, this summary is not intended to portray the entirety of the submissions received.

Broadly speaking, the further submissions concerned the following:

1. The quantum of allowances
2. The definition, guidelines and conditions applicable to allowances
3. The provision of additional entitlements

The quantum of allowances

(i) Logistic/Support Allocation

A number of the submissions argued that the quantum of allowance calculated for Members logistic/support allowances was insufficient. In particular, concern was expressed over the component calculated to represent estimated costs for electronic communication and transport.

(ii) Travelling allowances for recognised office holders

The rates proposed in the draft determination exceed the reasonable limit set by the Australian Taxation Office for overnight stays in Adelaide, Darwin Hobart and Canberra. It is proposed that these rates reflect the rates payable to the equivalent office holders in the Federal Parliament.

(iii) Electoral allowance

In some submissions it was contended that the proposed new electoral allowance does not adequately reflect the changed economic circumstances, CPI increases, the introduction of the GST or the additional costs associated with the 1999 redistribution of electorates.

(iv) Travel warrants

In a number of submissions it was contended that travel warrants should be available for Members intrastate, interstate, spouse and staff travel. It was contended that the transport component of the logistic/support allocation did not reflect actual estimated costs or provide the necessary flexibility for Members.

Definitions, guidelines and conditions applicable to allowances

(i) Implementation date

A number of submissions raised difficulties associated with the implementation of the determination from 1 July 2000. The difficulties identified included the time required to develop the necessary administrative procedures and guidelines to give effect to the new determination and problems associated with ensuring proper accountability when the conditions for entitlements had changed during the transition from the current entitlements to those proposed in the draft determination. The Parliament and other Members have recommended that the implementation date for all entitlements, with the exception of the electoral allowance, be deferred to 1 July 2001, or alternatively 1 January 2001.

(ii) Carry forward

A number of submissions have expressed concern over the perceived ambiguity of guidelines with respect to the carry forward of entitlements. It was contended that the fixed allocations should be made annually, but no repayment occur until the end of the parliamentary term. The NSW Treasury have suggested that these provisions be clarified in the determination.

(iii) Parliament to prescribe claim procedures, substantiation requirements and guidelines.

The Parliament has sought the inclusion of a new condition providing clear authority for the Parliament to prescribe claim procedures, claim/entitlement substantiation requirements and guidelines to assist Members in complying with the Tribunal's determination.

(iv) Clarification of Audit procedures

Some concerns were expressed as to the auditing of Members entitlements. In particular, submissions were put as to how regularly auditing should occur, who should undertake the audit and who is responsible for the payment of these services.

(v) Logistic/Support allocation

The Parliament and a number of other Members have sought clarification as to the particular items which Members will be required to fund from their Logistic/Support allocation.

(vi) Entitlements for Independent and Cross Bench Members

Submissions have sought clarification with regard to the provision of entitlements for Members elected as Independents or Cross Bench Members, particularly in relation to those Independent or Cross Bench Members originally elected as members of a political party.

The provision of additional entitlements

(i) Shadow Ministers

The joint submission of the Liberal and National Parties has argued that the provision of additional entitlements as outlined in the draft determination does not adequately reflect the additional costs and work associated with the role of Shadow Ministers.

(ii) Additional entitlements for Recognised Office Holders

Submissions to the Tribunal have suggested that a number of additional entitlements for Recognised Office Holders have been omitted from the draft determination.

CONSIDERATION

In response to the Statement and draft determination the Tribunal received a number of very substantial submissions providing detailed recommendations as to alterations appropriate to be made to the draft determination. In the result, the Tribunal received the benefit of a detailed analysis of the content and structure of the draft determination which, broadly speaking, assisted the Tribunal in its deliberations and illustrated the value of the Tribunal issuing a draft determination prior to publishing its final report.

It must be said, however, that some submissions extended beyond the scope allowed by the Tribunal for the making of further submissions and dealt with entirely new matters, often supported by little or no factual material. Furthermore, changes were occasionally proposed to the draft determination with little supportive argument. In the absence of appropriate materials or reasoned argument those aspects of the proposals advanced have naturally failed.

It should also be mentioned that some Members sought to make additional oral submissions and, in some cases, attain private audiences with the Tribunal, in addition to the process envisaged by the Statement. In some cases no previous submissions had been made or appearances entered. The Tribunal has provided ample opportunity for all Members to participate in these proceedings and to be heard by means of the giving of evidence and making submissions. The failure of such Members to take appropriate steps in the time allotted and in accordance with the procedures established by the Tribunal (which procedures were developed early in consultation with Members) is a reflection upon their application to attend to the task at hand and not as to the adequacy of procedures adopted by the Tribunal. The Tribunal has made its final determination having regard to submissions made during the initial

determination process, the evidence and submissions provided prior to the issuing of the Tribunal's Statement and draft determination and the submissions received in response to that Statement.

The Tribunal has evaluated the submissions made and recommendations for changes to the draft determination. The Tribunal has decided to make the determination attached to this Report. It is not feasible for the Tribunal to provide reasons dealing with the entirety of the propositions advanced in response to the Statement and draft determination. Rather, the Tribunal has provided reasons in relation to some matters which are either particularly significant or require particular observations to be made. The judgement of the Tribunal in each such case is reflected in the changes which have been made to the draft determination in the final determination accompanying this Report.

Electorate to Sydney Travel

The Clerk of the Legislative Council has drawn to the Tribunal's attention the different administrative systems which exist in the provision of air travel entitlements between Members of the Legislative Assembly and Members of the Legislative Council. Members of the Legislative Assembly are issued with travel warrants while Members of the Legislative Council use issued with an air travel card.

The Tribunal has determined that for present purposes, the difference in the systems operating between the Legislative Assembly and Legislative Council for such travel will be retained. However, this should not be taken as an indication by the Tribunal that it necessarily accepts the present differences as being warranted (and thereby continuing indefinitely). This issue will be revisited during the annual determination of 2001 when additional information as to the basis for and utility of the respective systems will be considered by the Tribunal.

Quantum of Electoral allowance

The Tribunal received submissions from some Members and organisations arguing for an increase in the quantum of the electoral allowance specified in the draft

determination. It should be noted that some of the arguments raised in support of this contention (and the information advanced in support of same) were entirely new in the sense that they had not been advanced at any earlier stage of the proceedings. Some of the submissions were also erroneous. For example, a submission was put as to the appropriate effect of CPI increases without recognising that the Tribunal had awarded in the draft determination an increase in allowance which represented a 2.1% CPI adjustment (arising from the initial determination) from the period 1 July 1997 to 30 June 1999 and 3.2% for the 12 month period ending 30 June 2000. These are reasonably generous adjustments by community and industrial standards.

The Tribunal has also considered submissions dealing with a variety of other matters such as the reconstitution of electorates. However, these considerations need to be balanced against the already substantial averaging undertaken in the assessment of the electoral allowance and the contentions advanced by Members as to potential losses occasioned by any repayment provisions in relation to the electoral allowance.

The Tribunal has decided that the draft determination will not be altered with respect to quantum of electoral allowances. The Tribunal is, however, prepared to consider in the future, on a case by case basis, the particular circumstances of individual Members which might warrant an adjustment to electoral allowances for a particular group or zone.

Recognised Office Holders

The Tribunal received submissions as to additional entitlements for Recognised and Other Office Holders. The Tribunal has examined the issues raised and has amended the entitlements where it was considered appropriate to do so. In all other cases, the Tribunal does not consider a change is warranted at this time. This issue will be revisited during the annual determination of 2001 and any submissions which are intended to be made concerning the existing systems will then be received and considered by the Tribunal.

Sydney Allowance

The Parliament proposed that the Sydney Allowance be restricted to a daily rate. This proposition was advanced having regard to the requirement to repay the unspent portions of the annual Sydney allowance and having regard to various taxation and administrative considerations. The Tribunal considers that there has not, as yet, been demonstrated a sufficient case for the abolition of the annual component of the Sydney allowance but will reconsider this matter, if appropriate submissions are made, during the annual determination for the year 2001. If necessary, the removal of the transit rate can be considered at the same time.

The Liberal and National Parties proposed adjustments to the quantum of the allowance and also that the unused portion of the allowance not be repaid. As to the second of those considerations, the Tribunal does not depart from the conclusions which it reached in the initial determination and its Statement. Both the Sydney allowance and the fixed allocations require appropriate accountability provisions which include in the Tribunal's view, the repayment provisions specified in the draft determination.

As regard to the quantum, the submission fails to recognise the historical, underlying principle governing the determination of the allowance. That is, that members will be required to spend a considerable period of time each year in Sydney on parliamentary business, and as such should be making longer term accommodation arrangements. The rate determined is lower than the ad hoc overnight rate (where commercial hotel accommodation is envisaged), because it is expected that Members will find cheaper accommodation when in Sydney. No evidence was presented to warrant a contrary conclusion being reached and some of the submissions alluding to private accommodation arrangements would seem to support the retention of the principle.

It should also be noted that the quantum of the Sydney allowance was adjusted in both the initial determination and the draft determination so as to maintain the real value of the provision. If a case is to be mounted, in due course, for a fundamental restructuring for the basis for this allowance then such a case should be mounted specifically and with the view to establishing why the long term historical principles

underpinning the allowances should be now altered. This is a matter that can be considered in due course, if appropriate submissions and materials are advanced.

Logistical Support Allocation

The State Parliamentary Labor Party has submitted that because the Member for Murray Darling has two electoral offices his logistic/support allocation should be increased. Whilst there would appear to be some prima facie justification for an adjustment in the allowance for this Member there is insufficient information provided to the Tribunal to identify precisely how the operation of two offices might result in a higher allowance. This issue may be revisited in the 2001 annual determination.

The Tribunal has considered the detailed submission put by the Liberal and National Parties as to the logistical support allocation. These submissions do not address squarely the considerations raised by the Tribunal in its Statement as to the assessment of the quantum of the logistical/support allocation. The Tribunal is not persuaded that the Liberal and National Parties have demonstrated a sufficient case for an increase in the logistical support allocation above the already substantial adjustment in those provisions arising from the draft determination. It should also be noted that the draft determination provided an allocation based substantially on current information provided by the Parliament as to transport costs relevant to the logistic support allocation.

Further, the adjustments to the allocation which were provided in the draft determination were generous by community standards with respect to allocations of this kind.

Additionally, as to the communication – electronic component of the logistic/support allocation, the amounts calculated for the Legislative Assembly contemplate that those Members will have access to an electoral office in contrast to those Members of the Legislative Council.

Guidelines and Procedures

The Parliament requested that the general conditions specified in the draft determination be varied so as to specifically provide authority for the Parliament to prescribe procedures, claim/entitlement substantiation requirements and guidelines to assist Members in complying with the determination.

The Tribunal has not introduced the condition proposed by the Parliament as the Tribunal considers that it would be inappropriate to incorporate any condition which may have the effect of delegating or conferring power residing in the Tribunal under the Act to some other person, body or organisation.

However, the Tribunal does consider that it would be appropriate, from time to time, for the Parliament to assist Members in complying with the determination by the setting of guidelines and procedures which serve to explain, illustrate and summarise the effect of the determination. By this means the Parliament would create administrative arrangements to give effect to the determination but not introduce procedures, conditions or guidelines inconsistent with the determination. For example, items 14 and 15 of the Parliament's submission would seem to be a sensible administrative arrangements but are inappropriate to incorporate in the determination because they concern the minutiae of the administration of allowances and allocations.

Accountability

It is an essential ingredient of this determination that Members shall be fully accountable for public monies claimed under the determination. An important aspect of ensuring accountability is the process of auditing of, for example, fixed allocations. The Tribunal was concerned that some submissions by or on behalf of Members did not seem to understand or comprehend this important consideration.

The community demands a reasonable standard of accountability for Members of Parliament in relation to the receipt and use of public funds. The conditions for use of additional entitlements in the Tribunal's determination reflects this standard.

The Tribunal was concerned that the proposal advanced by the Parliament as to auditing may have had the unintended effect of reducing the effectiveness of the auditing requirements specified in the draft determination. However, the Tribunal has accepted some aspects of the Parliament's proposal by recognising internal auditing processes, ensuring an effective external auditing process and clarifying that the costs of the audit would be met by Parliament.

Public Service Association Submission

The Tribunal received a submission from the Public Service Association/ Professional Officers Association Amalgamated Union of New South Wales ("PSA") seeking additional staffing in electorate offices. It is not entirely clear from the submission whether the PSA was seeking an increase in the assignment of permanent officers or the provision of relief staff.

The PSA appears to contend that the draft determination has constrained the Parliament in providing adequate relief staff. If this is the effect of the submission, it must be said that it misconstrues the draft determination. The draft determination does not deal specifically with the issue of temporary clerical relief.

The Tribunal considers that the PSA has not made out a sufficient case in its submission to warrant an overall increase in staffing levels. For example, the submission does not identify with precision what changed circumstances might warrant an alteration to existing staffing levels. Nevertheless, as the PSA seems to contend that the making of further submissions and evidence might better support its contention. This will be a matter to be considered, if required, in further determinations although it should be noted that the PSA plainly has other jurisdictions and avenues to address the issues it raises.

As to the submissions based on the *Occupational Health and Safety Act*, 1983, the Tribunal has made no determination (and nor could it) which would restrain the employer of staff from meeting the requirements of that legislation. In order to put that matter beyond doubt the Tribunal has amended the section dealing with the

provision of staff to ensure that no confusion will exist as to the requirements arising under the *Occupational Health and Safety Act*, 1983.

The Tribunal will consider any submission and accompanying materials presented by the PSA as to staffing in a future determination.

Asia Pacific Friendship Group

The Tribunal had sought during the taking of oral submissions a list of Parliamentary groups to which Members may belong and with respect to which additional entitlements may be used. However, this information has not yet been provided.

It does seem appropriate that some recognition be given to special interest groups, such as the Asia Pacific Friendship Group, where there is a legitimate connection between the functions of the Group and Parliamentary duties. For present purposes, the Tribunal considers that the identification of a Parliamentary Group meeting such criteria would be best undertaken by the Speaker and the President.

The Tribunal is not, however, attracted to the notion that the group itself will be given some form of allocation. This would raise serious difficulties in controlling the allocation of monies and, in any event, would probably exceed the charter given to the Tribunal under the Act. It would be appropriate, however, for Members who are members of such groups to use part of their allocations to support the work of the Group provided that the Group has been formally recognised by the President and Speaker. The Tribunal will, therefore, amend the definition of parliamentary duties so as to permit this outcome.

Carry forward arrangements

A number of Members and political parties raised a question as to the unspent portions of the logistic support allocation being carried forward. They contended that the unspent portion of the allocation should only be returned at the end of the Parliamentary term and that this was the effect of the draft determination.

This issue has a considerable heritage. It arose at the time of the time of the Report made by Justice Sully and was discussed in the initial determination. In its proposed advice under section 13(5) the Treasury commented upon Justice Sully's Report and determination as follows:

Financial Management Implications

The Determination proposes a "carry forward" of unexpended member entitlements. S. 14 states that if any portion of monies paid into the additional entitlements account and the Schedule 2 and 3 sub-accounts during a financial year is not expended within that year, the unexpended portion of the entitlement is to stand to the credit of the additional entitlements account for the next financial year, for each year during a term of Parliament.

This would be technically in breach of Section 23 of the Public Finance and Audit Act. This section states that every appropriation out of the Consolidated Fund for any financial year shall lapse and cease to have any effect for any purpose at the close of that year. Furthermore, appropriations out of the Consolidated Fund for the purpose of funding member entitlements have been traditionally 'protected', such that any unexpended portion may not be used for any other purposes and must be returned to the Fund.

Although future annual determination of the Tribunal may take the unexpended portion of monies allocated for members' entitlements into account when formulating the coming year's entitlements, and thus give effect to its Determination, this would be essentially against the intent of the legislation.

Allowing unspent funds to effectively be carried forward will also provide incentives for members to utilise previously unexpended funds allocated for entitlements, and reduce the fiscal restraint built in through the 'protection' (return to the Budget) of any such monies.

Section 23 of the Public Finance and Audit Act 1983 states:

23 Lapsing of appropriation of revenue

(1) Except as provided by subsection (2), every appropriation out of the Consolidated Fund for any financial year shall lapse and cease to have any effect for any purpose at the close of that year.

(2) Where, in relation to any appropriation for salaries or wages or payments in the nature of salaries or wages, an amount, not exceeding:

(a) the total of the sums required to meet so much of those salaries, wages or payments as is chargeable in respect of that part of the pay period current at 30 June in any year which terminations on that day, and

(b) the total of the sums require to meet so much of those salaries, wages or payments as is, pursuant to a lawful determination made on or before 30 June in any such year, required to meet salaries, wages or payments for that pay period or any pay period occurring before that pay period, or both, is transferred to the credit of a suspense account within the Special Deposits Account, and the amount so transferred is thereafter applied in or towards meeting those salaries, wages or payments for that pay period or those pay periods, as the case may require, the amount so transferred shall, for the purposes of this section, be deemed to have been applied during the financial year in relation to which the appropriation was made.

During the course of proceedings for the initial determination a submission was received by the Chairman of the Council of the Cost of Government with respect to the Treasury advice as follows:

While Treasury has drawn attention to section 23 of the Public Audit and Finance Act dealing with lapsing of appropriations, the Act was written to apply to a cash system whereas the State moved to accrual accounting some years ago. The majority of agencies now finish each financial year with a positive cash balance in their bank accounts. In fact, provision exists for agencies to be able to underspend or overspend from year to year by modest amounts.

The Cash Flow Statements for a range of agencies shown in the current State Budget Papers, for example, shows "Opening cash and cash equivalent" at the beginning of the financial year and the anticipated "Closing cash and cash equivalents" at the end of the financial year. This is tangible evidence that the allocations to those agencies have not lapsed at the end of each financial year.

Agencies are then able to use "agency cash balances" at the end of one financial year as a source of funds for the following financial year, subject to limitations imposed by the Treasury from time to time. Such a limitation might be expressed as a dollar amount, or a percentage of total expenditure or Net Cost of Services.

Another factor to be borne in mind is that the appropriation to the Legislature is not Member specific. Provided the Legislature stays within its overall budget limit and meets other requirement of Treasury, it can maintain considerable flexibility in what entitlements are provided to each Member each year. For example, some members may draw heavily on their entitlements in one year while others may not. The reverse could exist in following years. This allows individual Members to draw on their entitlements as required and does not bind them to exercise their entitlements evenly throughout the life of the Parliament. This is in fact what happens at present, although it is acknowledged that this can cause some difficulty to the Financial Controller in balancing Member needs and Treasury requirements.

In the initial determination, the Tribunal stated with respect to carry forward arrangements:

As previously mentioned, another aspect of the draft determination was the provision allowing entitlements to be carried forward from one financial year to another. The Secretary of the Treasury was critical of this approach. Having regard to this critique, and noting the financial management systems adopted in this determination, the Tribunal has determined not to allow Members to carry forward their entitlements into the next financial year (p37).

The draft determination recently issued by the Tribunal made changes to the scheme for additional entitlements which arose from the initial determination. In doing so, and having regard to the increased flexibility in the use of additional entitlements provided under the draft determination, the Tribunal specified that the unspent portions of Members entitlements (which are specified as annual entitlements) may be used by

Members in later periods of their Parliamentary term (until the conclusion of the Parliamentary term).

The Tribunal has adopted this approach for the following reasons:

1. It is an essential objective of this determination that Members be provided with flexibility in the use of additional entitlements so as to accommodate, as far as possible, the vastly different circumstances operating in their various electorates and to maximise the efficient use of Members' available resources by allowing the allocations to meet the needs of the electorate. Under the legal advice now received by the Tribunal this flexibility of approach can be provided in the determination made by the Tribunal. Any requirement to fix allowances on a purely annual basis will detrimentally affect the fulfilment of those objectives;
2. It appears to the Tribunal that its determination is not contrary to the *Public Finance and Audit Act*, 1983. The Tribunal has made provision for Members per se, and not for the overall administration of funds held from year to year by the Parliament;
3. The Tribunal should not assume that any requirement reposing in the Parliament under the *Public Finance and Audit Act*, 1983 will not be met by the Parliament having regard to the management of finances under accrual accounting systems and the absence of any submission by the Parliament in the current round seeking to alter in any relevant way the draft determination (which provides for the allocations over the term of Parliament);
4. The determination conforms with the longstanding practice adopted by the administration of Parliament in relation to Members allotments. It also conforms with the custom and practice adopted by Members in the utilisation of such entitlements. No previous problems as to such practices has been identified by the Parliament or any other relevant agency.

Date of Operation

The parties to the proceedings contended that the date of operation for this determination should be 1 July 2001, or alternatively, 1 January 2001. This proposition was advanced on a number of bases including the administrative difficulties associated with the retrospective operation of the determination. Issues were also raised as to accountability requirements and the difficulties which would arise from retrospectively imposing different conditions upon the use of allowances and other entitlements upon Members.

The arguments raised against retrospectively are, no doubt, soundly based. However, the Tribunal is bound by the statute. Section 11 of the Act would appear to require that an annual determination may only operate on and from 1 July in the year that the annual determination is made by the Tribunal. This arises from the plain language of section 11(1), and at least impliedly, from the terms of section 11(3) of the Act. Plainly, this is an issue which the Legislature should consider given that, as in the present case, the date for the determination may be altered so as to provide for a determination being made later than 1 June in a given year (see section 11(2)).

The Tribunal has reviewed the submissions of the parties in this matter and considers that, in this particular case, there exists a limited (and perhaps sole) basis upon which the later operation of the determination may be granted. The Tribunal has previously determined that the final terms of the initial determination including its date of operation would be determined as part of the exercise of the Tribunal's powers under section 11(that is, as part of the annual determination process). The Tribunal has determined that the only effect of the annual determination will be to usher in the final form of the initial determination. Thus, it would appear that the Tribunal may make a date of operation in this determination having regard to its powers to make an initial determination. The Tribunal's discretion to fix an appropriate operative date for an initial determination is not relevantly fettered.

The Tribunal determines that the initial determination shall operate on or from 31 December 2000 (noting that it is appropriate that any determination under section 11 be made within the calendar year which is relevant to that determination). The annual determination which provides this result shall operation on and from 1 July 2000.

Hence, the determination which accompanies this report shall operate on and from 31 December 2000.

It would be desirable for Parliament to address this anomaly in section 11(1) by providing for a later date of operation for an annual determination where an extension of time is granted under s.11(2)

Determination

The Tribunal makes the determination contained in the attached determination to operate on and from 31 December 2000.

Dated this 4th Day of December 2000

The Honourable Justice Walton

THE PARLIAMENTARY REMUNERATION TRIBUNAL

Appendix 1
Submission by Parliament's Administration

Point of Concern – Item 1:	Commencement Date of New Determination
PRT Determination Reference:	Paragraphs 1 and 2 (page 45)
Change Proposed:	Deferral of commencement date until 1 January 2001 for entitlements and allowances excluding electoral allowances which should commence as proposed from 1 July 2000.
Reason:	<p>The proposed implementation date of 1 July 2000 is considered impractical and undesirable for the following reasons:</p> <ul style="list-style-type: none"> ➤ The time required to update computer systems and to develop reporting requirements ➤ The time required to develop procedures and systems to give effect to the new Determination and then document these procedures and produce a Members' Handbook. This process will require consultation with a number of external bodies including the PRT and NSW Audit Office. ➤ The administrative and accounting work involved in reprocessing all Members' entitlement claims since 1 July 2000 in accordance with the requirements of the new determination. ➤ Members have utilised their entitlements since 27 March 1999 on the basis of the existing entitlement system which has included carrying forward certain travel, printing, stationery and postage entitlements to the current financial year. Members were advised in writing by the Parliament that they could carry forward these unused entitlements and they have accepted this advice in good faith. ➤ The introduction of a new entitlement system retrospectively is considered inequitable and contrary to normal business and government practice. ➤ Application of the electoral allowance increase from 1 July 2000 is supported

Point of Concern – Item 2:	Notification to Tribunal of Shadow Ministers
PRT Determination Reference:	Definition of "Shadow Ministers" second paragraph, (page 46)
Change Proposed:	Notification to be made by the Leader of the Opposition to the Parliament's Presiding Officers in lieu of the Tribunal.
Reason:	<ul style="list-style-type: none"> ➤ Both House departments of the Parliament publish a list of "Shadow Ministers" which is updated when a change is advised. ➤ The changes to logistic support budget allocations can be actioned on a more timely basis by the Parliament's administration with the advice of the change subsequently forwarded on to the Tribunal.

	<ul style="list-style-type: none"> ➤ There appears to be no benefit in involving the PRT in this process as other non-executive government office-holder appointments are dealt with internally within the Parliament.
Point of Concern – Item 3:	Clarification of circumstances upon which the additional entitlements may be used for parliamentary duties
PRT Determination Reference:	Guideline 1.1.1 page 47 and 2.2.3 page 48
Change Proposed:	Further clarify direct electioneering or political campaign nature by specifying the date writs are issued for the holding of a General Election or By-Election as the commencement of the election campaign.
Reason:	<ul style="list-style-type: none"> ➤ The current conditions are too broad and open to individual interpretation as to when a political campaign actually commences. The setting of a definitive period will assist Members in complying with the guidelines and the Parliament’s administration in applying them

Point of Concern – Item 4:	Member of Parliament who is a Member of a recognised political party at time of election who subsequently resigns from that party and stands as an independent Member.
PRT Determination Reference:	Guideline 1.1.10 (page 48)
Change Proposed:	Clarification that this condition only applies from the effective date of the determination forward and not retrospectively
Reason:	<ul style="list-style-type: none"> ➤ Two existing Members of the Legislative Council have resigned from their respective parties and currently stand as independent Members.

Point of Concern – Item 5:	Members’ Participation in Activities of the Commonwealth Parliamentary Association outside Australia
PRT Determination Reference:	Guideline 1.11.1 (page 48)
Change Proposed:	Participation within Australia in activities of the Commonwealth Parliamentary Association provided such activities arise directly from Membership of the New South Wales branch and officially endorsed by the Branch (exclusive of air travel).
Reason:	<ul style="list-style-type: none"> ➤ Reference to activities outside Australia organised by the Commonwealth Parliamentary Association have been removed as it is understood that the Tribunal does not have jurisdiction to determine overseas entitlements, refer section of the Parliamentary Remuneration Act of 1989.

Point of Concern - Item 6:	Use of additional entitlement fixed by this determination for fundraising for other party political Members.
PRT Determination Reference:	Condition 2.2.4 (page 49)
Change Proposed:	Exclude use of electoral allowances from this condition.
Reason:	<ul style="list-style-type: none"> ➤ Members currently use their electoral allowances for this purpose and this is allowed as a legitimate deduction by the Australian Taxation Office in certain circumstances. ➤ There is no practical way for the Parliament's administration to enforce this condition without auditing each Members' electoral allowance expenditure.

Point of Concern - Item 7:	Audit of Members' Fixed Allocation Entitlements
PRT Determination Reference:	Condition 8 (page 51)
Change Proposed:	All Members additional entitlements in the nature of fixed allocations should be audited annually for compliance by the Parliament's Internal Auditor and subject to review by the External Auditor. These auditors shall have access to all records and documentation held by the Parliament relating to Members' additional entitlements. If requested by the Auditor's, Members' are to supply further clarification or documentation.
Reason:	<ul style="list-style-type: none"> ➤ The current condition does not specify who should conduct the audit, whereas the changes proposed clarify the matter. ➤ The Parliament's administration will be in possession of documentation to support and substantiate each Members' entitlement claim or payment made from the Members' fixed allocations. Members will therefore only need to supply additional information or clarification in respect to specific claims required by the Auditor from time to time. ➤ Clarification is also sought as to who meets the cost of the audit and the timeframe for completing the audit, ie can they be conducted throughout the year or only in the last month, after the completion of the year etc.

Point of Concern – Item 8:	Authorization for the Parliament to prescribe additional entitlement claim procedures, substantiation requirements and guidelines.
PRT Determination Reference:	Item 2 Conditions (pages 50-52), suggested condition number 11.
Change Proposed:	Inclusion of a new condition providing clear authority for the Parliament to prescribe claim procedures, claim/entitlement substantiation requirements and guidelines to assist Members in complying with the PRT determination.
Reason:	<ul style="list-style-type: none"> ➤ Based on a review of the draft determination and inquiries received from Members, it is apparent that additional guidelines and procedures will need to be developed to assist Members with interpreting and complying with the new determination provisions. While it is anticipated that these will be developed by the Parliament (in consultation with the PRT) the authority for the Parliament to deal with such matters to be specified in the determination.

Point of Concern – Item 9:	Quantum of Electoral Allowance Provided to Members
PRT Determination Reference:	Item 1 (b) and (c) (pages 53-54)
Change Proposed:	An increase to the proposed allowance payable for each electorate group and for each Member of the Legislative Council.
Reason:	<ul style="list-style-type: none"> ➤ The 3.2% increase provided only reflects the cost of living adjustment since 1 July 1999. The last increase to Members' electoral allowances applied from 1 July 1997. ➤ The CPI increase for the period 30 June 1997 to 30 June 2000 is 4.3%. ➤ The increase provided of 3.2% does not take into account the impact of GST which Members are required to meet personally as they are not entitled to a input tax credit for electorate allowance expenditure. ➤ The reduction in the number of seats in the Legislative Assembly following the March 1999 election has increased the number of constituents that have to be serviced by up to 20% since the electoral allowances were last increased in July 1997. ➤ The area of each electorate to be serviced has also increased in most instances, which has impacted on electoral costs incurred by Members.

Point of Concern – Item 10:	Sydney Allowance Conditions
PRT Determination Reference:	Condition 1 (page 55)
Change Proposed:	Restrict the payment of the Sydney Allowance to a daily rate.
Reason:	<ul style="list-style-type: none"> ➤ The requirement for Members in receipt of the annual amount to repay the unspent portion of the allowance effectively converts the allowance into a daily rate. ➤ The requirement to repay unspent portions of this annual Sydney Allowance creates substantial accounting and tax related issues which were set out on page 7 of the Parliament’s July 2000 submission. The latest draft determination does not address these issues and the concerns remain, namely; <ul style="list-style-type: none"> ➤ The likely refund in a different tax year to which the allowance was paid, this will require the Member to pay tax on the unspent portion of the allowance, notwithstanding it has to be repaid. ➤ Fringe benefits tax will be payable by the Parliament if a Member holds an unused allowance in excess of six months. ➤ The substantial administrative effort in administering and accounting for the return of the unused annual Sydney Allowance will be avoided if the Sydney Allowance is paid on a daily basis.

Point of Concern – Item 11:	Payment of Sydney Allowance whilst in transit to and from Sydney
PRT Determination Reference:	Table 1 (page 55)
Change Proposed:	Remove in transit rate from Sydney Allowance entitlement.
Reason:	<ul style="list-style-type: none"> ➤ This has only been claimed on approximately three occasions over the last five years and is considered redundant. ➤ The inclusion of this in-transit rate mirrors the Australian Remuneration Tribunal determination which deals with Members having to travel to and from remote parts of Australia which does not apply to NSW Members who have access to same day air services to and from Sydney. ➤ A number of Members have been confused by this in-transit overnight rate and have attempted to claim it when they were not entitled.

Point of Concern – Item 12:	Leader of the Third Party in Assembly Sydney Allowance specified in Table 1
PRT Determination Reference:	Table 1 (page 55)
Change Proposed:	Minister, Speaker, Leader of the Opposition (Assembly and Council), Leader of a Third Party in the Legislative Assembly with not less than 10 Members.
Reason:	<ul style="list-style-type: none"> ➤ All other entitlements relating to a Leader of a Third Party refer to not less than 10 Members and it is assumed that the same minimum number of party Members would also apply to this entitlement.

Point of Concern – Item 13:	Omission of President and Chairman of Committees Legislative Council from Table 1
PRT Determination Reference:	Table 1 (page 55)
Change Proposed:	<p>Provide the President with the same entitlement as the Speaker, Leader of the Opposition (Assembly and Council) Leader of the Third Party in the Assembly.</p> <p>Provide the chairman of committees Legislative Council with the same entitlement as the Deputy Speaker and Chair of Committees in the Legislative Assembly.</p>
Reason:	<ul style="list-style-type: none"> ➤ The exclusion of the President and Chair of Committees-Legislative Council from this entitlement has been an anomaly for a considerable period. This should now be rectified, notwithstanding that the current president as a city based Member is not entitled to a Sydney Allowance. Similarly, the Chair of Committees currently resides in a category 2 residential zone and therefore receives the same entitlement as he would if included in the table with the Deputy Speaker and Legislative Assembly Chair of Committees.

Point of Concern – Item 14:	Repayment of unspent portion of annual Sydney Allowance
PRT Determination Reference:	Condition 6 (page 56)
Change Proposed:	In the event that the Annual Sydney Allowance option is retained (refer point of concern 9), the following amendment is proposed “Members in receipt of the annual amount will be required to return to the Parliament the unspent portion of the Allowance for re-credit of the Consolidated Fund no later than one month after the end of the financial year or from the date they cease to be a Member. The amount to be refunded shall be the difference between the Sydney Allowance received as an annual amount (paid calendar monthly) and the value of the actual overnight stays multiplied by the current daily overnight rate”.
Reason:	➤ There needs to be clear conditions as to when the allowance has to be repaid and the method used to calculate the amount.

Point of Concern – Item 15:	Sydney Allowance – Clarification of Records to be Maintained by Members as Proof of Overnight Stays in Sydney
PRT Determination Reference:	Condition No. 5 (page 56)
Change Proposed:	Members will need to substantiate the occasions they stayed in Sydney in connection with their parliamentary duties. Such substantiation could include air-line boarding passes for arrival and departure from Sydney or any other documentary evidence of having travelled and stayed in Sydney in connection with parliamentary duties. This substantiation will need to be supplied to the Parliament’s administration at the time of claiming the daily Sydney Allowance or reconciling the annual allowance with actual overnight stays.
Reason:	➤ The existing condition only specifies that Members need to maintain records and does not specify to whom they are to be forwarded to, or when they are to be submitted.

Point of Concern – Item 16:	Committee Allowance Conditions
PRT Determination Reference:	Entitlement (a) (page 57)
Change Proposed:	<ol style="list-style-type: none"> 1. The existing condition be amended to include “Chairpersons of Standing Committees of the Legislative Assembly, Joint Standing Committees and Select Committees”. 2. Add the following sentence to the existing entitlement clause (a) “ this allowance is not payable to Chairpersons in receipt of a salary of office as specified in schedule 1 of the Parliamentary Remuneration Act of 1989”.
Reason:	<ul style="list-style-type: none"> ➤ The Legislative Assembly often creates standing committees for which the Chairpersons should be entitled to the same allowance as joint committee or select committee chairpersons. ➤ The exclusion of Chairpersons who are already in receipt of a salary of office is consistent with the existing entitlements and clarifies that these chairpersons are not entitled to an additional committee allowance.

Point of Concern – Item 17:	Audit of Sydney Allowance
PRT Determination Reference:	Condition No. 8 (page 57)
Change Proposed:	Adoption of the same audit requirements as that applying to fixed allocation entitlements (refer point of concern 6, PRT condition 8, page 51)
Reason:	<ul style="list-style-type: none"> ➤ Members’ Sydney Allowance payments should be audited annually for compliance by the Parliament’s Internal Auditor and subject to review by the External Auditor. These Auditors shall have access to all records relating to the payment and administration of the Sydney Allowance. If requested by the Auditors, Members are to supply further clarification or documentation in relation to payment of this allowance.

Point of Concern – Item 18:	Electorate to Sydney Office-holder Entitlement
PRT Determination Reference:	Entitlement table (page 58)
Change Proposed:	Allocation of 32 single journey entitlements for the Deputy Speaker of the Legislative Assembly
Reason:	<ul style="list-style-type: none"> ➤ All other entitlements of the Deputy Speaker are equivalent to those provided to the Chairman of Committees in the Legislative Assembly and it appears that this position has been overlooked when drafting the latest determination. ➤ The travel requirements of the Deputy Speaker to attend Sydney are comparable with those of the Chairman of Committees

Point of Concern – Item 19:	Purpose and Operation of Electorate to Sydney Travel Provisions
PRT Determination Reference:	Page 58
Change Proposed:	Amend the fourth paragraph to read “where eligible, each of the below mentioned office-holders shall be entitled to the following additional electorate to Sydney travel entitlements per annum. Office-holders who hold more than one of the below mentioned offices shall only be entitled to additional journey entitlements pertaining to one office.
Reason:	➤ Provide clarification for office-holders holding more than one office as to their correct electorate to Sydney travel entitlement.

Point of Concern – Item 20:	Electorate to Sydney Travel Conditions
PRT Determination Reference:	Conditions 2 to 4 (page 59)
Change Proposed:	Conditions 2 to 4 refer to the use of warrants, whereas Legislative Council Members are not issued with warrants, alternatively electorate to Sydney travel is recorded as an entitlement. Air travel details are recorded directly from the Qantas account and matched with airline boarding passes where possible. Clarification is sought as to whether the Legislative Council should retain their existing system.
Reason:	➤ It is preferable for both Houses of Parliament to adopt the same systems and procedures in administering Members’ entitlements as recommended by the ICAC.

Point of Concern – Item 21:	Conditions Pertaining to Electorate to Sydney Travel
PRT Determination Reference:	Condition No. 4 (page 59)
Change Proposed:	Members’ warrants are not transferable to Members’ spouses or approved relatives, Members’ staff, other Members or other persons.
Reason:	➤ The existing wording of the condition is confusing as Members’ spouses are not provided with travel warrants under this new determination. ➤ It is assumed that the Tribunal intended that warrants are also not transferable to Members’ staff or other persons.

Point of Concern – Item 21:	Purposes for which the Logistic Support Allocation may be applied
PRT Determination Reference:	Page 60
Change Proposed:	<p>Expansion of purpose for which the Logistic Support Allocation can be used include:</p> <ul style="list-style-type: none"> ➤ Mail distribution and postal delivery services ➤ Private post office box rental ➤ Minor office equipment not exceeding \$1,000 per item, for equipment not provided as part of standard office facilities or services by the Parliament. Any such item purchased from this allocation with a value of \$200 or more is to remain the property of the Parliament. ➤ Substitute the word “transport” for “travel” in the list of purposes 1,2 and 5.
Reason:	<ul style="list-style-type: none"> ➤ A number of alternative postal delivery services are now available which provide more cost effective alternatives than the services provided by Australia Post. ➤ Members, under current entitlement arrangements, are able to purchase minor items of equipment utilising their external printing allowances. Continuation of this practice will provide Members with flexibility to meet their specific support requirements. ➤ Substitution of the word “transport” for “travel” will provide consistency with terminology used in subsequent tables and conditions documented on pages 63 and 64 of the draft determination. Use of the term transport also indicates that meal and accommodation charges are not included see also point of concern. ➤ The term “travel” should be retained for staff if the Parliament’s recommendation is that they receive a sustenance allowance whilst staying overnight in Sydney on parliamentary business is approved, refer point of concern 24.

Point of Concern – Item 22:	Return of unused Logistic Support Allocation Funds at end of term
PRT Determination Reference:	Condition No. 4 (page 62)
Change Proposed:	Any unused entitlements remaining in the Members’ Logistic Support Allocation at the end of each 4 year term or earlier dissolution of the Legislative Assembly are to be forfeited.
Reason:	<ul style="list-style-type: none"> ➤ The amended clause clarifies the length of the term plus corrects the impression that Members are given actual funds in lieu of incurring expenditure against a set Logistic Support Allocation budget. Consequently, there will be no actual funds to be returned by Members, they will simply forfeit the unused entitlement amount in their budget.

Point of Concern – Item 23:	Logistic Allowance Entitlement
PRT Determination Reference:	Page 62
Change Proposed:	<p>Insert new paragraph</p> <p>The annual allocation shall be made available at the commencement of each financial year. A pro-rata allocation is to be made available for the period following a General Election or By-election to the end of that financial year. Similarly, a pro-rata allocation is to be made for the 9 month period in the financial year leading up to a General Election.</p>
Reason:	<ul style="list-style-type: none"> ➤ A number of queries have already been received from Members as to how the Logistic Support Allocation is to be allocated. The inclusion of the paragraph suggested above will clarify the matter and avoid subsequent disputes.

Point of Concern – Item 24:	Logistic Support
PRT Determination Reference:	General Condition 5 (page 62)
Change Proposed:	An increase to the proposed allowance payable for each electorate group and for each Member of the Legislative Council.
Reason:	<ul style="list-style-type: none"> ➤ Amend general condition no. 5 so that it is consistent with condition no. 8 on page 51 of the determination which also refers to auditing of Members’ additional entitlements in the nature of fixed allocations (refer also points of concern 6 and 15).

Point of Concern – Item 25:	Logistic Support Allocation General Conditions
PRT Determination Reference:	General Condition 5 (page 62)
Change Proposed:	An increase to the proposed allowance payable for each electorate group and for each Member of the Legislative Council.
Reason:	<ul style="list-style-type: none"> ➤ Amend general condition no. 5 so that it is consistent with condition no. 8 on page 51 of the determination, which also refers to auditing of Members’ additional entitlements in the nature of fixed allocations (refer also points of concern 6 and 15).

Point of Concern – Item 26:	Logistic Support Allocation Transport Conditions for Spouses
PRT Determination Reference:	Particular Condition 3 (page 64)
Change Proposed:	All transport costs (including electorate to Sydney transport) associated with spouse/approved relative transport are to be provided from the Logistic Support Allocation. This allocation is not be used for meal and accommodation expenses.
Reason:	<ul style="list-style-type: none"> ➤ Clarify that the Logistics Support Allocation can not be used for accommodation and meal expenses.

Point of Concern – Item 27:	Electorate Staff Travel
PRT Determination Reference:	New particular transport condition (page 65)
Change Proposed:	All transport costs associated with Members’ staff travel (excluding travel costs associated with staff training which is approved by the Parliament’s administration) is to be provided from the Logistic Support Allocation account. Members’ staff located in the Legislative Assembly (group 2-8 electorates) or Legislative Council (zones 2 and 3) are to be provided with an overnight sustenance allowance if required to stay overnight in Sydney on parliamentary business. The allowance is to be paid at the appropriate NSW Public Sector rate. Staff training costs approved by the Parliament’s administration are to be met by the Legislature.
Reason:	<ul style="list-style-type: none"> ➤ The original transport condition 3 did not differentiate between Parliament approved staff training courses and other courses. ➤ The current guidelines provide for an overnight sustenance allowance to be paid to country based electorate office staff when required to stay overnight in Sydney and it appears reasonable that this will be provided for in the new determination given that electorate staff are permitted to travel. ➤ It is recommended that the term Members’ staff be substituted for electorate staff, which will permit Legislative Council Members’ staff located in Legislative Council zones 2 and 3 to travel to Sydney to support their Member as required.

Point of Concern – Item 28:	Transport Conditions Relating to Stay in Sydney
PRT Determination Reference:	Condition 8 (page 65)
Change Proposed:	Members’ staff will need to maintain records which clearly document the occasions they stayed in Sydney in connection with their parliamentary duties. Such documentation could include airline boarding passes for arrival and departure from Sydney or any other documentary evidence of having travelled and stayed in Sydney accommodation in connection with Parliamentary duties. This documentation is to be forwarded to the Parliament’s administration on request.
Reason:	<ul style="list-style-type: none"> ➤ The existing condition represents a duplication of condition 7 on page 59 relating to electorate to Sydney travel and therefore is not required or relevant in relation to non electorate to Sydney transport conditions. ➤ The amendment suggested is dependant upon the Tribunal accepting the changes proposed to Members’ staff travel documented as point of concern number 24. This amendment will ensure that substantiation is provided to support any overnight sustenance allowance payment.

Point of Concern – Item 29:	Communication – Electronic Conditions
PRT Determination Reference:	Condition 1 (pages 65-66)
Change Proposed:	<p>Suggested amendment to condition 1</p> <p>The Tribunal accepts that there will be some private usage in connection with mobile telephones supplied by the Parliament and electronic communication equipment installed at public expense in a Members’ principal place of residence. To ensure the Legislature does not pay Fringe Benefits Tax for the private usage of electronic equipment, the Financial Controller will undertake a survey over an appropriate period of time to ascertain public/private percentage use of Members’ home telephones. Once established Members will be reimbursed the parliamentary business cost of each home telephone call account and an adjustment shall be made to previous accounts reimbursed from the effective date of this determination on or from the date of election, whichever is the later.</p>
Reason:	<ul style="list-style-type: none"> ➤ The Australian Taxation Office has ruled that there is no fringe benefits tax payable on incidental private use of mobile telephones, consequently it is proposed that the survey only apply to Members’ home telephones. This will greatly reduce the administrative burden for both Members and the Parliament’s accounting staff which will be more cost effective than adjusting each Members’ mobile telephone account to recoup minor incidental private usage call costs. ➤ The proposal for Members to pay proportionate private percentage costs from the completion of the survey, serves as a disincentive for

	return of the survey and would also attract payment of FBT. Consequently, it is proposed that reimbursement be adjusted retrospectively based on the outcome of the survey.
--	---

Point of Concern – Item 30:	Communication – Electronic Conditions Overseas Call Charges.
PRT Determination Reference:	Condition 2 (page 66)
Change Proposed:	<p>Members will be required to meet the cost of all overseas calls, changed information/service calls, reverse charge calls and home-link calls Telecard calls except the following office-holders who shall be entitled to reimbursement from the Parliament of overseas calls relating to parliamentary business:</p> <ul style="list-style-type: none"> ➤ Ministers ➤ Speaker of the Legislative Assembly ➤ President of the Legislative Council ➤ Leader of the Opposition (Assembly and Council) ➤ Leader of a Party (not less than 10 Members) ➤ Chairman of Committees (Assembly and Council) ➤ Deputy Speaker ➤ Deputy Leader of the Opposition (Assembly) ➤ Parliamentary Secretaries (Assembly and Council) ➤ Government and Opposition Whips (Assembly and Council) ➤ Deputy Whips (Assembly and Council)
Reason:	<ul style="list-style-type: none"> ➤ Changes suggested are consistent with current guidelines, except the exclusion of Telecard calls and rectify existing anomalies between office-holders in the Legislative Council and Legislative Assembly, relating to an entitlement to be reimbursed overseas telephone calls. ➤ It is proposed that these office-holders will only be entitled to reimbursement for overseas calls made for parliamentary purposes, which is consistent with the current practice.

Point of Concern – Item 31:	Communication – Electronic Conditions Members Required to Pay Full amount then seek reimbursement
PRT Determination Reference:	Condition 3, page 66
Change Proposed:	Accounts may be paid directly by the Parliament and debited to a Members’ Logistic Support Allocation to the value of the Members’ public use proportion with the Member responsible for payment of the balance. Alternatively, a Member may effect payment in the first instance then seek reimbursement from the Parliament for the public use proportion.
Reason:	➤ The current clause was inconsistent with the Logistic Support Allocation General Condition number 6 on page 62 of the draft determination. The proposed amendment reflects the existing practices currently in place for Legislative Assembly Members.

Point of Concern – Item 32:	Communication – Non-electronic
PRT Determination Reference:	Page 66
Change Proposed:	Members are permitted to purchase postage stamps or other mail distribution and delivery services and make arrangements for payment direct by the Parliament or obtain reimbursement by providing substantiation in accordance with the requirements of the Parliament’s administration.
Reason:	➤ A number of alternative mail and postal services are now available at a more competitive price than the standard postage stamp. ➤ With the introduction of GST, the long established practice of issuing cheques in advance jeopardises the Parliament’s access to an input tax credit, as a tax invoice must be obtained and held by the Parliament, which is difficult to obtain under the former arrangements.

Point of Concern – Item 33 :	Printing and Stationery
PRT Determination Reference:	Conditions 1-3 (pages 66-67)
Change Proposed:	Inclusion of an additional condition no. 4 “A Member may use their printing and stationery allowance to meet the cost of minor items of office equipment not exceeding a cost of \$1,000, provided such equipment is used for parliamentary purposes. A Member may retain ownership of this equipment provided the initial cost of purchase does not exceed \$200.”
Reason:	➤ Provide flexibility to Members to meet their office requirement needs which are not provided by the Parliament directly. ➤ Maintain the current entitlement available to Members who are able to utilise their existing external printing allowance for this purpose.

Point of Concern – Item 34:	Electorate Charter Transport for Members of the Legislative Assembly Auditing Condition
PRT Determination Reference:	Condition 6 (page 68)
Change Proposed:	All Members additional entitlements in the nature of fixed allocations should be audited annually for compliance by the Parliament’s Internal Auditor and subject to review by the External Auditor. These auditors shall have access to all records and documentation held by the Parliament relating to Members’ additional entitlements. If requested by the Auditors, Members are to supply further clarification or documentation.
Reason:	➤ Standardise requirements with other auditing conditions relating to other entitlements and the general auditing condition 8 (page 51).

Point of Concern – Item 35:	Travelling Allowances for Recognised Office-holders			
PRT Determination Reference:	Table 2 (page 69)			
Change Proposed:				
Recognised Office-holder	Capital Cities		Other Areas	Where no overnight stay if required
	Melbourne Brisbane Perth	Adelaide Darwin Hobart Canberra	Other Capital City	
	\$	\$	\$	\$
Premier	335	270	180	87
Ministers	335	270	180	70
President of the Legislative Council	335	270	180	70
Speaker of the Legislative Assembly				
Leader of the Opposition in the Legislative Council	335	270	180	70
Leader and Deputy Leader of a Recognised Political Party of which not less than ten Members are Members of the Legislative Assembly	335	270	180	70
Chairman of Select, Joint Standing and Public Accounts Committees	240	200	170	70
Members of Select, Joint and Public Accounts Committees	240	200	170	51
Reason:	➤ The rates proposed in the draft determination exceed the reasonable limit set by the Australian Taxation Office for			

	<p>Adelaide, Darwin, Hobart and Canberra. This will require payment through the payroll and tax deducted on that proportion that exceeds the reasonable limit.</p> <p>➤ The rates proposed in the above table reflect those payable to equivalent office-holders in the Australian Parliament as recently set by the Australian Remuneration Tribunal. The Australian Taxation Office have accepted these rates as reasonable, consequently tax is not required to be deducted and they do not have to appear on group certificates.</p>
--	--

Point of Concern – Item 36:	Travelling Allowance for Recognised Office-holders – Conditions relating to Actual and Reasonable Expenses
PRT Determination Reference:	Condition 2 (page 70)
Change Proposed:	<p>On occasions when the rates of travelling allowance set out above prove to be insufficient, reimbursement of actual and reasonable expenses shall be allowed subject to the production of receipts relating to accommodation, meal and incidental expenses that exceed \$50.</p> <p>For other costs below this amount such as meals and incidentals, a statement from the Recognised Office-holder concerned is required.</p>
Reason:	➤ Under the new GST tax system tax invoices are required to claim an input tax credit for expenses exceeding \$50.

Point of Concern – Item 37:	Travelling Allowance for Shadow Ministers			
PRT Determination Reference:	Table 3 (page 71)			
Change Proposed:				
Title	Melbourne Brisbane Perth	Adelaide Darwin Hobart Canberra	Other than Capital City	Where no overnight stay is required
	\$	\$	\$	\$
Shadow Ministers	240	200	170	51
Reason:	➤ This will comply with Australian Taxation reasonable allowance limits and align rates to other position holders documented in Table 2 (please refer to point of concern 36).			

Point of Concern – Item 38:	Travelling Allowance for Shadow Ministers– Conditions relating to Actual and Reasonable Expenses
PRT Determination Reference:	Condition 2 (page 71)
Change Proposed:	On occasions when the rates of travelling allowance set out above prove to be insufficient, reimbursement of actual and reasonable expenses shall be allowed subject to the production of receipts relating to accommodation, meal and incidental expenses that exceed \$50.

	For other costs below this amount such as meals and incidentals, a statement from the Shadow Ministers concerned is required.
Reason:	<ul style="list-style-type: none"> ➤ Under the new GST tax system tax invoices are required to claim an input tax credit for expenses exceeding \$50. ➤ Standardise this condition with office-holders referred to in point of concern 37.

Point of Concern – Item 39:	Entitlement for Recognised Office-holders
PRT Determination Reference:	Schedule 3 (page 79)
Change Proposed:	<ul style="list-style-type: none"> ➤ Amend title to read “Recognised Office-holders and other Member entitlements”. ➤ Increase transport entitlement for Presiding Officers from 10% to 30% which will equate with the Ministerial entitlement. ➤ Specify that a Party Leader must be the Leader of a Party with not less than 10 Members.
Reason:	<ul style="list-style-type: none"> ➤ The title of this schedule needs to be changed as independent Members and Shadow Ministers included, are not Recognised Office-holders. ➤ To correct anomalies in the draft determination so as to reflect previous travel entitlements provided to Recognised Office-holders ➤ The definition of a Party Leader needs to be consistent throughout the determination when referring to the provision of entitlements.

- END OF SUBMISSION -

Appendix 2

SUBMISSION OF THE MEMBERS OF THE
STATE PARLIAMENTARY LIBERAL AND NATIONAL PARTIES

I note that: *'The Tribunal would be particularly interested in receiving submissions as to:*

- 1) *The further opinion of the Crown Solicitor*
- 2) *Particular points of concern as to the proposed terms of the draft consideration'*

SUBMISSION RELATING TO THE FURTHER OPINION OF THE CROWN SOLICITOR

Question 1 We agree with the general thrust of the advice and accept that there is no requirement to spell out in the determination that unexpended amounts revert to the Treasury and become part of the Consolidated Fund. We would contend, however, that this also must be read to mean that the question of whether allowances are fully expended or otherwise arises at the end of the parliamentary term. This also accords with past practice.

Question 2 We agree with the Crown Solicitor's advice.

Question 3 We agree with the Crown Solicitor's advice.

Question 4 We agree with the Crown Solicitor's advice that there is no impediment to the suggested legislative amendments and accept that amendments (i) and (ii) would achieve little additional benefit in terms of the submissions put forward by both the Liberal and National Parties and the Labor Party. We further acknowledge the advice of the Crown Solicitor that if an amendment were to be made in the form of (iii), which would address the issues raised, that the commands implicit in s.2A(1) should be specifically addressed. We therefore suggest that, in addition to the legislation being amended by the inclusion of the principle proposed as an additional s.10(1)(c); that s.2A(1) be also amended by the insertion of a new principle,

(b) All members are provided with an electoral allowance that is paid as an all-incidents-of – employment allowance for the performance of their parliamentary duties as members.

The following sub-paragraphs identified as (b) to (d) to be sequentially renumbered.

Recommendation

That s.2A(1) be amended by the insertion of a new principle,

(b) All members are provided with an electoral allowance that is paid as an all-incidents-of – employment allowance for the performance of their parliamentary duties as members.

That a new s.10(1)(c) be inserted,

(c) Application of electoral and Sydney allowances as all-incidents-of employment allowances in recognition of the wide range of functions addressed by members within the community and for the inconvenience and erosion of privacy to which members are subjected.

SUBMISSION RELATING TO PARTICULAR POINTS OF CONCERN AS TO THE PROPOSED TERMS OF THE DRAFT CONSIDERATION

Retrospectivity

We submit the decision of the Tribunal, that the determination will take effect on and from the 1st July 2000, is unfair in that Members have been advised that their entitlements beyond 1st July 2000 until the Tribunal's decision was handed down would be in accordance with the 1999 Determination.

Members were advised as recently as 20 October 2000 *“the Presiding Officers have approved a further two months pro-rata entitlement which will extend existing arrangements to 31 December 2000. Individual entitlements and allowances that are impacted by these arrangements are documented in the attached schedules. These schedules provide details of the existing 4 month pro-rata allocation to 31 December 2000 plus details of which entitlements and allowances have carried over from the previous 1999/2000 financial year.”*

There are two main points that arise therefrom.

- (1) It is presumed that the documentary evidence referred to in various parts of the draft determination, if carried through to a final determination, will be needed from 1 July 2000 or a breach of the determination may occur. With respect many members, because they are not presently obliged to, would not have the necessary documentary evidence. Also while the determination exists only in draft form there is no certainty as to what documents will be or may be required to be produced.
- (2) From an accounting point of view a retrospective date would seem to create considerable difficulty. Members may have already consulted their accountants and others following the conclusion of the financial year, some five months ago.

We submit, given the financial and accounting considerations in the document, that the commencing date be 1 July 2001. This will allow a smooth transition from one financial year to the next and allow both Members and the Legislature to work through and establish the procedures necessary to give effect to the determination.

Recommendation

That the new determination takes effect on and from 1st July 2001.

Definition of Parliamentary Duties

Page 48 para. 2.2.3 Members are concerned that while it may be contended that campaigning in a general election should attract a prohibition, although this is something we may well argue at a later date, expenses incurred by a Member in by-election campaigning should at least be treated differently. The personal expenses incurred by a Member in this circumstance are very much a part of a Member's on-going parliamentary duties and are seen by the public as such. It should be included in para. 1.1.8 as a category of "participation in the activities of recognised political parties". It is not suggested that funds should be used in a way that may be seen as subsidising the campaign but simply that personal expenses incurred by a Member during a by-election campaign be an acceptable use of Members allowances.

Recommendation

That sub-paragraph 1.1.8 be amended by the insertion of the words, "*personal expenses incurred during and arising from by-election campaigns*".

Sydney Allowance

Country Members are concerned that the Sydney Allowance is too low in respect of the per diem sum allocated for overnight stays in Sydney. Members make the following points:

- i) When a member of their electorate staff travels to Sydney for training the staff member is entitled to a per diem allowance of \$172. It seems quite incongruous that a Member of Parliament should receive less than a member of his or her staff.
- ii) If a Member serves as a committee member he or she is entitled to a per diem rate of \$209 for a capital city in another state but is only entitled to \$155 for an overnight stay in Sydney when involved in parliamentary duties in that city although Sydney traditionally has a higher cost structure for accommodation than other capital cities in Australia.

It is submitted that the per diem allowance should be increased to at least the minimum of other capital cities, that is, \$209.

Members who rely on commercial accommodation have experienced occasions upon which they have not been able to book their customary accommodation and have then had to hunt around for an alternative. Of course as one gets more desperate so the likelihood of paying much more for a bed for the night increases. Members submit that it is demeaning that they should have to search out economy accommodation to stay within the per diem allocation. Members believe they are entitled to some dignity in relation to their accommodation requirements.

The draft determination does not appear to take into account the situation of Members who have over the years bought or leased permanent accommodation. Members who elect this option do so to provide a better quality of living than the gypsy-like existence of securing commercial accommodation. For Members who have availed themselves of this option it has, in the first instance, entailed them in a considerable financial undertaking over a long period. This has been made possible in most instances only on the basis of the receipt of periodic monthly payments of the Sydney Allowance.

To change the rules now is unfair and retrospective. Members who own or lease permanent accommodation have done so on the understanding that they could utilise the full amount of this allowance for that purpose. Precedents for the expenditure of this allowance in such a manner go back to the time of the introduction of the allowance and Members have relied on statements in previous determinations to plan their present and future accommodation requirements.

The proposal of repayment of an 'unused' annual component assumes that Members are infrequent, temporary visitors to Sydney. The reality is that members are in fact semi-permanent residents of Sydney due to the nature of their parliamentary (including committee) duties. The non-conditional payment of an annual amount recognises this unique lifestyle and enables members to establish long-term accommodation. Indeed the quantum of the daily allowance reflects this principle.

Members who expend their allowance in this manner should be able to submit documentation of their ownership or lease as sufficient evidence to substantiate full expenditure of their annual allowance.

It is submitted that as consideration for deeming the allowance to be fully expended those claiming the annual amount against premises owned or leased by the Member should receive a lesser amount of allowance, say 75%, as against a Member claiming per diem expenses against that allowance.

The Tribunal states, page 56 sub paragraph 5 that Members need to “maintain records which clearly document the occasions they stayed in Sydney in connection with their Parliamentary duties” and suggests boarding passes and other such documentary evidence as appropriate. Many who are relatively close to Sydney do not use air travel but travel in their own car. There is thus no relevant documentation available and in any event documentation such as boarding passes provides no real evidentiary link between the travel and parliamentary duties. It is submitted that a system of self-certification should be used whereby Members enter details of travel on a schedule stating the date of travel and the nature of their parliamentary business. Each item would be signed off by the Member as an accurate statement and the schedule submitted to the Parliamentary Accounts office each month or quarter. Surely, given the acceptance of the ATO of such practices, this is not unreasonable and would be administratively simple. Spot audits could be done if returns seemed abnormal or inconsistent with the normal scope of parliamentary duties. It is noted the Tribunal can take into account the administrative cost of implementation and this would certainly simplify accounting procedures in this regard.

Recommendation

- i) That the Daily Rate for Overnight in Sydney be increased to \$209.
- ii) The annual allowance when claimed against the use of permanent accommodation be set at a notional rate of \$155 per diem.
- iii) That sub-paragraph 4 be amended by deleting the remainder of the words in that sentence after “certify at the end of the financial year” and inserting in their place; “in a form of schedule prescribed by the Legislature, the details of each date of travel and the nature of the parliamentary duty carried out by the member on that occasion.”

iv) That paragraph 6 be amended by the addition of the words, *“provided that, where a member applies the allowance to premises owned or leased by the member the member shall submit documentation of the ownership or lease of the property as sufficient evidence to substantiate full expenditure of their annual allowance.*

Logistic Support Allowance

Air Travel

Many submissions from the National Party, Liberal Party, Labor Party and others including the Presiding Officers, and which are quoted in the draft determination, requested the warrant system for travel be retained. The Tribunal has, however, not acceded to these requests, except for Sydney to Electorate Travel for Members, despite these submissions being made by persons well versed in the parliamentary system.

It may be, with respect, that the Tribunal misunderstood the submissions or read them narrowly as a call for the retention of the warrant system for Electorate to Sydney travel for Members only as at page 33 the Tribunal states: *“It was vigorously submitted that in respect of travel, Electorate to Sydney trips should be removed from the financial allocations and a warrant system restored.”*

On reading the ALP submission printed on page 33 we believe their call is clearly for a full return to the warrant system. Certainly the Coalition’s position is for the complete retention of the warrant system as is shown in the determination at page 33 and earlier at page 12. Indeed the submission for the retention of warrants was very specifically shown at page 12 where the Tribunal notes: *“The LIB-NP submission best summarised the views”*: stating: *“Within the Logistic Support Allowance the air travel component would be covered by the warrant system with a single monetary amount available for other travel such as taxis, hire cars, communication, printing and stationery.”*

We therefore seek a return to the **full warrant system**, that is including spouse/approved relative, staff, intrastate and interstate travel entitlements. This is in line with our earlier submission. The warrant system makes all members equal as far as travel is concerned. Practical reasons for this to occur include:

- (1) The warrant system is fully transparent and accountable, with members not being directly involved with payments to airlines and members certifying parliamentary usage.

- (2) While a global amount encourages members to maximise their entitlements by being able to access “cut price” or “special deal” seats this is difficult to achieve because of the requirement that members use only the government contractor supplier, currently Qantas and their subsidiary Eastern Airlines.

Further with “cut price” or “special deal” tickets there is no flexibility. Travel must be taken at the designated time and day and tickets must be booked according to a timetable usually with a long lead-time. Members often do not have long lead-times to determine travel. For instance the recent floods in NSW required urgent travel for various members to the flood scene. Even though parliamentary dates might be projected the government may choose to alter the schedule with little notice or sitting times may be extended or shortened causing changes to flight arrangements.

Members of Parliament must have flexibility of travel as they are frequently required to change air trips because of any number of factors associated with their employment.

- (3) If the global system was used the notional amount is not realistic. Again to link all groups with the same notional amount of travel except Group 1 does not take into account, say the Member for Ballina, who is the Shadow Minister for Land and Water Conservation travelling to Leeton or Hay to discuss water issues. This would involve a significantly higher airfare than say the Member for Gosford who is the Shadow Attorney General flying to the same destination to discuss matters of legal concern with the local law society.

The draft determination does not seem to fully appreciate the ‘hub and spoke’ nature of regional air routes which means that country members often incur significant costs in travelling from their electorates through Sydney to other country destinations.

It is noted that the draft determination specifically allows members to attend conferences of their relevant parties. The National Party consistently holds conferences in regional NSW. The resultant travel costs for those members who have electorates distant from the conference location will be much higher.

On the basis that unexpended logistic support moneys will be returned to the Parliament at the end of the Parliament, with respect what is the difference to the current practice of unexpired warrants being returned?

Under the draft determination Members are required to fund travel for spouse/approved relative and electoral staff. Members in Group 2 and above receive \$2000 per year more than their colleagues in Group 1. The following tables demonstrate the inequity of the current allocation. The figures are calculated on the existing basis of spouse/approved relatives being entitled to 10 return trips per year and electorate secretaries being entitled to 3 return trips per year. The 3 trips available to electorate staff are calculated on the basis that one return trip is available as of right and 2 return trips are accessible from the Members Electorate to Sydney warrants, that is, 4 single journey warrants.

Member for Ballina (a Shadow Minister) – notional allowance	\$6,000
Spouse or approved person travel 10 return trips in one year @ \$612 return	<u>\$6,120</u>
	<u>(-)\$120</u>
Secretary travel at 3 return trips per year other than for staff training purposes	<u>\$1,836</u>
Balance available to member for all travel other than Electorate to Sydney travel	<u>(-)\$1,956</u>

_____  _____

Member for Murrumbidgee – notional allowance	\$6,000
Spouse or approved person travel 10 return trips in one year @ \$512 return	<u>\$5,120</u>
	<u>\$880</u>
Secretary travel at 3 return trips per year other than for staff training purposes	<u>\$1,536</u>
Balance available to member for all travel other than Electorate to Sydney travel	<u>(-)\$656</u>

_____  _____

Member for Orange (Secretary to Shadow Cabinet)– notional allowance	\$6,000
Spouse travel 10 return trips in one year @ \$358 return	<u>\$3,580</u>
	<u>\$2,320</u>
Secretary travel at 3 return trips per year other than for staff training purposes	<u>\$1,074</u>
Balance available to member for all travel other than Electorate to Sydney travel	<u>\$1,246</u>

_____  _____

Member for Wagga Wagga – notional allowance	\$6,000
Spouse travel 10 return trips in one year @ \$409 return	<u>\$4,090</u>
	<u>\$1,910</u>
Secretary travel at 3 return trips per year other than for staff training purposes	<u>\$1,074</u>
Balance available to member for all travel other than Electorate to Sydney travel	<u>\$836</u>

_____  _____

Member for Albury – notional allowance	\$6,000
Spouse travel 10 return trips in one year @ \$440 return	<u>\$4,400</u>

	\$1,600
Secretary travel at 3 return trips per year other than for staff training purposes	<u>\$1,074</u>
Balance available to member for all travel other than Electorate to Sydney travel	\$526

The Hon. Brian Pezzutti MLC – notional allowance	\$6,000
Spouse travel 10 return trips in one year @ \$636 return	<u>\$6,360</u>
Balance available to member for all travel other than Electorate to Sydney travel	<u>(-)(\$360)</u>

It should also be pointed out that, in addition to the above figures that highlight the inadequacy and unfairness of the notional travel component of the Logistic Support Allowance, spouses have also been entitled to 4 single interstate warrants and 16 single intra state warrants for the life of the Parliament.

On the above scenarios, if the Member for Ballina's spouse/approved relative in one year took one interstate flight to Perth or Melbourne and on a pro rata basis two intra state flights, one to Griffith and one to Orange the following scenarios would occur:

Debit balance carried forward from spouse and electorate secretary, Electorate to Sydney travel	(\$-1956)
Return airfare Ballina –Perth for spouse or approved relative	<u>\$2070</u>
	(\$-4026)
Return airfare Ballina to Orange for spouse or approved relative	<u>\$946</u>
	(\$-4972)
Return airfare Ballina to Griffith for spouse or approved relative	<u>\$1112</u>
Debit balance	(\$-6084)

Or alternatively:

Debit balance carried forward from spouse and electorate secretary, Electorate to Sydney travel	(\$-1956)
Return airfare Ballina to Melbourne or spouse or approved relative	<u>\$1326</u>
	(\$-3282)
Return airfare Ballina to Orange or spouse or approved relative	<u>\$946</u>
	(\$-4228)
Return airfare Ballina to Griffith or spouse or approved relative	<u>\$1120</u>
Debit balance	(\$-5340)

If the Member for Orange's spouse elected to travel to Perth or Melbourne on an inter state warrant and to Ballina and Griffith on an intra state warrant then the following scenario occurs.

Credit Balance carried forward from spouse and electorate secretary, Electorate to Sydney travel	\$1246
--	--------

Cost of return airfare to Perth for spouse or approved relative	<u>\$1940</u>
	(\$-694)
Cost of return airfare to Ballina for spouse or approved relative	<u>\$946</u>
	(\$-1640)
Cost of return airfare to Griffith for spouse or approved relative	<u>\$284</u>
Debit balance	(\$-1924)

Or in the alternative Melbourne:

Credit balance carried forward from spouse and electorate secretary, Electorate to Sydney travel	\$1246
Cost of return airfare to Melbourne for spouse or approved relative	<u>\$970</u>
	\$276
Cost of return airfare to Ballina for spouse or approved relative	<u>\$946</u>
	(\$-670)
Cost of return airfare to Griffith for spouse or approved relative	<u>\$284</u>
Debit balance	(\$-954)

As it would be normal to expect the Member would accompany his or her spouse/approved relative on the interstate and intra state trips the figures for these 'trip examples' would add a further \$4128 to the Member for Ballina's costs increasing the debit balance, beyond the notional \$6,000 to \$10,212 for the Perth example and \$9468 for the Melbourne example.

Similar extrapolations apply to the other Members

The above figures clearly show discrimination between Group I electorates and Groups 2 to 8. It also demonstrates that insufficient funds may be available even for Group 1 electorates in respect of their travel requirements.

Finally we simply cannot agree that the global facility for air travel will "*introduce greater flexibility in members use of the allowance to meet expenses*". The concept is for the reasons set out above, impractical and could be subject to abuse. It certainly does not place all members on an equal footing so far as air travel is concerned and therefore discriminates against members in their ability to undertake their parliamentary duties in an equal manner. It particularly disadvantages country members in comparison with their city colleagues who incur little or no cost in bringing their spouse/approved relative to Parliament House.

A further point of concern is that while city Members can bring their staff to Parliament House at any time to assist them in their parliamentary duties, country Members are denied this opportunity by virtue of the cost involved. This further disadvantages the country Member. This discrimination could be partially addressed by the issue of a specified number of warrants for electorate staff travel over and above the travel provided by the Legislature for staff training. We therefore seek an increase from the current staff travel entitlement of 1 return trip per year to 10 single journey warrants per year.

On a specific issue with regard to Electorate to Sydney warrants it is noted that there is no provision for additional warrants for the Deputy Leader of a party of not less than 10 members (at page 58). It is submitted that this office should receive the same entitlement as the Deputy Leader of the Opposition for the Assembly and Council, namely 16 additional single journey entitlements should occur.

Recommendation

- i) That the opening paragraph of the section entitled Electorate to Sydney Travel be amended by inserting after the words “zones 2 and 3” the words, “and their spouse/approved relative”
- ii) That the following third paragraph be amended by the addition of the sentence, “All eligible spouses/approved relatives shall receive ten (20) single economy class journeys per annum between electorate/zone and Sydney.
- iii) That the section entitled Transport (Other than Electorate to Sydney Transport be amended as to paragraph 3 by the deletion of the paragraph and the insertion of a new paragraph, “ All costs associated with staff training including travel from the electorate to the place of training are to be met by the Legislature.”
- iv) That consideration be given to the issue of 10 single journey warrants per annum to eligible members for the purpose electorate staff travel within New South Wales.
- v) That the Deputy Leader of a party of not less than 10 members receive 16 additional single journey entitlements

Reimbursement of expenses related to the Logistic Support Allowance

We wish to submit a case for an alternative to reimbursement as the requirement that Members initially finance purchases poses the likelihood of additional costs that cannot be recovered. Bank charges are imposed on the initial payment and on the deposit of the reimbursement. Given the multitude of transactions in a calendar year this can amount to a significant cost to the Member. Past experience of

direct payment by the Legislature has also been unsatisfactory at times due to delays in payments being made to creditors. These delays reflect badly on the Member in his or her local community.

It is suggested that a system whereby a Member can pay directly from his or her Logistic Support Allowance account should be considered, either a chequebook or debit card (or both). This would enable prompt payment and together with invoices and receipts would maintain an accurate record of the Member's claims against his or her account.

It is also submitted that the Legislature should be directed to investigate an electronic accounting system, such as is used by the banks, that would enable Members to check the status of their account electronically at any time. If such a system was linked to a debit card system for payment this should, once it is established, considerably reduce the complexity of accounting procedures otherwise required of the Legislature and therefore the cost to the Legislature. Members are concerned that additional costs in the accounts section automatically depletes funds available for other parliamentary services such as the library, security, parliamentary education and so on.

Recommendation

That a debit card system be introduced that would enable direct payment from the Member's Logistic Support Allowance account held with the Legislature and that members be required to submit invoices relating to the expenditure to the Legislature within 60 days.

Regional Differences

1. Delivery of stationery and equipment

Although the grouping of electorates has to some extent addressed the question of regional cost differences some clear anomalies remain. A particular example is the costs associated with the delivery of equipment and stationery to country offices. This is far greater than for city Members many of whom have the option of collecting goods personally at no cost. An additional allowance should be made for country Members to restore equity as between city and country.

2. Photocopier charges

At page 72 the draft determination states "*Each member of the Legislative Assembly shall receive a fitted out, equipped and maintained Electorate Office to an appropriate standard*".

We submit that the item "*Electorate office photocopier copy charge*" presently paid for by the Parliament as part of our Electorate office expense should not be drawn against the Logistic Support Allowance.

These components are a microcosm of an overall problem which exists within the draft determination's Logistic Support Allowance in that for the most part equal amounts of money have been allocated but offices and electorates are subject to significant regional differences.

Recommendation

- i) That the costs associated with delivery of stationery and equipment to electorate offices in Groups 2 to 8 be met by the Legislature.
- ii) That the item "*Electorate office photocopier copy charge*" listed on page 60 be deleted.

Telecommunication costs

The scale used to calculate telecommunications costs as between Group 1 and other Groups will have a severe adverse impact on country Members.

Members in Group 1 Electorates (Sydney) are notionally given an allowance for electronic communication of \$3000. Members in Groups 2 to 8 are allowed \$4000.

Group 1 enjoys the benefit of untimed local calls to connect to Groupwise whereas the other Groups all incur high STD charges.

Members will, therefore, be severely limited in their use of notebooks from home or from hotels etc.

Country Members also incur higher costs because of the high proportion of STD charges relating to phone calls and the use of their home facsimile, both essential to country Members. These include STD charges incurred connecting to Groupwise or Internet from home or locations other than Parliament House and Electorate Office.

Members in the country spend many hours driving and utilise this time to make phone calls from their mobile phone to provide better service for their constituents and to utilise this time spent away from their office.

Most country Members will reach the \$4000 limit very quickly, especially as it includes mobile phone costs. In relation to the use of the electronic notebook, long STD charges are incurred downloading antivirus files let alone the time needed to work on email. Downloading antivirus files is absolutely essential to the security of not only the Members notebook but also the Parliament House system generally.

The Parliamentary Information Technology Services have been asked to look into the use of a local server or some other Telstra product to reduce these costs or to alter the software to download Groupwise so that it can be worked on, mail read, mail prepared etc offline, with the ability to return online to transmit the work. No response has yet been forthcoming.

It should also be noted that much of the equipment supplied by the Legislature is out-dated or of the cheaper variety and that in many cases this imposes additional costs that must be borne by Members.

It is noted that Legislative Council Members in Zone 3 receive \$6,500. It is suggested that Legislative Assembly electorates in Groups 2 to 8 match this figure.

Recommendation

That the amount listed in the table on page 63 for *communication-electronic* be amended to \$6,500 for Legislative Assembly Members in Groups 2 to 8

Electorate to Sydney Warrants applied to car travel

Members may from time to time elect to use their own motor vehicle to travel to or from Sydney even though air travel is available. It has been the policy in the past that Member may claim reimbursement in these circumstances. In such cases it is submitted that the Member should be entitled to surrender a warrant for the equivalent journey and obtain monetary reimbursement for the cost of that journey at the rate based on the NRMA cost schedule for motor vehicle running expenses.

Recommendation

That the conditions applying to Electorate to Sydney Travel be amended by the insertion of a new paragraph 8, “ *A Member who uses a car for a journey for which an air travel warrant is available may surrender a warrant for that journey and obtain monetary reimbursement at the rate based on the NRMA cost schedule for motor vehicle running expenses*”.

Increase in quantum for allowances due to increase in size of electorates and GST

While the Tribunal's statement that the components of the Logistic Support Allowance have been increased by a factor that takes into consideration population increases, inflation and GST is noted, any realistic measure of these components sees the increases falling well behind the true figure. However, of major concern is the fact that allowances other than the Logistic Support Allowance have received no adjustment to take into account these factors.

An example of the increase is that of the seat of Lachlan, which has increased in geographical size from 31,548 square kilometres to 36,795 square kilometres – a 17 % increase. In population terms the electorate of Lachlan has increased from 37,391 electors to 44,592 electors – a 20 % increase. The geographical increases of other electorates are varied but all did increase. The population increase of each other electorate would be similar to that of the seat of Lachlan on the basis of the number of electors in an electorate to be proportionately equal.

The question of the quantum of the electoral allowance and the logistic support allowance is again submitted on the basis that it should adequately reflect the impact of cost increases for each of these elements.

Recommendation

That further consideration be given, for all allowances, to the formula by which the increase to cover population increases, inflation and GST is calculated so that it more realistically reflects the impact of the changes on Members.

Charter transport in connection with parliamentary duties falling within the Logistic Support Allowance.

Conditions are imposed by paragraph 9 of the section entitled *Transport (Other than Electorate to Sydney Transport)* that only the Member's spouse/approved relative can travel on the charter.

The following matters are raised:

- (1) The draft determination at page 60 says that the Logistic Support Allowance can be used for staff travel (training excluded) but the provision relating to the use of Logistic Support Allowance for air charter specifically rules out anyone else other than a spouse/approved relative travelling with the Member. It is our contention that in the interests of consistency Members should be able to use charters for which either warrants are surrendered or for which a debit is made against the Logistic Support Allowance to carry staff.
- (2) In any event, there are instances when members, whether Party Leaders, Shadow Minister, or backbenches need to take staff with them, on charter, to assist with the particular visit or activity being undertaken in relation to the charter. It would be illogical for a member to charter a flight, when that is most practical and economical, and forgo the opportunity for staff to accompany them if the charter has empty seats.

We submit there should be a provision to allow staff to travel on a charter flight provided the configuration of the plane does not need to be changed to accommodate the staff. It should be noted that this would be revenue neutral as charters are a fixed cost item.

It should also be noted that Ministers and Parliamentary Secretaries, when they charter, do so almost exclusively through their department and staff fly on those charters. In allowing staff to fly on charter with Opposition members (and government members for that matter) it assists members in carrying out their duties without imposing any additional cost on the Parliament.

Recommendation

That page 65, paragraph 9 line 3 be amended by deleting the words *"except the Members spouse or an approved relative accompanying the Member on Parliamentary duties"* and inserting a new sentence following, *"A Member may be accompanied by his or her spouse or an approved relative or a member/s of staff, provided that in the latter case the configuration of the plane does not need to be changed to accommodate staff,"*

Editorial Point

Page 56 sub paragraph 4 there is a reference to parliamentary business. This is the only use of this word; elsewhere references are to duties. To avoid confusion there should be complete consistency.

Shadow Ministers

In our previous submission we set out the responsibilities of Shadow Ministers, determined as much as anything by the public perception that a Shadow Minister is a statutory position and consequently a position funded and resourced to fulfil the role of alternative minister. In reality nothing could be further from the truth and all Shadow Minister substantially draw on their personal income to do their job. As previously stated Shadow Ministers are required to:

- attend Shadow Cabinet meetings
- direct the formulation of policy in the area of portfolio responsibility and coordinate it with other relevant portfolios, eg. a land management policy may involve elements of the current portfolio areas of Land and Water Conservation, Planning, Environment, Mineral Resources, Fisheries, National Parks and Wildlife, Agriculture and Health.
- attend meetings and conferences as the Opposition representative and give keynote speeches on matters of policy.
- prepare briefing papers for the party on all new legislation
- maintain contact with organisations and persons relevant to the portfolio area. This may involve regular mailouts, deliver of material on new legislation, at short notice, to persons and groups who need to be consulted for comment and advice

- lead for the Opposition in parliamentary debates on all relevant legislation, urgency motions, Matters of Public Importance and private members bills and motions, often at short notice.
- make presentations on policy to both public and political party forums
- be available to the media at all times for comment on current issues
- prepare press releases on current issues and attend press conferences as necessary
- deal with individual matters on a state-wide basis, that is, for the relevant portfolio area the Shadow Minister has a state-wide constituency
- liaise with ministerial and shadow ministerial counterparts in other states and in Federal Parliament
- attend party political meetings and fund-raisers as a VIP party member.
- fulfil a major role at election and by-election times as a policy maker
- react to the demands of emergency situations as they arise, eg. in times of natural or other disaster such as bushfires or the Glenbrook rail tragedy.
- as appropriate establish and maintain international links. We also feel it is necessary to reiterate Recommendation 33 of the ICAC Report handed down in 1998 which, at page 31 stated,

“The entitlements system should recognise the role of Shadow Ministers. The current system is a source of problems as it:

- *does not match parliamentary and public expectations that Shadow Ministers embark on additional activities to fulfil the role of an informed opponent to a Government Minister who is resourced by a department or agency*
- *encourages the misuse of resources as there is a discrepancy between the resources presently provided and the expectations held of Shadow Ministers.”*

It is our respectful submission that the entitlements granted to Shadow Ministers in the draft determination fall far short of the level of resources foreshadowed ICAC to redress the problem it identified.

Not the least area of shortfall is the lack of additional air travel entitlement. This was central to the adverse finding against a former Labor member who was found to have misused warrants while endeavouring to fulfil his duties as a Shadow Minister.

The recognition of additional cost incurred by Shadow Ministers in the provision of an allocation for accommodation and living expenses while travelling is much appreciated. It is submitted, however, that

the cost of travel to and from these locations is equally important. It should be recognised that Shadow Ministers have a 'state-wide' constituency by nature of their portfolio responsibilities.

To give an example:

The Shadow Minister for Aboriginal Affairs (who also holds the portfolios of Community Services and Disability Services and Ageing) is expected to liaise with Aboriginal communities in remote parts of the State frequently.

A typical 3-day visit would involve return airfares to Broken Hill, hire of a car to travel to Wilcannia and Mootwingee (remote Aboriginal Communities) and would involve approximately the following expenses:

1	Airfares Sydney/Broken Hill return – estimated	\$ 740
2	Accommodation (2 nights)	\$ 280 (approx)
3	Food – dinners, lunches etc	\$ 150
4	Car hire 100 kms per/day)	<u>\$ 417</u> (\$139.00 per day – mileage over
		\$1587

The warrant system for travel which currently exists recognises the reality of the situation far better than the draft Determination which if implemented will severely limit the capacity of Shadow Ministers to carry out their responsibilities.

The nominal allowance of \$4,000 for travel will simply not permit a Shadow Minister to undertake what the community is entitled to expect of such an elected representative.

Currently a Shadow Minister may under the Warrant System undertake the following travel per year –
Intrastate Warrants – 12 for 12 months

Sydney/Broken Hill/Sydney	2 trips -	\$1480.00
Sydney/Moree/Sydney	2 trips -	\$1008.00
Sydney/Dubbo/Sydney	2 trips -	<u>\$ 752.00</u>

Interstate Warrants – 16 for the life of the Parliament (ie 4 per year)		
Sydney/Perth/Sydney	-	\$1958.00 (Business Class)
Sydney/Darwin/Sydney	-	\$1916.00
Sydney/Adelaide/Sydney	-	\$1056.00
Sydney/Melbourne/Sydney	-	<u>\$ 576.00</u> (Economy Class)
Total		<u>\$8719.00</u>

Accordingly Shadow Ministers are effectively being denied current travel arrangements which would give them a further total sum of approximately \$5000 in travel.

If the draft Determination becomes operational then the NSW Opposition Shadow Ministry will be largely shut down in its capacity to carry out its obligations to meet with community groups around the State and familiarise themselves with portfolio issues.

The inequity and inappropriateness of this limitation should be measured against the total open ended travel resources available to Ministers of the Government.

The recent spectacle of the Premier and two of his Ministers using Government helicopters to attend flood-ravaged parts of NSW twice in three days is an opportunity not available to Shadow Ministers. This use of Government resources is appropriate but there must be some effort to equalise the opportunity for Shadow Ministers to carry out their obligations.

Almost every portfolios shadowed by the Shadow Ministers require extensive travel to rural and regional NSW and interstate. The Shadow Minister for Land and Water Conservation, as a further example, has significant travel requirements to meet stakeholders in rural and regional New South Wales, likewise the Shadow Minister for Regional Development or the Shadow Minister for Roads, to name but a few.

It is therefore submitted that there should be an addition to schedule of Additional Entitlements in the Nature of Fixed Allocations. It is noted that the Chairman of Committees in the Legislative Assembly and Legislative Council have additional entitlement to 32 single journeys although the nature of their duties does not give rise to any function which would require such an entitlement.

We seek the following amendment to the determination to equate them with the position of Chairman of Committees.

Shadow Minister	32 single journey entitlements
-----------------	--------------------------------

There seems to be no particular rationale for linking the level of travel allowance Members of Select, Joint and Public Accounts Committees as the requirements on a Shadow Minister are much greater in terms of the demands placed on them by constituency groups and individual with whom they meet. It seems more reasonable and equitable to link them with Chairman of Select, Joint Standing and Public Accounts Committees with whom there is a more comparable level of responsibility and expectation of interaction with the community.

We seek the following amendment to equate the travel allowance component with the office of Chairman of Select, Joint Standing and Public Accounts Committees.

Shadow Ministers	\$280	\$159	\$70
------------------	-------	-------	------

Shadow Ministers in NSW have no more staff than the newest and most junior backbenchers on either the Opposition or Government backbenches. They have one less staff member than an Independent Member of Parliament. It should also be noted that the Electorate Officers Grade 1 who assist Shadow Ministers in portfolio responsibilities usually have a minimum of one degree and often postgraduate qualifications, yet they earn up to \$16,000 less than a staff member working for a Legislative Assembly or Legislative Council backbencher who has far less responsibility. The result is discontent amongst staff members who rarely stay for any length of time before taking on more lucrative appointments. On occasions they have even left to work for a Legislative Council Independent with less stress and responsibility and more money.

In practice Shadow Ministers have to allocate one of their electoral staff out of their electoral office to be located in Parliament to carry out policy and media and portfolio interest group liaison.

This exposes the staff member left at the electoral office to additional stress and work requirements which put them at risk in an occupational health and safety sense and in some instances a personal safety issue arises. In addition they are alone in an office which often attracts individuals who have major personal issues.

Hence both from the Shadow Minister's point of view in terms of portfolio requirements and the electorate staff member's point of view there is an absolute requirement that an additional staff member be allocated.

On page 34 of the Statement and Draft Determination the statement is made that, *"the Tribunal does not provide any entitlement for additional staff to Recognised Office Holders and thus, it has not acceded to the submission that additional staff should be provided for Shadow Ministers. Historically, the provision of additional staff to Recognised Office Holders has been a matter for the Government."*

It is submitted that the Tribunal does not have the power to declare Shadow Ministers to be Recognised Office Holders, nor, it is further submitted has it attempted to do so. It is therefore wrong for the Tribunal to draw on the historical elements of the provision of staff to Recognised Office Holders to support its decision not to grant an additional staff entitlement to Shadow Ministers.

It is further submitted that there is a much more persuasive element in the draft determination to support the argument that the Tribunal has the power to grant additional staff. Paragraph 5(ii) and (iii) provides for an additional staff member for Members of the Legislative Assembly and Legislative Council elected as independents or cross bench Members respectively. If the Tribunal has the power to grant additional staff entitlements to ordinary Members, that is, Members who are not Recognised Office Holders then there is no impediment to the Tribunal granting an additional staff member to Shadow Ministers. In doing so the Tribunal would redress a grave imbalance that currently exists.

It is submitted that an additional staff member, at the same salary level as the additional staff member employed by independents and cross bench Members be allocated to Shadow Ministers.

The same argument in respect of adequate resources can be applied to the Tribunal's failure to extend the 40% loading granted in respect of Printing and Stationery to the communication component, both electronic and non-electronic. The very nature of Shadow Ministers' responsibilities with its state-wide constituency demands means that they have to respond to approaches from interest groups and

individual over a very wide spectrum. The information technology revolution means that many more constituents are using electronic mail to communicate. Shadow Ministers need to be able to respond appropriately and as with their other expenses can only do so by subsidising the cost from their personal income. This is quite contrary to the statutory intention of the Parliamentary Remunerations Act, which expressly state that a Members salary is for their personal use. It also follows that the constituents of a Shadow Minister's own electorate must receive less communications because of the need the Shadow Minister has to draw on the same pool of resources to service the broader state-wide portfolio constituency. It is therefore submitted that a 40% loading be provided on the communication (electronic and non-electronic) allowance.

Overseas Phone Calls

At page 66 it is noted that Members will be responsible for the cost of overseas phone calls. Presently Recognised Office Holders are reimbursed for overseas phone calls provided they are made for parliamentary reasons. We believe that provision must be maintained and we believe, as both Whips and Shadow Ministers often have to make contacts or access information overseas that this right should be extended to Whips and Shadow Ministers.

Many developments that occur in overseas jurisdictions have applications to New South Wales . New Zealand and indeed other overseas jurisdictions are readily accessible to Members where it is necessary to investigate particular policy areas.

Recently a Shadow Minister travelled to New Zealand and visited (inter alia) the Minister relevant to the portfolio areas in his Shadow Ministry. The time spent with the Minister was of substantial benefit to the development of further assessment of policy programs. Further visits will need to be undertaken. The international phone calls to arrange the meetings were paid for by the Shadow Minister out of his personal income.

In any other area of employment sector, public or private, an employee would rightfully expect such monies to be reimbursable by the employer.

An anomaly

Schedule 3; page 79 sets out 'Recognised Office Holder Entitlements'.

It indicates that the Deputy Leader of the Opposition in both the Council and Assembly are to receive a 40% supplement in printing and stationery entitlements.

Yet only the Council Deputy Opposition Leader receives a 15% supplement for non-electronic communications.

The Deputy Leader of the Opposition in the Legislative Assembly is also the official Deputy Leader of the Opposition for both houses and as such has a higher profile with consequent greater demands. As such that person has a considerably greater workload than his or her counterpart in the Legislative Council.

The extra printing and stationery entitlement should have a corresponding capacity to distribute material.

This anomaly highlights further anomalies in relation to the entitlements of Recognised Office Holders on page 79 of the draft determination. There can be no logical argument to support higher Communication entitlements for equivalent office holders in the Legislative Council over those in the Legislative Assembly. These entitlements should be at least equal.

Recommendation

i) That the schedule on page 58 be amended as follows

Deputy Leader of the Opposition Assembly and Council	32 single journey entitlements
Shadow Minister	32 single journey entitlements

ii) That the Table 3 on page 71 be amended as follows

Shadow Ministers	\$280	\$159	\$70
------------------	-------	-------	------

iii) That paragraph 5 of the section entitled *Equipment, Service and Facilities* be amended by the insertion of a new sub-paragraph “(vi) *Shadow Ministers shall have an additional staff member.*”

iv) That a 40% loading be provided on the communication (electronic and non-electronic) allowance.

v) That Shadow Ministers and Whips be reimbursed for overseas phone calls that are made for parliamentary reasons.

vi) That the Communication entitlements for the following Recognised Office Holders be equal,

Presiding Officer

Leader of the Opposition

Deputy Leader of the Opposition

Whips

Appendix 3

**FURTHER SUBMISSIONS TO THE PARLIAMENTARY REMUNERATION
TRIBUNAL ON BEHALF OF THE MEMBERS OF THE
STATE PARLIAMENTARY LABOR PARTY**

Introduction

1. On 13 November 2000 the Parliamentary Remuneration Tribunal (“the Tribunal”) issued a Statement and Draft Determination for the consideration of interested parties. In the Statement, the Tribunal invited further submissions, particularly as to the further opinion of the Crown Solicitor and any particular points of concern identified with respect to the Draft Determination. The Crown Solicitor’s further opinion essentially canvasses matters which have been dealt with in earlier submissions made on behalf of the State Parliamentary Labor Party Members (“the SPLP Members”). The Tribunal has made reference to those submissions in its Statement, and has clearly given them full and careful consideration. In the circumstances, the SPLP Members do not consider it to be useful or necessary to make any further submissions about these issues. However, the SPLP Members do make submissions as to the following matters of detail.

Photocopying fax costs

2. Currently, Members pay for the paper used in photocopying and replacement toner cartridges. All other costs associated with photocopying - purchase/lease, maintenance and power are met by the Parliament. There is no copying charge as such. At p.60 of the Draft determination, the list of items under the Logistic Support Allocation includes “Electorate office photocopier copy charge”. It is unclear what this means, but it might be read as requiring Members to pay the Parliament for each copy made. It is submitted that only those items which Members currently pay for with respect to photocopying should be included in the list of items. In the alternative, the quantum of the Logistic Support Allocation should be increased in recognition of this new expense.

Home Office Expenses of MLCs

3. In a number of places in the Draft Determination (for example at p.60 in the reference to photocopying), there seems to be an absence of reference to the home office expenses of MLCs. This needs to be clarified.

State Mail Service Charges

4. At p.60 of the Draft determination, the list of items under the Logistic Support Allocation includes “Delivery of correspondence through the State Mail Service from Parliament House” and “Delivery of correspondence through the State Mail Service from Electorate Office”. Currently, delivery of correspondence through the State Mail Service from Parliament to the Electorate Office, and vice versa, is without charge to the Member. It is submitted that this situation should not change. In the alternative, the quantum of the Logistic Support Allocation should be increased in recognition of this new expense.

Courier and Freight Charges

5. At p.60 of the Draft determination, the list of items under the Logistic Support Allocation includes “Courier and Freight charges for delivery of stationery or equipment to electorate of home office”. Currently, these expenses are not charged to the Member, but are met by the Parliament. It is submitted that this should not change. In the alternative, the quantum of the Logistic Support Allocation should be increased in recognition of this new expense.

Logistic Support Allowance - Member for the Murray Darling

6. The quantum of the Logistic Support Allocation for the Member for the Murray Darling is the same as for Members in Groups 2-8. However, there is a failure to recognise that the Member for the Murray Darling runs two offices. The Logistic Support Allocation includes some office costs. These costs will be higher for the Member for the Murray Darling because of his two offices. Some increase in the quantum of the allocation for him is necessary to take this into account.

Carry-forward of the Logistic Support Allocation

7. General condition (4) of the Logistic Support Allocation provides that “Any unused funds remaining in the Member’s account at the end of each term of the Legislative Assembly are to be returned to the Consolidated Fund”. It is assumed that this means that for each year within the term of the Legislative Assembly, any unused funds may be carried forward to the following year, with the need for repayment only arising at the end of the term. If this assumption is correct, it should be made explicit in the Determination. The SPLP Members support the concept of carrying forward unused funds within each term, as submitted earlier.

Conditions re Communication - electronic

8. At pp.65-6, the Tribunal establishes a condition with respect to the private usage of phones. This condition appears to remove a benefit which Recognised Office Holders, as distinct from ordinary members, currently have, namely 100% reimbursement of home and mobile telephone expenses. It is not clear if this result was intended. It is submitted that the Determination should make clear that this benefit is to remain.

Spouse Travel

9. In the travel conditions at p.64, condition (4) relates to spouse travel. There are two concerns about this condition:

(i) On one view, it appears to say that the only circumstances in which spouses are permitted travel benefits is for the purpose of attendance at functions. This is of course not the current situation; no such limitation applies. It is not thought that any such limitation was intended by the Tribunal, but this ambiguity should be removed.

(ii) The condition apparently fails to take into account the fairly common situation where a spouse represents a Member at a function in the course of Parliamentary duties (ie. the Member himself or herself does not attend). Some reference to this situation should be included.

Sydney Allowance - Table of Entitlements

10. In Table 1 at p.55, reference to the President of the Legislative Council and the Chairman of Committees in the Legislative Council, and their current additional entitlements, is excluded. It is assumed this was not intentional. Reference to those officeholders should be included together with their additional entitlements.

Travelling Allowance - Table of Entitlements

11. In Table 2 at p.69, reference to the Deputy Speaker, Parliamentary Secretaries and the Chairmen of Committees in both houses, with their additional entitlements, is excluded. It is assumed this was not intentional. This should be rectified.

Parliamentary Duties

12. Paragraph 1.1 at p.46 ff sets out a list of Parliamentary duties for which additional entitlements are provided. It is assumed that paragraph 1.1.2 on p. 47 would encompass a situation where a Member represents the Premier or a Minister, upon request, at a function or event. If the Tribunal is of the view that paragraph 1.1.2 does not encompass this, the this situation should be explicitly referred to.

Cost of Audits

13. At p.57, there is a requirement that there be regular independent audits of Members’ Sydney allowance, and at p.62 a similar requirement appears with respect to the Logistic Support Allocation. It is assumed that the Member does not bear the cost of these audits. If there is any doubt about this, it should be clarified.

Use of Private or Rental Motor Vehicles

14. At p.59, condition (2) in relation to Electorate to Sydney Travel permits the use of warrants to meet the cost of the use of a private motor vehicle or rental vehicle in lieu of air travel. However, no rate per kilometre has been included which would permit this system to be effective. Reference to the current rate per kilometre should be included.

Use of Logistic Support Allocation for Electorate to Sydney Travel

15. The Draft Determination (p.60) permits the Logistic Support Allocation to be used for interstate and intrastate travel, but not for electorate to Sydney travel. It is submitted that Members should be permitted to use the Logistic Support Allocation for electorate to Sydney travel in (and only in) the circumstance where they have exhausted their travel warrants.

Staff Overnight Allowance

16. It is assumed that the reference to "Staff travel costs" in the list of items under the Logistic Support Allowance does not require the Member to pay the Staff Overnight Allowance of \$160.00, which is currently met by the Parliament. It is submitted that the cost of the Staff Overnight Allowance should not be imposed upon Members.

24 November 2000

ADAM HATCHER
Counsel for the State Parliamentary Labor Party

THE DETERMINATION OF THE PARLIAMENTARY REMUNERATION TRIBUNAL

THE DETERMINATION

Pursuant to section 10 (2) and 11(1) of the *Parliamentary Remuneration Act*, 1989, the Tribunal makes the determination appearing hereunder.

With effect on and from 31 December 2000, and pursuant to section 10 (6) of the Act, all previous determinations of the Tribunal are revoked. The initial determination made on 20 December 1999 shall be amended by the terms of this determination so that this determination shall constitute the initial determination and shall operate on and from 31 December 2000.

DEFINITIONS

Member or *Members* refers to a duly elected Member or Members of the Parliament of New South Wales (referred to hereinafter in this Determination as “*the Parliament*”).

In this Determination the expression *Additional entitlements* is to be understood in the sense used in Part 3 of the *Parliamentary Remuneration Act* 1989 (“the Act”).

Parliamentary duties has the meaning attributed to it by section 3 of the Act,

“*Electoral groups*” are the groups of electorates specified in Schedule 1.

For the purpose of the Additional Entitlements Account for Members of the Legislative Council “*Zones*” shall be those areas described in Schedule 2A.

“*Shadow Ministers*” are defined as those officers nominated by the Leader of the Opposition who undertake the role of opposition spokesperson on behalf of particular Ministerial portfolios. The number of shadow Ministers qualifying for additional entitlements shall at no stage exceed the number of Ministers of the Government. The Leader of the Opposition is to advise the Tribunal which Members will act for

particular portfolio/s. These Members, as advised to the Tribunal, will be eligible for additional entitlements as contained in this determination.

GUIDELINES AND GENERAL CONDITIONS REGARDING ADDITIONAL ENTITLEMENTS FOR MEMBERS IN CONNECTION WITH PARLIAMENTARY DUTIES.

1. Guidelines

Every class of “additional entitlements” described in this determination is provided pursuant to section 10 (1) (a) of the Act “for the purpose of facilitating the efficient performance of the Parliamentary duties of Members.” The following guidelines shall apply to the receipt, use and operation of additional entitlements.

1. Circumstances upon which the additional entitlements may be used for Parliamentary Duties.

1.1 Additional entitlements are provided to facilitate the efficient performance of the following particular Parliamentary duties of Members as follows:

1.1.1 Activities undertaken in representing the interests of constituents, but excluding activities of a direct electioneering or political campaigning nature.

1.1.2 Performing electorate work for a Member’s electorate and participation in official and community activities to which the Member is invited because of the Member’s status as a Parliamentary representative.

1.1.3 Attending and participating in sessions of Parliament.

1.1.4 Participation in the activities of Parliamentary committees.

1.1.5 Attending Vice-Regal, Parliamentary and State ceremonial functions.

1.1.6 Attending State, Commonwealth and Local Government functions.

- 1.1.7 Attending official functions to which a Member is invited because of the Member's status as a Parliamentary representative, eg. receptions and other community gatherings hosted by Members of the diplomatic corps, educational and religious institutions, community and service organisations, business associations, sporting bodies or other special interest groups.
- 1.1.8 Participation in the activities of recognised political parties, including participation in national, State and regional conferences, branch meetings, electorate council meetings, executive meetings, committee meetings, and meetings of the Members of the Parliamentary political party, its executive and committees.
- 1.1.9 For a Member elected to the Parliament as an independent, participation in activities that are reasonable alternatives to participation in the activities of recognised political parties.
- 1.1.10 A Member who is elected to the Parliament as a representative of a recognised political party and who subsequently resigns from that party Membership and thereafter sits as an independent Member, howsoever described, is not entitled to the benefit of the rule in Clause 1.1.9 above.
- 1.1.11 Participation within Australia in the activities of the Commonwealth Parliamentary Association as well as activities outside Australia organised by the Commonwealth Parliamentary Association provided such activities arise directly from membership of the New South Wales Branch and officially endorsed by the Branch (exclusive of air travel).
- 1.1.12 Participation in a Parliamentary Group such as the Asia Pacific Friendship Group; provided that, such group is approved in writing by the President of the Legislative Council and the Speaker of the Legislative Assembly. Such written approval shall be forwarded to the Tribunal.

2. Where any additional entitlement fixed by this Determination is to be used for the purpose of facilitating Members' participation in the activities of recognised political parties, the Tribunal sets out the following guidelines as to the use of that additional entitlement:
 - 2.1 Parties registered under the *Parliamentary Electorates and Elections Act* 1912, and included in the register of parties maintained by the Electoral Commissioner, are to be treated as recognised political parties.
 - 2.2 Additional entitlements should not be used to fund:
 - 2.2.1 activities such as those associated with party Membership drives;
 - 2.2.2 mail distributions for non-electorate or non-Parliamentary activities;
 - 2.2.3 costs associated with election campaigning for an individual Member;
 - 2.2.4 fund raising for other party political Members (such as the purchase of raffle tickets, raffle prizes or tickets to attend functions, etc); and
 - 2.2.5 costs previously borne by political parties which are not principally related to a Member's Parliamentary or electorate duties.
 - 2.3 The electorate office provided for a Member of the Legislative Assembly is not to be used as an election campaign office.

3. The Tribunal sets out the following additional and general guidelines:
 - 3.1 Some intermingling of a Member's Parliamentary duties and private activities is in practical terms not always easily avoided, but the onus is always on the Member to show that any expenditure or any claim for reimbursement relates to Parliamentary duties, or to the Parliamentary duties component of costs incurred for intermingled Parliamentary duties and private purposes.
 - 3.2 In the case of electorate work, any activities within the electorate, and in respect of which a Member's involvement may reasonably be regarded as deriving from the Member's status as the Parliamentary representative for the electorate, should be treated as Parliamentary duties.
 - 3.3 In the case of Parliamentary work, any activities in which a Member's involvement may reasonably be regarded as deriving from the Member's responsibilities as a Parliamentary representative should be treated as Parliamentary duties.
 - 3.4 In the case of a Member's activities within the broader community outside the Member's electorate, activities that may reasonably be regarded as deriving from the Member's status as a Parliamentary representative should be treated as Parliamentary duties.

2. Conditions

The following general conditions will apply to all additional entitlements determined hereunder. These conditions are in addition to any special conditions attaching to the provision of allowances or other benefits (as specified later in this determination):

1. All procurement by Members will be in accordance with the Parliament's purchasing policies.
2. Members must ensure that they have sufficient funds to meet the costs associated with their Parliamentary duties.
3. Each member shall have, in addition to payments of the Electoral and Sydney Allowance, an account entitled the "Logistic Support Allocation" which shall cover expenditure in the areas of transport (excepting for electorate to Sydney travel), communications, printing and stationery.
4. The Logistic Support Allocation shall be established and maintained by the Financial Controller of the Parliament. Members should be advised by the Financial Controller each month as to the balance of their Logistic Support Allocation
5. The funds in the Logistic Support Allocation shall only be used by the Member to carry out the purpose for which the allowance is established, but otherwise may, subject to these conditions, manage the funds as he/she thinks appropriate.
6. Nothing shall prevent the use of the Electoral Allowance for legitimate electorate expenses which might also fall within the categories of expenses covered by the Logistic Support Allocation.
7. All accounts must be submitted to the legislature for payment within 60 days of receipt.
8. All Members' additional entitlements in the nature of fixed allocations and Sydney allowance provided to Members shall be audited annually for compliance.

In addition to any internal audit conducted by the Parliament, Members additional entitlements in the nature of fixed allocations and the Sydney allowance provided to Members shall be the subject of an external audit conducted by the Auditor-General of NSW. The cost of any audit shall be met by the Parliament. Members should ensure they maintain appropriate records of expenditure for the purpose of any audit.

9. Expenditure is only to be incurred in connection with the Parliamentary duties of Members (and in this respect the Member should refer to the guidelines in this Determination).

10. The various allowances determined here, as well as the Logistic Support Allocation are for the sole use of the Member and are not to be transferred between Members.

ADDITIONAL ENTITLEMENTS IN THE NATURE OF ALLOWANCES

1. Electoral Allowance

Purpose and Operation of the Provision

The allowance is based upon those factors which have historically been taken into account in assessing the quantum of the allowance (including the additional costs associated with the performance by Members of their Parliamentary duties in their electorates) and such other factors as may be determined from time to time as appropriate to be taken into account by the Tribunal under the Act.

Entitlement

The allowances shall be paid as follows:

- a) Each Member of the Legislative Assembly and the Legislative Council shall receive an electoral allowance. The quantum of that allowance shall be fixed in accordance with the electoral grouping for the electorate of the Member.
- b) The allowance payable for each electorate group shall be as follows:

<u>Electorate Group</u>	<u>Allowance</u>
Group 1	\$30,770
Group 2	\$36,035
Group 3	\$42,465
Group 4	\$46,360
Group 5	\$49,315
Group 6	\$54,055
Group 7	\$56,760
Group 8	\$63,220

- c) The electoral allowance for each Member of the Legislative Council shall be \$36,035.

2. Sydney Allowance

Purpose and Operation of the Provisions

The Sydney allowance is provided to Members who reside in non-metropolitan electorates to compensate for the additional costs including commercial accommodation, meals and incidental costs associated with staying in Sydney to attend sessions of Parliament, meetings of Parliamentary committees or other Parliamentary business.

For the purpose of this allowance the non-metropolitan electorates (Electorate Groups 2-8) have been divided into two categories based on distance from Sydney. Members whose principal place of residence is in either Category 1 or Category 2 electorates, as specified in Schedule 2, are eligible to receive the Sydney allowance.

Entitlement

The daily rate (including the number of overnight stays) and the annual amount for the Sydney allowance for categories 1 and 2 shall be in accordance with Table 1 below. Where a Member elects for a daily rate, he/she shall be entitled to the daily rate for the number of overnight stays per annum specified in that Table.

TABLE 1

	Residence	Daily Rate			Annual amount
		Overnight Stays p.a.	Overnight in Sydney	Overnight in Transit to and from Sydney	
Minister, Speaker, President, Leader of the Opposition (Assembly and Council), Leader of Third Party in Assembly with not less than 10 Members.	Category 1 or 2	140	\$155	\$120	\$21,700
Deputy Speaker, Chairman of Committees in the Legislative Assembly and Chairman of Committees in the Legislative Council.	Category 1 or 2	120	\$155	\$120	\$18,600
Parliamentary Secretary/Shadow Minister	Category 1	90	\$155	\$120	\$13,950
	Category 2	120	\$155	\$120	\$18,600
Other Assembly/Council Members	Category 1	90	\$155	\$120	\$13,950
	Category 2	120	\$155	\$120	\$18,600

The following conditions apply to the Sydney allowance:

1. A Member can choose to receive the Sydney allowance as either an annual fixed allowance or a daily rate.
2. Where a Member chooses to receive the daily rate of allowance the Member shall receive the overnight daily rate as specified in Table 1 at the 'Sydney' or the 'transit to and from Sydney' rate as applicable. The Member is entitled to the number of overnight stays per annum specified in Table 1 without the need to substantiate to the Parliament expenses up to the daily rate.
3. Where the daily costs exceed the daily rate or the number of overnight stays is exceeded, full substantiation will be required for each such occasion.
4. When in receipt of the annual allowance Members are required to certify at the end of the financial year the number of occasions they stayed in Sydney and that on each occasion the stay was for Parliamentary business. Members who nominate to receive the annual allowance cannot claim for additional overnight stays in excess of those specified in Table 1.
5. Members will need to maintain records which clearly document the occasions they stayed in Sydney in connection with their Parliamentary duties. Such documentation could include airline boarding passes for arrival and departure from Sydney or any other documentary evidence of having travelled and stayed in Sydney in connection with Parliamentary duties.
6. Members in receipt of the annual amount will be required to return to Parliament the unspent portion of the Allowance for re-credit of the Consolidated Fund.
7. Members are not to claim the Sydney Allowance if they stay in Government owned or funded accommodation.

3. Committee Allowances

Purpose and Operation of the Provision

Committee Allowances are paid to Chairpersons of Joint and Select Committees in recognition of the additional responsibilities of the office. Because of the statutory nature of the Public Accounts Committee and its role in Government activities, an annual rate of allowance is payable to Members of the Public Accounts Committee.

Entitlement

The allowances shall be paid as follows:

- a) Members of the Legislative Council and the Legislative Assembly serving as Chairpersons of Joint Committees, Select Committees and Standing Committees shall be paid the sum of \$120.00 for each day upon which they attend a meeting or an official visit of inspection if that day is one upon which the Legislative Council (so far as a Member of the Council is concerned) or the Legislative Assembly (so far as a Member of the Assembly is concerned) is not sitting. This allowance is not payable to Chairpersons in receipt of a salary of office as specified in Schedule 1 of the Parliamentary Remuneration Act 1989.

- b) Members of the Public Accounts Committee, other than the Chairperson, shall each receive a committee allowance of \$2,740 per annum.

ADDITIONAL ENTITLEMENTS IN THE NATURE OF FIXED ALLOCATIONS

1. Electorate to Sydney Travel

Purpose and Operation of the Provisions

Members of the Legislative Assembly who reside in electorate groups 2 to 8 and Members of the Legislative Council who reside in zones 2 or 3 qualify for return air travel warrants between their electorates/zones and Sydney.

These entitlements are provided for the performance of Parliamentary duties.

All eligible Members shall receive one hundred and four (104) single economy class journeys per annum between electorate/zone and Sydney.

Where eligible, each of the below mentioned recognised office holders shall be entitled to the following additional electorate to Sydney travel entitlements per annum.

Entitlement

Office holder	<u>Electorate to Sydney travel entitlement</u>
Minister of the Crown	32 single journey entitlements
Speaker of the Legislative Assembly	32 single journey entitlements
President of the Legislative Council	32 single journey entitlements
Leader of the Opposition Assembly and Council	32 single journey entitlements
Leader of Party not less than 10 Members	32 single journey entitlements
Chairman of Committees Legislative Assembly and Legislative Council	32 single journey entitlements.
Deputy Speaker	32 single journey entitlements
Deputy Leader of the Opposition Assembly and Council	16 single journey entitlements

Conditions

1. All electorate to Sydney travel and return is restricted to economy class.
2. Warrants may be used to meet the cost of using a private motor vehicle or rental vehicle in lieu of electorate to Sydney air travel. The amount of warrants used for this purpose shall be assessed by calculating the reasonable cost of using the motor vehicle over the distance travelled.
3. A minimum of one warrant is required to be surrendered for each single journey; a return trip will require the surrender of at least two warrants.
4. Warrants are not transferable between Members, spouses or approved relatives, or Members staff.
5. Where the determination refers to warrants the expression is intended to include a reference to the existing system for electorate to Sydney travel used for the Legislative Council.
6. A Member's air transport bookings for Parliamentary duties are to be made through the booking agent nominated in the NSW government travel contract, for all types of transport covered by the contract. Should the official NSW government travel booking agent not offer a booking service required by a Member for Parliamentary duties, the Member's transport bookings for that service may be made directly with the transport provider.
7. Benefits accrued by a Member by way of loyalty/incentive schemes such as frequent flyers, as a consequence of the Member using his or her additional entitlements, are to be used only for Parliamentary duties and not for private purposes. Any outstanding benefits of this nature, when the Member ceases to be a Member, are to be forfeited.
8. Members will need to maintain records which clearly document the occasions they travelled to Sydney in connection with their Parliamentary duties. Such

documentation could include airline boarding passes for arrival and departure from Sydney or any other documentary evidence of having travelled to Sydney in connection with Parliamentary duties.

2. Logistic Support Allocation

Purpose and Operation of the Provision

The Financial Controller of the Parliament will establish a Logistic Support Allocation Account for each Member. Each Member's Logistic Support Allocation Account may be applied for the following purposes:

- * All interstate and intrastate transport for Parliamentary business (any mode) excepting electorate to Sydney travel.
- * Taxi travel
- * Staff travel costs (training excluded)
- * Airport parking
- * Travel expenses for Members spouse or other approved relative
- * Home telephone, facsimile and internet call charges for official business
- * Mobile telephone call charges
- * Mail distribution and postal delivery services.
- * Post Office box rental.
- * Fax Post, Express Post and Lettergram Services
- * Postage stamps
- * All stationery costs
- * Courier and Freight charges for delivery of stationery or equipment to electorate or home office
- * Costs associated with photocopying.
- * Printing (both Parliament house and external providers)
- * Publication services at Parliament House.

Entitlement

Each Member and Recognised Office Holder of the Legislative Assembly who resides in one of the following electorate groups will be entitled to an annual allocation for the Logistic Support Allocation as follows:

<u>Electorate Group</u>	<u>Entitlement</u>
Group 1	\$24,000
Group 2	\$27,000
Group 3	\$27,000
Group 4	\$27,000
Group 5	\$27,000
Group 6	\$27,000
Group 7	\$27,000
Group 8	\$27,000

Each Member and Recognised Office Holder of the Legislative Council who resides in one of the following zones will be entitled to an annual allocation for the Logistic Support Allocation as follows:

<u>Zone</u>	<u>Entitlement</u>
Group 1	\$16,300
Group 2	\$16,300
Group 3	\$21,300

Recognised Office Holders are entitled to further additional entitlements as specified in Schedule 3.

Shadow Ministers are entitled to further additional entitlements equivalent to a 40% loading on the printing and stationery component of the Logistic Support Allocation.

General Conditions

The following general conditions shall apply to the Logistic Support Allocation Account:

- 1) Subject to these conditions, each member shall determine at his/her own discretion the use of the funds within this Account for the purpose and operations specified above.
- 2) It is the primary responsibility of Members to ensure that they manage their Logistic Support Allocation Account to ensure that they do not over-expend their budgets. No supplementation of this Allocation will be allowed by the Tribunal. However, the Logistic Support Allocation is not intended to restrict the proper use of the electoral allowance, which may be used to meet any expense referred to in the 'purpose and operations' section of this clause, after the Logistic Support Allocation Account has been fully expended.
- 3) Members may not use their Logistic Support Allocation to procure goods or services to be used for electioneering purposes or political campaigning.
- 4) Any unused funds remaining in the Member's account at the end of each term of the Legislative Assembly are to be returned to the Consolidated Fund. The unused funds will be calculated on a financial year basis but no requirement to return funds will arise until the end of each four year term or the earlier dissolution of the Legislative Assembly.
- 5) Accounts will be paid either directly by the Parliament and debited to a Member's account or paid in the first instance by the Member who would then seek reimbursement from the Parliament.

Whilst, subject to the further conditions, Members may determine at their discretion the use of the funds available for any purpose and operation specified in this clause, the following table outlines the basis upon which the Tribunal has established the quantum of the account for future assessment. The table shall be used for the future assessment of the Allocation and for particular purposes such as the calculation of additional entitlements for Recognised Office Holders and Shadow Ministers.

Electorate Group or Zone	Transport	Communication – electronic	Communication –non-electronic	Printing and Stationery	Total Logistic Support Allowance
Legislative Assembly					
Group 1	\$4,000	\$3,000	\$11,000	\$6,000	\$24,000
Group 2	\$6,000	\$4,000	\$11,000	\$6,000	\$27,000
Group 3	\$6,000	\$4,000	\$11,000	\$6,000	\$27,000
Group 4	\$6,000	\$4,000	\$11,000	\$6,000	\$27,000
Group 5	\$6,000	\$4,000	\$11,000	\$6,000	\$27,000
Group 6	\$6,000	\$4,000	\$11,000	\$6,000	\$27,000
Group 7	\$6,000	\$4,000	\$11,000	\$6,000	\$27,000
Group 8	\$6,000	\$4,000	\$11,000	\$6,000	\$27,000
Legislative Council					
Zone 1	\$4,000	\$3,500	\$2,800	\$6,000	\$16,300
Zone 2	\$4,000	\$3,500	\$2,800	\$6,000	\$16,300
Zone 3	\$6,000	\$6,500	\$2,800	\$6,000	\$21,300

Particular Conditions.

Transport (Other than Electorate to Sydney transport)

- 1) A Member may use any form of transport within Australia subject to the requirement that the transport was used for Parliamentary or electorate duties and that the cost was reasonable.
- 2) A Member may travel to any place in Australia, subject to the requirement that all such travel must be for Parliamentary duties and that there must be, at the time of the making of the relevant reservation, sufficient funds in that Member's Account to pay for the expenses involved.
- 3) All transport costs associated with spouse/approved relative or Members staff travel (excluding travel costs associated with staff training) are to be provided from the Logistic Support Allocation Account. Staff training costs are to be met by the Legislature.
- 4) A Member and his or her spouse or approved relative may travel together or separately in connection with attendance at the same function in the course of Parliamentary duties.
- 5) A Member may use taxis or hire cars for Parliamentary duties.
- 6) A Member's air transport bookings for Parliamentary duties are to be made through the booking agent nominated in the NSW government travel contract, for all types of transport covered by the contract. Should the official NSW government travel booking agent not offer a booking service required by a Member for Parliamentary duties, the Member's transport bookings for that service may be made directly with the transport provider.
- 7) Benefits accrued by a Member by way of loyalty/incentive schemes such as frequent flyers, as a consequence of the Member using his or her additional entitlements, are to be used only for Parliamentary duties and not for private purposes. Any outstanding benefits of this nature, when the Member ceases to be

a Member, are to be forfeited.

- 8) Members should require their staff to maintain records which clearly document the occasions they stayed in Sydney in connection with their parliamentary duties. Such documentation may include airline boarding passes for arrival and departure from Sydney or any other documentary evidence of having travelled and stayed in Sydney accommodation in connection with Parliamentary duties.
- 9) A Member may use charter transport in connection with Parliamentary duties, but only within the limits of the Member's individual Logistic Support Allocation. No passenger, except the Member's spouse or an approved relative accompanying the Member on Parliamentary duties, may be carried at the cost of the Member's Logistic Support Allocation entitlement. Where more than one Member is travelling on the air charter, the total air charter cost should be covered by arrangement between the Members travelling.
- 10) The charter service provider shall provide a passenger manifest with the invoice when it is sent for payment.

Communication – electronic

1. The Tribunal accepts that there will be some private usage in connection with mobile telephones supplied by the Parliament and electronic communication equipment installed at public expense in a Members' principal place of residence. To ensure the Legislature does not pay Fringe Benefits Tax for the private usage of electronic equipment, the Financial Controller will undertake a survey over an appropriate period of time to ascertain public/private percentage use of Members' home telephones. Once established Members will be reimbursed the parliamentary business cost of each home telephone call account and an adjustment shall be made to previous accounts reimbursed from the effective date of this determination on or from the date of election, whichever is the later. Nothing in this provision alters the existing arrangements applying to Recognised Office Holders.

2. A fax modem line installed at Legislative Council Members home office continue to be reimbursed at the rate of 100%.
3. Members will also be required to meet the cost of all overseas calls, charged information/service calls, reverse charge calls and home-link Telecard calls.
4. Members will pay the full amount of each electronic communication account and seek reimbursement from the Financial Controller of the public use proportion from the Members Electronic Communication Account.

Communication - non-electronic

Members are permitted to purchase postage stamps or other mail distribution and delivery services and make arrangements for payment direct by the Parliament or obtain reimbursement by providing substantiation in accordance with the requirements of the Parliament's administration.

Printing and stationery

1. Members may only use the printing and stationery entitlement for Parliamentary duties.
2. The entitlement may be used to purchase printing and stationery items from the Parliament or other providers and in accordance with Parliamentary procurement policies and practices.
3. A Member may not use their printing and stationery allowances to procure goods or services to be used for electioneering purposes or political campaigning.

ELECTORATE CHARTER TRANSPORT FOR MEMBERS OF THE LEGISLATIVE ASSEMBLY

Purpose and operation of the provision

Members of the largest electorates (Electoral Groups 5-8) shall be provided with an allowance from which are met charter transport costs incurred within their electorates. For the purposes of this allowance “charter transport” means charter transport used with and for the service of the Member’s electorate and includes charter aircraft, drive yourself vehicles and any other mode of charter transport which may be deemed appropriate in the circumstances by the Speaker of the Legislative Assembly.

Entitlement

Members of the Legislative Assembly in the following electorate groups shall be entitled to charter transport allowance up to the maximum amount shown below:

<u>Electoral Group</u>	<u>Entitlement</u>
Group 8	\$16,980
Group 7	\$11,250
Group 6	\$9,180
Group 5	\$5,620

Conditions

The following conditions shall apply in respect of Charter Transport Allowance:

1. This allowance shall only be used in connection with Parliamentary duties within the Member’s electorate and shall not be used during election campaigns or for other electioneering or party political activities.
2. Only the cost of the Member’s spouse or approved relative or member of staff accompanying the Member may be met from this allowance.
3. It is a condition of all air transport charters that the charter service provider shall provide a passenger manifest with the invoice when it is sent for payment.

4. Members are to meet the cost of the air charter and seek reimbursement from the Financial Controller with appropriate certification as to the purpose of the charter.
5. The charter transport shall only be used within and for the service of the Member's electorate. Where the only source of available charter transport is outside the boundaries of the electorate, the reasonable additional expenses consequently incurred may be included in the reimbursement available under this determination.
6. These additional entitlements shall be audited annually for compliance. In addition to any internal audit conducted by the Parliament, Members additional entitlements shall be the subject of an external audit conducted by the Auditor General of NSW. The cost of any auditing shall be met by the Parliament. Members should ensure they maintain appropriate records of expenditure.

TRAVELLING ALLOWANCE FOR RECOGNISED OFFICE HOLDERS

When travelling on official business Recognised Office Holders shall be paid a travel allowance in addition to other transport allocations within this determination in accordance with Table 2 below:

TABLE 2

Recognised Office Holder	CAPITAL CITIES (incl. Canberra)	OTHER AREAS	WHERE NO OVERNIGHT STAY IS REQUIRED
Premier	\$348	\$192	\$87
Ministers	\$280	\$159	\$70
President of the Legislative Council and Speaker of the Legislative Assembly	\$280	\$159	\$70
Leader and Deputy Leader of the Opposition in the Legislative Council	\$280	\$159	\$70
Leader and Deputy-Leader of the Opposition in the Legislative Assembly	\$280	\$159	\$70
Leader and Deputy Leader of a Recognised Political Party of which not less than ten Members are Members of the Legislative Assembly	\$280	\$159	\$70
Chairman of Select, Joint Standing and Public Accounts Committees	\$280	\$159	\$70
Members of Select, Joint and Public Accounts Committees	\$209	\$131	\$51

The following conditions shall apply in respect of this allowance:

1. To be eligible for travelling allowance, Recognised Office Holders will need to be absent from Sydney for a period in excess of six hours where no overnight absence is involved. Where absence overnight is involved, the absence must extend six hours beyond the first period of twenty-four hours before a second day's allowance is

payable. The second day's allowance is as shown in the column headed "Where no overnight stay is involved".

2. On occasions when the rates of travelling allowance set out above prove to be insufficient, reimbursement of actual and reasonable expenses shall be allowed, subject to the production of receipts relating to accommodation and a statement from the Recognised Office Holder concerned outlining other costs such as meals and incidental expenses.
3. A Recognised Office Holder whose spouse accompanies him or her to a State or other official function and who consequently incurs expenses in respect of meals and accommodation for Recognised Office Holder and spouse exceeding the allowance to which he or she is entitled as indicated above, shall be entitled to be reimbursed the additional expenses associated with the spouse. This provision applies to the "approved relative" of a Recognised Office Holders in a case where there is no spouse.
4. Those Recognised Office Holders for whom non-Parliamentary funded budgets are provided are to meet travel allowance costs from those budgets and not from the Parliament.

TRAVELLING ALLOWANCE FOR SHADOW MINISTERS

Shadow Ministers shall be paid a travel allowance in addition to other transport allocations within this determination in accordance with the following table:

TABLE 3

Office Holder	CAPITAL CITIES (incl. Canberra)	OTHER AREAS	WHERE NO OVERNIGHT STAY IN REQUIRED
Shadow Ministers	\$209	\$131	\$51

The following conditions shall apply in respect of this allowance:

1. To be eligible for travelling allowance, Shadow Ministers will need to be absent from Sydney for a period in excess of six hours where no overnight absence is involved. Where absence overnight is involved, the absence must extend six hours beyond the first period of twenty-four hours before a second day's allowance is payable. The second day's allowance is as shown in the column headed "Where no overnight stay is involved".
2. On occasions when the rates of travelling allowance set out above prove to be insufficient, reimbursement of actual and reasonable expenses shall be allowed, subject to the production of receipts relating to accommodation and a statement from the Shadow Ministers concerned outlining other costs such as meals and incidental expenses.
3. A Shadow Minister whose spouse accompanies him or her to a State or other official function and who consequently incurs expenses in respect of meals and accommodation for Shadow Minister Holder and spouse exceeding the allowance to which he or she is entitled as indicated above, shall be entitled to be reimbursed the additional expenses associated with the spouse. This provision applies to the "approved relative" of a Shadow Minister in a case where there is no spouse.

4. Those Shadow Minister for whom non-Parliamentary funded budgets are provided are to meet travel allowance costs from those budgets and not from the Parliament.

EQUIPMENT, SERVICES AND FACILITIES

Members of the Legislative Assembly and the Legislative Council shall be provided by the Parliament with the equipment, services and facilities necessary to perform their Parliamentary duties as follows:

1. All members shall receive at the Parliament House, Sydney, a fitted out, equipped and maintained office, and secretarial services.
2. Each Member of the Legislative Assembly shall receive a fitted out, equipped and maintained Electorate Office to an appropriate standard. The Member for Murray-Darling is to be provided with an additional electorate office.
3. Each Member shall be supplied equipment and ancillary services in the Member's private residence (or if the Member has more than one private residence then in the Member's principal private residence) including a telephone and a facsimile machine, for the performance by the Member of Parliamentary duties.
4. Each Member shall receive portable equipment to supplement the provision of equipment as referred to in clauses 1, 2 and 3 above. This portable equipment shall include, but is not limited to, a mobile telephone and a notebook computer.
5. The presiding officers are to provide administrative support to each Member in accordance with the following:
 - (i) Subject to (ii), each Member of the Legislative Assembly shall have two staff members employed at each electoral office.
 - (ii) Each Member of the Legislative Assembly elected as an Independent shall have an additional staff member employed at his/her electoral office.
 - (iii) Each Member of the Legislative Council, who is not a Minister, shall be entitled to one staff member.

(iv) Each Member of the Legislative Council, who is not a Minister, and who is elected as a cross bench Member shall be entitled to two staff members.

(v) Ministers shall receive a reasonable allocation of staff members.

(vi) This provision specifies the minimum staffing required in electorate offices. Nothing in this determination removes from the employer of staff the obligations arising under the Occupational Health and Safety Act 1983.

Dated this 4th of December 2000.

The Hon (Justice) Michael Walton

THE PARLIAMENTARY REMUNERATION TRIBUNAL

ELECTORAL GROUPS**SCHEDULE 1**

Group 1 Electorates		
1. Auburn	17. Granville	33. North Shore
2. Bankstown	18. Heffron	34. Parramatta
3. Baulkham Hills	19. Hornsby	35. Penrith
4. Blacktown	20. Kogarah	36. Pittwater
5. Bligh	21. Ku-ring- gai	37. Port Jackson
6. Cabramatta	22. Lakemba	38. Riverstone
7. Campbelltown	23. Lane Cove	39. Rockdale
8. Canterbury	24. Liverpool	40. Ryde
9. Coogee	25. Macquarie Fields	41. Smithfield
10. Cronulla	26. Manly	42. Strathfield
11. Davidson	27. Maroubra	43. The Hills
12. Drummoyne	28. Marrickville	44. Vacluse
13. East Hills	29. Menai	45. Wakehurst
14. Epping	30. Miranda	46. Wentworthville
15. Fairfield	31. Mount Druitt	47. Willoughby
16. Georges River	32. Mulgoa	
Group 2 Electorates		
1. Blue Mountains	7. Illawarra	13. Peats
2. Camden	8. Keira	14. Swansea
3. Charlestown	9. Kiama	15. The Entrance
4. Gosford	10. Lake Macquarie	16. Wallsend
5. Hawkesbury	11. Londonderry	17. Wollongong
6. Heathcote	12. Newcastle	18. Wyong

SCHEDULE 1

Group 3 Electorates		
1. Ballina	5. Myall Lakes	8. South Coast
2. Cessnock	6. Port Macquarie	9. Southern Highlands
3. Coffs Harbour	7. Port Stephens	10. Tweed
4. Maitland		
Group 4 Electorates		
1. Albury	4. Dubbo	7. Oxley
2. Bathurst	5. Lismore	8. Tamworth
3. Bega	6. Orange	9. Wagga Wagga
Group 5 Electorates		
1. Burrinjuck		
2. Clarence		
3. Monaro		
4. Northern Tablelands		
Group 6 Electorates		
1. Lachlan		
2. Murrumbidgee		
3. Upper Hunter		
Group 7 Electorates		
1. Barwon		
Group 8 Electorates		
1. Murray-Darling		

SYDNEY ALLOWANCE GROUPINGS

SCHEDULE 2

Category 1		
1. Blue Mountains	7. Illawarra	13. Peats
2. Camden	8. Keira	14. Swansea
3. Charlestown	9. Kiama	15. The Entrance
4. Gosford	10. Lake Macquarie	16. Wallsend
5. Hawkesbury	11. Londonderry	17. Wollongong
6. Heathcote	12. Newcastle	18. Wyong

Category 2		
1. Albury	11. Lachlan	20. Oxley
2. Ballina	12. Lismore	21. Port Macquarie
3. Barwon	13. Maitland	22. Port Stephens
4. Bathurst	14. Monaro	23. South Coast
5. Burrinjuck	15. Murray-Darling	24. Southern Highlands
6. Bega	16. Murrumbidgee	25. Tamworth
7. Cessnock	17. Myall Lakes	26. Tweed
8. Clarence	18. Northern Tablelands	27. Upper Hunter
9. Coffs Harbour	19. Orange	28. Wagga Wagga
10. Dubbo		

LEGISLATIVE COUNCIL ZONES

SCHEDULE 2A

Zone 1 Electorates		
1. Auburn	17. Granville	33. North Shore
2. Bankstown	18. Heffron	34. Parramatta
3. Baulkham Hills	19. Hornsby	35. Penrith
4. Blacktown	20. Kogarah	36. Pittwater
5. Bligh	21. Ku-ring- gai	37. Port Jackson
6. Cabramatta	22. Lakemba	38. Riverstone
7. Campbelltown	23. Lane Cove	39. Rockdale
8. Canterbury	24. Liverpool	40. Ryde
9. Coogee	25. Macquarie Fields	41. Smithfield
10. Cronulla	26. Manly	42. Strathfield
11. Davidson	27. Maroubra	43. The Hills
12. Drummoyne	28. Marrickville	44. Vaucluse
13. East Hills	29. Menai	45. Wakehurst
14. Epping	30. Miranda	46. Wentworthville
15. Fairfield	31. Mount Druitt	47. Willoughby
16. Georges River	32. Mulgoa	
Zone 2 Electorates		
1. Blue Mountains	7. Illawarra	13. Peats
2. Camden	8. Keira	14. Swansea
3. Charlestown	9. Kiama	15. The Entrance
4. Gosford	10. Lake Macquarie	16. Wallsend
5. Hawkesbury	11. Londonderry	17. Wollongong
6. Heathcote	12. Newcastle	18. Wyong

LEGISLATIVE COUNCIL ZONES**SCHEDULE 2A**

Zone 3 Electorates		
1. Albury	11. Lachlan	21. Port Macquarie
2. Ballina	12. Lismore	22. Port Stephens
3. Barwon	13. Maitland	23. South Coast
4. Bathurst	14. Monaro	24. Southern Highlands
5. Bega	15. Murrumbidgee	25. Tamworth
6. Burrinjuck	16. Murray-Darling	26. Tweed
7. Cessnock	17. Myall Lakes	27. Upper Hunter
8. Clarence	18. Northern Tablelands	28. Wagga Wagga
9. Coffs Harbour	19. Orange	
10. Dubbo	20. Oxley	

**RECOGNISED OFFICE HOLDER AND
OTHER MEMBER ENTITLEMENTS**

SCHEDULE 3

Recognised Office Holder	Transport	Communication (electronic)	Communication (non- electronic)	Printing & Stationery
Presiding Officer	30%		55%(A) 175%(C)	40%
Minister				40%
Deputy Speaker, Chair of Committees				40%
Leader of the Opposition	20%(A)		140%(A) 175%(C)	40%
Deputy Leader of the Opposition			15%(C)	40%
Whips			15%(C)	40%
Party Leader (not less than 10 Members)	15%			20%
Deputy Party Leader (not less than 10 Members)	10%			40%
Leader of the National Party (in Opposition with not less than 10 Members in LA)	15%		15%	40%
Other Recognised Office Holders				40%
Shadow Ministers				40%
Independent Members				20%

- Where entitlements formerly provided for the recognised office holder's spouse these have been included in the allocation.
- Where an entitlement is followed by (A) or (C) it applied only to the office holder in either the Assembly or the Council.

Advice of the Secretary of Treasury Pursuant to Section 13(5) of the Parliamentary Remuneration Act, 1989

The following comments on the Parliamentary Remuneration Tribunal's 2000 annual determination are made pursuant to Section 13 (5) of the Parliamentary Remuneration Act, 1989.

Financial Implications

The 2000 annual determination is consistent with the NSW Budget administration and policy framework. The costs of the entitlements provided are also consistent with overall Consolidated Fund allocations for Members' additional entitlements.

1. Recurrent Budget Impact

The following table provides estimates of the maximum annual cost of additional allowances for members of the Legislative Assembly and members of the Legislative Council contained in the determination.

For the purposes of calculating the financial costs, estimates are based on the present composition of Members in the Legislative Assembly and Legislative Council, and the distribution of private members and recognised office holders across the electoral district groupings.

Entitlement Type	Legislative Assembly (\$pa)	Legislative Council (\$pa)	Total (\$pa)
Electoral Allowances	3,416,115	1,513,470	4,929,585
Sydney Allowance (Living Away from Home) Allowances Being either Daily or Annual	771,900	302,250	1,074,150
Committee Allowances	13,700	...	13,700
Logistic Support Allocation ¹	2,370,000	739,600	3,109,600
Electorate Charter Transport for Members of the Legislative Assembly	78,250	...	78,250
Travelling Allowance for Recognised Office Holders	Unable to be estimated	Unable to be estimated	...
Travelling Allowance for Shadow Ministers	Unable to be estimated	Unable to be estimated	...
Equipment, Services and Facilities	Not Defined	Not Defined	
Total	\$6,649,965	\$2,555,320	\$9,205,285

¹ Electorate to Sydney travel operates on a warrant system so costs are not attached. All eligible Members shall receive one hundred and four (104) single economy class journeys per annum between electorate/zone and Sydney.

Estimates have not been provided where either maximum remuneration limits have not been defined, or in the case of travelling allowances and reimbursement of some travelling expenses, where it is not possible to estimate the number of occasions in which members would be entitled to the allowance.

Logistic Support Allowance

In regard to the ‘Logistic Support Allowance’ unused funds will be calculated on a financial year basis but no requirement to return funds will arise until the end of each four year term or the earlier dissolution of the Legislative Assembly.

Treasury raises no objections to this requirement on a policy basis as it allows flexibility and reflects current practice. However, this practice will need to comply with Section 23 of the Public Finance & Audit Act. The most efficient means of ensuring statutory compliance would be to include an estimate of the unused portion of the ‘Logistic Support Allowance’ in the Appropriation Act for the following year.

Other Entitlements – Equipment, Services and Facilities

The Tribunal has determined that Members will be provided with equipment, services and facilities however did not specify the amount of funding to be provided for these entitlements. The Tribunal has determined at this time that Parliament will continue to negotiate directly with the Treasury for appropriate financing of these entitlements in accordance with the normal budgetary cycle.

Costs Associated with Scheme Administration

Costs of the Legislature will increase due to external audit requirements and to comply with new reporting requirements. It is understood that Parliament will make a separate funding application to meet these additional costs.

John Pierce
Secretary