

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 proceeding 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 Keprese 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.

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 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.

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		

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