

NEW SOUTH WALES

REPORT

AND

DETERMINATION

under the

PARLIAMENTARY REMUNERATION ACT 1989

31 May 1995

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THE PARLIAMENTARY  
REMUNERATION TRIBUNAL

The Honourable the Chief Justice  
of New South Wales  
Chief Justice's Chambers  
Supreme Court of New South Wales  
SYDNEY NSW 2000

31 MAY 1995

My dear Chief Justice

The Parliamentary Remuneration Tribunal has the honour to present to you, pursuant to section 13(1) of the Parliamentary Remuneration Act 1989, the Report of its Determination to be effective for the year commencing on 1 July 1995.

Yours faithfully

THE PARLIAMENTARY REMUNERATION TRIBUNAL

A handwritten signature in cursive script that reads "John Slattery".

(THE HON. JOHN SLATTERY)

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

PRELIMINARY

1. The Parliamentary Remuneration Act 1989 ("the Act"), which was assented to on 12 December 1989, constituted the Parliamentary Remuneration Tribunal. The Act, *inter alia*, provides for the basic salaries of members of Parliament to bear a fixed relationship to those of members of the House of Representatives in the Commonwealth Parliament and for certain prescribed additional salaries and expense allowances to be at rates bearing a fixed percentage to the rate of basic salary. Pursuant to section 9(a) of the Act, the Parliamentary Remuneration Tribunal determines additional allowances to be payable to a member or recognised office holder and, pursuant to section 9(b) of the Act, makes recommendations to the Minister on matters referred to it by the Minister, relating to the provision of services, equipment or facilities to a member or recognised office holder.
2. Pursuant to Schedule 2 of the Parliamentary Remuneration Act 1989, I, THE HONOURABLE JOHN PATRICK SLATTERY, a retired Judge of the Supreme Court of New South Wales was, on 28 June 1993, appointed by the Chief Justice of the Supreme Court of New South Wales to be the Parliamentary Remuneration Tribunal.
3. The Parliamentary Remuneration Act 1989, provides for the making by the Tribunal of an annual determination of the additional allowances payable to recognised office holders and members of Parliament, to take effect from 1 July of each year.
4. Specifically, section 11 of the Act provides -

- "(1) An annual determination as regards additional allowances is to be made on or before 1 June in each year (or such later date as the Chief Justice directs under this section), with effect from 1 July in that year.
- (2) The Chief Justice may, because of the illness of the person holding office as the Tribunal or for any other reason that seems proper to the Chief Justice, from time to time by order published in the Gazette, direct that a particular annual determination is to be made on or before a later specified date.
- (3) If an annual determination is not made by 1 July in a year, additional allowances continue to be payable at the rates at which they were payable before that date, until payment of additional allowances can be effected in accordance with the determination, but any necessary adjustments are to be made as a result of the making of the determination".

### PROCEDURE

5. Shortly after the State Election the Tribunal sent letters to members of the Legislative Council and of the Legislative Assembly inviting them to forward to it such written submissions as they might wish to make in relation to the additional allowances which should be paid to recognised office holders and members and the rates of any such allowances. The letters also stated that the Tribunal was prepared to interview any member who had made a written submission and wished to confer with it for the purpose of elucidating or elaborating such submission. They concluded with the statement that submissions and conferences would be treated confidentially and that any material used in the report and determination would not be identified with its author. This letter also indicated that the Tribunal would be examining Special Expenses or "Living Away from Home" Allowances and sought comments from Members on this matter.

6. In response to the abovementioned letters, the Tribunal received written submissions from the Parties and members of both Houses. All submissions have been carefully considered by the Tribunal.
7. The Tribunal has made such other inquiries as it considered necessary. It has noted the reports of the Australian Remuneration Tribunal and other State/Territory remuneration tribunals.
8. The Tribunal has been informed of changes in the costs incurred by members in the performance of their parliamentary duties since the last review.

#### ELECTORAL ALLOWANCES OF MEMBERS OF BOTH HOUSES

9. The Tribunal has reviewed the costs incurred by members in servicing their electorates and has increased rates of allowances accordingly.

#### SPECIAL EXPENSES OR "LIVING AWAY FROM HOME" ALLOWANCES

10. These allowances are provided to country members of both Houses towards the cost of overnight accommodation whilst in Sydney on parliamentary business or in transit to and from Sydney.
11. The Tribunal's Special Determination of 29 May 1991 under section 12 of the Act made provision for members to elect, when elected to Parliament, to be paid either a daily or annual Special Expenses Allowance for the life of a Parliament. The Special Expenses Allowance should be sufficient to permit the acquisition of rented accommodation. The Tribunal's report and determination of 1 May 1992 removed the maximum allocation available for parliamentary business, other than sittings of the House or meetings of parliamentary committees, for members within the grouping of Minister, Speaker, Leader of the Opposition - Assembly and Council, Leader of Third Party in Assembly - resident in category 1 or category 2. The Tribunal's report and determination of 26 May 1993 determined

that members can elect, each year, how they wish to be paid this allowance subject to certain conditions.

12. Prior to the commencement of this review the Tribunal was requested to advise on the entitlement and discretionary use of this Allowance.
13. The Tribunal undertook a comprehensive review of this Allowance and provided advice on this matter. As the advice was made public it need not be repeated here but it is attached at Appendix C for completeness.
14. For this review the Tribunal sought comments from members on the appropriateness of this Allowance. These views have been carefully considered and the allowance closely examined to determine whether any changes are warranted.
15. After careful examination of all the relevant material the Tribunal considers that the current definition of this allowance is appropriate and should not be changed. Narrowing the scope of the Allowance would, in the Tribunal's view, defeat the purpose for which it was intended.
16. The Tribunal, following its enquiries does not consider that either the daily Special Expenses Allowances per overnight stay in Sydney and in transit to and from Sydney or the annual Special Expenses Allowance should be increased.
17. The Tribunal did receive submissions indicating that while the overall number of overnight stays determined by the Tribunal was adequate, the 25 overnight stays allocated for other parliamentary business was inadequate.
18. After reviewing the material before the Tribunal and after receiving verbal submissions on this item the Tribunal considers that the number of overnight stays should be increased from 25 to 35 and so determines. The overall allocation remains unchanged as does the allocation to those office holders in Category 2 electorates allocated 50 nights for other parliamentary business.



### COMMITTEE ALLOWANCES

19. The allowances fixed for Chairmen of Joint or Select Committees and for members of the Public Accounts Committee have been increased by approximately 2.0 per cent.

### TRAVELLING ALLOWANCES FOR THE PREMIER, MINISTERS OF THE CROWN, OTHER RECOGNISED OFFICE HOLDERS, COMMITTEE MEMBERS, SPOUSES OR APPROVED RELATIVES

20. These have been increased marginally to reflect the relevant changes in the costs covered by the allowances.

### CHARTER TRAVEL

21. A survey conducted during the current review revealed that there had been no significant increase to charter costs in the past twelve months. The opening of country travel to competition has overall resulted in a better service to users. The Government contract for air charter services provides a better service and rates to users. Having regard to these facts the quantum of the charter allowance has not been increased at this time.

### REIMBURSEMENT OF CERTAIN TRAVELLING EXPENSES

22. Provision is made for payment of a car allowance to those members of the Legislative Council who reside in the country and at a considerable distance from the closest airport or railway station from which they can obtain transport to and from Sydney, thus requiring the use of their private motor vehicles between their homes and the airport or railway station. The Tribunal's enquiries show that there has been no increase in the costs of running a motor vehicle, therefore the car allowance has not been increased at this time.

The Tribunal has increased the number of taxi fares members are entitled to be reimbursed when travelling in the course of other parliamentary business between Sydney airport and the city from twenty five to thirty five.

### MATTERS CONSIDERED BY THE TRIBUNAL

23. Some of the submissions received from members relate to matters which have either been raised before or are new matters. The Tribunal has examined these and has provided a report hereunder.

a) **Provision of Government Owned Motor Vehicles for Members**

Once again some members sought the introduction of Government owned motor vehicles for members.

On 26 July 1990 the Tribunal made a report and determination on the provision of Government-owned motor vehicles to members of the Legislative Council and members of the Legislative Assembly for use in the servicing of their electorates and on other Parliamentary business.

The Tribunal's determination included the provision of a motor vehicle at the option of the member and set out the conditions relating thereto. The cost of providing the motor vehicle, including running costs, was to be met by the member out of her or his electoral allowance or salary.

Due to legislative impediments the Tribunal's determination was not adopted.

The Tribunal, as stated in previous reports, is of the view that, should legislation be introduced which overcomes the impediments to the adoption of the determination of 26 July 1990 then the Tribunal would support the provision of Government-owned motor vehicles to members of the Legislative Council and members of the Legislative Assembly.

Should the Premier consider it necessary, a direction could be given to the Tribunal to undertake a new inquiry into this matter, given the time that has elapsed since the Tribunal's initial report and determination.

**b) Other Matters**

Submissions were also received on various other matters but the Tribunal considered them to be outside the scope of this current review. Some of the matters include: Staff assistance for members, 008 telephone facilities, car and mobile telephones, upgrade of office equipment both in the electorate and at Parliament House including additional telephone lines and increases in postal and printing allowances.

The Tribunal also received a number of submissions from members seeking a review of travel warrant arrangements. This matter is also outside the scope of the current review and would require a special reference from the Premier to undertake an inquiry into travel warrants arrangements.

PARLIAMENTARY REMUNERATION ACT 1989DETERMINATION PURSUANT TO SECTION 11(1) OF THE ACT

For the reasons set forth in the above Report, the Parliamentary Remuneration Tribunal hereby makes the following determination of the additional allowances which should be paid on and from 1 July, 1995 to members, including recognised office holders, in the Legislative Council and the Legislative Assembly of New South Wales, in lieu of the amounts presently payable, for each of the purposes indicated below, and not in addition thereto:

ELECTORAL ALLOWANCES FOR MEMBERS OF BOTH HOUSES

The electoral allowances payable to members of the Legislative Assembly whose electoral districts are specified hereunder shall be as follows:-

<u>Electoral Districts</u>	<u>Yearly Rate of Allowance</u>
	\$
Group 1	23,200
Group 2	27,700
Group 3	32,500
Group 4	38,200
Group 5	41,600
Group 6	44,300
Group 7	48,500
Broken Hill	56,900

The electoral districts included in each Group are as determined in the Tribunal's special determination of 29 May 1991, under section 12 of the Parliamentary Remuneration Act 1989, and are set forth in Appendix A.

The electoral allowance payable to each member of the Legislative Council shall be \$32,500 per annum.

## SPECIAL EXPENSES OR "LIVING AWAY FROM HOME" ALLOWANCES

A special expenses allowance shall be payable to country members of both Houses towards the cost of overnight accommodation whilst in Sydney on parliamentary business or in transit to and from Sydney. The allowance is payable when the stay is occasioned by:

- sittings of the House of Parliament or direct travel to and from such sittings; or
- meetings of parliamentary committees of which he or she is a member, or direct travel to or from such meetings; or
- other parliamentary business.

The member may elect to be paid either a daily or annual special expenses allowance on a financial year basis. This election to take effect from 1 July 1995 and is subject to the following conditions:-

- \* election is made for a full financial year;
- \* such election to be received by the Parliament House Accounts Branch prior to 1 July each year;
- \* new members to make their election effective from the date they are duly elected until the end of that financial year and;
- \* re-elected members will not be eligible to change their current elections until the end of that financial year.

## SPECIAL EXPENSES ALLOWANCE - DAILY ALLOWANCE

The daily special expenses allowance per overnight stay is as follows:

	<u>Sydney</u>	<u>In Transit To and From Sydney</u>
Ministers, resident in category 1 or category 2.	\$140.00	\$108.00
The Leader of the Opposition in the Legislative Council, resident in category 1 or category 2.	\$140.00	\$108.00
The Leader of the Opposition in the the Legislative Assembly, resident in category 1 or category 2.	\$140.00	\$108.00
Speaker of the Legislative Assembly, resident in category 1 or category 2.	\$140.00	\$108.00
Leader in the Legislative Assembly (other than the leader of the Opposition) of a recognised political party of which not less than ten members are members of the Legislative Assembly, resident in category 1 or category 2.	\$140.00	\$108.00
Chairman of Committees in the Legislative Assembly, resident in category 1 or category 2.	\$140.00	\$108.00
Member of the Legislative Council and member of the Legislative Assembly resident in category 1 or category 2.	\$140.00	\$108.00

The maximum number of overnight stays per annum are as follows:

	<u>Overnight Stays</u> <u>Per Annum</u>
Minister, Speaker, Leader of Opposition - Assembly and Council, Leader of Third Party in Assembly - resident in category 1 or category 2.	140
Chairman of Committees in the Legislative Assembly - resident in category 1 or category 2.	120 (35)
Parliamentary Secretary resident in:	
Category 1 electorates	90 (35)
Category 2 electorates	120 (50)
Other Assembly members, resident in:	
- category 1 electorates	90 (35)
- category 2 electorates	120 (35)
Other Council members, resident in:	
- category 1 electorates	90 (35)
- category 2 electorates	120 (35)

The figures in brackets show the maximum number of overnight stays that are available for parliamentary business other than sittings of the House or meetings of parliamentary committees. The figures in brackets are not additional to the overall maximum overnight stays allowed.

A member is entitled to only one allowance for each overnight stay.

The allowance is not payable for an overnight stay within the electoral district of the Legislative Assembly which contains the home base of the member.

Where parliamentary business requires members to exceed their entitlements set out above, then reimbursement of the actual and reasonable expenses, but not exceeding \$140.00 for each overnight stay in Sydney and \$108.00 for each overnight stay whilst in transit to and from Sydney, shall be allowed for any additional overnight stays. Such reimbursement is subject to the production of receipts relating to accommodation and a statement from the member concerned outlining other costs such as meals and incidental expenses. Provided that, payments made for overnight stays on parliamentary business other than the sittings of the House or meetings of parliamentary committees should not exceed the maximum shown in brackets above.

### **SPECIAL EXPENSES ALLOWANCE - ANNUAL ALLOWANCE**

The annual special expenses allowances for overnight stays are as follows:

- (1) \$19,600 per annum to:-
  - (a) each Minister of the Crown who is a member of the Legislative Council and whose usual place of residence is situated in an electoral district specified in category 1 or category 2;
  - (b) each Minister of the Crown who is a member of the Legislative Assembly and is the member for, or whose usual place of residence is in, an electoral district specified in category 1 or category 2;
  - (c) the Leader of the Opposition in the Legislative Council whose usual place of residence is situated in an electoral division specified in category 1 or category 2;
  - (d) the Speaker of the Legislative Assembly, being the member for an electoral district specified in category 1 or category 2;
  - (e) the Leader of the Opposition in the Legislative Assembly, being the member for an electoral district specified in category 1 or category 2;



- (f) the Leader in the Legislative Assembly (other than the Leader of the Opposition) of a recognised political party of which not less than ten members are members of the Legislative Assembly and of which no member is the holder of any office of profit pursuant to section 13B of the Constitution Act 1902, being the member for an electoral district specified in category 1 or category 2;
- (2) \$16,800 per annum to:-
- (a) the Chairman of Committees in the Legislative Assembly, being the member for an electoral district specified in category 1 or category 2;
- (b) each member of the Legislative Council whose usual place of residence is situated in an electoral district specified in category 2 and to each member of the Legislative Assembly for an electoral district specified in category 2.
- (3) \$12,600 per annum to each member of the Legislative Council whose usual place of residence is situated in an electoral district specified in category 1 and to each member of the Legislative Assembly for an electoral district specified in category 1.

A member is entitled to only one allowance under paragraphs (1) to (3).

The electoral districts included in each category, are as determined in the Tribunal's determination of 29 May 1991, under section 12 of the Parliamentary Remuneration Act 1989, and are set forth in Appendix B.

**REIMBURSEMENT OF EXPENSES FOR CHARTER TRANSPORT OF MEMBERS OF THE LEGISLATIVE ASSEMBLY**

For the purposes of this clause "charter transport" means charter transport used within 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.

Each accounting year for the purposes of the reimbursement of expenses for charter transport shall commence on 1 July; and

- (1) The member for the Electoral District of Broken Hill shall be reimbursed to a maximum amount of \$16,092 per annum for charter transport.
- (2) The member for the Electoral District of Murray shall be reimbursed to a maximum amount of \$12,404 per annum for charter transport.
- (3) The members for the Electoral Districts of Barwon, Lachlan, Murrumbidgee and Upper Hunter shall each be reimbursed to a maximum amount of \$8,716 per annum for charter transport.
- (4) The members for the Electoral Districts of Albury, Burrinjuck, Clarence, Dubbo, Monaro and Northern Tablelands shall each be reimbursed to a maximum amount of \$5,362 per annum for charter transport.

While charter transport, reimbursable under this determination, is intended to be used within and for the service of the member's electorate, where the 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.

#### COMMITTEE ALLOWANCES

Members of the Legislative Council and of the Legislative Assembly serving as Chairmen of Joint Committees and Select Committees shall be paid the sum of \$102.00 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.

Members of the Public Accounts Committee, other than the Chairman, shall each receive a committee allowance of \$2,310 per annum.

**TRAVELLING ALLOWANCES FOR THE PREMIER, MINISTERS OF THE CROWN, OTHER RECOGNISED OFFICE HOLDERS, COMMITTEE MEMBERS, SPOUSES OR APPROVED RELATIVES**

When travelling on official business the following shall be the travelling allowances per day payable respectively to the undermentioned:-

	<u>Capital Cities (incl. Canberra)</u>	<u>Other Areas</u>	<u>Where no overnight stay is involved</u>
Premier	\$320	\$178	\$79
Ministers	\$258	\$148	\$65
President of the Legislative Council and Speaker of the Legislative Assembly	\$258	\$148	\$65
The Leader of the Opposition in the Legislative Council			
Leader and Deputy Leader of the Opposition in the Legislative Assembly			
Leader and Deputy Leader of a Recognised Political Party of which not less than ten members are members of the Legislative Assembly			
Chairman of Select, Joint, Standing and Public Accounts Committees			
Members of Select, Joint, Standing and Public Accounts Committees	\$193	\$122	\$47

An absence from Sydney for a period in excess of six hours shall be the minimum requirement for the payment of travelling allowance 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. Therefore, the second day's allowance is as shown in the column headed "Where no overnight stay is involved".

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 member concerned outlining other costs such as meals and incidental expenses.

A 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 self and spouse exceeding the allowance to which he or she is entitled as indicated above, shall be entitled to be reimbursed such excess expenses. This provision applies to the "approved relative" of a Minister in a case where there is no spouse.

#### REIMBURSEMENT OF CERTAIN TRAVELLING EXPENSES

- (1) (a) When a member of the Legislative Council or of the Legislative Assembly travels by taxi from Sydney Airport to the city for the purpose of attending a sitting of the House of Parliament or any Joint, Select or Standing Committee or the Public Accounts Committee, of which she or he is a member, the member shall be entitled to be reimbursed the actual cost of the taxi fare incurred for the journey between Sydney Airport and the city. The member shall also be entitled to be reimbursed the actual cost of the taxi fare incurred for the return journey between the city and Sydney Airport from such a sitting.
- (b) A member of the Legislative Council or of the Legislative Assembly shall be entitled to be reimbursed the actual cost of the fare incurred on up to thirty five taxi journeys per annum when travelling in the course of other parliamentary business between Sydney Airport and the city.

- (2) Where the residence of a member of the Legislative Council is more than 25 kilometres from the airport or the closest practicable railway station from which the member is to commence a flight or train journey to Sydney for the purpose of attending a sitting of the Council or of a Select, Joint or Standing committee of which she or he is a member, and travels by private motor vehicle to such airport or railway station, the member shall be paid an amount equivalent to 49 cents per kilometre for the distance driven in excess of 25 kilometres on each single journey between the member's place of residence and such airport or railway station. A separate allowance, calculated on the same basis, shall be payable in respect of the return journey.

This allowance is also payable in respect of other journeys between the member's residence and Sydney on parliamentary business, but excluding party business, provided that, in the case of air travel, the fare is payable by the Government under the air travel entitlement provisions for journeys between the member's residence and Sydney.

These allowances are payable upon the following conditions:-

- (i) that the member satisfies the President of the Legislative Council as to the existence of the circumstances mentioned above; and
- (ii) that the member certifies to the President as to the distance driven by her or him to reach the airport or railway station and return home therefrom.

Dated this 31st day of May, 1995.

**THE PARLIAMENTARY REMUNERATION TRIBUNAL**



(The Hon. John Slattery)

ELECTORAL DISTRICTS  
AS DETERMINED IN THE TRIBUNAL'S DETERMINATION OF 29 MAY, 1991  
UNDER SECTION 12 OF THE PARLIAMENTARY REMUNERATION ACT  
1989

Group 1

Ashfield	North Shore
Bligh	Port Jackson
Coogee	Vaucluse
Marrickville	

Group 2

Auburn	Lakemba
Bankstown	Lane Cove
Baulkham Hills	Liverpool
Blacktown	Manly
Cabramatta	Maroubra
Campbelltown	Miranda
Canterbury	Moorebank
Cronulla	Mount Druit
Davidson	Northcott
Drummoyne	Parramatta
East Hills	Penrith
Eastwood	Pittwater
Ermington	Riverstone
Fairfield	Rockdale
Georges River	Smithfield
Gladesville	St Marys
Gordon	Strathfield
Granville	Sutherland
Heffron	The Hills
Hurstville	Wakehurst
Kogarah	Willoughby
Ku-ring-gai	

Group 3

Badgerys Creek	Londonderry
Blue Mountains	Newcastle
Bulli	Peats
Camden	Swansea
Charlestown	The Entrance
Gosford	Wallsend
Illawarra	Waratah
Keira	Wollongong
Kiama	Wyong
Lake Macquarie	

## APPENDIX A (CONTINUED)

Group 4

Ballina  
Cessnock  
Coffs Harbour  
Hawkesbury  
Lismore  
Maitland

Murwillumbah  
Myall Lakes  
Port Macquarie  
Port Stephens  
South Coast  
Southern Highlands

Group 5

Bathurst  
Bega  
Orange

Oxley  
Tamworth  
Wagga

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Group 6

Albury  
Burrinjuck  
Clarence

Dubbo  
Monaro  
Northern Tablelands

Group 7

Barwon  
Lachlan  
Murray

Murrumbidgee  
Upper Hunter

Special Group

Broken Hill

ELECTORAL DISTRICTS INCLUDED IN EACH CATEGORY  
AS DETERMINED IN THE TRIBUNAL'S DETERMINATION OF 29 MAY 1991  
UNDER SECTION 12 OF THE PARLIAMENTARY REMUNERATION ACT  
1989.

Category 1

Badgerys Creek	Londonderry
Blue Mountains	Newcastle
Bulli	Peats
Camden	Southern Highlands
Charlestown	Swansea
Gosford	The Entrance
Hawkesbury	Wallsend
Illawarra	Waratah
Keira	Wollongong
Kiama	Wyang
Lake Macquarie	

Category 2

Albury	Monaro
Ballina	Murray
Barwon	Murrumbidgee
Bathurst	Murwillumbah
Bega	Myall Lakes
Broken Hill	Northern Tablelands
Burrinjuck	Orange
Cessnock	Oxley
Clarence	Port Macquarie
Coffs Harbour	Port Stephens
Dubbo	South Coast
Lachlan	Tamworth
Lismore	Upper Hunter
Maitland	Wagga Wagga





THE PARLIAMENTARY  
REMUNERATION TRIBUNAL

APPENDIX C

Issue

Advice to the Premier - Request for advice on the entitlement of the Annual Special Expenses or "Living Away from Home" Allowance paid to country members of both Houses and its discretionary use

Consideration

1. The allowance has been determined by the Tribunal pursuant to section 10(1) of the Parliamentary Remuneration Act 1989. Section 15(2) prescribes -  

"...additional allowances are payable in such manner, and subject to such provisions, as may be specified in a determination that is in force."
2. The current determination of the Tribunal (dated 20 May 1994) provides that -  

"A special expenses allowance shall be payable to country members of both Houses towards the cost of overnight accommodation whilst in Sydney on parliamentary business or in transit to and from Sydney .... The allowance is payable when the stay is occasioned by:

  - sittings of the House of Parliament or direct travel to and from such sittings; or
  - meetings of parliamentary committees of which he or she is a member, or direct travel to or from such meetings; or
  - other parliamentary business.

The member may elect to be paid either a daily or special expenses allowance on a financial year basis ....."
3. Under the determination different conditions apply where the member elects to be paid the daily or annual allowances.

4. Where a member elects to receive a daily allowance, there is a maximum number of overnight stays for which a flat rate of allowance is payable.

In addition where parliamentary business requires members to exceed such entitlements, then reimbursement of the actual and reasonable expenses not exceeding prescribed maximum rates shall be allowed for additional overnight stays. Such reimbursement is subject to the production of receipts relating to accommodation and a statement from the member concerned outlining other costs such as meals and incidental expenses.

5. No similar conditions are prescribed where a member elects to be paid the annual Special Expenses or "Living Away from Home" Allowance (the subject of this advice), ie -

- the quantum of remuneration received is not affected by any maximum number of "overnight stays";
- there is no provision for the member to claim additional costs where parliamentary business requires the member to exceed the annual allowance; and
- there is no requirement for the member to produce any receipts or statements relating to costs such as accommodation, meals and incidental expenses.

6. Under the Parliamentary Remuneration Act 1989, determinations of additional allowances (which includes the Special Expenses or "Living Away from Home" Allowance) are to be made annually, by 1 June (section 11(1)). In addition the Premier may direct that a special determination be made (section 12(1)). A determination may amend or revoke a previous determination (section 10(3)).

7. There has been no such direction that a special determination be made in respect of Special Expenses or "Living Away from Home" Allowance.

8. The Tribunal's determination dated 20 May 1994 (operative from 1 July 1994) prescribes that the allowances therein, including the annual Special Expenses or "Living Away from Home" Allowance, are in lieu of amounts previously payable.

9. In the absence of any prescription to the contrary, the requested advice turns on how one should reasonably interpret the words "towards the cost of overnight accommodation whilst in Sydney on parliamentary business or in transit to and from Sydney", taken within the context of the construction of the determination as a whole.

10. It is noted that the Clerk of the Legislative Assembly has interpreted the broad wording of this determination in the following terms -

"The allowance is a discretionary allowance for specified country members. The Ministers specified may use the annual allowance .... to assist to defray the cost of living away from home. These costs might possibly include any item that is associated with living away from home.

The Parliamentary Remuneration Tribunal determination does not require Ministers to produce receipts except in the case of claims on a "daily basis" where any claims are above the (maximum)(sic) 140 days specified."

11. It is clear that the annual allowance is an all-inclusive and "flat" rate. That is, it is paid towards such costs, rather than being intended to cover all or unlimited expenses necessarily incurred. When this option is selected the amount is paid whether the level of expenditure exceeds or is less than such amount.

This is by no means a unique arrangements when prescribing industrial entitlements. For example under the Crown Employees (Travelling Compensation) Award of the NSW Industrial Relations Commission which applies to officers of the Public Service, employees are entitled to compensation for "expenses properly and reasonably incurred during the time spent away from the officer's residence in order to perform that duty" by way of flat all-inclusive allowances. (Note: This applies where officers elect not to be paid the actual necessary expenses which requires them to produce receipts or other supporting documentation.)

12. It will be noted that under the Tribunal's determination, a member who is away from home overnight on more than 140 eligible occasions would receive a lesser amount of money by electing to receive the annual allowance than the daily allowance option.
13. The purpose of the payment of the annual Special Expenses or "Living Away from Home" Allowance is not intended to be limited to the expenses of lodgings. This is made explicit in the case of arrangements relating to the production of receipts for the daily allowance option. No one could, for example, reasonably suggest that the annual allowance would not include compensation towards the costs of food, laundry, and other incidental expenses additional to those normally incurred if the member was not absent overnight from home.
14. Also payment of the annual allowance is not affected by the nature of the accommodation used when the member is absent overnight from his/her home. For example it is immaterial under the determination as to whether the lodgings used for the overnight stay are a hotel, motel, flat, residence of a relative or friend etc.

15. It may be of limited assistance to consider entitlements under arrangements which existed prior to the current determination of the Tribunal, bearing in mind that the Parliamentary Remuneration Act 1989 repealed the Parliamentary Remuneration Tribunal Act 1975 and the Parliamentary Remuneration Tribunal (Special Provisions) Act 1989 (section 19(1)).
16. The Parliamentary Remuneration Tribunal was first established in 1975. Debate on the relevant legislation did not refer to an annual Allowance for Special Expenses. However parliamentary debate earlier that year on the then proposed special expenses allowance included the following statement in the second reading speech of the then Premier -

"I turn now to the proposed special expenses allowance. The Government has given consideration to the difficulties of members and Ministers representing outlying electorates who are involved in substantial additional expenditure because of the need for them to be away from their homes regularly to attend Parliament or for other parliamentary duties....."

(Hansard - Legislative Assembly - 19 March 1975,page 4938)
17. In its first report dated 3 November 1975, the Tribunal, when referring to Special Expenses Allowances stated -

"These special expenses allowances (which are sometimes called "accommodation allowances" and sometimes "living-away-from-home allowances") commenced from 1st July 1975 pursuant to the Parliamentary Allowances and Salaries (Amendment) Act, 1975, which was assented to on 1st April 1975. Some submissions have been made to the Tribunal in relation to this form of allowance but this range of allowances has not been in force for a sufficient length of time to test its adequacy with any confidence. They are expenses allowance to compensate members for increased expenditure which they are obliged to incur through having to live away from their usual places of abode in order to perform the duties required of them as Members of Parliament."  
(Paragraph 67, Page 30)
18. The wording used to describe Special Expenses or "Living Away from Home" Allowance by the Tribunal has varied with subsequent determinations. However the current (and relevant) wording has been constant since 1990.
19. The annual Special Expenses or "Living Away from Home" Allowance does, of course, apply to eligible members of all political persuasions and of both Houses and have effect on a financial year basis.

20. In all the circumstances the interpretation that has been given to the relevant portion of the Tribunal's determination by the Clerk of the Legislative Assembly is reasonable and is endorsed.
21. As you are aware I am required, pursuant to Section 11(1) of the Parliamentary Remuneration Act 1989, to make an annual determination in respect of additional allowances (which includes Special Expenses or "Living Away from Home" Allowance) by 1 June 1995. Normally I commence my inquiry in late February however this year I have decided to delay commencement until after the State election.

Dated this 15th day of March 1995  
Parliamentary Remuneration Tribunal

  
(The Hon. John Slattery)

