

PARLIAMENTARY REMUNERATION ACT 1989

Report and Determination pursuant to section 12 of the Act

BACKGROUND:

1. On 20 February 2006 the Premier of New South Wales the Hon. Morris Iemma MP, issued a special reference to the Tribunal pursuant to section 12 of the Parliamentary Remuneration Act 1989, (the Act) requesting that the Tribunal consider adjusting the Electorate Mailout Account to permit Members of the Legislative Assembly to communicate with prospective constituents arising from the 2004 electoral boundary redistribution. The Premier advised the Tribunal that this request had arisen as a result of representations of the Speaker the Hon. John Aquillina MP.
2. The Electorate Mailout Account (EMA) was created in 2002 by the Tribunal to permit Members of the Legislative Assembly to communicate with constituents in their respective electorates concerning electorate matters. A separate entitlement is provided to each Member for this purpose and the quantum of the entitlement is determined by the number of constituents in each electorate.
3. Upon receipt of the special reference from the Premier, the Tribunal sought the advice of the Crown Solicitor on whether the Tribunal had the statutory authority to make such a determination. The Crown Solicitor in his advice of 11 April 2006 stated that:

“...The only way to ensure that the Tribunal has authority to determine the additional entitlement would be if the duty in question were to be prescribed as being within the definition of “parliamentary duties in s.3(1) of the Act.”
4. The Tribunal also wrote to the State Electoral Commissioner seeking advice on the nature and type of communication the State Electoral Office would be undertaking with those New South Wales residents affected by the 2004 redistribution.

5. The State Electoral Commissioner has responded advising that there are approximately 1.1 million electors who will change electoral districts as a result of redistribution. The Commissioner further advised that all electors in New South Wales (4.3 million) will be provided with key electoral information by the State Electoral Office.
6. The Tribunal sought the views of the NSW Coalition parties regarding the Premier's special reference. Advice from the NSW Opposition dated 24 April 2006 was that the Liberal/National Party Coalition had no objection to the EMA being used to communicate with prospective constituents arising from the Electorate redistribution. It was the view of the Coalition that the current formula based on population used to calculate the EMA would be sufficient and for this same formula to be applied to the new electorate areas. The Coalition Parties did not consider there was a need for any extra funds as a one-off allocation on top of the existing arrangements.
7. The Tribunal notes that Federal Members are already able to perform this function. In its Determination of Federal Members' entitlements (2005/9) the Remuneration Tribunal provides at 10.9 the following:

“From the date of formal determination of the new electoral divisions by the Australian Electoral Commission, a Member may use his or her communications allowance entitlement to communicate with residents of an adjoining or nearby area, if that area and part of the Member's existing electoral division are to become part of the same electoral division.”

REVIEW:

8. Section 27(1)(c) of the Constitution Act 1902 requires that a redistribution of electoral boundaries take place after two elections have been conducted using the same electoral boundaries. Electoral redistributions are undertaken pursuant to the Parliamentary Electorates and Elections Act 1912(PE&E Act). Section 15 of the PE&E Act provides:

15 Report of commissioners to be proclaimed etc

- (1) The commissioners shall report to the Governor the names and boundaries of the electoral districts determined by them under any provision of this Part.*
- (2) The Governor shall thereupon cause a proclamation setting out the names of such electoral districts and the boundaries thereof to be published in the Gazette.*
- (3) Upon publication of a proclamation under subsection (2), the electoral districts specified in the proclamation shall, until altered by a further distribution under the Constitution Act 1902 , be the electoral districts of New South Wales.*
- (4) Notwithstanding subsection (3), the electoral districts existing immediately before the publication of a proclamation under subsection (2) shall, for the purposes of any by-election to be held before the dissolution or expiry of the Assembly next succeeding that publication, be the electoral districts of New South Wales.*

9. As noted above section 15(3) provides that the electoral districts come into effect at the time of the gazettal. The 2004 Redistribution Proclamation was published on 21 December 2004. Therefore the electorates come into existence from that date.
10. While the new electorates come into effect from that date, pursuant to section 15(4) of the PE&E Act the “former” electorates remain in place for the purposes of any by-elections that may occur prior to the general election.
11. The Tribunal has statutory authority to determine additional entitlements for Members.
12. Section 10(1)(a) of the Act provides that

“...additional entitlements are provided for the purpose of facilitating the efficient performance of parliamentary duties of members and recognised office holders.”
13. The Act defines “parliamentary duties” as:

“...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 any duties prescribed as being within this definition, but does not include any duties prescribed as being outside this definition.”

14. The Tribunal notes the Crown Solicitor’s advice that to achieve certainty, the duty in question would have to be prescribed as being within the definition of parliamentary duties. The definition of parliamentary duties, in the Act, is broad and not all duties are prescribed. The Tribunal notes that in the Second Reading Speech for the Parliamentary Remuneration Amendment Bill 1998, the Minister stated the following:

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

15. In the absence of prescribed duties the Tribunal in its annual determinations provides broad Guidelines on what it considers constitute “parliamentary duties”. The establishment of the EMA to permit Members of the Legislative Assembly to communicate with their constituents reflects the Tribunal’s view that communication between a Member and his or her constituents about electorate matters would form part of a Member’s parliamentary duties.

16. The question now arises as to whether communicating with prospective constituents about electorate matters would also form part of a Member’s parliamentary duties.

17. The Crown Solicitor’s advice on this matter was as follows:

“...There is a reasonable argument that in the context of a redistribution the member for a previous electoral district to which an area has been added or from which an area has been taken in order to create a new electoral district would be expected to communicate to constituents of the new electoral district who are not constituents the previous electoral district information about issues pertaining to the previous electoral district or the transferred area which affect them as constituents of the new electoral district and about which they need to be informed in order to vote at the next general election for the new electoral district.”

18. Affected electors may or may not be aware that they have been listed on the roles of the new electorates. As noted above, the State Electoral Office will only provide all NSW electors with general information concerning the election.

19. It seems reasonable to the Tribunal that a Member should be able to communicate with prospective constituents about the electorate to which they have been enrolled. To not do so, it could be argued, would place the prospective constituents at a disadvantage *vis-a-vis* the existing constituents who remain within the new electorate boundaries and who receive correspondence from the local Member about matters affecting the electorate through letters and/or newsletters.

20. The Tribunal considers that in the context of an electoral redistribution, it is reasonable to expect that the local Member would communicate with prospective constituents about electorate matters. In these circumstances, therefore, the Tribunal considers communicating with each prospective constituent arising from electoral redistributions to be part of a Member’s parliamentary duties.

21. Rather than determine a new entitlement the Tribunal considers that the EMA is the appropriate entitlement for this purpose and will amend it by this determination to allow for this new facility.

22. The form this communication will take shall be consistent with the broad Guidelines issued by the Tribunal from time to time about entitlements generally and the EMA specifically. Additional conditions will be added to the EMA for communications with prospective constituents.

23. The Tribunal will not be determining an additional allocation as part of this determination. It is considered that the current allocation can be used for this purpose. There will therefore, be no additional resources required. Further, as electoral redistributions take place at regular intervals the Tribunal will include an additional condition over and above the conditions currently in place for the EMA to accommodate communications with prospective constituents arising from future redistributions.

24. The effective date of the Determination will be the date of the Premier's letter to the Tribunal ie 20 February 2006.

The Honourable Justice R Boland

THE PARLIAMENTARY REMUNERATION TRIBUNAL

Date: 18 May 2006

DETERMINATION:

Pursuant to section 12 of the Act the Tribunal's determination in respect of the Electorate Mailout Account is amended as follows. The effective date of this Determination is 20 February 2006.

Electorate Mailout Account

Each Member of the Legislative Assembly will be provided with an amount as specified in the attached Schedule for the following specific purposes:

- A) For preparing and distributing letters/newsletters to each constituent in his/her electorate. Members are provided with an annual amount based on the cost of issuing two newsletters/letters per enrolled voter per annum. Members may issue additional newsletters/letters subject to available funds in their Electorate Mail-Out Account and the Legislative Assembly's administrative guidelines.
- B) Upon the gazettal of new electoral districts following an electoral redistribution (undertaken pursuant to s 27(1)(c) the Constitution Act 1902), Members may use their Electorate Mailout Account to communicate with prospective constituents from neighbouring electorates who at the time of the next election following the gazettal of the new electoral districts will become constituents of the Member's electorate.

Conditions

1. The Electorate Mailout Account shall be established and maintained by the Clerk of the Legislative Assembly. Members should be advised by the Clerk each month as to the balance of their Account.
2. Members are to fund the cost of preparing, printing and distributing letters/Newsletters to each constituent in his/her electorate and for no other purpose.

3. All procurement by Members will be in accordance with the Parliament's purchasing policies.
4. No supplementation to the allocation will be considered. Any additional costs are to be met from the Member's Logistic Support Allocation.
5. Unused funds are to be returned to the Consolidated Fund at the end of each financial year.
6. All accounts must be submitted to the Legislature for payment within 60 days of receipt.
7. Printing and distribution of newsletters/letters from the Electorate Mail-Out Account is to be in accordance with the Parliament's administrative guidelines.
8. Communication with prospective constituents following gazettal of electoral districts will be limited only to those electors who will transfer from adjoining electorates to the new electorate. Each Member is to receive the details of the prospective constituents from the State Electoral Office
9. Communications with constituents/prospective constituents will be limited to matters affecting the Member's electorate.

The Honourable Justice R Boland

THE PARLIAMENTARY REMUNERATION TRIBUNAL

Date: 18 May 2006

ELECTORATE MAILOUT ACCOUNT**SCHEDULE**

ELECTORAL DISTRICT	CURRENT ENTITLEMENT (31 March 2005) As provided by the State Electoral Office	ANNUAL ENTITLEMENT
1. ALBURY	44,031	\$57,240
2. AUBURN	48,109	\$62,542
3. BALLINA	48,041	\$62,453
4. BANKSTOWN	45,740	\$59,462
5. BARWON	40,631	\$52,820
6. BATHURST	45,292	\$58,880
7. BAULKHAM HILLS	46,838	\$60,889
8. BEGA	50,418	\$65,543
9. BLACKTOWN	47,275	\$61,458
10. BLIGH	50,814	\$66,058
11. BLUE MOUNTAINS	46,839	\$60,891
12. BURRINJUCK	45,245	\$58,819
13. CABRAMATTA	43,821	\$56,967
14. CAMDEN	56,919	\$73,995
15. CAMPBELLTOWN	44,329	\$57,628
16. CANTERBURY	44,851	\$58,306
17. CESSNOCK	45,716	\$59,431
18. CHARLESTOWN	44,919	\$58,395
19. CLARENCE	45,385	\$59,001
20. COFFS HARBOUR	47,366	\$61,576
21. COOGEE	42,785	\$55,621
22. CRONULLA	45,156	\$58,703
23. DAVIDSON	45,187	\$58,743
24. DRUMMOYNE	50,300	\$65,390
25. DUBBO	44,122	\$57,359
26. EAST HILLS	44,720	\$58,136
27. EPPING	45,204	\$58,765
28. FAIRFIELD	44,989	\$58,486
29. GEORGES RIVER	46,418	\$60,343
30. GOSFORD	50,277	\$65,360
31. GRANVILLE	44,272	\$57,554
32. HAWKESBURY	50,534	\$65,694
33. HEATHCOTE	45,682	\$59,387
34. HEFFRON	46,677	\$60,680
35. HORNSBY	47,438	\$61,669
36. ILLAWARRA	46,618	\$60,603
37. KEIRA	44,200	\$57,460
38. KIAMA	50,262	\$65,341
39. KOGARAH	45,873	\$59,635
40. KU-RING-GAI	44,632	\$58,022
41. LACHLAN	44,478	\$57,821
42. LAKE MACQUARIE	47,680	\$61,984
43. LAKEMBA	43,138	\$56,079
44. LANE COVE	45,133	\$58,673
45. LISMORE	43,911	\$57,084
46. LIVERPOOL	49,169	\$63,920
47. LONDONDERRY	44,436	\$57,767

ELECTORATE MAILOUT ACCOUNT**SCHEDULE**

ELECTORAL DISTRICT	CURRENT ENTITLEMENT (31 March 2005) As provided by the State Electoral Office	ANNUAL ENTITLEMENT
48. MACQUARIE FIELDS	57,153	\$74,299
49. MAITLAND	52,781	\$68,615
50. MANLY	44,186	\$57,442
51. MAROUBRA	44,392	\$57,710
52. MARRICKVILLE	46,405	\$60,327
53. MENAI	48,996	\$63,695
54. MIRANDA	43,389	\$56,406
55. MONARO	49,518	\$64,373
56. MOUNT DRUITT	46,902	\$60,973
57. MULGOA	49,778	\$64,711
58. MURRAY-DARLING	40,413	\$52,537
59. MURRUMBIDGEE	43,804	\$56,945
60. MYALL LAKES	48,882	\$63,547
61. NEWCASTLE	46,038	\$59,849
62. NORTH SHORE	46,916	\$60,991
63. NORTHERN TABLELANDS	43,242	\$56,215
64. ORANGE	44,812	\$58,256
65. OXLEY	45,701	\$59,411
66. PARRAMATTA	46,675	\$60,678
67. PEATS	45,418	\$59,043
68. PENRITH	44,267	\$57,547
69. PITTWATER	46,039	\$59,851
70. PORT JACKSON	55,683	\$72,388
71. PORT MACQUARIE	49,304	\$64,095
72. PORT STEPHENS	48,588	\$63,164
73. RIVERSTONE	56,590	\$73,567
74. ROCKDALE	44,578	\$57,951
75. RYDE	45,848	\$59,602
76. SMITHFIELD	47,155	\$61,302
77. SOUTH COAST	50,385	\$65,501
78. SOUTHERN HIGHLANDS	49,179	\$63,933
79. STRATHFIELD	47,547	\$61,811
80. SWANSEA	48,126	\$62,564
81. TAMWORTH	45,250	\$58,825
82. THE ENTRANCE	46,818	\$60,863
83. THE HILLS	59,891	\$77,858
84. TWEED	51,948	\$67,532
85. UPPER HUNTER	42,628	\$55,416
86. VAUCLUSE	43,326	\$56,324
87. WAGGA WAGGA	44,603	\$57,984
88. WAKEHURST	45,664	\$59,363
89. WALLSEND	49,058	\$63,775
90. WENTWORTHVILLE	44,730	\$58,149
91. WILLOUGHBY	47,908	\$62,280
92. WOLLONGONG	43,447	\$56,481
93. WYONG	52,565	\$68,335

**Advice of the Secretary of Treasury Pursuant to Section 12(A) of the
*Parliamentary Remuneration Act 1989***

The following comments are provided by the Secretary of the Treasury in relation to the Parliamentary Remuneration Tribunal's special determination on the Electorate Mailout Account (EMA), pursuant to Section 12 (A) of the *Parliamentary Remuneration Act 1989*.

Financial Implications

The special determination introduces an additional condition that allows Members to use their EMA allocations to communicate with prospective constituents following electorate boundary changes arising from electoral redistributions.

The current amount determined for the EMA is \$5.67 million per year.

In making this determination the Tribunal has specified that current EMA allocations should be used to meet the cost of correspondence to prospective constituents. Therefore, no additional resources will be required.

Accountability and Control

I note that the Parliamentary Remuneration Tribunal has maintained strict guidelines to ensure proper accountability and transparency over the use of entitlements by Members.

John Pierce
Secretary