



Australian Government

**Independent Parliamentary
Expenses Authority**

ELECTION PERIOD – TRAVEL – HIGH LEVEL GUIDANCE NOTE

Travel throughout Australia is an integral component of the role and function for a parliamentarian throughout their parliamentary term. Engaging with constituents and representing their electorate to understand better the interests and needs for their region will at times require travel to be undertaken at Commonwealth expense.

As articulated in the *Parliamentary Business Resources Act 2017* (PBR Act) and associated Determinations (collectively the 'PBR Framework'), parliamentarians can only claim for expenses¹ that are incurred for the **dominant purpose** of conducting **parliamentary business** and that are **value for money**. Parliamentarians remain **personally responsible and accountable** for their use of public resources and must be prepared to **justify publicly** their use of those resources.

Notwithstanding this general advice from IPEA regarding parliamentary business, accessing travel resources remains subject to the obligations in the PBR Framework and continue to apply during an election period.

Legislative provisions

The law since 1 January 2018

1. On 1 January 2018, the PBR Act, as well as associated Regulations and Determinations, commenced. The PBR Act provides that a parliamentarian must not claim expenses, allowances or other public resources unless these are claimed or incurred for the **dominant purpose** of conducting their **parliamentary business** (s 26(1)), are **value for money** (s 27) and meet **relevant conditions** (s 28).
2. The PBR Act provides that a member of parliament re-contesting the election continues to be able to access travel related work resources until the day before polling day.
3. Members who are not re-contesting the election are able to contact IPEA for advice specific to their particular circumstances.

What is parliamentary business?

4. The PBR Act defines 'parliamentary business' in s 6(1) as the activities of a member categorised into 'parliamentary duties', 'electorate duties', 'party political duties', and

¹ Provided under Part 3 of the *Parliamentary Business Resources Act 2017*.

'official duties'. Each of these is further defined in Schedules 1-4 of the *PBR (Parliamentary Business) Determination 2017*.

5. Subsection 6(2) of the PBR Act further provides that an activity is not the parliamentary business of the member if it is carried out for the dominant purpose of providing a personal benefit to the member or another person or pursuing commercial purposes of the member or another person (or both).
6. For parliamentarians who are **not** Ministers or other office holders, electioneering activities could fall under *parliamentary duties* or *electorate duties*. For parliamentarians who are Ministers or other office holders, electioneering activities could also fall under *official duties*.
7. The PBR Framework can operate slightly differently for former Prime Ministers who are also current parliamentarians, as they have extra resources they could access.

What is dominant purpose?

8. 'Dominant purpose' attracts its ordinary meaning and therefore refers to the 'ruling', 'prevailing' or 'most influential' purpose.²
9. In many circumstances the 'dominant purpose' will be identified by determining "...whether, **but for** the parliamentary business, the member would have undertaken the activity; or incurred or claimed the expense, allowance or public resource. Where they would have taken the same action without the parliamentary business, the test is not satisfied."³
10. However, some travel may involve multiple purposes and activities and in those cases the **but for** test may not always identify the dominant purpose. Ultimately parliamentarians should ask themselves what was the **ruling, prevailing or most influential** purpose of the travel, in order to satisfy themselves the dominant purpose is parliamentary business. A parliamentarian should not seek to disguise as parliamentary business an activity whose dominant purpose is personal or commercial.
11. Whether or not the 'dominant purpose' test is satisfied is a question of fact. Parliamentarians should remember that in any audit or review, regard will be had to the surrounding circumstances in determining whether a particular expense satisfies the 'dominant purpose' test. Those surrounding circumstances may include but would not be limited to the timing of the expense, the timing of any activities associated with the expense, who issued the invitation to any relevant event and the scale of the event, and the parliamentarian's particular circumstances in relation to incurring the expense. Ultimately, the onus will be on the parliamentarian to justify the expense in the context of all of the circumstances.

² As recognised in the Explanatory Memorandum to the *Parliamentary Business Resources Bill 2017* at paragraph 95: *Federal Commissioner of Taxation v Spotless (1996) 186 CLR 404 at 416*.

³ Explanatory Memorandum, *Parliamentary Business Resources Act 2017*, paragraph 96.

Staff Travel within Australia

12. Electorate staff can have a work base of the electorate office, Parliament House, an office holder's office or a non-standard arrangement as approved. The role of electorate staff is to assist their employing parliamentarian carry out duties as a parliamentarian, and not for party political purposes (see paragraph 2, *Determination 2016/15 – Employment of Electorate Officers*). Personal staff, including ministerial and media advisers, work as directed (Special Minister of State *Determination 2018/5 – Staff Travel and Relief Staff Arrangements*).
13. Staff of parliamentarians are able to travel as directed for **official business**. As official business is not a defined term in the relevant legislation, the employing parliamentarian (or someone they have authorised to direct staff on their behalf) determines what is official business. However, directing or authorising staff to do something that **would not** be assisting or supporting the employing member's parliamentary business may attract scrutiny because it would unlikely be seen as the staff member's official business. The PBR Framework does not otherwise apply to staff travel.

Additional assistance for parliamentarians and their staff

14. IPEA encourages parliamentarians and their staff who have any questions about the application of the relevant framework to their activities in an election period to contact IPEA for personal advice on their intended use of travel resources.
15. IPEA treats all communications from parliamentarians and their staff requesting personal advice sensitively. Documents relating to requests for personal advice received by IPEA are not subject to the *Freedom of Information Act 1982* and cannot be released under that legislation.
16. IPEA treats each request for personal advice from parliamentarians and their staff on a case-by-case basis because it recognises that what may apply to one parliamentarian may not apply to another parliamentarian. Key differences include:
 - if the parliamentarian is a Senator or member of the House of Representatives
 - if the parliamentarian is a Minister or other office holder
 - the parliamentarian's portfolio responsibilities, membership of committees and other policy or parliamentary interests
 - the parliamentarian's political party, position within the party and their party's main policy interests
 - the nature of the parliamentarian's electorate (e.g. city or rural, demographic of electorate)
 - public statements by a parliamentarian (or their staff) about upcoming travel (e.g. they are attending a certain meeting)
 - the parliamentarian's travel destination, the mode and cost of the travel and the purpose for the travel.
17. The material included in this guidance document is designed to assist parliamentarians assess whether proposed travel during an election period complies with the parliamentary business requirement of the PBR Framework. In line with the PBR

Framework, and as specifically required by the PBR Act, parliamentarians remain personally responsible and accountable for their use of public resources and must be prepared to justify publicly their use of those resources. Notwithstanding this general advice from IPEA regarding parliamentary business, accessing travel resources remains subject to the obligations in the PBR Framework. Those obligations are that: the proposed travel is undertaken for the *dominant purpose* of the member's parliamentary business; the travel must represent *value for money*; and any *relevant conditions* have been met.

18. IPEA has information on its website about the PBR Framework and how it operates. IPEA can be contacted on enquiries@ipea.gov.au and (02) 6215 3000 for personal advice.