

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 55

Issued by the Authority of the Special Minister of State

Parliamentary Entitlements Act 1990

Parliamentary Entitlements Amendment Regulations 2011 (No. 1)

The *Parliamentary Entitlements Act 1990* (the Act) provides members of each House of Parliament (members) with a range of benefits, including those set out in Schedule 1 to the Act. Section 12 of the Act provides, in part, that the Governor-General may make regulations for the purposes of section 9 of the Act. Subsection 9(2) of the Act provides that a benefit set out in Schedule 1 to the Act may be varied or omitted by the regulations.

The Amendment Regulations implement the Government's decision to supplement a member's existing capped entitlements following a disaster. An eligible member (i.e. affected by a disaster and having substantially expended a capped entitlement) can apply to the Special Minister of State (the Minister) for supplementation of his or her capped entitlements or a member's entitlement under a relevant determination (supplement of capped entitlements in exceptional circumstances).

With the Minister's approval, the member would be provided with a benefit of up to \$20,000, with the actual spend deducted from the following financial year's entitlement. The Minister may also decide that circumstances justify waiving the requirement to deduct the actual spend from the member's following financial year entitlement. The member would be able to use the supplementation for one or more of the purposes declared by the Minister in a legislative instrument.

The Amendment Regulations also make other amendments to:

- clarify that the printing and communications entitlement, provided under regulation 3AA of the *Parliamentary Entitlements Regulations 1997* (Principal Regulations) can be used to produce and distribute e-material;
- the entitlement to item 2, Part 1, Schedule 1 to the Act, to provide that Australian flags and printed material related to national symbols, for presentation to constituents, are to be approved by the Minister; and
- remove the redundant provisions that refer to the 2009-10 financial year.

Details of the Amendment 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 Amendment Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Amendment Regulations commence the day after they are registered on the Federal Register of Legislative Instruments.

Consultation and Regulatory Impact

Consultation was undertaken with all members in relation to the supplement of capped entitlements in exceptional circumstances. Consultation was not undertaken in relation to the other provisions in the Amendment Regulations. These other provisions do not have a direct or significant indirect impact on business and do not restrict competition.

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 2011 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Parliamentary Entitlements Amendment Regulations 2011 (No. 1)*.

Regulation 2 – Commencement

This regulation provides that the Amendment Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of the *Parliamentary Entitlements Regulations 1997 (Principal Regulations)*

This regulation provided that the Principal Regulations are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] substitutes subregulation 3AA(2) of the Principal Regulations to clarify that e-material can be produced and distributed using the printing and communications entitlement. Specifically the costs of commercial services for the following can be met using the entitlement:

- paragraph (2)(a) - printing and the production of e-material;
- paragraph (2)(aa) – matters for incorporation into commercially printed material or commercially produced e-material, including: translation, design, artwork and photography can be met using the entitlement. This list is not exhaustive;
- paragraph (2)(b) – the communication and distribution of both printed material and e-material (for example, via a member’s website, or emailed to individuals on a mailing list);
- paragraph (2)(c) – the establishment and maintenance of websites. This paragraph has not been changed.

The inclusion of references to ‘commercial’ explicitly excludes the recovery of costs related to items or services produced or provided in a member’s office. The e-material must also comply with the other requirements of the printing and communications entitlement (i.e. it must include a statement in the circumstances outlined in subregulation 3AA(6)).

Example 1

Senator G submits an invoice to the Department of Finance and Deregulation (Finance) for the payment of the production and design costs of his e-newsletter. As the e-newsletter was commercially produced, the related design costs are able to be met from the printing and communications entitlement.

Example 2

Staff in the office of the Member for H produce a Chinese New Year e-greeting card in-house, using facilities within the electorate office. The Member for H then submits an invoice to Finance for the payment of the translation costs related to her e-greeting card. As the e-item was produced in-house, the cost of translation cannot be met from the printing and communications entitlement.

Example 3

The Member for J submits an invoice to Finance for the payment of his e-flyer which was produced commercially. However, the e-flyer does not include the statement required in subregulation 3AA(6). The costs cannot be met from the printing and communications entitlement as the statement requirement of the entitlement has not been complied with.

Example 4

Senator K submits an invoice to Finance for the payment of his e-Christmas card which was produced commercially. As the item comes under the definition of a greeting card, it does not require one of the statements outlined in subregulation 3AA(6). The costs are therefore able to be met from the printing and communications entitlement.

Items [2] and [3] removes the redundant provisions in regulations 3AB and 3AC of the Principal Regulations that refer to the 2009-10 financial year.

Item [4] inserts two new subregulations into regulation 3AB. These new subregulations provide that the printing and communications entitlement for a Member of the House of Representatives is reduced by an amount spent in the previous financial year under the new entitlement in regulation 3EA - Supplement of capped entitlements in exceptional circumstances (see Item [6]), unless otherwise determined by the Minister.

Under the new subregulation 3AB(9), where a Member of the House of Representatives is approved a benefit under new regulation 3EA, his or her printing and communications entitlement for the following financial year is reduced by the amount of the benefit spent by the Member of the House of Representatives on printing and communications in the financial year in which the benefit in regulation 3EA is provided.

Under the new subregulation 3AB(10), the Minister may decide that the reduction of the printing and communications entitlement for the next financial year, as outlined in subregulation 3AB(9), is not required.

An application for supplementation of a member's capped entitlements under the new entitlement in regulation 3EA must be in writing to the Minister and must be submitted as soon as practicable after a disaster has occurred. The Minister will issue guidelines on the detail necessary for approval of supplementation which a member will need to address in his or her application.

Example 1

The Member for X is provided with a benefit of \$15,000 under new regulation 3EA in the 2010-11 financial year and spends \$10,000 of the benefit on printing and communications. Subregulation 3AB(9) operates to provide that the Member for X's printing and communications entitlement is reduced by \$10,000 for the 2011-12 financial year.

Example 2

The Member for Z is provided with a benefit of \$18,000 under new regulation 3EA in the 2010-11 financial year and the Minister has not waived the requirement that his expenditure of the benefit not reduce his 2011-12 capped entitlement(s). He spends \$10,000 of the benefit on printing and communications. A second disaster occurs. Subregulation 3AB(10) operates to allow the Member for Z to make a case to the Minister and the Minister can decide that a reduction of the Member for Z's 2011-12 printing and communications entitlement equivalent to his expenditure under this benefit is not required.

Item [5] inserts two new subregulations into regulation 3AC. These new subregulations mirror the provisions in Item [4], but in relation to Senators. Under the new subregulation 3AC(3), where a Senator is approved a benefit under the new regulation 3EA, his or her printing and communications entitlement for the following financial year is reduced by the amount of the benefit spent by the Senator on printing and communications in the financial year the benefit in regulation 3EA is approved.

Under the new subregulation 3AC(4), the Minister may decide that the reduction of the printing and communications entitlement for the next financial year, as outlined in subregulation 3AC(3), is not required.

Item [6] inserts a new regulation 3EA benefit in the Principal Regulations. The new benefit provides for a supplementation of capped entitlements in exceptional circumstances. This entitlement has been inserted following the recent natural disasters in Australia.

Subregulation 3EA(1) provides a threshold for the application of the regulation. The regulation applies in circumstances where the Minister is satisfied that:

- (a) the member has expended a substantial part of one of his or her:
- capped entitlements (an entitlement declared by the Minister to be a capped entitlement in a legislative instrument in accordance with new subregulation 3EA(8)) in the financial year in which a disaster occurs; or
 - an entitlement of the member under a relevant determination. A 'relevant determination' for this provision will be declared by the Minister in a legislative instrument (see subregulation 3EA(8), below).

The drafting of regulation 3EA distinguishes amounts payable 'under a relevant determination' because the supplement concerns entitlements which have other legislation as the head of authority (ie. supplement to the relief staff budget or the electorate staff travel budget must be made by a determination of the relevant Minister under the *Members of Parliament (Staff) Act 1984* (MOP(S) Act)).

The term 'substantial' is not defined. The Minister would make an assessment of whether or not a member has expended a substantial part of a capped entitlement or an amount under a relevant determination based on the amount of the entitlement expended by the member and the point in the financial year that the member is applying for entitlement supplementation; and

Example

For example, a Senator has spent 70 per cent of his printing and communications entitlement and a ‘disaster’ occurs in:

- January. The Minister may decide that a ‘substantial’ portion of the capped entitlement has been expended to satisfy this subregulation;
- May. The Minister may decide that a ‘substantial’ portion of the capped entitlement has not been expended and this subregulation is not satisfied.

- (b) because of a disaster (a term defined in the new subregulation 3EA(9)), a supplementation is required to a member’s capped entitlement or an amount under a relevant determination to enable the member to conduct his or her parliamentary or electorate business.

Subregulation 3EA(2) provides that a member is entitled to a supplementation of his or her capped entitlements, on application to the Minister. The supplement must be used in the financial year in which the disaster occurs.

Subregulation 3EA(3) provides that the application mentioned in subregulation 3EA(2) must be:

- (a) in a form approved by the Minister (the Minister will issue guidelines on the detail necessary for approval of supplementation which a member will need to address in his or her application); and
- (b) provided as soon as practicable after the disaster.

Subregulation 3EA(4) provides that the benefit is an amount that the Minister decides the member needs to supplement his or her capped entitlements or a member’s entitlement under a relevant determination in order to conduct his or her electorate or parliamentary business in the financial year in which a disaster occurs.

Subregulation 3EA(5) provides that the benefit cannot exceed \$20,000 in a financial year and is less any amount the member is entitled to under a determination made by the Minister. The supplement concerns entitlements which have the MOP(S) Act as the head of authority – i.e. supplement to the relief staff budget or the electorate staff travel budget must be made by a determination of the relevant Minister under the MOP(S) Act. *Determination 2011/9 Supplement – Relief Staff Budget and Electorate Staff Budget* made by the Minister under the MOP(S) Act will reflect the terms of the regulation 3EA entitlement to give effect to those approvals made under regulation 3EA which supplement entitlements under the MOP(S) Act. Therefore the total supplement available under regulation 3EA must be reduced to reflect the amount/s determined under the MOP(S) Act to avoid ‘double-dipping’ (this is reflected in the note to subregulation 3EA(5)).

Example 1

The Member for A is provided with a supplement of \$5,000 under new regulation 3EA in the 2010-11 financial year and spends it all on printing and communications. A second disaster occurs. Subregulation 3EA(5) operates such that the Member for A can apply for a further supplement of up to \$15,000.

Example 2

The Member for B is provided with a supplement of \$15,000 under new regulation 3EA in the 2010-11 financial year. For the purposes of paragraph 3EA(8)(b), a relevant determination for subparagraph 3EA(1)(a)(ii) is the relief staff budget determination. The Member wants to

spend \$5,000 on hiring additional staff in accordance with the relevant relief staff budget determination (made by the Special Minister of State under the MOPS Act), which leaves \$10,000 available for other 'non-MOPS Act' purposes.

Subregulation 3EA(6) provides that the benefit provided to the member must only be used for one or more of the purposes declared by the Minister in a legislative instrument.

Subregulation 3EA(7) provides that the benefit in regulation 3EA can only be used after the budget related to the capped entitlement accessed has been fully expended. The term 'capped entitlements' is defined in subregulation 3EA(9).

The example included in the subregulation demonstrates the application of this provision in circumstances where the supplementation approved under regulation 3EA is used for printing and communications.

Subregulation 3EA(8) provides that the Minister may, by legislative instrument, declare: an entitlement to be a 'capped entitlement'; and a determination made under the MOP(S) Act to be a 'relevant determination'.

The capped entitlements are aligned with the purposes for which the supplement may be used under the Minister's legislative instrument. For example, if the Minister declares that the printing and communications entitlement is a capped entitlement for the purposes of regulation 3EA, the Minister's legislative instrument will declare that the supplement provided under regulation 3EA can be used for the same purposes as the printing and communications entitlement, as provided by regulation 3AA.

Subregulation 3EA(9) provides the definitions of 'capped entitlement', 'disaster' and 'relevant determination' for the purposes of regulations 3EA.

Example 1

The Member for X applies for a benefit under new regulation 3EA in the 2010-11 financial year under the new regulation 3EA. In his application, the Member notes that:

- he is seeking supplementation of \$15,000;
- he has expended a substantial portion of the allowance provided to him for charter transport under Remuneration Tribunal Determination 2006/18 (the Determination) in the current financial year;
- a significant portion of his electorate has been affected by flooding which occurred recently;
- the supplementation will enable him to continue to perform electorate business within his electorate for the remainder of the current financial year;
- he represents a large electorate and requires all of the charter allowance provided by the Determination each financial year, as evidenced by his pattern of expenditure in preceding years; and
- he is seeking a waiver of the requirement that expenditure of the supplementation will reduce his 2011-12 entitlement(s) as he will be unable to adequately service his electorate in 2011-12 if he is required to recover the cost of charter travel under the new regulation 3EA from his charter entitlement at the beginning of 2011-12.

The Minister approves supplementation of \$15,000, on the basis that he is satisfied that:

- the Member's electorate has been affected by a disaster, as defined by regulation 3EA;

- the Member has expended a substantial portion of at least one of his capped entitlements; and
- because of the disaster, the Member requires supplementation of his capped entitlements to enable him to continue to conduct his parliamentary or electorate business.

In approving the supplement, the Minister waives the requirement for charter travel under the supplement to reduce the Member's charter entitlement in 2011-12.

The Member totally exhausts his charter allowance provided by the Determination. He undertakes further travel within and for the service of his electorate to the value of \$12,500 during 2010-11, which is funded from the supplementation. There is no offset of this further travel from the Member's charter transport entitlement in 2011-12.

Example 2

The Member for Y applies for a benefit under new regulation 3EA in the 2010-11 financial year under the new regulation 3EA. In her application, the Member notes that:

- she is seeking supplementation of \$20,000;
- she has expended a substantial portion of her relief staff budget in the current financial year;
- a significant portion of her electorate has been affected by a tropical cyclone which occurred recently;
- the supplementation will enable her to engage a relief employee for the remainder of the financial year to enable her office to cope with the increased constituent contact in the wake of the cyclone;
- the Member notes that she is seeking a waiver of the requirement that expenditure of the supplementation will reduce her 2011-12 relief staff budget as she expects the constituent demand to continue into 2011-12 and will be unable to adequately staff her electorate office to cope with this continuing demand if she is required to recover the cost of relief staff under the new regulation 3AE from her relief staff budget at the beginning of 2011-12.

The Minister approves supplementation of \$20,000, on the basis that he is satisfied that:

- the Member's electorate has been affected by a disaster, as defined by regulation 3EA;
- the Member has expended a substantial portion of at least one of her capped entitlements; and
- because of the disaster, the Member requires supplementation of her capped entitlements to enable her to continue to service the needs of her constituents.

In approving supplementation, the Minister waives the requirement for expenditure on relief staff under the supplement to reduce the Member's relief staff budget in 2011-12.

The Member totally exhausts her remaining relief staff budget by engaging an additional electorate employee. She is able to continue to employ the additional electorate officer until 30 June 2011 using the supplementation provided under regulation 3EA at a cost of \$14,500.

The Member also totally exhausts her printing and communications entitlement. She prints and distributes a publication at a cost of \$3,800 from the remaining entitlement supplementation. As the Minister's waiver of the requirement that expenditure of the supplementation would reduce the Member's capped entitlements in the following financial year was limited to expenditure on relief staff, the Member's printing and communications entitlement for 2011-12 is reduced by \$3,800.

Example 3

The Member for Z applies for a benefit under new regulation 3EA in the 2010-11 financial year under the new regulation 3EA. In her application, the Member notes that:

- she is seeking supplementation of \$5,000;
- she has expended a substantial portion of her capped entitlement to desktop and hand-waver flags in the current financial year;
- parts of her electorate has been devastated by a bushfire that occurred recently;
- the supplementation will provide her with the capacity to provide flags to her constituents that have been impacted by the bushfire.

The Minister approves supplementation of \$5,000, on the basis that he is satisfied that:

- the Member's electorate has been affected by a disaster, as defined by regulation 3EA;
- the Member has expended a substantial portion of at least one of her capped entitlements; and
- because of the disaster, the Member requires supplementation of her capped entitlements to enable her to continue to conduct her parliamentary or electorate business.

The Member totally exhausts her remaining flags entitlement. She is able to order further desktop, hand waver and large flags for presentation to her constituents using the supplementation provided under regulation 3EA at a cost of \$4,900.

Item [7] amends item 2, Part 1, Schedule 1 to the PE Act (via an amendment to the Principal Regulations), to make it clear that the Australian flags and printed material related to national symbols, for presentation to constituents are as approved by the Minister.

Item [8] inserts two new subitems into item 7, Part 1, Schedule 1 to the PE Act (via an amendment to the Principal Regulations). These new subitems mirror the provisions in Items [4] and [5], but in relation to office requisites and stationery. Under new subitem 7(3), where a member is approved a benefit under new regulation 3EA, his or her office requisites and stationery entitlement for the following financial year is reduced by the amount of the benefit spent by the member on office requisites and stationery in the financial year that the benefit in regulation 3EA is approved.

Under new subitem 7(4), the Minister may decide that the reduction of the office requisites and stationery entitlement amount for the next financial year, as outlined in subitem 7(3), is not required.