

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance

Parliamentary Business Resources (Consequential and Transitional Provisions) Act 2017

Parliamentary Business Resources (Consequential and Transitional Provisions) Regulations 2017

Outline

The *Parliamentary Business Resources (Consequential and Transitional Provisions) Regulations 2017* (the Regulations) are made under item 11, Schedule 3 to the *Parliamentary Business Resources (Consequential and Transitional Provisions) Act 2017* (the PBR (CTP) Act). The PBR (CTP) Act contains consequential amendments and transitional provisions to facilitate the transition from the parliamentary work expenses framework under the *Parliamentary Entitlements Act 1990* (PE Act) to the new framework under the *Parliamentary Business Resources Act 2017* (PBR Act) and the *Parliamentary Business Resources Regulations 2017* (PBR Regulations).

The Regulations modify Schedule 3 of the PBR (CTP) Act to ensure that the transition to the PBR Act framework operates effectively in relation to the public resources that have now been prescribed by the PBR Regulations, including:

- clarifying the scope of certain existing transitional rules in the PBR (CTP) Act
- providing that certain of the transitional rules do not apply for the purposes of specified matters that are determined by the Remuneration Tribunal
- ensuring that approvals made under the PE Act framework in relation to certain public resources continue in force for the purposes of the PBR Act framework, and
- providing that, for relevant public resources and other payments that are subject to a financial or other numerical limit in a financial year (or other relevant period) under the PBR Regulations, the limit will be adjusted to account for corresponding resources that have been provided and payments made during the period under the PE Act.

A Statement of Compatibility with Human Rights is included in [Attachment A](#). Details of the Regulation are included in [Attachment B](#).

Commencement

The Regulations commence immediately after the commencement of Schedule 3 to the PBR (CTP) Act.

Consultation

In relation to section 17 of the *Legislation Act 2003*, the Regulations are wholly transitional. Consultation was not considered necessary as the measures are machinery in nature; they operate to streamline the transition from the current framework for parliamentary entitlements to the new *Parliamentary Business Resources Act 2017* (PBR Act) framework, and do not otherwise alter the arrangements under the frameworks.

Regulatory impact

The Office of Best Practice Regulation (OBPR) has agreed the Regulations have no regulatory impact on businesses, individuals or organisations and therefore the regulatory costs are nil.

OBPR ID Number: 22472.

Authority: Item 11, Schedule 3 to the
*Parliamentary Business Resources
(Consequential and Transitional
Provisions) Act 2017*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Parliamentary Business Resources (Consequential and Transitional Provisions) Regulations 2017

These Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Parliamentary Business Resources (Consequential and Transitional Provisions) Regulations 2017* (the Regulations) amends certain transitional rules provided in the *Parliamentary Business Resources (Consequential and Transitional Provisions) Act 2017*, to provide for the transition between the old and new frameworks for parliamentarians' business resources in a streamlined manner. Specifically, the Regulations:

- clarify the intended scope of certain existing transitional rules in the PBR (CTP) Act
- provide that certain of the transitional rules do not apply for the purposes of specified matters that are determined by the Remuneration Tribunal
- ensure that approvals made under the PE Act framework in relation to certain public resources continue in force for the purposes of the PBR Act framework, and
- provide that, for relevant public resources and other payments that are subject to a financial or other numerical limit in a financial year (or other relevant period) under the PBR Regulations, the limit will be adjusted to account for corresponding resources that have been provided and payments made during the period under the PE Act.

Human rights implications

The Regulations engage the right to work and rights at work (Articles 6 and 7 of the *International Covenant on Economic Social and Cultural Rights (ICESCR)*).

Right to work and rights at work

Article 6(1) of the ICESCR recognises '...the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.'

Article 6(2) further provides:

The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

Article 7 of the ICESCR further recognises:

...the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Effect of the Regulations in relation to the human rights

The Regulations provide for a transition to the new *Parliamentary Business Resources Act 2017* (PBR Act) framework. They do not substantially alter the arrangements for parliamentarians' work expenses under the old or new frameworks, but operate to streamline the move from one to the other. They are intended to promote the achievements of the rights and freedoms engaged by the Principal Regulations, by providing for a smooth transition with minimal disruption to the working arrangements of parliamentarians.

Therefore, to the extent that these transitional Regulations engage the human rights outlined above, they promote those applicable rights and freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it promotes the protection of human rights.

Mathias Cormann
Minister for Finance

Details of the *Parliamentary Business Resources (Consequential and Transitional Provisions) Regulations 2017*

Part 1 - Preliminary

Section 1 - Name

1. This section provides that the title of the Regulations is the *Parliamentary Business Resources (Consequential and Transitional Provisions) Regulations 2017* (the Regulations).

Section 2 - Commencement

2. This section provides that the Regulations commence immediately after the commencement of Schedule 3 to the *Parliamentary Business Resources (Consequential and Transitional Provisions) Act 2017* (PBR (CTP) Act).

Section 3 - Authority

3. This section confirms that the Regulations are made under item 11 of Schedule 3 to the PBR (CTP) Act.

Section 4 – Definitions

4. This section provides that in these Regulations, ‘Act’ means the PBR (CTP) Act.

Part 2—Modification of Schedule 3 to the Act

5. Schedule 3 to the PBR (CTP) Act contains application and transitional provisions relating to the replacement of the *Parliamentary Entitlements Act 1990* (PE Act) and *Parliamentary Allowances Act 1952* (PA Act) with the new PBR Act. Item 11 of that Schedule provides for regulations to be made to modify the operation of these application and transitional provisions, for up to 12 months, for the purposes of providing for the transition between these schemes. The regulations in this Part are regulations for this purpose.

Section 5 – Modification of rule about approvals being in force

6. This section affects the operation of the transitional rule in item 5 of Schedule 3 to the PBR (CTP) Act. It provides that during the first 12 months after commencement of that Act, item 5 has effect as if it was drafted in the terms set out this section.

Item 5 Approvals in force

7. The revised terms for item 5 ensure that the transitional rule for approvals will operate where the Commonwealth would be liable to provide the relevant resources under the PBR Act if a relevant approval was given.

8. The rule has effect so that if the Commonwealth would be required to provide certain resources under the PBR Act if an approval is given, and an approval was given for the corresponding type of resources under the PE Act, the PE Act approval will be taken to have been given for the purposes of the PBR Act. The Commonwealth will therefore be able to provide the member with the PBR Act resources on the basis of the approval given for the equivalent resources under the PE Act. This rule is made for

the purposes of continuity of eligibility and administration, for corresponding resources, during the transition.

Section 6 – New items for Schedule 3

9. This section provides that for the purposes of subitem 11(2) of Schedule 3 to the PBR (CTP) Act, during the first 12 months after commencement of that Act, Schedule 3 has effect as if new Items 6A – 6F were inserted after item 6 of the Schedule.

Item 6A Matters to which items 5 and 6 do not apply

10. Item 6A provides that items 5 and 6 of Schedule 3 do not apply in relation to the arrangements for:

- a private plated vehicle, or an allowance in lieu of a private plated vehicle, that has been provided to a member as a benefit under the PE Act (in particular, in accordance with Part 6 of the *Remuneration Tribunal Determination 2017/13* (paragraph 6A(a));
- post-retirement travel expenses provided to former members in accordance with the PE Act (under Part 9 of the *Remuneration Tribunal Determination 2017/13* (paragraph 6A(b)), or
- offices and resources covered by item 6B of Schedule 3 (paragraph 6(c)).

11. Items 5 and 6 of Schedule 3 to the PBR (CTP) Act contain general transitional rules (including, for item 5, as modified by section 5 of this instrument). In the specific circumstances of the resources covered by this item 6A, those general transitional rules would not provide for a streamlined transition in all cases. Excluding the operation of the general rules in relation to those resources enables targeted transitional arrangements to be made for the resources, to reduce the administration required for members and decision makers.

12. In relation to the matters previously dealt with in the *Remuneration Tribunal Determination 2017/13* (that is, private plated vehicles, allowances in lieu, and post-retirement travel), the transitional arrangements may instead be included in any new Remuneration Tribunal Determination made under the PBR Act for those resources (see Part 2, sections 14 and 15 of the PBR Act). The other resources (offices and office resources) are covered by specific arrangements in item 6B of these Regulations (below).

Item 6B Offices and resources for offices

13. Item 6B provides for the transition for electorate and capital city offices, and associated office resources, that have been given to a member in accordance with an approval under the PE Act. The item operates so that, if those offices and resources are of a kind that could be provided to a member under the new PBR Act (specifically, in accordance with a determination made for subsection 33(1) of that Act and sections 72, 73 or 74 of the *Parliamentary Business Resources Regulations 2017* (PBR Regulations)), the offices will be taken, from the commencement of the PBR Act, to be provided to the member in accordance with a subsection 33(1) determination made under the PBR Act. This avoids a need for the Minister to make a series of new determinations in relation to offices and resources (of the kinds mentioned in sections 72, 73 and 74 of the Regulations) that the Minister has already approved under the old framework, and which the members are already using in accordance with those approvals.

14. The item will also operate in relation to offices and resources that the Minister has approved prior to the commencement of the PBR Act but which have not yet been provided to the relevant member (for example, if the Minister has approved the purchase of office resources but the purchase has not yet been made). When the approved office resources are purchased for the member, they will be taken to be provided in accordance with a subsection 33(1) determination made for that purpose. Again, this avoids

a need to duplicate the approvals process for resources that have already been properly approved under the existing arrangements.

15. This transitional rule will have effect in relation to an office or resources provided to a member until the Minister makes a new determination under the new framework (that is, a determination under subsection 33(1) of the PBR Act for the purposes of sections 72, 73 or 74 of the PBR Regulations) that relevantly affects those resources, or until the expiry of the 12 month period for which these transitional rules apply.

Item 6C Limits for 2017-18 financial year

16. Item 6C provides for financial year limits on resources to be applied across the resources provided under both the PE Act scheme (for the first half of the financial year 1 July 2017 – 31 December 2017) and the PBR Act scheme (in the second half of the financial year 1 January 2018 – 30 June 2018), where there are corresponding types of resources provided under both schemes.

17. The rule applies where there is a corresponding limit on a type or class of resources under both schemes, and only in relation to numerical limits (for example, limits on a total value of a particular kind of resources that may be provided over the financial year, or a limit on a total number of items that may be provided across the year). The rule is designed to provide for certainty and fairness during the transition by avoiding limits having to be recalculated on 1 January, or split into two ‘half financial year’ limits, which could potentially result in inequitable outcomes. The rule is also intended to facilitate continuity of administration and to avoid unnecessary red tape during the transition process.

18. The rule will mean that, for example:

- A member who has a large electorate transport charter budget for the 2017-2018 financial year under the PE Act and the *Remuneration Tribunal Determination 2017/13* will have that amount continue to apply across the whole financial year. From 1 January (when the PBR Act commences), the limit will operate as the member’s limit for section 14 of the PBR Regulations (but will be affected by the amounts already claimed under the budget between 1 July and 31 December 2017). This means that relevant unscheduled commercial transport use will count towards the limit across the whole financial year, irrespective of whether it was incurred or claimed in accordance with the Determination or the PBR Regulations;
- The family reunion travel budget under the PE Act and the *Remuneration Tribunal Determination 2017/13* for the 2017-2018 financial year will not need to be recalculated on 1 January 2018 under the PBR Regulations; each member’s family travel budget amount will continue to apply for the whole year. From 1 January 2018 the amount will operate as the limit for the purposes of section 29 of the PBR Regulations (but will be affected by the amounts already claimed under the budget between 1 July and 31 December 2017). That is, relevant family travel taken across the whole financial year will count towards the limit, whether incurred or claimed in accordance with the Determination or the PBR Regulations;
- Where there is an annual limit on the number of fares or nights that can be claimed (for example, in relation to travel allowance under section 10 of the PBR Regulations or family reunion travel under section 18 and 19 of the PBR Regulations, and the equivalent arrangements under the PE Act and Determinations), the limit will apply across the whole financial year, and applicable travel across the whole of the financial year will be counted

towards the limit, whether taken under the PE Act (or subordinate instruments) or PBR Act (or subordinate instruments); and

- Similarly, non-travel expenses incurred across the entire financial year will count towards the relevant annual limits for those expenses (such as in relation to the office budget), whether they were incurred or claimed under the PE Act or PBR Act.

19. As noted above, the rule applies in relation to numerical limits only (eg in relation to a total dollar amount, or total number of fares), but not to limits relating to other types of conditions of eligibility (eg in relation to approvals, or classes of travel, or whether another type of transport is available). Where necessary, transitional rules for these other types of conditional limits are provided for elsewhere.

20. This rule will not have the effect that the pre-PBR instruments that contain the relevant limits will continue to govern the access to or eligibility for the relevant resources after 1 January 2018; from that date all eligibility for the resources covered by the relevant limit will be in accordance with the PBR Act and instruments. This rule simply ensures that a limit that corresponds, in a substantial sense, to a limit on resources provided under both schemes will apply across the schemes during the transition year. This means, for example, that the amendments to travel resources that implement the Review recommendations can commence from 1 January 2018 (for example, in relation to types or classes of travel claimable under the family reunion travel budget provisions, or the scope of claimable unscheduled commercial transport for members in large electorates), while avoiding the need to recalculate or split the relevant budgets that members have been working with in accordance with the PE Act and Determinations. Similarly, from 1 January 2018 members will be able to purchase the new types of resources that are included for the office budget in the PBR Regulations but weren't in the PE Act office budget list (such as virtual town hall services), without an administrative need to recalculate the budget on that date.

Item 6D International travel equipment allowance

21. Item 6D provides a specific rule for international travel equipment allowance, which under the PBR Regulations is only able to be claimed by a member or other eligible person once every three years (based on financial years) where they are undertaking international travel under Division 4 of Part 2 of the PBR Regulations. The transitional rule operates so that any payment of a corresponding type of allowance (which may have been under the PE Act or executive arrangements, depending on the person travelling) that is made between 1 July 2015 – 31 December 2017 will count when assessing whether a person is eligible for payment of the allowance, under section 60 of the PBR Regulations, in the period between 1 January 2018 – 30 June 2018.

Item 6E Photographic services

22. Item 6E provides a specific transitional rule for photographic services provided to members at Parliament House. The total annual limit for such services under the PBR Regulations, across all members, is \$250,000 for the financial year 2017-2018. This rule ensures continuity over the transition by ensuring that any expenditure on those services between 1 July 2017 – 31 December 2017 is counted towards the 2017-18 limit.

Item 6F Ministerial salaries

23. Item 6F provides a specific transitional rule for Ministerial salaries accounting over the transition time. As for photographic services, the rule operates so that the salaries paid in the period 1 July 2017 - 31 December 2017 are accounted for under the total annual limit for Ministerial salaries for the 2017-18 financial year, as prescribed in section 96 of the PBR Regulations.