



**DEPARTMENT OF PARLIAMENTARY SERVICES**  
Office of the Chief Executive

24 March 2021

D21/14499

Mr Peter Sidgreaves, MP  
Member for Camden  
Chair  
Standing Committee on Parliamentary Privilege and Ethics  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Sidgreaves

Thank you for the opportunity to contribute to the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics' deliberations regarding the proposed creation of a Parliamentary Compliance Officer.

Unlike when dealing with staff who are employees of the Parliament, where it relates to the conduct of Members, the Department of Parliamentary Services has almost no capacity to formally receive a complaint, investigate a complaint, compel cooperation in any inquiries into a complaint, report on or sanction a Member.

We do implement a series of preventative measures, such as training and advisory services. In cases where the complainant approaches us informally, we can deploy a range of interventions designed to assist to resolve a situation before it becomes a formal complaint, such as mediation, training and skills development. And of course, where the issue is serious enough, we can assist a complainant to access the Police (in the case of criminal matters), the Anti-Discrimination Board (in the case of sexual harassment) or ICAC (in the case of serious or systemic corruption).

Given that there is no current mechanism to deal with issues relating to lower level breaches around entitlements and complaints around Member behaviour, I am very supportive of the proposal to create a Parliamentary Compliance Officer.

I have outlined answers to your particular questions relating to those informal, advisory and quality assurance mechanisms that do exist below.

#### **Training and assistance for Members**

***Noting legal advice that, as a consequence of the Members of Parliament Staff Act 2013, Members have the duties of an 'officer' under the Work Health and Safety Act 2011, what training and assistance is provided to Members to meet these duties?***

There is a large number of opportunities for training and assistance for Members. The new Member induction is a mandatory program which provide information on WHS matters. Other optional training and assistance that is available to Members:

- A large suite of E-learning modules
- A Human Services team that is available for confidential advice assistance.
- The option for an external professional (such as an Organisation Psychologist)

- Access to a 'Manager Assist' direct service through the Parliament's EAP Provider

These optional opportunities are available for Members on an ad hoc basis.

### **Anti-discrimination Matters**

***Over the period 4 July 1997 to the present how many complaints have been made to the Parliament's administration which could have been referred to the NSW Anti-Discrimination Board?***

The Parliament's administration has no power to refer any matters to the NSW Anti-Discrimination Board. In line with that, as the administration has no capacity to formally accept a complaint about a Member there are no records kept.

### **Bullying and inappropriate behaviour**

***A number of Members have sought a mechanism to handle complaints about the conduct of Members, including allegations of workplace bullying or inappropriate behaviours, and for such matters to be independently investigated.***

Parliament's administration cannot receive any formal complaint about workplace bullying or inappropriate behaviours by Members.

With the agreement of all parties, if we are informally asked to mediate issues between Members and staff this is undertaken, however due to the informal nature of this we do not keep records.

***What procedures are currently in place to respond to complaints about the conduct of Members?***

There are no formal mechanisms for the administration to respond to complaints about the conduct of Members, they are not covered by the Grievance Policy. Informal actions such as advice and support are provided.

### **Member Entitlements**

***What are the current processes involved in the scrutiny of Members' use of their entitlements (e.g. audits and assessments)?***

#### *Administration*

The Chief Executive of DPS has administrative oversight for the use of the additional entitlements determined by the Parliamentary Remuneration Tribunal (PRT). Unlike some other Australian jurisdictions however, *DPS has no investigative powers or the ability to impose sanctions on Members in the event it receives a referral about a Member's use of their parliamentary entitlements.*

Whilst the use of entitlements and compliance related matters are treated seriously and confidentially, DPS does not undertake a forensic examination of Members' claims as the accountability always rests with the Member to substantiate the claim is in connection with their parliamentary or electorate duties.

The services provided to Members and staff are predominantly advisory in nature and are intended to help them self-assess the validity of a potential claim or use of an allowance. The guidance and advice is further supported by a range of resources including the Members' Entitlements Handbook, Parliament's administrative guidelines, circulars and other information.



For example, the communications appraisal service expresses an opinion as to whether or not the communication to be funded from the Communications Allowance is consistent with the PRT Determination and Parliament's administrative guidelines. It is not intended to approve the communication, but rather support Members in making an informed decision on whether to proceed with the communication to be funded from the entitlement. The appraisal may also provide additional comments to ensure the Member is mindful of any other issues which may arise.

Ultimately, the accountability for compliance with the PRT Determination and Parliament's administrative guidelines rests with each Member of Parliament. The Member is accountable for the accuracy and compliance of the claim. This accountability cannot be delegated to staff.

DPS will only ever undertake a limited administrative assessment against the relevant PRT conditions and administrative guidelines.

Where a claim is clearly within guidelines and consistent with the purpose for which it has been provided, a claim from a Member will be supported. Where a claim is clearly outside the guidelines for use of the allowance, it will be discussed with the Member or their staff, before being returned. If there is an argument for either side, and the decision could go either way, the final decision to proceed with a claim will be left to the Member.

#### *Audit*

All claims are subject to an audit program and Members are required to retain records for a minimum period of two years for the purpose of substantiating claims submitted to Parliament. It should also be noted that all Members will be audited at least once in each parliamentary term. The audits look for patterns and trends and for instances of material and immaterial non-compliance.

In response to the audit requirements contained in the PRT Determination, DPS engages auditors for the purpose of undertaking an independent internal audit of a sample of claims for all allowances in a given financial year. This is further complemented by a data analytical approach to identifying trends and patterns in the use of entitlements. The findings of the internal audit are used to identify non-compliant claims, improvements to Parliament's administrative guidelines and processes.

The findings of the internal audit are also made available to the Auditor-General of NSW during its annual review of Members' Entitlements. During this time, the Auditor-General considers the findings of the internal audit and any previous findings which require further consideration. The Auditor-Generals reported is tabled in Parliament. Currently, the Auditor-General does not identify Members in their annual report to Parliament, but this may change in the future should the Auditor-General form the view a different approach is required.

In both cases, material findings of non-compliance are actioned by Parliament's administration. This may include remedial action such as Members repaying funds claimed from their entitlements.

#### ***What mechanisms are in place to deal with any irregularities detected in this area?***

As indicated in the previous response, DPS does not have any investigative powers in respect to any irregularities in this area.

Where irregularities are raised or identified, an *administrative* review can be undertaken to determine the appropriate course of action. DPS will review and scrutinise the relevant expense claims and determine if the concerns raised are credible and warrant further investigation. This may involve requests for additional information from relevant Members or their staff, a review of any advice or correspondence between DPS and the Member or their staff and a review of the primary

purpose for which the expense has been incurred in relation to the parliamentary duties of a Member. Note that DPS cannot compel cooperation with such an administrative review.

As a general rule, DPS will not respond to those who have raised the concerns (other than to acknowledge receipt of the information) nor provide information on the progress of any review or of any actions taken.

Appropriate action may include administrative remedial action for minor matters such as requesting the repayment of any expense claims submitted. More serious matters including substantial possible misuse of entitlements may be referred to Parliament's internal auditors, the Office of the Auditor General or the Independent Commission against Corruption (ICAC) for further review.

The table attached to this response outlines the review process.

*There is no formal mechanism for dealing with complaints made by members of the public against Members regarding the use of their entitlements. A complaint made by a member of the public can only be referred to external bodies with investigation powers such as the ICAC or Audit Office of NSW, neither of whom are likely to investigate what may be more minor breaches from each organisation's standpoint.*

**Are there any other initiatives that the Parliament's administration has taken recently that are relevant to the handling of misconduct allegations concerning Members in the areas proposed to be dealt with by the Compliance Officer (i.e. entitlements, pecuniary interests, and bullying and inappropriate behaviour)?**

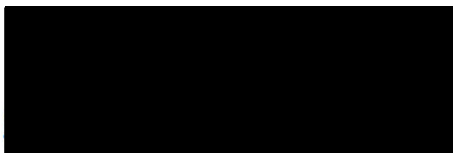
#### *Members Entitlements*

The Auditor-General's 2016 Report to Parliament on Members Additional Entitlements recommended the Parliamentary Remuneration Tribunal should consider, as a part of the next Determination review process, requiring the Department of Parliamentary Services to regularly publish full details of Members' expenditure claims on its website in an accessible and searchable format. The Department should be given some time for consultation with Members and implementation of systems before any new requirements are effective.

The Department in response carried out extensive consultation with Members on the level of detail to be included in such reporting. System requirements were then scoped out along with the resources required to support the process identifying the need for additional funding to implement the recommendation. Funding proposals have been submitted each year to Treasury from 2017-18 to implement the system but no funding has been provided. Accordingly, the recommendation has not been implemented.

A further initiative was the development of comprehensive guidelines for the use of the Communication Allowance by Members. Communication Allowance is the highest value additional entitlement provided to Members and was subject to significant change in the way Members were communicating with their constituents. The previous guidelines were brief and limited to the issue of written communications. Contemplation of all versions of electronic communications and detailed coverage of all aspects of usage of the entitlement was required. The development of the guidelines included a consultation draft put out to all Members inviting input. The new guidelines commenced in June 2020.

Thank you again for the opportunity to contribute to your deliberations, and I would be very happy to discuss any aspects of this response in more detail if required.



Mark Webb  
Chief Executive  
Department of Parliamentary Services



## Administrative Review (participation voluntary)



Members Entitlements administrative assessment process