

Administration of Travel Entitlements Provided to Parliamentarians

Department of Finance

© Commonwealth of Australia 2015

ISSN 1036-7632 (Print)

ISSN 2203-0352 (Online)

ISBN 978-1-76033-050-7 (Print)

ISBN 978-1-76033-051-4 (Online)

Except for the content in this document supplied by third parties, the Australian National Audit Office logo, the Commonwealth Coat of Arms, and any material protected by a trade mark, this document is licensed by the Australian National Audit Office for use under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives 3.0 Australia licence. To view a copy of this licence, visit

<http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

You are free to copy and communicate the document in its current form for non-commercial purposes, as long as you attribute the document to the Australian National Audit Office and abide by the other licence terms. You may not alter or adapt the work in any way.

Permission to use material for which the copyright is owned by a third party must be sought from the relevant copyright owner. As far as practicable, such material will be clearly labelled.

For terms of use of the Commonwealth Coat of Arms, visit the *It's an Honour* website at <http://www.itsanhonour.gov.au/>.

Requests and inquiries concerning reproduction and rights should be addressed to:

Executive Director
Corporate Management Branch
Australian National Audit Office
19 National Circuit
BARTON ACT 2600

Or via email:

publications@anao.gov.au.





Office of the Auditor-General for Australia



Canberra ACT
4 June 2015

Dear Mr President
Dear Madam Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Department of Finance titled *Administration of Travel Entitlements Provided to Parliamentarians*. The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee'.

Ian McPhee

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

For further information contact:

The Publications Manager
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Phone: (02) 6203 7505

Fax: (02) 6203 7519

Email: publications@anao.gov.au

ANAO audit reports and information about the ANAO are available on our website:

<http://www.anao.gov.au>

Audit Team

Tina Long
Amanda Ronald
Amy Willmott
Brian Boyd

Contents

Abbreviations and Glossary	7
Summary and Recommendations	11
Summary	13
Introduction	13
Audit objectives and scope	18
Audit criteria	18
Overall conclusion	19
Key findings by chapter	22
Summary of entity responses	35
Recommendations	36
Audit Findings	39
1. Introduction	41
Background	41
Previous ANAO audits	42
Entitlements reviews since 2009–10 audit report	44
Audit objective, criteria and methodology	48
Report structure	50
2. Entitlements Framework	51
Introduction	51
Recommendations of the Committee for the Review of Parliamentary Entitlements	52
Implementation arrangements	53
Progress in reforming the entitlements framework	58
Scope of key eligibility terms	66
Application of non-statutory conventions	78
Conclusion	89
3. Confirming the Eligibility of Use of Entitlements	92
Introduction	92
Basis for certification approach to obtaining assurance	92
Transactional certification of the use of certain travel entitlements	94
Pre-payment checking of claim eligibility	96
Reliance on certification as to purpose of travel	104
Implementation of charter certification form as a key compliance tool	115
Cost effective use of charter transport at public expense	121
Periodic certification of the use of all entitlements	129
Conclusion	145

4. Key Accountability Mechanisms	148
Post-payment review and checking	148
Publication of entitlements expenditure	160
Responding to allegations of misuse of entitlements.....	164
Revised travel declaration and repayment of incorrect claims	180
Conclusion	189
Appendices	193
Appendix 1: Entity Responses.....	195
Appendix 2: Six Monthly Entitlements Use Certification Form	199
Appendix 3: Protocol Followed when an Allegation is Received of Alleged Misuse of Entitlement by a Member or Senator	200
Index.....	201
Series Titles.....	203
Better Practice Guides	208

Tables

Table 1.1: Report structure	50
Table 3.1: Risk based approach to accessing entitlements as advised to Parliamentarians by Finance	93
Table 3.2: Response rates to six monthly certification requests as reported by Finance as at 11 May 2015	135

Figures

Figure 1.1: Terms of Reference: Review of Parliamentary Entitlements.....	44
Figure 2.1: Travelling allowance payments associated with undertaking electorate business: January 2012 to December 2013.....	86

Abbreviations and Glossary

2001–02 audit report	Audit Report No.5 2001–02, <i>Parliamentarians’ Entitlements 1999–2000</i>
2003–04 audit report	Audit Report No.15 2003–04, <i>Administration of Staff employed under the Members of Parliament (Staff) Act 1984</i>
2009–10 audit report	Audit Report No.3 2009–10, <i>Administration of Parliamentarians’ Entitlements by the Department of Finance and Deregulation</i>
AGS	Australian Government Solicitor
ANAO	Australian National Audit Office
AOR	Available on Request: relates to travelling allowance claims submitted for the applicable commercial accommodation rate for which the claimant does not attach a copy of the relevant commercial accommodation receipt, but certifies that it is available on request.
AFP	Australian Federal Police
ASKMAPS	A specialist entitlements advisory service that operated within the Department of Finance between August 2011 and October 2012.
CAPF	Case Assessment and Prioritisation Framework
CPRs	Commonwealth Procurement Rules
CROPE	Committee for the Review of Parliamentary Entitlements (also known as the Belcher Review)
EMS	Entitlements Management System
Finance	Department of Finance

High Level Departmental Committee	Committee of senior officials of the Department of Finance, chaired by the Finance Secretary, convened under the Protocol followed when an Allegation is Received of Alleged Misuse of Entitlement by a Member or Senator as required to consider allegations of potential misuse of entitlements by a Senator or Member that are considered to represent a more serious allegation or high incidence of transgression.
the Protocol	Protocol followed when an Allegation is Received of Alleged Misuse of Entitlement by a Member or Senator
M&PS	Ministerial and Parliamentary Services, a division within the Department of Finance
MoP(S) Act	<i>Members of Parliament (Staff) Act 1984</i>
Opposition office holders	Leader and Deputy Leader of the Opposition in the House of Representatives and the Senate
Parliamentary Allowances Act	<i>Parliamentary Allowances Act 1952</i>
PE Act	<i>Parliamentary Entitlements Act 1990</i>
PEAC	Parliamentary Entitlements Advisory Committee, formed within the Department of Finance in October 2009 to give effect to the then Government's decision to establish a vetting and checking system for the new printing and communications entitlement.
PVA	Private Vehicle Allowance
Remuneration Tribunal Act	<i>Remuneration Tribunal Act 1973</i>
the Tribunal	Remuneration Tribunal

Tools of trade	A term referred to by the CROPE to cover the resources, services and allowances (or business expenses) that do not represent personal remuneration, but are instead provided to support Parliamentarians in carrying out their respective duties, including transportation (by various transport modes), official telephones, office equipment and facilities, and expenditure for communicating with electors by way of printed or electronic material.
SMOS	Special Minister of State
Williams Review	Review of the Administration of Parliamentarians Entitlements by the Department of Finance and Deregulation, Helen Williams AO, January 2011

Summary and Recommendations

Summary

Introduction

1. The Commonwealth Parliament comprises the Senate, which has 76 members (12 for each State and two for each of the Territories), and the House of Representatives, which has 150 members.¹ In addition to the remuneration provided as a consequence of being a member of the Parliament, Parliamentarians are provided with a range of support services and allowances to assist them in effectively carrying out their duties. These are generally referred to as 'entitlements' and include office accommodation and facilities, staff support, travel, and various other resources to assist Parliamentarians service and inform their constituents.

2. While responsibility for the administration and delivery of Parliamentarians' entitlements is spread across a range of Commonwealth departments, the Department of Finance (Finance) has by far the most significant role. This is particularly the case in relation to the administration of non-remuneration entitlements, including travel.

3. The Australian National Audit Office (ANAO) has previously examined some or all aspects of the administration of Parliamentarians' entitlements on a number of occasions. This has included conducting three performance audits since 2000, comprising:

- Audit Report No.5 2001-02, *Parliamentarians' Entitlements 1999-2000*, tabled in August 2001 (referred to in this audit report as the 2001-02 audit report);
- Audit Report No.15 2003-04, *Administration of Staff employed under the Members of Parliament (Staff) Act 1984*, tabled in December 2003 (referred to in this audit report as the 2003-04 audit report); and
- Audit Report No.3 2009-10, *Administration of Parliamentarians' Entitlements by the Department of Finance and Deregulation*, tabled in September 2009 (referred to in this audit report as the 2009-10 audit report).

1 For convenience, in this report Senators and Members are referred to collectively as Parliamentarians.

4. A common theme arising from the previous ANAO audits was that the existing entitlements framework is difficult to understand and manage for both Parliamentarians and Finance. This situation arises as a result of the:

- complex (and often overlapping and ambiguous) array of legislation, determinations, rules, guidelines and conventions under which various entitlements are provided; and
- absence of an articulation or shared understanding of the scope of the key terms that largely govern whether a particular transaction will be considered to be within entitlement (such as 'parliamentary business', 'electorate business' and, for office-holders, 'official business').

5. The 2009–10 audit report noted that a positive outcome of that audit was that the then Special Minister of State (SMOS) had informed ANAO that the then Government agreed that immediate attention was warranted in clarifying the entitlements framework and providing greater transparency. In addition to changes that were to be made to certain existing entitlements, the then Government had also agreed to the conduct of a 'root and branch' review of the entitlements framework.

6. In that context, as was the case with previous audits, the 2009–10 audit report made a range of recommendations relating to improving the transparency and accountability of entitlements administration. This included recommending that, in progressing the government decision to undertake a review of the framework, Finance examine options that would:

- provide a principles-based legislative basis that authorises the provision of specified entitlements for defined purposes and in accordance with eligibility criteria; and
- enable accountability processes (such as usage certifications by Parliamentarians) to be mandated.

7. In agreeing with that recommendation, Finance advised that: 'These options have been included in the terms of reference for the review of the entitlements framework'.

Review of Parliamentary Entitlements

8. The 'root and branch review of Parliamentarians' entitlements was publically announced by the then SMOS on 8 September 2009. The review committee comprised: Ms Barbara Belcher AM (Chair), former First Assistant

Secretary of the Department of the Prime Minister and Cabinet; Mr John Conde AO, President of the Remuneration Tribunal; Ms Jan Mason, then Deputy Secretary of the Department of Finance; and Professor Allan Fels AO, former Australian Competition and Consumer Commissioner and then Dean of the Australia and New Zealand School of Government.

9. In its report, the Committee for the Review of Parliamentary Entitlements (CROPE) noted that its work represented the first comprehensive review of federal parliamentary entitlements in over 35 years. The terms of reference that guided the review comprised a mix of high level strategic issues (including recommending options for legislative framework reform) and detailed specific references. A public call for submissions was made on 3 October 2009, and the Committee chair also wrote to all then current Parliamentarians; affected former Parliamentarians, Prime Ministers and Governors-General; state jurisdictions; and selected academics and Commonwealth agency heads inviting their views. Public hearings were not held, but the chair and other members of the Committee spoke to a number of those who had made submissions and other interested parties. The Committee also examined how selected similar jurisdictions regulate parliamentary entitlements.

10. The Committee's report setting out 39 recommendations was provided to the then Government on 9 April 2010. Reflecting the review's terms of reference, those recommendations addressed a range of matters including proposals for broad legislative reform; enhancing administrative arrangements in relation to existing accountability mechanisms; and recommendations directed at abolishing, reforming or establishing a range of specific entitlements under the existing framework. Four of the report's recommendations related to parliamentary remuneration and associated consequential effects. Five recommendations proposed significant legislative and administrative reform in order to establish a consistent, simple and transparent framework for funding Parliamentarians' non-remuneration business expenses (or 'tools of trade'—currently known as entitlements). In March 2011, the then Government announced that it had agreed with the first of the CROPE report recommendations which related to restoring the power of the Remuneration Tribunal to determine parliamentary base salary, with relevant amendments to the *Remuneration Tribunal Act 1973* required to implement that measure being subsequently enacted. The remaining CROPE report recommendations were referred by the then Government to the Remuneration Tribunal to consider and make recommendations.

11. A December 2011 report by the Tribunal setting out the outcome of its subsequent work value assessment in relation to parliamentary remuneration also supported the CROPE report's conclusions in relation to the inadequacies of the existing framework in terms of providing a clear and transparent view of what Parliamentarians are entitled to be provided with in order to undertake their duties and how they use those non-remuneration entitlements. Significantly, the Tribunal recommended legislative reforms consistent with those set out in the CROPE report.

12. Following the deliberations to date of the previous and current governments and the Remuneration Tribunal, as at April 2015 action had been taken in respect to all or part of 17 of the 39 recommendations made in the April 2010 CROPE report.² This includes some recommendations that have been actioned by either the Tribunal or government through means that took a different form to those proposed by the CROPE report, or in respect to which the Tribunal's December 2011 report identified the basis on which it had decided to reject recommendations relating to the proposed folding in of certain existing entitlements into base salary.

13. However, to date, there has been no formal government response to the recommendations of the CROPE report, or subsequent Remuneration Tribunal report, in relation to fundamental reform of the legislative and administrative framework underpinning the provision of Parliamentarians' 'tools of trade'.

Review of Finance's administration of entitlements

14. In 2010, Finance commissioned a review of its administration of Parliamentarians' entitlements by Ms Helen Williams AO, former Secretary of the Department of Human Services (referred to as the Williams Review). Under its terms of reference, given the recommendations of the April 2010 CROPE report were yet to be considered by government, the Williams review examined Finance's administration of entitlements as provided under the existing framework. The review's report provided to Finance in January 2011, made eight multi-faceted recommendations. As at 28 February 2013, Finance had reported that all 47 elements of those recommendations had been implemented.

2 Records relating to the implementation status of a further three recommendations were not examined within the scope of this audit.

Measures announced by SMOS in November 2013

15. On 9 November 2013, the current SMOS announced a number of measures directed at strengthening the rules governing Parliamentarians' business expenses.³ That announcement followed a period in the latter half of 2013 that involved significant media scrutiny of the use of travel entitlements by a number of Parliamentarians. Reflecting that context, the measures announced by the Minister primarily related to travel entitlements, as provided under the existing framework. In particular, the SMOS announced the introduction from 1 January 2014 of:

- an amended declaration to be made by a Senator or Member when submitting travel claims;
- a 25 per cent loading to be paid where a Parliamentarian made a subsequent adjustment to travel claims, other than where the adjustment was the result of an error made by Finance. There would be a grace period of 28 days after making a travel claim in which Parliamentarians could make adjustments without penalty; and
- mandatory training for Parliamentarians and their offices if more than one incorrect claim was lodged within a financial year.

16. Amendments to the *Parliamentary Entitlements Act 1990* (PE Act) to implement the proposed 25 per cent penalty loading and other associated measures were incorporated in the *Parliamentary Entitlements Legislation Amendment Bill 2014* introduced into the Parliament in October 2014, and which was still before the Parliament as of April 2015. Other announced measures are being implemented through administrative processes, or have been implemented via amended Tribunal Determinations.

17. In addition, the 2015–16 Budget delivered on 12 May 2015 included further proposals for amendment to existing travel provisions, as provided under current legislation and Remuneration Tribunal Determinations, together with simplification of budget arrangements for supporting Parliamentarians' electorate office requirements and the implementation of a Parliamentarians' injury compensation scheme.

3 Senator the Hon Michael Ronaldson, Special Minister of State, Media Release 3/13, *Strengthening the Rules Governing Parliamentarians' Business Expenses*, 9 November 2013.

Audit objectives and scope

18. The objective of this audit was to assess the effectiveness of Finance's administration of travel entitlements provided to Parliamentarians.

19. The audit examined the administration of travel entitlements generally, with a focus on two entitlements (travelling allowance and charter transport) over the period January 2012 to December 2013. It assessed the effectiveness of the administrative arrangements and controls that are in place, including Parliamentarians' certification of the use of entitlements and arrangements to respond to any issues that arise in respect to entitlements use. More broadly, having regard for the various reviews and reforms announced or undertaken since the 2009–10 audit report was completed, the audit also examined whether the current entitlements framework, and its administration, assists Parliamentarians to adhere to any conditions and limitations on the travel entitlements provided to them.

20. The audit scope did not include travel entitlements provided to persons employed under the *Members of Parliament (Staff) Act 1984* (MoP(S) Act). It also did not examine the administration of travel entitlements provided through other agencies, such as transport entitlements provided to Ministers by their home department or the special purpose aircraft flights administered by the Department of Defence.

Audit criteria

21. To form a conclusion against the audit objective, the ANAO adopted the following high-level criteria:

- the entitlements framework is clearly articulated and supports the transparent, accountable and effective provision of travel entitlements to Parliamentarians;
- travelling allowance payments made by Finance are within the entitlements of the relevant Parliamentarian; and
- charter travel payments made by Finance are within the entitlements of the relevant Parliamentarian, and are utilised in a manner that provides value for money.

Overall conclusion

22. The conduct of an independent ‘root and branch’ review of Parliamentarians’ entitlements following the completion of ANAO’s 2009–10 audit report gave some cause for optimism that improvements would be made to the entitlements framework and its administration. However, fundamental weaknesses in the framework remain. Principally, this is because independent recommendations for substantive legislative and administrative reform developed to simplify current arrangements and safeguard the interests of the Commonwealth and Parliamentarians, or alternative measures to address recognised fundamental issues with the framework, have not been actioned. As a result, the framework under which Parliamentarians’ non-remuneration entitlements are provided has continued to be complex and opaque, with travel entitlements recognised as representing one of the areas most affected by those factors.

23. It is unsurprising, therefore, that this audit again highlighted the resulting challenges for: Parliamentarians in effectively accessing entitlements; the Department of Finance (Finance) in terms of efficient and effective administration; and all parties in promoting transparency and accountability for the public expenditure involved. In particular, there continue to be adverse implications for the ability of Parliamentarians and their offices to understand and comply with the intended purposes of, and any conditions or limitations on, individual entitlements, with associated implications for the capacity to provide reliable certifications in relation to that entitlements use. The certification processes also do not encourage reasonable disclosure of the purposes of travel for which public moneys have been applied, noting that:

- in providing transaction-based certifications (which are only required for certain travel entitlements), Parliamentarians rarely chose to provide information that gave any additional insight into the particular purpose of individual instances of travel beyond that broadly indicated by the generic travelling allowance or charter transport entitlement being accessed. In the case of travelling allowance, for example, this is notwithstanding that the relevant form provides the capacity to provide additional details. Under the existing framework, the provision of such information is not a requirement; and
- the periodic global certification of all entitlement usage in a given six month period remains a voluntary process with variable levels of adherence by Parliamentarians, and in respect to which some

Parliamentarians take a more cautious approach in relation to the nature of certification provided.

24. It is recognised that Parliamentarians have very demanding roles, of which travel is an essential part. This includes for routine purposes which are fully recognised as part of the entitlements framework, including attending Parliamentary proceedings; servicing the needs of the constituents the Parliamentarian represents; and undertaking other aspects of the work of a Senator or Member and, as relevant, office-holder. In that context, however, it has often been the case that it is only when information regarding the specific nature of the activities that particular entitlements usage was associated with is highlighted through other sources, including the media, that closer consideration is able to be applied as to whether undertaking those activities represented an eligible or appropriate use of entitlements. In that respect, although it does not accurately reflect the actual processes that are employed, there have been no changes made to the published administrative protocol for handling allegations of entitlements misuse by a Senator or Member in the nearly 17 years since that document was introduced. Nor has there been any improvement to address its evident shortcomings as an effective accountability mechanism, other than the recent partial implementation of a CROPE report administrative recommendation directed at addressing the inability to compel Parliamentarians to respond to inquiries made under the Protocol.⁴

25. For its part, Finance has provided advice and assistance to successive governments, with the aim of seeking to address various shortcomings in the entitlements framework. In response to the findings and recommendations of earlier ANAO audits and other reviews, the department has also made some important improvements to its administration of Parliamentarians' travel entitlements. This has included enhanced pre-payment monitoring to identify claims that may have been made under an entitlement not available to the relevant Senator or Member or which would exceed applicable caps or limits, and implementation of a more comprehensive and risk-based post-payment checking and audit function. However, the scope for further improvements in the department's entitlements administration remains constrained by the deficiencies in the framework itself.

4 That measure relates to an announcement by the SMOS in November 2013 under which the Minister 'may' table in the Parliament the name of any Senator or Member who fails to substantially comply within a reasonable time with a request for further information as part of a departmental inquiry (see further at paragraphs 61 and 4.79 to 4.93).

26. In this context, it is relevant to note that a recent judgment issued by the Supreme Court of the Australian Capital Territory included consideration of the application, and associated ambiguity, of the term ‘parliamentary business’ as currently identified in relevant heads of authority for the use of entitlements at public expense.⁵ The specific circumstances of that particular case are appropriately a matter for the courts. More broadly, however, the Court’s published consideration and conclusions highlighted that, under the existing framework, it is very difficult for the standards of accountability supported by objective and independent assurance generally expected to apply to the expenditure of public money to be effectively applied in relation to entitlements expenditure by Parliamentarians.

27. To support and reinforce actions already taken by Finance to improve its administration of Parliamentarians’ entitlements under current arrangements, ANAO has made two recommendations. The first relates to further improving transparency and accountability in reporting on the periodic certification by Parliamentarians of entitlements use. The second seeks to further improve the department’s approach to post-payment audit and checking of the use of travel entitlements.

28. As noted at paragraphs 4 to 7, previous ANAO audit reports highlighted the need for fundamental review of the entitlements framework and made associated recommendations. In that respect, recommendations of the April 2010 report of the independent ‘root and branch’ review (and subsequently supported by the Remuneration Tribunal), setting out a reform pathway for establishing a consistent, simple and transparent framework for providing Parliamentarians with the ‘tools of trade’ required to undertake their respective duties, remain relevant. No government decisions not to implement those recommendations had been recorded in the five years since the CROPE report was finalised. Nor had any alternative proposals been adopted to address the fundamental issues associated with the current framework. In that context, ANAO has not made any further recommendations concerning the entitlements framework.

29. The 2015–16 Budget delivered on 12 May 2015 set out proposals for simplifying arrangements under which Parliamentarians will be able to access funding to operate their respective electorate offices. The Government also proposed to pursue amendment to certain aspects of the existing travel

5 Slipper v Turner [2015] ACTSC 27 (26 February 2015).

entitlements, including through the introduction of an additional generic eligibility test allowing travel to also be undertaken for 'business as an elected representative'. The Budget proposals in themselves do not address the need for the more extensive reform that has been highlighted by earlier independent reviews. In the absence of such reform, Parliamentarians' entitlements will continue to be provided through a patchwork framework that has been the subject of only limited enhancements. As a consequence, there will continue to be:

- a lack of transparency as to the particular purposes for which entitlements have been accessed, which can be expected to give rise to continued concerns that the framework is providing greater latitude to Parliamentarians in their use of public money than might be expected in the public interest; and
- a heightened risk of Parliamentarians being criticised for the judgements they individually make in relation to whether a particular use of publically funded resources was within the terms of the relevant entitlement and represented an efficient, effective, economical and ethical use of public resources.

30. It is well within the capacity of government and the Parliament to agree on a clearer and more contemporary framework for administering parliamentary travel and other entitlements, and further consideration of such an approach is encouraged.

Key findings by chapter

Entitlements Framework (Chapter 2)

31. Successive ANAO audit reports have highlighted the inadequacy of the existing legislative and administrative framework for the provision of services, facilities and other allowances (known as 'entitlements') to Parliamentarians in order to enable them to undertake their respective duties. In particular, the current framework does not provide appropriate certainty in terms of the nature and extent of each entitlement and, therefore, whether it has been accessed on each occasion for eligible purposes and within other applicable limits or specifications. Both the ANAO's 2001–02 and 2009–10 audit reports concluded that fundamental reform of the overall framework was needed, so as to provide appropriate clarity about the purposes for which entitlements are provided; any limits on their use; and to allow for a stronger accountability regime over expenditure.

32. In response to the 2009–10 audit report, the then Government commissioned a ‘root and branch’ review of the entitlements framework to be undertaken by an independent committee, the Committee for the Review of Parliamentary Entitlements (CROPE—also known as the Belcher Review). The terms of reference for that review comprised a mix of high level strategic issues and detailed specific references.

33. The April 2010 CROPE report reached similar conclusions to those set out in earlier ANAO audit reports in regard to the inadequacy of the existing framework supporting the provision of Parliamentarians’ entitlements. The report made a number of recommendations directed at separating determination of the personal remuneration to be paid to Parliamentarians from the expenditure that relates to providing parliamentary ‘tools of trade’ (which incorporates most expenditure currently referred to as ‘entitlements’, including travel). In relation to remuneration, the report recommended that the Remuneration Tribunal independently establish the base salary that is to be provided to Senators and Members based on a work value assessment, together with the additional salary that should be provided to Shadow Ministers.

34. The CROPE report also recommended establishing a new approach to delivering the ‘tools of trade’ stream to provide a robust foundation upon which to administer and use the entitlements covered by the scheme. Specifically, the Committee recommended that the Government enact a single piece of legislation to provide a consistent, simple and transparent framework for the provision and regulation of Parliamentarians’ tools of trade at public expense. That legislation, to be administered by the SMOS, would replace the existing plethora of legislation, determinations, other instruments, executive decisions and conventions that currently govern the entitlements available to Parliamentarians.

35. Under the proposed reforms, the Remuneration Tribunal would no longer have a role in determining non-remuneration entitlements, thereby removing the existing duality (and associated complexities) under which responsibility for determining the tools of ‘the parliamentary trade’ is shared between the Tribunal and the SMOS (through regulations made under the PE Act).⁶ Instead, the non-remuneration facilities, services and allowances

6 In addition, some aspects of such ‘tools’ (such as a range of travel benefits) are also specified in the Schedule to the PE Act itself, with those scheduled benefits able to be varied or omitted by Regulation or Tribunal Determination. Determinations that vary or omit a scheduled benefit do not include reference to the relevant scheduled benefit or result in a revised compilation of the Act’s schedule.

available to Parliamentarians at public expense would be established by the SMOS through regulations made under the new single piece of legislation. Such regulations would be disallowable by the Parliament.

36. The CROPE report proposed that this new approach to delivering tools of trade would also involve clearer powers of delegation (which would be used in accordance with the objectives of the primary legislation) and subordinate legislation that groups like entitlements together, with consistent meanings and operational rules. In addition, the Committee recommended that, in determining the tools of trade to be provided under the new legislation, the SMOS receive advice from an independent advisory committee and publish both the committee's advice and the government response.

37. The CROPE report's conclusions and recommendations in regard to both the need for, and recommended approach to, reforming the legislative and administrative framework underpinning the provision of Parliamentarians' remuneration and other entitlements were supported by the subsequent independent report of a January 2011 review of Finance's administration of entitlements and the Remuneration Tribunal's initial review of Parliamentarians' remuneration concluded in December 2011.

38. In that regard, the Williams review commented that a concern expressed by Parliamentarians had been that both written and oral advice on entitlements from the department could lack clarity or be inconsistent. However, the report also noted the difficulties that arose in providing definitive advice in the context of an entitlements framework 'that is based on three terms (parliamentary, electorate and official business) that are not easily defined but are used as eligibility criteria for over 50 entitlements'.

39. The Tribunal's 2011 report recommended that government streamline the existing entitlements framework to reflect a firm delineation between remuneration (to be provided under the *Remuneration Tribunal Act 1973* (Remuneration Tribunal Act)) and business expenses (to be provided under a single Act, being the PE Act or a successor), and an improved interface between the administrators of the two Acts so that the two legislative instruments operate singularly and separately with no overlap.

40. The CROPE recommendation relating to the independent determination of parliamentary base salary has been implemented, with an increased base salary being set by the Tribunal from 2012 based on the findings of a work value assessment. Some other recommendations of the CROPE

report relating to amendments to certain specific entitlements provided under the existing framework have also received consideration and, in some cases, been implemented.

41. The 2015–16 Budget delivered on 12 May 2015 included proposals for further amendment to existing travel entitlements, including incorporating travel on ‘business as an elected representative’ as an additional generic eligible purpose of travel at public expense⁷; better aligning travel provisions with the purpose of travel, including streamlining of existing travelling allowance provisions; and providing a mechanism by which a Parliamentarian would be able to certify usage of travel services that is not within standard entitlement parameters, but which the Parliamentarian considers to provide greater value for money. Given the Remuneration Tribunal’s role in independently determining Parliamentarians’ travel entitlements, implementation of those proposals will require consultation with, and the agreement of, the Tribunal. The Budget measure also proposed the simplification of a range of existing entitlements relating to Parliamentarians’ electorate office costs through the formation of two broad entitlement budgets that are intended to provide greater efficiency and flexibility for Parliamentarians; and the introduction of a Parliamentarians’ injury compensation scheme. Both of those latter measures reflected, in full or in part, recommendations of the CROPE report and Remuneration Tribunal. In May 2015, Finance advised ANAO that implementation strategies for the proposals set out in the Budget measure were under consideration.

42. However, as at May 2015, there had been no progress in implementing the April 2010 CROPE recommendations for legislative reform to underpin the provision of non-remuneration entitlements, or adopting alternative proposals to address the fundamental issues associated with the current framework. In addition, the CROPE report’s suggestion that the scope of eligible entitlements use be clarified by government identifying, through the use of broad categories, those activities that would and would not be publicly funded has also not been implemented. The resulting ongoing challenges for maintaining transparent and accountable use of the public money involved, and for Parliamentarians in effectively accessing their entitlements, were reflected in the outcome of ANAO’s examination in this performance audit of the

7 See further at paragraphs 62 to 67.

administration of travel entitlements.⁸ This situation was also reflected in advice provided by Finance to the SMOS in November 2013 being that the existing system is expensive to administer ‘... whilst at the same time failing to provide a fundamental safeguard that payments are only made in accordance with the entitlements’.

43. A further consequence of the absence of progress in implementing substantive framework reform is that the use of entitlements continues to be subject to certain ‘conventions’. These particularly relate to the use of entitlements (including travel entitlements) in the context of election campaigns. The continued application of such conventions, which have no legal standing, is problematic in terms of both:

- clearly establishing whether entitlements have been accessed only for the purposes for which they have been provided under the relevant head of authority and do not provide an inappropriate benefit of incumbency; and
- ensuring that administrative arrangements do not seek to inhibit access to entitlements in a manner that is contrary to the terms of the relevant head of authority.

Confirming the Eligibility of Use of Entitlements (Chapter 3)

44. The certification by Parliamentarians that they have appropriately accessed goods, services and allowances provided at public expense is a key element of the entitlements accountability framework. Reliance is placed upon those certifications as the primary mechanism for ensuring that all entitlements are only accessed in accordance with the terms set out in the relevant head of authority (and, therefore, within entitlement). This is particularly the case in relation to the purpose for which an entitlement has been accessed. Certifications are sought on a periodic basis and, for certain entitlements, on a transactional basis.

45. In respect to travel entitlements, Parliamentarians are required to certify the eligibility and compliance of each transaction under their respective travelling allowance and charter transport entitlements. This is done through

8 See, for example, the discussions at paragraphs 43 and 44 to 53 of this Summary, with more detailed discussion of various aspects of the ongoing deleterious impact of the existing framework on the transparent, accountable and effective accessing and administration of entitlements being set out in Chapters 2, 3 and 4 of the audit report.

the Senator or Member signing a travel declaration (for travelling allowance claims) or charter certification (with separate forms applying to different charter transport entitlements). Finance also undertakes a number of pre-payment checks which go to aspects of eligibility under the relevant entitlement that are capable of objective confirmation. The department's administration of those aspects of Parliamentarian's travel entitlements has improved considerably over practices observed in previous audit reports, and was reasonably effective having regard for the inherent risk of error arising from the manual processing involved.

46. Various aspects of the transactional certification process undertaken in the period examined by this audit indicated weaknesses in the robustness and reliability of that process. ANAO noted instances in which charter certification forms provided by Parliamentarians did not accurately identify all travel taken using the chartered transport and/or the details set out on the form did not match those identified on the relevant charter company invoice. In some cases, in accordance with documented procedures, Finance had sought clarification or an amended certification form from the relevant Parliamentarian's office. However, in other cases, the department did not seek to clarify the matter or obtain an accurate certification of the relevant charter transport use. In that context, there would be benefit in Finance applying an increased focus as to whether the certifications received from Parliamentarians are performing their intended assurance role. This includes applying appropriate scrutiny to associated invoices and other documentation in order to identify potential anomalies requiring clarification.

47. In relation to travelling allowance, there were a number of circumstances in which, as part of the pre-payment checks undertaken, Finance was able to identify that a Parliamentarian had submitted a travel declaration that incorrectly certified that he or she had fulfilled all the requirements of the nominated Remuneration Tribunal Determination clause (entitlement). In other cases, the department required further information before it could process a claim under the relevant clause. It was not uncommon for these processes to result in claims being amended or replaced such that the claim was then made under a different clause, including in some cases to reflect a different purpose of travel. On occasion, the claim was withdrawn. This situation serves to highlight the complex nature of the existing entitlements framework and both the resulting difficulties Senators and Members (and their offices) experience at times in providing reliably

completed travel declarations and associated certifications; and increased exposure to the potential for ineligible claims to be submitted.

48. However, clarifying exchanges of that nature do not occur where there is no readily identifiable anomaly between: the relevant Parliamentarian's electorate and other offices held; the entitlement being certified to; the location of the overnight stay or travel undertaken (as relevant); and/or the information set out on the travel declaration or charter certification form. In those circumstances, reliance is placed upon the certification provided by the Parliamentarian by way of signing the relevant form as to the compliance of the claim with the entitlement being accessed, including that the travel was for eligible purposes.

49. In providing such certifications, and notwithstanding that the form provides the capacity for greater details to be submitted, Parliamentarians rarely provided information that gave any additional insight into the purpose of individual instances of travel beyond that indicated by the generic travelling allowance entitlement being accessed, or the type of charter certification form provided. For example, in most cases examined, the field on the travel declaration form for describing the meeting attended or other reason for the claim was either completed with generic references⁹ that simply mirrored the broad eligible purpose of travel set out in the Determination for the travelling allowance entitlement being accessed, or was left blank.

50. In relation to charter transport entitlements, there were instances in the transactions examined in which the purpose of travel certified to in relation to a particular use of charter transport was potentially inconsistent with the purpose of travel that had been separately certified to by the relevant Parliamentarian when claiming travelling allowance for overnight stays associated with the same journey. There were also instances in which the travel details identified on a travel declaration submitted for a particular journey were inconsistent with those identified on a charter certification form separately submitted in respect to the same journey.

51. Significant elements of the travel and other entitlements available to Parliamentarians are not subject to a transaction-based certification process. In relation to travel entitlements, this includes, for example, all travel on domestic scheduled aircraft and other services where no associated travelling allowance

9 Such as 'official business', 'Ministerial business', Shadow Minister duties', 'portfolio meetings' or 'electorate business'.

is being claimed, and car costs (such as COMCAR and self-drive hire vehicles not engaged under a charter transport entitlement). Travel declarations are not required to be submitted in relation to such travel. Rather, certification as to the compliant use of those entitlements is sought through a request made to current and former Parliamentarians to provide periodic general certifications in relation to their use of all entitlements. As from November 2011, certification was changed from the previous monthly process to align with the publication on the Finance website of six monthly entitlements expenditure reports for each relevant current and former Parliamentarian.¹⁰ The certification requested is general in its terms and includes no specific reference to particular entitlements or instances of entitlements use. Rather, it involves each individual being asked to certify (for entitlements administered by Finance) that his or her use of each entitlement during the specified period was in accordance with the provisions legislated for each respective entitlement.

52. This process involves an administrative request, with Parliamentarians being under no obligation to provide the certification. Response rates under the previous monthly certification process had been an ongoing issue, with some Parliamentarians declining to provide the requested certification. In this context, also from November 2011, Finance has published details of whether each relevant individual has provided the requested certification in respect to a given six month period.¹¹ That measure partially implemented one of the administrative recommendations of the April 2010 CROPE report directed at enhancing accountability and providing an incentive for current and former Parliamentarians to provide the requested periodic certifications.

53. Consistent with the outcomes achieved under previous approaches, it continues to be the case that in no reporting period to date has there been full compliance with the provision of relevant six monthly certifications of entitlements use, including by sitting Parliamentarians. Over the seven certification periods to 30 June 2014, Finance has reported on the provision or otherwise of certifications of the use of entitlements as a sitting Senator or Member in respect to 320 individuals. Of those, as at 11 May 2015 around two-thirds (210, 66 per cent) were disclosed as having provided the requested certification on all relevant occasions. The remaining third were disclosed as having failed to provide a certification in respect of one or more relevant

10 See further at paragraph 57.

11 See at <http://www.finance.gov.au/publications/parliamentarians-reporting> [accessed 11 May 2015].

periods. As at May 2015, three individuals (two current Parliamentarians and one former Member who left the Parliament at the September 2013 election) had not provided a certification in relation to their use of entitlements as a sitting Senator or Member in respect to any of the periods for which six monthly certification details had been published since November 2011. It also continues to be the case that some Parliamentarians qualify the certification provided.

54. Given the entitlements, including travel, provided to Parliamentarians are funded through the use of public money, it is not unreasonable to expect Senators and Members to certify as to their compliance in the use of those funds with the eligibility and other requirements set out in the relevant head of authority, or to explicitly state the basis on which he or she does not feel able to provide such a certification. Similarly, any qualification to the certification should be rare and, where it does occur, transparent to the broader community. In that context, the efficacy of the existing certification disclosure process as a transparent accountability mechanism would be enhanced by the department also disclosing:

- the terms of the certification each individual has chosen to provide; and
- in respect to each individual listed as not having provided a relevant certification, any reason that may have been given for not signing the certification or, as relevant, that no reason has been provided; and/or that no response to the certification request had been received from the relevant individual.

Key Accountability Mechanisms (Chapter 4)

55. ANAO's 2009–10 audit report observed that shortcomings in the entitlements framework had not assisted Finance in its role, and that the department had also adopted a relatively gentle approach to entitlements administration. In that context, in July 2009, the then Government agreed to the establishment of an enhanced audit and checking function within Finance, at a cost of \$3.5 million over four years. That function consists of a rolling internal audit review program conducted through Finance's internal audit provider; and a post-payment checking program undertaken within the areas responsible for entitlements management and processing. In a significant improvement over the department's previous approach to post-payment oversight of entitlements, both aspects have been based upon an evolving risk assessment framework. The function is also overseen by an internal governance committee.

56. The various travel entitlements accessed by a Parliamentarian in undertaking a particular trip are generally processed separately and at different times. This is due to both the manner in which the relevant documentation is provided to the department by Parliamentarians and travel service providers, and Finance's internal processes.¹² As a consequence of this 'silo' approach, there is a risk of the department's oversight of entitlements use not identifying potential inconsistencies between the various purpose-based travel entitlements accessed by a Parliamentarian in the course of a particular journey. A number of such potential inconsistencies were identified in ANAO's examination of a sample of transactions.¹³ In that context, there would be merit in Finance supplementing its existing post-payment audit and checking program to incorporate data analysis and other risk-based tests that reconcile the various entitlements accessed in connection with a single journey to assist the department in identifying potential anomalies for further examination or clarification. Tests of that nature would build on the work already undertaken in relation to identifying concurrent use of mutually exclusive car transport entitlements and in relation to the risks associated with travel taken without associated travelling allowance claims.

57. As mentioned in paragraph 51, details of entitlements expenditure incurred by current and former Parliamentarians are now published in six monthly reports. That measure implemented a July 2009 decision by the then Government to expand the then existing six monthly travel expenditure reports to encompass all entitlements administered by Finance. The publication of expanded expenditure details has provided the capacity for enhanced public scrutiny of the entitlements use of individual Parliamentarians. In that respect, the April 2010 CROPE report recommended additional measures to further enhance the public disclosure of entitlements expenditure, but none of those recommendations had been implemented as at April 2015. A November 2013 departmental proposal to the SMOS that there

12 For example, travelling allowance claims are required to be submitted within 60 days of the travel being completed, with the department maintaining key performance indicators in relation to target processing times. However, the processing of payments relating to the associated travel via scheduled flights, charter and car transport may not be finalised until some time after the travel occurred, as a consequence of the various data downloading and invoicing processes adopted by the relevant service providers and/or delays in obtaining relevant certification forms from Parliamentarians. In addition, there are separate teams within Finance that are responsible for processing the various travel-related entitlements claims and payments.

13 See, for example, paragraph 50.

would be merit in providing more timely, and potentially more detailed, public reporting on entitlements expenditure has also not been actioned.

58. In June 1998, the then SMOS approved a document titled Protocol followed when an Allegation is Received of Alleged Misuse of Entitlement by a Member or Senator (the Protocol). The Protocol document was tabled in the Parliament in 2000. Aspects of the department's administration of the Protocol have improved compared to the practices observed in the 2009–10 audit report. However, it has been long recognised that the document itself would benefit from amendment to both:

- ensure its terms transparently reflect actual practice in dealing with allegations of entitlements misuse, which is not currently the case; and
- enhance its efficacy as an accountability governance document.

59. In this respect, in the period examined by ANAO as part of this current audit, a number of amendment proposals were put to successive Special Ministers of State by the department. The content and operation of the Protocol was also the subject of CROPE report recommendations. However, the Protocol document has not been amended in the nearly 17 years since it was first issued.

60. As noted, legislation amending the PE Act to implement a measure announced by the SMOS in November 2013 relating to imposing a 25 per cent penalty on adjustments to certain travel benefits (including voluntary repayments) was before the Parliament as at April 2015.¹⁴ The legislation also proposes to establish a legal right of recovery where a Parliamentarian has been paid a benefit in excess of the relevant entitlement. However, the amending Bill does not seek to provide a legislative head of authority for handling allegations of entitlements misuse. Nor does it alter the reliance under the existing framework on key eligibility terms that are open to interpretation. Accordingly, under existing arrangements, it will continue to be the case that Finance will be largely reliant upon current and former Parliamentarians self-assessing whether it would be appropriate to make a voluntary repayment where there is an allegation of misuse of entitlements.

61. A further measure announced in November 2013 (partially implementing a CROPE report recommendation) was that the SMOS may table

14 See paragraph 16, and also see further at paragraphs 62 to 65.

in the Parliament the name of any Senator or Member who fails to substantially comply within a reasonable time with a request for further information as part of a departmental inquiry. The published Protocol has similarly not been amended to reflect that process. Nor had administrative procedures for its implementation been agreed by the SMOS as at 30 April 2015.

62. As noted at paragraph 15, the SMOS also announced that, to improve the system's integrity, from 1 January 2014 the Government would:

- strengthen the declaration a Parliamentarian is required to make when submitting a travel claim, which would involve declaring that the relevant travel had been undertaken 'in my capacity as an elected representative'; and
- require Parliamentarians that made an adjustment to any travel claims made after 1 January 2014 to pay a loading of 25 per cent, in addition to the full amount of the adjustment, subject to specified caveats.

63. Legal advice subsequently provided to Finance highlighted concerns in relation to the terms of the revised declaration. These included that it did not reflect the eligibility terms used in the relevant heads of authority; introduced a term (elected representative) that is not a relevant test for determining eligibility under the expressed terms of any of the travel entitlements; and that it may be counterproductive to attempts to tighten travel entitlement provisions. Amendments to the declaration proposed in the legal advice were not implemented, with the announced declaration being added in March 2014 to the travel declaration and private vehicle allowance claim forms required to be submitted by Parliamentarians.¹⁵

64. Further, as noted, legislation to authorise the imposition of a penalty loading on certain repayments was still before the Parliament as at April 2015. Consequently, for at least 12 months, Parliamentarians have been required to make a declaration when submitting travelling allowance and private vehicle allowance claims that:

15 In that respect, following the Minister's November 2013 announcement, it was subsequently clarified between the SMOS' office and Finance that the penalty loading would only apply in relation to travelling allowance and private vehicle allowance claims. However, the Bill that was before the Parliament as at April 2015 included a mechanism by which additional travel entitlements can be made subject to the penalty loading at a future time. Specifically, the Bill introduces the concept of 'prescribed travel benefits' which are determined by the Minister by legislative instrument, with the penalty loading provisions of the PE Act to apply to repayments made in relation to any prescribed travel benefits, subject to the specified caveats.

- is not a relevant test of eligibility for accessing the entitlement¹⁶; and
- includes an acknowledgement of the potential imposition of a financial loading on any subsequent repayments that had no legal effect and for which there was no legal authority.¹⁷

65. In light of the already complex entitlements framework, that situation is not helpful in terms of assisting Parliamentarians in accessing their respective entitlements in an effective manner. It also serves to highlight the difficulties that arise in attempting to implement specific measures directed at strengthening the integrity of entitlements administration in the context of an underlying entitlements framework that is in recognised need of fundamental reform.

66. As noted¹⁸, the 2015–16 Budget delivered on 12 May 2015 included proposals for amendment to certain travel entitlements. This included that the Remuneration Tribunal would be asked to consider:

- extending Parliamentarians' domestic travel entitlements to provide for travel on 'business as an elected representative', in addition to the existing entitlements to travel on 'parliamentary', 'electorate' and 'official' business;
- aligning the myriad of travelling allowance provisions with domestic travel provisions, including travel on 'business as an elected representative'; and
- providing a mechanism for Parliamentarians to undertake domestic travel which is not within standard entitlement parameters, but which the Parliamentarian considers to deliver greater value for money. It is proposed that this mechanism would rely upon a certification provided by the Parliamentarian.

67. The Budget measure proposed that the realignment of travel provisions with the purpose of travel will provide greater clarity in assessing travel

16 In that respect, the new declaration was announced by the SMOS in the context of public concerns regarding the potential use of travel entitlements for personal purposes. The additional declaration may assist in encouraging Parliamentarians to turn their minds to that question when submitting a travelling allowance claim, which is helpful. However, there is also a risk that the introduction of a term that is not relevant to determining whether a particular claim is compliant with the entitlement being accessed may also add to the already complex and confusing framework within which such claims are made.

17 In that context, there is no provision within the amending legislation for any retrospective application of the penalty loading.

18 See paragraphs 17 and 41.

entitlements. In that respect, the application of key eligibility terms for accessing entitlements has proven problematic over a considerable period of time in terms of achieving appropriate transparency and accountability in entitlements use. In that context, those recognised challenges would need to be addressed in implementing the proposed introduction of an additional term for describing eligible purposes for which travel may be taken at public expense.

Summary of entity responses

68. The proposed report was provided to Finance and the Special Minister of State. An extract of the proposed report was provided to the Remuneration Tribunal. Formal comments on the proposed report were provided by Finance and the Remuneration Tribunal, and are included in full at Appendix 1. A summary of Finance’s comments is also included below.

Department of Finance’s response

The Department of Finance notes and welcomes the ANAO’s findings that the department has made ongoing and important improvements to its administration of parliamentarians’ travel entitlements. These improvements have been designed to both assist our clients in accessing their entitlements and provide transparency for government in the management of parliamentary entitlements.

Whilst the department necessarily relies on the certification of Senators and Members in accessing their travel entitlements ANAO has noted the department’s audit and checking process provides improved assurance in regard to the public outlays to these entitlements.

Finance notes that there are several case studies provided in the report where inconsistency of process is highlighted. Given the length of time since these transactions were undertaken (pre 2014), Finance has undertaken a sample review to ensure that such inconsistencies have been removed from current transaction processes.

The department remains committed to continually improving our administrative processes and procedures within the Parliamentary Entitlements Framework.

Recommendations

Set out below are ANAO's recommendations directed at improving administration of entitlements within the existing framework, and Finance's abbreviated responses. More detailed responses are shown in the body of the report immediately after each recommendation. Although it is recognised as being deficient in many respects, ANAO has not made any recommendations in this audit report concerning the entitlements framework. This is because recommendations for substantive reform that were set out in the April 2010 report of an independent committee commissioned to undertake a 'root and branch' review of the entitlements framework in response to ANAO's 2009–10 audit report (and subsequently supported by a 2011 report of the Remuneration Tribunal) have yet to be actioned, but remain relevant. Nor have any alternative proposals been adopted to address the fundamental issues associated with the current framework.

Recommendation No. 1

Paragraph 3.146

To enhance the efficacy of the certification disclosure process as a transparent accountability mechanism, ANAO recommends that the Department of Finance improve its procedures for disclosing details of six monthly entitlements use certifications provided by current and former Parliamentarians such that:

- (a) the disclosure tables set out on the Finance website provide an accurate reflection of the extent to which each individual has provided relevant certifications;
- (b) the terms of the certification provided by each individual is disclosed; and
- (c) any reason that may have been given by an individual for not providing the certification is disclosed or, as relevant, disclose that no reason has been provided and/or no response to the certification request had been received from the relevant individual.

Department of Finance response: *Agreed in principle.*

**Recommendation
No. 2****Paragraph 4.40**

To assist it to better understand the way in which Parliamentarians use their travel entitlements, as well as to identify inconsistencies or anomalies that might merit further examination or clarification, ANAO recommends that the Department of Finance supplement its existing post-payment audit and checking function processes to include risk-based processes for reconciling the various entitlements accessed by Parliamentarians in connection with undertaking a single journey.

Department of Finance response: *Agreed in principle.*

Audit Findings

1. Introduction

This chapter provides an overview of the Parliamentary entitlements framework and its recent history, and describes the audit approach and scope.

Background

1.1 The Commonwealth Parliament comprises the Senate, which has 76 members (12 for each State and two for each of the Territories), and the House of Representatives, which has 150 members.¹⁹ To assist them in effectively carrying out their duties, Parliamentarians are provided with a range of support services, generally referred to as ‘entitlements’. This includes office accommodation and facilities, staff support, travel and various other allowances to assist Parliamentarians service and inform their constituents.

1.2 While responsibility for the administration and delivery of Parliamentarians’ entitlements is spread across a range of Commonwealth agencies, the Department of Finance (Finance) has by far the most significant role. This is particularly the case in relation to the administration of non-remuneration entitlements, including travel.²⁰ The provision of Parliamentarians’ entitlements is administered by Finance as part of its Outcome 3. The department’s 2014–15 Portfolio Budget Statements reported estimated actual expenses of some \$523 million for that outcome and described the related programme objective as follows:

This programme contributes to the outcome through providing the entitlements—and advice on these entitlements—of Ministers, Office-holders, Senators, Members and certain former Parliamentarians and their respective staff (employed under the *Members of Parliament (Staff) Act 1984* (MoP(S)Act)). Under this programme support services provided by Finance include:

- electorate and ministerial support costs; car-with-driver and associated ground transport services;
- luggage service for guests of the Australian Government; and
- the Political Exchange Programme.

19 For convenience, in this report Senators and Members are referred to collectively as Parliamentarians.

20 Remuneration payments, which are generally administered through the Chamber departments, are not examined within the scope of this performance audit.

1.3 In aggregate, the various travel entitlements comprise a significant proportion of the cost of all entitlements provided to Parliamentarians. Specifically, excluding staff related costs, the six monthly expenditure reports published by Finance reported payments totalling \$209.8 million as being made between January 2012 and December 2013 in relation to entitlements costs incurred by sitting Parliamentarians. Of that, nearly one third (\$64.5 million or 30.7 per cent) related to costs associated with travel for Parliamentarians.²¹ This included travelling allowance payments over that period totalling \$11.53 million and charter transport costs totalling \$2.97 million.

Previous ANAO audits

1.4 The Australian National Audit Office (ANAO) has previously examined some or all aspects of the administration of Parliamentarians' entitlements on five occasions. This has included conducting three performance audits since 2000²², comprising:

- Audit Report No.5 2001-02, *Parliamentarians' Entitlements 1999-2000*, tabled in August 2001 (referred to in this audit report as the 2001-02 audit report);
- Audit Report No.15 2003-04, *Administration of Staff employed under the Members of Parliament (Staff) Act 1984*, tabled in December 2003 (referred to in this audit report as the 2003-04 audit report); and
- Audit Report No.3 2009-10, *Administration of Parliamentarians' Entitlements by the Department of Finance and Deregulation*, tabled in September 2009 (referred to in this audit report as the 2009-10 audit report).

1.5 The most recent of those audit reports focussed primarily on the use of the printing entitlement, but also examined the overarching entitlements framework. The audit found that the framework remained little changed from that which had applied at the time of the 2001-02 audit, some eight years earlier.

21 A further \$3.1 million (1.5 per cent) related to costs associated with travel for Parliamentarians' families.

22 The remaining two relevant audit reports were: Audit Report No.34 1990-91, *Department of Administrative Services: Services to Members of Parliament and their staff*; and Audit Report No.23 1997-98, *Ministerial Travel Claims*.

1.6 A common theme arising from the findings and recommendations of the previous ANAO audits was that the existing entitlements framework is difficult to understand and manage for both Parliamentarians and Finance. This situation arises as a result of the:

- complex (and often overlapping and ambiguous) array of legislation, determinations, rules, guidelines and conventions under which various entitlements are provided; and
- absence of an articulation or shared understanding of the scope of the key terms that largely govern whether a particular transaction will be considered to be within entitlement (such as ‘parliamentary business’, ‘electorate business’ and, for office-holders, ‘official business’).

1.7 The 2009–10 audit report noted that a positive outcome of that audit was that the then Special Minister of State (SMOS) had informed ANAO that the then Government agreed that immediate attention was warranted in clarifying the entitlements framework and providing greater transparency. In addition to specified changes that were to be made to the entitlements relating to printing, communications, newspapers and periodicals and office requisites and stationery, the then Government had also agreed to the conduct of a ‘root and branch’ review of the entitlements framework.

1.8 In that context, as was the case with previous audits, the 2009–10 audit report made a range of recommendations relating to improving the transparency and accountability of entitlements administration. This included recommending that, in progressing the government decision to undertake a review of the entitlements framework, Finance examine options that would:

- provide a principles-based legislative basis that authorises the provision of specified entitlements for defined purposes and in accordance with eligibility criteria; and
- enable accountability processes (such as usage certifications by Parliamentarians) to be mandated.

1.9 In agreeing with that recommendation, Finance advised that: ‘These options have been included in the terms of reference for the review of the entitlements framework’.

Entitlements reviews since 2009–10 audit report

Review of Parliamentary Entitlements

1.10 The ‘root and branch’ review was publically announced by the then SMOS on 8 September 2009, coinciding with the tabling of the 2009–10 audit report. The Committee for the Review of Parliamentary Entitlements (CROPE—also known as the Belcher Review) comprised: Ms Barbara Belcher AM (Chair), former First Assistant Secretary of the Department of the Prime Minister and Cabinet; Mr John Conde AO, President of the Remuneration Tribunal; Ms Jan Mason, then Deputy Secretary of the Department of Finance; and Professor Allan Fels AO, former Australian Competition and Consumer Commissioner and then Dean of the Australia and New Zealand School of Government. The review’s terms of reference are set out in Figure 1.1.

Figure 1.1: Terms of Reference: Review of Parliamentary Entitlements

Provide advice and recommendations to Government addressing issues such as:

- developing a single principles-based legislative basis that authorises the provision of specified entitlements, identifies who is eligible to access these entitlements and in what circumstances, and the purposes for which these entitlements may be used;
- recommending framework changes that remove instances of overlap, duplication, inconsistency and gaps in the provision of entitlements;
- defining, in regulations and/or legislative instruments, key terms and the scope and any limits on entitlements use;
- improving transparency in the use of taxpayer-funded parliamentary entitlements;
- enabling accountability processes to be mandated; and
- recommending possible improvements to the protocol for handling allegations of misuse of entitlements.

In formulating advice and recommendations, the review should have regard to:

- the development of a new simplified framework;
- appropriate use of entitlements during election campaigns;
- the inter relationship with the Members of Parliament (Staff) Act 1984 employment framework;
- entitlements provided at Parliament House;
- remuneration and allowances (including the current electorate allowance);
- private-plated vehicles;
- overseas study travel;
- entitlements to Life Gold Pass and severance travel;
- entitlements of former Prime Ministers (including a head of authority to provide any entitlements), Governors-General and former Parliamentarians;
- production of postal vote applications under the printing entitlement; and
- other matters considered relevant to the review.

Source: Review of Parliamentary Entitlements, Committee Report, April 2010, p. 22.

1.11 The April 2010 CROPE report noted that the Committee's work had represented the first comprehensive review of federal parliamentary entitlements in over 35 years, with the terms of reference that guided its work comprising a mix of high level strategic issues and detailed specific references. A public call for submissions to the review was made on 3 October 2009, and the Committee chair also wrote to all then current Parliamentarians, affected former Parliamentarians, former Prime Ministers, former Governors-General, state jurisdictions and selected academics and Commonwealth agency heads inviting their views. Public hearings were not held, but the chair and other members of the Committee spoke to a number of those who had made submissions and other interested parties. The Committee received 39 written submissions, of which 29 were subsequently published on the Finance website. During the course of its deliberations, the Committee also examined how selected similar jurisdictions regulate parliamentary entitlements. The Committee's report was provided to Government on 9 April 2010.

Review of Finance's administration of entitlements

1.12 In 2010, Finance commissioned a review of its administration of Parliamentarians' entitlements. That review's terms of reference stated that:

The Department has sought the assistance of an independent reviewer with senior level experience in the Australian Public Service to examine the way Finance administers the parliamentary entitlements framework to see if there are improvements that could be made to the way it does business and the way it interacts with parliamentary clients...Given that the parliamentary entitlements framework has recently been reviewed by an independent committee (Chaired by Ms Barbara Belcher AM) and its recommendations are yet to be considered by the Government, this review will focus on options to improve the administration of the parliamentary entitlements framework, rather than examining the framework itself.

1.13 The review was undertaken by Ms Helen Williams AO, former Secretary of the Department of Human Services (referred to as the Williams Review). The report provided to Finance in January 2011²³ made eight multi-faceted recommendations in relation to:

²³ Review of the Administration of Parliamentarians Entitlements by the Department of Finance and Deregulation, Helen Williams, January 2011, (Williams Review), available at http://www.finance.gov.au/publications/review_of_the_administration_of_parliamentary_entitlements/docs/review_parliamentary_entitlements.pdf?v=2 [accessed 15 January 2015].

- possible alternative service delivery models, including the transfer of responsibilities in relation to certain entitlements between Finance and other agencies;
- the provision to Parliamentarians of written guidance on entitlements;
- processes for communication and provision of advice to Parliamentarians and their staff;
- improving access to entitlements, both to facilitate usage and provide administrative efficiencies;
- improving the monthly management reports provided to Parliamentarians, and transferring the post-payment entitlements certification process from the monthly reports to align with the six-monthly publication of entitlements expenditure reports;
- revising the procedures for processing certain types of claims in order to balance facilitation and control;
- prioritising necessary processing system upgrades; and
- other process improvements.

1.14 Finance has published an implementation plan in relation to the Williams Review recommendations. As at 28 February 2013, Finance had reported that all of the 47 elements of the eight recommendations had been completed. Finance's implementation of those recommendations was examined by ANAO as relevant to the scope of this audit.

Measures announced by SMOS in November 2013

1.15 On 9 November 2013, the current SMOS announced a number of measures directed at strengthening the rules governing Parliamentarians' business expenses. In announcing the measures, the SMOS stated that:

The system of funding the work costs of parliamentarians in carrying out their responsibilities must work in a way that ensures senators and members are accessible to their electors while ensuring taxpayers' money is well spent and maintaining public confidence in the system.

For this reason, the Government will act to strengthen a range of measures governing the funding of parliamentarians' work costs.²⁴

1.16 The SMOS' announcement followed a period in the latter half of 2013 that involved significant media scrutiny of the use of travel entitlements by a number of Parliamentarians. Reflecting that context, the measures announced by the Minister primarily related to travel entitlements. In particular, the SMOS announced the introduction from 1 January 2014 of:

- an amended declaration to be made by a Senator or Member when submitting travel claims;
- a 25 per cent loading to be paid where a Parliamentarian made a subsequent adjustment to travel claims²⁵, other than where the adjustment was the result of an error made by Finance. The SMOS further announced that there would be a grace period of 28 days after making a travel claim in which Parliamentarians could make adjustments without penalty; and
- mandatory training for Parliamentarians and their offices if more than one incorrect claim is lodged within a financial year.

1.17 Implementation of the proposed 25 per cent loading on post-payment adjustments, and further associated amendments of the *Parliamentary Entitlements Act 1990* (PE Act) proposed by Finance to enhance the capacity to recover payments made beyond entitlement, are incorporated in the *Parliamentary Entitlements Legislation Amendment Bill 2014* that was introduced into the Parliament in October 2014. The Bill was still before the Parliament as of April 2015. Other measures are being implemented through administrative processes, or have been implemented via amended Tribunal Determinations.

1.18 The SMOS' announcement further stated that, as part of this process, the Government had considered the recommendations of the April 2010 CROPE report 'that were not adopted by the former Government'.²⁶

24 Senator the Hon Michael Ronaldson, Special Minister of State, Media Release 3/13, *Strengthening the Rules Governing Parliamentarians' Business Expenses*, 9 November 2013.

25 It was subsequently clarified between the SMOS' office and Finance that the 25 per cent penalty loading would only apply in respect to travelling allowance or private vehicle allowance (see paragraph 4.97). However, the amendments provide a mechanism by which additional entitlements may be made subject to the loading in the future if required.

26 See further in Chapter 2.

May 2015 Budget measure

1.19 The 2015–16 Budget delivered on 12 May 2015 included further proposals for amendment to existing travel provisions, as provided under current legislation and Remuneration Tribunal Determinations. Given the Remuneration Tribunal’s responsibilities, implementation of those aspects of the proposals that relate to entitlements that are independently determined by the Tribunal will require consultation with, and the agreement of, the Tribunal. Other aspects of the proposals may require amendments to the PE Act. The relevant measure also proposed amendments to the budget arrangements relating to the operation of a number of aspects of Parliamentarians’ electorate offices, and the introduction of a Parliamentarians’ injury compensation scheme. Finance advised ANAO that implementation strategies for the proposed measures were under consideration as at May 2015.

Audit objective, criteria and methodology

Audit objective

1.20 The objective of this audit was to assess the effectiveness of Finance’s administration of travel entitlements provided to Parliamentarians.

1.21 This audit examined the administration of travel entitlements generally, with a focus on two entitlements (travelling allowance and charter transport) over the period January 2012 to December 2013. It assessed the effectiveness of the administrative arrangements and controls that are in place, including Parliamentarians’ certification of the use of entitlements and arrangements to respond to any issues that arise in respect to entitlements use. More broadly, having regard for the various reviews and reforms announced or undertaken since the 2009–10 audit report was completed, the audit also examined whether the current entitlements framework, and its administration, assists Parliamentarians to adhere to any conditions and limitations on the travel entitlements provided to them.

1.22 The audit scope did not include travel entitlements provided to persons employed under the *Members of Parliament (Staff) Act 1984* (MoP(S) Act). It also did not examine the administration of travel entitlements provided through other agencies, such as transport entitlements provided to Ministers by their home department or the special purpose aircraft flights administered by the Department of Defence.

Criteria and methodology

1.23 To form a conclusion against the audit objective, the ANAO adopted the following high-level criteria:

- the entitlements framework is clearly articulated and supports the transparent, accountable and effective provision of travel entitlements to Parliamentarians;
- travelling allowance payments made by Finance are within the entitlements of the relevant Parliamentarian; and
- charter travel payments made by Finance are within the entitlements of the relevant Parliamentarian, and are utilised in a manner that provides value for money.

1.24 The methodology adopted for this audit included:

- examining documentation relating to implementation of recommendations of the 2010 CROPE report and 2011 Williams Review, and relevant measures announced by the SMOS in November 2013;
- examining Finance's operating procedures and guidelines and other documentation in relation to the administration of travel entitlements, including through the Entitlements Management System (EMS) used to process entitlements payments, and the register used to record calls, contact and queries raised between Finance and each Parliamentarian or their offices in relation to entitlements;
- analytical review of travelling allowance and charter travel payments made in relation to Parliamentarians in the period examined;
- analysing a sample of travelling allowance and charter travel transactions for demonstrated compliance with the relevant head of authority. This included examining: the claim and supporting documentation submitted by the Parliamentarian; processing of the claim by Finance (including pre-payment checks); records of associated use of other travel entitlements; and relevant publically available information. Individual claims were selected for detailed examination on both a random basis and based on the outcome of relevant analytical review;
- examining the post-payment audit and checking function within Finance, particularly as it related to travel entitlements;

- analysis of the periodic certifications provided by Parliamentarians in relation to their use of entitlements; and
- examining documentation relating to the administration of the 'Protocol followed when an Allegation is Received of Alleged Misuse of Entitlement by a Member or Senator' (the Protocol).

1.25 The audit was conducted under section 18 of the *Auditor-General Act* 1997. The audit was conducted in accordance with ANAO auditing standards at a cost to the ANAO of \$887 000.

Report structure

1.26 The audit findings are reported in the following chapters.

Table 1.1: Report structure

Chapter	Overview
2. Entitlements Framework	This chapter examines the progress made in implementing the recommendations of the April 2010 report of the 'root and branch' review of parliamentary entitlements, with a particular focus on the recommendations relating to reform of the legislative and administrative framework underpinning the provision of non-remuneration entitlements (including travel).
3. Confirming the Eligibility of Use of Travel Entitlements	This chapter examines the processes by which assurance is obtained by Finance that travel entitlements are only accessed within the terms of the relevant heads of authority, including for eligible purposes.
4. Key Accountability Mechanisms	This chapter examines key mechanisms used to provide accountability and transparency in relation to the entitlements expenditure incurred by Parliamentarians.

2. Entitlements Framework

This chapter examines the progress made in implementing the recommendations of the April 2010 report of the 'root and branch' review of parliamentary entitlements, with a particular focus on the recommendations relating to reform of the legislative and administrative framework underpinning the provision of non-remuneration entitlements (including travel).

Introduction

2.1 The entitlements of Senators and Members, their families and staff to travel at Australian Government expense, and for the receipt of related allowances, are set out in a complex series of authorising instruments. For example, there are 13 Acts identified by Finance in its Senators and Members Entitlements Handbook as bearing on the provision of entitlements to current and former Senators and Members. The major ones comprise:

- the *Parliamentary Allowances Act 1952* (Parliamentary Allowances Act) and the PE Act, both administered by Finance; and
- determinations made by the Remuneration Tribunal (the Tribunal) under the *Remuneration Tribunal Act 1973* (Remuneration Tribunal Act).

2.2 Implementation of the provisions of those Acts and Determinations also involves a series of subsidiary instruments, guidelines and conventions. Within that framework, all Parliamentarians are provided with a broad entitlement to unlimited domestic travel by scheduled services when travelling for parliamentary or electorate business or other specified purposes. There is also a broad entitlement to car transport when travelling on parliamentary business, subject to certain parameters. However, the specific travel-related entitlements of each serving Parliamentarian are derived from a complicated series of additional entitlements which vary depending upon:

- whether the Parliamentarian is a Senator or a Member of the House of Representatives;
- the nature of the relevant State or electoral division the Parliamentarian represents (in terms of both overall size and geographic make-up); and
- the nature of any additional Parliamentary, Executive or Opposition office held by the Parliamentarian at a given point of time.

2.3 The framework supporting the provision of a range of facilities, services and allowances to Parliamentarians in the conduct of their respective duties (commonly referred to as entitlements) has been the subject of considerable criticism and comment over a number of years. This has included through previous ANAO performance audits which have consistently recommended that the existing framework be reviewed with a view to providing a more robust and accountable footing for accessing of entitlements by Parliamentarians, and the capacity for the associated expenditure of public money to be appropriately overseen and administered.

2.4 As noted at paragraph 1.7, in response to the most recent of those previous audit reports, the then Government agreed to a ‘root and branch’ review of the entitlements framework by an independent committee. The CROPE report was provided to the then Government in April 2010, and tabled in the Parliament by the then SMOS in March 2011.

2.5 ANAO examined the progress made to date in implementing the recommendations of the April 2010 CROPE report, particularly in relation to reform of the legislative and administrative framework underpinning the provision of non-remuneration entitlements.

Recommendations of the Committee for the Review of Parliamentary Entitlements

2.6 The CROPE terms of reference asked the Committee to examine matters ranging from the development of a new simplified framework, including consideration of the legislative basis underpinning the provision of entitlements, to a range of specific individual entitlements as provided under the existing framework (see Figure 1.1 in Chapter 1). In that context, nearly a third (11) of the 39 recommendations set out in the CROPE report related to reforming the legislative and structural framework underpinning the establishment and provision of parliamentary entitlements. This included four recommendations relating to establishing parliamentary remuneration and associated consequential effects; and two recommendations for creating a legislative head of authority for the provision of benefits to former Prime Ministers and former Governors-General. The remaining five recommendations in this group set out proposals for significant legislative and administrative reform in order to establish a consistent, simple and transparent framework for funding Parliamentarians’ non-remuneration business expenses—currently known as entitlements.

2.7 In particular, the report recommended the adoption of a two stream approach under which payments that are in the nature of remuneration (personal reward²⁷) would be clearly separated from the ‘tools of trade’ by which Parliamentarians carry out their respective roles.²⁸ It was recommended that the remuneration element be determined by the Remuneration Tribunal, including that the Tribunal be provided with the power to determine Parliamentarians’ base salary (based on work value) through non-disallowable determinations. It was further recommended that the ‘tools of trade’ stream (including travel-related entitlements) be covered by a single, simplified piece of legislation to be administered by the SMOS (see further at paragraphs 2.23 to 2.45).

2.8 A further three recommendations were directed at enhancing transparency and accountability mechanisms associated with Parliamentarians’ use of entitlements.²⁹

2.9 The remaining 25 CROPE recommendations related to abolishing, reforming or establishing a range of entitlements provided under the existing framework. This included 13 recommendations relating to certain domestic and overseas travel entitlements for sitting and former Parliamentarians and their families. In that respect, the CROPE report commented that:

The parliamentary entitlements surrounding travel are arguably the most complex, confusing and difficult to understand both for senators and members and those who administer the entitlements. The committee considered various aspects of travel to assess their continuing relevance, and identify where flexibility and simplicity could be improved.

Implementation arrangements

2.10 In announcing the ‘root and branch’ review in September 2009, the then SMOS requested that the final report be provided within six months. That timeframe was largely achieved, with the report being finalised in April 2010.³⁰

27 Such as salary, allowances in the nature of salary, living away from home allowances, superannuation and severance benefits.

28 Including transportation, official telephones, office equipment and facilities, and expenditure for communicating with electors by way of printed or electronic material.

29 Progress in implementing those recommendations is discussed further in Chapters 3 and 4.

30 The Committee was assisted in that respect by a number of background and discussion papers prepared by the departmental secretariat, which reflected Finance’s accumulated experience in administering the existing framework. A number of the recommendations subsequently made by the Committee were based on proposals and advice provided in those papers.

However, subsequent consideration and, where it has occurred, implementation of the resulting recommendations has been a protracted process.

Government consideration of the CROPE report

2.11 Consideration by the then Government of the CROPE recommendations was the subject of an extended process throughout 2010. Finance records indicate that, by November 2010, the department was advised that it was no longer proposed that a response to individual recommendations would be considered by the Government at that time. Instead, consideration would be given to approving the public release of the report and to related legislative drafting work being undertaken.³¹ In November 2010, the CROPE report recommendations were referred to a sub-committee of Cabinet for further consideration.

2.12 On 10 January 2011, the Tribunal President (who, as noted at paragraph 1.10 of Chapter 1, was a member of the independent committee) wrote to the then SMOS expressing the Tribunal's long-standing dissatisfaction with the existing framework.³² The President offered the Tribunal's assistance in the consideration of reform, particularly in relation to the determinative jurisdiction for parliamentary remuneration being vested in the Tribunal³³, which the President indicated he understood to be the Committee's principal recommendation. In February 2011, the then Government agreed to Recommendation 1 of the CROPE report to:

- restore the Tribunal's power to determine parliamentary base salary;
- require the Tribunal to publish reasons for its decisions in relation to parliamentary remuneration; and

31 On 15 November 2010, this was amended to include consideration of responses to five specific recommendations. In that respect, the Remuneration Tribunal had met with the then SMOS on 15 November 2010 to discuss matters relating to the preferred arrangements for governing parliamentary remuneration and associated entitlements.

32 The President advised that: 'In August 2009, the Tribunal wrote to [*the then*] Special Minister of State ... about parliamentarians' remuneration and entitlements. We referred to the Tribunal's long-standing concerns; to the fact that there had been no thorough review for a considerable period; and to the need for such a review (which the Tribunal, itself, was willing and able to conduct). [*The then SMOS*] elected to conduct the review through a committee. The Tribunal's views about the appropriate arrangements for the determination and expression of parliamentary remuneration and other entitlements were expressed clearly in its submissions to that committee. Our submissions were made public at the time and are still readily available on the Tribunal's website.'

33 The Tribunal's CROPE submission had called for the remuneration elements of a Parliamentarian's package to be rationalised and consolidated, and determined independently through an examination of the roles and responsibilities of a Parliamentarian.

- remove the Parliament's ability to disallow parliamentary remuneration determinations made by the Tribunal.

2.13 A further recommendation relating to reviewing the profile of Opposition personal staffing had already been implemented prior to the February 2011 Government decision. Decisions in respect to the 37 remaining CROPE recommendations were deferred pending further consideration by the Tribunal and advice to government.

Arrangements for consideration of remaining recommendations

2.14 In tabling the CROPE report in the Parliament on 24 March 2011, the then SMOS announced that the then Government had accepted the recommendation relating to the determination of parliamentary base salary by the Tribunal. In introducing legislation to make relevant amendments to the Remuneration Tribunal Act, the Minister advised the Parliament that the amendments would implement the 'cornerstone recommendation' in the CROPE report. Also on 24 March 2011, the Tribunal released a statement welcoming the then Government's announcement and further noting that:

The Tribunal considers that it would be both logical and prudent for the Tribunal to be requested to consider the other recommendations of the Review of Parliamentary Entitlements. This would include consideration of broader entitlement issues, including parliamentarians' 'tools of trade'.

2.15 On the same day, the SMOS announced that he had agreed to the President's request that the Tribunal be allowed to consider the other recommendations of the CROPE report and to make recommendations on Parliamentarians' tools of trade and other entitlements issues. The Minister further stated that:

Given the Committee for the Review of Parliamentary Entitlements has provided the first comprehensive review of federal parliamentary entitlements in over 35 years...there are many contentious issues to deal with. In order to ensure reform is comprehensive and well informed, the Government has welcomed further consideration by the Remuneration Tribunal.

Remuneration Tribunal consideration of CROPE recommendations

2.16 The recommendations referred to the Tribunal included a number of matters, including the 'tools of trade' proposals, that would require legislative reform and were not, therefore, capable of being implemented directly by way of Tribunal Determination. In addition, in the Tribunal's 2010–11 Annual Report, the Tribunal's President noted that:

... the recommendations in the report of the Review of Parliamentary Entitlements are extensive. It will take the Tribunal some time to address them and to report to the Special Minister of State.

2.17 Similarly, in a statement issued on 30 September 2011, the Tribunal reaffirmed its previously expressed view that parliamentary entitlements should be rationalised and separated into two distinct streams, but also commented that: 'This will require a comprehensive review; such a review will take some time'. The statement advised that, as a first step, the Tribunal was conducting an assessment of the work of federal parliamentary backbenchers so as to establish a defensible basis for assessing appropriate remuneration and a benchmark for future assessments.

2.18 The Tribunal published its initial report on the review of the remuneration of members of Parliament in December 2011.³⁴ The report identified an increased base salary for Senators and Members that the Tribunal would be setting based on the outcome of the work value assessment, together with amendments the Tribunal was proposing to make to certain other entitlements. The Tribunal reported that it considered the decisions set out in its December 2011 report responded, in whole or in part, to eight of the CROPE recommendations. In addition, the Tribunal recommended that the Government streamline the existing entitlements framework to reflect a firm delineation between remuneration and business expenses streams.³⁵ In relation to the remaining CROPE recommendations, the December 2011 report advised that the Tribunal would next review:

- the business funding given to Parliamentarians, with a view to rationalising and separating remuneration and business expenses into two distinct streams; and
- whether there is any scope for improving or refining the provisions for travel within Australia, including consideration of a number of CROPE recommendations relating to existing travel entitlements.

2.19 As at April 2015, more than three years later, the Tribunal had not issued further reports in relation to its review of entitlements, including

34 Remuneration Tribunal, *Review of the Remuneration of Members of Parliament*, Initial Report, December 2011.

35 See further at paragraphs 2.34 to 2.37.

travel.³⁶ In that respect, the Tribunal stated in its 2013–14 Annual Report that, as its work programme permits, further consideration will be given to rationalising parliamentary entitlements to simplify and clarify the numerous complexities in the current arrangements.

2013 Government implementation of CROPE recommendations

2.20 In November 2013, the SMOS announced the amendment or abolition of eight specific travel entitlements provided to Parliamentarians or their families under the existing framework.³⁷ Five of those entitlements had been the subject of CROPE report recommendations. The measures announced by the SMOS fully or partially implemented the relevant recommendation in three cases. In the other two cases, the CROPE report had recommended that the entitlement be abolished, but the SMOS announced an alternative measure.³⁸ The remaining three measures related to limiting the circumstances in which Parliamentarians and their families would be entitled to use travel entitlements when breaking a journey between Canberra and Western Australia or the Northern Territory. The SMOS also announced a measure that partially implemented a CROPE report recommendation directed at improving accountability in relation to the operation of the protocol for the handling of allegations of potential misuse of Parliamentarians entitlements (see further at paragraphs 4.55 to 4.93).³⁹

36 The Tribunal has, however, issued Determinations amending certain existing entitlements that were the subject of a CROPE recommendation. Those amendments were made at the request of the current Government following the November 2013 announcement of various measures by the SMOS (see further at paragraph 2.20).

37 This included certain entitlements provided by way of Tribunal Determination. Following consideration of a request from the SMOS, those measures were subsequently implemented by the Tribunal by way of amended Determination issued in February 2014. Relevant amendments of the PE Act required to implement the measures in relation to the remaining entitlements were included in the *Parliamentary Entitlements Legislation Amendment Bill 2014* that was before the Parliament as at April 2015.

38 In one case, relating to the additional travel entitlements provided under the PE Act to the dependent children of Ministers and other specified office holders (defined as 'senior officers'), the measure announced by the SMOS was to retain the entitlement but reduce the qualifying age from under 25 to under 18. Relevant amendments of the PE Act required to implement the measure are also included in the amendment Bill before the Parliament (to date, no amendments have been made to similar provisions of Tribunal Determinations). The second case related to the provision under the PE Act for a spouse/partner to accompany a Parliamentarian travelling overseas on a parliamentary delegation. The SMOS' announcement stated that an Implementation Group that would be established to advise on implementing the reforms set out in the November 2013 announcement would also be asked to 'examine whether when a spouse or partner travels on delegations it should happen at no net expense to the taxpayer.' As at April 2015, no changes had been made to the relevant provision of the PE Act.

39 The SMOS also announced that the Government would prohibit the employment of specified relatives within a Parliamentarian's own office. In that respect, the CROPE report had proposed the introduction of conditions to improve the transparency of the practice of Parliamentarians employing close family members. The announced prohibition, implemented through a determination made under the MOP(S) Act, applies to new employment agreements entered into from 1 January 2014.

Implementation progress summary

2.21 Following the deliberations to date of the previous and current governments and the Tribunal, as at April 2015 action had been taken in respect to all or part of 17 of the 39 recommendations made in the April 2010 CROPE report. This comprised:

- six recommendations that had been fully implemented;
- two recommendations that had been actioned through amendments or reforms of the relevant entitlements that took a different form to those proposed by the CROPE report;
- seven recommendations that had been partially implemented, including four in which the relevant entitlement has been amended through a different means to that proposed in the CROPE report. For three of those seven recommendations, the Tribunal's December 2011 report identified the basis on which it had decided to reject part of the relevant recommendation; and
- two recommendations in respect to which a different, related measure had been subsequently implemented by government.⁴⁰

2.22 Records relating to the implementation status of a further three recommendations were not examined within the scope of this audit.

Progress in reforming the entitlements framework

CROPE recommendations for reform of the entitlements framework

2.23 The conclusions reached in the April 2010 CROPE report in regard to the shortcomings in the existing framework applying to the provision of Parliamentarians' entitlements were similar to those set out in the earlier series

⁴⁰ The first related to a recommendation that the government take measures to prevent the recommended folding-in of electorate allowance into base salary (which had been supported in the Tribunal's submission to the review) flowing to retirement benefits paid under the *Parliamentary Contributory Superannuation Act 1948* (the 1948 Act). In its December 2011 report, the Tribunal stated that, in the context of undertaking the work value assessment to set base salary, it had changed its view in relation to the cashing out of individual entitlements. The Tribunal decided to retain electorate allowance in its current form, reporting that 'it now accepts this as a business expense payment'. However, the underlying principle of the CROPE recommendation was reflected in amendments subsequently made to the 1948 Act to ensure the increased base salary did not flow to the pensions of retired Parliamentarians. The second related to the recommendation to abolish the additional travel entitlements of the dependent children of senior officers (see footnote 38).

of ANAO audit reports in this area. In highlighting the complex nature of the existing framework⁴¹, the Committee concluded that:

... the existing arrangements are an extraordinarily complex plethora of entitlements containing myriad ambiguities...This mix of primary legislation, regulations, determinations, procedural rules, executive decisions, accepted conventions and administrative practices has resulted over the years in inconsistency, ambiguity, duplication, overlap, redundancy and gaps in the framework ... No one should be required to work within such a complex system; neither senators and members nor those required to administer the entitlements. The need for greater simplicity and transparency was therefore important in the committee's considerations.

2.24 The report commented that the Committee's recommendations aimed to:

... ensure that senators and members are given relevant and adequate resources to do their jobs within a simplified, transparent and accountable framework that has regard to contemporary community standards. In making its recommendations, the committee has endeavoured to strike a balance between the needs of parliamentarians and public confidence in the appropriateness of the level of support provided to elected representatives.

2.25 In that context, the CROPE report made a series of recommendations relating to the framework for establishing Parliamentarians' entitlements. In particular, as noted at paragraph 2.7, the Committee considered it important to separate remuneration from the 'tools of trade' by which Senators and Members carry out their roles. The Committee concluded that a clearer delineation between those two streams 'would help to assure both the parliamentarians and the wider community about the true nature of the expenditure'.

Establishing a 'tools of trade' stream

2.26 The CROPE report noted that responsibility for determining the tools of 'the parliamentary trade' is currently shared between the Tribunal and the SMOS (through regulations made under the PE Act)⁴², and commented that

41 The Committee noted that the existing framework comprised: at least 11 Acts; three sets of regulations; six Tribunal determinations and reports; 21 determinations made under the MOP(S) Act and nine formal procedural rules and sets of guidelines.

42 In addition, some aspects of such 'tools' (such as a range of travel benefits) are also specified in the Schedule to the PE Act itself, with those scheduled benefits able to be varied or omitted by Regulation or Tribunal Determination. Determinations that vary or omit a scheduled benefit do not include reference to the relevant scheduled benefit or result in a revised compilation of the Act's schedule.

this duality contributes to the complexity of the entitlements framework. The report further noted that, under the existing framework, there are unclear and sometimes inconsistent definitions of key terms relating to the use of entitlements, and that:

A new approach to delivering tools of trade could establish primary legislation, clearer powers of delegation (which would be used in accordance with the objectives of the primary legislation) and subordinate legislation that groups like entitlements together, with consistent meanings and operational rules. That type of approach would establish a robust foundation upon which to administer and use the entitlements covered by the scheme.⁴³

2.27 Accordingly, the Committee recommended that the government enact a single piece of legislation to provide for the regulation of the tools of trade provided to Parliamentarians at public expense. The report stated that the object of this new legislation should be to provide a consistent, simple and transparent framework, which the Committee considered would give Senators and Members the tools of trade necessary to carry out their roles and responsibilities and the provisions that would apply when they were accessing publicly funded entitlements. The report recommended that, within that replacement legislative framework:

- the tools of trade matters would be determined by the SMOS under regulations approved by the Parliament;
- in doing so, the SMOS would draw on advice from an independent advisory committee convened as required (but at least once in the life of each Parliament)⁴⁴; and
- the SMOS' decisions, including any advice received from the advisory committee and the government's response, would be published.

2.28 As the means of providing the tools of trade resources to Parliamentarians, the report also recommended the introduction of capped allocations that provide the recipient with spending discretion. This was to be

43 The question of articulating the scope of key terms that establish entitlement eligibility under the existing framework is discussed further at paragraphs 2.46 to 2.78.

44 In addition to reviewing the tools of trade at least once during each Parliament, the Committee considered the SMOS should have the capacity to draw on independent advice before he or she made decisions on more complex or potentially partisan matters, and that the advisory committee should not have a majority membership of former Parliamentarians or include any current Parliamentarians.

in place of the existing approach under which costs are contained primarily through the use of rules and eligibility criteria.⁴⁵

2.29 Advice prepared by Finance in June 2010 in the context of the then Government's consideration of the CROPE report commented that:

The recommendations which will contribute most to the simplification of the entitlements framework are those which recommend that the Special Minister of State alone determine non remuneration entitlements (tools of trade or business related expenses) under the regulating power of legislation and the recommendation that tools of trade entitlements be covered by a single piece of legislation.

September 2011 departmental proposal for reform implementation

2.30 As discussed at paragraphs 2.14 to 2.15, in March 2011 the then Government referred most of the CROPE recommendations to the Remuneration Tribunal for further consideration and advice. However, prior to the Tribunal reporting on those matters, in August 2011 the then SMOS requested that Finance develop a proposal to replace the existing legislative framework of parliamentary entitlements. In September 2011, the department provided the Minister with a proposed legislative framework which reflected the approach to the provision of non-remuneration entitlements recommended by the CROPE report.

2.31 Finance advised that the proposal was designed to deliver the resources necessary for a Senator or Member to efficiently perform his or her role as a federal Parliamentarian in a single piece of legislation. The proposed resources Act would be expressed in descriptive terms 'without the current level of prescription that can inhibit the adaptation of entitlements as circumstances change'. Finance further advised that, under the proposal, resources (currently referred to as entitlements) and remuneration (salary and allowances) would be separated, both legislatively and administratively. Resources would be provided under the proposed resources Act and administered by Finance; while remuneration, set by the Tribunal, would be administered by the chamber departments.

⁴⁵ That proposal extended to the cost-neutral conversion of currently uncapped entitlements to capped allocations. The Committee further recommended that the introduction of capped allocations be accompanied by additional administrative controls, including auditing, transparent disclosure of expenditure, and the provision of advice to Parliamentarians about their level of use of each allocation.

2.32 The proposed resources Act was to be supported by regulations. An accompanying plain English guide, also issued under authority of the Act, was to embody the policies that directed the use of the resources provided, and give the Minister power to alter policy over time, as necessary, to ensure that the working needs of Parliamentarians continued to be met. Finance advised that the proposed plain English guide would replace the non-legislative elements of the current framework (such as determinations, procedural rules, guidelines, ministerial decisions and conventions⁴⁶), as well as the guidance currently residing in the suite of entitlements handbooks published by Finance.

2.33 The departmental brief asked the SMOS to note the proposed legislative framework, and to agree to meet with departmental officials to discuss the draft proposal. The Minister signed the brief on 27 September 2011. Departmental records identify that, at a meeting with the SMOS on 7 December 2011, it was agreed that preliminary work on the development of reforms to the parliamentary entitlements framework would be suspended pending the deliberations of the Tribunal.

Remuneration Tribunal consideration

2.34 The Tribunal's December 2011 report identified similar conclusions in relation to the inadequacies of the existing entitlements framework to those set out in the April 2010 CROPE report. In particular, the Tribunal noted that

... the entitlement framework does not provide a clear and transparent view of what parliamentarians are entitled to or how they use those entitlements. In fact the framework is quite opaque.

2.35 The Tribunal stated that it was timely to consider the development of a framework that supports the CROPE report's recommendation for legislative reform. The Tribunal recommended that government streamline the existing entitlement framework to reflect a firm delineation between remuneration and business expense streams, and that the framework, inter alia, should provide:

- that the Remuneration Tribunal Act covers all payments of a remuneration type for Senators and Members;
- that a single Act, being the PE Act or a successor, should contain the legislative provisions underpinning all business expense funding

46 The current application of conventions in the use of entitlements is discussed further at paragraphs 2.79 to 2.105.

provided to Senators and Members to undertake their electorate and Parliamentary accountabilities; and

- an improved interface between the administrators of the two Acts so that the two legislative instruments operate singularly and separately with no overlap.

2.36 The Tribunal commented that a move to a simplified framework would remove much of the opaqueness of the current framework, and that the introduction of legislation that facilitates the provision, operation and compliance of the two streams of entitlements 'is a sensible and fresh approach to the difficulties experienced within the current legacy framework'.

2.37 In January 2012, the then SMOS requested that Finance provide him with regular reports, in the form of a traffic light report, on the implementation by 30 June 2012 of the recommendations made in the Tribunal's December 2011 report. Between March 2012 and February 2013, Finance provided the SMOS with seven progress reports. The final report in that series noted that progress in relation to the Tribunal's recommended reform of the entitlements framework remained assessed as 'red'. The department's February 2013 advice was that:

This recommendation will not be achieved unless priorities change and while current resourcing constraints remain in place.

2013 reform implementation proposal

2.38 On 8 November 2013, Finance submitted a brief on reform of parliamentary entitlements to the current SMOS which advised that:

... [*the current*] system is expensive to administer, whilst at the same time failing to provide a fundamental safeguard that payments are only made in accordance with the entitlements.

2.39 Similar to the proposal provided to the then SMOS in 2011, the department proposed the components of a new simplified framework that Finance considered would facilitate a greater understanding of available entitlements by Senators and Members and their staff, and lead to a restoration of public trust in Parliamentarians' use of entitlements. This included:

- separation of business/work expenses and personal remuneration, enshrined in legislation, with all personal remuneration moved to the remit of the independent Remuneration Tribunal;

- rationalisation and simplification of the legislative heads of authority of parliamentary entitlements;
- plain English legislation with accompanying policy;
- more timely and potentially more detailed expenditure reporting;
- reduced prescription regarding individual budget caps and a move to a more global budget encompassing purpose-based business expenses⁴⁷; and
- a subsequent rationalisation and reduction of administrative processes and associated costs for the public purse.

2.40 Finance proposed that a staged approach to reform could begin with the recommended separation of remuneration from business expenses, which could be undertaken in conjunction with the Tribunal and would not diminish the entitlements available to Senators and Members. The department advised that reform of the entitlements system could be approached in several different ways, including through the conduct of a further internal or external review. However, the department also advised that, before proceeding, it would be of benefit to clarify the outcomes the (new) Government was seeking. Finance advised that: 'If reform is considered the best way to achieve the desired outcomes, then the terms of reference could be framed to deliver these intended results'.

2.41 The 8 November 2013 brief recommended that the SMOS agree to the department providing a proposed reform agenda by 18 December 2013. A copy of the brief that had been signed or otherwise annotated by the SMOS or his Office was not held in departmental records.

2.42 As discussed, the SMOS announced a series of measures directed at strengthening the rules governing Parliamentarian's business expenses on 9 November 2013.⁴⁸ A number of those measures and associated amendments to the PE Act are scheduled to be implemented through the *Parliamentary*

47 In this respect, Finance advised: 'For example, there would be scope, perhaps through the establishment of capped global budgets, to amalgamate entitlements that are currently fragmented. Broader budgets, with clearer principles for their use, would provide Senators and Members with greater confidence in accessing entitlements as well having more flexibility than currently exists.' Finance advised that such a move could also create opportunity for more streamlined access to funding for business expenses, and provide scope for reduction of administrative red tape.

48 See paragraphs 1.15 to 1.18 and paragraph 2.20. Finance advised ANAO that the department had not been consulted in relation to that announcement.

Entitlements Legislation Amendment Bill 2014. As at April 2015, that Bill was still before the Parliament. However, the measures included in the Bill do not address the overarching structural inadequacies of the existing non-remuneration entitlements framework that have been consistently highlighted in independent reviews and commentary.

2015 Budget measure

2.43 The 2015–16 Budget delivered on 12 May 2015 included a measure titled Simplifying Parliamentary Budgets. That measure involved proposals to:

- streamline a range of existing entitlements relating to the operation of Parliamentarian’s electorate offices into two separate budgets to provide greater efficiency and flexibility for Parliamentarians. Departmental documentation indicates that: a new office budget would be available for use in purchasing a range of items including publications, office requisites and stationery (including choice in supplier), printing and communications and software (with that budget being equivalent to the value of the existing entitlements, with indexation arrangements to apply); and a new electorate support budget equivalent to the value of the current capped electorate staff travel and relief staff budgets, which is to be used for electorate staff travel and employment of relief staff. As discussed⁴⁹, the introduction of capped allocations that provide the recipient with spending discretion had been recommended by the CROPE report as the means of providing the tools of trade resources to Parliamentarians; and
- establish a Parliamentarians’ injury compensation scheme. The establishment of such a scheme had been supported by both the CROPE report and December 2011 Remuneration Tribunal report.

2.44 The Budget measure also included proposals for further amendment to existing travel entitlements as provided through the PE Act and Remuneration Tribunal Determinations. This included proposals for:

- incorporating travel on ‘business as an elected representative’ as an additional generic eligible purpose of travel at public expense⁵⁰;

49 See paragraph 2.28.

50 See further at paragraphs 4.109 to 4.110.

- better aligning travel provisions with the purpose of travel, including streamlining of existing travelling allowance provisions; and
- providing a mechanism by which a Parliamentarian would be able to certify usage of travel services that is not within standard entitlement parameters, but which the Parliamentarian considers to provide greater value for money.

2.45 As a number of the proposals relate to travel entitlements that are determined by the independent Remuneration Tribunal, their implementation will require consultation with, and the agreement of, the Tribunal. As with the measures announced in November 2013, the amendments proposed in the May 2015 Budget similarly do not address the overarching structural inadequacies of the existing non-remuneration entitlements framework that have been highlighted by earlier independent reviews and audits.

Scope of key eligibility terms

2.46 Under the existing framework, the expenditure a Parliamentarian may legitimately incur at public expense is primarily determined by reference to the purpose for which the relevant good, service or allowance is being utilised or accessed. The Acts, Determinations and other instruments under which the various entitlements are established use a number of phrases to describe the purposes for which each entitlement will be available. These include: ‘electorate business’; ‘parliamentary business’; ‘official business’ as a specified office-holder within the Executive, Opposition or Parliament; and for certain travel-related entitlements, when travelling on ‘duties or functions connected with’ a specified office. However, the meaning (or scope) of those purpose terms has not been articulated.

2.47 There is also uncertainty as to the activities captured by terms used to identify the purposes for which individual entitlements may not be used. For example, the relevant Tribunal Determinations specify that travel and related entitlements may not be used for ‘party business’ other than to attend specified types of properly constituted party meetings and conferences. However, the meaning of ‘party business’ in the context of travel entitlements set by

Determination has not been articulated.⁵¹ In addition, of the entitlements provided under legislation or Determination to sitting Parliamentarians, it is only the private plated vehicle entitlement that is expressly identified as also being generally available for private purposes.⁵² By implication, the entitlement for Senators and Members to travel by other means at public expense is not available for private purposes. However, the scope of circumstances considered to represent travel for private (or personal) purposes has also not been articulated.

2.48 In 1997, in response to a request from the then Government to consider defining the key terms ‘Parliamentary’, ‘electorate’ and ‘official’ for the purposes of travel entitlements, the Tribunal stated that it had decided that it would be inappropriate for it to define those terms to exclusion.⁵³ However, a number of subsequent ANAO audit reports identified the on-going potential for differing interpretations of key terms to give rise to difficulties for both Parliamentarians and administering departments in ensuring the eligibility of expenditure. As was noted in the 2009–10 audit report, advice provided to the then SMOS by Finance in 2007 had been that:

The majority of entitlements provided under the Parliamentary entitlements framework are to facilitate a Senator or Member’s Parliamentary, electorate, official and party business. There are more than 50 separate entitlement provisions that rely on the terms *Parliamentary*, *electorate*, *official* and *party business* within the Parliamentary entitlements framework. However, to date, these terms remain undefined and there is little formal guidance provided to Senators and Members about how these terms should be interpreted. Several audit reports have highlighted the potential for differing interpretations but have also recognised the difficulty in narrowly defining these terms.

2.49 In this latter respect, the 2009–10 audit report commented that the challenges in developing definitions and/or providing guidance on key terms that limit the eligible use that may be made of entitlements is recognised, but that they are not insurmountable. The 2001–02 audit report had similarly recommended that, to enhance the transparency and accountability of the

51 In that respect, subsequent to the 2009–10 audit report, the then Government introduced a series of amendments to the printing and communications entitlement which resulted in the PE Regulations now specifying a definition of ‘party business’ for the purposes of that entitlement. However, the narrow terms of that definition are of little relevance to the use of any other entitlement.

52 In addition, the relevant Determination provides that Parliamentarians may use the car transport provided in Canberra for specified personal emergencies, compassionate circumstances and to access services such as religious services and banking when not available at Parliament House.

53 Remuneration Tribunal, *Report on the Fundamental Design and Administration of Travel Allowances for Members of the Parliament*, October 1997, p. 15.

entitlements management framework and assist Parliamentarians in the management of their entitlements, Finance develop and promulgate guidelines on the activities likely to be considered to represent parliamentary and electorate business and expenditure that is unlikely to qualify for reimbursement.

CROPE consideration of eligible purpose terms

2.50 The CROPE terms of reference included that the Committee would provide advice and recommendations to government addressing ‘defining, in regulations and/or legislative instruments, key terms and the scope and any limits on entitlements use’. In this respect, Finance’s December 2009 submission to the independent review again pointed to the difficulties the existing situation presented in terms of effectively administering the entitlements provided to Parliamentarians, and commented that:

The current framework places Finance in the difficult position of being responsible for the proper administration of Parliamentary entitlements, but having very little basis on which to question whether or not an entitlement has been used appropriately or to take action in relation to a Parliamentarian who has not appropriately accessed an entitlement. This is as a direct result of key terms such as *Parliamentary*, *electorate*, *official*, *party*, *private* and *commercial* business being undefined in the current entitlements legislation. Instead, the current framework relies very heavily on interpretation and judgement, mainly by the Senators and Members who access the entitlements, on whether or not their entitlement use is appropriate. Finance considers that accountability would be enhanced through the definition of key terms in any proposed new legislative framework.

In a simplified entitlements regime, it may be possible to replace the current terms *Parliamentary*, *electorate* and *official* business with a single term that defines the business of a Parliamentarian that may be supported by the use of Parliamentary entitlements. Sensible definitions of *private* and *commercial* could also be developed.

2.51 In December 2009, the then SMOS wrote to the Committee outlining difficulties that had been encountered with the practical interpretation and implementation of the definition of ‘electioneering’ the then Government had introduced in October 2009 (and abolished in December 2009) in relation to the printing and communications entitlement. The Minister asked the Committee to consider alternative options for addressing the recommendation made in the 2009–10 audit report in relation to addressing the risk of entitlements being used to meet costs associated with election campaign expenses.

2.52 In discussing the limitations of the existing framework, the April 2010 CROPE report commented that: ‘A key framework design question is how to make the purpose of specific entitlements clearer and more defensible’. The report acknowledged the interpretative and administrative difficulties that arise from leaving key terms within the current framework undefined. However, the Committee concluded that reaching agreement on statutory definitions of Parliamentarians’ business would present intrinsic difficulties.⁵⁴ In that respect, the minutes of the Committee’s March 2010 meeting recorded that the Committee had also agreed that a move away from the use of these key terms would be appropriate, on the basis that, as long as they exist, ‘they will cry out for definition’.

2.53 The Committee concluded that it would be preferable for government to identify, through the use of broad categories, those activities that would be publicly funded. Specifically, the Committee suggested that the Government identify activities that, regardless of the category of business in which they might fall, would be publicly funded (for example participating in public debate, attending meetings and representing the interests of constituents), or would not (for example producing and distributing how-to-vote material). Activities that were not identified would not be publicly funded. By way of example, the CROPE report set out a list of the activities that might be funded in relation to a Senator’s or Member’s electorate or constituents.

2.54 The Committee further noted the need for any formal description of identified activities to include a mechanism that would allow the descriptions to evolve over time to reflect changes in parliamentary activity and technological change. While acknowledging that identified activities would still be open to contest, the Committee considered ‘the associated risks to be lower than those of finite statutory definitions’. The suggestion set out in the April 2010 CROPE report has not been implemented.

2.55 In March 2012, Finance advised the then SMOS that:

At our meeting with you on 3 November 2011 to discuss the issues raised in [*a September 2011 departmental brief setting out a proposal for a replacement legislative framework for Parliamentarians’ entitlements*]⁵⁵, you agreed that any parliamentary

⁵⁴ The Committee commented that those difficulties included the risk that any definition adopted would not be accepted by all Parliamentarians or resolve the ambiguities in the current framework; could restrict Parliamentarians in performing their duties; and might be breached inadvertently because of the broad and unpredictable nature of the job of a Parliamentarian.

⁵⁵ See paragraphs 2.30 to 2.33.

consultative group convened to consider entitlements matters should also have put before it consideration of the definitions of *parliamentary*, *electorate*, *official* and *party* business. The Department is awaiting your advice as to which Parliamentarians have been nominated to participate in the consultative group.

2.56 Departmental records examined by ANAO did not document any subsequent deliberations of a parliamentary consultative group in relation to articulating the scope of key eligibility terms used in the existing framework. In April 2015, Finance advised ANAO that, to the department's knowledge, the consultative group was not convened.

Departmental guidance on the scope of key eligibility terms

2.57 In the above context, Finance has continued its existing approach in relation to advising Parliamentarians as to whether a particular nominated activity is likely to fall within the relevant eligible purpose for accessing entitlements. Specifically, while the department is able to provide advice in relation to the terms of an entitlement, it has been Finance's policy to advise a Parliamentarian that he or she must satisfy him or herself as to whether a particular activity would constitute, as relevant, electorate, parliamentary or other eligible business. This has been the case both prior to a Parliamentarian submitting a claim and where a Parliamentarian seeks advice post-payment.

Provision of written entitlements advice

2.58 In October 2009, the Parliamentary Entitlements Advisory Committee (PEAC) (comprising Finance senior officials) was formed to give effect to the then Government's decision to establish a vetting and checking system for the new printing and communications entitlement. The PEAC provided written advice in respect to whether a particular item a Senator or Member was proposing to print came within the terms of the entitlement. If followed, that advice was to be treated as authoritative such that the Parliamentarian would not be held at fault if it was later discovered that the advice was incorrect (with any related recovery of costs likely to be waived).

2.59 In respect to the provision of entitlements advice more broadly, the January 2011 report of the Williams review commented that a concern expressed by Parliamentarians had been that both written and oral advice on entitlements from the department could lack clarity or be inconsistent. However, the report also noted the difficulties that arose in providing

definitive advice in the context of an entitlements framework 'that is based on three terms (parliamentary, electorate and official business) that are not easily defined but are used as eligibility criteria for over 50 entitlements'.⁵⁶

2.60 Those difficulties were again highlighted in advice provided to the then SMOS in April 2011 in response to a request that Finance explore options for expanding the PEAC's functions to cover other entitlements.⁵⁷ Finance advised that it could expand the PEAC's function, but that:

...The underlying problem with providing definitive written advice in relation to other entitlements lies with the complex and often ambiguous entitlements framework. In its current form, the framework for entitlements, other than the printing and communications entitlement, is a complex and sometimes ambiguous mix of legislation, determinations, executive decisions, practice, precedent and convention. This makes definitive interpretation difficult and necessarily involves qualifications, because access under one head of authority may impact, for example, on an entitlement provided under another head of authority. It is also difficult to be definitive when the framework is so opaque and, frequently, a definitive answer simply does not exist. Decisions about access to entitlements are commonly reliant on assumptions of the proposed purpose for their use. In this regard, terms such as parliamentary/electorate/official business are not defined and, even with the best intention, are difficult to define. As a result they are left as a matter for self-determination by the entitlee ...

2.61 The department noted the April 2010 CROPE report's recommendations for legislative reform, and advised that a simplified framework would assist Parliamentarians in navigating their entitlements and Finance in providing more

56 The Williams Review made a number of recommendations directed at improving the provision of written and oral advice to Parliamentarians, including through enhancements to the suite of entitlements handbooks, helpdesk processes and the call register system. Those recommendations have been progressively implemented by Finance.

57 The request for the department to develop the proposal had arisen in the context of discussions between Finance and the Offices of the then Prime Minister and then SMOS in relation to consideration of the role of the then proposed Parliamentary Integrity Commissioner and consultations with the Australian Greens and Independent Members of Parliament. In this respect, the September 2010 Agreements between the Australian Labor Party (ALP) and the Australian Greens, the ALP and Mr Andrew Wilkie MP, Member for Denison, and the ALP and Mr Tony Windsor MP, Member for New England, and Mr Rob Oakeshott MP, Member for Lyne envisaged that a Parliamentary Integrity Commissioner would be established within a year and would be responsible for investigations relating to Parliamentary entitlements, and providing advice to Parliamentarians on ethical issues. The department referred the then SMOS to its previous advice regarding the role and functions of a Parliamentary Integrity Commissioner which had recommended that, to ensure a greater degree of independence and objectivity in conducting investigations, the provision of investigations and ethical advice be separated from the provision of advice, administration and reporting of entitlements. As at April 2015, a Parliamentary Integrity Commissioner had not been established.

definitive advice. Finance provided the then SMOS with examples from three 'live' cases to demonstrate the issues it was likely to face in providing definitive written advice in relation to travel entitlements under the existing framework. The examples provided highlighted that, where the question of eligibility goes to matters of the purpose for accessing the entitlement, reliance is placed on the relevant Parliamentarian's self-assessment.⁵⁸ In May 2011, Finance provided the then SMOS with a proposal for an enhanced entitlements advisory service, but also again advised that: '... there will be times when, due to the ambiguity of the entitlements framework, we will be unable to provide definitive advice'.

2.62 The advisory service, known as ASKMAPS, commenced operations on 10 August 2011, with Senators and Members being advised of the new service by Departmental Circular. After a lower than expected uptake⁵⁹, Finance advised the then SMOS in June 2012 that the department had decided to cease the service as a savings measure in response to an increased efficiency dividend for the 2012–13 financial year. ASKMAPS ceased operating on 31 October 2012.

Current advice services

2.63 Currently, advice on entitlements use is available to Parliamentarians through the dedicated entitlements managers located within Finance, who also coordinate specific queries between the department and each Parliamentarian's office; associated helpdesk services; and the guidance material available on the department's entitlements website (including handbooks, circulars and other material).

2.64 Guidance is provided via the department's website in relation to the scope of the key terms for eligible use of the printing and communications entitlement.⁶⁰ However, there is a clear stipulation that those definitions specifically relate to the printing and communications entitlement. No

58 Finance advised that: 'At Attachment C [*to the brief*] is a case that on the face of the question, it could be argued that the Parliamentarian and their spouse are taking a holiday at tax payers' expense. However, provided that the Parliamentarian has certified that the travel was for 'electorate business', then Finance is in no position to and indeed has no basis for querying the purpose of the travel. At Attachment D is an example of a question previously asked of the Entitlements Management Branch which we were unable to answer since it involved an ethical judgement by the Parliamentarian concerned. At Attachment E is a further example of travel, this time at Ministerial level, which could be perceived as the Department agreeing to a family holiday at tax payers' expense. It is however, within entitlement'.

59 During the first 12 months of operations (10 August 2011 to 9 August 2012), ASKMAPS responded to 105 requests for advice.

60 See <http://maps.finance.gov.au/printing/Printing_and_Communications_Definitions.htm> [accessed 31 October 2014]

equivalent guidance has been made available to Parliamentarians in respect of other entitlements, including travel and related entitlements.

2.65 In that respect, in advising the then SMOS in July 2011 on the proposed operating arrangements for ASKMAPS, Finance had advised that, in providing the new service, it would be important for the department to provide consistent advice as definitively as possible within the limitations of the existing entitlements framework. Finance further advised that, in order to achieve that:

... a shared understanding between Parliamentarians and public servants of key terms such as *parliamentary*, *electorate*, *commercial* and *official* purposes and *party business* will need to be established.⁶¹

2.66 The department proposed interim interpretations of those key terms for use in providing advice under the ASKMAPS service, but further advised that:

Based on our experience with the printing and communications entitlement⁶², we consider that Parliamentarians are best placed to develop guidance on the terms *parliamentary*, *electorate* and *official* purposes, and *commercial*, *private*, *personal* and *party* business. To best achieve this, the guidance should be endorsed by a group of Senators and Members with the appropriate authority to gain common acceptance, perhaps through the inquiries of a Parliamentary Committee. Another option could be to consult with a broad cross section of Senators and Members in the process of drafting legislative changes for consideration by the Government.

2.67 Finance recommended that the then SMOS agree to meet with departmental officials to discuss the proposed definitions and possible consultation strategies with Senators and Members. The Minister signed the brief in August 2011, annotating strong agreement with the proposal for engaging Parliamentarians and comments in relation to some of the proposed definitions. However, the Minister did not indicate specific agreement to the department's recommendation.

2.68 As noted at paragraphs 2.55 to 2.56, a further brief provided in March 2012 advised that the Minister had agreed in November 2011 that any

61 The department asked the then SMOS to note that, while definitions of 'party business' and 'parliamentary, electorate, commercial and official purposes' had been established for the purposes of the printing and communications entitlement, these definitions would need to be reviewed in the context of a new and broader entitlements advisory service.

62 This was a reference to the difficulties in relation to interpretation and implementation of the definition of 'electioneering' the then SMOS had advised to the CROPE committee (see paragraph 2.51), which had highlighted the different interpretation that Parliamentarians had placed on the terms of that definition compared to that applied by departmental officials.

parliamentary consultative group convened to consider entitlements matters should also have put before it consideration of the definitions of key eligibility terms, and that the department was awaiting the Minister's advice as to which Parliamentarians have been nominated to participate in the consultative group. As further noted, Finance advised ANAO in April 2015 that the parliamentary consultative group did not convene and 'therefore there was no further guidance to provide to parliamentarians' in relation to the scope of those key terms when accessing entitlements more broadly, including travel entitlements.

Recent examples of the lack of a shared understanding

2.69 In the period examined by ANAO, the advice provided by the department in terms of the eligibility of specific travel proposed by a Parliamentarian has continued to be broad and non-specific, and reflective of the opaque nature of the existing framework. For example, in May 2012, Finance recorded that a Member had sought advice about travel to an external territory 'to meet with constituents'. No further information as to the nature of the business to be conducted was recorded. Travel to external territories at public expense is only available in limited, prescribed circumstances. Finance recorded that it advised the Member that travel to the external territory is not provided as an entitlement to that Member. Further advice confirmed in writing at the Member's request was that:

You have therefore asked if your entitlement to travel for parliamentary, electorate or official purposes anywhere in Australia would include your travel to the point of departure for [*the external territory*] (you mentioned [*two potential points of departure*]) ... Our advice is that the portion of travel for electorate purposes that is within Australia may be met from your domestic travel entitlement.

2.70 Finance's advice indicates that the mainland travel outside of the Member's electorate to and from the departure point for the external territory would need to be for the purpose of electorate business. However, it was left to the Member's judgement as to whether the purpose of that travel could be appropriately considered to represent electorate business that was separate from

the Member's indicated primary purpose of travelling to the external territory, which the Member did not have an entitlement to do at public expense.⁶³

2.71 As noted at paragraph 1.16, the November 2013 announcement of measures to strengthen the rules governing Parliamentarians' business expenses followed a period in the latter half of 2013 that involved significant media scrutiny of the use of travel entitlements. Those instances primarily related to questions as to whether attending the relevant functions could properly be considered to fall within the relevant eligibility purpose terms, such as whether:

- attending the weddings of Parliamentary colleagues or others could properly be regarded as representing 'official business' for an office holder; undertaking the duties or functions of a Shadow Minister; or an eligible use of the (then existing) overseas study trip entitlement;
- attending and/or participating in sporting events, including where hospitality was provided, could properly be regarded as representing 'official business' for an office holder; undertaking the duties or functions of a Shadow Minister; or 'electorate business' for a Senator or Member; and
- interstate travel undertaken by a Senator or Member for particular purposes could properly be regarded as constituting electorate business (for the purpose of accessing the entitlement to travel via scheduled services for a Parliamentarian and his or her family) or 'attending meetings on electorate business outside the electorate' (for the purpose of claiming travelling allowance).

2.72 That process resulted in some Parliamentarians voluntarily repaying (in some cases partially rather than fully) the cost of entitlements that had been accessed in attending various functions or other trips. In some instances, the Parliamentarians involved indicated that the repayment was being made in the interests of avoiding doubt given that the existing framework allowed for judgements in these matters, not as an acceptance that the relevant entitlements had not been properly accessed. In other cases, Parliamentarians did not make

⁶³ That Member subsequently travelled interstate under entitlement to one of the discussed points of departure for travel to the external territory, and then back to home base from that same location 12 days later. The Member did not claim travelling allowance for any of the nights away from home base, and there is no record of other travel at public expense during that period other than the use of COMCAR travel to and from the airport at the discussed point of departure and a nearby location.

such voluntary repayments, with media reports indicating that this was on the basis that the Parliamentarian remained of the belief that the particular function or activity did properly fall within the terms of their entitlements.

2.73 In providing the current SMOS with a brief proposing a way forward in terms of legislative reform in November 2013⁶⁴, Finance noted that the repayment of entitlements by Parliamentarians in the latter half of 2013:

... are symptomatic of a system in need of reform, both administrative and legislative, to ensure that parliamentarians are able to undertake their duties and responsibilities without undue criticism.

2.74 However, as noted, as at April 2015 no progress had been made in relation to implementing substantive reform of the framework underpinning the provision of non-remuneration entitlements, including travel, in the five years since the CROPE report was provided to government in April 2010. Nor had any alternative proposals to address the fundamental issues associated with the current framework been adopted.

2.75 The November 2014 report of the Senate Finance and Public Administration Legislation Committee's inquiry into the *Parliamentary Entitlements Legislation Amendment Bill 2014*⁶⁵ considered the proposal under the Bill to introduce a 'public benefit' test in relation to retirement travel.⁶⁶ The amendment bill did not propose a definition of the term 'public benefit'. The Committee's report noted that, in a submission to the inquiry, the Shadow SMOS had opposed the inclusion of the new requirement, arguing that the test was not adequately defined and there would be an increase in bureaucracy and cost in administering the scheme.⁶⁷

2.76 The Senate Committee's report further noted advice set out in a submission received from Finance that acknowledged that the term 'public

64 See paragraphs 2.38 to 2.41.

65 The Senate, Finance and Public Administration Legislation Committee, *Parliamentary Entitlements Legislation Amendment Bill 2014 [Provisions]*, November 2014.

66 Under the Bill, the former *Members of Parliament (Life Gold Pass Act) 2002* (Life Gold Pass Act) is to be renamed the *Parliamentary Retirement Travel Act 2002*. That amended Act will require that travel under the Parliamentary Retirement Travel entitlement be for a purpose that is for the public benefit, and not for a commercial purpose or a private purpose. Under the existing Act, the only limitation on the purpose of travel by entitled retired Parliamentarians was that it not be for a commercial purpose (defined by the Life Gold Pass Act as a purpose relating to the derivation of financial gain or reward, whether as a board member, an office-holder, an employee, a self-employed person or otherwise).

67 In this respect, the Shadow SMOS' submission had commented that: '... If there are to be parameters for this test; they should be defined in The Bill for all of us to see and consider.'

benefit' was not defined, 'other than to clarify that in order to satisfy the public benefit test, travel must not be undertaken for a commercial [or] a private purpose'. Finance's submission acknowledged that the proposed approach to administering the 'public benefit' test was consistent with its existing approach to administering entitlements provided to serving Parliamentarians. That is, reliance would be placed upon the individual judgement of each entitlee as to whether a particular activity reasonably fell within the permitted purpose, with six-monthly certifications being sought that his or her use of entitlements in the relevant period was in accordance with the legislated provisions.⁶⁸ In that context, the Senate Committee concluded that:

In the committee's view, if a public benefit test is to be included in legislation, then it should be accompanied by guidance, as to when a trip will be considered to be for 'a purpose that is for the public benefit', which will avoid this uncertainty. This guidance should be published on Finance's website.⁶⁹

2.77 The Senate Committee's findings and recommendations in relation to the retirement travel entitlement lend further weight to the CROPE report's proposals for the development of guidance as to the categories of activities that will be regarded as representing eligible use of entitlements by sitting Parliamentarians.⁷⁰ In the absence of such guidance, it is reasonable to expect that the acknowledged challenges that the existing framework presents in terms of transparency and accountability in the use of entitlements will continue to arise.

2.78 Those challenges were again highlighted in a recent judgment issued by the Supreme Court of the Australian Capital Territory which included consideration of the application, and associated ambiguity, of the term 'parliamentary business' as currently identified in relevant heads of authority for the use of entitlements at public expense. In its consideration, the Court noted that the term 'parliamentary business' as currently set out in the relevant Tribunal Determinations is ambiguous and '... is a term susceptible to a number of different interpretations'. The Court further noted that, under existing arrangements: '... it must be left to an individual [*Parliamentarian*] in the first

68 The six monthly certification process is discussed further at paragraphs 3.101 to 3.144.

69 The Committee further reported that: 'The committee notes that information relating to the travel expenses of former parliamentarians is available on the Finance website. The committee considers, in the interests of full disclosure, former parliamentarians should be required to list the purpose of all travel undertaken pursuant to the parliamentary retirement travel entitlement. Recommendation 3: The committee recommends that in the records published by the Department of Finance of former parliamentarians travel, the purpose of the travel should be included.'

70 See paragraphs 2.50 to 2.54.

instance to form his or her own judgment as to whether a particular journey is for the purpose of parliamentary business'.⁷¹ The specific circumstances of that particular case are appropriately a matter for the courts. More broadly, however, the consideration and conclusion set out in the Court's published decision highlighted that, under the existing framework, it is very difficult for the standards of accountability supported by objective and independent assurance generally expected to apply to the expenditure of public money to be effectively applied in relation to entitlements expenditure by Parliamentarians.

Application of non-statutory conventions

2.79 Since the 2004 general election, Finance has provided pre-election advice to Parliamentarians in relation to the use of entitlements during an election campaign. That advice is based on contemporary legislative provisions, together with a series of conventions (as reflected in a set of 31 statements) that were originally developed in 2004.⁷² The statements were most recently reviewed in preparation for the 2013 federal election.⁷³

2.80 The conventions set out in those statements largely relate to the use of entitlements in the capacity of an ordinary Senator and Member. The 2009–10 audit report noted advice to ANAO from the then SMOS that: 'It is the absence of definitions which gave rise to the reliance by Parliamentarians on conventions.' These conventions do not have any legislative authority.

Conventions on the use of office-holder travel entitlements during election period

2.81 In general, the access of Parliamentarians to their respective entitlements is governed by the provisions of the Parliamentary Allowances Act. In the case of office-holders, that Act specifies the dates on which the allowances (including those determined by the Tribunal) that are payable to Presiding and Deputy Presiding Officers; Opposition office-holders and a Leader of a recognised non-Government party of at least five members (referred to as Leader of a minority party) shall begin and cease. The *Ministers of State Act 1973* provides that such

71 Slipper v Turner [2015] ACTSC 27 (26 February 2015).

72 The development of the 31 statements is discussed in the 2009–10 audit report.

73 Updated sets of statements prepared in 2010 and 2013 were submitted to the then SMOS to note, but in both cases the relevant briefs were not actioned by the then Minister or his Office as they were received during the caretaker period.

respective allowances as are determined by the Tribunal are payable to those Parliamentarians holding the position of Minister and Parliamentary Secretary.

2.82 However, under conventions that have developed over time, the access of particular office-holders to entitlements provided under a legislative head of authority has been sought to be restricted by administrative arrangement. Those conventions relate to the use of certain travel-related entitlements during the part of an election campaign that is known as the ‘election period’. Specifically, the election period begins on the day of the policy speech by the relevant party’s Leader (known as the campaign launch) and concludes the day after polling day. The defined ‘election period’ represents only the latter part of the formal election campaign. For example, the writs for the 7 September 2013 federal election were issued on 5 August 2013. The Coalition held its policy launch on 25 August 2013, with the ALP holding its policy launch on 1 September 2013. In that context, by convention⁷⁴:

- Ministers and Parliamentary Secretaries, Opposition office holders, Shadow Ministers and Shadow Parliamentary Secretaries and the Leader and Deputy Leader of a minority party do not claim travelling allowance (an entitlement provided by Tribunal Determination) for an overnight stay on official business from the date of the policy launch until the Sunday night after polling day. In the case of Ministers, Finance further advises that: ‘where the primary purpose of the overnight stay is to fulfil portfolio or specific official duties as an Office Holder, it may be appropriate to claim travelling allowance’. No such additional advice is provided in relation to the convention as it applies to other office holders; and
- during the election period, the Leader and Deputy Leader of the Opposition do not access their entitlement to charter travel on official business (a scheduled benefit under the PE Act), except where special circumstances arise that make such travel essential. Although similarly provided under the PE Act, there is no convention limiting access to the charter transport entitlement of a Leader of a minority party (including

74 Questions and Answers document for Senators and Members seeking re-election available from <<http://maps.finance.gov.au/Election/Senators-Members-Re-election-Parliamentarians-Travel.htm#PTLaunch>> [accessed 25 July 2014]

the Leader of the Nationals when in opposition) during the election period.⁷⁵

2.83 There is no convention limiting access by the above-mentioned office holders to travel via scheduled services, car transport or (as relevant) Special Purpose Aircraft at any stage during an election campaign. In addition, office holders retain the capacity to access relevant entitlements as a Senator or Member throughout an election campaign. This includes travelling allowance when travelling on electorate business and (where relevant) use of charter transport when travelling within and for the service of the electorate.⁷⁶

2.84 Neither the Tribunal Determination setting out the entitlement to travelling allowance nor the PE Act make any provision for the travelling allowance or charter travel entitlements of office holders to be suspended during any period that a Parliamentarian holds the relevant position.⁷⁷ The development of, and rationale and basis for, the conventions limiting access by office holders to certain travel-related entitlements (and not others) during (only) the latter part of an election campaign has not been documented in the same manner as the amended 31 statements document discussed at paragraphs 2.79 to 2.80.

Application of the conventions

2.85 ANAO noted examples from the 2013 election period that highlighted the uncertain status of such conventions and the challenge they represent in terms of robust administration of the relevant entitlements.

2.86 For example, in one case, a then Minister claimed travelling allowance as a Minister in connection with travelling interstate to participate in a television panel on election night. Upon receipt of the claim, Finance brought the convention in relation to not claiming travelling allowance until the

75 A similar convention provides that Ministers (with the exception of the Prime Minister), or Parliamentary Secretaries when representing the Minister, do not access the Ministerial entitlement to charter travel on official business during the election period except in special circumstances where travel is essential and related specifically to portfolio or ministerial responsibilities. In that respect, however, it should be noted that the Ministerial charter entitlement is provided by executive decision, rather than under any legislative head of authority.

76 See further in that respect at paragraphs 2.91 to 2.105.

77 In that respect, Ministers continue to hold the position of Minister under the Constitution until they resign their commission, which usually occurs upon finalisation of the outcome of an election and immediately prior to the swearing in of the new government (including where a government is returned). Similarly, Shadow Ministers and the Leader and Deputy Leader of a minority party will also continue in their nominated roles throughout the election campaign.

Sunday night following an election to the attention of the Parliamentarian's office, and sought additional information or advice as to whether the Parliamentarian would like to withdraw the claim. The Parliamentarian's office advised that the Parliamentarian wished to continue with the claim on the basis that the purpose of the travel was to fulfil portfolio official duties in the capacity of Minister and, consequently, the exception to the convention for Ministers applied in this case (see paragraph 2.82). Finance recorded that, in the context of a subsequent query from the Parliamentarian's office as to when payment would be received, the convention was again discussed and that the Parliamentarian's office had advised that the then Minister had been invited to appear on the panel in his capacity as a Minister.

2.87 Travelling allowance was not paid to any other than Minister or then Shadow Minister for the night of the 2013 election in connection with undertaking official business as Minister or Shadow Minister. This included other Ministers as well as Shadow Ministers that similarly participated in election night television coverage. This example highlights the scope under the existing framework for Parliamentarians to exercise varying judgments as to the type of activity that falls within the parameters of terms such as 'official business' as an office holder, as compared to activities that are more closely related to party or other business.

2.88 Two further former Ministers submitted claims for travelling allowance in relation to overnight stays during the period covered by the convention. Specifically:

- the first former Minister flew to the location of the party launch on the day prior to the launch, but did not claim travelling allowance for that night. However, travelling allowance was claimed as official business for the night following the launch. In response to a Finance query referring to the convention, the then Minister's office advised that it had prepared the claim in that manner because the Minister had delivered the opening address at a conference on the day following the party launch. Finance did not seek further confirmation from the Parliamentarian that he wished to proceed with the claim based on the exception set out in the convention; and
- on 21 August 2013, a second former Minister's office had sought advice regarding Ministerial travel during the election period. Finance's recorded response referred the office to the convention and advised that 'travel to Canberra or anywhere else should only be for electorate

business'. In response to a request for further clarification in relation to travel during the last week of the election campaign, the department also advised the office that the Parliamentarian continued to have an entitlement to travel 'but is unable to claim Travelling Allowance as a Minister following the party launch'. The Parliamentarian subsequently submitted a claim for travelling allowance as a Minister for nights during the election period. Unlike the other two instances noted in relation to claims for Ministerial travelling allowance during the period to which the convention applies, in this case there was no evidence of Finance drawing the Parliamentarian's attention to the convention upon receipt of the claim and seeking confirmation that the Parliamentarian wished to pursue the claim either prior to or after processing the payment.

2.89 ANAO also noted an example in which a then Shadow Minister submitted a claim seeking payment of travelling allowance for the period 25 to 28 August 2013 on the basis of attending inter-state meetings relevant to the Parliamentarian's then Shadow Ministry portfolio. As noted, the Coalition had held its policy launch on 25 August 2013. Finance advised the Parliamentarian's office that it was unable to process the claim. Rather than referring to the relevant convention relating to certain office-holders not accessing travelling allowance during the election period following the party policy launch as the basis for that advice, the department referred to separate advice set out in the Senators and Members handbook, as follows:

We are unable to process [*the*] claim for travelling allowance under clause 3.27 (*travel in the performance of duties or functions connected with the office of Shadow Minister*) for the period 25 to 28 August 2013 ... [*The Parliamentarian*] has an entitlement to travel by scheduled services for Parliamentary and electorate business but not party business (other than meetings of a Parliamentary political party, or of its executive, or of its committees, and the national conference of a political party). Once the Parliament has been dissolved, it

would be difficult to rely on Parliamentary business as a justification for travel.⁷⁸

2.90 The department invited the Parliamentarian to submit an amended claim under a different travel purpose clause if the Parliamentarian so desired. Finance recorded that the Parliamentarian's office had subsequently advised that Shadow Minister duties was the only purpose relevant to the travel undertaken. The department further recorded that it had then advised the Parliamentarian's office that: '... there are times when a Senator or Member is simply unable to claim [*travelling allowance*]', and that the Parliamentarian's office had undertaken to explain that position to the Parliamentarian. The Parliamentarian's office subsequently advised Finance that the Parliamentarian would no longer be claiming travelling allowance for the relevant period. In that context, given its non-binding status, the administrative 'convention' not to access entitlements that remain legally available is reliant upon voluntary compliance by affected individuals. However, it was not evident that the department had made that position clear to the then Shadow Minister.

Use of entitlements in association with seeking re-election

2.91 As noted at paragraph 2.46, undertaking 'electorate business' is one of the key purposes for which a number of entitlements may be legitimately accessed. This generally relates to providing Senators and Members with the means to effectively undertake their role representing the interests of, and providing services to, the constituents of their respective electorates. However, the scope of the term 'electorate business' has not been articulated within the relevant heads of authority for the provision of those resources and allowances.

2.92 In that context, a further area that is currently governed by way of convention relates to the extent to which Parliamentarians are able to utilise their entitlements as an incumbent Senator or Member for the purpose of promoting their own re-election. Specifically, by convention, such activities

78 That advice also reflected general advice provided to Parliamentarians in relation to the use of entitlements during an election campaign (see Questions and Answers document for Senators and Members seeking re-election available from <<http://maps.finance.gov.au/Election/Senators-Members-Re-election-Parliamentarians-Travel.htm>> [accessed 21 January 2015]). If that advice was the basis on which the department had declined to process the Parliamentarian's claim in this instance, similar advice would have been provided in relation to the claims for Shadow Minister travelling allowance submitted by this Parliamentarian and others during the period between Parliament being prorogued on 5 August 2013 and the commencement of the 'election period' following the Coalition's policy launch on 25 August 2013 (when the convention took effect). However, that was not the case.

have become considered to represent an element of a Senator's or Member's 'electorate business'.

2.93 This convention had its genesis in the not unreasonable view that it is difficult to disassociate a Senator or Member from the positive reflection that may incidentally accrue to himself or herself when undertaking activities in service of their respective electorates (such as assisting constituents in dealing with government or lobbying government for the provision of services or infrastructure that would benefit the electorate). This premise was reflected in advice provided by Finance in the context of the development of the original convention statements in 2004, with the department advising the then SMOS that:

It is simply realistic to recognise that from time to time in using benefits for the purpose of providing a service to the electorate there may be an unintended effect of furthering one's own standing in the electorate—that is, the essential concept is that the entitlements be used for Parliamentary and electorate purposes NOT that furthering one's own candidacy is one of those purposes e.g. the key concept is that in using entitlements for electorate purposes it is inevitable that an incidental effect may be to further one's own candidacy. *[emphasis as per original]*

2.94 However, over time the relevant 'statement' has evolved to exclude reference to use of entitlements to promote a Parliamentarian's own re-election being 'incidental'. For example, the relevant statement as advised to the then SMOS by Finance in August 2013 was as follows:

Senators or Members may use their entitlements in support of their own re-election. In doing so they may directly solicit a vote for themselves, but not for another person, subject to the limitations on the entitlements used (for example the prohibition on using the printing and communications entitlement to produce and/or distribute how-to-vote material).

2.95 Similarly, the advice provided to Parliamentarians by Finance, particularly in relation to travel, has made increasingly less reference to any need for the use of entitlements to promote his or her own re-election to arise in a manner that is merely an incidental effect, rather than being the primary purpose for accessing the entitlements. For example, Finance currently advises Parliamentarians that:

You may travel within your electorate, including in support of your own re-election, by scheduled services and charter (if applicable) and where an entitlement is provided by [*the relevant Determination*], claim electorate travelling allowance up to the night preceding the polling day. In the event

you are re-elected, you may claim travelling allowance commencing on the night of the polling day.⁷⁹

2.96 By way of comparison, the advice provided in relation to the use of electorate offices for campaigning purposes has continued to highlight that any such use should be incidental to the facility's primary purpose of providing a service to constituents by carrying out parliamentary and electorate business.⁸⁰ The basis for the different approaches taken to advising Parliamentarians in relation to the recommended application of a single convention to different entitlements is not identified in departmental records.

2.97 In that respect, the period between the Parliament rising in late June each year and resuming sittings for the Spring session (typically during August in a non-election year) provides an opportunity for Parliamentarians to undertake more electorate-based travel. As Figure 2.1 illustrates, of the 24 months included in the period examined by ANAO, the highest claims for travelling allowance associated with undertaking electorate business⁸¹ by entitled Parliamentarians occurred in July and August 2013.⁸² That period encompassed the month leading up to calling of the 2013 federal election and most of the election campaign period leading up to the 7 September 2013 election.

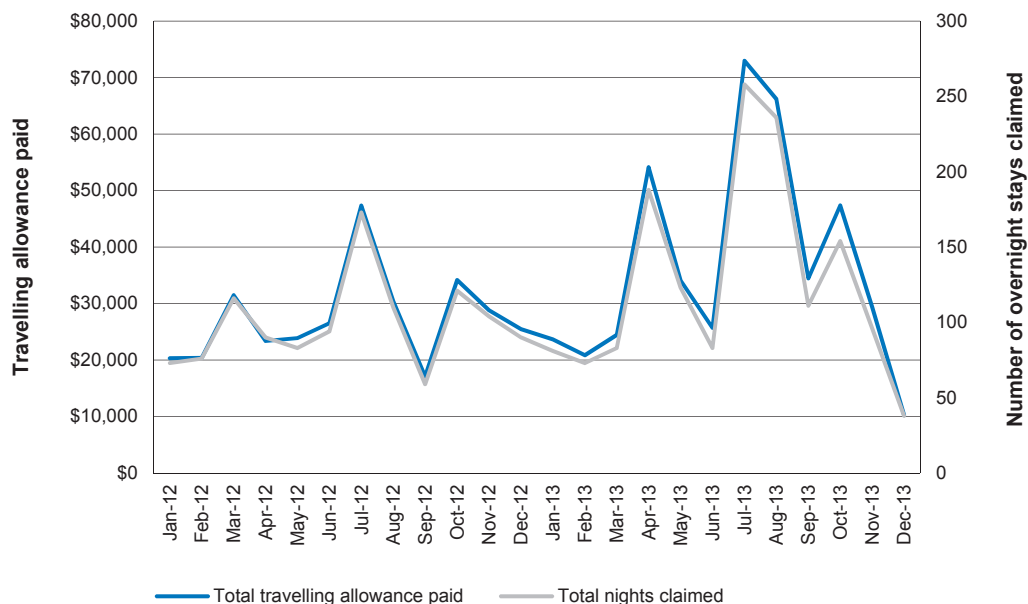
79 Questions and Answers document for Senators and Members seeking re-election available from <<http://maps.finance.gov.au/Election/Senators-Members-Re-election-Parliamentarians-Travel.htm>> [accessed 21 January 2015].

80 For example, Parliamentarians are advised that, in keeping with the convention that a Senator or Member may use entitlements in support of his or her own re-election, campaign material may be displayed for this purpose, but that: 'In deciding to do so, you should take into account that the office is provided primarily so that you can provide a service to constituents by carrying out parliamentary and/or electorate business.' Further, in advising that it is not appropriate to use the electorate office as a campaign headquarters, Finance advises that: 'There may be some incidental use of the electorate office in the lead-up to an election that relates to your own re-election campaign. However, in order for your electorate office to be effective in providing a service to all members of your electorate, its primary use should relate to parliamentary and/or electorate business.' (Available from <<http://maps.finance.gov.au/Election/Senators-Members-Re-election-Office-Accommodation.htm>> [accessed 21 January 2015].)

81 This analysis incorporated claims made in each month under each of the Tribunal Determination clauses relating to travelling on electorate business both within and outside of the electorate.

82 As noted at paragraph 2.82, the writs for the 7 September 2013 federal election were issued on 5 August 2013, at which time the entitlements of Members not standing for re-election at the 2013 election ceased to be available. As a consequence, there were fewer Parliamentarians entitled to access the relevant entitlements during the 2013 election campaign than was the case during the equivalent period in 2012.

Figure 2.1: Travelling allowance payments associated with undertaking electorate business: January 2012 to December 2013



Source: ANAO analysis of Finance data.

2.98 Travelling allowance payments associated with undertaking electorate business in July 2013 totalled \$72 981, an increase of 54 per cent from the \$47 354 claimed for July 2012. While there had been a slight increase in the rates of travelling allowance payable from August 2012, the total of 258 overnight stays claimed in July 2013 was 49 per cent higher than had been the case in July 2012 (173 overnight stays). Claims made in August 2013 (\$66 201 for 236 overnight stays) were also significantly higher than those made in August 2012 (\$30 408 for 110 overnight stays). However, a factor in that difference is likely to relate to August 2012 including seven sitting days for which Parliamentarians were required to travel to Canberra, compared to there being no sitting days in August 2013.

2.99 A comparison of the claims made in the first weeks of September 2012 and September 2013 respectively (with neither period including any sitting days) similarly highlighted an increased use of travelling allowance for electorate business in 2013. Specifically, payments for the period 1 to 7 September 2013 totalling \$12 814 (for 41 overnight stays) were 33 per cent higher than the payments totalling \$9623 (for 33 overnight stays) claimed in the same period of 2012.

2.100 In this respect, the 2009–10 audit report noted that there would be benefits to all concerned for the entitlements framework to explicitly address whether, and, if so, to what extent, public money provided for Parliamentarians’ entitlements is able to be used for candidate and election campaigning activities.

CROPE consideration of the use of entitlements in the context of election campaigns

2.101 The CROPE terms of reference included that, in formulating advice and recommendations, the review should have regard to appropriate use of entitlements during election campaigns. In this respect, a number of submissions to the review highlighted the need to ensure that the system of parliamentary entitlements does not unduly increase the natural (and unavoidable) benefits of incumbency that accrue to sitting Senators and Members.

2.102 Similarly, the background paper prepared by the departmental secretariat on this aspect of the CROPE review’s terms of reference advised the Committee that there will always be an unavoidable advantage of incumbency but, as far as possible, the entitlements framework should be constructed with a view to minimising this advantage. The paper further suggested that the current interpretation of entitlements rules is overly generous and sanctions party political activity being directly and indirectly supported by parliamentary entitlements.

2.103 The Committee’s final report did not make any recommendations in relation to the existing general convention regarding the use of entitlements by incumbent Parliamentarians in support of their own re-election. Instead, as noted (see paragraphs 2.23 to 2.29), the Committee recommended the establishment of a single piece of legislation for the provision of ‘tools of trade’ to Parliamentarians which would replace existing arrangements (including non-statutory conventions). However, the Committee’s comments in this respect supported the original premise of the convention (that is, that any such use should arise as an incidental effect rather than being the primary purpose of accessing the entitlement). Specifically, the report commented that:

There will always be some element of incidental crossover between parliamentary, electorate, party and personal business, no matter how careful the parliamentarian is to keep them separate. Some submissions to the review argued that use of benefits for party political activity should be totally banned. The committee considered, however, that an absolute prohibition on incidental party political or personal use would be unrealistic and impractical. Provisions

are made to facilitate the business of being a member of parliament, and an effective entitlements scheme will recognise that there will be some incidental use for other purposes.

2.104 In that context, the April 2010 CROPE report made recommendations in respect to the use of three specific entitlements in association with election campaigns. Specifically, the Committee recommended that:

- given the service provided by the Australian Electoral Commission, the government remove the entitlement for Senators and Members to use their printing and communications entitlement to produce and distribute postal vote applications—that entitlement was introduced by the then SMOS in 2004 under the discretion then provided for the Minister to approve the menu of items able to be printed by Senator and Members at public expense;
- in order to minimise publicly funded advantage of sitting parliamentarians over other candidates, the Government:
 - remove access to the printing and communications entitlement from the date of the announcement of a federal election to the day after the corresponding polling day, and
 - undertake a future assessment of the use of the entitlement and, if there remains cause for concern, consider mechanisms for removing access to the entitlement for a period prior to the announcement of a federal election; and
- access to travelling allowance for personal staff employed under Part III of the MoP(S) Act who travel independently of their employer to the city in which their employer’s party’s campaign headquarters is based be removed from the date of a Prime Minister’s announcement of a federal election until the day after polling day. In making that recommendation, the Committee observed that such travel created the ‘not unreasonable perception that staff were engaged in party political business at public expense’, which the Committee concluded should be no longer permitted.

2.105 None of those recommendations have been implemented.

Conclusion

2.106 In response to the 2009–10 audit report, the then Government commissioned a ‘root and branch’ review of the entitlements framework to be undertaken by an independent committee, the Committee for the Review of Parliamentary Entitlements (CROPE—also known as the Belcher Review). The April 2010 CROPE report reached similar conclusions to those set out in earlier ANAO audit reports in regard to the inadequacy of the existing framework supporting the provision of Parliamentarians’ entitlements. The report made a number of recommendations directed at separating determination of the personal remuneration to be paid to Parliamentarians from the expenditure that relates to providing parliamentary ‘tools of trade’ (which incorporates most expenditure currently referred to as ‘entitlements’, including travel).

2.107 The CROPE report also recommended establishing a new approach to delivering the ‘tools of trade’ stream to provide a robust foundation upon which to administer and use the entitlements covered by the scheme. Specifically, the Committee recommended that the Government enact a single piece of legislation to provide a consistent, simple and transparent framework for the provision and regulation of Parliamentarians’ tools of trade at public expense. That legislation, to be administered by the SMOS, would replace the existing plethora of legislation, determinations, other instruments, executive decisions and conventions that currently govern the entitlements available to Parliamentarians. It would also involve clearer powers of delegation and subordinate legislation that groups like entitlements together, with consistent meanings and operational rules. In addition, the Committee recommended that, in determining the tools of trade to be provided under the new legislation, the SMOS receive advice from an independent advisory committee and publish both the committee’s advice and the government response.

2.108 The CROPE report’s conclusions and recommendations in regard to both the need for, and recommended approach to, reforming the legislative and administrative framework underpinning the provision of Parliamentarians’ remuneration and other entitlements were supported in subsequent independent reports of a January 2011 review of Finance’s administration of entitlements and the Remuneration Tribunal’s initial review of Parliamentarians’ remuneration concluded in December 2011.

2.109 The 2015–16 Budget delivered on 12 May 2015 included a Budget measure that included proposals for amendment to existing travel entitlements, including incorporating travel on ‘business as an elected

representative' as an additional generic eligible purpose of travel at public expense⁸³; better aligning travel provisions with the purpose of travel, including streamlining of existing travelling allowance provisions; and providing a mechanism by which a Parliamentarian would be able to certify usage of travel services that is not within standard entitlement parameters, but which the Parliamentarian considers to provide greater value for money. As those proposals relate to travel entitlements that are determined by the independent Remuneration Tribunal, their implementation will require consultation with, and the agreement of, the Tribunal. The Budget measure also proposed the simplification of a range of existing entitlements relating to Parliamentarians' electorate office costs through the formation of two broad entitlement budgets that are intended to provide greater efficiency and flexibility for Parliamentarians; and the introduction of a Parliamentarians' injury compensation scheme. Both of those latter measures reflected, in full or in part, recommendations of the CROPE report and Remuneration Tribunal. In May 2015, Finance advised ANAO that implementation strategies for the proposals set out in the Budget were under consideration.

2.110 However, as at May 2015, there had been no progress in implementing the independent recommendations for legislative reform to underpin the provision of non-remuneration entitlements, and no alternative proposals had been adopted to address the fundamental issues associated with the current framework. In addition, the CROPE report's suggestion that the scope of eligible entitlements use be clarified by government identifying, through the use of broad categories, those activities that would and would not be publicly funded has also not been implemented.

2.111 The resulting ongoing challenges for maintaining transparent and accountable use of the public money involved, and for Parliamentarians in effectively accessing their entitlements, were reflected in the outcome of ANAO's examination in this performance audit of the administration of travel entitlements.⁸⁴ This situation was also reflected in advice provided by Finance to the SMOS in November 2013, being that the existing system is expensive to administer '... whilst at the same time failing to provide a fundamental safeguard that payments are only made in accordance with the entitlements'.

83 See further at paragraphs 4.109 to 4.110.

84 In addition to the matters discussed in this chapter, further discussion of the findings in that regard are set out in subsequent chapters of this audit report.

2.112 A further consequence of the absence of progress in implementing substantive framework reform is that the use of entitlements continues to be subject to certain ‘conventions’. These particularly relate to the use of entitlements (including travel entitlements) in the context of election campaigns. The continued application of such conventions, which have no legal standing, is problematic in terms of both:

- clearly establishing whether entitlements have been accessed only for the purposes for which they have been provided under the relevant head of authority and do not provide an inappropriate benefit of incumbency; and
- ensuring that administrative arrangements do not seek to inhibit access to entitlements in a manner that is contrary to the terms of the relevant head of authority.

3. Confirming the Eligibility of Use of Entitlements

This chapter examines the processes by which assurance is obtained by Finance that travel entitlements are only accessed within the terms of the relevant heads of authority, including for eligible purposes.

Introduction

3.1 The principal mechanisms by which Finance seeks to obtain assurance that travel entitlements are accessed within the terms of the relevant head of authority, including for eligible purposes, are:

- transaction-based certifications and pre-payment checks;
- periodic general certifications as to all entitlements use, including travel entitlements; and
- a post-payment audit and checking function.

3.2 ANAO examined the operation of those mechanisms, with a particular focus on the processes applied to obtaining assurance in relation to the eligibility and compliance of travelling allowance claims and use of charter travel entitlements in the period January 2012 to December 2013.

Basis for certification approach to obtaining assurance

3.3 As discussed at paragraphs 2.46 to 2.49, the expenditure a Parliamentarian may legitimately incur at public expense is primarily determined by reference to a number of eligible purpose terms whose meaning (or scope) has not been articulated, and in respect to which little guidance is made available to Parliamentarians. As further discussed, it has been widely recognised that determining the precise scope of the entitlements available to an individual Parliamentarian is difficult for both Parliamentarians and Finance.⁸⁵ In that respect, as also noted, the department advised its Minister in

⁸⁵ See, for example, the comments of the CROPE report and Remuneration Tribunal (at paragraphs 2.23 and 2.34 of this report respectively) in relation to the complexity and opaqueness of the existing framework.

November 2013 that the existing framework fails to provide a fundamental safeguard that payments are only made in accordance with the entitlements.⁸⁶

3.4 The inherent uncertainty that exists under the existing framework as to whether a particular activity will be within entitlement or not is reflected in the advice provided to Parliamentarians by Finance. For example, the Senators and Members entitlements handbook suggests that, in deciding whether or not to access an entitlement for a particular purpose, Parliamentarians should adopt a risk assessment approach by asking themselves the series of questions outlined in Table 3.1.

Table 3.1: Risk based approach to accessing entitlements as advised to Parliamentarians by Finance

Is it within the rules?	How would it look? Is it defensible?	What is the overall risk assessment?
Clearly yes	Fully defensible	Low risk
Technically yes	Some difficulty in defending publicly	Medium risk
Arguably yes	May/would attract criticism	High risk
Clearly no	Would certainly attract criticism	Unsafe/unlawful

Source: <http://maps.finance.gov.au/entitlements_handbooks/senators-and-members/Part_One_Introduction_-_1.3_Provision_of_Entitlements_and_Accountability.asp#OneThreeThree> [accessed 9 January 2015].

3.5 Within that framework, the certification by Parliamentarians that they have accessed goods, services and allowances at public expense in accordance with the relevant legislative requirements is a key element of the accountability framework. In this respect, the version of Finance's Senators and Members' entitlements handbook available during the period examined by ANAO advised Parliamentarians that:

... The certification process is an integral part of the accountability framework that, among other things, serves to protect Senators and Members from unwarranted criticism regarding their use of entitlements.

In administering the various entitlements, [*Finance*] frequently relies on the certification of the relevant Senator or Member that their use is within entitlement, as it is often not possible or desirable for Departmental officers to

⁸⁶ See paragraph 2.38.

make the sort of independent inquiries that would be needed to make an objective assessment ...⁸⁷

3.6 Similarly, the current version of the entitlements handbooks highlights the central role played by the certification process, and advises Senator and Members that, while the department can provide advice and assistance:

... it remains the responsibility of the Senator or Member to satisfy themselves that the use of their entitlements is lawful. It is also in the Senator or Member's interest to satisfy themselves that the use is publicly defensible.⁸⁸

Transactional certification of the use of certain travel entitlements

3.7 For certain entitlements, Parliamentarians are required to certify the eligibility of each instance of their use of the relevant entitlement as part of the process of submitting an invoice or claim for payment. In relation to travel entitlements, this primarily⁸⁹ relates to travelling allowance and charter transport entitlements.

3.8 The entitlement to travelling allowance is provided by way of Tribunal Determination (currently Determination 2014/16). The Determination sets out a series of clauses, each of which specifies who is entitled to be paid travelling allowance under that clause and for which purpose(s) (such as undertaking electorate or Parliamentary business or in connection with the official business or duties of a specified office), and any annual caps or limits. The Determination also specifies the rate of travelling allowance that will be payable in relation to a particular claim, as determined by:

- the location of the overnight stay, in terms of both the city or town involved and, for capital cities, nominated central city zones;
- whether the claimant holds one of certain specified offices, with those office-holders receiving a higher rate of travelling allowance than is

87 *Senators and Members Entitlements, December 2013*, pp. 7–8 (www.maps.finance.gov.au accessed 7 July 2014).

88 <http://maps.finance.gov.au/entitlements_handbooks/senators-and-members/Part_One_Introduction_-_1.3_Provision_of_Entitlements_and_Accountability.asp#OneThreeThree> [accessed 9 January 2015].

89 Pre-payment certification also applies to claims from Parliamentarians for the payment of private vehicle allowance, in which he or she is required to certify that the allowance claimed is for travel within entitlement.

payable to other Senators and Members for an overnight stay in the same location; and

- the type of accommodation used. The travelling allowance rates set by the Determination are based on the use of commercial accommodation. Where non-commercial accommodation is used, the applicable rate is one third of the commercial rate set out in the Determination.

3.9 In order to claim travelling allowance, a Parliamentarian must submit a completed travel declaration form that identifies the relevant travel details and the nights for which travelling allowance is being claimed.⁹⁰ The form requires the Parliamentarian to nominate the Determination clause under which the claim is being made, together with a certification that he or she has fulfilled all the requirements of that clause. Provision of the certification is ‘passive’ in that the text of the certification is pre-printed on the form next to the signature box and the Parliamentarian is taken to have provided the certification by signing the form. The form also includes a pre-printed declaration that the information given is true and correct.⁹¹

3.10 Where travel has been undertaken using non-scheduled transport engaged under a charter entitlement (including air charter and self-drive hire vehicles), the Parliamentarian is asked to provide a completed charter certification form. The form requires the Parliamentarian to provide specified details as to the travel undertaken, including in relation to any accompanying passengers, and to certify to certain matters in order to demonstrate compliant use of the relevant entitlement. The nature of the certification required differs depending upon the terms of the charter entitlement being accessed (as set out in the relevant head of authority). The available entitlements are:

- Ministerial charter provided under Executive decision when undertaking official Ministerial business (including by a Parliamentary Secretary or other Parliamentarian when representing a Minister);

90 A Parliamentarian is not required to submit a travel declaration in relation to travel in respect to which he or she is not seeking to claim travelling allowance.

91 One of the measures announced by the SMOS in November 2013 (see paragraphs 1.15 to 1.18) was that the Government would ‘strengthen the declaration a parliamentarian is required to make when submitting a travel claim’. As is discussed further at paragraphs 4.96 to 4.107, the declaration announced by the Minister was added to the travel declaration form in March 2014, but does not provide a specific accountability mechanism in relation to assurance that the relevant entitlement has been accessed in accordance with the legislative requirements.

- Presiding Officer, Opposition Office Holder and Leader of a Minority Party charter provided under the PE Act when travelling on official business of the relevant position;
- charter travel taken by an entitled Senator or Member 'within and for the service of the electorate' (commonly referred to as electorate charter) provided under Remuneration Tribunal Determination; and
- charter travel approved by the SMOS in special circumstances (known as Special Charter⁹²), also provided under Tribunal Determination.

3.11 The relevant certifications are pre-printed on the charter certification forms provided by Finance. Although generally identified as a pre-payment certification process, in some instances the relevant invoice is paid prior to a certification form being obtained from the Parliamentarian. In those cases, the department sought the certification form to enable it to allocate the associated expenditure to the correct entitlement.

Pre-payment checking of claim eligibility

3.12 In processing travelling allowance or charter transport claims, Finance undertakes a range of pre-payment checks. The checks set out in departmental processes include confirming that:

- the Parliamentarian has access to the entitlement being claimed against, based upon his or her electorate or other position(s) held;
- the claim would not result in a capped or limited entitlement being exceeded. In that respect, a number of travelling allowance entitlements are uncapped, including for travel to attend sittings of Parliament or party meetings in Canberra; travel on Parliamentary Committee business; or travel on official business as a Minister or other specified office-holder. However, other entitlements are subject to specified annual limits in terms of overnight stays able to be claimed under the relevant Determination clause, including for travel within the electorate

92 Specifically, the relevant Determination provides that the SMOS shall have a discretion to approve the use of charter transport within Australia at government expense in special cases, including such use by the Leader of a recognised party of at least 5 members and circumstances where there are no scheduled commercial services or a Senator or Member would be unduly delayed by the use of scheduled services. This entitlement does not extend to the use of charter transport for purposes which are covered by the entitlement for charter transport 'within and for the service of the electorate' which is separately provided under the Determination to Senators and certain Members.

and travel in connection with the duties of Shadow Minister. Similarly, while Ministerial, Presiding Officer, Opposition Office-Holder and Special Charter transport entitlements are not subject to any annual financial limit, the remaining entitlements are subject to annual budgets set out in the relevant Determination or legislation;

- for certain travelling allowance claims, the occurrence of a relevant meeting or event has been independently confirmed⁹³; and
- relevant administrative requirements have been observed. These include, for example: the requirement set out in the Determination that, in order to be payable, travelling allowance claims must be submitted, or the SMOS' agreement to an extension obtained, within 60 days of the relevant travel being completed; and the requirement that a Minister or Presiding Officer had provided a written request for a Parliamentarian to represent that Minister or Presiding Officer at a particular function where claims are made in relation to travelling allowance or charter entitlements available when representing a Minister on official business.

3.13 Those checks are undertaken through a combination of manual processes⁹⁴ and automated functions within the Entitlements Management System (EMS) for preventing certain budget-limited entitlements for individual entitlees being exceeded. This is supported by the use of reporting functions through which detailed reports on the use of specific entitlements by an individual Senator or Member are able to be generated as required, including for identifying expenditure that is close to applicable limits. Based on the EMS reporting, advice on the accumulated use of budget-limited entitlements is also provided to each Parliamentarian via monthly management reports.⁹⁵

93 See further at paragraphs 3.53 to 3.59.

94 Completed travel declarations and charter certification forms (and associated invoices where relevant) may be submitted to Finance by Parliamentarians or their offices via email, fax or in hardcopy. Processing of each claim requires manual review and data entry by Finance officers. In addition, for certain entitlements (including Shadow Minister travelling allowance and electorate charter), the management of each entitlee's annual budget is primarily managed through manual processes, including emails and spreadsheets.

95 This aspect of the management reports was enhanced from January 2013 through implementation of recommendations of the January 2011 report of the Williams Review.

Effectiveness of pre-payment checks

3.14 In the period examined, it was not uncommon for post-payment adjustments to be required in relation to travel entitlements payments. For travelling allowance, this included instances of both under and overpayment. In some cases, this had arisen as a result of human error in the manual data entry process. For example, payment was made at the rate applicable to the wrong location or accommodation type or for the incorrect number of nights, as compared to the details set out on the travel declaration submitted. In other cases, the adjustment was requested by the relevant Parliamentarian due to, for example, having incorrectly claimed travelling allowance for a particular night. Other adjustments arose as a result of the post-payment checks undertaken by Finance, including in relation to confirming eligibility to the commercial rate of travelling allowance.⁹⁶

3.15 Adjustments had also been required in relation to claims for which the pre-payment checks had failed to prevent payment of a claim that was identifiably in excess of entitlement. For example, EMS data provided to ANAO by Finance identified that between August 2012 and June 2013, there had been 15 repayments obtained from 10 Parliamentarians in relation to travelling allowance claims incorrectly made under a clause to which the Parliamentarian was not entitled (and consequently being paid at the higher, office holder rate); or under an already exhausted entitlement.

3.16 It should also be noted that such payments were processed on the basis of a completed claim on which the Parliamentarian had certified that he or she had satisfied all relevant requirements, despite that not being the case. For example, Finance had advised one Member's office in May 2012 that the Member had reached the limit of nights available under a clause that is limited to 10 nights a year and that any further claims under that clause for the remainder of the 2011–12 financial year would not be processed. In August 2012, the Member signed a travel declaration seeking payment of a further three nights in June 2012 under the exhausted clause. Despite its earlier advice, Finance processed the claim as made. Finance records indicate that, at the time this claim was processed, the automated function within EMS designed to prevent payments being processed in excess of a specified limit failed. The over-payment was subsequently identified and recovered from the Member.

96 That process is discussed further at paragraphs 4.32 to 4.35.

3.17 Instances of that nature notwithstanding, Finance's administration of those aspects of travel entitlements eligibility that are capable of objective confirmation was reasonably effective in the period examined in this performance audit. In particular, the nature and extent of the department's oversight of entitlements management issues such as adherence to annual budgets and caps has significantly improved over the period since ANAO's 2001–02 audit report.

3.18 The process of compiling six monthly entitlements expenditure reports for each Parliamentarian has also provided a useful mechanism by which the department is able to subsequently identify instances in which the pre-payment checks had not prevented incorrect payments and initiate remedial action. As well as undertaking necessary actions in terms of the relevant transaction (including, as relevant, recovery and/or adjustments to the transaction details), in some cases this also involved consideration of improvements to processing systems, training or procedural manuals. In that respect, in response to ANAO inquiries regarding inaccuracies in the departmental records for monitoring the allocations made to individuals by the Leader of the Opposition from the pooled Shadow Minister travelling allowance entitlement, Finance advised ANAO in November 2014 that the department had reviewed its processes and implemented measures to ensure accurate records were maintained in relation to each entitlee's available allocation.⁹⁷

Non-compliant claims not identified

3.19 However, ANAO also noted instances in which travelling allowance claims that did not comply with the terms of the Determination clause certified to, and which had been nevertheless paid by Finance, were not subject to any post-payment adjustment. For example, within the sample of transactions examined, there were nine instances where the Senator or Member had certified a claim under the Shadow Minister clause for nights spent in a location that was within their own electorate (one Member) or within the

97 In April 2015, Finance advised ANAO that, in relation to the effectiveness of pre-payment checks: 'Finance notes that pre-payment checking processes and system controls for budget limits have been strengthened since the time period of these selected transactions. For example, the processes regarding Shadow Ministers' travelling allowance allocations has been centralised within the travel team for stricter control and management of each individual allocation; and budget controls within EMS are more regularly confirmed'.

electoral division that their home base was located in (two Senators⁹⁸). The Determination specifically does not allow payment of such claims.⁹⁹

3.20 Similarly, the clause that provides an entitlement for Senators and Members to be paid travelling allowance when attending a state party conference is clause 3.12f (or clause 3.8f for office holders). The Determination separately stipulates that a Senator or Member is only entitled to travelling allowance for an overnight stay within the electoral division of the House of Representatives which contains his or her respective home base (which for Members is usually his or her own electorate):

- as is provided under clauses 3.15 to 3.18 relating to travel within his or her respective electorate on electorate or parliamentary business; or
- for a Senator or Member whose home base is in a House of Representatives electorate that is over 100 000 km², for travel for the purpose of attending: meetings or the formal business of a parliamentary committee (clause 3.12b); functions when representing a Minister or Presiding Officer on official business (clause 3.12c); or meetings of a Government advisory committee or task force (clause 3.12i).

3.21 Accordingly, there is no provision for Parliamentarians to claim travelling allowance for nights at locations within their own electorate (or, for Senators, at a location within the House of Representatives electorate in which their home base is located) where the overnight stay is primarily occasioned by attendance at a party conference. However, ANAO noted two such instances in the period examined. In both cases, Finance sought evidence confirming that there had been a party conference at the relevant location, but did not question the eligibility of the claim in terms of the location of the overnight stays.

98 For one of those Senators, an additional instance was identified by Finance post-payment. In response to a request from Finance as to whether the Senator was able to re-allocate the claim, an amended travel declaration was provided under which the travelling allowance clause (and therefore certified purpose of the travel) was changed from Shadow Minister duties (as previously certified) to electorate business (see further in relation to this practice at paragraphs 3.47 to 3.50).

99 Specifically, the applicable clause stipulates that a Parliamentarian may be paid travelling allowance when travelling in the performance of duties or functions connected with the office of Shadow Minister providing: in the case of a Senator, the travel is outside the electoral division of the House of Representatives which contains his or her home base; and in the case of a Member of the House of Representatives, the travel is outside his or her electorate.

Travel costs associated with attending state party conferences

3.22 One of the complexities of the existing framework is that, although Senators and Members are provided with an entitlement to claim travelling allowance for attending state party conferences, they are not entitled to associated travel at public expense.¹⁰⁰ This is reflected in advice provided to Parliamentarians by Finance by way of departmental circular which states that:

- Senators and Members must pay for their own travel costs (including car costs) associated with attending a state party conference; but
- if a Senator or Member is invited to speak at a state conference of a political party in an official capacity (for example, as a Minister or Shadow Minister), they are able to use scheduled services to attend the event on the basis that the travel relates to their office-holder duties.

3.23 However, the pre-payment checks undertaken by Finance in relation to travelling allowance claims for attending state party conferences do not include consideration of whether travel entitlements may have been ineligibly used to travel to and/or from the conference. This is despite the travel declaration form requiring the Senator or Member to specify the travel details associated with each travelling allowance claim.¹⁰¹ Nor does Finance seek to confirm the capacity in which a Parliamentarian attended the state conference such that, based on Finance's advice, he or she may have been entitled to the use of scheduled services or other transport services in association with attending the conference.

3.24 While there is generally a time lag between the processing of travelling allowance claims and processing of the associated travel costs, claims for attendance at state party conferences are not flagged for subsequent review in relation to any travel costs incurred. For example, where a Parliamentarian accesses car transport such as taxis or COMCAR while attending a conference,

¹⁰⁰ Specifically, the travelling allowance Determination provides that one of the purposes for which travelling allowance is payable under clauses 3.8f and 3.12f is to attend '***national and state conferences*** of a political party. However, clause 3.1 of the entitlements Determination (currently Determination 2012/04) states that: 'a senator or member when travelling within Australia, excluding the external territories, on parliamentary, electorate or official business but not including party business (other than meetings of a parliamentary political party, or of its executive, or of its committees, ***and the national conference*** of a political party, of which he or she is a member), shall be entitled to travel at government expense.' (*ANAO emphasis*)

¹⁰¹ In two instances examined, the department specifically sought the travel details associated with a claim for attending a state party conference as they had not been completed on the relevant travel declaration.

this will not be apparent to the department from the travel details set out on the travel declaration. Instead, those details are compiled from other data sources for reporting in the relevant Parliamentarian's monthly management reports.

3.25 In that context, in the two year period to December 2013 examined, there were at least 14 instances in which Parliamentarians were paid travelling allowance as a Senator or Member¹⁰² on the basis of attending a state party conference, with associated travel costs also being paid.¹⁰³ Those costs variously included:

- scheduled flights to and from the location of the conference;
- car transport, such as COMCAR or taxis, during the period spent in the conference location; or
- air charter costs for travel from a Senator's regional home base to the State capital city. The Senator spent two nights in the capital city, with the travel declaration claiming travelling allowance for those overnight stays stating, by virtue of the clause claimed under, that they were primarily occasioned by attending the party state conference. The travel declaration identified the mode of travel to the capital city as being via a charter flight. The charter invoice was subsequently processed by Finance as relating to the Senator's electorate charter entitlement, which is required to be used for travel 'within and for the service of the electorate' (as certified to by the relevant Parliamentarian).¹⁰⁴ Use of that entitlement for travel to attend a party conference would only be

102 This includes one Parliamentarian who had claimed the travelling allowance using the backbencher clause for attending state party conferences, but in respect of whom Finance subsequently amended the claim to the office-holder clause on the basis that the individual had assumed a Parliamentary office-holder position prior to attending the conference (with an additional payment for the higher applicable rate also being processed). The Parliamentarian was entitled to the higher rate of travelling allowance at the relevant time. However, in terms of the eligibility of travel costs, there is no evidence of the Parliamentarian having attended the conference in connection with undertaking official business as a Parliamentary office-holder.

103 This excludes instances in which the travel declaration submitted indicated that travel to and from the conference was via the private plated vehicle provided to Senators and Members under entitlement. The Determination stipulates that the private plated vehicle may be used for parliamentary, electorate or official business, family travel and private purposes but not for commercial purposes. In that context, the eligibility of use of the private plated vehicle for travel to attend a state party conference is unclear in that the Determination does make a clear statement in relation to its use for party business (party conferences being identified as one of the eligible aspects of party business).

104 There was extensive delay in processing the charter company invoice for this travel, which had occurred in August 2012. The invoice was paid in June 2013. The only record of the need to request a charter certification form from the Senator for this trip was an internal request recorded by Finance in August 2013. The records examined by ANAO did not include a completed charter certification form.

appropriate if the Senator primarily accessed the charter transport in order to undertake electorate business in the capital city prior to attending the conference. However, there is no evidence of Finance seeking to reconcile the use of the two entitlements or to satisfy itself that the use of charter travel in association with attending a state party conference had been undertaken within entitlement.

3.26 In a further five instances, travel costs were also paid for office-holders who had claimed travelling allowance for attending a state party conference but who had not indicated (including through the Determination clause claimed under) that he or she had attended the conference in the ‘official capacity’ described by Finance in its advice (see paragraph 3.22).¹⁰⁵

3.27 In April 2015, Finance advised ANAO that:

... parliamentarians have approval to travel on domestic scheduled services and their attendance at State Conferences often coincides with other business in that location which is of a parliamentary, electorate or official nature.

3.28 In that respect, as is discussed further at paragraphs 3.31 to 3.46, under existing arrangements Parliamentarians are not required to provide the department with advice as to the ‘other business’ that may have been undertaken in the course of a particular journey in addition to that identified as the basis for claiming travelling allowance. In the instances discussed, the travel declarations submitted by the relevant Parliamentarians had identified attendance at a state party conference as the reason for travel that occasioned the relevant overnight stays. The situation in relation to attendance at state party conferences serves to highlight both the complexity of existing travel entitlements, and the resulting challenges for effective oversight of compliance with the terms of those entitlements.

¹⁰⁵ Specifically, rather than claiming under the clause provided for overnight stays primarily occasioned by official business as a Minister or office holder (clause 3.8b or other clause relevant to official business of a particular Parliamentary office), those Parliamentarians had claimed the travelling allowance under the clause that directly provides office-holders with an entitlement to be paid travelling allowance for attending, inter alia, a state party conference (clause 3.8f). That clause replicates the same entitlement provided to Senators and Members under clause 3.12f. ANAO also noted a number of examples in which overnight stays that coincided with the relevant Parliamentarian’s party holding a state conference at the same location had been claimed under clauses related to undertaking official business as a Minister or other office holder, Opposition Office-holder, Shadow Minister or Chief Whip. As is discussed further at paragraphs 3.31 to 3.36, claims made in that capacity are not subject to pre or post-payment checks as to the purpose of the travel.

Processing system improvements

3.29 The 2009–10 audit report noted that efforts to introduce greater automation to entitlements processing and reporting had not proven successful, due in part to the high cost of developing information technology systems for the complex entitlements framework.¹⁰⁶ Subsequently, the January 2011 report of the Williams Review observed that the systems on which Finance depended for its entitlements administration were both outdated and vulnerable, and that significant manual intervention was necessary to support even basic service provision.

3.30 In the period following that report, Finance has undertaken a program of work to deliver IT related improvements to services provided to Parliamentarians, including a project to extend the useful life of EMS and specific system improvements to support Finance’s business processes. The Williams Review report noted that the business case for EMS 2.0 was signed off in October 2009, with the project originally scheduled for completion by March 2011, but that the project costs and completion timeline had subsequently blown out. The report recommended that priority be given to finalising the EMS upgrade. Departmental records indicate that, following testing in 2013, the enhanced version of EMS has been implemented. However, any further progress toward a fully integrated, online processing system is subject to future funding availability. In that respect, in the context of the 2015–16 Budget, it was agreed that Finance would undertake a scoping study for the development of an online capability for the submission of travelling allowance claims by Parliamentarians and their MoP(S) Act employees.

Reliance on certification as to purpose of travel

3.31 The pre-payment checks undertaken by Finance generally go to matters that are ‘mechanical’ aspects of the relevant entitlement, such as allowable locations, office held, and annual budgets and caps. Finance does not generally¹⁰⁷ undertake pre-payment checks that seek to validate that the purpose for which the travel (relevant to a travelling allowance or charter claim) had been undertaken complies with the eligible purposes set out in the

106 The audit report further noted that a Business Improvement Program had been initiated but was subsequently suspended due to significant increases in the expected costs, with Finance advising that further work on the project would only be undertaken if additional funding was provided.

107 As noted at paragraph 3.12, for some claims, Finance seeks to obtain evidence confirming that the relevant meeting or event occurred prior to processing the claim—see paragraphs 3.53 to 3.59.

relevant head of authority. Rather, reliance is placed upon the certification provided by the Parliamentarian, by way of completed travel declaration or charter certification form.

3.32 One of the measures announced by the SMOS on 9 November 2013 was that:

Improvements to the Department of Finance records systems will be implemented as quickly as possible with a view to highlighting non-standard travel or usage amongst parliamentarians.

3.33 In March 2014, Finance advised the SMOS of the pre and post payment checks that are undertaken, but that:

There are currently no automated systems within [Finance], which check and highlight ‘non-standard’ travel. Identifying ‘non-standard’ travel is challenging given that what constitutes non-standard travel depends on a number of factors including the Office (if any) a Senator or Member holds, their Parliamentary responsibilities and their geographical location.

3.34 Finance’s advice also highlighted that, in general, the checks undertaken do not directly address whether the purpose of travel was within the terms of the purpose-based entitlement. Specifically, the department advised that, in relation to travelling allowance claims:

... Given that the Senator or Member has certified that they have fulfilled the requirements of the particular clauses of...the Determination as identified on the form, the purpose of the travel is generally not queried by Finance staff. Instances where clarification of the travel might be sought are if it appears to fall outside of the parameters of the party business travel that is allowed under the Determination or if the travel is to external territories by a Senator or Member who has no responsibilities in relation to these areas.

3.35 The approach outlined by Finance is applied to the range of clauses under which the Determination stipulates that travelling allowance is payable in respect of overnight stays primarily occasioned by ‘official business’ as a Minister or office holder; ‘electorate business’; ‘parliamentary business’; ‘Parliamentary Committee business’; or ‘when travelling in the performance of duties or functions connected with the [relevant office]’.¹⁰⁸ Notwithstanding that

108 This includes the offices of: the Leader or Deputy Leader of a recognised party of at least five members in the Parliament; the Chief/Primary Whip of each party in the Senate or the House of Representatives; other whips of all parties in either the Senate or the House of Representatives in specified circumstances; and Shadow Minister.

the travel declaration form provides the capacity for greater details to be submitted, Parliamentarians claiming under those clauses within the sample of transactions examined rarely chose to provide information that gave any additional insight into the purpose of individual instances of travel beyond that indicated by use of the relevant clause. In most cases, the field on the travel declaration form for describing the meeting attended or other reason for claim was either completed with generic references that mirrored the terms of the relevant entitlement (such as ‘official business’; ‘Ministerial business’; ‘Shadow Minister duties’; ‘portfolio meetings’ or ‘electorate business’), or was left blank.

3.36 In the two year period January 2012 to December 2013, claims under that group of purpose-based clauses represented 27 per cent of nights paid and 32 per cent of total travelling allowance payments to all Parliamentarians. Of the travelling allowance paid in that period, 61 per cent of nights and 57 per cent of amounts paid were under the clauses related to attending sittings of the Parliament. When those claims are excluded, the clauses for which establishing eligibility of purpose is solely reliant on certification by the Parliamentarian represented 69 per cent of remaining nights paid and 74 per cent of remaining expenditure.

3.37 Similarly, in signing charter certification forms, Parliamentarians are only asked to certify that the charter transport was used for official purposes or ‘within and for the service of the electorate’, as relevant.¹⁰⁹ There is no provision for Parliamentarians to provide any further information in relation to the particular nature of the business undertaken in conjunction with the use of the charter transport.

Inconsistency between certifications provided for a single instance of travel

3.38 Within the transactions examined, there were instances where the purpose of travel certified to in relation to a particular instance of charter transport (by virtue of the type of certification form provided) was potentially inconsistent with the purpose of travel separately certified to by the relevant Parliamentarian (by virtue of the Determination clause identified) when

109 The certification form required to be provided in relation to use of charter transport in special circumstances as approved by the SMOS does not require any certification as to the purpose for which the charter was provided, only that it was used in accordance with the SMOS’ approval.

claiming travelling allowance for overnight stays associated with the hire period for the charter transport.

3.39 For example, the electorate charter entitlement is provided specifically for travel undertaken by an entitled Senator or Member within and for the service of his or her electorate. The charter transport is able to be engaged or dismissed outside of the electorate, but its use must meet that essential electorate requirement. Accordingly, given the purpose-based nature of each travelling allowance entitlement, it may be inconsistent with the provisions of the Determination for travelling allowance to be claimed in respect of overnight stays associated with travel undertaken using the electorate charter entitlement under an entitlement other than those related to undertaking electorate business.

3.40 ANAO noted a number of instances in which Parliamentarians engaged charter transport that was subsequently certified by the Senator or Member as having been used for the service of his or her electorate (using the electorate charter certification form). However, travelling allowance for associated overnight stays was separately certified (through the clause identified on the travel declaration) as relating to undertaking official business as a Minister or Parliamentary Secretary; travelling in the performance of duties or functions connected with the office of Shadow Minister; travel on Parliamentary Committee business; or attending a party meeting.¹¹⁰ The transactions examined also included instances in which the clause under which travelling allowance was claimed was potentially inconsistent with the terms of the approval applicable to the associated use of travel by special charter.

3.41 Such instances may be due to error on the part of the Parliamentarian (or his or her office) in completing either the travel declaration or charter certification form; misunderstandings in relation to the nature of available entitlements; or due to the Parliamentarian undertaking a variety of activities within the period covered by the charter transport. However, they also diminish the robustness of the certification process as the principal means by which assurance is obtained as to the primary purpose for which a particular instance of travel was undertaken.

¹¹⁰ ANAO also noted instances in which the entitlement to which a charter transaction was attributed by Finance in EMS and the published six monthly expenditure reports was inconsistent with the entitlement under which the Parliamentarian certified to the relevant charter transport use (based on the charter certification form submitted) and, in some cases, the entitlement accessed for the associated travelling allowance.

3.42 In that context, there were also instances in which the travel details identified on a travel declaration submitted for a particular journey were inconsistent with those identified on a charter certification form separately submitted in respect to the same journey. In one case, for example, the travel declaration claimed travelling allowance for two overnight stays at the same location. However, the charter certification form identified that a chartered vehicle had been used to travel to a different location on the second day, staying overnight and returning to the first location the following day.

Primary purpose of travel

3.43 A further consideration goes to the question of whether the eligible purpose identified and certified to on the travel declaration or charter certification form comprised the ‘primary purpose’ of the travel. In that respect, the travelling allowance entitlements are variously expressed as being payable: when an overnight stay is ‘occasioned primarily by’ official business or attending sittings or specified types of meetings; when travelling on parliamentary or electorate business; or when travelling in the performance of duties or functions connected with the relevant office. Similarly, the charter transport entitlements are expressed as being available when travelling for a particular purpose (official business as a specified office holder or ‘within and for the service of the electorate’). In 2009, Finance advised the then SMOS that:

If the primary purpose of the travel is within entitlement (for example, for *parliamentary business*), the entitlement may be validly claimed by Senators and Members even if there is a subsidiary purpose or other activities take place at the destination. This is consistent with the Remuneration Tribunal’s view on travel on Parliamentary business, expressed in its 1992 Report, as *[i]t is necessary that the real purpose of this travel be Parliamentary business. However, if the need for the particular journey be the Member’s parliamentary business, the Member, may of course, combine that business with personal or other business: If he must go to Melbourne on Parliamentary business, he may whilst there deal with personal or Party business.* [sic]

3.44 In that context, where eligible and other activities are combined while on a single trip, it is left to the discretion and judgement of individual Parliamentarians to determine whether the eligible business that may have been undertaken at a particular location could reasonably be considered to have been the primary purpose for initiating the travel to that location in the first instance. For example, Finance recorded a request from one Parliamentarian for advice in relation to the use of travel entitlements to attend a function associated with a private venture. The department recorded that, in

response to advice that it would be a personal expense if the travel was primarily to attend the function:

[The Parliamentarian] then asked if [the Parliamentarian] had [official] meetings, could [the Parliamentarian] attend [the function] later in the day. [Finance] advised that [the Parliamentarian] would need to be able to defend [the] decision to travel if there was media or other scrutiny. [The Parliamentarian] asked how many [official] meetings [the Parliamentarian] would have to attend to justify that [that the] primary purpose for travel was [official business], and I advised that [Finance] could not provide such an answer as it would be dependent on the individual circumstances.

3.45 In response to the Parliamentarian's request for written advice to assist in making a decision, Finance provided the following advice:

I refer to our earlier conversation concerning travel entitlements. As you are aware, there is no limit to the travel within Australia that may be undertaken by a Senator or Member on scheduled commercial services provided such travel is for Parliamentary, electorate or official business. The *Parliamentary Entitlements Act 1990* is silent on what incidental activities may be undertaken by a Senator or Member at the conclusion of his or her Parliamentary, electorate or official duties and we are unable to provide advice on whether an activity, such as your [function], would or would not be acceptable. We note, however, that the entitlements framework precludes the use of various entitlements for Commercial purposes.

Each Senator and Member is individually accountable for his or her use of entitlements as they are required to certify that use was within entitlement. While [Finance] can provide advice and assistance, it is in your interest to satisfy yourself that the use of your entitlements is publicly defensible. In deciding whether or not to access your travel entitlements, you should adopt a risk assessment approach. The...table set out in the Senators and Members Entitlements Handbook is provided to assist with risk assessment.

3.46 In that respect, Finance's 2009 advice to the then SMOS had further noted that:

In most cases, [Finance] is unaware of when incidental activities occur in the course of travel under entitlement.

Clauses incorrectly certified to

3.47 As part of the pre-payment checks undertaken, there were a number of circumstances in which Finance was able to identify that Parliamentarians had submitted a travel declaration incorrectly certifying that he or she had fulfilled

all the requirements of a nominated Determination clause. This arose, for example, where the travel declaration nominated a clause under which the Parliamentarian did not have, or had exhausted, any entitlement; or which the Parliamentarian was not able to access in the relevant location or circumstances.¹¹¹

3.48 As discussed at paragraphs 3.14 to 3.21, on some occasions the ineligibility of the certified clause was identified after payment had occurred, often during the process of preparing the six monthly expenditure reports. However, more commonly, the department's pre-payment checking process had identified the anomaly. In those instances, Finance generally invited the Parliamentarian, through his or her office, to submit a revised claim under an alternative clause should they still wish to claim travelling allowance for the night/s in question.¹¹² That process could involve multiple iterations.

3.49 For example, in one case a Member submitted a signed travel declaration claiming travelling allowance for two nights in the nearest capital city to the Member's electorate (but outside the electorate) under clause 3.15 (relating to 'in electorate travel' on parliamentary or electorate business). Finance rejected the claim, suggesting that the Member instead claim under the annual capped entitlement of 10 nights for meetings outside the electorate on electorate business (clause 3.12(f)). The Member's office submitted an amended travel declaration (initialled by the Member) under which the Member now certified to the two nights as relating to clause 3.15.1 (which allows for a specified portion of the capped 'in electorate travel' entitlement to be utilised for transit stops at the nearest major transport centre when not able to access the electorate through direct flights from within the electorate). Finance responded that the two nights in the capital city were not able to be claimed under the transit stop provision given flight availability from that city to the Member's home base in the electorate. A further amended travel declaration then submitted by the Member certified that the first overnight stay had been primarily occasioned by official business as an office holder (clause 3.8b) and the second as relating to meetings on electorate business outside the electorate

111 It also included instances involving claims for attending party or Parliamentary committee meetings that could not be subsequently supported by evidence of the meeting occurring (see further at paragraphs 3.53 to 3.59).

112 However, ANAO also noted examples in which the clause was changed by either a member of the Parliamentarian's staff or Finance without that change being appropriately initialled or signed by the Senator or Member.

(clause 3.12f), with those nights being paid on that basis. As a result of that process, the Member had certified to the same two overnight stays as relating to four separate clauses involving two different purposes of travel.¹¹³

3.50 Interchanges of that nature between Finance and Parliamentarians' offices were not uncommon in the period examined by ANAO. In other cases, travel declarations had been submitted that did not identify a clause (rendering the certification provided meaningless), for which Finance sought amended and complete travel declarations.

3.51 The examples observed by ANAO served to highlight the complex nature of the entitlements framework, and both the resulting difficulties Senators and Members (and their offices) experience at times in providing reliably completed travel declarations and associated certifications, and the increased exposure to the potential for ineligible claims being submitted.

3.52 However, clarifying exchanges of that nature do not occur where there is no readily identifiable anomaly between: the clause being certified to, the location of the overnight stay, and the information set out on the travel declaration form. That is the circumstance that generally applies to the purpose-based claims discussed at paragraphs 3.34 to 3.36 which, as noted, comprise the bulk of overnight stays claimed that are not associated with attending sittings of the Parliament.

Pre-payment checks for travelling allowance claims to attend party meetings or conferences

3.53 As noted, Finance's March 2014 advice to the SMOS was that, given the Senator or Member had certified that they had fulfilled the requirements of the particular Determination travelling allowance clause identified on the form, the purpose of the travel is generally not queried by Finance staff. However, that approach is not adopted in respect to all travelling allowance claims.

3.54 Specifically, notwithstanding the certification provided by the relevant Parliamentarian, pre-payment checking of compliance with the specified purpose of travel or other conditions set out in the Determination or associated procedural rules is applied to claims made under certain clauses. Where

¹¹³ Illustrating the complexity of the existing framework, Finance subsequently changed its view, and advice to the Member, in relation to the applicability of claims under clause 3.15 at the same location. That process led to the Member requesting that the department amend a number of claims for nights spent in that location that had previously been submitted and paid under clause 3.12f.

relevant evidence of eligibility is not able to be provided to the department, the Parliamentarian is advised that the claim is not able to be processed unless the Parliamentarian wishes to nominate an alternative entitlement clause. This approach is applied, for example, in respect of claims related to attending Parliamentary committee meetings; functions representing a Minister or Presiding Officer; meetings of a Parliamentarian's parliamentary political party, its executive or committees; or attendance at the national and state conferences of a political party to which the Parliamentarian belongs.

3.55 The type of evidence on which Finance relied in processing travelling allowance claims in relation to attending party conferences varied, but generally consisted of confirming that the conference was held at the relevant location on the relevant dates.¹¹⁴ In few instances did the department seek to confirm the relevant Parliamentarian's attendance.

3.56 The Determination stipulates that travelling allowance will only be payable in relation to attending party meetings where the meeting has been properly constituted. Prior to processing such claims, Finance generally seeks confirmation of the meeting from the office of the relevant party's Chief Whip. In some cases, the advice received confirming that a party meeting had occurred also confirmed the specific nature of the meeting, as well as providing a list of attendees or otherwise confirming the relevant Parliamentarian's attendance. For other transactions, Finance relied upon a general confirmation of a party meeting having occurred, without confirmation of the specific nature of the meeting and/or of the relevant Parliamentarian's attendance also being obtained.¹¹⁵

3.57 Finance has declined to provide Parliamentarians with definitive advice as to what type of party meetings are eligible under the relevant travelling allowance clauses. For example, ANAO noted one example in which a Member's office sought advice as to whether a specified clause (which refers

114 The evidence relied upon included media reports that the conference had occurred or would be occurring; extracts from the party website inviting registrations to attend the conference; conference pamphlets; party Facebook posts of the conference commencing; posts on the party website promoting the conference outcomes; and a Labor State Minister media release criticising a Liberal Member that mentioned the date of the first day of the Liberal state conference. In one case, the Member had described the purpose of the travel as attending the 'Labor Party NSW Left Caucus Annual Dinner.' The date on which travelling allowance was claimed coincided with the middle night of the 2012 Labor state party conference. The evidence relied upon by Finance in processing the claim was a conference brochure.

115 In that respect, the original request from Finance often included a request for 'a list of attendees if possible', but the department did not follow-up on that aspect where such a list was not provided.

to meetings of a Parliamentarian's 'parliamentary political party executive') would apply to the Member's attendance at meetings of the state executive of the relevant party. Finance advised that: 'It is up to [*the Member*] to determine if the meeting [*the Member*] is attending would fall under those categories'. Finance further advised that it would require evidence that such a meeting had occurred in order to pay any travelling allowance claim. Finance subsequently paid the Member's travelling allowance claim under the relevant clause based on evidence of the Member attending a meeting of the state executive.

3.58 There were other cases in which the occurrence of a properly convened meeting requiring the Parliamentarian's attendance was not able to be confirmed to Finance by the relevant Whip, claiming Parliamentarian or any other source. In some such instances, the claim was not then pursued (despite the Parliamentarian having previously certified as to the eligibility of the claim). In other cases, the Parliamentarian re-submitted the claim under a different purpose-based clause in respect to which such supporting evidence was not sought by the department.

3.59 Further in that respect, ANAO noted instances in which Parliamentarians attending the same parliamentary or party meeting subsequently claimed travelling allowance for the relevant nights under different clauses. Whereas some claimed under a meeting-related clause, others claimed under a purpose-based clause related to undertaking the duties of a particular office. As a consequence, only the claims of the former group of attendees were the subject of pre-payment evidence-checking by Finance; and the purpose that occasioned the relevant travel was reported differently in the attendee's respective six monthly expenditure reports. That situation further highlights the complexity and uncertainty associated with the existing entitlements framework.

Implications for reliability of the certification process

3.60 Instances such as those discussed in which Parliamentarians have provided certifications that were subsequently amended, replaced or withdrawn, or which are potentially inconsistent with other certifications provided, do not necessarily indicate that the relevant Parliamentarians were not eligible to access travel-related entitlements when undertaking the relevant activity. However, they do serve to undermine the extent to which the transactional certifications provided can reasonably be seen as providing a robust and reliable assurance as to the:

- nature of the relevant business that occasioned the relevant travel; and
- the level of understanding there is among Parliamentarians and/or their offices of the details of the entitlements they are certifying compliance with.

3.61 As noted at paragraph 2.9, the April 2010 CROPE report concluded that the entitlements surrounding travel are arguably the most complex, confusing and difficult to understand both for Senators and Members and those who administer the entitlements.

3.62 Further in that respect, it is evident from the communications regularly recorded between Finance and Parliamentarians' offices that, in large part, travel declarations and charter certification forms are prepared by Senators' and Members' staff for signature by their employing Parliamentarian. That is unsurprising given the many calls upon the time of a Parliamentarian. However, a natural consequence of this approach is that the accuracy of the details provided and, consequently, the reliability of the associated certification of compliance, can be diluted depending upon the extent to which:

- the staff members involved have an appropriate knowledge and understanding of the entitlements framework; and/or
- Parliamentarians scrutinise the details set out in each completed form prior to signing it.

3.63 The risks associated with the approach used in various offices were highlighted, for example, in the case of one Parliamentarian in the context of a post-payment check of a travelling allowance claim. In that case, the travel declaration submitted had claimed travelling allowance for an interstate overnight stay in July 2013 at the commercial accommodation rate, with the completed form indicating that receipts evidencing the commercial accommodation were available upon request. That claim was subsequently selected in May 2014 for inclusion in a sample of such transactions in respect to which Finance sought a copy of the receipt. Finance records indicate that, in response, the Parliamentarian advised that, whilst originally scheduled to stay overnight at the interstate location, the Parliamentarian had changed flights to be back at home base on the same day. The department further recorded that:

[The Parliamentarian] advised that the claim form received by the Department was "an electronic form with an attached electronic signature. I did not authorise the form. I was not aware that the claim had been made, and was also unaware that I had received payment for it until I received your email of

14 May 2014.” *[The Parliamentarian]* has advised that *[the Parliamentarian]* has now changed procedures in *[the]* office such that accommodation receipts will be provided with TA claims, with the exception of Canberra.¹¹⁶

3.64 A further example involved two repayments made by one Parliamentarian in October 2013. Those repayments related to two instances in 2011 in which travelling allowance was incorrectly claimed in Canberra. On both occasions, the Parliamentarian had travelled to Canberra for the purpose of attending sittings of the Parliament but spent the weekend elsewhere. In making the repayments, the Parliamentarian advised Finance that the electorate staff had not been aware that the Parliamentarian had left Canberra on personal business on those occasions and had, consequently, ‘drafted the travel claim for the entire period between my flights to and from Canberra, as was standard practice in my office’. The relevant errors had come to the Parliamentarian’s attention as a result of the range of media reports relating to Parliamentarians’ travel in the latter part of 2013.

3.65 In the period examined by ANAO, there were also instances of claims being submitted for the payment of travelling allowance as relating to official business for nights that were then disclosed in the relevant Parliamentarian’s pecuniary interest statement as being the subject of hospitality, including accommodation, to attend sporting and cultural events. The Parliamentarian subsequently initiated repayment of the relevant travelling allowance to the department.

3.66 Such examples serve to highlight the need for care by Parliamentarians in scrutinising travelling allowance claims prepared by staff before signing and, therefore, certifying the eligibility of the claim.

Implementation of charter certification form as a key compliance tool

3.67 As noted at paragraphs 3.10 to 3.11, the principal means by which Finance obtains assurance that charter entitlements have been used for eligible purposes, and within the terms of the relevant entitlement, is through the provision by Parliamentarians of completed charter certification forms. However, ANAO

¹¹⁶ The post-payment audit process for the provision by Parliamentarians of receipts of commercial accommodation is discussed further at paragraphs 4.32 to 4.35.

noted aspects of the department's oversight of that process that indicated weaknesses in its efficacy as a key accountability and compliance tool.¹¹⁷

Certified travel details inconsistent with relevant invoice

3.68 Finance's documented internal procedures for processing charter payments requires departmental officers to confirm that the charter certification form contains the same information as the invoice, approval and ticket. In addition, the certification forms advise Parliamentarians to ensure that all legs of travel undertaken using the chartered transport are identified on the form.¹¹⁸ In that respect, the sample of transactions examined by ANAO included instances in which the certification form provided did not accurately identify all travel taken using the chartered transport and/or the details set out on the form did not match those identified on the relevant charter company invoice.

3.69 In some cases, in accordance with the documented procedures, the department had sought clarification or an amended certification form from the relevant Parliamentarian's office. In that context, ANAO noted instances in which Finance accepted amended certification forms for processing despite the amended travel details not having been appropriately certified to by the relevant Parliamentarian.

3.70 In other cases, however, the department did not seek to clarify the matter or obtain an accurate certification of the relevant charter transport use. This included, for example, instances in which the invoice from the provider identified the relevant hire period as being for a period of two or more days, but the certification form only identified the travel as occurring on the first day of the hire period and/or all legs of travel undertaken during the hire period were not disclosed. This included cases where the invoice indicated that the

117 This included, in one case, the department relying upon a completed certification form relating to the special charter entitlement in processing an invoice for air charter under the relevant Parliamentarian's electorate charter entitlement. The Parliamentarian had submitted the special charter certification form in error for travel within the relevant electorate. When a response to requests for the correct certification form was not received, Finance crossed out the word 'special' in the certification form title and replaced it with 'electorate'. However, as noted at paragraphs 3.10 to 3.11, the nature of the certification required in respect to each charter transport transaction differs depending upon the charter entitlement being accessed, with the relevant certification requirements being pre-printed on the form applicable to each entitlement. In addition, the Parliamentarian's signature to the special charter certification form was dated seven days prior to the date of travel identified on the form and associated invoice. As a result, an effective certification of this instance of travel was not provided by the relevant Parliamentarian or otherwise obtained by Finance.

118 The certification forms issued by Finance provide for the Parliamentarian to specify the itinerary of travel undertaken, including the date, departure location and arrival location of each leg of travel.

charter had involved a return trip, but the certification form only identified one leg of travel.¹¹⁹ There were also instances of:

- the certification form identifying the travel as occurring over two days (involving one night), whereas the invoice identified the hire period as extending over three calendar days (involving two nights);
- the certification form identifying the travel as occurring on a date prior to the date identified on the charter company's invoice, with Finance recording the date of travel as per the certification form;
- the certification form identifying the travel as occurring on a date subsequent to the date the invoice reported the charter period as having concluded on; and
- the certification form being signed, and in some cases, submitted prior to the hire period identified on the invoice being completed, or the signature was undated.

3.71 Those instances reflected a combination of processing scenarios. Specifically, in a number of cases the charter provider's invoice had been paid by the department, based upon the invoiced details, prior to a charter certification form being sought from the relevant Parliamentarian to enable the costs to be allocated to the correct entitlement. The details already recorded in EMS were not reconciled to those identified on the certification form as part of the process of allocating the relevant costs to the Parliamentarian's electorate charter entitlement. There were also cases in which:

- the certification form was provided by the Parliamentarian prior to the department receiving and/or processing the relevant invoice¹²⁰; or

¹¹⁹ For example, in one case, the hire car invoice identified travel over a two day period of the 19th to 20th of the relevant month that commenced and ended at the regional centre in which the Parliamentarian's electorate office was located. The certification form submitted by fax at 12:48pm on the 19th (approximately 2.5 hours after the hire car had been picked up) stated that the travel was a one way journey from the regional centre to the capital city on the 20th. However, the signature was undated and the mode of travel box was not marked. Finance sought an amended form, but did not raise the anomaly of a certification form being submitted on the 19th for travel that the form stated was to occur on the 20th. The Parliamentarian's office returned an amended form that showed the same travel details, but on which the Parliamentarian's signature was now dated as the 19th. Finance did not query the anomaly between the signature date now identified and the reported travel date of the 20th. In subsequently processing the payment, Finance recorded the travel details as per the invoice, but did not query the incomplete travel details identified on the certification form. In that respect, the distance between the departure and destination points identified on the certification form is approximately 200 kilometres. The distance travelled during the hire period was identified on the invoice as 496 kilometres, indicating a return journey was undertaken using the hire car.

- the invoice was provided to the department as an attachment to the Parliamentarian's certification form.

3.72 An example of the latter scenario included a case in which a Member submitted an invoice for payment which identified that the costs involved related to separate charter flights (each with multiple stops) taken on consecutive days. However, the certification form submitted with the invoice only identified the travel legs undertaken on the first day. In processing the charter payment, Finance attributed all costs to the charter flight taken on the first day and only recorded the legs that had been travelled on that day. As a result, the published entitlements expenditure details for that Member overstated the cost of the charter flight taken on the first day and omitted to report the charter flight taken on the second day.

3.73 Further in that respect, the invoices provided by car rental companies typically identify the pick-up and drop-off locations and times, together with a count of the number of kilometres driven during the rental period based on odometer readings. However, there is no evidence of Finance routinely examining the details provided on car rental invoices to provide a reasonableness test of the reliability of the details provided on the certification form submitted.

3.74 For example, in one case Finance queried the eligibility of the use of a hire car where the electorate charter certification form signed by the Parliamentarian had identified the same capital city as both the departure and destination points, with all travel being identified as occurring on the same day (noting that the Parliamentarian also claimed travelling allowance for an

120 In that respect, ANAO also noted an example in which clarification of the discrepancy between the travel details identified on the invoice and certification form was only initiated at the request of the relevant Parliamentarian's office. Specifically, in that case Finance had processed payment of a charter invoice based on the departure date identified on the invoice of a Saturday, despite the certification form that had already been provided by the Parliamentarian stating that the travel occurred on the following Monday. The travel was undertaken under a standing special charter approval for that Parliamentarian to travel to Canberra to attend sittings. In signing the special charter certification form, a Parliamentarian certifies that the charter was in accordance with the approval. The travel date certified by the Parliamentarian was consistent with the relevant SMOS approval. As the travel was booked through Finance's travel provider, the invoice was provided directly to Finance. In processing payment of the invoice, Finance crossed out the Monday departure date identified on the signed certification form and annotated a replacement date of the previous Saturday. Following a query from the Parliamentarian's Office after the transaction appeared in the monthly management report, a revised invoice was obtained from the charter company and Finance amended the transaction details to reflect the correct travel dates. In the absence of an inquiry from the Member's office, incorrect details would have been reported in the Parliamentarian's published six monthly expenditure report.

overnight stay in the capital city for the same night).¹²¹ Finance recorded that, in response, the Parliamentarian's office had advised that the hire car had been used to travel between the capital city and the Parliamentarian's home base and that an amended certification form would be provided. The charter certification form comprises two pages, with the travel details being identified on the first page and the second page carrying the signature block. The Parliamentarian's office subsequently provided Finance with an amended version of the first page, on which further details had been added to state that the hire car was picked up in the capital city, driven to the Parliamentarian's home base and back to the capital city the same day.¹²² Finance processed the charter claim on that basis.

3.75 The hire car invoice stated that the vehicle had been picked up in the capital city on the date identified on the charter certification form, but had been dropped off at the capital city airport the following morning. It further stated that the total distance travelled during the hire period was 567 kilometres. In that respect, return travel by road between the capital city and the Parliamentarian's home base involved a distance in excess of 1000 kilometres. However, there is no evidence of Finance seeking to reconcile the travel details recorded on the invoice with the amended travel details advised by the Parliamentarian's office.

Claims for reimbursement of long-term vehicle costs

3.76 The terms of the Tribunal Determination setting out the electorate charter entitlement reflect an expectation that the entitlement will be accessed on a trip by trip basis. That expectation is similarly reflected in the electorate charter certification form issued by Finance which, as noted, requires Parliamentarians to identify all legs of travel undertaken utilising the chartered transport and any accompanying passengers on each trip (including those for whom cost recovery applies or is to be waived on specified grounds). However, the Senators and Members Handbook also states as follows:

121 The electorate charter entitlement does not extend to the use of hire cars in capital cities.

122 In response to advice from Finance that the department did not appear to have received the second (signature) page of the amended certification form, the Parliamentarian's office provided the department with an email carrying two attachments. One was the amended first page previously provided. The second attachment appears to be a copy of the original signature page, with the signature still carrying the same date as the originally submitted form. This was accepted by Finance as certification by the Parliamentarian of the additional details set out on the amended page provided by the Parliamentarian's office.

Vehicles may be hired under the electorate charter entitlement on a long-term basis from private firms, provided the arrangement is for hire only, with no residual equity in the vehicle accruing to the hirer.

3.77 In that context, a particular example highlighting weaknesses in the charter certification process related to the use of the electorate charter entitlement by one Parliamentarian to acquire the full-time use of a non-standard vehicle. Departmental records indicate that the Parliamentarian had adopted that approach since at least 2004, involving a succession of vehicles, after being previously advised by the then SMOS that a request for an additional private plated vehicle in order to meet electorate-travel requirements was not able to be agreed to under the available entitlements. The SMOS' advice to the Parliamentarian had suggested that engaging a vehicle on either an occasional or long-term lease basis utilising the electorate charter entitlement were alternative options available to the Parliamentarian. In that respect, the departmental advice provided to the SMOS in relation to the non-availability of an entitlement to an additional private plated vehicle had advised that it was open to the Parliamentarian to 'hire' a non-standard vehicle to travel within the electorate.

3.78 Subsequent to the Parliamentarian indicating a desire to take up the option identified in the SMOS' advice of taking out a long-term lease on a vehicle using the electorate charter entitlement, the department sought to clarify the administrative arrangements that would apply in relation to the vehicle and the Parliamentarian's claims under the charter entitlement. Those arrangements involved the Parliamentarian providing electorate charter certification forms in relation to use of the vehicle in accordance with the terms of the electorate charter entitlement; and that pro-rata cost arrangements would apply for any other use or periods in which the vehicle was not used within and for the service of the electorate.

3.79 However, as a consequence of the approach that has been subsequently adopted, the charter certification form has not been applied in a manner that provides the intended transparency and accountability for expenditure incurred when accessing the electorate charter entitlement. In particular, in seeking each reimbursement of costs associated with the vehicle, the Parliamentarian provided a single charter certification form to cover the month (or months) to which the relevant costs related. On no occasion were any other details sought or provided in relation to individual journeys undertaken using the vehicle, including in respect to distance travelled or locations visited, or to

identify any passengers that may have travelled in the vehicle at any stage.¹²³ Nor was information sought or provided in order to confirm any periods or journeys in the two year period examined for which the vehicle had been used for purposes other than within and for the service of the electorate and, therefore, to which pro-rata cost arrangements should apply.

3.80 During the period since 2004, the department had not sought any further policy consideration as to the appropriateness of such use of the electorate charter entitlement from any subsequent Minister. The Parliamentarian's last claim for reimbursement of lease costs associated with the vehicle related to September 2012, with two subsequent claims submitted in 2013 for reimbursement of other operating costs being later withdrawn as having been submitted in error. In April 2015, Finance advised ANAO that it would review the current arrangements to determine the continued relevance of the provision of a vehicle in this manner.

Cost effective use of charter transport at public expense

Utilisation of charter transport entitlements

3.81 As discussed at paragraph 3.12, the various charter transport entitlements comprise a combination of capped and uncapped entitlements. Where an entitlement is subject to a cap, it is expressed in the relevant head of authority as a maximum financial budget that will be available to the entitled Senator or Member in a given financial year. Consequently, it is open to each Parliamentarian to exercise individual judgements as to how (and whether) to utilise that available budget.

3.82 In the case of electorate charter budgets, for example, some entitled Parliamentarians rarely access their entitlement, whereas others use most or all of the entitlement available each year. For example, 109 Senators and Members were identified by Finance as having an available electorate charter budget for the 2012–13 financial year.¹²⁴ Those budgets ranged from \$2189 to \$104 668,

¹²³ In that context, on all but one of the occasions in the 2011–12, 2012–13 and 2013–14 financial years that the Parliamentarian claimed travelling allowance for overnight stays at locations within the electorate, the travel declaration form stipulated that travel to the relevant location had been undertaken using a private plated vehicle, with the remaining travel declaration stating 'car'. On no occasion did the Parliamentarian identify that the vehicle being funded through the electorate charter entitlement had been used for such travel within the electorate.

¹²⁴ Due to the considerable time lag that frequently occurs between charter travel being accessed and the finalisation of the associated certification and invoicing processes, final utilisation data for the 2013–14 financial year was not available at the completion of ANAO fieldwork.

which reflected the sliding scale of entitlement provided under the Determination based on electorate size.¹²⁵ Specifically, the annual budget provided to Members increases depending upon the size of the electorate (with Members representing electorates of less than 10 000 km² not having any entitlement to electorate charter transport). While all Senators are provided with an annual budget, those from the Northern Territory (the highest band of entitlement) and Queensland and Western Australia (the second band) are provided with higher budgets than Senators representing other States and the Australian Capital Territory (the third band).

3.83 Of the 109 Senators and Members identified by Finance as having an available electorate charter entitlement in 2012–13:

- 37 Parliamentarians (34 per cent of those with an entitlement) did not incur any expenditure;
- 24 Parliamentarians (22 per cent) used less than 20 per cent of their respective available budgets;
- 26 Parliamentarians (24 per cent) used between 20 per cent and 50 per cent of their respective available budgets;
- 13 Parliamentarians (12 per cent) used between 51 per cent and 79 per cent of their respective available budgets; and
- nine Parliamentarians (8.3 per cent) used between 80 and 99 per cent of their respective available budgets. The nine Senators and Members in this cohort represented a variety of electorates and States, and had available budgets ranging from \$12 452 to \$90 956. Of the five Members in this group, three represented one of the six largest electorates that are provided with the highest budgets; one represented an electorate in the second band of entitlement (100 000 to 299 999 km²); and one represented an electorate in the lowest band of entitlement (10 000 to 24 999 km²). The four Senators in this group comprised two Senators from States in the second band of entitlement and two Senators from the third band of entitlement.

¹²⁵ The Determination also provides that a Senator or Member may carry forward from one year to the next year up to 20 per cent of charter allowance for the first year, if unused. In addition, a Senator or Member's electorate charter entitlement for a given financial year may be reduced as a result of elections made by the Parliamentarian in relation to accessing a non-standard private plated vehicle for use in his or her electorate.

3.84 The remaining charter entitlement relating to domestic travel that is subject to a financial cap (Leader of a minority party) was not accessed in 2012–13 by one of the entitlees.¹²⁶ The remaining entitlee utilised 93 per cent of the available budget of \$18 500.

Utilisation of uncapped entitlements

3.85 As also noted at paragraph 3.12, one of the charter entitlements that is not subject to any financial cap is special charter undertaken at the approval of the SMOS in circumstances where no scheduled services are available or the Parliamentarian would be unduly delayed by the use of scheduled services. That entitlement is used in relation to both one-off requests from Parliamentarians for use of special charter for a nominated instance of travel; as well as standing approval arrangements.

3.86 In the two year period January 2012 to December 2013 examined by ANAO, expenditure on special charter flights totalled \$330 264. Of that, \$49 188 (15 per cent) related to one-off requests.

3.87 The standing approval arrangements related primarily to travel between a Senator or Member's home base and Canberra to attend sittings (and in one case, Parliamentary committee hearings and party meetings) based on consideration of the availability or otherwise of reasonable scheduled air services. Such approvals are subject to periodic review by the department, with recommendations being made to the SMOS as to whether the approval should be extended, varied or terminated based on factors such as any change in availability of scheduled services.

3.88 In the period January 2012 to December 2013, there were four Members and two Senators for whom standing special charter approvals were in place. However, none of the charter expenditure incurred by one Senator in that period had been identified by Finance as relating to the relevant special charter standing approval.¹²⁷ Total expenditure incurred over that period under the

126 That entitlee did utilise the entitlement during the 2013–14 financial year, involving a charter flight taken on 16 August 2013 (in the course of the 2013 election campaign) at a net cost of \$827 after cost recovery from a number of accompanying passengers.

127 The Senator's standing approval related to completing the final leg of a return journey to the Senator's home base, via the nearest capital city, on a Thursday or Friday following sittings in Canberra. The standing approval provides that the Senator may undertake that journey on a shared charter with another Member who also has a standing special charter approval. However, departmental expenditure records do not identify whether that occurred on any occasion.

standing approvals in place for the remaining five Parliamentarians was \$281 076 (with individual expenditure ranging from \$100 138 to \$3260).

3.89 In respect to the remaining uncapped charter entitlements, total expenditure incurred in the two year period to December 2013, as reflected in Finance records as at the completion of audit fieldwork, comprised:

- \$988 562 under the entitlement available to Ministers, which is also able to be accessed, with the agreement of the Minister, by Parliamentary Secretaries and other Senators and Members when representing the Minister of official business at the request of the Minister;
- \$57 772 under the entitlement available to Opposition Office Holders; and
- \$559 under the entitlement available to Presiding Officers.

Introduction of requirement to obtain quotes for certain charter transport

3.90 In accessing air and land charter transport, Parliamentarians (and/or their staff on the Parliamentarian's behalf) are able to make decisions as to which charter provider (including air charter and hire cars) the service will be procured from. The charter transport can be booked through Finance's contracted service provider (which includes the capacity for the Parliamentarian to nominate the charter provider that is to be used), or the Parliamentarian can procure the services directly from the charter provider.

3.91 The Commonwealth Procurement Rules (CPRs), which represent the Government policy framework under which agencies and their officials are to govern and undertake procurement, do not apply to the procurement by Parliamentarians of goods and services under entitlement. This includes the core requirement under the CPRs in relation to achieving value for money. Nevertheless, Finance's Senators and Members Entitlements Handbook advises Parliamentarians that, when accessing travel entitlements, they should ensure that they will use public money in the most efficient and effective manner, and that:

The entitlements framework for Senators and Members provides considerable flexibility in relation to travel arrangements. This flexibility is provided on the understanding that decisions regarding travel are underpinned by reasonable efforts by Senators and Members to reduce the overall cost to the Australian Government subject to the requirements of the relevant Parliamentary or other official business.

3.92 In that context, the 2009–10 audit report recommended that Finance develop options for Government consideration to improve the control framework applying to situations where Parliamentarians and/or their employees are making procurement decisions.¹²⁸ Finance's August 2009 response to that recommendation included the undertaking that the department would continue to pursue procurement arrangements that will help to ensure that value is secured for the public monies spent on specific parliamentary entitlements such as charter.

3.93 Subsequently, in November 2010, Finance sought the then SMOS' agreement to the introduction of a requirement that all charter travel undertaken under authority of a special charter approval be booked through the department's contracted travel services provider. Finance advised the SMOS that:

While 85 per cent of special charter flights are booked through [*the travel services provider*], unlike the arrangements for scheduled services, there is no formal requirement that Senators or Members book charter flights through the travel services provider. Nor is there requirement that, where possible, [*the service provider*] obtain two quotes for charter services.

[*Finance*] considers that improvements to accountability and transparency would be achieved and value for money considerations would be encouraged if the same arrangements applying to scheduled services were to apply to the special charter entitlement

Currently, once approval is granted by you as Special Minister of State for travel by special charter, the Senator or Member is able to make arrangements directly with any charter company. There is no financial cap or other incentive to obtain more than one quote or to seek best value for money when booking charter travel under this entitlement.

3.94 The department advised that, subject to the Minister's agreement, Finance would require the travel services provider to obtain at least two quotes, where possible and practical, for every proposed special charter booking. The

128 The 2009–10 audit report examined the issue of supplier selection, particularly in relation to the engagement of printers and related services. As part of its response to that audit, the then Government decided in July 2009 that Finance should establish a non-exclusive panel of printing providers for use by Senators and Members. The 2009–10 audit report noted that this should significantly tighten the arrangements for that entitlement and provide greater assurance that value for money will be obtained from the expenditure of public funds. However, it was further noted that there was a wider issue as to whether a stronger focus on procurement principles such as value for money and open and effective competition should be applied to the use of some other entitlements, such as the electorate charter transport entitlement.

department noted that the Senator or Member would not be required to accept the lowest quote, but that the introduction of choice would encourage Senators and Members to obtain value for the Commonwealth's money when deciding which charter carrier to engage. The SMOS agreed to the proposal in November 2010. Subsequent letters advising of Ministerial approval of a special charter request have included reference to the new requirement.

3.95 However, the only visibility Finance maintains over compliance with the policy requirement¹²⁹ is in relation to the requirement to book special charter flights through the contracted service provider.¹³⁰ Finance does not seek to have either the travel services provider or the relevant Parliamentarian's office provide the department with any information or confirmation relating to whether quotes were obtained in relation to special charter flights, or the nature of those quotes.

No application to electorate charter

3.96 In seeking the then SMOS' agreement to the requirement for competitive quotes to be obtained for proposed special charter travel, Finance further advised that the department did not consider that similar policy arrangements were warranted for the electorate charter entitlement.¹³¹ This was on the basis that:

The entitlement to electorate charter provided under Remuneration Tribunal Determination...includes a financial limit based on a Senator's state or territory, or a Member's electorate size. This financial cap provides sufficient incentive to seek value for money when accessing the entitlement.

3.97 However, reliance on budgetary pressure as the primary control over the cost-effective use of charter transport in individual instances is not supported by the position set out in paragraphs 3.82 to 3.83, which highlighted that the

129 Procedural Rule No. 4 of 2005 was made by the then SMOS in relation to charter transport. In seeking Ministerial agreement to mandating the new requirements for special charter, Finance advised that the department would prepare a new procedural rule to give effect to the new arrangements. However, there has been no amendment made to Procedural Rule No.4 or any new Procedural Rule made.

130 In that respect, after two instances of that not occurring, departmental records indicate that in March 2014 consideration was given to the capacity to compel Parliamentarians to book the charter travel through the provider by making the SMOS approval conditional on that occurring (as suggested by internal legal advice). However, it was determined that, while that approach would be preferable, it was not always possible. It was also discussed that this would not be enforceable administratively. It was agreed that advice that the travel service provider 'should' be used for special charter would remain.

131 No reference was made in the relevant brief to the potential application of the requirement to other charter transport entitlements.

majority of entitled Parliamentarians do not utilise the majority of their annual budget each year. In those circumstances, a Parliamentarian may not feel restricted by the total available budget in terms of the costs incurred on individual trips, or as to whether he or she has organised the travel itinerary in a manner that will maximise the efficient and effective use of available resources.

3.98 For example, in the period examined by ANAO, the Parliamentarian who had utilised the electorate charter budget to provide a vehicle that was available for the Parliamentarian's use at all times¹³², represents an electorate that is in the third band of entitlement for Members (that is, electorates that are 25 000 km² to 99 999 km² in size). The Determination currently provides electorates in that band with an annual electorate charter budget of \$21 160. The Parliamentarian did not fully exhaust the available budget in 2011–12 or 2012–13, and reimbursement of the Parliamentarian for the cost of acquiring and operating the long-term vehicle was the only use made of that entitlement in either year. However, that does not necessarily correspond with the approach taken by the Parliamentarian representing the most cost effective means of meeting any requirement to travel within the electorate that could not be satisfied by using the standard private plated vehicle also provided. In the period examined, no other Parliamentarian had identified a similar requirement to retain a long-term vehicle under their respective charter entitlements.

3.99 Other examples noted included:

- a Member whose only use of the electorate charter entitlement in the period examined was for air travel between the Member's home base and the location of the Member's second electorate office. The two locations are approximately 190 kilometres apart by highway (approximately 2.5 hours' drive). In the two year period examined, the Member took nine return, same day air charter flights between the two locations, with the Member not claiming travelling allowance for any overnight stays at the location of the second electorate office. The cost of the return trips (all taken with the same charter company) totalled \$16 253 over two years; and
- a Member who returned to home base from Canberra sittings on a Friday via scheduled service. On the same day, the Member travelled by chartered aircraft from the home base to a location approximately

132 See discussion at paragraphs 3.76 to 3.80.

1.25 hours away by road, where the Member's partner joined the Member for onward travel via the chartered aircraft to a third location within the Member's electorate. The invoice records indicate that the aircraft returned to its home base the same day (being the same home base as that of the Member). A different aircraft from the same company departed the following day to transport the Member and partner back to the second location.¹³³ The total cost of the two chartered aircraft was around \$6300 (GST exclusive). In that context, in the period examined the Member had regularly travelled from home base to the third location at significantly lesser cost. For example:

- a return overnight charter with a different air charter company at a cost of \$2300 (GST exclusive);
- a return overnight charter with the same charter company (including an overnight fee for the pilot) at a cost of \$1945 (GST exclusive); and
- return travel by scheduled commercial flight at a cost of less than \$400.

3.100 Each of those instances of travel is within entitlement, as long as the travel was undertaken for electorate or parliamentary business. However, there is no requirement for a Parliamentarian to demonstrate the basis on which he or she had concluded that a particular use of the electorate charter entitlement represented the most efficient use of the public money involved.¹³⁴ In April 2015, Finance advised ANAO that:

Finance notes that whilst, within our administration, we take steps to increase value for money for the Commonwealth, there is no legislative base for

133 The Member did not claim travelling allowance for the overnight stay.

134 Under the current framework, it is similarly left to individual Parliamentarians' judgement as to when it may be reasonable to claim travelling allowance in connection with a decision to stay overnight at a location other than his or her home base. In particular, a provision setting a minimum distance from home base of at least 100 kilometres before travelling allowance could be claimed for travel within a Senator or entitled Member's electorate was removed from the relevant Determination in 2003. At the same time, the Tribunal removed any entitlement to electorate travelling allowance for Members representing electorates of less than 10 000 km². Since that time, the Determination has not specified any minimum distance that a Parliamentarian is required to travel from his or her home base before being entitled to claim travelling allowance. In that context, the sample of transactions examined by ANAO included examples of travelling allowance being claimed for overnight stays at locations relatively close to the relevant Parliamentarian's home base. For example, in one case, travelling allowance was claimed for an overnight stay at a location that was about 24 kilometres (or an approximately 20 minute drive) from the Parliamentarian's home base.

parliamentarians to meet value for money requirements within their individual expenditure decisions.

Periodic certification of the use of all entitlements

3.101 Significant elements of the entitlements available to current and former Parliamentarians are not subject to a pre-payment certification process. In respect to travel by current Parliamentarians, for example, this includes all travel on domestic scheduled aircraft and other services¹³⁵ where no associated travelling allowance is being claimed; car transport, such as use of COMCAR, taxis and self-drive hire vehicles not engaged as part of a charter entitlement; and use of private plated vehicles provided in the electorate and Canberra. Travel declarations are not required to be submitted in relation to such travel. Similarly, there are no pre-payment certification processes in relation to the use of family and retirement travel entitlements.

3.102 Rather, certification as to the compliant use of those entitlements is sought through a request to provide periodic general certifications. Specifically, current and former Parliamentarians are asked to provide general certifications stipulating that their use of entitlements in the nominated period complied with the provisions of all relevant legislation and determinations. That process involves an administrative request, with Parliamentarians being under no obligation to provide the certification.

Timing of post-payment certification process

3.103 At the time ANAO undertook fieldwork for the 2001–02 audit report, Parliamentarians were provided with monthly reports outlining their entitlements expenditure as paid by Finance in that month. This was followed in November of each year with an end-of-year report for the previous financial year, with Parliamentarians then being asked to provide an annual certification that the reported expenditure related to the use of entitlements in accordance

¹³⁵ Such travel is not subject to any financial or usage cap. In that respect, Finance's March 2014 advice to the SMOS in relation to implementation of the announced measure relating to departmental systems highlighting non-standard travel or usage (see paragraph 3.33) also highlighted that there are no pre-payment checks undertaken in relation to travel that does not involve a claim for travelling allowance. Specifically, Finance advised that: 'If a Senator or Member undertakes travel that does not involve a claim for travelling allowance, there is no documentation regarding the travel provided to Finance. Consequently, it is not possible to undertake any processing checks in these instances. Finance has no visibility of such travel until data is received from the contracted travel provider for payment of the travel account.' The post-payment audits and checks undertaken by Finance are discussed at paragraphs 4.4 to 4.39.

with relevant legislation and determinations. In that respect, the 2001–02 audit report noted that the reliability of the annual certification process as a key control and accountability tool was diminished by the poor response rate by Parliamentarians in providing the requested certifications; the short timeframe available to make the appropriate certification; and the remoteness of the provision of the certification from the point at which the expenditure occurred.¹³⁶

Introduction of monthly certifications

3.104 In December 2000, Finance advised the then SMOS that replacing annual certifications with more regular and contemporaneous reporting through the adoption of monthly certification of the management reports would significantly strengthen the accountability framework. In May 2001, Finance had advised ANAO that the then Government had made an in-principle decision to implement monthly certifications. Pending the finalisation of a format, the annual certification process continued, with the response rates continuing to be poor.¹³⁷

3.105 Monthly certification of management reports was introduced from August 2003, with the response continuing to be variable. In this respect, Finance incorporated into each Parliamentarian's management reports a table identifying those monthly certifications that had and had not been received. This initiative promoted more timely receipt of certifications overall, but there remained some Senators and Members who did not respond.

3.106 The responsiveness of Parliamentarians in certifying their management reports became a standing issue raised in Senate Estimates. At the May 2011 Senate Estimates hearing, Finance advised the Senate committee that, at that time, the proportion of certified management reports that had been received for each month from July 2009 to March 2011 ranged from 95.59 per cent (for July 2009) to 47.01 per cent (for the then most recent month of March 2011).

3.107 The committee was advised that the response rates for the more recent months were lower due to the timeframe involved in Parliamentarians and their offices completing the checking and certification process, with the department finding that it could take up to six months for it to receive the

¹³⁶ In that respect, annual certifications in respect to the 1999–2000 financial year had been received from 36 per cent of Parliamentarians by 6 February 2001, and (based on Finance advice) 80 per cent of Parliamentarians by 25 May 2001.

¹³⁷ The 2003–04 audit report identified that annual certifications were provided by the due date for 2000–01 and 2001–02 by 30 per cent and 32 per cent of Parliamentarians respectively.

maximum number of certifications that were going to be provided for a given month.¹³⁸ However, there was no month in the period since July 2009 in respect to which 100 per cent of certifications had been provided by May 2011.¹³⁹

Change to six monthly certifications

3.108 The January 2011 report of the Williams Review commented that Finance and successive Ministers had worked to encourage Parliamentarians to certify the monthly management reports ‘with considerable success, although the certifications received are frequently delayed and qualified’. The Review found that the timeliness, quality and accuracy of the reporting then being provided was a factor in the extent to which Parliamentarians felt able to provide the requested certifications. A lack of relevant expertise to accurately maintain ‘shadow records’ of entitlements expenditure as advised by Finance was identified as a further factor causing Parliamentarians difficulty in confirming both their own entitlement use and the expenditure of their office. The report commented that:

In consequence, a number of the parliamentarians consulted said they had difficulty in providing either confirmation of the details or the requested certification that their entitlement use was in line with the relevant legislation, and often gave a delayed or conditional response.

3.109 To assist in achieving a more timely and efficient management reporting process, the Williams Review recommended changes to the monthly reports, including through aligning the structure, format and wording with that used in the expanded six monthly published reports of entitlements expenditure. Those recommendations, and further additional enhancements, have been subsequently implemented through a monthly management report redevelopment program initiated by Finance.

3.110 The Williams Review further proposed that, in light of the achievement of greater transparency through the six-monthly tabling of entitlement usage and expenditure, there would be benefits in aligning the certification process with the six monthly public reporting process. On 28 June 2011, the then SMOS agreed that, rather than being asked to certify their monthly management

¹³⁸ Official Committee Hansard, Finance and Public Administration Legislation Committee, Estimates, 26 May 2011, p. 98.

¹³⁹ Based on the data provided to the committee, the average monthly certification rate for the 2009–10 financial year was 90.8 per cent; and as at May 2011, there was no month in the 2010–11 financial year in respect to which more than 89 per cent of Parliamentarians had provided a certification.

reports, Parliamentarians would be asked to provide a certification in relation to their use of entitlements in a given six month period in conjunction with the preparation of the published expenditure reports for the same period.

3.111 The six monthly certification process was first applied to the use of entitlements in the period 1 January to 30 June 2011 (with expenditure reports for payments made by Finance in that period being tabled in the Parliament on 24 November 2011). The certification requested of entitlees is general in its terms and includes no specific reference to particular entitlements or instances of entitlements use. Rather, it involves relevant current and former Parliamentarians (or a surviving spouse or de facto partner of former Prime Ministers and Life Gold Pass holders) being asked to certify (for entitlements administered by Finance) that his or her use of each entitlement during the specified period was in accordance with the provisions legislated for each respective entitlement (an example certification form is at Appendix 2).

Promoting compliance with certification requests

3.112 The 2009–10 audit report identified that the certification response rate had improved when compared with that observed in earlier audit reports, but that there remained a significant incidence of reports not being certified. In response to an ANAO recommendation¹⁴⁰, the terms of reference subsequently established for the CROPE review included that the Committee was to report on enabling accountability processes to be mandated. Finance's December 2009 submission to that review commented that:

Finance considers that the current voluntary system of certification should be strengthened by providing a legislative underpinning for certification, and a public reporting mechanism for those Senators and Members who do not properly certify their expenditure.

3.113 In noting that the certifications requested of Parliamentarians are a primary accountability tool, the April 2010 CROPE report also noted the observations set out in the 2009–10 audit report 'that there had been occasions when members had not certified their management reports'. In that context, the Committee recommended that:

140 The 2009–10 audit report recommended that, in progressing the July 2009 Government decision to undertake a review of the entitlements framework, Finance examine options that would, in part, enable accountability processes (such as usage certifications) to be mandated.

- the SMOS, on advice of Finance, table in the Parliament regular reports setting out each Senator's and Member's compliance with the requirement for certification that entitlements have been accessed in accordance with the relevant legislation; and
- the report should include any justification given by the Senator or Member for non-compliance with the requirement.

3.114 That recommendation was included in the recommendations referred to the Remuneration Tribunal by the then Government in March 2011.¹⁴¹ However, in agreeing on 28 June 2011 to the certification process being moved to align with the production of the six monthly expenditure reports, the then SMOS also agreed to Finance publishing on its website information regarding the provision of six monthly certifications by current and former Parliamentarians. Accordingly, since November 2011, in publishing the entitlements expenditure reports for a given six month period, Finance has also published two tables relating to the provision of certifications for the same six month period. These comprise:

- one table that relates to certification of the use of the entitlements that are provided to sitting Senators or Members; and
- a second table that relates to certification of the use of the entitlements provided to former Parliamentarians in the capacity of former Prime Ministers (or surviving spouse or de facto partner); Life Gold Pass Holders (or surviving spouse or de facto partner); or severance and post retirement travellers.

3.115 In that respect, the expenditure reports prepared for each individual identify the payments made by Finance in the relevant six month period, rather than being a representation of the expenditure incurred by the Parliamentarian in the relevant period. The payments are separated into two sections. The first identifies payments made in the relevant six month period that relate to entitlements use in the same (current) period to which the report relates. The second relates to payments made in that six month period that arose from entitlements use in a prior period. The reports prepared for a former Parliamentarian (particularly the first report prepared after leaving the Parliament) often include transactions that relate to entitlements use incurred while still in the Parliament.

141 See paragraphs 2.14 to 2.19.

3.116 Due to that timing lag, former Parliamentarians may be listed in both certification tables for a given six month period, with their names being annotated accordingly.¹⁴² The certification status for the relevant six month period of the individuals listed in each table is identified as either 'certified', 'not applicable'¹⁴³ or left blank (indicating that no certification had been received). Where certifications are received subsequent to the initial publication of the tables, the data on the website is updated accordingly.

3.117 The existing arrangement partially addresses the CROPE report recommendation (see paragraph 3.113) in that it provides public disclosure of each relevant current and former Parliamentarian's compliance with the administrative request that they certify their entitlements use in specified six month periods. However, as is discussed further at paragraph 3.125, the second part of the CROPE recommendation has not been implemented to date.

Six monthly certification compliance rate

3.118 As at May 2015, certification compliance data had been published in relation to seven reporting periods covering entitlements use between January 2011 and June 2014. As Table 3.2 illustrates, the information published on Finance's website indicates that, in relation to use of entitlements as a sitting Senator or Member¹⁴⁴, the proportion of certifications provided in relation to each of the seven reporting periods varied between 81 per cent and 97.4 per cent. The average certification rate across the seven periods to date has been 91 per cent.

142 For the first two six monthly periods, the annotation description was 'expenditure incurred in the period for service as a Parliamentarian and as a Former Parliamentarian'. Since the 1 January to 30 June 2012 reporting period, the annotation description has been 'Parliamentarian and Former Parliamentarian details in the period.'

143 This status was recorded in three reporting periods in relation to a deceased former Member for whom historical transactions were still being finalised. The 'not applicable' status was also recorded in the July to December 2011 and July to December 2012 reporting periods against some former Parliamentarians for whom historical use of entitlements as a sitting Senator or Member was reflected in transactions completed by Finance in the relevant six month period. However, as is discussed further at paragraphs 3.132 to 3.144, this approach has not been consistently applied.

144 Excluding those former Parliamentarians that were listed in the certification table relating to use of the entitlements of a sitting Senator or Member, but whose certification status in that table was marked as 'not applicable'—see footnote 143.

Table 3.2: Response rates to six monthly certification requests as reported by Finance as at 11 May 2015

Period of entitlements use	Date originally published	Status date identified on website as at 11 May 2015	<i>Entitlements use as a Parliamentarian</i>	<i>Use of post-service entitlements</i>
			Certification rate (%)	Certification rate (%)
1 Jan 2011 to 30 June 2011	Nov 2011	20 July 2012	81.3	63.7
1 July 2011 to 31 Dec 2011	June 2012	20 Feb 2013	97.2	72.5
1 Jan 2012 to 30 June 2012	Nov 2012	19 Dec 2013	97.1	70.5
1 July 2012 to 31 Dec 2012	June 2013	29 July 2013	97.4	64.5
1 Jan 2013 to 30 June 2013	Dec 2013	8 May 2014	90.2	84.4
1 July 2013 to 31 Dec 2013	July 2014	8 Sep 2014	92.6	73.0
1 Jan 2014 to 30 June 2014	Dec 2014	24 Feb 2015	81.0	66.7

Source: ANAO analysis of data published on Finance website identifying current and former Parliamentarians for whom certification in respect to a given six month period was relevant and those individuals from whom a certification had been received <<http://www.finance.gov.au/publications/parliamentarians-reporting>> [accessed 11 May 2015].

3.119 Based on the data reported on the Finance website, the proportion of former Parliamentarians (or their surviving spouse or de facto partner) that had provided the requested certification of their use of post-service entitlements in each six month period was lower than for current Parliamentarians, varying between 63.7 per cent and 84.4 per cent.

3.120 As Table 3.2 indicates, the disclosed response rate in relation to certifying entitlements use as a sitting Parliamentarian was relatively poor for the first reporting period (1 January to 30 June 2011, reported in November 2011), but improved considerably in the three subsequent periods. The certification rate of greater than 97 per cent of relevant individuals in relation to each of those periods was an improvement over the highest rate of 95.59 per cent achieved in relation to any monthly certification process in the

period July 2009 to March 2011.¹⁴⁵ However, as also illustrated by Table 3.2, there was a considerable reduction in the disclosed certification rate for the three most recently reported periods, ranging from 81 per cent to 92.3 per cent.

3.121 One factor in that result appears to relate to the significant number of Senators and Members that left the Parliament at or around the September 2013 federal election. Specifically, certifications in relation to the use of entitlements as a sitting Parliamentarian in the period 1 January to 30 June 2013 were sought by Finance in the latter part of 2013. Of the 235 current and former Parliamentarians identified on the Finance website as being applicable to that request, 23 (9.8 per cent) have not provided the relevant certification. Of those 23 individuals, 16 (69.6 per cent) had left the Parliament by the time the six monthly expenditure reports and associated certification data for that period were published in December 2013.¹⁴⁶ Similarly, Finance's website identifies 20 individuals (7.4 per cent of those listed by the department as relevant to that certification) as not having certified their use of entitlements as a sitting Parliamentarian in the six month period ending 31 December 2013 (for which certifications were sought in April 2014). Of those 20 individuals, 13 (65 per cent) had left the Parliament at the September 2013 election or earlier.

3.122 The certification disclosure tables and associated expenditure reports for the most recently reported period identified in Table 3.2 (1 January to 30 June 2014) were originally published by Finance on 4 December 2014. The certification rate disclosed by the department's website as at 11 May 2015¹⁴⁷ of 81 per cent was the lowest since publication of certifications data commenced. Finance's reporting listed 268 current and former Parliamentarians as relevant to certification of their use of entitlements as a sitting Senator or Member in the period 1 January to 30 June 2014. Of those, as at May 2015 Finance identified 51 individuals (19 per cent) as not having provided the relevant certification, comprising 26 (51 per cent) sitting Parliamentarians and 25 individuals who had left the Parliament by 4 December 2014 (when the certification details were first published).

145 See paragraphs 3.106 to 3.107.

146 Eight of those 16 individuals did provide a certification in relation to the subsequent six monthly period (covering 1 July to 31 December 2013).

147 See <<http://www.finance.gov.au/publications/parliamentarians-reporting/parliamentarians-certification-P34/>> [accessed 11 May 2015.]

3.123 To the extent delays in the provision of the requested certifications by some current or former Parliamentarians is also a factor in the low reported response rate, the timeliness of the certification process is also called into question.¹⁴⁸

Non-provision of requested certifications

3.124 Consistent with the outcomes achieved under the previous monthly certification process¹⁴⁹, it continues to be the case that in no reporting period to date has there been 100 per cent compliance with the requested provision of six monthly certifications of entitlements use, including by sitting Parliamentarians. In that respect:

- over the seven periods to 30 June 2014, Finance has reported on the provision or otherwise of certifications of the use of entitlements as a sitting Senator or Member in respect to 320 individuals. Of those, as at 11 May 2015 around two-thirds (210, 66 per cent) were disclosed as having provided the requested certification on all relevant occasions. The remaining third were disclosed as having failed to provide a certification in respect of one or more relevant periods; and
- as at May 2015, three individuals (two current Parliamentarians and one former Member who left the Parliament at the September 2013 election) had not provided a certification in relation to their use of entitlements as a sitting Senator or Member in respect to any of the periods for which six monthly certification details had been published since November 2011.

3.125 As noted, the publication of certification data partially implemented the relevant recommendation of the CROPE review. However, the CROPE report also recommended that there be public disclosure of any justification given by a Senator or Member for non-compliance with the certification requirement

¹⁴⁸ As noted at paragraph 3.115, it is Finance's practice to update the published certification data to reflect any certifications received subsequent to the original data being published in relation to the relevant six monthly period. In that respect, as at 22 April 2015, the department's website had identified a further two sitting Parliamentarians as not having provided the relevant certification for the period ending 30 June 2014, with the data reported at that time identified as being 'as at 5 February 2015'. Subsequent to ANAO initially completing this analysis, the Finance website was updated in May 2015 to reflect that two further Parliamentarians had provided a certification for the period ending 30 June 2014, with the status date identified on the website being amended at that time to 'as at 24 February 2015'.

¹⁴⁹ See paragraphs 3.106 to 3.107.

(see paragraphs paragraph 3.113 to 3.117). That aspect of the Committee's recommendation has not been implemented.

3.126 The efficacy of the existing certification disclosure process as a transparent accountability mechanism would be enhanced by the department also disclosing, in respect to each individual listed as not having provided a relevant certification:

- any reason that may have been given by the current or former Parliamentarian (or other entitlee) for not providing the certification; or
- as relevant, that no reason has been provided and/or no response to the certification request had been received from the relevant individual.

Terms of the certifications provided

3.127 A feature of the certification process observed in each of the previous audit reports was that some Parliamentarians had taken a more cautious approach to certifying the eligibility of their entitlements use than is reflected in the form of certification requested by Finance. This included cases of Parliamentarians qualifying their certification or otherwise amending the terms of the certification from that requested by the department.

3.128 That has continued to be the approach adopted by some Parliamentarians to the provision of six monthly certifications. For example, 251 certifications were provided to Finance in relation to the use of entitlements as a sitting Senator or Member in the period 1 July to 31 December 2013.¹⁵⁰ In eight instances (3.2 per cent), the terms of the certification had been amended from that set out in the certification form provided by the department. Most often this involved the Parliamentarian annotating the certification to state that it was given 'to the best of my knowledge' or similar qualifying term. Other approaches observed involved:

- striking a line through the requested certification and replacing it with the alternative words: 'I certify that I have no reason to think that any part of the expenditure was not within entitlement'; and

¹⁵⁰ This was the most recently reported period during the ANAO fieldwork, with the six monthly expenditure reports, and associated certifications, for that period being reported by Finance in July 2014.

- adding the words ‘based upon the limited information provided to me, and upon the advice of my staff’ to the terms of the certification provided.¹⁵¹

3.129 Previous ANAO audit reports had observed that it had been the department’s practice to record all certifications received, regardless of the form they may take or any associated qualifications, as representing a generic ‘certification’ of the same type as certifications provided in the form requested. In particular, such certifications have been included without qualification in advice provided to Senate Estimates committees listing the number of Parliamentarians who had certified their management reports for a given period. In the period examined by this audit, Finance had continued the practice of presenting the certification status of applicable individual entitlees in a binary fashion. That is, the published table either identifies the certification status of each individual as ‘certified’ or the status is left blank (indicating no certification has been received).

3.130 In that respect, in publishing the certifications data, Finance’s website states that: ‘Parliamentarians are asked to certify that their entitlements usage was in accordance with the provisions legislated for each respective entitlement’.¹⁵² As illustrated at Appendix 2, that advice replicates the standard certification requested by Finance. No information is disclosed as to the nature of the certification that has actually been provided by each individual. As a result, the published data incorrectly implies that each individual for whom the status ‘certified’ is reported has provided the certification as described by Finance on its website. The transparency of the certification disclosure process would be enhanced by the department disclosing the actual terms of the certification provided by each respondent.

3.131 As discussed, there are occasions on which Finance seeks repayments in relation to claims that are subsequently found to have been incorrectly made. In addition, there are occasions when a Parliamentarian will initiate a

151 A number of other certifications were qualified subject to queries relating to specific transactions identified in the expenditure report for the same six month period that the Parliamentarian had been asked to review ahead of its publication.

152 That statement is included on the web page on which Finance publishes the table identifying the certification status of current and former Parliamentarians use of entitlements as a sitting Senator or Member. The equivalent page publishing the certification status of former Parliamentarians’ use of post-service entitlements similarly states that: ‘Former Parliamentarians (including surviving spouses of former Prime Ministers and Life Gold Pass holders) are asked to certify that their entitlements usage was in accordance with the provisions legislated for each respective entitlement.’

repayment after it comes to his or her attention that a particular payment was, or may have been, incorrectly claimed. However:

- the certification requested of Parliamentarians makes no provision for reference to entitlements use that was claimed and paid but later repaid as outside entitlement within the same six month period; and
- the certification process makes no provision for a certification previously provided to be amended to acknowledge that it had been incorrectly given in respect to specified matters.

Clarity of the basis of the certification requested

3.132 As noted (see paragraph 3.108), the January 2011 Williams Review report commented that the certifications provided under the then existing monthly management report process were frequently delayed and qualified. The Review commented that many Parliamentarians had expressed concern about the implications of their certification signature, which the report considered may account for frequent delays in the provision of certifications.

3.133 In that respect, the report noted that Finance had emphasised that the certification process did not involve certification that the value of entitlements use as set out in the monthly report was correct, but rather that the use of entitlements in the relevant period complied with the legislative framework. However, it was noted that the certification page also asked that the certification be signed ‘subject to qualification’ if a discrepancy in the data included in a monthly report was identified and to inform Finance of such discrepancies. The Williams Review commented that:

... This request, combined with the requirement to examine the transaction details, continues to cause some confusion about the extent to which the certification does in fact cover the verification of these transaction details in addition to compliance with legislative entitlements ... The fact that reminders of the purpose of the certification have had to be sent out not only by [Finance] but by successive Ministers also suggests ongoing uncertainties about the implications of the requirement.

Confirming the accuracy of six monthly entitlements expenditure reports

3.134 In producing the expanded six monthly expenditure reports introduced from June 2010, Finance initially provided each relevant current and former Parliamentarian with a preliminary report and requested that the entitlee provide a signed confirmation that the reported details were correct. In proposing that the process for certifying entitlements use be moved to align

with the production of the six monthly expenditure reports, the Williams Review also considered whether the then existing requirement for Parliamentarians to confirm the accuracy of the data set out in the six monthly report should be also retained. In concluding that this requirement should be retained, the Review report also concluded that the certification should relate to the actual entitlement use listed in the relevant expenditure report. Specifically, the Review report commented that:

The importance of correct reporting in the six-monthly reports for tabling means that *it would be important to retain the current requirement* that parliamentarians confirm that the detail in the reports and in the accompanying information placed on the internet is correct. The question then is whether the certification should be part of the same report, and therefore be a certification that the actual entitlement use listed in the report was in line with legislation. The alternative would be to have a separate, but more general, certification about entitlement usage over the six month period. *The first option is a tighter and more specific accountability requirement and, as other adjustments are bedded down, should probably be the preferred option at this stage.* [ANAO emphasis]

3.135 Accordingly, the report recommended, inter alia, that:

Recommendation 5 (vii). the current requirement for parliamentarians to confirm the expenditure details in the six-monthly report, in addition to the certification of legal entitlement use, *be retained* [ANAO emphasis]

3.136 However, in seeking the then SMOS's agreement to the change to six monthly certifications, Finance provided advice that was inconsistent with the recommendations as set out in the published Williams Review report. Specifically, in June 2011 the department advised the Minister that:

In her report, amongst other things, Ms Williams recommended that the certification of entitlements usage be streamlined to:

(a) remove the requirement for Senators and Members to certify that their entitlements usage has been in accordance with the legislative framework in their monthly management reports;

(b) *remove* [ANAO emphasis] the requirement for Senators and Members to confirm the information contained in their six-monthly entitlements expenditure reports is correct; *but* [emphasis as per original]

(c) require Senators and Members to certify their entitlements usage is in accordance with the legislative framework every six months. The certification will be a stand alone document provided as part of the package of information with the six-monthly entitlements expenditure reports.

3.137 Reflecting the department's advice, Parliamentarians are no longer asked to provide written confirmation that the amounts identified in the expenditure report provided for a six month period are correct. Rather, they are asked to certify that the use he or she made of entitlements in the same six month period was in accordance with the relevant legislated provisions (that is, that all entitlements were accessed for an entitled purpose and in accordance with any other caps, limits or specifications).

3.138 In that respect, the six monthly certification form is provided to Parliamentarians at the same time as the preliminary expenditure report for the same period.¹⁵³ As illustrated at Appendix 2, the certification form also incorporates reference to the Parliamentarian checking the information detailed and contacting Finance in relation to any amendments. In that context, ANAO also noted certifications provided in respect to the 1 July to 31 December 2013 period that were qualified on the basis of the Parliamentarian's capacity to check certain costs reported in the expenditure report for the same six month period, or subject to certain queried transactions being amended.¹⁵⁴

3.139 More broadly, in at least one case a Parliamentarian expressed concern directly to the then SMOS in relation to the reputational risks that may arise from being asked to certify expenditure reports that the Parliamentarian did not consider to be accurate. Based on departmental advice, the Minister's December 2012 response advised the Parliamentarian that:

Finance has previously provided advice to all Senators and Members that the 'certification of entitlements use form' is directly related to the use of entitlements for the period reported, not the specific transactional and expenditure information provided in the relevant Report. [*emphasis as per original*]

3.140 However, given the nature of the qualifications some Parliamentarians continue to apply to the certification provided, it appears to be the case that there continues to be uncertainty as to the nature, and associated implications, of the periodic certification process.

153 The expenditure reports reflect the payments made by Finance in the six month period which may relate to entitlements use that occurred in the same period or in earlier periods (see paragraph 4.46).

154 Examples noted included:

- 'Note: 1) I do not agree with the COMCAR costing regime as it is not transparent nor verifiable; 2) Other costs are beyond my capacity to verify'; and
- 'Qualified as I do not see original bills for many of these services.'

Certification of past entitlements use by former Parliamentarians

3.141 A factor that may not be assisting in promoting clarity in that respect relates to the approach taken to obtaining, and subsequently disclosing, certifications by former Parliamentarians in relation to the entitlements use that occurred prior to leaving the Parliament.

3.142 Specifically, as noted at paragraph 3.116, due to the lag in finalising and reporting entitlements expenditure, former Parliamentarians may be listed in both the sitting and former Parliamentarian certification tables for a given six month period, with their names being annotated accordingly. In that context, individuals are asked to sign a single certification form in relation to each period. Finance applies that certification, as relevant, to the separate tables on its website disclosing certifications provided in respect to use of sitting and former Parliamentarians' entitlements respectively.

3.143 In each of the seven periods for which certification data has been published to date, Finance included the names of individuals who had not sat in the Parliament in the relevant six month period in the table disclosing the provision or otherwise of a certification of the use of the entitlements of a sitting Parliamentarian in that period. Those former Parliamentarians were identified by the department as being required to provide a certification for that period because payments relating to costs incurred in a prior period (while still in the Parliament) had been processed by Finance in the subsequent period (and therefore included in the expenditure report published for that period). This was despite certification of the 'use' of entitlements in the relevant prior period(s) having been the subject of a previous certification request, with the provision or otherwise of that certification being separately disclosed in the relevant table on the Finance website.

3.144 The consistency of that approach with advice provided to Parliamentarians (such as that discussed at paragraph 3.139) that the certification requested of them is directly related to the use of entitlements for the period reported and not the specific transactional and expenditure information provided in the relevant report is unclear. The approach adopted also gives rise to a risk of the certification details published on the department's website presenting an inaccurate impression as to the extent to which each former Parliamentarian has provided relevant certifications in relation to his or her use of entitlements while still in the Parliament. In that respect, in April 2015 Finance advised ANAO that the department:

...is of the view that the current disclosure tables accurately reflect parliamentarians' certification. However, Finance does agree that further clarification would be beneficial.

3.145 The department advised ANAO that it proposed to:

- amend the current reporting page to note that the published certification is for the use of expenditure as noted in the report published at that time (that is, the relevant report); and
- amend the current certification page (see Appendix 2) to make it clear that the certification relates to usage of entitlements as stated in that relevant report 'being different to certifying specific amounts which the Senator or Member does not control, such as airfares and cleaning costs'.

Recommendation No.1

3.146 To enhance the efficacy of the certification disclosure process as a transparent accountability mechanism, ANAO recommends that the Department of Finance improve its procedures for disclosing details of six monthly entitlements use certifications provided by current and former Parliamentarians such that:

- (a) the disclosure tables set out on the Finance website provide an accurate reflection of the extent to which each individual has provided relevant certifications;
- (b) the terms of the certification provided by each individual is disclosed; and
- (c) any reason that may have been given by an individual for not providing the certification is disclosed or, as relevant, disclose that no reason has been provided and/or no response to the certification request had been received from the relevant individual.

Finance's response

3.147 *Finance agrees in principle with Recommendation 1. The department will undertake a review of the certification process to determine whether the information currently provided by Senators and Members would satisfy the recommendation.*

Conclusion

3.148 Parliamentarians are required to certify the eligibility and compliance of each transaction under their respective travelling allowance and charter transport entitlements. Various aspects of the transactional certification process undertaken in the period examined by this audit indicated weaknesses in the robustness and reliability of that process. ANAO noted instances in which charter certification forms provided by Parliamentarians did not accurately identify all travel taken using the chartered transport and/or the details set out on the form did not match those identified on the relevant charter company invoice. In some cases, in accordance with documented procedures, Finance had sought clarification or an amended certification form from the relevant Parliamentarian's office. However, in other cases, the department did not seek to clarify the matter or obtain an accurate certification of the relevant charter transport use. In that context, there would be benefit in Finance applying an increased focus as to whether the certifications received from Parliamentarians are performing their intended assurance role. This includes applying appropriate scrutiny to associated invoices and other documentation in order to identify potential anomalies requiring clarification.

3.149 In relation to travelling allowance, there were a number of circumstances in which, as part of the pre-payment checks undertaken, Finance was able to identify that a Parliamentarian had submitted a travel declaration that incorrectly certified that he or she had fulfilled all the requirements of the nominated Determination clause. In other cases, the department required further information before it could process a claim under the relevant clause. It was not uncommon for these processes to result in claims being amended or replaced such that the claim was then made under a different clause, including in some cases to reflect a different purpose of travel. On occasion, the claim was withdrawn. This situation serves to highlight the complex nature of the existing entitlements framework and both the resulting difficulties Senators and Members (and their offices) experience at times in providing reliably completed travel declarations and associated certifications; and increased exposure to the potential for ineligible claims to be submitted.

3.150 However, clarifying exchanges of that nature do not occur where there is no readily identifiable anomaly between: the relevant Parliamentarian's electorate and other offices held; the entitlement being certified to; the location of the overnight stay or travel undertaken (as relevant); and/or the information set out on the travel declaration or charter certification form. In those circumstances,

reliance is placed upon the certification provided by the Parliamentarian by way of signing the relevant form as to the compliance of the claim with the entitlement being accessed, including that the travel was for eligible purposes.

3.151 In providing such certifications, and notwithstanding that the form provides the capacity for greater details to be submitted, Parliamentarians rarely provided information that gave any additional insight into the purpose of individual instances of travel beyond that indicated by the generic travelling allowance entitlement being accessed, or the type of charter certification form provided. For example, in most cases examined, the field on the travel declaration form for describing the meeting attended or other reason for the claim was either completed with generic references¹⁵⁵ that simply mirrored the broad eligible purpose of travel set out in the Determination for the travelling allowance entitlement being accessed, or was left blank.

3.152 In that context, there were instances in the transactions examined in which the purpose of travel certified to in relation to a particular use of charter transport was potentially inconsistent with the purpose of travel that had been separately certified to by the relevant Parliamentarian when claiming travelling allowance for overnight stays associated with the same journey. There were also instances in which the travel details identified on a travel declaration submitted for a particular journey were inconsistent with those identified on a charter certification form separately submitted in respect to the same journey.

3.153 As from November 2011, the request for Parliamentarians to provide periodic general certifications as to the compliance of their entitlements use with the provisions of the relevant heads of authority was changed from the previous monthly process to align with the publication on the Finance website of six monthly entitlements expenditure reports. This process involves an administrative request, with Parliamentarians being under no obligation to provide the certification. In this context, also from November 2011, Finance has published details of whether each relevant individual has provided the requested certification in respect to a given six month period.

3.154 Consistent with the outcomes achieved under previous approaches, it continues to be the case that in no reporting period to date has there been full compliance with the provision of relevant six monthly certifications of

155 Such as 'official business', 'Ministerial business', Shadow Minister duties', 'portfolio meetings' or 'electorate business'.

entitlements use, including by sitting Parliamentarians. Over the seven certification periods to 30 June 2014, Finance has reported on the provision or otherwise of certifications of the use of entitlements as a sitting Senator or Member in respect to 320 individuals. Of those, as at 11 May 2015 around two-thirds (210, 66 per cent) were disclosed as having provided the requested certification on all relevant occasions. The remaining third were disclosed as having failed to provide a certification in respect of one or more relevant periods. Three individuals (two current Parliamentarians and one former Member who left the Parliament at the September 2013 election) have not provided a certification in relation to their use of entitlements as a sitting Senator or Member in respect to any of the periods for which six monthly certification details have been published since November 2011. It also continues to be the case that some Parliamentarians qualify the certification provided.

3.155 In that context, the efficacy of the existing certification disclosure process as a transparent accountability mechanism would be enhanced by the department also disclosing:

- the terms of the certification each individual has chosen to provide; and
- in respect to each individual listed as not having provided a relevant certification, any reason that may have been given for not signing the certification or, as relevant, that no reason has been provided; and/or that no response to the certification request had been received from the relevant individual.

4. Key Accountability Mechanisms

This chapter examines key mechanisms used to provide accountability and transparency in relation to the entitlements expenditure incurred by Parliamentarians.

Introduction

4.1 The April 2010 CROPE report commented that, in the Australian context, good governance incorporates accountability, ethical use of public resources and transparency. In this respect, the report noted that the Committee was aware of significant improvements that had been made to the governance arrangements around Parliamentarians' entitlements, including that there:

- had been increased public reporting of expenditure on entitlements; and
- was an established process for handling allegations of misuse of entitlements.

4.2 Both of those areas had been the subject of recommendations in previous ANAO performance audits of the administration of Parliamentarians' entitlements. The Committee noted that its recommendations in this area were aimed at strengthening these existing governance arrangements. In addition, one of the measures agreed to by the then Government in July 2009 was the establishment of an enhanced post-payment audit and checking function within Finance.

4.3 ANAO examined these accountability and assurance mechanisms, including progress in implementing relevant recommendations of the CROPE report.

Post-payment review and checking

4.4 A consistent finding of previous ANAO audit reports in relation to the administration of Parliamentarians' entitlements had been that there would be value in Finance developing and implementing a regime of risk-based post-payment checking of entitlements use. In that respect, the 2009–10 audit report noted that some post-payment checking was being undertaken. However, it involved relatively few entitlements and Finance's sample selection process was not informed by benchmarking analysis of entitlements use or other data matching to focus attention on higher value/volume users or those where the data indicated a greater likelihood of misuse. It was recommended that Finance

develop a stronger control framework for its administration of Parliamentarians' entitlements by, in part, adopting a more risk-based approach to planning and undertaking post-payment checking of entitlements use.

4.5 As noted, one of the measures agreed to in July 2009 by the then Government in response to the 2009–10 audit report was the establishment of an enhanced audit and checking function within Finance, at a cost of \$3.5 million over four years. An Accountability and Reporting Branch was established within the Ministerial and Parliamentary Services (M&PS) division of the department to undertake the internal audit aspects of that function, together with a number of the other additional reporting functions also agreed by government. That branch was disbanded in late 2013 due to funding constraints, with its functions being redistributed. At that time, a Business Integrity Team was established within an existing area of the division. That team's responsibilities include managing M&PS' internal audit services and undertaking preliminary assessment of entitlement allegation referrals.¹⁵⁶ In addition, a post-payment checking program is undertaken within the claim processing and entitlements management areas of M&PS in relation to a number of entitlements.

4.6 In a significant improvement over the department's previous approach to post-payment oversight of entitlements payments, both aspects of the 'enhanced audit and checking function' have been based upon an evolving risk assessment framework. The function is also overseen by an internal governance committee.

Internal audit reviews

4.7 Under the enhanced function, Finance has engaged its internal audit provider to undertake a program of reviews in relation to Parliamentarians' entitlements. Initially, the program comprised a series of reviews of specific aspects of Finance's entitlements administration, primarily relating to various travel entitlements, with recommendations for process improvements being provided to the department. Reviews were also undertaken of a number of Parliamentarians' electorate offices, the purpose of which was to gain an understanding of the processes and controls in place at the offices to manage the accuracy and validity of certain office-related entitlements. That program of reviews had been informed by a risk assessment process undertaken in 2010.

¹⁵⁶ See further at paragraph 4.64.

4.8 In 2012, it was decided that, going forward, the internal audit program would be focused on reviewing the validity and accuracy of entitlements provided to Senators and Members and their employees. To this end, a risk workshop was conducted in August 2012 to identify efficient and effective means of reviewing the operation of controls, including consideration of data analytics. The workshop focused on identifying the key risks associated with Parliamentarians' entitlements, in respect of fraud or misstatement; the key controls in place to mitigate these risks; and the nature of data captured that may be used to provide indicators of risks being realised.

4.9 Based on the outcomes of the workshop, a risk-based testing program was developed. In relation to travel entitlements, the test program focussed largely on data analytics as a means of identifying potential ineligible use. Based on that program, from early 2013 Finance engaged the internal audit provider to perform a series of Parliamentary Entitlements Usage Reviews. The objective of the work performed was to provide the department with details of the relevant Parliamentarian's entitlements transactions to facilitate further analysis and risk mitigation activity by M&PS staff.

4.10 Each review involved analysing the travel entitlements transactions of three Parliamentarians (including family and staff travel) against specified risk criteria including, for example, travel that coincided with key dates relating to significant sporting events and public holiday periods. Parliamentarians were selected for inclusion in the sample using a number of criteria including: allegations made in relation to Parliamentary entitlement usage; the amount of expenditure across a range of entitlements, particularly travel; overspends of entitlements; and debts raised.

4.11 For each Parliamentarian, the transactions analysed covered an 18 month period for the Senator or Member and his or her staff, and a four year period for family travel. The resulting report and data was subject to further analysis by the Business Integrity Team to identify if any further action was warranted in relation to any of the exceptions identified, including in respect to opportunities for entitlements administration process improvements. Three Parliamentary Entitlements Usage Reviews were completed during 2013. In one case, matters arising from the review were referred for consideration under the protocol applying to allegations of potential misuse of entitlements by a Senator or Member. Finance advised ANAO that, as at April 2015, consideration of that matter was ongoing.

4.12 In early 2014, the internal audit program was again re-focused. Rather than proceeding with a planned fourth Parliamentary Entitlements Usage Review, the department requested the internal audit provider to perform a broader data analytics exercise. That review was focused on the identified risk area associated with the potential for Parliamentarians to access travel entitlements for personal or other ineligible purposes.

4.13 One potential indicator in that respect is where the travel involves one or more overnight stays away from the Senator or Member's home base, but the Parliamentarian does not claim travelling allowance in relation to those nights. As noted at paragraph 3.101, a certified travel declaration is only required to be submitted when claiming travelling allowance. The data analysis was performed on travel entitlements data extracted by Finance in relation to 117 Parliamentarians who were backbenchers at any time during the period 1 July 2011 to 18 August 2013. To assist in assessing the appropriateness of entitlement use with respect to domestic travel (including family reunion travel), analysis was undertaken to identify instances where Parliamentarians did not claim travelling allowance and undertook travel in the following categories:

- outside of their State (excluding trips to Canberra) and where there were coinciding instances of family travel;
- outside of their State (excluding trips to Canberra); and
- outside of their electorate (this analysis was applied to Members only as Senators' travel is covered by the previous category).

4.14 Based on flight and car travel data provided by the department, the internal audit review identified a total of 7645 relevant trips.¹⁵⁷ Of those, 6146 trips were to locations outside of the relevant Parliamentarian's home State (3094 by Senators and 3052 by Members); and for Members, 2942 trips were to locations outside their respective electorates. The April 2014 report setting out the data analysis results identified a total of 580 trips (355 by Members, 225 by Senators) for which no travelling allowance was claimed and the trip:

- included a leg outside the home State for Senators or home electorate for Members; and

¹⁵⁷ For the purposes of the analysis, a trip was defined as a journey starting at a home base location and ending with the next chronological return trip to the home base location.

- included at least an overnight period; and
- did not involve a leg to or from Canberra.

4.15 The results of the analysis were grouped to identify trips that met the following criteria (with the relevant Parliamentarians and number of relevant trips for each being listed within the group):

- Group 1—trips where no travelling allowance was claimed; the trip was outside the Parliamentarian’s home State; and there was associated family travel identified (44 instances involving 22 Parliamentarians);
- Group 2—trips where no travelling allowance was claimed and the trip was outside the Parliamentarian’s home State (478 instances involving 95 Parliamentarians); and
- Group 3—trips where no travelling allowance was claimed and the trip was outside the Parliamentarian’s home State for Senators or outside the Parliamentarian’s home electorate for Members (580 instances involving 97 Parliamentarians).¹⁵⁸

4.16 The purpose of the analysis undertaken was to identify travel that exhibited specific characteristics and, therefore, risk factors. However, it was not intended to, and could not, form any view in relation to the eligibility or otherwise of the travel taken. Based on the exceptions identified by the data analysis, the Business Integrity Team was to be responsible for examining whether any instances warranted further consideration.

4.17 A risk-based approach of this nature to undertaking post-payment assurance procedures across a broad cohort of Parliamentarians is a more robust process than the department has previously applied. In that respect, the utility of the analysis undertaken will be reliant upon the application of resources to appropriately examine the resulting data. As at 31 July 2014 (when relevant ANAO fieldwork was completed), examination of the exceptions identified in the April 2014 internal audit report in relation to the first four of the 22 Parliamentarians identified in Group 1 was still underway. In April 2015, Finance advised ANAO that examination of the exceptions identified in the internal audit report remained current.

¹⁵⁸ The groups were not mutually exclusive. Results identified in Group 1 were a subset of those in Group 2, which in turn were a subset of the results identified in Group 3.

4.18 In addition to the Business Integrity Team’s ongoing analysis, travel undertaken by one of the Parliamentarians for whom trips relating to Groups 2 and 3 had been identified had already been referred by M&PS for consideration under the protocol applying to allegations of potential misuse of entitlements. This referral was the result of separate processes that led the department to identify a pattern of interstate travel (largely without associated travelling allowance claims) that may indicate personal use.¹⁵⁹ The matter was referred to the relevant High Level Departmental Committee¹⁶⁰ in April 2014. Finance advised ANAO that, as at April 2015, consideration of that matter was ongoing and was expected to be finalised by the end of the 2014–15 financial year.

Post-payment checking of entitlements transactions

4.19 The enhanced post-payment checking program was also first developed on the basis of the 2010 risk assessment, with consideration being given to whether existing checks should be retained and/or the introduction of new checks. Amendments to the program have been made over time, including in response to recommendations or findings of the internal audit reviews. In that respect, the March 2014 meeting of the governance committee agreed to a further risk-based assessment of the checking program, which was conducted in July 2014.

4.20 The program consists of periodic checks of compliance with specific aspects of an entitlement that are conducive to objective assessment by the department. Reflecting the self-assessment reliance within the existing entitlements framework, the checking process does not consider other aspects of eligibility, such as the purpose of travel. A paper provided to the governance committee’s 2 August 2011 meeting advised that the enhanced audit and checking requirements effectively cover four categories:

- payments that are subject to a budget;
- data loaded into EMS from an external source that is not subject to individual transaction scrutiny at the time of upload;
- payments that relate to other entitlements and can be cross-checked against each other as a validation; and

159 The Parliamentarian had also made a number of self-initiated, voluntary repayments of travel costs over the course of 2013.

160 That Committee and its operation are discussed further at paragraphs 4.55 to 4.93.

- payments that are 'stand alone' claims that are assessed at the point of entry/certification.

4.21 Depending upon the entitlement involved and the risk that is being addressed, the checks are undertaken monthly, quarterly, six monthly or annually and involve either a nominated sample size or examination of compliance across the full population of relevant entitlees. The checking program primarily relates to use of travel-related entitlements of Parliamentarians and their employees.

Post-payment checking of charter transport entitlements

4.22 In relation to charter transport, the only entitlements that are subject to a post-payment check are special charter and electorate charter. In respect to special charter, the test identified in the checking program is directed at confirming, for a sample of transactions, that a valid approval for use of charter travel had been provided by the SMOS. Departmental documentation indicates that the sampled transactions are also examined to confirm that the travel undertaken complied with the Determination requirement that special charter not be approved for travel that is for a purpose covered by the separate, financially capped entitlement determined for travel 'within and for the service of the electorate' (the electorate charter entitlement).¹⁶¹ The special charter check is undertaken twice a year, in conjunction with the preparation of the six monthly expenditure reports.

4.23 In respect to electorate charter, the test identified in the checking program is directed at undertaking reconciliations to confirm that each entitled Parliamentarian has not exceeded his or her respective financial cap for a given financial year. As noted at paragraph 3.82, the annual budget provided to Senators and Members increases depending upon the State represented or the size of the electorate, with Members representing electorates of less than 10 000 km² not having any entitlement to charter transport for travel within their electorate.

4.24 Initially, the budget compliance check was done each September, in relation to the previous financial year. However, due to the significant lag that can occur between the end of a financial year and the finalisation of all charter

¹⁶¹ For example, the March 2014 meeting of the governance committee was advised that: 'Of the 25 sample transactions checked since the last report, no travel was 'within the electorate' and therefore used as a potential 'supplement' to the electorate charter budget entitlement.'

costs incurred by a Parliamentarian in that year, the governance committee agreed in March 2014 that this check was to also be done in March of each year in respect to the prior financial year's budgets. This was to ensure that no additional transactions had been processed that resulted in a budget overspend.

4.25 In that respect, the robustness of this post-payment compliance test would be further improved by incorporating a process for checking that there had been no transactions processed as electorate charter in relation to a Member who has no entitlement. This would assist in ensuring that charter travel has been allocated to the appropriate entitlement, and that all relevant compliance elements of the relevant entitlement have been accounted for. For example, the March 2014 meeting of the governance committee was advised that additional testing had confirmed that there had been no overspends in relation to entitled Parliamentarians' electorate charter budgets in 2012–13. However, ANAO noted two instances in which transactions had been processed on the basis of electorate charter certification forms submitted by Members who did not have an electorate charter entitlement. The six monthly expenditure reports subsequently published for those Members also identified the relevant trips as relating to the electorate charter entitlement.

4.26 In one case, the Member had sought advice from the department in relation to whether it would be possible to travel under entitlement as part of a broader group of party representatives that was travelling via chartered transport from the Member's electorate to a location outside of the electorate, and return. The department advised that, in the circumstances described by the Member, the most appropriate entitlement to access would be the charter-in-lieu entitlement. This relates to a provision set out in the relevant Determination that allows travel under the uncapped entitlement to domestic travel via scheduled commercial services for eligible purposes to also be undertaken by charter transport, provided that the Parliamentarian pays any additional cost over the estimated reimbursement cost of private vehicle allowance (PVA) at the highest Australian Public Service rate for the most reasonable and usual route between the departure and destination point.

4.27 However, when the Member provided the department with an invoice from the charter company for the cost of travel by the Member and spouse, Finance requested that the Member complete an electorate charter certification form. The Member returned a completed certification form and the transaction was processed on that basis. Departmental records did not include documentation of any reconciliation being undertaken to confirm whether the

PVA-equivalent entitlement available to the Member under the charter-in-lieu arrangements was sufficient to cover the invoiced cost of the charter travel.¹⁶²

4.28 In the other instance, the Member's office had sought the department's advice in relation to the availability of charter transport for travel within the electorate that the Member was planning to undertake. The Member was to be accompanied on the travel by another Member. The Member's office had advised that charter travel was required instead of using available commercial transport services in order to provide the Member with sufficient time to attend relevant meetings. After consideration of the charter-in-lieu entitlement, the department advised the Member's office that the other available options were to seek SMOS approval under the special charter entitlement, or for the Member to meet the cost personally. Based on the department's advice, both Members sought and obtained (on recommendation of the department) approval from the SMOS to undertake special charter travel. Departmental records did not document the basis on which the department had concluded that special charter approval was appropriate for one of those Members in relation to travel within the Member's own electorate.¹⁶³

4.29 The charter company invoice for the relevant journey subsequently provided to Finance identified the passenger as being the Member within whose electorate the travel occurred. Accordingly, Finance requested that the Member's office arrange for the completion of the appropriate charter certification form in order to accurately report this entitlement usage. The Member signed and returned an electorate charter certification form, rather than the certification form required to be used for special charter travel. Despite the Member not having an electorate charter entitlement, Finance processed the transaction as relating to that entitlement.

Post-payment checking of travelling allowance entitlements

4.30 There are two post-payment checks identified in the checking program in relation to travelling allowance payments made to Parliamentarians.

4.31 One involves claims for travelling allowance in Canberra. Under the Determination, the Canberra rate of travelling allowance is payable subject to

162 The department had further advised that, under charter-in-lieu arrangements, travel by an accompanying spouse would be debited from the Member's family reunion travel budget. However, as an entitled Member may be accompanied on travel under the electorate charter entitlement, and the transaction was processed as relating to that entitlement, that allocation did not occur.

163 See paragraph 4.22.

documentary evidence of arrival in or departure from Canberra being produced on request. The post-payment check involves seeking such evidence for a sample of claims made in each month. In accordance with guidelines issued by the SMOS, the checks undertaken by Finance generally involve examining material that enables the department to confirm a Parliamentarian's arrival or departure from Canberra on the relevant date without needing to seek documentary evidence from the Parliamentarian. This includes records of commercial travel to or from Canberra booked through Finance's contracted travel service provider; entries in the Canberra Location Validation Register available to Parliamentarians to sign when entering Parliament House; Parliamentary records of attendance at proceedings or committee meetings; and accommodation receipts that may have been attached to the relevant travel declaration form.

Commercial accommodation receipts 'available on request' audits

4.32 The other post-payment check relates to travelling allowance payments that were made at the rate applicable to commercial accommodation. The Determination stipulates that, in order to be paid the commercial accommodation rate (being the full rate determined for the relevant location), a receipt for the commercial accommodation must be produced or certification must be made that a receipt for the commercial accommodation can be produced, and will be produced upon request. Use of non-commercial accommodation attracts a payment that is one-third of the commercial accommodation rate.

4.33 Practice among Parliamentarians varies in that respect. A number of Parliamentarians choose to attach copies of relevant accommodation receipts when submitting a travelling allowance claim. However, it is also common for receipts not to be attached. During the two year period to December 2013 examined by ANAO, the travel declaration form required Parliamentarians to identify whether they had used commercial or non-commercial accommodation, and to also indicate whether accommodation receipts were attached, available on request (AOR) or not applicable.¹⁶⁴ In processing claims, Finance entered the relevant details into EMS. The post-payment check involves, for each month, selecting a sample of Parliamentarians who had a claim paid in that month at the commercial rate for which the receipts field in

¹⁶⁴ Accommodation receipts are not applicable for claims relating to stays in Canberra, as there is a flat Canberra rate regardless of the accommodation used, or for non-commercial accommodation.

EMS has been recorded as 'AOR', and requesting that those Parliamentarians provide a copy of the relevant accommodation receipt.

4.34 For a number of years, that process had involved selecting one claim each from 10 Senators or Members, or 120 claims per year. In the period examined by ANAO, that represented around six per cent of claims paid on the basis of accommodation receipts being available upon request. In April 2011, the governance committee was advised that, based on recommendations provided in the context of an internal audit review of travel entitlement administration, the approach would be modified such that the monthly sample would be increased to 20 and, over a 12 month period, would include at least one claim from each Senator and Member who submitted an AOR claim. In addition, location details on accommodation receipts would also be examined as part of this check to ensure that the correct rate of travelling allowance had been paid. The amended methodology has been reflected in the approved checking program since April 2011. However, there is no evidence of the increased sample size having been implemented, with samples of claims from 10 Parliamentarians per month continuing to be used.

4.35 In addition, data entry errors have resulted in some transactions being incorrectly selected for an AOR audit.¹⁶⁵ In each case, the error was identified either in the process of preparing correspondence to the Parliamentarians (such that no request for copies of receipts was sent), or through the Parliamentarian's response to such a request. However, in no case did the department seek to replace the incorrect transaction within the sample. As a result, the effective sample size for the relevant monthly audits was reduced. Based on departmental records, this occurred in relation to 10 of the 17 monthly AOR audits identified in departmental documentation as having been undertaken in relation to claims made in the period January 2012 to December 2013. In total, 17 fewer claims (10 per cent) were examined in relation to those 17 months as a result.¹⁶⁶

¹⁶⁵ This included, for example, instances in which the claim had been for the non-commercial rate but the receipts field in EMS had been identified as AOR; accommodation receipts were attached to the claim and the receipts field on the travel declaration was completed as 'attached', but the receipts field in EMS was identified as AOR; and a claim for the Canberra rate of travelling allowance (to which AOR does not apply) had left the receipts field blank, but the receipts field in EMS was identified as AOR.

¹⁶⁶ Department records provided to ANAO did not document monthly AOR audits as having been undertaken in respect to the remaining seven months (comprising January to March 2012 inclusive and March to June 2013 inclusive). The conduct of AOR audits was also frequently delayed. For example, the audit requests in relation to claims made for accommodation used in July to December 2013 inclusive were all made in May 2014. The governance committee was advised that this had been due to resourcing constraints, including the impact on workloads of the September 2013 election.

Journey-based checking of claims

4.36 The various travel entitlements accessed by a Parliamentarian in undertaking a particular trip are generally processed separately and at different times. This is due to both the manner in which the relevant documentation is provided to the department by Parliamentarians and travel service providers, and Finance's internal processes. In particular, travelling allowance claims are required to be submitted within 60 days of the travel being completed, with the department maintaining key performance indicators on target processing times. However, as a consequence of the various data downloading and invoicing processes adopted by the relevant service providers and/or delays in obtaining relevant certification forms from Parliamentarians, the processing of payments relating to the associated travel via scheduled flights, charter and car transport may not be finalised until some time after the travel occurred. In addition, there are separate teams within Finance that are responsible for processing the various travel-related entitlements claims and payments.

4.37 As discussed in Chapter 3, ANAO's examination of travelling allowance and charter transport transactions identified various anomalies. This included, for example, instances of potential inconsistency between the travelling allowance and transport entitlements accessed in relation to a single journey (see paragraphs 3.38 to 3.42); and potential ineligible use of travel at public expense to attend state party conferences (see paragraphs 3.22 to 3.26). In none of the instances noted had Finance subsequently sought to clarify the apparent inconsistencies with the relevant Parliamentarian.

4.38 The post-payment checking program currently includes a test that involves checking that a sample of travelling allowance claims across the year have associated transport claims to verify that the travel occurred. The checking program states that the risk this test is addressing is: 'Members and Senators may be claiming travel allowances and not claiming associated transport costs—thereby possibly indicating a misuse of the travel entitlements.' However, the stated purpose for the same test is: 'To identify employees who have claimed a travel allowance that do not have an associated transport claim'. This indicates that the test is currently only applied in respect of travelling allowance claims submitted by MoP(S) Act employees. Departmental records did not document any application of the test to travelling allowance claims submitted by Parliamentarians.

4.39 In that context, there would be merit in Finance extending its post-payment checking program to incorporate data analysis and other risk-based tests that reconcile all departmental records in relation to the various transport and travelling allowance entitlements accessed by Parliamentarians in association with a particular journey. Tests of that nature would build on the work already undertaken in relation to identifying concurrent use of mutually exclusive car transport entitlements and in relation to the risks associated with travel taken without associated travelling allowance claims. This would assist the department in identifying potential anomalies such as those discussed in Chapter 3 for further examination or clarification.

Recommendation No.2

4.40 To assist it to better understand the way in which Parliamentarians use their travel entitlements, as well as to identify inconsistencies or anomalies that might merit further examination or clarification, ANAO recommends that the Department of Finance supplement its existing post-payment audit and checking function to include risk-based processes for reconciling the various entitlements accessed by Parliamentarians in connection with undertaking a single journey.

Finance's response

4.41 *Finance agrees in principle with Recommendation 2 and advises that the recommendation has been fully implemented.*

Publication of entitlements expenditure

Public reporting of travel entitlements expenditure

4.42 Prior to 1984, there was no public disclosure of individual Parliamentarians' use of entitlements. In the period between 1984 and 2009, there was an increase in the scope of public reporting, but the published data was limited to travel entitlements expenditure. In particular, from 1998, details of each Parliamentarians' air and car transport costs and travelling allowance payments have been tabled in the Parliament every six months. This process was expanded to include travel expenditure by former Parliamentarians (including Life Gold Pass Holders) as part of the September 2001 response of the then Government to the 2001–02 audit report.

Expansion of published entitlements expenditure

4.43 As part of the package of reforms agreed in July 2009, the then Government decided that it would expand the existing reporting regime to table, and publish on the Finance internet site, details of expenditure under all entitlements administered by Finance for current and former Parliamentarians, family members and employees. The expansion of the six monthly public reporting was announced by the then SMOS in September 2009.

4.44 In February 2010, the SMOS agreed to the format for the enhanced report, subject to certain amendments requested by the Minister and his office.¹⁶⁷ The SMOS further agreed to the detailed transactional information supporting the tabled summary documents also being made available through the Finance website. Under the previous arrangements, supporting information was only available on CD on request to the SMOS' office.¹⁶⁸

4.45 Publication of the expanded expenditure details has been accompanied by a significant increase in the public availability, through the relevant Finance website¹⁶⁹, of the documentation setting out the basis for the entitlements to which the reported expenditure relates. This includes copies of the relevant legislation and Tribunal Determinations; information on particular entitlements; departmental and Ministerial circulars; online versions of the various entitlements handbooks (which has also enabled the handbooks to be updated in a more timely fashion as required); and the various forms used by Parliamentarians and their staff in accessing entitlements. The publication of this information has enhanced the transparency of the entitlements framework, as well as providing an improved context to support the public disclosure of entitlements expenditure.

4.46 The six monthly expenditure reports are prepared for the periods 1 January to 30 June and 1 July to 31 December of each calendar year. As discussed at paragraphs 3.115 to 3.116, the reports are prepared on a cash basis. That is, for each Parliamentarian they identify the payments made by

167 As noted at paragraph 4.43, the original decision of government had been that the expanded publication of expenditure details would include that of Parliamentarians' staff. In February 2010, the then SMOS' office advised Finance that the Minister had decided that staffing details and entitlements expenditure data were to be removed from the published report. Instead, staff-related expenditure would continue to be reported as aggregate figures in the MoP(S) Annual Report, with any future reporting of staff costs to be looked at as part of any enhancements to that Report.

168 Publication of the bi-annual travel expenditure documents on the Finance website commenced in June 2009 in response to findings of the 2009–10 audit.

169 See <<http://maps.finance.gov.au>>.

Finance in the relevant six month period¹⁷⁰, rather than being a representation of the expenditure incurred by the Parliamentarian in the relevant period. Each report is prepared over a five to six month period following the completion of the relevant reporting period, with Parliamentarians being provided with a preliminary report for review and correction, as necessary. Consequently, when published, the report includes transactions that may relate to entitlements use that had occurred 12 months or more prior, such that they are not particularly timely.

4.47 The expanded six monthly expenditure reports were first prepared in relation to payments made by Finance in the period 1 January to 30 June 2010, with those reports being tabled and published in November 2010. On 31 October 2012, the then SMOS agreed to discontinue the practice of tabling the six monthly reports in the Parliament. Instead, the reports are now published on the Finance website only, with their public availability made known via a media statement.¹⁷¹

CROPE report recommendations

4.48 The April 2010 CROPE report commented that broadening the range of information disclosed on entitlements and expenditure and improving public access were significant steps towards making the entitlements framework more transparent. Similarly, the January 2011 report of the Williams Review of Finance's administration of parliamentary entitlements commented that the achievement of greater transparency through the six-monthly tabling of entitlement usage and expenditure 'represents a major advance in accountability in this area'.

4.49 The publication of expanded expenditure details has provided the capacity for enhanced public scrutiny of the entitlements use of individual

170 The payments are separated into two sections. The first identifies payments made in the relevant six month period that relate to entitlements use in the same (current) period to which the report relates. The second relates to payments made in that six month period that arose from entitlements use in a prior period.

171 This decision followed a joint media statement with the then Minister for Finance and Deregulation on 25 September 2012, which highlighted the former Government's commitment to finding further public sector efficiencies including a direction for departments to reduce printing costs by publishing more Government material online only.

Parliamentarians.¹⁷² As discussed¹⁷³, that scrutiny has on occasion led to the repayment of funds where there is doubt as to the eligibility of particular transactions. In November 2013, Finance advised the SMOS that:

The provision of more detail has also proven to be highly effective as a means of clarifying entitlements and improving public confidence in the system. For example, the decision to publish the titles of purchased books and journals has modified the purchasing behaviour of parliamentarians and many have adopted a more conservative approach in this expenditure.

4.50 However, the April 2010 CROPE report had also recommended that further measures be undertaken in this area. Specifically, it was recommended that, in the interests of transparency:

- the then Government's decision to publish details of all expenditure on parliamentary entitlements administered by Finance be underpinned with a legislative basis; and
- all Senators and Members be required to provide a link on their official parliamentary websites to their individual expenditure reports on the Finance website. The Committee commented that this measure would give constituents easy access to information about a particular Parliamentarian's expenditure.

4.51 In addition, the Committee recommended that the Presiding Officers be encouraged to publish on a regular basis details of expenditure on services and facilities provided to individual Senators and Members by the chamber departments.

4.52 None of the CROPE recommendations in relation to further enhancing the public disclosure of entitlements expenditure had been implemented as at April 2015.

172 In that respect, as the public reporting is based on expenditure transactions processed by Finance, there is no provision for the public reporting of travel undertaken at public expense by a Parliamentarian when travelling as a passenger in charter transport engaged by another Parliamentarian. The charter certification forms Parliamentarians provide to Finance require that all other accompanying passengers on the relevant journey be listed, including other Senators or Members and their staff. However, the costs incurred in relation to the relevant journey are debited against the entitlement of the Parliamentarian who engaged the charter transport and provided the certification form. Accordingly, there is no mechanism for public disclosure of the travel undertaken at public expense by the accompanying Parliamentarian/s (or of any other accompanying passengers). This is in contrast to the approach taken in respect to Special Purpose Flights administered by Defence, with the six monthly reports tabled on those flights listing the principal engaging Parliamentarian and all other passengers.

173 See paragraphs 2.38 to 2.41.

Finance proposal for further reform of the publication of entitlements expenditure

4.53 Finance's 8 November 2013 brief to the SMOS proposing an implementation approach for reform of the entitlements framework proposed that there would be merit in providing more timely, and potentially more detailed, public reporting on entitlements expenditure. Specifically, the department advised the SMOS that:

Reports of expenditure on entitlements are published each six months for the previous six month period, resulting in a constant lag of six months in the currency of the data provided for public consumption. In the cultural environment of immediacy of information this six month lag often provokes criticism of both the department and parliamentarians and leads to increased administrative processes related to Freedom of Information and Media requests.

Reducing the reporting lag would improve the transparency of the framework and also bring the administration of the framework into line with international standards such as those operational in the United Kingdom, France, and the United States (where reporting lags have been reduced to less than one month, providing higher and more immediate levels of transparency).¹⁷⁴

4.54 In support of the potential for also introducing more detailed reporting of entitlements expenditure, the department commented on the beneficial effect that had been obtained to date in respect to certain entitlements from the provision of more detail. As noted at paragraph 2.41, the department's November 2013 brief was not signed by the SMOS and the timeframe and scope of the six monthly published reports have not been reviewed.

Responding to allegations of misuse of entitlements

4.55 From time to time, instances of potential ineligible use of entitlements by Parliamentarians or their staff are brought to Finance's attention. This can occur in a number of ways, including through direct complaint to the department; the onward referral by the SMOS' office of complaints received by the Minister or matters raised by the Minister's office in the first instance; the

¹⁷⁴ As noted at paragraphs 2.38 to 2.41, the brief had proposed that entitlements reform could begin with the separation of remuneration from tools of trade, with potential benefits accruing to both Parliamentarians and the department from a more holistic approach to business expenses. Finance further advised that, after an initial investment in enabling technology, a simplified business expense regime would be less costly to administer and enable the timeframes for the reporting of Senators and Members' business expenses to be considerably shorter than is currently possible, providing greater transparency, and therefore, enhanced accountability.

Australian Federal Police (AFP)¹⁷⁵; media reports that come to the department's attention; or Parliamentary processes such as Estimates Committee hearings or questions on notice. External complaints are received from a variety of sources including members of the public, media representatives, political party officials, other Parliamentarians or anonymous sources.

4.56 Further, as noted¹⁷⁶, Finance's post payment checking and review processes may identify matters that indicate possible ineligible use of the relevant entitlement. Such matters may also be brought to Finance's attention through the findings of external audits. Regardless of the manner in which they are brought to the department's attention, all such matters are referred to as 'allegations of misuse'.

4.57 In June 1998, the then SMOS approved a document titled Protocol followed when an Allegation is Received of Alleged Misuse of Entitlement by a Member or Senator (the Protocol). The Protocol was tabled in the Senate on 31 October 2000. The only amendment made since that time has been to note that the then SMOS agreed in 2003 that the Protocol should also be used for allegations of misuse of entitlements involving MoP(S) Act employees (Appendix 3 sets out the current version of the Protocol).

4.58 The administrative Protocol does not have any statutory authority or underpinning.

Transparency of Protocol processes

4.59 The Protocol states that the objective underlying its introduction was that: 'an 'arms length' process should be put in place to ensure allegations against politicians were handled in a way which could not invite allegations of partisanship'.

4.60 The administrative processes that are to be followed in relation to a particular allegation depend upon whether the matter is considered to be 'relatively minor' or to represent 'a more serious allegation or high incidence of transgression'. However, the Protocol provides no guidance as to the criteria that are to apply in making such a determination. In addition, the applicable

175 The AFP routinely refers allegations or investigation requests it has received from members of the public, Parliamentarians or other sources to Finance for consideration under the Protocol.

176 See paragraphs 4.11 and 4.18.

processes under both categories as set out in the published Protocol document differ from those actually applied. For example:

- the Protocol states that Finance will undertake an ‘internal investigation’¹⁷⁷ in order to determine whether an allegation is ‘credible (rather than being only vexatious or malicious)’. In practice, Finance does not seek to form a conclusion as to whether a particular allegation may be viewed as ‘only vexatious or malicious’. Rather the department has only sought to form a view as to whether the allegation is reliable and credible and, therefore, appropriate for consideration under the Protocol;
- although the Protocol provides that, if a matter is ‘relatively minor’, the Parliamentary will be invited to ‘provide an explanation to the Department’, the process generally applied¹⁷⁸ is that it is the SMOS, on advice of the department¹⁷⁹, who writes to the relevant Parliamentary¹⁸⁰ (and to whom the Parliamentary provides his or her written comments)¹⁸¹;
- the Protocol states that the relevant considerations as to whether a matter is to be referred to a High Level Departmental Committee (chaired by the Finance Secretary) are if it is a more serious allegation or high incidence of transgression ‘or further investigation would involve interviewing members of the public’. However, departmental procedures do not include any process involving interviewing members of the public; and

177 The department has no investigative powers under the Protocol—see further in that respect at paragraphs 4.70 and 4.72 to 4.76.

178 For allegations that are initially received during a caretaker period, Finance may provide an initial response to the complainant and/or seek initial advice from the relevant Parliamentary (see further at paragraphs 4.62 to 4.63).

179 In that respect, ANAO noted instances in which the draft letter prepared by the department was amended by the Minister or his office, or not sent following a request by the SMOS for the department to reconsider whether correspondence was required in the relevant circumstances.

180 This is also generally the case where the original ‘allegation’ was raised by the SMOS’ office. However, in one such instance in the period examined by this audit, the department provided its brief to the then Minister for Finance and Deregulation due to the nature of the allegation raising a potential conflict of interest for the then SMOS.

181 The department may subsequently recommend further correspondence where the Parliamentary either does not respond or the response is considered to either inadequately address the relevant issues or indicate that the relevant expenditure is likely to be outside of entitlement (in which case the department may recommend that the Minister advise the Parliamentary that he or she may wish to consider making a voluntary repayment). In each of those circumstances, it is the prerogative of the Minister to decide whether the recommended letter should be sent and/or to seek further advice from the department in relation to the potential eligibility of the relevant activity or item under the entitlements framework.

- under the Protocol, the High Level Departmental Committee may seek the advice of the Secretary of the Attorney-General's Department in relation to whether a matter warrants referral to the AFP. In that respect, the Protocol states that, if such advice is positive, the SMOS will be asked to note that 'subject to a further analysis by the Committee, the matter may be referred to the AFP by the [Finance] Secretary'. The Protocol further states that the Minister for Justice 'is advised of the intended referral'. Those statements do not accurately reflect the process followed. Specifically, should the Finance Secretary decide to refer a particular matter to the AFP, relevant Ministers have been provided with a brief advising of that decision at the same time the referral is made.

4.61 In that context, for all matters that arise as a result of a direct complaint, the complainant is advised that the matter is being considered under the Protocol, but there is no provision for him or her to be provided with any further information in relation to the outcome of the relevant deliberations. There is also no provision for public disclosure of the occurrence of matters being considered under the Protocol or their outcome. Finance records indicate that this position has been adopted on privacy grounds.

4.62 Aspects of Finance's administration of the Protocol have improved compared to the practices observed in the 2009–10 audit report. For example, that report had noted that Finance had not actioned any allegations received during the caretaker period for the 2007 federal election until the new government had been formed. By way of comparison, Finance undertook timely initial inquiries in relation to three matters (involving six Parliamentarians) referred to the department during the caretaker period for the 2010 federal election, including writing to the relevant Parliamentarians to seek their respective comments. Departmental records did not identify any allegations as having been first received during the 2013 election caretaker period.

4.63 Similarly, the 2009–10 audit report had noted that, following the 2007 election, the incoming SMOS had not been briefed in relation to five matters that had remained outstanding prior to the commencement of the 2007 election caretaker period. Finance's advice to ANAO at the time of the 2009–10 audit report was that the department did not consider it appropriate to brief a new government and new SMOS on allegations that arose under a previous government and which were the subject of advice to a former SMOS. By way of comparison, ANAO noted two matters that had been the subject of

Ministerial briefs under the previous government, but not yet resolved, which were then the subject of briefs prepared for consideration by the incoming SMOS following the change of government at the 2013 election.¹⁸²

4.64 In addition, in May 2014, Finance engaged its internal audit provider to develop a Case Assessment and Prioritisation Framework (CAPF) to support a consistent and systematic approach to forming a view as to whether individual matters should appropriately be considered under the Protocol.¹⁸³ This represented an improvement over the less formal approach previously applied in deciding whether an allegation was credible and, therefore, would be instigated for consideration under the Protocol.

4.65 However, similar procedures have not been established in relation to determining whether a matter should be considered under the processes relating to 'relatively minor' allegations, or referred to the High Level Departmental Committee as a more serious or high transgression allegation. In that respect, for some matters the basis on which it was determined that particular matters would not be considered by the Committee was not well documented in departmental records. Similarly, the deliberations and decisions of the Committee were rarely minuted or otherwise recorded other than through subsequent actions being taken.

182 In one case, the incoming SMOS agreed to a departmental recommendation that no further action be taken based on the assurances provided by the then Member as to the eligible use of entitlements. In the other case, Finance had advised a prior SMOS in November 2012 that, based on the relevant Member's response to an initial request for comment, there had been use outside entitlement for which the department would raise an invoice. Finance recommended that the then SMOS sign a letter requesting that the Member make the relevant repayment and seeking further comments in relation to other questions that had arisen in relation to the eligible use of the relevant entitlement. That brief was not returned to the department prior to the commencement of the caretaker period in August 2013. Following the election, Finance prepared a further brief along similar lines for the incoming SMOS. As at the end of June 2014, when relevant ANAO fieldwork was completed, departmental records did not include a finalised version of the brief as having been returned from the SMOS and the relevant repayment had not been made as at 30 June 2014.

183 The key elements of the CAPF include assessing and rating: the reliability of the source of an allegation; the credibility of the information provided; the likelihood that sufficient relevant evidence exists to sustain the allegation; the potential financial consequence; the individual to whom the allegation relates; and the reputational and other risks of inaction. The outputs of those elements are used to assign an overall score. Cases achieving a score above a specified threshold are recommended for acceptance under the Protocol, with ratings of High, Medium or Low Priority. Matters that do not achieve the minimum score are not accepted for consideration, with the relevant information to be recorded in an intelligence database for future use.

Consideration of amendments to the published Protocol

2008 amendment proposals

4.66 In December 2007, the department provided a brief to the then incoming SMOS on the operation of the Protocol and sought agreement to its continued use or to discuss any changes. In marking the brief as agreed, the then SMOS also requested departmental advice as to whether the Protocol could be improved. In February 2008, Finance recommended amendments to the Protocol¹⁸⁴, including:

- the inclusion of a non-exhaustive list of what was encompassed by the categories of serious and non-serious allegations. Finance advised that this measure would address issues arising from the non-specific nature of the language used in the Protocol for determining whether a particular matter should be referred to the High Level Departmental Committee or be dealt with through correspondence only;
- deleting those parts of the Protocol that the department considered to ‘serve no practical or conceivable purpose’¹⁸⁵; and
- generally amending the language used to enable the process to be as clear as possible.

4.67 The SMOS did not agree to the amendments, annotating the brief to advise that the matter would be reconsidered ‘in due course’.

184 This advice was given in the context of parallel consideration of the potential establishment of an office of the Parliamentary Entitlements Auditor, which had been a pre-election commitment of the then incoming Government. Finance advised the then SMOS that the proposed amendments to the Protocol would remain relevant and appropriate even should such an office be established. The office of Parliamentary Entitlements Auditor was not subsequently established.

185 In this respect, Finance made particular reference to two provisions, as follows: ‘...the Protocol indicates that the High Level Departmental Committee may decide to (or not to) seek an explanation from the Senator or Member in relation to a more serious allegation. We consider it would be inappropriate for the Committee to seek such an explanation (rather if an explanation was sought, it would either be sought by the Special Minister of State, in relation to a less serious matter, or by the AFP as part of an investigation). Similarly, if the Secretary of the Attorney-General’s Department supported referral of a matter to the AFP, there is provision in the Protocol for the High Level Departmental Committee briefing the Special Minister of State that the matter may be referred to the AFP *subject to further analysis by the Committee*. We cannot envisage a situation where such further analysis would be undertaken; either the matter is to be referred to the AFP or it is not.’ ANAO notes that the department appears to have subsequently changed its view in relation to the first matter raised as having no practical purpose, with departmental records indicating that the High Level Departmental Committee (through the Finance Secretary) sought comment in relation to an allegation of misuse from the relevant Parliamentarian on at least four occasions between December 2009 and May 2014.

2010 CROPE report recommendations

4.68 The 2009–10 audit report examined the operation of the Protocol in the period June 2005 to March 2009, and recommended that Finance develop a stronger control framework for its administration of Parliamentarians' entitlements by, in part, developing a more robust (and transparent) approach to responding to allegations of entitlements misuse. Finance agreed in principle to that recommendation, advising that:

While Finance has recommended a review of the process for responding to allegations of entitlements misuse, any change to the process is a decision for Government.

4.69 As illustrated at Figure 1.1 at page 45, the CROPE terms of reference subsequently developed included that the Committee would provide advice and recommendations to government on possible improvements to the Protocol. The April 2010 CROPE report noted the recommendation made in the 2009–10 audit report, and stated that the Committee considered that changes should be made to the existing Protocol to clarify the threshold credibility test, describe more clearly the current procedures and remove out of date references.

4.70 The report set out a proposed amended text reflecting the recommended changes, together with removal of any reference to the department undertaking an 'investigation' in relation to allegations received. Instead, it was proposed that the Protocol set out that the initial process would involve consideration of the allegation by the department through examination of its internal records to ascertain whether the allegation is credible.

4.71 Those recommendations were included in the recommendations referred to the Remuneration Tribunal by the then SMOS in March 2011. As noted at paragraph 4.57, the Protocol is administrative in nature and is determined by the SMOS. The Tribunal has no role in relation to the arrangements that will apply in respect to addressing instances of claimed or potential ineligible use of entitlements by Parliamentarians. As at April 2015, none of the amendments to the published Protocol document recommended by the April 2010 CROPE report had been implemented.¹⁸⁶

¹⁸⁶ See further at paragraphs 4.79 to 4.95.

Determining an outcome in relation to an alleged instance of ineligible use entitlements

4.72 The processes undertaken in relation to allegations of misuse reflect the self-assessment approach adopted more broadly in the administration of Parliamentarians' entitlements. Specifically, most allegations are dealt with through a self-assessment by the relevant Parliamentarian as to whether there has been any ineligible use of entitlements.

4.73 The Protocol does not provide for anyone other than the individual Parliamentarian against whom the 'allegation' has been made to address whether or not the relevant entitlement was used for an eligible purpose under the terms of the relevant head of authority. In this respect, for example, Finance has no authority to compel a current or former Parliamentarian to provide detailed reasons for his or her travel. The department has also previously advised its Minister that the Protocol does not provide it with the capacity to seek further information from parties other than the relevant Parliamentarian in relation to allegations of misuse.

4.74 This reliance on self-assessment has been adopted, at least in part, due to the imprecise nature of the existing entitlements framework. This was reflected, for example, in advice provided to the then SMOS by Finance in April 2012, as follows:

Many entitlements are expressed as having a 'purpose' basis; that is, the entitlement must be for parliamentary, electorate or official purposes, but not personal, commercial or party purposes. Allegations of misuse often arise concerning purpose-based entitlements, where the entitlements framework is open to interpretation. In these situations, the respondent's views need to be considered as it is difficult for Finance to objectively determine the purpose for which an entitlement may have been accessed and therefore whether or not that access complies with the legislative framework.

4.75 The department's advice further highlighted that, under the administrative Protocol, Finance does not have any power to determine whether entitlements have been misused in a given circumstance. Specifically, Finance advised the SMOS that:

The ... Protocol has been subject to criticism for its lack of transparency, rigour and ability to enforce. While it provides a consistent framework for handling allegations of misuse of entitlements, it does not, and cannot in its current non-legislative form, provide any formal powers or protections to those inquiring into, or the subject of, such allegations. In particular, there are no

investigatory powers for matters other than those that warrant referral to the Australian Federal Police (AFP), the conduct and outcome of matters are not reported on (either publicly or to any person who may have made the allegation). Nor is there any formal power to decide that there has been a misuse of entitlement, nor the review rights that would flow from such a decision or more generally for persons who are the subject of an allegation of misuse of entitlement ... Apart from powers exercised by the AFP in relation to more serious allegations of misuse (concerning a potential criminal offence), there are no other powers to investigate allegations. As a result, if a respondent does not respond to a letter in relation to an allegation that has not been referred to the AFP, no formal action can be taken other than to write again.

4.76 The limitations those factors place upon the capacity for matters to be objectively determined under the Protocol had been previously highlighted in advice provided in February 2011. Specifically, in recommending that no further action be taken in relation to a particular allegation on the basis of assurances received from the relevant Parliamentarian, the department noted that the advice received from the Parliamentarian differed from that which had been provided by the complainant and advised the then SMOS that:

This case also highlights a limitation of the Protocol ... namely [*Finance's*] lack of investigatory power and resulting inability to weigh conflicting material in considering the outcome of its determinations.

Consideration of matters by High Level Departmental Committee

4.77 Departmental records indicate that there were 72 separate matters relating to allegations of potential misuse of entitlements by a Parliamentarian identified by Finance between August 2009 and June 2014.¹⁸⁷ Consideration of 58 of those matters under the Protocol had been finalised as at the completion of ANAO fieldwork. Of those 58 matters:

- five were considered by the High Level Departmental Committee. In one case, the Committee sought the Secretary of the Attorney-General's Department's views as to whether the matter warranted referral to the AFP, without seeking comment from the relevant Parliamentarian. Following consideration of the Secretary's advice, the matter was marked for no further action. In another case, consideration of the response provided by the Parliamentarian to the Committee's request

¹⁸⁷ This excludes matters that related to potential misuse by a MOP(S) staff member only, and also only includes once those matters that had been raised in multiple allegations.

for comments resulted in no further action in relation to the Parliamentary, but staff members of the Parliamentary being subsequently referred to the AFP.¹⁸⁸ In the remaining three cases, the Committee decided that no further action was required based on advice received from the Parliamentary or the department, with (in one case) the Committee also writing to the Parliamentary drawing attention to certain requirements for accessing the relevant entitlement¹⁸⁹;

- briefs proposing that two matters be referred to the High Level Departmental Committee had been drafted, but neither had been ultimately considered by the Committee.¹⁹⁰ Both matters had been registered as an allegation under the Protocol based on media reports, and had been the subject of partial voluntary repayments by the Parliamentarians involved; and
- one matter was subsumed into existing AFP inquiries.

Consideration of 'relatively minor' matters

4.78 The other 50 matters had been classified as 'relatively minor' such that consideration by the High Level Departmental Committee was not appropriate. In relation to 15 (30 per cent) of those, Finance recommended that correspondence with the Parliamentary was unnecessary (12 matters)¹⁹¹ or finalisation of the matter was not recorded (three matters). The department determined that no further action was required in relation to a further two matters on the basis of media reports in which the Parliamentarians had self-assessed that the use of entitlements to attend the relevant events met the parliamentary, electorate or official purpose test. For the remaining 33 matters:

188 Following completion of the AFP investigation, the matters involving the staff members were referred back to the department for consideration of recovery action.

189 As at the completion of ANAO fieldwork: one further matter had been considered by the High Level Committee and comments sought from the relevant Parliamentary, but the matter remained outstanding. Development of a brief regarding potential referral of another matter to the Committee had yet to be completed.

190 Documentation made available to ANAO in relation to those two matters did not record a finalised brief or the basis for the final decision that the matter not be considered by the Committee.

191 This was variously on the basis that the relevant use appeared to be within entitlement (seven matters); there was insufficient basis to proceed (three matters); a claim under entitlement in relation to the action complained of had not yet been submitted and, if it was, would be subject to relevant checks (one matter); or, for one matter, Finance determining that, given the nature of the breach, no further action was necessary based on media reports of the Parliamentary acknowledging the relevant activity had been outside of the rules and undertaking there would not be a repeat instance.

- correspondence in relation to one matter resulted in the Parliamentary agreeing to make a repayment, with Finance proposing that the SMOS issue revised procedural rules in relation to the relevant entitlement. On that basis, the SMOS agreed that no further action be taken;
- three matters had come to the department's attention as a result of media reports, with the relevant Parliamentarians making voluntary repayments. In one case, the SMOS agreed to a departmental recommendation that no further action be taken on that basis. In respect to the other two matters:
 - in one case, the Parliamentary had made voluntary repayments in relation to one aspect of the overall allegation, with the department recording verbal advice from the Finance Secretary that no further follow up was required in relation to that aspect. The department separately determined that no further action was required in relation to the other aspects of the allegation because, based on media reports, the Parliamentary had self-assessed that the identified uses of entitlements to attend the relevant events met the parliamentary, electorate or official purpose test. Finance did not seek any advice from the relevant Parliamentary in order to confirm the accuracy of the relevant media reports; and
 - the relevant Parliamentary in the other case had also made voluntary repayments in relation to one aspect of the overall allegation, with the department determining that no further action was required in relation to that aspect of the allegation because, based on media reports, the Parliamentary had self-assessed that the identified uses of entitlements met the parliamentary, electorate or official purpose test. Again, Finance did not seek any advice from the relevant Parliamentary in order to confirm the accuracy of the relevant media reports;
- there were five matters (12 per cent) in relation to which the SMOS agreed to a departmental recommendation that no further action be taken due to the relevant current or former Parliamentarians failing to respond, or not providing an adequate response, to the SMOS' requests for advice in relation to the relevant allegation; and

- the SMOS agreed that no further be taken in respect to the remaining 24 matters (71 per cent) on the basis of the assurances and advice provided by the relevant Parliamentarian that the relevant use was within entitlement; the relevant activity had not involved use of entitlements; or that the alleged activity had not occurred.

Addressing non-responsive Parliamentarians

4.79 In November 2009, Finance recommended to the then SMOS that he agree to take no further action regarding a particular allegation of misuse of entitlements ‘because of the limitations of the [*Protocol*]’. This advice was provided following a series of correspondence between the SMOS’ predecessor and the relevant Parliamentarian, in which the Parliamentarian had stated that he considered the relevant use to have been within entitlement but had not responded to requests to indicate the basis for that view. In this respect, Finance advised the SMOS that:

A limitation of the Protocol is that it does not contemplate what action to take when a current or former Senator or Member simply refuses to respond to correspondence from the Special Minister of State or provides an inadequate response regarding their use of entitlements.¹⁹²

4.80 In providing that advice, the department further noted that the independent review committee announced in September 2009 was to consider the Protocol within its terms of reference.

CROPE recommendations

4.81 In addition to recommending amendments to the Protocol text (see paragraphs 4.69 to 4.70), the CROPE report further recommended that the SMOS, on the advice of Finance, table in the Parliament:

- the name of any sitting or former Senator or Member who has not substantially complied with a request for information about an alleged entitlement misuse within a reasonable time (for example, 28 days); and
- the outcome of the investigation into the complaint.

¹⁹² The department recommended that the then SMOS agree to sign a draft response advising the then Parliamentarian that, on the basis of the Parliamentarian’s response, the Minister did not intend to take any further action in relation to the relevant matters. Finance further advised the Minister that: ‘We consider it important, in replying to [*the then Parliamentarian*], that [*the Parliamentarian*’s] response be appropriately recognised and more so in a case like this where little or no justification has been provided to support the contention made.’

4.82 In making that recommendation, the Committee was informed by a discussion paper prepared by the departmental secretariat to the review, which had advised the Committee that:

Non-cooperation by Members or former Members can be a significant impediment to the operation of the Protocol and therefore some incentive should be provided to Members or former Members to respond to a request for information or comments.¹⁹³

4.83 Although being similarly related to an administrative matter not within the remit of the Remuneration Tribunal, this recommendation was also referred to the Tribunal by the then SMOS in March 2011. In the interim, the department continued to advise its Minister that the lack of any capacity to compel or otherwise incentivise current and former Parliamentarians to provide adequate and timely responses to requests for advice in relation to allegations of misuse represented a significant limitation in the Protocol as a primary accountability mechanism. In August 2011, the department advised that it was proposing to examine this issue in the context of work then underway on the development of the simplified entitlements legislation recommended by the CROPE report.

2012 amendment proposals

4.84 In January 2012, the then SMOS requested that Finance provide him with options for further action to be taken in instances where persons do not respond to requests for further information made under the Protocol. In April 2012, the department provided a brief that proposed a number of options for reform, including:

- implementing the CROPE report recommendations for amending the Protocol;
- the tabling of allegations information in the Parliament in a manner that expanded on the recommendations of the CROPE report (see paragraph 4.81). In this respect, the department advised the Minister

¹⁹³ The discussion paper had further commented that: 'It should be noted that a Member might claim that he or she does not have the necessary information and so is unable to respond. Therefore, for this sanction to be meaningful, Members should be required to keep proper records.' The subsequent CROPE report made no reference to the maintenance of records of entitlements expenditure by Parliamentarians.

that: ‘... tabling could provide greater transparency to the allegations process which is frequently criticised for its lack of transparency’¹⁹⁴;

- establishing a Compliance/Investigatory Function, which Finance advised could be conducted by a Parliamentary Integrity Commissioner or a separate office; and/or
- legislative change to require Senators and Members to respond to Finance regarding allegations investigated under the Protocol

4.85 The April 2012 brief recommended that the SMOS agree to meet with departmental officials to discuss the Minister’s views on the proposed reform options. The Minister agreed to the recommendation. Departmental records did not identify any further advice on this matter as having been provided to the Minister prior to the September 2013 election.¹⁹⁵

2013 measure

4.86 On 1 November 2013, Finance provided the incoming SMOS with advice in relation to the process followed under the Protocol. The brief was provided in the context of the considerable media coverage in the latter part of 2013 regarding allegations of travel entitlements misuse. Finance advised the SMOS that the Protocol had been the subject of recommendations set out in the CROPE report, which the department noted had not been implemented. The brief was signed by the SMOS on 9 November 2013. One of the reforms announced by the SMOS the same day was that:

The Special Minister of State may table in parliament the name of any parliamentarian who fails to substantially comply within a reasonable time with a request for further information as part of a departmental inquiry.

4.87 The SMOS’ announcement partially implemented Recommendation 13 of the April 2010 CROPE report (see paragraph 4.81). However, the announced measure did not:

¹⁹⁴ The department further advised that there may also be benefit from publishing the information on the Finance website to increase transparency and encourage timely responses to requests for information.

¹⁹⁵ However, the lack of mechanisms to compel current or former Parliamentarians to respond to allegations of misuse were again highlighted by the department in a June 2013 brief to the then SMOS recommending that no further action be taken in relation to long-standing allegations of misuse against two further current and former Parliamentarians who had either not responded or had inadequately responded to requests for comments on their use of entitlements.

- identify the timeframe within which it would be considered reasonable for a Parliamentarian to have responded to a request for information before being identified in a report tabled in the Parliament;
- provide for the automatic tabling of such a report in specific circumstances. Rather, the announced measure provides the discretion that the SMOS 'may table' a Parliamentarian's name; or
- provide for the outcome of any investigations into the use of entitlements by a Parliamentarian who has been so named to also be tabled in the Parliament (as had been recommended by the CROPE report).

4.88 On 30 January 2014, Finance provided the SMOS with proposed implementation arrangements for a number of the measures announced in November 2013. In relation the proposal to table the names of non-responsive Parliamentarians, the department advised that:

As the Protocol is a description of the process followed when the misuse of an entitlement is alleged, Finance recommends that the Protocol be updated to reflect this new step in the process. Finance will brief you separately on this issue.

4.89 On 17 April 2014, the department again advised the SMOS that an update to the Protocol would be needed to implement the announced measure, and further recommended that, as the Protocol was to be updated:

... other minor changes also be implemented to reflect Finance's current practice in the handling of allegations, which is consistent with the recommendations of the [CROPE report].

4.90 The department provided an updated Protocol for approval, which Finance advised was consistent with the redrafted protocol suggested by the CROPE report. The SMOS was also asked to approve proposed administrative arrangements setting out the process that would apply in respect to the Minister's determination as to when a Parliamentarian may be named in the Parliament. That brief was not returned to the department.

4.91 On 9 May 2014, Finance provided a further brief which advised that the Protocol: '... is an administrative protocol, so you, as Special Minister of State, may establish the new condition regarding tabling through ministerial decision.' This brief did not propose any amendment to the Protocol in order to implement the 'tabling' measure, other than to advise that, should the Minister approve the new condition, Finance would add an annotation noting the new

condition. Broader amendments to the text of the Protocol in order to implement the CROPE report recommendation were also no longer proposed. The brief included proposed administrative arrangements under which:

- the ‘naming provisions’ would only apply in relation to allegations considered under the Protocol that were, after an initial assessment, determined to be (a) credible and (b) a minor matter; and
- the 28 day timeframe proposed by the CROPE report would be adopted, with a subsequent 14 day period for a follow-up request where an acceptable response is not received.

4.92 In April 2015, Finance confirmed to ANAO that a version of this brief that had been signed by the Minister or his Office had not been received by the department.

4.93 As at April 2015, the published Protocol document originally introduced nearly 17 years ago had not been amended to reflect the arrangements for tabling the names of Parliamentarians who do not respond to departmental enquiry in a reasonable timeframe, including through annotation as had been proposed by the department in its May 2014 brief.

4.94 Legislation amending the PE Act to implement the measure announced by the SMOS in November 2013 relating to imposing a 25 per cent penalty on the repayment of incorrectly claimed travelling allowance and private vehicle allowance was introduced into the Parliament in October 2014. That amending Bill also proposes to amend the PE Act to establish a legal right of recovery where a Parliamentarian has been paid a benefit in excess of the relevant entitlement.

4.95 However, the amending Bill does not seek to provide a legislative head of authority for handling allegations of entitlements misuse. Nor does it alter the reliance under the existing framework on key eligibility terms that are open to interpretation. In that context, under existing arrangements, it will continue to be the case that Finance will be largely reliant upon Parliamentarians’ self-assessing whether it would be appropriate to make a voluntary repayment where there is an allegation of misuse of entitlements.¹⁹⁶

196 As is discussed further at paragraphs 4.96 to 4.124, under the proposed amendments a voluntary repayment that relates to travelling allowance or private vehicle allowance would also be subject to the 25 per cent penalty loading.

Revised travel declaration and repayment of incorrect claims

4.96 As noted at paragraph 1.16, among the reforms to improve the system's integrity announced in November 2013 were that, from 1 January 2014, the Government would:

- strengthen the declaration a Parliamentarian is required to make when submitting a travel claim; and
- require Parliamentarians that made an adjustment to any claims made after 1 January 2014 to pay a loading of 25 per cent, in addition to the full amount of the adjustment. The loading was not to apply where the need to make the adjustment was the result of an error made by Finance, or it was made within 28 days of making the travel claim.

4.97 It was subsequently clarified between the SMOS' office and Finance that the penalty loading would only apply to travelling allowance or private vehicle allowance.¹⁹⁷ This was on the basis of the SMOS' office confirming that the announced declaration (incorporating reference to the loading) was to apply only to travel entitlements that a Parliamentarian accesses through a claim form submitted to Finance¹⁹⁸, and would not apply to travel by employees or family members. As a consequence, Finance was to administer the reform on the basis that 'claims' for the purposes of the 25 per cent loading are Senators and Members' travelling allowance and private vehicle allowance claims that have

197 However, the proposed amendments to the PE Act for implementing the penalty loading include a mechanism by which additional travel entitlements can be made subject to the penalty loading at a future time. Specifically, the amending Bill introduces the concept of 'prescribed travel benefits' which are determined by the Minister by legislative instrument, with the penalty loading provisions of the PE Act to apply to repayments made in relation any prescribed travel benefits, subject to the specified caveats.

198 As discussed, Parliamentarians are required to submit certification forms in relation to all payments made under their respective charter travel entitlements. Where charter travel claimed by a Parliamentarian is identified as being outside of (or in excess of) entitlement prior to payment being made to the charter provider, it is the responsibility of the Parliamentarian to meet the relevant costs personally. Where a claim is found to be outside of entitlement subsequent to payment being made to the charter provider, it is the responsibility of the Parliamentarian to repay the relevant amount to Finance. In addition, in accordance with the Protocol, Parliamentarians may elect to make a voluntary repayment in relation to their use of charter travel in response to queries being raised in the media or through an allegation of misuse being submitted to the department. The departmental records made available to ANAO did not document the basis on which payments certified by a Parliamentarian as being eligible under his or her respective charter travel entitlements would not be subject to the 25 per cent penalty loading where repayments are subsequently required or made.

been submitted on a travel declaration or private vehicle allowance form.¹⁹⁹ The same arrangements would apply in relation to the implementation of the associated measure also announced by the SMOS that, from 1 January 2014, mandatory training will be provided for Parliamentarians and their offices if more than one incorrect claim is lodged within a financial year.

4.98 Following the SMOS' announcement, Finance sought legal advice in relation to potential means of implementing the announced changes. Advice was received from the Australian Government Solicitor (AGS) on 12 December 2013 and 4 February 2014.²⁰⁰

Implementation of announced declaration

4.99 Prior to the SMOS' announcement, the travel declaration form Parliamentarians were required to submit when claiming travelling allowance included the following declaration: 'I declare that the information given is true and accurate'. This was followed by the statement: 'I certify that I have fulfilled all the requirements of the particular Remuneration Tribunal Determination clauses that I have identified on this form'.²⁰¹ The new declaration that the SMOS announced Parliamentarians would be required to make when submitting a travel claim was as follows:

I declare that this travel was undertaken in my capacity as an elected representative and I acknowledge that a financial loading will be applied if subsequent adjustment to this travel claim is required.

4.100 AGS' advice was that the making of the announced declaration would have no legal status and, consequently:

- had no effect on the department's legal capacity to seek recoveries of an amount paid beyond entitlement²⁰²; and

199 In that context, as noted, Parliamentarians are not required to submit a travel declaration form in respect of travel undertaken at public expense for which associated travelling allowance is not claimed.

200 Both advices included in the records made available to ANAO were in draft form.

201 As discussed at paragraphs 3.7 to 3.30.

202 In that respect, at the time of the AGS advice, there was no provision in the entitlements framework that legally compelled a Parliamentarian to repay an amount paid in excess of entitlements, or for an overpaid amount to be recovered through a reduction in future benefits (such as deducting an overpayment of travelling allowance from a Senator or Member's next travelling allowance claim)—see further at paragraphs 4.111 to 4.114.

- did not provide a basis for the department to seek recovery of a 25 per cent loading on top of an amount that is paid beyond entitlement, or on top of an amount that is voluntarily repaid. Rather, AGS advised that there needed to be a legislative basis to establishing the loading as a penalty or as a reduction in future entitlements.

4.101 The AGS advice also raised concerns in relation to the utility of the announced declaration, given its formulation did not reflect the specific terms as set out in the relevant heads of authority of the entitlements to which it was to be applied. In particular, the legal advice highlighted that it was not clear what was meant by travel 'being undertaken in the capacity as an elected representative', or why this was relevant to the declaration. AGS noted that the term 'elected representative' is not used in the PE Act or in any Commonwealth legislation, and that the new form of words suggested that some general entitlement arises because of a Parliamentarian's status as an elected representative (which is not the case). AGS proposed another form of words, including reference to the terms used in the legislation and Determinations that are the source of travel entitlements, that could be used either as an alternative to, or in addition to, that announced by the SMOS. The legal advice also proposed a replacement form of words regarding an acknowledgement of the potential for a 25 per cent loading that could be included in the declaration if the PE Act was amended to authorise the imposition of such a penalty.

4.102 In December 2013, Finance advised the SMOS that, based on the draft legal advice received to that time, it was clear legislation would need to be amended in order to implement the reform proposals and that this could not be achieved by the announced date of effect of 1 January 2014. A further brief provided to the SMOS' office on 30 January 2014 included an attachment setting out proposals for implementing individual measures. Introduction of the revised travel claim declaration was identified as a measure that could be implemented through changes to administrative arrangements. The table attached to the department's 30 January 2014 advice noted the AGS advice in relation to the utility of the announced declaration (including the advice that 'in its current form, the declaration may be counterproductive to attempts to tighten travel entitlement provisions'). The table advised that the department would separately provide the Minister with a proposal to amend the new declaration.

4.103 On 5 February 2014, Finance met with the SMOS' Office to discuss, among other things, the travel declaration. It was at that meeting that the

entitlements to which the 25 per cent loading would apply was clarified (see paragraph 4.97). Following a further meeting between departmental officials and the SMOS on 20 February 2014, it was decided that the new declaration as announced would be added to the travel declaration and private vehicle allowance claim forms, but that this would be in addition to, rather than instead of, the existing declaration. It was also noted that Parliamentarians would still be required to provide the certification in relation to compliance with the terms of the travelling allowance entitlement being accessed.

4.104 Finance provided a further brief to the SMOS on 21 March 2014 which advised that the department had amended the travel declaration and private vehicle allowance claim forms to add the new declaration, and that the updated forms were available to Parliamentarians online. The background section to the brief further advised that:

AGS has advised that the declaration may suggest that a general entitlement arises because of a Parliamentarian's status as an elected representative. The PE Act does not define the term "elected representative". Our preference is that we address this matter in training and information to Senators and Members. Additionally Senators and Members are still required to note the relevant clauses relevant to each of their trips.

4.105 The new versions of each form issued for use by Parliamentarians in March 2014 incorporated an acknowledgement in respect to a financial loading applying to subsequent adjustments. This was despite the legislative basis for applying such a loading not yet being established. In that respect, the 21 March 2014 brief further advised the SMOS that, upon implementation of the legislative amendments then in train to establish a legal right of recovery and authority to impose a 25 per cent loading on relevant repayments, Finance would be required to review all declarations related to the proposed legislative amendments. Finance recommended that a review of the additional declaration occur in line with implementation of the PE Act reforms, and further advised that:

AGS' advice included a recommended declaration that may be considered at the time the PE Act amendments are implemented. Their recommendation also includes reference to the 25 per cent loading for incorrect claims. To ensure consistency within the entitlements framework, Finance recommends a review of the current declaration be undertaken in line with implementation of the PE Act reforms mid this year.

4.106 Each of the matters the SMOS was asked to note on the 21 March 2014 brief, including Finance's recommendation of a review of the declaration in line with amendment of the PE Act, was marked as 'discuss' by the Minister. A further revised version of the travel declaration form issued by Finance in August 2014 continues to carry the additional declaration, including reference to a financial loading. However, as at April 2015, the amending legislation to establish authority to impose a 25 per cent loading on relevant repayments was still before the Parliament.

4.107 Accordingly, for at least 12 months, Parliamentarians have been required to make a declaration when submitting travelling allowance and private vehicle allowance claims that:

- is not a relevant test of eligibility for accessing the entitlement. In that respect, the new declaration was announced by the SMOS in the context of public concerns regarding the potential use of travel entitlements for personal purposes. The additional declaration may assist in encouraging Parliamentarians to turn their minds to that question when submitting a travelling allowance claim, which is helpful. However, there is also a risk that the introduction of a term that is not relevant to determining whether a particular claim is compliant with the entitlement being accessed may also add to the already complex and confusing framework within which such claims are made; and
- includes an acknowledgement of the potential imposition of a financial loading on any subsequent repayments that had no legal effect and for which there was no legal authority. There is no provision within the amending legislation for any retrospective application of the penalty loading.

4.108 That situation serves to highlight the difficulties that arise in attempting to implement specific measures directed at strengthening the integrity of entitlements administration in the context of an underlying entitlements framework that is in recognised need of fundamental reform.

4.109 As noted²⁰³, the 2015–16 Budget delivered in May 2015 included proposals for amendment to certain travel entitlements. This included that the

203 See paragraphs 2.43 to 2.45.

Remuneration Tribunal would be asked to consider amending the relevant Determinations to:

- extend Parliamentarians' domestic travel entitlements to provide for travel on 'business as an elected representative'. This would be in addition to the existing entitlements to travel on 'parliamentary', 'electorate' and 'official' business; and
- align the myriad of travelling allowance provisions with domestic travel provisions, including the proposed additional purpose of travel on 'business as an elected representative'.

4.110 The Budget measure proposed that the realignment of travel provisions with the purpose of travel will provide greater clarity in assessing travel entitlements. In that respect, the application of key eligibility terms for accessing entitlements has proven problematic over a considerable period of time in terms of achieving appropriate transparency and accountability in entitlements use.²⁰⁴ In that context, those recognised challenges would need to be addressed in implementing the proposed introduction of an additional term for describing eligible purposes for which travel may be taken at public expense.

Right to recover overpaid entitlements benefits

4.111 A long-standing issue relating to the framework supporting the provision of entitlements to Parliamentarians has been the absence of any legal right of recovery. That is, the relevant legislation has not included any specific provision enabling the department to compel Parliamentarians to repay amounts subsequently found to have been paid outside of entitlement. Instead, in seeking recoveries, Finance has relied upon common law bases under which it may be open to the department to take a particular matter to court to seek a judicial ruling compelling the repayment to occur.

4.112 A related issue that had remained unresolved for some time was the extent to which payments made outside of the legislated terms of a Parliamentarian's entitlements represented a breach of section 83 of the Constitution. Section 83 stipulates that no money shall be drawn from the Treasury of the Commonwealth except under an appropriation made by law. Payments that are not supported by the legislative head of authority relied

204 See further at paragraphs 2.46 to 2.78.

upon in making the payment will not have been made for the purpose for which the associated funding was appropriated by the Parliament.

4.113 Section 11 of the PE Act provides for money to be appropriated for the payment of Parliamentarians' entitlements. Finance advised the SMOS in January 2014 that AGS advice was that, where the department makes a payment that is beyond entitlement, there is a risk that there will have been a breach section 83 of the Constitution. If an overpayment is such a breach, recovering the overpaid amount does not remove the breach.

4.114 In June 2013, AGS had advised Finance in relation to amendments that could be made to the PE Act to resolve doubt over whether entitlements-related payments subsequently found to have been made outside the terms of the relevant head of authority involved a breach of section 83. AGS also noted that amending the PE Act in this way would provide a statutory basis for recovery against Parliamentarians. As implementing the measure to apply a penalty loading to certain repayments would require amendment to the PE Act, Finance proposed that concurrent amendments also be made to address these two long-standing issues. This was agreed by government and relevant mechanisms are included in the amendment Bill that was before the Parliament as at April 2015.

Application of penalty loading to voluntary and involuntary repayments

4.115 Implementation of the penalty loading measure required consideration of two scenarios. The first related to instances in which Finance is able to form the view that a claim has been paid outside of entitlement. This may relate to situations such as the post-payment identification of claims that resulted in a specified cap or annual budget limit being exceeded; or travelling allowance being claimed under a wrong and/or ineligible provision of the Determination. In such circumstances, the department notifies the Parliamentarian of its finding, raises an invoice and seeks repayment of the amount in question.

4.116 However, there are also occasions on which Parliamentarians voluntarily repay an amount. For example, as discussed at paragraphs 4.72 to 4.95, this is the scenario that frequently arises where a particular use of travel entitlements receives unfavourable media attention and/or in response to a request from the SMOS for the Parliamentarian to provide information in relation to a particular allegation being considered under the Protocol. In that respect, AGS advised that there would need to be legislation establishing a

mechanism by which a 25 per cent loading could be imposed in respect to an amount voluntarily repaid by a Parliamentarian.

4.117 In that context, the amendment Bill introduced into the Parliament in October 2014 includes provisions relating to both involuntary and voluntary repayments of relevant travel entitlement claims (prescribed travel benefits), as follows:

- the Bill introduces new provisions that a person must not make a claim for a benefit that is in excess of the entitlement (whether wholly or partly);
- where a claim in relation to a prescribed travel benefit has been determined to have been made in contravention of that requirement, both the relevant amount and (if the amount has not been repaid within 28 days of the claim being made) a penalty loading of 25 per cent will be debts due to the Commonwealth.²⁰⁵ Some or all of both elements of the debt can be recovered through an alternative means of deduction from a future benefit (entitlement) that is payable to the Parliamentarian. Deduction from a future benefit is at the direction of the Finance Secretary, after consultation with the Parliamentarian; and
- where a voluntary repayment is made in relation to a prescribed travel benefit more than 28 days after the claim was made, an amount equivalent to 25 per cent of the repayment may, if the Finance Secretary so directs after consultation with the Parliamentarian, be deducted (in whole or in part) from a future benefit amount payable to the Parliamentarian. If a voluntary payment is also made in respect of the loading amount, the total amount that may be deducted from a future benefit will be reduced by that amount.

4.118 As also noted in the discussion at paragraphs 4.72 to 4.95, in making voluntary repayments in relation to allegations of potential misuse, Parliamentarians commonly do not make any admission that the claim was outside entitlement, and there is no such finding by Finance or any other body.

²⁰⁵ For the 'relevant amount' (being the amount originally paid in excess of entitlement), this is based on the new section introduced to provide a legal right of recovery, which provides that the cost of a benefit provided outside the boundaries of an entitlement under the PE Act will be recoverable from the person receiving the benefit as a debt due to the Commonwealth that is recoverable in a court of competent jurisdiction. For the penalty loading, this is based on separate provisions of the amendment Bill relating to the application of the loading.

That is the premise on which the Protocol operates. That scenario is particularly relevant to circumstances in which the determining factor as to whether a claim was within entitlement or not goes to the question of the purpose for which the entitlement was used. In that context, Parliamentarians may, in the future, become more reluctant to make such voluntary repayments where that will invoke a penalty loading.

Defining 'departmental error' in implementing penalty regime

4.119 As noted at paragraph 4.96, the SMOS' November 2013 announcement stated that the 25 per cent loading on adjustments to travel claims 'will not apply where the adjustment is the result of an error made by the Department of Finance'. The Bill amending the PE Act as subsequently drafted relevantly provides that the 25 per cent loading on the repayment of a prescribed travel benefit applies if: 'The excess was not attributable, to any extent, to administrative error within the Department'.

4.120 It will important for the robustness of the proposed penalty regime's implementation for there to be clarity, certainty and consistency in relation to the circumstances in which a payment of a claim that is incorrect or outside of entitlement will be deemed to have arisen 'to any extent' due to 'departmental error', as opposed to being the result of the Parliamentarian submitting a certified claim later found to have been outside of entitlement. This is particularly the case in light of the reliance on compliance certification provided by the Parliamentarian in other aspects of the department's administration of travelling allowance.

4.121 There are occasions in which processing errors by the department result in Parliamentarians receiving incorrect travelling allowance payments that are later repaid. For example, ANAO noted instances in which Parliamentarians were paid at a rate applicable to a location other than the location identified on the travel declaration submitted, or where a commercial rate of travelling allowance was paid instead of the non-commercial rate claimed.

4.122 However, as discussed at paragraphs 3.12 to 3.59, there are also occasions on which incorrect claims are certified and submitted by Parliamentarians. While Finance undertakes pre-payment checks directed at preventing such claims from being processed, there are occasions on which the claim is nevertheless paid as per the certified travel declaration, with subsequent repayments occurring. However, there has been an inconsistent approach taken in relation to the reporting of such repayments.

4.123 ANAO noted instances in which the repayment was identified in both correspondence from the department advising the Parliamentarian of the need to make a repayment and the subsequent six monthly expenditure report published by the department as being due to 'Departmental error. Claim overpaid'. This was the case, for example, in relation to the claim discussed at paragraph 3.16 in which a Member submitted a certified claim for travelling allowance against an entitlement that the department had advised the Member's office had already been exhausted.

4.124 However, there were other cases in which the subsequent repayment that had resulted from a Parliamentarian having similarly submitted a claim for something to which they were not entitled appeared to have been treated differently. For example, in one case the certified claim submitted by a backbench Member incorrectly claimed travelling allowance under a Determination clause that is only available to specified office-holders (and which pays a higher rate of travelling allowance). Although the Member was not entitled to payments under that clause, the claim was processed as submitted by the Member. The issue was subsequently identified and the Member was invoiced for the excess travelling allowance paid.²⁰⁶ The original payment was annotated in the next six monthly report as 'Incorrect rate paid. Adjustment to be reflected in subsequent reporting period'. The subsequent six monthly report identified the repayment as 'Adjustment by Member. Incorrect rate paid in a previous reporting period'. In neither case, did the six monthly report make any reference to departmental error.

Conclusion

4.125 In July 2009, the then Government agreed to the establishment of an enhanced audit and checking function within Finance, at a cost of \$3.5 million over four years. That function consists of a rolling internal audit review program conducted through Finance's internal audit provider; and a post-payment checking program undertaken within the areas responsible for entitlements management and processing. In a significant improvement over the department's previous approach to post-payment oversight of entitlements, both aspects have been based upon an evolving risk assessment framework. The function is also overseen by an internal governance committee.

²⁰⁶ The travelling allowance was originally claimed under clause 3.8(b), which relates to official duties of an office holder. Following the raising of the invoice, the department adjusted the clause recorded in EMS against both the original claim and the repayment to clause 3.12b, which relates to Senators or Members travelling in association with formal business of a Parliamentary committee.

4.126 The various travel entitlements accessed by a Parliamentarian in undertaking a particular trip are generally processed separately and at different times. This is due to both the manner in which the relevant documentation is provided to the department by Parliamentarians and travel service providers, and Finance's internal processes.²⁰⁷ As a consequence of the 'silo' approach taken to processing travel-related claims and payments, there is a risk of the department's oversight of entitlements use not identifying potential inconsistencies between the various purpose-based travel entitlements accessed by a Parliamentarian in the course of a particular journey. A number of such potential inconsistencies were identified in ANAO's examination of a sample of transactions. In that context, there would be merit in Finance supplementing its post-payment audit and checking program to incorporate data analysis and other risk-based tests that reconcile the various entitlements accessed in connection with a single journey to assist the department in identifying potential anomalies for further examination or clarification. Tests of that nature would build on the work already undertaken in relation to identifying concurrent use of mutually exclusive car transport entitlements and in relation to the risks associated with travel taken without associated travelling allowance claims.

4.127 The publication since November 2010 of expanded expenditure details has provided the capacity for enhanced public scrutiny of the entitlements use of individual Parliamentarians. In that respect, the April 2010 CROPE report recommended additional measures to further enhance the public disclosure of entitlements expenditure, but none of those recommendations had been implemented as at April 2015. A November 2013 departmental proposal to the SMOS that there would be merit in providing more timely, and potentially more detailed, public reporting on entitlements expenditure has also not been actioned.

4.128 Aspects of the department's administration of the Protocol followed when an Allegation is Received of Alleged Misuse of Entitlement by a Member or Senator (the Protocol) have improved compared to the practices observed in

207 For example, travelling allowance claims are required to be submitted within 60 days of the travel being completed, with the department maintaining key performance indicators in relation to target processing times. However, the processing of payments relating to the associated travel via scheduled flights, charter and car transport may not be finalised until some time after the travel occurred, as a consequence of the various data downloading and invoicing processes adopted by the relevant service providers and/or delays in obtaining relevant certification forms from Parliamentarians. In addition, there are separate teams within Finance that are responsible for processing the various travel-related entitlements claims and payments.

the 2009–10 audit report. However, it has been long recognised that the document itself would benefit from amendment to both:

- ensure its terms transparently reflect actual practice in dealing with allegations of entitlements misuse, which is not currently the case; and
- enhance its efficacy as an accountability governance document.

4.129 In this respect, in the period examined by ANAO as part of this current audit, a number of amendment proposals were put to successive SMOS²⁰⁸ by the department. The content and operation of the Protocol was also the subject of CROPE report recommendations. However, the Protocol document has not been amended in the nearly 17 years since it was first issued.

4.130 Legislation amending the PE Act to implement a measure announced by the SMOS in November 2013 relating to imposing a 25 per cent penalty on adjustments to certain travel benefits (including voluntary repayments) was before the Parliament as at April 2015. The legislation also proposes to establish a legal right of recovery where a Parliamentarian has been paid a benefit in excess of the relevant entitlement. However, the amending Bill does not seek to provide a legislative head of authority for handling allegations of entitlements misuse. Nor does it alter the reliance under the existing framework on key eligibility terms that are open to interpretation. Accordingly, under existing arrangements, it will continue to be the case that Finance will be largely reliant upon current and former Parliamentarians self-assessing whether it would be appropriate to make a voluntary repayment where there is an allegation of misuse of entitlements.

4.131 As a consequence of the approach adopted to implementing certain measures announced by the SMOS in November 2013 as being directed at improving the system's integrity, for at least 12 months to April 2015 Parliamentarians had been required to make a declaration when submitting travelling allowance and private vehicle allowance claims that:

- is not a relevant test of eligibility for accessing the entitlement²⁰⁸; and

²⁰⁸ In that respect, the new declaration was announced by the SMOS in the context of public concerns regarding the potential use of travel entitlements for personal purposes. The additional declaration may assist in encouraging Parliamentarians to turn their minds to that question when submitting a travelling allowance claim, which is helpful. However, there is also a risk that the introduction of a term that is not relevant to determining whether a particular claim is compliant with the entitlement being accessed may also add to the already complex and confusing framework within which such claims are made.

- included an acknowledgement of the potential imposition of a financial loading on any subsequent repayments that had no legal effect and for which there was no legal authority.²⁰⁹

4.132 In light of the already complex entitlements framework, that situation is not helpful in terms of assisting Parliamentarians in accessing their respective entitlements in an effective manner. It also serves to highlight the difficulties that arise in attempting to implement specific measures directed at strengthening the integrity of entitlements administration in the context of an underlying entitlements framework that is in recognised need of fundamental reform.

4.133 As noted²¹⁰, the 2015–16 Budget delivered in May 2015 included proposals for amendment to certain travel entitlements provided under Remuneration Tribunal Determination that are yet to be considered and agreed to by the Tribunal. This included incorporating an additional eligible purpose of travel for ‘business as an elected representative.’

4.134 The Budget measure stated that the proposed realignment of travel provisions with the purpose of travel will provide greater clarity in assessing travel entitlements. In that respect, the application of key eligibility terms for accessing entitlements has proven problematic over a considerable period of time in terms of achieving appropriate transparency and accountability in entitlements use. In that context, those recognised challenges would need to be addressed in implementing the proposed introduction of an additional term for describing eligible purposes for which travel may be taken at public expense.



Ian McPhee

Canberra ACT

4 June 2015

209 In that context, there is no provision within the amending legislation for any retrospective application of the penalty loading.

210 See paragraph 4.109.

Appendices

Appendix 1: Entity Responses



Australian Government Department of Finance

Jane Halton PSM
Secretary

Our Ref: SEC0011777

Mr Ian McPhee *BM*
A/g Auditor General
Australian National Audit Office
19 National Circuit
BARTON ACT 2601

27/5

Dear Mr McPhee,

Thank you for your letters of 30 April and 20 May 2015, regarding the audit of Administration of Travel Entitlements provided to Parliamentarians.

Finance is pleased to receive the section 19 report and thanks the Australian National Audit Office (ANAO) for the opportunity to respond to the matters raised.

The Department of Finance's comments are provided at Attachment A, consistent with discussions held between our officers at a meeting held on Wednesday, 15 April 2015.

Finance appreciates ANAO's recognition of substantial improvements in the administration of travel entitlements since the last performance audit and we remain committed to continually improving our administrative processes and procedures within the Parliamentary Entitlements Framework.

Should you have any queries please do not hesitate to contact Ms Cheryl-anne Moy, First Assistant Secretary, Ministerial and Parliamentary Services on 02 6215 3711.

Yours sincerely

Jane Halton
Secretary

26 May 2015

Attachment A

**Department of Finance response to s.19 Report dated 30 April 2015 and
amendments provided on 20 May 2015**

Administration of Travel Entitlements Provided to Parliamentarians

Summary of Formal Response

1. The Department of Finance notes and welcomes the ANAO's findings that the department has made ongoing and important improvements to its administration of parliamentarians' travel entitlements. These improvements have been designed to both assist our clients in accessing their entitlements and provide transparency for government in the management of parliamentary entitlements.
2. Whilst the department necessarily relies on the certification of Senators and Members in accessing their travel entitlements ANAO has noted the department's audit and checking process provides improved assurance in regard to the public outlays related to these entitlements.
3. Finance notes that there are several case studies provided in the report where inconsistency of process is highlighted. Given the length of time since these transactions were undertaken (pre 2014), Finance has undertaken a sample review to ensure that such inconsistencies have been removed from current transaction processes.
4. The department remains committed to continually improving our administrative processes and procedures within the Parliamentary Entitlements Framework.

Response to recommendations

5. Recommendation 1.

Finance agrees in principle with Recommendation 1. The department will undertake a review of the certification process to determine whether the information currently provided by Senators and Members would satisfy the recommendation.

6. Recommendation 2.

Finance agrees in principle with Recommendation 2 and advises that the recommendation has been fully implemented.

GED
28 MAY 2015
12.05



REMUNERATION TRIBUNAL

John C Conde AO
President

Ms Barbara Cass
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Dear Ms Cass

Thank you for your letter of 30 April 2015 providing an opportunity for the Tribunal to comment on the proposed Australian National Audit Office (ANAO) report on the audit of the *Administration of Travel Entitlements Provided to Parliamentarians*.

I note the Tribunal has only been provided with an extract from the report which does not include recommendations.

The Tribunal remains committed to reform of the entitlements of parliamentarians and has continued to engage with key stakeholders on the outstanding recommendations from the 2010 *Committee for the Review of Parliamentary Entitlements*, as well as other related matters. These stakeholders include relevant Ministers, elected members and the Department of Finance.

The Tribunal has been examining how selected Australian and international jurisdictions define, regulate and administer parliamentary entitlements. In particular we are having a close look at the experience of the Independent Parliamentary Standards Authority (IPSA) in the United Kingdom (UK). IPSA was created by the UK Parliament in the wake of the 2009 MPs' expenses scandal. It was given the remit and powers to introduce independent regulation of MPs' business costs and expenses and, subsequently, pay and pensions.

The Tribunal has worked with the current Government on changes flowing from its November 2013 initiatives to strengthen the rules governing parliamentarians' business expenses and provided advice on changes to post-retirement and severance travel provisions to complement initiatives in the *Parliamentary Entitlements Legislation Amendment Bill 2014*.

The Tribunal notes the reference in the ANAO report to the absence of an articulation and shared understanding of the terms 'parliamentary', 'electorate' and 'official' business. This is a matter that we are examining closely when reviewing the experiences of other jurisdictions.

The Tribunal looks forward to examining the full ANAO report and its recommendations and continuing to work with key stakeholders on further reform to the entitlements framework.

Yours sincerely

A handwritten signature in black ink, reading "John Conde". The signature is fluid and cursive, with the first name "John" and the last name "Conde" clearly distinguishable.

John C Conde AO
President

27 May 2015

Appendix 2: Six Monthly Entitlements Use Certification Form



Australian Government

Department of Finance

SENATORS AND MEMBERS ENTITLEMENTS USE - CERTIFICATION FORM 1 July to 31 December 2013

The expenditure detailed in your report, including the supporting information, for the period 1 July to 31 December 2013 has been met on your behalf by the Department of Finance (Finance). The report is proposed to be published on the Finance website.

This report and supporting information includes:

- aggregate information for expenditure met by Finance on travel entitlements (including both domestic and overseas travel for you and your nominated family members) and any related payment adjustments made to Finance;
- aggregate information for expenditure met by Finance on Office Facilities, Office Fit Outs, Office Administrative entitlements and Telecommunications costs, including any related payment adjustments made to Finance; and
- Travelling Allowance payments paid to you by Finance and any related payment adjustments made to Finance.

As part of the process of preparing your report please check the information detailed and contact Finance with any changes and/or amendments to the email or fax address listed below.

Certification (receipt of your certification will be published on the Finance website)

By signing this section, I **certify** that my use of each entitlement during the period 1 July to 31 December 2013, for entitlements administered by Finance, was in accordance with the provisions legislated for each respective entitlement.

Please ensure this certification is completed and returned by 30 April 2014.

--- Signature -----

----- Date -----

After completion, please email your completed form to emb@finance.gov.au

Appendix 3: Protocol Followed when an Allegation is Received of Alleged Misuse of Entitlement by a Member or Senator



Protocol followed when an Allegation is Received of Alleged Misuse of Entitlement by a Member or Senator

(As tabled in the Senate by the then Special Minister of State on 31 October 2000)

The Protocol was approved by the then Special Minister of State, on 23 June 1998, following an exchange of correspondence with the Attorney-General. Underlying the change (since the old system placed directions with the Minister responsible for Ministerial and Parliamentary Services and the Australian Federal Police) was that an 'arms length' process should be put in place to ensure allegations against politicians were handled in a way which could not invite allegations of partisanship.

The process is as follows:

Internal Audit

- When an allegation of or other event which suggests misuse of entitlement occurs, the Department undertakes an internal investigation to ascertain whether the allegations are credible (rather than being only malicious or vexatious).
- If the matter is relatively minor, the Member or Senator will be invited to provide an explanation to the Department.

Departmental Committee

- In the event of a more serious allegation or high incidence of transgression (or further investigation would involve interviewing members of the public) the matter is referred to a high level Departmental Committee chaired by the Secretary.
- The Committee may decide to, or not to, seek an explanation from the Member or Senator.
- The Committee, provided it is satisfied that each action is appropriate, seeks the advice of the Secretary, Attorney-General's Department, as to whether the matter warrants referral to the Australian Federal Police.
- If such advice is positive, the Special Minister of State would be provided with appropriate background material and a recommendation would be made to note that, subject to a further analysis by the Committee, the matter may be referred to the Australian Federal Police by the Secretary.
- The Minister for Justice is advised of the intended referral.
- The Secretary makes the decision as to whether the allegation against the Member or Senator is to be referred to the Australian Federal Police.
- Any further action would then be a matter for the Australian Federal Police.

On 12 August 2003 the then Special Minister of State agreed that the Protocol should also be used for allegations of misuse of entitlements involving *Members of Parliament (Staff) Act 1984* employees.

Index

A

ASKMAPS, 73, 72–74
Australian Federal Police, 166, 168, 170,
173, 174

B

Belcher Review. *See* Committee for the
Review of Parliamentary
Entitlements

C

Certification of entitlements use. *See*
Periodic certification of entitlements
use, *See* Transactional certification of
travel

Charter transport

cost effective use, 121–29

Committee for the Review of
Parliamentary Entitlements, 44–45,
114, 179
recommendations and
implementation, 47, 52–58, 68–70,
72, 77, 87–89, 132–35, 138, 163–65,
171–72, 176–79, 179–80

E

Eligible use of entitlements
assurance through certification, 92–
94, 104–11, 113–15, *See* Periodic
certification of entitlements use,
See Transactional certification of
travel, *See* Certification of
entitlements use
pre-payment checks, 96–104, 111–13,
129
primary purpose, 75, 83–87, 104–11

proposed additional eligible
purpose, 65–66, 182–86
scope of key terms, 66–78, 92–93,
182–86

Enhanced post-payment review and
checking function
audit of commercial accommodation
receipt available on request, 158–
60
electorate charter budgets, 157
implementation, 149–50
internal audit reviews, 150–54
journey-based checking of claims,
160–61
program of post-payment checks,
154–61

M

Measures announced in 2015–16
Budget, 48, 65–66, 104, 186
Measures announced in November
2013, 46–47, 57–58, 65, 75, 95, 105,
178–79, 181–82

P

Parliamentary Entitlements Advisory
Committee, 70–72
Periodic certification of entitlements
use, 129–30
change to six monthly certification,
130–32
clarity of the nature of the
certification requested, 141–45
qualified certifications, 131–32, 139–
41
response rates, 130–31, 132–39
Previous ANAO audit reports, 42–43
2001–02 audit report, 68, 99, 130, 162

2003–04 audit report, 130
2009–10 audit report, 67–68, 69, 78,
79, 87, 104, 125, 132, 149–50, 168–
69, 171
Protocol followed when an Allegation
is Received of Alleged Misuse of
Entitlement by a Member or Senator.
See Responding to allegations of
entitlements misuse
Publication of entitlements
expenditure
expansion of reporting, 162–63
recommendations for further
enhancement, 163–65
timeliness of reporting, 163, 165

R

Remuneration Tribunal
entitlements reform, 48, 53, 54–57,
58, 62–63, 64, 65–66, 182–86
Repayment of incorrect claims
penalty loading, 46–47, 181–90, 193
statutory right of recovery, 184, 186–
87
Responding to allegations of
entitlements misuse
consideration of matters, 151–52,
154, 172–76
High Level Departmental
Committee, 154, 168, 169, 170,
173–74
measures to address non-responsive
Parliamentarians, 176–80
proposals for amendment of
protocol not implemented, 170–
72, 179–80
protocol does not accurately reflect
processes followed, 166–70

protocol establishment and
standing, 166
'relatively minor' matters, 167, 169,
174–76
reliance on self-assessment by
Parliamentarian, 172–76, 180–81,
187–89
Review of the Administration of
Parliamentarians Entitlements by
the Department of Finance and
Deregulation, 45–46, 71, 97, 104, 131–
32, 141–43, 163
Revised declaration for travel claims
announcement, 46–47, 181–82
implementation, 182–86
legal advice, 182–85, 188

T

Transactional certification of travel, 94–
96
purpose of travel, 111
reliability, 106–8, 109–11
where not required, 129–30, 152–54,
182

U

Use of entitlements during election
campaigns, 69
CROPE report, 87–89
office holders following party
launch, 78–83
promoting own re-election, 83–87

W

Williams Review. *See* Review of the
Administration of Parliamentarians
Entitlements by the Department of
Finance and Deregulation

Series Titles

ANAO Report No.1 2014–15

Confidentiality in Government Contracts: Senate Order for Departmental and Agency Contracts (Calendar Year 2013 Compliance)

Across Agencies

ANAO Report No.2 2014–15

Food Security in Remote Indigenous Communities

Department of the Prime Minister and Cabinet

ANAO Report No.3 2014–15

Fraud Control Arrangements

Across Entities

ANAO Report No.4 2014–15

Second Follow-up Audit into the Australian Electoral Commission's Preparation for and Conduct of Federal Elections

Australian Electoral Commission

ANAO Report No.5 2014–15

Annual Compliance Arrangements with Large Corporate Taxpayers

Australian Taxation Office

ANAO Report No.6 2014–15

Business Continuity Management

Across Entities

ANAO Report No.7 2014–15

Administration of Contact Centres

Australian Taxation Office

ANAO Report No.8 2014–15

Implementation of Audit Recommendations

Department of Health

ANAO Report No.9 2014–15

The Design and Conduct of the Third and Fourth Funding Rounds of the Regional Development Australia Fund

Department of Infrastructure and Regional Development

ANAO Report No.10 2014–15

Administration of the Biodiversity Fund Program

Department of the Environment

ANAO Report No.11 2014–15

The Award of Grants under the Clean Technology Program

Department of Industry

ANAO Report No.12 2014–15

Diagnostic Imaging Reforms

Department of Health

ANAO Report No.13 2014–15

Management of the Cape Class Patrol Boat Program

Australian Customs and Border Protection Service

ANAO Report No.14 2014–15

2013–14 Major Projects Report

Defence Materiel Organisation

ANAO Report No.15 2014–15

Administration of the Export Market Development Grants Scheme

Australian Trade Commission

ANAO Report No.16 2014–15

Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2014

Across Entities

ANAO Report No.17 2014–15

Recruitment and Retention of Specialist Skills for Navy

Department of Defence

ANAO Report No.18 2014–15

The Ethanol Production Grants Program

Department of Industry and Science

ANAO Report No.19 2014–15

Management of the Disposal of Specialist Military Equipment

Department of Defence

ANAO Report No.20 2014–15

Administration of the Tariff Concession System

Australian Customs and Border Protection Service

ANAO Report No.21 2014–15

Delivery of Australia's Consular Services

Department of Foreign Affairs and Trade

ANAO Report No.22 2014–15

Administration of the Indigenous Legal Assistance Programme

Attorney-General's Department

ANAO Report No.23 2014–15

Administration of the Early Years Quality Fund

Department of Education and Training

Department of Finance

Department of the Prime Minister and Cabinet

ANAO Report No.24 2014–15

Managing Assets and Contracts at Parliament House

Department of Parliamentary Services

ANAO Report No.25 2014–15

Administration of the Fifth Community Pharmacy Agreement

Department of Health

Department of Human Services

Department of Veterans' Affairs

ANAO Report No.26 2014–15

Administration of the Medical Specialist Training Program

Department of Health

ANAO Report No.27 2014–15

Electronic Health Records for Defence Personnel

Department of Defence

ANAO Report No.28 2014–15

Management of Interpreting Services

Department of Immigration and Border Protection

Department of Social Services

ANAO Report No.29 2014–15

Funding and Management of the Nimmie-Caira System Enhanced Environmental Water Delivery Project

Department of the Environment

ANAO Report No.30 2014–15

Materiel Sustainment Agreements

Department of Defence

Defence Materiel Organisation

ANAO Report No.31 2014–15

Administration of the Australian Apprenticeships Incentives Program

Department of Education and Training

ANAO Report No.32 2014–15

Administration of the Fair Entitlements Guarantee

Department of Employment

ANAO Report No.33 2014–15

Organ and Tissue Donation: Community Awareness, Professional Education and Family Support

Australian Organ and Tissue Donation and Transplantation Authority

ANAO Report No.34 2014–15

Administration of the Natural Disaster Relief and Recovery Arrangements by Emergency Management Australia

Attorney-General's Department

ANAO Report No.35 2014–15

Delivery of the Petrol Sniffing Strategy in Remote Indigenous Communities

Department of the Prime Minister and Cabinet

ANAO Report No.42 2014–15

Administration of Travel Entitlements Provided to Parliamentarians

ANAO Report No.36 2014–15

Administration of the Assistance for Isolated Children Scheme
Department of Human Services

ANAO Report No.37 2014–15

Management of Smart Centres' Centrelink Telephone Services
Department of Human Services

ANAO Report No.38 2014–15

Administration of Enforceable Undertakings
Australian Securities and Investments Commission

ANAO Report No.39 2014–15

Promoting Compliance with Superannuation Guarantee Obligations
Australian Taxation Office

ANAO Report No.40 2014–15

Transport Services for Veterans
Department of Veterans' Affairs

ANAO Report No.41 2014–15

The Award of Funding under the Safer Streets Programme
Attorney-General's Department

ANAO Report No.42 2014–15

Administration of Travel Entitlements Provided to Parliamentarians
Department of Finance

Better Practice Guides

The following Better Practice Guides are available on the ANAO website:

Public Sector Financial Statements: High-quality reporting through good governance and processes	Mar. 2015
Public Sector Audit Committees: Independent assurance and advice for Accountable Authorities	Mar. 2015
Successful Implementation of Policy Initiatives	Oct. 2014
Public Sector Governance: Strengthening performance through good governance	June 2014
Administering Regulation: Achieving the right balance	June 2014
Implementing Better Practice Grants Administration	Dec. 2013
Human Resource Management Information Systems: Risks and Controls	June 2013
Public Sector Internal Audit: An Investment in Assurance and Business Improvement	Sept. 2012
Public Sector Environmental Management: Reducing the Environmental Impacts of Public Sector Operations	Apr. 2012
Developing and Managing Contracts: Getting the Right Outcome, Achieving Value for Money	Feb. 2012
Fraud Control in Australian Government Entities	Mar. 2011
Strategic and Operational Management of Assets by Public Sector Entities: Delivering Agreed Outcomes through an Efficient and Optimal Asset Base	Sept. 2010
Planning and Approving Projects – an Executive Perspective: Setting the Foundation for Results	June 2010
Innovation in the Public Sector: Enabling Better Performance, Driving New Directions	Dec. 2009
SAP ECC 6.0: Security and Control	June 2009
Business Continuity Management: Building Resilience in Public Sector Entities	June 2009
Developing and Managing Internal Budgets	June 2008