

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 366

Issued by the Authority of the Special Minister of State

Parliamentary Entitlements Act 1990

Parliamentary Entitlements Amendment Regulations 2009 (No. 2)

The *Parliamentary Entitlements Act 1990* (the Act) provides Members of each House of Parliament (Members) with a range of benefits (set out in the Schedule to the Act) and additional benefits (as determined by the Remuneration Tribunal or as prescribed by regulations). Section 12 of the Act provides, in part, that the Governor-General may make regulations for the purposes of paragraph 5(1)(b) of the Act (which provides that Members, Parliamentary office-holders and Ministers are entitled to additional benefits as prescribed by the regulations).

The Regulations amend the *Parliamentary Entitlements Regulations 1997* (the Principal Regulations) to simplify and clarify the rules in relation to the recently created printing and communications entitlement.

Specifically, the Regulations would amend the Principal Regulations to:

- remove the definition of electioneering in subregulation 3AA(11) of the Principal Regulations and the prohibition against using the printing and communications entitlement for electioneering, as it has operated unintentionally to limit free policy discourse, as well as removing the prohibition against using the entitlement for personal purposes;
- insert a definition of ‘party business’ to clarify what the entitlement does not include in relation to ‘party business’;
- reduce the current rules in relation to the statement that is required on each page of material printed using the printing and communications entitlement, including that the statement only has to be included once on printed items and that greeting cards and associated envelopes are not required to include the statement; and
- add to the range of items that can be included on personalised letterhead stationery, including that Members can include one personal slogan or motto and incidental material on their personalised letterhead stationery.

Details of the Regulations are included in the [Attachment](#).

The Act does not impose any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1 to the Regulations is taken to have commenced on 1 October 2009. Schedule 2 to the Regulations commenced on the day after the proposed Regulations were registered on the Federal Register of Legislative Instruments.

The retrospective commencement of the proposed Regulations in Schedule 1 do not affect the rights of a person or impose liabilities on a person other than the Commonwealth and so would not contravene subsection 12(2) of the *Legislative Instruments Act 2003*, rather the retrospectivity would advantage persons, namely, Members. The amendments are retrospective to the start date of the printing and communications entitlement, on 1 October 2009, to ensure that no Members would be disadvantaged by

any unintended effects of, or lack of clarity with, the printing and communications entitlement from its commencement on 1 October 2009.

Consultation and Regulatory Impact

A multi-party consultative group was established by the Special Minister of State to facilitate feedback in relation to the new printing and communications entitlement in the Principal Regulations. Feedback from this group, as well as Members' concerns with aspects of the printing and communications entitlement that had been raised with the Special Minister of State and the Shadow Special Minister of State, formed the basis of these amendments.

The Office of Best Practice Regulation has confirmed that the preparation of a Regulation Impact Statement is not necessary, as the amendments have a nil or low impact on business or the economy or individuals, apart from the Federal Parliamentarians affected.

Details of the Parliamentary Entitlements Amendment Regulations 2009 (No. 2)**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Parliamentary Entitlements Amendment Regulations 2009 (No. 2)*.

Regulation 2 – Commencement

This regulation provides that regulations 1 to 3 and the amendments in Schedule 1 are taken to have commenced on 1 October 2009 and that the amendments in Schedule 2 commence the day after the Regulations are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of the Parliamentary Entitlements Regulations 1997

This regulation provides that the *Parliamentary Entitlements Regulations 1997* (the Principal Regulations) are amended as set out in Schedule 1 and Schedule 2.

Schedule 1 – Amendments taken to have commenced on 1 October 2009

Item [1] substitutes subregulation 3AA(3) with a new subregulation 3AA(3), which removes the current prohibition against using the printing and communications entitlement for ‘electioneering’ and ‘personal’ purposes by removing the words ‘electioneering’ and ‘personal’ from the provision. This change addresses the current interpretive difficulties associated with the term ‘electioneering’, in particular, that it operates to inhibit policy debate, which was not the intention of the prohibition against electioneering.

Subregulation 3AA(3) also currently prohibits the use of the printing and communications entitlement for ‘party purposes’. Although the prohibition against electioneering is removed, the amendments maintain the current prohibition against using the printing and communications entitlement for party purposes, but the amendments strengthen this prohibition by referring to ‘party business’ instead and inserting a comprehensive definition of this term in subregulation 3AA(11) (currently it is not defined). The prohibition against using the entitlement for the production of how-to-vote material, in subregulation 3AA(3), is incorporated into the proposed definition of ‘party business’ in subregulation 3AA(11) (see item [7] below).

The definition of ‘electioneering’ contained in subregulation 3AA(11) is redundant and has been repealed (see item [7] below).

This item also repeals subregulation 3AA(4), as the provision is redundant following the removal of the terms ‘electioneering’ and ‘personal’ from subregulation 3AA(3).

Item [2] substitutes subregulations 3AA(6) and (7) with new subregulations 3AA(6), (7) and (7A).

Subregulation 3AA(6), which provides that a statement acknowledging that the printing and communications entitlement was used to produce printed material (the statement), has been amended to:

- make it clear that the statement is required only on items printed using the printing and communications entitlement;
- remove the requirement that the statement must be on each page of printed material;

- insert new paragraph 3AA(6)(b), which provides that greeting cards in relation to events such as Christmas or another religious occasion, New Year, a birthday, an anniversary, the birth of a child, success in education or training, or bereavement, are not required to include the statement;
- insert a new paragraph 3AA(6)(c), which provides that envelopes for the purposes of paragraph (b) (greeting cards) are not required to include the statement;
- provide that one of the following statements must be included on items printed using the entitlement:
 - *This material has been produced at Australian Government expense by [insert name of member']* (which is the previously required statement); or
 - *This material has been produced by [insert name of member] using [his or her] printing and communications entitlement.*

The inclusion of the alternative statement would address concerns from some non-Government Members that they are not part of the Australian Government.

Subregulation 3AA(7), which deals with the font, colour and size requirements for the statement in subregulation 3AA(6), is also amended. This amendment removes the existing requirements and provides only that the statement be written in English, legible and be a minimum font size of 8 point. This amendment ensures the statement is clearly and easily readable, and also address concerns that unduly prescriptive rules of form resulted in administrative restrictions unnecessary to fulfil the purpose of the statement.

New subregulation 3AA(7A) provides that the statement referred to in subregulation 3AA(6) must appear once on each item of printed material and be on either the inside or outside of the front or back page of the material, or the front or back cover of the material.

This amendment simplifies the administration of the entitlement, while fulfilling the purpose that material printed under the printing and communications entitlement carries the acknowledgment that it has been produced using the printing and communications entitlement.

Item [3] amends paragraph 3AA(8)(g) to remove the requirement that the description of an electorate, state or territory on personalised letterhead stationery be ‘brief’ and also to enable pictorial representations of an electorate to be included on personalised letterhead stationery. The Principal Regulations did not expressly provide that a ‘description’ of an electorate, state or territory could be both words and pictures. The amendment ensures that pictures (including a montage of pictures), as well as pictorial watermarks, of a Member’s electorate, state or territory can be included on personalised letterhead stationery.

Item [4] amends paragraph 3AA(8)(h), which allows personalised letterhead stationery to include a photo of a Member, to provide that more than one photograph of the Member is permissible.

Item [5] makes a minor technical amendment to replace a period with a semi-colon in paragraph 3AA(8)(k).

Item [6] amends subregulation 3AA(8), which limits the range of material that can be printed on personalised letterhead stationery, to include two further items, namely:

- one personal slogan or one personal motto of the Member (proposed new paragraph 3AA(8)(l)); and
- incidental material. The purpose of this amendment is to ensure that incidental printing such as ‘100% recycled paper’ or a symbol, such as one denoting that the paper has been produced using a ‘green’ production method, can be included on personalised letterhead stationery. These examples of incidental material are included at the end of paragraph 3AA(8)(m). This amendment ensures that such incidental markings on personalised letterhead stationery are permissible.

Item [7] substitutes subregulation 3AA(11) of the Principal Regulations, with the effect that the definition of ‘electioneering’ is removed from, and a definition of ‘party business’ inserted into,

subregulation 3AA(11). Paragraph (a) of the definition of ‘party business’ provides that it means the production, communication or distribution of material:

- that is, or contains, how-to-vote material; or
- that solicits subscriptions or other financial support for a Member, political party or candidate.

Paragraph 3AA(11)(b) of the definition of ‘party business’ makes it clear that the term ‘party business’ does not include the production, communication or distribution of a postal vote application mentioned in subregulation 3AA(10). This ensures that a Member’s current entitlement to print postal vote applications for a federal election, under subregulation 3AA(10) of the Principal Regulations, is unaffected by the definition of party business.

Item [7] also amends the definition of ‘personalised letterhead stationery’ to insert the words ‘to which text or other material may then be added for the member’s purposes’. This amendment clarifies that a member is able to print text (i.e. overprint) on personalised letterhead stationery, for example through a mailing house, without having to include the statement at subregulation 3AA(6) of the Principal Regulations. However, any text printed on personalised letterhead stationery using the printing and communications entitlement would still need to comply with the requirement in subregulation 3AA(3) that the entitlement be used for parliamentary or electorate purposes only and must not be used for party business or commercial purposes.

Schedule 2 – Amendments commencing on the day after the Regulations are registered on the Federal Register of Legislative Instruments

Item [1] amends paragraph 3AA(2)(b) of the Principal Regulations to remove the reference to ‘hard copy and electronic format’ and replace this with a reference to the entitlement being used for the communication and distribution of printed material and the establishment and maintenance of web sites. This amendment ensures that the entitlement cannot be used to communicate information via radio or television.