



SPECIAL REPORT

15 DECEMBER 2020

Members' additional entitlements 2020

NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

THE ROLE OF THE AUDITOR-GENERAL

The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the *Public Finance and Audit Act 1983* and the *Local Government Act 1993*.

We conduct financial or 'attest' audits of State public sector and local government entities' financial statements. We also audit the Total State Sector Accounts, a consolidation of all agencies' accounts.

Financial audits are designed to add credibility to financial statements, enhancing their value to end-users. Also, the existence of such audits provides a constant stimulus to entities to ensure sound financial management.

Following a financial audit the Audit Office issues a variety of reports to entities and reports periodically to parliament. In combination these reports give opinions on the truth and fairness of financial statements, and comment on entity compliance with certain laws, regulations and government directives. They may comment on financial prudence, probity and waste, and recommend operational improvements.

We also conduct performance audits. These examine whether an entity is carrying out its activities effectively and doing so economically and efficiently and in compliance with relevant laws. Audits may cover all or parts of an entity's operations, or consider particular issues across a number of entities.

As well as financial and performance audits, the Auditor-General carries out special reviews and compliance engagements.

Performance audits are reported separately, with all other audits included in one of the regular volumes of the Auditor-General's Reports to Parliament – Financial Audits.



GPO Box 12
Sydney NSW 2001

The Legislative Assembly
Parliament House
Sydney NSW 2000

The Legislative Council
Parliament House
Sydney NSW 2000

In accordance with section 52B of the *Public Finance and Audit Act 1983*, I present a special report titled '**Members' additional entitlements 2020**'.

A handwritten signature in black ink, appearing to read 'Margaret Crawford'.

Margaret Crawford

Auditor-General
15 December 2020

© Copyright reserved by the Audit Office of New South Wales. All rights reserved. No part of this publication may be reproduced without prior consent of the Audit Office of New South Wales. The Audit Office does not accept responsibility for loss or damage suffered by any person acting on or refraining from action as a result of any of this material.

contents

Members' additional entitlements 2020

Section one –Members' additional entitlements 2020

Members' additional entitlements 2020	1
---------------------------------------	---

Section two – Appendices

Appendix one – Response from Department of Parliamentary Services	9
---	---

Section one

Members' additional
entitlements 2020

Members' additional entitlements 2020

The Auditor-General has reviewed the compliance of the Members of the NSW Parliament (Members) with certain requirements outlined in the Parliamentary Remuneration Tribunal's Determination (the Determination) for the year ended 30 June 2020.

The Auditor-General's review of Members' compliance with the Determination analyses claims made by Members during the 2019–20 financial year by testing a sample of transactions. Our sample included 66 claims submitted by 43 of the 136 Members.

Results

Our review identified three instances of material non-compliance with the Determination for the year ended 30 June 2020:

- one Member claimed the General Travel Allowance for the full cost of a charter flight used to both attend a family event and perform the Member's parliamentary duties instead of estimating and claiming only the cost related to the Member's parliamentary duties
- one Member claimed the Communications Allowance for the same expenditure twice
- one Member elected to repay the allowance claimed in lieu of providing evidence to support their claims. The Member claimed the Sydney Daily Allowance and advised that they did not have records to support that the purpose of the travel related to their parliamentary duties.

The Determination requires Members to maintain appropriate records of expenditure for the purpose of any audit or assurance engagements. Repeated reviews have identified Members who elect to repay the allowances claimed in lieu of providing supporting documents. Justifying a claim for an allowance with supporting documents should not rely on the Auditor-General's review. Last year, we recommended the Department of Parliamentary Services (the Department) work with the Tribunal to provide additional guidance to Members to clarify the definition of parliamentary duties, the activities that meet the definition and the requirements for retaining documents. The recommendation is currently being considered by the Department.

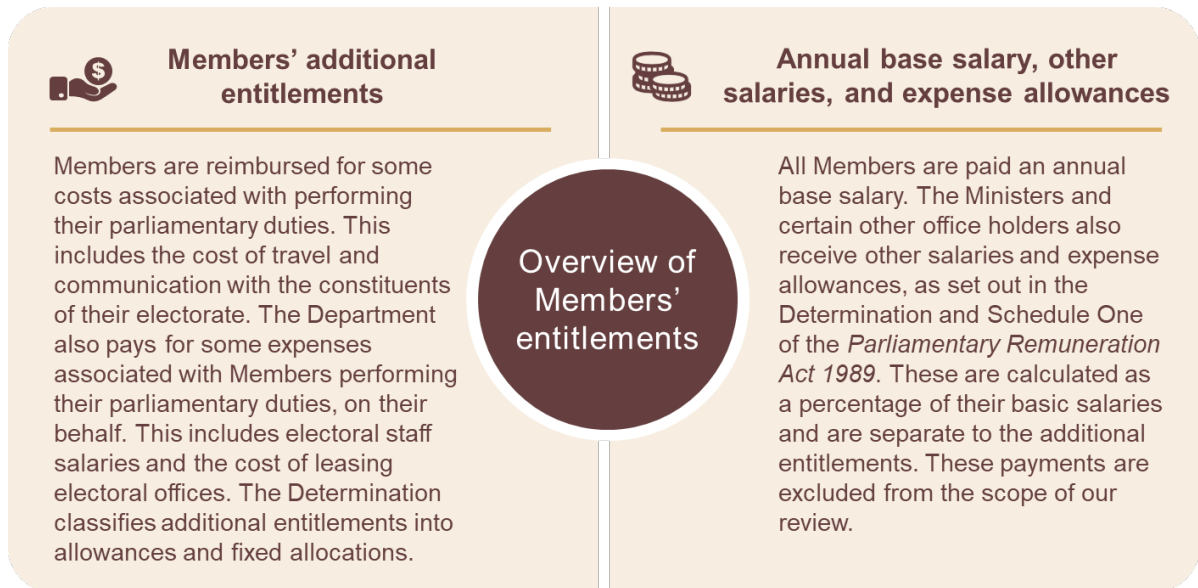
Our review also identified 22 other departures from the administrative requirements of the Determination:

- two Members did not make the required authorisations and attributions on a publication to claim the expenditure from the Communications Allowance
- seven reconciliations for the Sydney Allowance were submitted after the due date
- 13 Members' claims were not submitted to the Department for payment within 60 days of receipt or occurrence of the expense.

Our audit procedures identified three other departures from the Department's administrative guidelines, which support the application of the Determination. Three Members submitted their annual loyalty scheme declarations after the due date specified in the guidelines (31 July 2020). The Declaration is important because it affirms that loyalty scheme benefits accrued using the Member's parliamentary allowances and entitlements were not used for private purposes.

Background

The Parliamentary Remuneration Tribunal (the Tribunal) determines the salary and additional entitlements of Members of NSW Parliament (Members), which are set out in the Tribunal's annual Determination



Source: 2019 Annual Report and Determination - Parliamentary Remuneration Tribunal.

The NSW Parliament, through the Department, administers payments of additional entitlements to Members in accordance with the Tribunal's annual Determination. In 2019–20, Members claimed additional entitlements of \$21.6 million, an increase of 0.5 per cent from 2018–19.

The increase is largely attributable to the Tribunal's 2019 annual Determination increasing the quantum of the following allowances by 2.5 per cent, in line with the increase to Members' basic salaries:

- Electoral Allowance
- Sydney Allowance
- Communications Allowance (base allocation)
- General Travel Allowance and
- Electorate to Sydney Travel Allowance.

This was offset by a decrease in the number of Communications Allowance, General Travel Allowance and Electorate to Sydney Travel Allowance claims made by Members.

We did not test Members' compliance with the Determination for the following additional entitlements:

- Travelling Allowance for Recognised Office Holders. Members did not claim for reimbursement allowed under this allowance in 2019–20 or 2018–19.
- Electoral Allowances and Committee Allowances. The Determination excludes these allowances from the scope of this review.
- Equipment, Services and Facilities Fixed Allocation. Although the 2019 Determination includes all fixed allocations within the scope of this review, the Tribunal confirmed it was not their intention for transactions under the Equipment, Services and Facilities Fixed Allocation to be included in the scope of our review. The Tribunal clarified these allocations were not within the scope of our review in their 2020 Determination.

The following table shows the amounts claimed by Members' for additional entitlements in the scope of our review.

Nature	Additional entitlement	2019–20	2018–19	Movement (%)
Allowance	Sydney Allowance	\$1.6m	\$1.5m	7.2
Fixed allocations	Communications Allowance	\$8.0m	\$8.2m	(2.8)
	General Travel Allowance	\$686,000	\$780,000	(12.0)
	Electorate to Sydney Travel Allowance	\$455,000	\$543,000	(16.1)
	Skills Development Allowance	\$66,000	\$19,000	251

Source: The Legislature (unaudited).

Clarifying the Department's Guidelines relating to 'parliamentary duties'

Under the Determination, Members can only claim expenditure incurred performing their parliamentary duties. The Determination provides examples of circumstances where additional entitlements may be used for 'parliamentary duties' and refers to the Department's guidelines. In previous years, we noted instances where it was unclear whether the Member's activities validly related to 'parliamentary duties' as described in the guidelines, and we continued to note similar instances this year.

We recommended the Department work with the Tribunal to provide additional guidance to Members to clarify:

- the definition of 'parliamentary duties'
- the activities that meet the definition
- requirements for retaining documents.

The recommendation is currently being considered by the Department. The Department has advised they plan to consult with Members and review definitions in other jurisdictions.

The Tribunal noted in its 2020 Determination that they will work with the Department and will consider this matter in more detail during the 2021 annual review.

Detailed findings

Material findings

One Member's General Travel Allowance did not relate to parliamentary duties

Claims for the Members' General Travel Allowance must relate to parliamentary duties. Members must retain records to support that their travel related to their parliamentary duties. One Member claimed General Travel Allowance (\$2,918.19) for a charter flight with two stops. One of the stops was exclusively related to the Member's family event. The Determination requires that when it is not practical to separate intermingled parliamentary and non-parliamentary use, the Member must estimate the component of non-parliamentary use and, using the Member's best efforts, meet these costs independently. Consequently, the Department has asked the Member to return \$1,459.09 of the payment.

One Member claimed the Communications Allowance for the same expenditure twice

One Member claimed Communications Allowance for the same newspaper advertisement (\$145.00) on two separate occasions. The Department has now asked the Member to return the duplicate payment.

One Member chose to repay their allowance in lieu of providing evidence for our review

The Determination requires Members to maintain appropriate records of expenditure for the purpose of any audit or assurance engagements. One Member elected to repay their allowance in lieu of providing evidence for our review. The Member has advised that they did not have records to support the purpose of their travel was to perform their parliamentary duties.

The claim related to the Sydney Allowance. The Sydney Allowance is provided to Members whose principal place of residence is at least 70 kilometres by road from Parliament House. It compensates Members for the additional costs associated with staying in Sydney to attend sessions of Parliament, meetings of parliamentary committees or other parliamentary business. The Department has asked the Member to return \$315.00.

Other findings

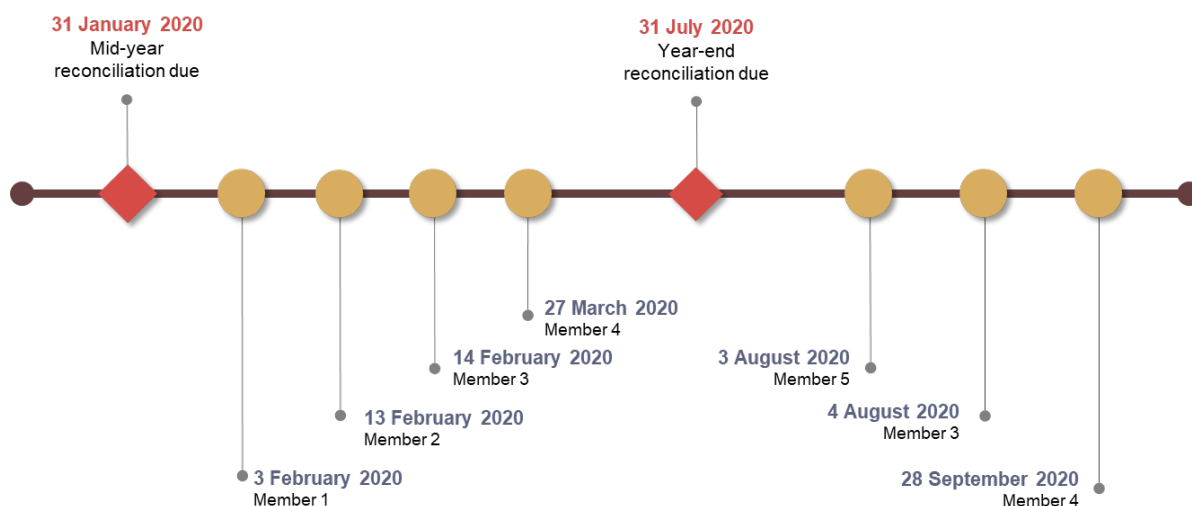
Two Members did not make the required authorisations and attributions on a publication to claim the expenditure from the Communications Allowance

The Communications Allowance guidelines requires that all paper-based publications, whether printed commercially or in-house and other communication types, must include the following statements: 'Authorised by (the Member). "Funded using parliamentary entitlements"'. Two Members claimed the Communications Allowance (\$1,045.00 and \$557.65) for Facebook advertising campaigns that did not disclose these statements.

Thirteen Members' claims were submitted for reimbursement after the due date

The Determination requires Members' expense claims to be submitted to the Department within 60 days of when the expense is incurred or receipted. Our audit procedures identified 13 instances where Members submitted their claims between two and 251 days late. Late submissions of claims disadvantage the Members themselves, as it delays the reimbursement of their claims.

Five Members submitted their Sydney Allowance reconciliations late



At the start of each financial year, a Member can choose to receive the Sydney Allowance as either an annual fixed amount, or at a daily rate for each required overnight stay. Members that choose to receive an annual fixed amount must submit reconciliations twice a year to the Department and return any excess of the Allowance over actual expenses incurred by 30 September each year. Of the five Members who submitted their Sydney Allowance reconciliations late, two Members were late with both of their mid-year and year-end reconciliations.

Of the three Members who submitted their year-end reconciliations late, one was owed money for expenditure in excess of the Allowance but two needed to repay unspent Allowances. Repayments were made by the required date of 30 September.

Three Members completed their annual loyalty/incentive scheme declarations late

At the end of each financial year, Members must declare they have not used loyalty/incentive scheme benefits accrued from their parliamentary duties for private purposes. The Determination requires current Members to complete the Declarations at the end of each year (by 31 July 2020 per the Department's administrative process). Former Members must complete the declarations within 30 days of leaving parliament. We found three current Members submitted their declarations between four and 12 days late.

Enhanced public reporting of Members' expenditure claims

In 2016, the Auditor-General's Report to Parliament recommended the Tribunal consider requiring the Department to regularly publish full details of Members' expenditure claims on its website in an accessible and searchable format.

The Tribunal had developed a plan requiring greater public reporting of Members' additional expenditure from 1 July 2019 but does not have the power to require the Department to facilitate this.

The Annual Reports of the Legislative Assembly and the Legislative Council, published on the parliament's website, currently list the total amount claimed during the year by each Member for each allowance. However, transparency around Members' claims would be enhanced if information was more extensively and regularly published on the parliament's website. The Department should continue to work with the Presiding Officers, Members, the Clerk of the Parliaments and the Clerk of the Legislative Assembly to enhance reporting of Members' expenditure.

Status of 2019 recommendations

In 2019, the Auditor-General's Report to Parliament made three recommendations. The Department has worked with the Tribunal and addressed two of the recommendations:

Recommendation	Response
Align the wording of the Determination in relation to the Electorate to Sydney Travel Allowance with the Tribunal's intent.	The 2020 Determination clarifies that eligible Members can claim the Electorate to Sydney Travel allowance for travel between either the Member's electorate or their principal place of residence and Sydney.
Clarify in the Determination that the Equipment, Services and Facilities Fixed Allocation is excluded from the scope of the external audit.	The 2020 Determination excludes this fixed allocation from the scope of this review by moving it to a new section of the Determination, 'Additional Entitlements – Resources'.

The 2019 Auditor-General's Report also recommended that the Department work with the Tribunal to clarify whether Members can claim the cost of travel from their General Travel Allowance when the travel was used to produce communications during the blackout period. Members are not permitted to use their Communications Allowance for the production and distribution of publications that they intended to distribute in a State Election year in the period from 26 January to the election date (the 'blackout period').

The 2020 Determination noted that the Tribunal will consider which entitlements can be claimed by Members during the blackout period. The Tribunal will consider this in the context of the proposed merging of the Communications and General Travel Allowances in 2021.

Section two

Appendices

Appendix one – Response from Department of Parliamentary Services



DEPARTMENT OF PARLIAMENTARY SERVICES
Office of the Chief Executive

Ref: D20/62998

10 December 2020

Ms Margaret Crawford
Auditor-General of NSW
The Audit Office of New South Wales
GPO Box 12
SYDNEY NSW 2001

Dear Ms Crawford

Re: Auditor-General's Report to Parliament - Members' Additional Entitlements 2020

I refer to your report to Parliament on Members' Additional Entitlements 2020 and specifically to the following items titled:

1. Clarifying the Department's Guidelines relating to 'parliamentary duties'

The Parliamentary Remuneration Tribunal has indicated it will work with the Department of Parliamentary Services and consult with the Auditor-General before changes, if any, are made. In its Annual Report and Determination dated 7 July 2020, the Tribunal indicated the matter will be considered in more detail during the 2021 annual review.

The Department has undertaken a review of the definitions of 'parliamentary duties' and activities that meet the definitions in select Australia jurisdictions.

As part of the 2021 annual review, the Department remains committed to working with the Parliamentary Remuneration Tribunal to identify any additional guidance it may wish to provide members to support them in undertaking their parliamentary and electorate duties.

Once this process has been undertaken, the Department will consult with members on any amendments the Tribunal intends to adopt as part of its 2021 annual review.

2. Enhanced public reporting of Members' expenditure claims

The Department remains committed to implementing the enhanced public reporting of Members' expenditure claims as contained in the Annual Report and Determination of the Parliamentary Remuneration Tribunal dated 16 May 2018.

However, in order to achieve this outcome, the Department requires significant capital funding from NSW Treasury to develop, implement and maintain the required reporting system to fulfil the original recommendation of the Audit Office and the proposed model agreed to by the Tribunal.

It should be noted that the Parliamentary Remuneration Tribunal acknowledged in its 2018 Determination that:

To provide for this degree of public reporting the Parliament will require an integrated online Members' Entitlements Reporting (MER) system which allows for claims data to be captured and extracted into an agreed format. A system of this nature would require a significant capital investment in addition to ongoing recurrent funding. The Parliament has estimated that the capital investment for the design, testing and implementation of the MER may exceed \$2.82 million in the first year with ongoing recurrent funding of \$343,000 indexed each year required thereafter.

It is unlikely the Parliament will be able to report on expenditure claims as intended by the Tribunal, and as recommended by the Auditor General, without this significant capital funding.

The Department has consulted with members, developed an agreed reporting framework in collaboration with the Audit Office and the Tribunal, had the project costed and submitted multiple bids to NSW Treasury seeking funding for the delivery of the enhanced reporting framework. To date, the funding is yet to be provided.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Webb', with a horizontal line extending to the right.

Mark Webb
Chief Executive

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help parliament hold government accountable for its use of public resources.

OUR VALUES

Pride in purpose
Curious and open-minded
Valuing people
Contagious integrity
Courage (even when it's uncomfortable)

Level 19, Darling Park Tower 2
201 Sussex Street
Sydney NSW 2000 Australia

PHONE +61 2 9275 7100

mail@audit.nsw.gov.au

Office hours: 8.30am-5.00pm