

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 97

Issued by the Authority of the Special Minister of State

Parliamentary Entitlements Act 1990

Parliamentary Entitlements Amendment Regulations 2011 (No. 1) 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 *Parliamentary Entitlements Amendment Regulations 2011 (No. 1)* (Amendment Regulations) amended the *Parliamentary Entitlements Regulations 1997* on 21 April 2011 to introduce an ability to supplement a member's capped entitlements following a disaster.

The Regulations amend the Amendment Regulations to give the Special Minister of State (Minister) the power to approve access to a member's 2010-2011 supplement entitlement in the 2011-2012 financial year, in recognition of the severity of the natural disasters which have affected parts of Australia in the 2010-2011 financial year, and the fact that members have only had access to the supplement entitlement since late April 2011.

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

Consultation and Regulatory Impact

Consultation was not undertaken in relation to the provisions in the Regulations. The 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) 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) Amendment Regulations 2011 (No. 1)*.

Regulation 2 – Commencement

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

Regulation 3 – Amendment of the Parliamentary Entitlements Amendment Regulations 2011 (No. 1) (Amendment Regulations)

This regulation provides that the Amendment Regulations are amended as set out in Schedule 1.

Schedule 1 – Amendments*Outline*

The supplement entitlement was introduced in April 2011 to provide members with a supplement to their capped entitlements in exceptional circumstances. Under regulation 3EA of the *Parliamentary Entitlements Regulations 1997* (Principal Regulations), a member is entitled, on application to the Minister, to a supplement in the financial year in which a disaster occurs, provided they have fully expended their relevant capped entitlement in that financial year. Where a member does not expend the full amount of the supplement in the financial year in which the disaster occurred, the unexpended amount of the supplement cannot be carried over for expenditure in the next financial year.

The Regulations insert a transitional provision into the supplement entitlement which provides the Minister with the discretion to approve access to a member's 2010-2011 supplement entitlement for expenditure in the 2011-2012 financial year (see item [6] below). Where the Minister gives approval, the same requirements as contained in the original provisions apply, namely:

- to access the 2010-2011 entitlement in the 2011-2012 financial year, the member must have first expended their relevant capped entitlement in the 2011-2012 financial year (see item [6] below); and
- unless the Minister waives the requirement, the expenditure from the supplement entitlement in 2010-2011 and 2011-2012 will be recovered from the member's relevant capped entitlement in the 2012-2013 financial year (see items [2], [4] and [8] below).

The Amendment Regulations have been amended as they have not passed the disallowance period.

Details of Provisions

Item [1] amends subregulation 3AB(9) of the Principal Regulations, via an amendment to item [3], Schedule 1 to the Amendment Regulations, to provide that subregulation 3AB(9) is subject to new subregulation 3AB(11) (see item [2] below).

Item [2] amends regulation 3AB of the Principal Regulations, via an amendment to item [3], Schedule 1 to the Amendment Regulations, by inserting new subregulations 3AB(11) and (12).

Subregulation 3AB(11) provides that, where the Minister has approved the expenditure, in the 2011-2012 financial year, of a supplement entitlement relating to a disaster that occurred in the 2010-2011 financial year, the amount of the supplement spent by a member of the House of Representatives (Member) under the printing and communications entitlement will be deducted from the Member's printing and communications entitlement in the 2012-2013 financial year.

Subregulation 3AB(12) provides that the Minister may waive the requirement in new subregulation 3AB(11), having regard to the particular circumstances of the Member.

Example

A disaster occurs in the electorate of the Member for A in January 2011. The Member for A is provided with a supplement of \$15,000 in May 2011, under regulation 3EA, in the 2010-2011 financial year for the purposes of the Member's printing and communications entitlement. In approving the Member's application for the supplement, the Minister decides that, as provided by subregulation 3AB(9), the value of the Member's printing and communications entitlement in 2011-2012 should be reduced by the amount of the supplement spent by the Member for the purposes of the printing and communications entitlement in 2010-2011.

The Member spends \$10,000 of the supplement for the purposes of the printing and communications entitlement by 30 June 2011. The Minister exercises his discretion provided by subregulation 3EA(7A) and agrees to the Member's request that she access the remaining value of the supplement, \$5,000, in the 2011-2012 financial year, once the Member has fully expended her capped entitlement for the 2011-2012 year. The Member fully expends her printing and communications entitlement in the 2011-2012 financial year and spends \$4,000 of her supplement from 2010-2011.

As provided by subregulation 3AB(11), the value of the Member's printing and communications entitlement in 2012-2013 is reduced by \$14,000, which is the total amount of the supplement spent by the Member for the purposes of the printing and communications entitlement in 2010-2011 and 2011-2012.

Item [3] amends subregulation 3AC(3) of the Principal Regulations, via an amendment to item [5], Schedule 1 to the Amendment Regulations, to provide that subregulation 3AC(3) is subject to new subregulation 3AC(5) (see item [4] below).

Item [4] amends regulation 3AC of the Principal Regulations, via an amendment to item [5], Schedule 1 to the Amendment Regulations, by inserting new subregulations 3AC(5) and (6). These new subregulations mirror the provisions in item [2] above, but in relation to the printing and communications entitlement of a Senator.

Subregulation 3AC(5) provides that, where the Minister has approved the expenditure, in the 2011-2012 financial year, of a supplement entitlement relating to a disaster that occurred in the 2010-2011 financial year, the amount of the supplement spent by the Senator under the printing and communications entitlement will be deducted from the Senator's printing and communications entitlement in the 2012-2013 financial year.

Subregulation 3AC(6) provides that the Minister may waive the requirement in new subregulation 3AC(5), having regard to the particular circumstances of the Senator.

Item [5] substitutes subregulation 3EA(5) of the Principal Regulations, via an amendment to item [6], Schedule 1 to the Amendment Regulations, to update the reference to the determination made under the *Members of Parliament (Staff) Act 1984*, to reflect the current determination, *Determination 2011/12, Supplement – Relief Staff Budget and Electorate Staff Travel Budget*.

Item [6] amends regulation 3EA of the Principal Regulations, via an amendment to item [6], Schedule 1 to the Amendment Regulations, by inserting new subregulations 3EA(7A) and (7B).

Subregulation 3EA(7A) provides that the Minister may decide that an amount of a supplement approved by the Minister for the 2010-2011 financial year, may be used by the member in the 2011-2012 financial year, where the full amount of the supplement has not been used in the 2010-2011 financial year. Where approved by the Minister, the member may only access the supplement in the 2011-2012 financial year where the member has fully expended his or her capped entitlement for that purpose in the 2011-2012 financial year.

Subregulation 3EA(7B) provides that any amount of a supplement for 2010-2011 that is spent in 2011-2012, as approved by the Minister under new subregulation 3EA(7A), does not count towards the annual amount specified in subregulation 3EA(5) for the 2011-2012 financial year.

Example

Disaster in 2010-2010 financial year

A disaster occurs in the electorate of the Member for B in January 2011. The Minister approves an application under regulation 3EA from the Member for B for a supplement of \$15,000 in the 2010-2011 financial year for the purposes of the Member's printing and communications entitlement. In approving the Member's application for the supplement, the Minister decides that, as provided by subregulation 3AB(9), the value of the Member's corresponding capped entitlement in 2011-2012 should be reduced by the amount of the supplement spent by the Member for the purpose of the capped entitlement in 2010-2011.

After fully expending the value of his printing and communications entitlement in 2010-2011, the Member spends \$10,000 of the supplement by 30 June 2011 for the purposes of the printing and communications entitlement. The Minister exercises his discretion provided by subregulation 3EA(7A) and agrees to the Member's request that he access the remaining value of the supplement, \$5,000, in the 2011-2012 financial year, once the Member has fully expended his capped entitlement for the 2011-2012 financial year, with the amount of the Member's printing and communications entitlement in 2012-2013 to be reduced by the total amount of the supplement expended in 2010-2011 and 2011-2012.

Subsequent disaster in 2011-2012 financial year

A second disaster occurs in the electorate of the Member for B in January 2012. The Minister approves a further application under regulation 3EA from the Member for B for a \$20,000 supplement of capped entitlements. As provided by subregulation 3EA(7B) any amount of the 2010-2011 supplement used in the 2011-2012 financial year, under regulation 3EA(7A), does not count towards the annual amount of supplementation available under subregulation 3EA(5) for the 2011-2012 financial year.

Recovery of supplement expenditure

As provided by subregulation 3AB(10), having regard to the particular circumstances of the Member, the Minister decides to waive the requirement in subregulation 3AB(9) for the amount of the Member's printing and communications entitlement in 2012-2013 to be reduced by the amount of the supplement approved in 2011-2012 and spent by the Member for the purpose of printing and communications. However, the Minister confirms that the Member's printing and communications entitlement in 2012-2013 will be reduced by the amount of the supplement approved for 2010-2011 and spent by the Member in 2010-2011 and 2011-2012 for the purposes of the printing and communications entitlement.

After fully expending the value of his printing and communications entitlement in 2011-2012, the Member spends the \$5,000 supplement remaining from the 2010-2011 financial year and the \$20,000 supplement for the 2011-2012 financial year. In 2012-2013, the value of the Member's printing and communications entitlement is reduced by \$15,000.

Item [7] amends subitem 7(3), Part 1, Schedule 1 to the Act, via an amendment to item [8], Schedule 1 to the Amendment Regulations (which amends the Principal Regulations), to provide that subitem 7(3) is subject to new subitem 7(5) (see item [8] below).

Item [8] amends item 7, Part 1, Schedule 1 to the Act, via an amendment to item [8], Schedule 1 to the Amendment Regulations (which amends the Principal Regulations), by inserting new subitems 7(5) and 7(6). These new subitems mirror the provisions in Items [2] and [4] above, but in relation to the office requisites and stationery entitlement.

Subitem 7(5) provides that, where the Minister has approved the expenditure, in the 2011-2012 financial year, of a supplement entitlement relating to a disaster that occurred in the 2010-2011 financial year, the amount of the supplement spent by the member under the office requisites and stationery entitlement will be deducted from the member's office requisites and stationery entitlement in the 2012-2013 financial year.

Subitem 7(6) provides that the Minister may waive the requirement in new subitem 7(5), having regard to the particular circumstances of the member.