

A u d i t o r - G e n e r a l
Report No.3 2009–10
Audit Report

**Administration of Parliamentarians'
Entitlements by the Department of Finance
and Deregulation**

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of Australia 2009

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Canberra ACT
8 September 2009

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Department of Finance and Deregulation in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure. The report is titled *Administration of Parliamentarians' Entitlements by the Department of Finance and Deregulation*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name and title.

Ian McPhee
Auditor-General

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 and financial statement audits 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.

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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> .
AEC	Australian Electoral Commission
AGD	Attorney-Generals' Department
AGS	Australian Government Solicitor
ALP	Australian Labor Party
ANAO	Australian National Audit Office
CPGs	Commonwealth Procurement Guidelines
DAS	Department of Administrative Services
Electoral Act	<i>Commonwealth Electoral Act 1918</i>
Finance	Department of Finance and Deregulation
FMA Act	<i>Financial Management and Accountability Act 1997</i>
GPV	General Postal Voter
MMP	Mixed Member Proportional electoral system
MOP(S) Act	<i>Members of Parliament (Staff) Act 1984</i>
MRA	Member's Representational Allowance (provided to Members of the United States House of Representatives)
Parliamentary Allowances Act	<i>Parliamentary Allowances Act 1952</i>
Parliamentary Entitlements Act	<i>Parliamentary Entitlements Act 1990</i>
Parliamentary Entitlements Regulations	<i>Parliamentary Entitlements Regulations 1997</i>
PM&C	Department of the Prime Minister and Cabinet
PVA	Postal Vote Application
SMOS	Special Minister of State

Summary and Recommendations

Summary

Introduction

1. Senators and Members of the Australian Parliament are provided with a range of entitlements to facilitate the carrying out of their duties and responsibilities as elected representatives of the Australian people. Entitlements include office accommodation and related facilities, staff support, travel and various other allowances to assist Parliamentarians service and inform their constituents.
2. The Department of Finance and Deregulation (Finance) is the agency responsible for administering the majority of entitlements provided to Parliamentarians, and the focus of this audit was on those entitlements it administers. The major Acts administered by Finance that relate to the provision of entitlements to current and former Senators and Members are the *Parliamentary Allowances Act 1952* and the *Parliamentary Entitlements Act 1990* (Parliamentary Entitlements Act). In addition, some entitlements are established under determinations of the Remuneration Tribunal made under the *Remuneration Tribunal Act 1973*. The Chamber Departments are also involved in the provision of some entitlements.
3. The 2009-10 Portfolio Budget Statements for the Finance and Deregulation portfolio disclosed estimated administered expenses for Parliamentarians' entitlements of some \$331 million in 2008-09.¹ The amounts paid by Finance do not include salary and electorate allowance, which are paid by the Chamber Departments. After deducting the \$169 million paid to or on behalf of Parliamentarians' staff, the cost of entitlements provided by Finance to Parliamentarians was estimated by Finance to be some \$162 million.

¹ Portfolio Budget Statements 2009-10, Finance and Deregulation portfolio, Budget Related Paper No. 1.8, *Budget Initiatives and Explanations, Appropriations Specified by Outcomes and Programs by Agency*, 5 May 2009, p. 42. Further detail is shown at Table 1.1 in Chapter 1.

4. As elected officials holding public office, Parliamentarians are expected to act with integrity in accordance with the public trust placed in them.² Despite the many demands on their time, this requires that Parliamentarians take personal responsibility for ensuring that expenses claimed are properly incurred in discharging their Parliamentary, electorate and/or official duties, and are consistent with applicable legislation, regulations and related guidance that govern the use of entitlements. In this respect, in guiding their decisions as to whether or not to access taxpayer-funded entitlements, Parliamentarians are advised by Finance that it would be advisable for them to adopt a risk-assessment approach, as outlined in Table S 1.

Table S 1

Risk assessment approach for deciding whether to use an entitlement as advised to Parliamentarians by Finance since 2004

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: Senators and Members Entitlements Handbook, November 2007, p. 8.

Audit objectives and scope

5. The Australian National Audit Office (ANAO) has previously examined some or all aspects of the administration of Parliamentarians’ entitlements on four occasions. The two most recent audits involved a comprehensive examination of entitlements provided to Parliamentarians (Audit Report No.5 2001-02, *Parliamentarians’ Entitlements 1999-2000*³-the

² In this respect, the December 2007 Standards of Ministerial Ethics issued by the Prime Minister outline a Minister’s obligations in respect to integrity, fairness, accountability, responsibility and to act in the public interest. In the United Kingdom, the Committee on Standards in Public Life (established in 1994 as an advisory non-departmental public body sponsored by the Cabinet Office) has advocated that seven principles should apply to all in public service, being: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership. In March 2009, the Committee announced that, later in 2009, it would be undertaking a wide-ranging review of allowances provided to Members of Parliament in the United Kingdom. The Committee aims to publish its final report in October 2009 <http://www.public-standards.gov.uk/OurWork/MPs_Allowances_0_1.html> [accessed 29 July 2009].

³ ANAO Audit Report No.5 2001-02, *Parliamentarians’ Entitlements: 1999-2000*, Canberra, 7 August 2001.

2001-02 Audit Report) and their staff (Audit Report No.15 2003-04, *Administration of Staff employed under the Members of Parliament (Staff) Act 1984*⁴-the 2003-04 Audit Report).

6. During consultations on the development of ANAO's 2008-09 Planned Audit Work Program, the Senate Standing Committee on Finance and Public Administration suggested that a follow-up of the 2001-02 audit of Parliamentarians' entitlements warranted the Auditor-General's attention. This audit responds to that request. Its objective was to assess whether:

- the entitlements framework is sound, including whether rules and guidance on entitlements are clear and precise;
- entitlements considered as part of the audit are claimed and administered in a cost-effective manner that is consistent with the entitlements framework underpinning them; and
- accountability arrangements (including internal and public reporting and certifications) are effective and appropriate.

7. The focus of this audit was on those entitlements administered by Finance. Similar to the 2001-02 Audit Report, the audit scope did not include entitlements provided to persons employed under the *Members of Parliament (Staff) Act 1984* (MOP(S) Act). It also did not examine the administration of entitlements provided through other agencies (such as Parliamentarians' salary and electorate allowance, which are paid by the Chamber Departments, and entitlements provided to Ministers by their home department).

8. A comprehensive examination was undertaken of the overall entitlements framework. ANAO also examined Finance's administrative controls; analysed Parliamentarians' certification of the use of entitlements included in Management Reports provided to them by Finance; and examined the use of a sample of five entitlements administered by Finance, namely: General Administrative Expenses; Newspapers and Periodicals; Communications Allowance; Car Transportation; and the Printing Entitlement.⁵ In addition, based on publicly available information, ANAO

⁴ ANAO Audit Report No.15 2003-04, *Administration of Staff Employed Under the Members of Parliament (Staff) Act 1984*, Canberra, 1 December 2003.

⁵ The results of this work resulted in ANAO undertaking a more detailed examination of use of the Printing Entitlement.

reviewed the entitlements models used in the United States, Canada, the United Kingdom and New Zealand.

9. The proposed report of the audit was issued in July 2009 to relevant Ministers, Finance and the Department of the Prime Minister and Cabinet (PM&C). Extracts of the proposed report were provided to the three most recent former SMOS', as well as the Attorney-General's Department (AGD) and the Remuneration Tribunal.

10. Also in July 2009, given the nature of the preliminary audit findings in respect to use of the Printing Entitlement, ANAO wrote to Parliamentarians whose use of this entitlement was examined in detail as part of the audit so as to offer them the opportunity to comment on audit analysis of this use, and/or to offer views on the framework for this entitlement, or more generally.⁶ Any comments provided by Parliamentarians and other stakeholders were taken into account prior to finalisation of this report.

Overall conclusion

11. The framework for Parliamentarians' entitlements reflects a combination of statute, convention and practice. Over time, the framework has been extended to permit greater flexibility in the use of entitlements. However, this flexibility has not been supported by principles-based legislation that establishes the purposes for which entitlements are provided or subordinate regulations and legislative instruments that provide clear boundaries to guide Parliamentarians in the use of their entitlements and Finance in terms of its administration.

12. To strike a better balance between assisting Parliamentarians and accountability for the public funds spent on providing entitlements to Senators and Members, ANAO's 2001-02 Audit Report on Parliamentarians' entitlements indicated that there would be merit in a comprehensive review of the entitlements framework. No such review was undertaken and, whilst various changes have been made to some individual entitlements, no fundamental changes have been made to the framework in the eight years that

⁶ A number of Parliamentarians requested that they be provided with copies of the specific material relating to their use of the Printing Entitlement. This more detailed information was provided to those Parliamentarians that requested it.

have passed since that audit. The result is an entitlements framework that is difficult to understand and manage for both Parliamentarians and Finance.

13. A key shortcoming in the framework is that there is not a consistent approach to specifying the purpose for which entitlements may be used and, where purposes are specified, the meaning of key terms such as Parliamentary business and electorate business has not been articulated. For the sample of entitlements subject to detailed examination by ANAO, this situation was particularly significant for the Printing Entitlement and the related Communications Allowance.⁷ There is no explicit statement that these (or any other entitlement) are not to be used for election campaigning activities. This is important in this context because public funding is provided through the Australian Electoral Commission (AEC) to assist candidates and parties meet the costs of campaigning. This position allows the capacity for 'double dipping' in circumstances where Parliamentarians use their entitlements for the primary purpose of attracting votes for themselves and/or their party when the party or candidate⁸ then receives funding from the AEC to meet the costs of election campaigning activities (the amount paid is calculated by reference to each vote that has been attracted). The Australian approach contrasts with entitlements frameworks in four overseas jurisdictions reviewed by ANAO where it was common to explicitly state that Parliamentary and electorate business does not include Parliamentarians campaigning for themselves, for others or for their party (often referred to as party-political purposes).

14. The shortcomings in the framework establishing Parliamentarians' entitlements have been compounded by a system that involves limited accountability for entitlements use. In particular, Parliamentarians are not required to respond to invitations that they certify their use of entitlements and there is a relatively low level of public reporting of entitlements expenditure.

15. The prime responsibility for ensuring that benefits use is within the terms of the relevant entitlement rests with Parliamentarians, but Finance has a role in exercising an appropriate level of inquiry in order to ensure amounts are properly payable. There have been continuing improvements made to

⁷ The Printing Entitlement (provided under the *Parliamentary Entitlements Regulations 1997*) provides for the production of printed material. The Communications Allowance (provided under Remuneration Tribunal Determination 2006/18) facilitates distribution of this material.

⁸ Election funding is paid to the party where the candidate or Senate group is endorsed by a registered political party, and in other cases is paid direct to the candidate or Senate group (or their agent).

aspects of Finance's administration of Parliamentarians' entitlements, including in the quantity and quality of management reporting to Parliamentarians on their use of entitlements.

16. Shortcomings in the framework have not assisted Finance in its role, and the department has also adopted a relatively gentle approach to entitlements administration. In particular,⁹ whilst the Printing Entitlement is one of the more financially significant entitlements over which Parliamentarians are able to exercise some discretion within the legislated parameters of the entitlement, the administrative approach that has been adopted has had the effect of ensuring the department is not aware of the substantive nature of the items produced, instead relying on invoice descriptions and certifications from Parliamentarians that the items produced are on the menu of items that may be printed. In this respect, Finance advised ANAO that it had been the intent of successive governments that the department not sight or vet any printed material.

17. The potential for this to result in the printing of material that was outside of entitlement was further increased by Finance's administrative response when presented with invoices that indicated questionable use of the entitlement. In these circumstances, rather than seeking to confirm the substance of the item printed, the department's procedure has been to invite the Senator or Member to provide a re-issued invoice or other advice carrying a descriptor of the printed item that aligns with the menu of approved printable items. Finance has recently changed its approach such that the department now advises Parliamentarians that it is unable to make payment for items that are not consistent with the menu of approved printable items and returns the relevant invoice to the Senator or Member for their personal attention.

18. The Printing Entitlement provided under the Parliamentary Entitlements Regulations is based on a specified menu of approved printable items. Both the form and content of an item must conform to one of the approved categories in order to be considered within entitlement. In this respect, based on the officially endorsed and promulgated framework, ANAO

⁹ While the more significant issues that arose in the audit related to the administration and use of the Printing Entitlement and related Communications Allowance, anomalies were also identified in relation to some of the other entitlements sampled by ANAO.

identified a significant number of items at risk of being outside of entitlement both in respect to the form of the items printed and their content. Of a sample of items produced using the Printing Entitlements of 144 Senators and Members in three States, 74 per cent represented items at varying levels of risk of being outside of entitlement.¹⁰ For the majority of these, this was primarily due to the content of the material offending the entitlement's principal purpose of facilitating Parliamentarians' capacity to undertake their duties as the elected representative of their constituents (see further at paragraphs 55 to 62). While these results cannot validly be extrapolated to the full population of transactions or to the total cost of the entitlement, the high proportion of transactions examined where there is a question as to whether they are within entitlement underlines the importance of improving the system and its operation. This situation arises from:

- an entitlements framework that is complex¹¹ and overdue for reform;
- some Parliamentarians relying upon a guidance document communicated between the then Government and then Opposition in mid 2003, which was not formally promulgated to all Parliamentarians and Finance was not aware it was being used or relied upon¹²; and
- an administrative approach by Finance that did not enable the department to be adequately informed about the nature of items being produced under the Printing Entitlement.

19. The ANAO has presented its assessment of items produced under the Printing Entitlement on a risk basis as the shortcomings in the entitlements framework meant it was not possible to form a definitive view as to whether

¹⁰ The transactions involved had an aggregate value of \$4.64 million. Appendix 4 to this report illustrates examples of printed items in the sample examined that were assessed as being at risk of being outside of entitlement.

¹¹ For example, it is based on a mix of Acts and Regulations, Remuneration Tribunal Determinations, Ministerial determinations, executive decisions, procedural rules, non-binding conventions and 'accepted practices'. There are also inconsistencies and ambiguities within and between the Printing Entitlement and the related Communications Allowance.

¹² This document was in the form of 42 Questions and Answers. In July 2009, the current SMOS advised ANAO that: 'The 42 questions contained within this document were formulated by the then Opposition in an attempt to obtain greater clarity around the use of entitlements. The answers to the 42 questions were prepared by the then Government and disseminated to parliamentarians by the then Special Minister of State. I understand these answers were accepted by parliamentarians as providing the definitive guidance on the matters raised therein.' See further at paragraph 61.

individual transactions were outside entitlement. This risk basis is consistent with the approach adopted by the legal adviser to AGD who considered that:

...we are not able to express a clear view as to whether a court would find that a particular document was covered by the benefit. All we are able to do is express the possible outcome in terms of risk.

20. Some Parliamentarians who contacted the ANAO in relation to items produced under the Printing Entitlement did not agree with the audit assessment, generally pointing to the shortcomings in the framework, that their decisions about the use of the Printing Entitlement were made in good faith and/or that their decisions about the use of the Printing Entitlement was considered to be consistent with their understanding of the rules and conventions in place at the time the material was produced.

21. While the audit does recognise that entitlements framework has let down Parliamentarians, it also underlines the importance of individual Senators and Members taking steps to be confident that their use of entitlements is within the officially promulgated framework.

22. During the course of this audit, steps were taken to address shortcomings in the Printing Entitlement and the related Communications Allowance that had been identified by the ANAO. This audit, and the 2001-02 Audit Report, have shown that fundamental reform of the overall entitlements framework is needed, so as to provide appropriate clarity about the purposes for which entitlements are provided; any limits on their use; and allow for a stronger accountability regime over expenditure. In particular, there would be considerable benefit in:

- having a framework that is guided by overarching principles that focus on entitlements supporting Parliamentarians in carrying out their duties and responsibilities as elected representatives of the Australian people;
- each entitlement provided under the framework having a clearly specified purpose so as to better guide Parliamentarians when deciding whether and how to use their entitlements; enable Finance to provide more definitive advice; and facilitate more cost-effective administration of payments made by Finance in respect to entitlements;
- formal arrangements for Parliamentarians to certify that use has been within entitlement; and

- greater reporting on entitlements use in a way that is more publicly accessible.

23. Such an approach would better serve Parliamentarians and instil greater public confidence in the way the entitlements system works, in the longer term. Finance's payment processing procedures for some entitlements would also benefit from the adoption of a more risk-based approach to post-payment checking and a stronger departmental response when there are allegations that expenditure may be outside entitlement.

24. A positive outcome of this audit is that, in July 2009, the Government made some decisions concerning the reform of the Printing Entitlement¹³, Communications Allowance, Newspapers and Periodicals Entitlement and Office Requisites and Stationery Entitlement. The Government also agreed to a 'root and branch' review of the entitlements framework (the Terms of Reference for this review include defining key terms in regulations and/or legislative instruments), and that the current protocol for handling allegations of entitlements misuse be referred for consideration as part of this review. The Government further agreed to provide significant additional funding for Finance to improve the administration of entitlements as well as for publishing, online, details of the entitlements framework and expanding the current reporting regime to table and publish on the Finance internet site all entitlements expenditure administered by Finance. The administrative costs associated with implementing these reform measures are to be met from savings resulting from the reduction in the Printing Entitlement.

Key findings by Chapter

Entitlements framework (Chapter 2)

25. Most Parliamentary entitlements are based on legislation, regulations or Determinations of the Remuneration Tribunal. However, the information necessary for interpreting and governing the use of many entitlements is often provided by 'conventions' or 'accepted practices'. Decisions relating to conventions and accepted practices may be documented by Ministerial signature to a relevant departmental brief, and/or promulgated to Senators and

¹³ Including that its use be restricted to Parliamentary or electorate business but not party business or electioneering—see further at paragraph 47.

Members by circular advice and amendments to entitlements handbooks prepared by Finance. These decisions are not made public and they cannot, as a matter of law, determine the extent of entitlements or any limits on their use.

26. There is considerable variation in the extent to which entitlements use is required to be for prescribed purposes.¹⁴ Where purposes are prescribed, the meaning of key terms such as 'Parliamentary', 'electorate' and 'party' business has not been articulated such that the purpose to which relevant entitlements may be put remains open to considerable interpretation. In addition, Finance has advised ANAO that the absence of definitions means the department may have no basis on which to undertake post-payment checks of some entitlements.

27. The entitlements framework also does not explicitly address whether entitlements may be used for election campaigning activities and, if so, the extent to which they may be used for this purpose. There is a convention that entitlements may be used by Parliamentarians in support of their own re-election. This convention has, as its basis, recognition of the fact that in carrying out Parliamentary and electorate business it is inevitable that an incidental effect will be to enhance the Parliamentarian's re-election prospects; and that Parliamentarians promoting their own re-election will not be the primary or only purpose of any particular entitlements use.¹⁵ However, ANAO found that, in 2007-08, the Printing Entitlement of some Parliamentarians was used principally for the purpose of election campaigning activities involving campaigning:

- for their party, their own re-election or the election of other candidates; and/or
- against the election or re-election of another party or candidate.

28. It is evident that the framework in respect of the Printing Entitlement needs attention. Regulations made under the Parliamentary Entitlements Act establish the Printing Entitlement (as well as a range of other entitlements¹⁶).

¹⁴ For example, certifications are sought by Finance in relation to 27 entitlements with 12 different purposes referenced, including: official purpose/business (eight entitlements), 'Parliamentary, electorate or official business' (three entitlements) and 'Duties as a Member of Parliament but not party political purposes' (one entitlement).

¹⁵ See further at paragraph 44.

¹⁶ ANAO's analysis of a selection of other entitlements indicated similar shortcomings to those identified in relation to the Printing Entitlement.

The menu of items that may be produced under the Printing Entitlement has been increased in instruments signed by successive Special Ministers of State (SMOS) which draw their authority from the Regulations. However, there are also a range of conventions that have been applied to the use of the Printing Entitlement, but these have not been codified in the Regulations or the instrument. Finance obtained legal advice on a sub-set of the transactions audited by ANAO, with that advice concluding that, in the majority of cases, there was a real risk that a court would find the material printed by Parliamentarians to be outside entitlement. However, Finance was advised by AGD not to refer the matters for investigation on the basis that the framework establishing the Printing Entitlement was uncertain and that, instead, the priority should lie in clarifying the Regulations, which were considered to be 'clearly uncertain in scope'. In July 2009, AGD advised PM&C that the issue of the vagueness of the rules warranted immediate attention.

Overseas comparisons

29. The Australian approach to addressing the purposes for which entitlements may be used contrasts with entitlements frameworks in four overseas jurisdictions where definitions have been developed. A common feature of each of these jurisdictions is that they recognise that the entitlements system is not to be used for political parties' publicity (including election campaigning activities). Of particular note was that:

- the United States grants its legislators a high level of flexibility in moving funds between budgets, while at the same time a high level of transparency prevails, which will be further increased when quarterly expenditure reports are made available online. There are also strict controls on the use of public funds for political purposes, and there is no transfer of funds between financial years (which is possible for some of the Australian entitlements); and
- whilst the entitlements provided in the United Kingdom differ in significant respects from those provided to Australian Parliamentarians, there are some common characteristics in the entitlements framework. This is particularly the case in relation to the lack of clarity concerning the legal framework governing the uses to which entitlements may be put and the extent of public accountability and disclosure. A comprehensive review of the United Kingdom

framework is currently underway and some recent changes have been made to:

- increase public reporting of entitlements expenditure, with detailed expense data from 2004-05 to 2007-08 being released on 18 June 2009;
- improve the rules concerning the use of entitlements, including addressing the overall principles that are to apply, as well as some guidance on the concept of parliamentary duties (which are stated to exclude ‘anything which is done for personal benefit or for electioneering or for the direct support of a political party’);
- supplement the rules with Practice Notes that are approved by a Parliamentary Committee; and
- establish a new system of audit and assurance.

30. In this respect, on 10 July 2009, Finance provided the current SMOS with proposed draft definitions of key terms, including ‘party business’, ‘electorate business’, ‘official business’ and ‘parliamentary business’, to aid in the interpretation of all Parliamentary entitlements. Finance advised the SMOS that, to give the definitions maximum weight, they could be included as definitions in the Parliamentary Entitlements Act, and that the Remuneration Tribunal could also be urged to incorporate the definitions verbatim for the purposes of its determinations.

Supplier selection

31. For some entitlements, as a service to Parliamentarians, Finance has entered into centralised contracts for the supply of goods and/or services. For other entitlements, Senators and Members select their own supplier. The Commonwealth Procurement Guidelines do not govern procurement decisions by Parliamentarians and their employees when accessing entitlements. Nevertheless, in such circumstances, adhering to principles such as maximising value for money, non-discrimination in procurement processes and the avoidance of conflicts of interest would clearly be of benefit and not unreasonably expected by the community. Some revision to the current approach is required given that audit analysis shows that the use of the Printing Entitlement and Communications Allowance has, in some instances, been organised by political parties rather than Parliamentarians or their staff.

That circumstance is not consistent with ensuring equitable access for suppliers and achieving value for money from the public funds involved.

Finance's administrative control structure (Chapter 3)

32. Finance provides current and former Parliamentarians with entitlements advice, personnel services, assistance with travel arrangements and entitlements processing and reporting. While it is incumbent on Parliamentarians to ensure that any benefit claimed is within the terms of the relevant entitlement¹⁷, Finance is obligated to ensure that the amounts paid to, and on behalf of, Parliamentarians are properly payable under the relevant entitlement. To meet its responsibilities, Finance has developed a control structure aimed at promoting accountability in the use of Parliamentarians' entitlements, and adherence to the existing entitlements framework. The key components of this control structure are:

- providing Parliamentarians with guidance on their entitlements (through the issuing of various handbooks and circulars, the availability of Entitlements Managers and a help desk function);
- use of an entitlements management system for processing of payments;
- reporting on entitlements use to Parliamentarians via monthly and End of Financial Year Management Reports, together with some public reporting on the cost of travel entitlements use;
- various certifications requested of Parliamentarians concerning their use of certain entitlements as expenditure is incurred, together with requested certifications of Management Reports;
- pre- and post-payment checking of the use of some entitlements; and
- a protocol for responding to allegations of entitlements misuse.

33. The administration of Parliamentarians' entitlements is resource-intensive. Efforts to introduce greater automation to entitlements processing and reporting have not proven successful, due in part to the high cost of developing Information Technology systems for a complex entitlements framework. Similarly, Finance's ability to provide clear advice to

¹⁷ Senators and Members' Entitlements Handbook, Department of Finance and Administration, November 2001, p. 99.

Parliamentarians has been impeded by the difficulties involved in interpreting and applying the framework to individual circumstances.

34. Since the 2001-02 Audit Report, there have been continuing improvements in the quantity and quality of management reports provided by Finance to Parliamentarians on their use of entitlements. However, there have been no significant improvements in transparency arrangements. Greater transparency would be achieved by:

- making the Entitlements Handbooks prepared by Finance publicly available so that there is a better understanding and appreciation of the range of entitlements provided to Parliamentarians; and
- increasing the level and extent of public reporting on entitlements use and the associated costs.

35. In relation to this latter point, in providing advice to the then SMOS, Finance calculated that, of the more than \$300 million spent in 2007-08¹⁸ on entitlements for Parliamentarians and their staff, less than 10 per cent was included in the reports tabled each six months in the Parliament. In addition, prior to 25 June 2009¹⁹, the tabled reports were only available in hard copy form, when making them available online would improve their accessibility (and be consistent with the broad Commonwealth policy that public accountability-type documents be made available online).

Certifications

36. The Senators and Members Entitlements Handbook states that, in administering the various entitlements available to Parliamentarians, Finance frequently relies on a certification by the relevant Senator or Member that use is within entitlement as it is often not possible or desirable for departmental officers to make the sort of independent inquiries that would be needed to make an objective assessment about entitlements use. The Handbook further states that, as well as promoting accountability by Senators and Members,

¹⁸ As outlined at paragraph 3, the 2009-10 Portfolio Budget Statements for the Finance and Deregulation portfolio disclosed estimated administered expenses for Parliamentarians' entitlements of some \$331 million in 2008-09, of which \$169 million was paid to or on behalf of Parliamentarians' staff, with the cost of entitlements provided by Finance to Parliamentarians estimated by Finance to be some \$162 million.

¹⁹ In August 2009, Finance commented to ANAO that, since 25 June 2009, the tabled reports have been made available online and historic data is being progressively published online.

certification is an important process by which Finance seeks to comply with its obligations under the *Financial Management and Accountability Act 1997*.

37. There are a small number of entitlements where certifications are requested to be provided in respect of individual transactions prior to Finance processing the relevant claim. However, the majority of transactions relating to the use of a Parliamentarian's entitlements are not required to be certified by the Senator or Member unless and until they appear in a Monthly Management Report.²⁰ Certification of these reports is viewed by Finance as an integral part of the accountability framework, but Parliamentarians are not required to respond to Finance's request. As a result, a number of Parliamentarians choose not to provide the requested certification.

38. At the time of the 2001-02 Audit Report, Parliamentarians were asked to certify their End of Financial Year Management Reports but not their Monthly Management Reports. The 2001-02 Audit Report found that, two months after certifications were due, only 36 per cent of Parliamentarians had provided the requested certification of their End of Financial Year Management Report for 1999-2000. At the time of the 2003-04 Audit Report, 34 per cent of certifications for 2000-01 and 39 per cent of 2001-02 certifications had not been submitted. At the time of this current audit, there had been some improvement in this area, but a significant proportion of Parliamentarians continue to exercise their discretion not to certify the use of entitlements that has been reported to them. Specifically, by late May 2009, more than seven months after the requested response date, more than 20 per cent²¹ of Parliamentarians who had been requested to certify their End of Financial Year Management Report for 2007-08 had not done so.

39. Voluntary certification on a monthly basis was introduced from August 2003. This provided a means of reducing the length of time between most transactions occurring and Finance receiving assurance through the provision of a certification. However, whilst Parliamentarians were asked to return the 2007-08 End of Financial Year Management Report certification within 21 days

²⁰ The Management Report is presented in two parts. The Parliamentarian may elect to authorise another person to certify Part B of the Report, which relates to staff use of entitlements. However, Part A of the Report, which relates to expenditure that a Senator or Member or family member incurs personally or expenditure of which he or she could be expected to have knowledge (such as their own and their spouse's travel), may only be certified by the relevant Parliamentarian.

²¹ 57 Parliamentarians.

of the report being issued, they were not asked to return Monthly Management Report certifications in any particular timeframe. In the 21 month reporting period between July 2007 and March 2009 examined by ANAO, Finance's records indicated that:

- by late May 2009, Finance had not received a certification in respect to about 14 per cent of Monthly Management Reports provided to Parliamentarians; and
- there were 12 Parliamentarians who did not submit any of the Monthly Management Report and End of Financial Year Management Report certifications requested of them in relation to their use of entitlements.

40. In the absence of a statutory or other obligation to require the timely submission of valid Management Report certifications, Finance has few options for responding when Parliamentarians elect not to certify their use of entitlements. Finance does include in each Monthly Management Report and the End of Financial Year Management Report a table that identifies those certifications that have been received from the relevant Parliamentarian and those that have not been received. However, as outlined above, this process has not been fully effective in promoting the timely receipt of certifications. In August 2009, Finance advised ANAO that the terms of reference for the Government's review of entitlements includes providing advice and recommendations to Government enabling accountability processes to be mandated.

Pre- and post-payment checking and investigation of irregularities

41. Certain travel entitlements are subject to systematic pre-payment checks with payment not proceeding until Finance is satisfied that particular criteria have been met. In addition, in 2005 Finance commenced post-payment checks of the use of a small number of Parliamentarians' entitlements. ANAO's analysis is that Finance's post-payment testing is narrow in scope, is not risk-

based and key aspects of entitlements use are not being examined.²² Finance's 'checking' may also not extend any further than the department writing to the Parliamentarian asking the Senator or Member to certify that use was within entitlement. Finance's post-payment checking has not identified a high level of potential irregularities in entitlements use.

42. Arrangements for responding to indications of entitlements misuse (whether identified from post-payment checks or otherwise) usually involve seeking advice or information from the affected Senator or Member. Where the Parliamentarian responds to such inquiries, there can be long delays and it is uncommon for the explanation to clearly resolve the allegation, or to result in any further investigation or repayments.

43. In July 2009, the Government agreed to provide significant additional funding (offset by savings from a reduced Printing Entitlement) for Finance to improve the administration of entitlements by:

- undertaking pre- and post-payment checking of items produced under the Printing Entitlement;
- publishing details of newspapers and other publications purchased under the Newspapers and Periodicals Entitlement;
- establishing an entitlements advisory function to provide written advice to Senators and Members on entitlements matters;
- establishing a non-exclusive panel of printing providers for use by Senators and Members;
- publishing, online, details of the entitlements framework and expanding the current reporting regime to table and publish on the Finance internet site all expenditure administered by Finance on

²² The majority of checked transactions relate to the use of Cabcharge by Parliamentarians or their staff. There has been no post-payment checking of the use of the Printing Entitlement, notwithstanding that this entitlement has been regularly subject to allegations of misuse and Finance's payment processing procedures do not require Parliamentarians to provide the department with a copy of the material that has been produced under the entitlement. Finance advised ANAO that: 'If we were to require copies of printed material to be provided and were then asked to do some sample based auditing we would be required to determine whether something was outside of entitlement relying on quite subjective criteria, for example the 70/30 convention in which its not clear what the 70/30 relates to. We are in no position to make judgements about such matters and this would place us in a very difficult position. Invoices would need to be paid, regardless of the likelihood of a subsequent challenge as to the legitimacy of the product. Were we then to determine that printed material appeared to be outside of entitlement, we would be obliged to seek recovery from the Senator or Member concerned, in many cases having nothing on which to base our position other than a subjective view against loosely defined criteria.'

Senators, Members, former Parliamentarians, family members (including surviving spouses and de facto partners) and employees; and

- establishing an enhanced auditing and checking function within the department.

The use of entitlements for election campaigning activities (Chapter 4)

44. ANAO's 2001-02 Audit Report concluded that a particular need for greater clarity and certainty related to the use of entitlements by Parliamentarians during periods of by-elections and general elections. This situation has not yet been addressed and the risks have been exacerbated by changes to the entitlements framework since 2004 that have:

- resulted in Parliamentarians using their entitlements to attract votes for themselves²³ and, accordingly, their political party²⁴, with their party then receiving public funding from the AEC for each vote they have attracted, regardless of whether the Senator or Member was successful in gaining re-election. The result is that there are two sources of public funding for the same types of election campaign expenses and this adversely affects the legislated provisions for financial disclosure of selected revenue and expenditure items incurred by participants in the

²³ As noted at paragraph 27, there is a convention that entitlements may be used by Parliamentarians in support of their own re-election. This convention has, as its basis, recognition of the fact that in carrying out Parliamentary and electorate business it is inevitable that an incidental effect will be to enhance the Parliamentarians' re-election prospects, not that Parliamentarians promoting their own re-election will be the primary or only purpose of any particular entitlements use. This situation is complicated by a further convention referred to as the '70/30 rule' that requires at least 70 per cent of the material in a newsletter to relate to the Parliamentarian's electorate or parliamentary business, which may involve an incidental promotion of the Parliamentarian's re-election prospects and may cover issues of international, state or local significance, with up to 30 per cent of content able to be other information, such as the Parliamentarian writing about the Parliamentary or electorate contribution of one or more of their colleagues or the activities of their political party. In this latter respect, in considering the application of the 70/30 rule, Finance has advised its Minister that the material that is subject to the 30 per cent of content restriction includes information 'such as party policies on certain issues'. Parliamentarians have been advised that it is important that any such references fall short of exhorting the reader to vote for the Parliamentarian's colleague or party. As noted at paragraph 25, legal advice to Finance is that conventions cannot, as a matter of law, determine the extent of entitlements or any limits on their use.

²⁴ This is based on a convention that the electorate business of a Parliamentarian may include promoting his or her own re-election (but not the election or re-election of anyone else) where this self-promotion is incidental to the undertaking of electorate or Parliamentary business.

Federal electoral process (due to some of these costs being met from Parliamentarians' entitlements); and

- allowed the amount available under both the Printing Entitlement and the related Communications Allowance in a financial year in which an election was to be held to be increased, thereby providing further assistance to incumbent Senators and Members in undertaking election campaigning activities.

45. The use of the Printing Entitlement for election campaigning activities (for which the *Commonwealth Electoral Act 1918* (Electoral Act) already provides public funding) was apparent from both the nature of items printed²⁵ using the entitlement in the period leading up to, and during, the 2007 election campaign (see further at paragraphs 55 to 61), as well as the surge in spending under the Printing Entitlement in the months prior to the November 2007 Federal Election (see Figure S 1).²⁶

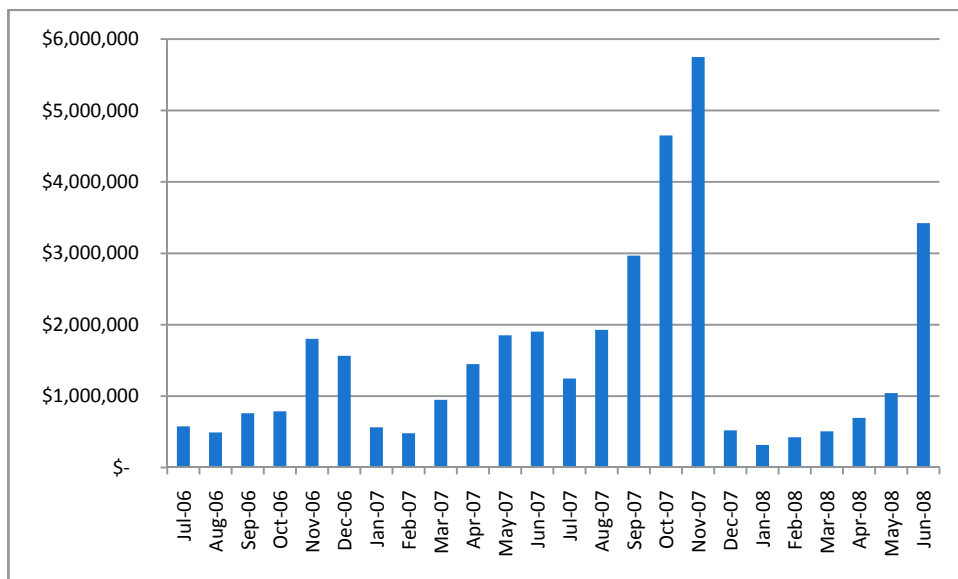
²⁵ For example, the use of Parliamentarians' Printing Entitlements for the production and distribution of Postal Vote Applications (PVAs) and associated material during the 2007 election campaign period was, in large part, a supplementary funding source for the overall campaign strategies of the relevant political parties and of the individual Members and Senators as incumbent party candidates. This was evident from:

- the co-ordinated approach to the use of PVAs by each party, with standardised designs and common printers being generally used within a party; and
- the distribution of PVAs being used by both of the two major parties as a vehicle for the widespread distribution of party campaign advertising material, which reflected the key elements of their respective election campaign strategies.

²⁶ More than 70 per cent of total reported annual expenditure for 2007-08 related to transactions in the five months to November 2007, and 44 per cent in October and November 2007 alone. These percentages would have been higher but for an increase in Printing Entitlement expenditure in June 2008 (amendment regulations made on 5 March 2008 removed the provision for Members to rollover unspent funds of up to 45 per cent of their 2007-08 Printing Entitlement into 2008-09).

Figure S 1

Total Printing Entitlement Expenditure by Month: 2007-08



Source: ANAO analysis of Monthly Management Reports and End of Financial Year Management Reports (Note: date relates to the date of the transaction included in the Management Reports).

46. Some legislative reforms are being considered in this area, including a prohibition on existing members of Parliament claiming electoral expenditure that has been met from their Parliamentary entitlements, allowances and benefits. In addition, in April 2009, the then SMOS agreed that significant reforms should be made to the Printing Entitlement, including some changes to aspects of the entitlements framework that will reduce the capacity for entitlements to be used for election campaigning activities. Finance was to prepare a further brief on options for reform. In June 2009, Finance provided the current SMOS with further advice on options and implementation mechanisms for reform to the Printing Entitlement. In that context, there would be benefits from reforms adopted in this area addressing the various ways in which entitlements have previously been used, and remain available to be used, for election campaigning activities.

47. In July 2009, the Government made decisions (see paragraph 24) that finalised reforms considered by the then SMOS in April 2009 in relation to:

- use of the Printing Entitlement being limited to Parliamentary or electorate business, but not party business or electioneering;
- removing the entitlement to produce How To Vote cards; and

- limiting the number of Postal Vote Applications (PVAs) that may be printed to 50 per cent of the number of enrolled voters in a Senator or Member's electorate²⁷, with further reform of the production of PVAs to be considered as part of the review of the entitlements framework.²⁸

Printing Entitlement (Chapter 5)

48. Prior to 1990, personalised letterhead stationery for Senators and Members was printed and supplied under an administrative convention by the relevant Chamber department (the Department of the Senate or the Department of the House of Representatives). This primarily involved the use of in-house printing facilities. The commencement of the Parliamentary Entitlements Act formalised Parliamentarians' entitlement to personalised letterhead stationery. This Act, the associated Parliamentary Entitlements Regulations, and various Ministerial Instruments provide the legal foundation for the Printing Entitlement (see Table S 2).

²⁷ The PVAs printed in the sample examined by ANAO in respect of the 2007 Federal Election each provided the capacity for two voters to apply to make a postal vote.

²⁸ The then SMOS' April 2009 decision had been that Finance provide further advice on options for reform, including the possibility of prohibiting the printing of PVAs.

Table S 2

Evolution of items able to be printed under the Printing Entitlement: 1997 to 2006

Date and mechanism	Change
November 1997: Parliamentary Entitlements Regulations passed	<p>Members' entitlement to personalised letterhead stationery previously provided under the Act was replaced with an entitlement to print, at public expense:</p> <ul style="list-style-type: none"> • personalised letterhead stationery; • newsletters for distribution to constituents; and • other printed material, as approved by the Minister, for distribution to constituents.
November 1997: Ministerial Instrument	<p>Members provided with an additional entitlement to print:</p> <ul style="list-style-type: none"> • magnetised calendars; and • magnetised emergency and community information cards.
December 2001: Parliamentary Entitlements Regulations amended	<p>Senators provided with an entitlement to:</p> <ul style="list-style-type: none"> • unlimited personalised letterhead and newsletter mastheads; and • a further entitlement to other printed material (including small calendars) and photocopying, which was limited by paper volume.
August 2004: Ministerial Instrument revised	<p>Members provided with a further entitlement to print 'postal vote applications and other voting information'.</p>
August 2006: Ministerial Instrument further revised	<p>Senators provided with each of the additional entitlements previously approved for Members (following the replacement of the previous entitlement to 'other printed material (including small calendars) and photocopying', which was limited by paper volume, with an entitlement to 'other printed material, as approved by the Minister, for distribution to constituents'). The revised Instrument also:</p> <ul style="list-style-type: none"> • incorporated into the Instrument written advice from the then SMOS to Finance in respect to his purpose when making the August 2004 decision to permit 'other voting information' to be printed by stating that it was to include how to vote cards for the Senator or Member's seat, which may include information on how to vote for candidates in the other House of Parliament in the Senator or Member's state or territory; and • approved the use of the Printing Entitlements of both Senators and Members to print two further categories of items, being: certificates of recognition or achievement for presentation on occasions of national or community significance; and greeting cards (including Christmas and New Year cards).
November 2006: Ministerial Instrument further revised	<p>Senators and Members provided with an entitlement to print 'non-magnetised calendars (which may not exceed 14 double sided A4 pages in length)'.</p>

Source: ANAO analysis.

49. A number of the entitlements provided to Parliamentarians may only be accessed legitimately for a specified purpose, such as the electorate, parliamentary or official business of the relevant Parliamentarian. However, the Parliamentary Entitlements Regulations do not specify the purpose for which the Printing Entitlement provided to Senators and Members is required to be used. A further shortcoming in the framework is that key terms for the purposes of the prescribed entitlement are not defined, including 'newsletter'. Further, whilst the term 'constituent' was defined in June 2007 for Members, there is no definition of 'constituent' in relation to Senators' Printing Entitlement.

50. In the absence of clear parameters governing the use of the Printing Entitlement being articulated in the legislation or regulations, a series of conventions or 'accepted practices' have evolved in relation to its administration.²⁹ The principal conventions that have been used, in various forms over time, in the administration of the Printing Entitlement are:

- that its proper use should be related to the Parliamentarian's electorate or parliamentary business, but not party business. However, the meaning of the terms 'electorate business', 'parliamentary business' and 'party business' has not been articulated;
- that the electorate business of a Parliamentarian may include the printing of material concerned with his or her own re-election, where this is incidental to the undertaking of electorate or Parliamentary business, but not material concerned with the election or re-election of anyone else;
- a proportional approach to determining the eligibility of newsletter content such that, as long as the majority of content is considered to relate to the Parliamentarian's parliamentary or electorate business, other material may also be included; and
- personalised stationery may include: letterhead paper, envelopes, business cards for the Senator or Member and compliments slips.

²⁹ As noted at paragraph 25, conventions and accepted practices cannot, as a matter of law, determine the extent of entitlements or any limits on their use.

51. Each of these 'conventions'³⁰ has evolved over time and, in many cases, their original premise has become blurred in both intent and implementation. As a result, rather than providing a sound framework within which the Printing Entitlement may be administered, the greater latitude provided over time has contributed to an approach to the use of the entitlement that has deviated from its principal purpose of facilitating Parliamentarians' capacity to undertake their duties as the elected representative of their constituents.

52. The shortcomings in the Printing Entitlement framework have been exacerbated by the approach taken to its administration. In particular, Finance has continued with the approach observed in ANAO's 2001-02 Audit Report of not sighting a copy of the material produced using the entitlement but instead requiring the Parliamentarian to provide it with a tax invoice from the printer and a certification from the Parliamentarian. In this respect, in July 2009 Finance advised ANAO that:

...it was the intent of successive governments that Finance not sight/vet any printed material. When the newsletter entitlement was introduced in 1995 (in preparation for the next federal election) by the then Minister for Administrative Services, a key feature was that Members would deal directly with printers to ensure that officials did not censor content.

53. By way of comparison, in the 2001-02 Audit Report, ANAO reflected favourably on the practice adopted by the Department of the Senate, which was responsible, until 2006, for administering all printing services for Senators. The department required Senators to submit the proposed text of newsletters and other printing requests to it for clearance. Where the text was considered to be outside of the guidelines provided by the Department of the Senate³¹, the

³⁰ In addition to these conventions, Finance has advised various SMOS' that the undefined term 'newsletter' is to be interpreted broadly to include any material that is not a letter, such as surveys, leaflets and other similar material. In this respect, Finance has previously advised some Parliamentarians that letters are not an allowable item under the Printing Entitlement and has declined to pay invoices under that entitlement which described the item produced or service provided as relating to letters. If done for Parliamentary, electorate or official business, Senators and Members are permitted to use the electorate office facilities to print letters on letterhead produced under the Printing Entitlement (and these letters may be distributed using the Communications Allowance, to the extent that they relate to Parliamentary, electorate or official business).

³¹ The guidelines, issued under authority of the President of the Senate, provided that printing and photocopying services were restricted to the preparation of Parliamentary material associated with Senators' Parliamentary duties, and that material related to political party or election campaign matters could not be accepted. In the course of the 2001-02 Audit, the Department of the Senate advised ANAO that the guidelines were consistent with the Parliamentary Entitlements Act and the requirement to avoid use of appropriations for party political purposes. The guidelines had been considered by the Senate Appropriations and Staffing Committee in April 2000, with no changes resulting.

Senator was required to revise the text before the printing would be undertaken.

54. A further feature of the administration of the Printing Entitlement has been that, in circumstances where the item description on an invoice from the printer does not match one of the descriptors of the items that are allowed under the entitlement, Finance's documented procedure was to ask for the Senator or Member to provide a re-issued invoice or other advice carrying a descriptor of the printed item that aligns with the menu of approved printable items, rather than seeking to confirm the substance of the item printed. This procedure was implemented even in situations where the original invoice has indicated that the printed item may not be within entitlement. This aspect of the administration of the entitlement would have benefited from the department also highlighting to the relevant Senator or Member that, if the original invoice had accurately described the item printed, then it was likely to be outside of entitlement and unable to be claimed. After ANAO pointed out that this practice may have encouraged Senators and Members to submit incorrect invoices, Finance has recently changed its approach such that the department now advises Parliamentarians that it is unable to make payment for items that are not consistent with the menu of approved printable items and returns the relevant invoice to the Senator or Member for their personal attention.

55. In concert, an entitlements framework that is complex and overdue for reform, as well as the interpretation by some Parliamentarians of the Printing Entitlement, has led to the printing of a significant number of items at risk of being outside of the Printing Entitlement as formally documented in departmental records and/or officially promulgated to Senators and Members. These instances were identified by ANAO analysis of a large selection of items produced using the Printing Entitlements of 144 Senators and Members in a sample of three States, primarily in the months leading up to, and during, the 2007 election campaign period (which is when the majority of the use of the Printing Entitlement in 2007-08 occurred). Of the sample of items examined, some 26 per cent were either clearly within entitlement, or were likely to be

within entitlement. However, 74 per cent of sampled items were at varying levels of risk of being outside of the entitlement.³²

56. The eligible category under which an invoice relating to use of the Printing Entitlement is to be paid is generally determined by Finance based on the item description set out on the invoice submitted to the department, together with a completed certification form. In many instances within the sample examined, the item was claimed under a category to which it did not relate and, therefore, for which it was clearly ineligible. In that context, in considering the potential eligibility of invoices under the Printing Entitlement, ANAO had regard for the substance of the items printed under each invoice, together with any further advice provided by the printer in relation to the ordering and production of the item or other services provided and considered whether the item would have been eligible under any of the alternative menu items (so as to provide the maximum opportunity for an item to be assessed as being within one of the allowable items, irrespective of any description relied upon by Finance when processing payments).

57. As the Printing Entitlement is menu-based, with certain prescriptive requirements, ANAO also assessed whether the form of the printed item was in accordance with the entitlement.³³ In these respects:

- the majority (56 per cent) of items were in a form that was within entitlement; but
- a high proportion (72 per cent) of sampled items did not include content that was demonstrably within the terms of the entitlement.

58. Thus, the most significant factor in items being assessed as at risk of being outside of the entitlement related to the content of printed material. Examples included items with high levels of material promoting party political

³² Examples of some of the items assessed as being at risk of being outside of entitlement are illustrated at Appendix 4.

³³ For example, the Printing Entitlement includes a menu of items that may be printed such as, for example, 'magnetised emergency and community information cards'. ANAO's assessment of the 'form' of the items produced addressed whether community information cards were magnetised (legal advice to Finance obtained during the course of the audit was that there is a real risk that non-magnetised emergency and community information cards are not within entitlement). The 'content' assessment relates to aspects such as whether 'newsletters for distribution to constituents' (another of the menu of items that may be produced) were devoid of any information about the Parliamentarian as the elected representative of the relevant electorate and instead comprised an appeal for the election or re-election of a party and/or adverse commentary on the policies or candidates of an opposing party.

interests and/or directly attacking or scorning the views, policies or actions of others, such as the policies and opinions of other parties. Examples where the form of the item printed, or service provided, under an invoice was assessed as at risk of being outside of entitlement included items that were not identifiable as being from the Parliamentarian whose entitlement was used; the use of the Printing Entitlement for the production of direct mail letters and other ineligible distribution-related costs; and the printing of a range of items (including various forms of booklets, posters and charts, bookmarks, shopping or Christmas lists, and songbooks) for distribution to constituents that did not conform to the menu of approved printable items as set out in the Regulations and the Ministerial Instrument made under the Regulations.

59. The ANAO assessment of Printing Entitlement transactions was made against the framework (statute, Ministerial Instruments, guidance and conventions) which had been used to administer this entitlement for many years. The assessment was undertaken on a risk basis having regard to:

- advice provided to Parliamentarians by way of Ministerial Circular;
- advice from Finance to Parliamentarians, including in the Senators and Members Entitlements Handbook and in written advice to incumbent Parliamentarians in 2004 and 2007 concerning the arrangements that apply during the election period; and
- legal advice obtained by Finance during the course of this audit which concluded that, in the majority of cases examined by the legal adviser, there was a real risk that a Court would find the material printed by the relevant Parliamentarians to be outside entitlement.³⁴

60. Due to the shortcomings in the entitlements framework, it was not possible for ANAO to form a definitive view as to whether individual transactions were outside entitlement. Similarly, July 2009 AGD advice was that it is difficult to form a definitive view on the legal position.

³⁴ For example, the legal advice stated:

- it would seem generally difficult to treat a document as a 'newsletter' if it was devoid of any information about a particular parliamentarian or parliamentarians but rather merely contained an appeal for the election or re-election of a party, as the case may be, or merely contained commentary on the policies or candidates of an opposing party; and
- it seems unlikely that it was intended that a parliamentarian's printing entitlement was intended to be used to fund a political party's general campaign material.

61. ANAO recognises that Parliamentarians did not have the benefit of Finance's recent legal advice on the Printing Entitlement. A number of the Parliamentarians that responded to ANAO correspondence concerning their use of the Printing Entitlement indicated to ANAO that their printing of election campaigning material had been organised on their behalf by their political parties' campaign headquarters. In addition, there was evidence of Parliamentarians arranging their printing based on more liberal guidance covering entitlements use communicated between the then Government and then Opposition in mid-2003. Under the terms of that document, which was developed without the benefit of departmental advice and was not formally promulgated to all Parliamentarians³⁵, many of the printed items assessed by ANAO as at risk of being outside entitlement would have been viewed as within entitlement. However, official departmental records attach no authority to this guidance, Finance was not aware it was being used or relied upon, and subsequent guidance issued to Parliamentarians by Finance maintained a more restrictive approach on key aspects. This situation highlights the shortcomings that exist in the current entitlements framework and also raises some issues around the reliance that could be placed on separate communication between the then Government and the then Opposition on entitlements use.

62. A positive outcome of this audit is that the Special Minister of State has informed ANAO that the Government agrees that immediate attention is warranted in clarifying the entitlements framework and providing greater transparency, including in respect of the Printing Entitlement in particular. In this respect, as noted at paragraph 47, decisions have been made to curtail the use of the Printing Entitlement for electioneering purposes. In addition, in July 2009, the Government decided to finalise reforms considered by the then SMOS in April 2009³⁶ (see paragraph 46) in relation to:

³⁵ Subsequent advice from Finance to the then SMOS was that the *Financial Management and Accountability Act 1997* (FMA Act) and the *Parliamentary Entitlements Act 1990* (PE Act) required that a formal process be followed in order to implement those 'conventions' which were extensions of the advice currently provided. In addition, the department advised that the principles of ethical administration and the specific arrangements under the FMA Act and the *Public Service Act 1999* (PS Act) meant that a change in the conventions relating to any entitlements administered by the department should be conveyed to all Senators and Members affected by the change.

³⁶ In addition, the Government also decided in July 2009 to limit the Printing Entitlement to printing on paper, card up to 700 gsm weight and magnetised material (to allow for the printing of items such as magnetised calendars).

- reducing the quantum of the Printing Entitlement by 25 per cent from current levels;³⁷
- combining the Printing Entitlement and the related Communications Allowance into a single entitlement;
- changing the Printing Entitlement from a menu-based approach to a purpose-based entitlement (that is, for Parliamentary and electorate business but not for party business or electioneering purposes);
- requiring that material produced under the Printing Entitlement (except for personalised letterhead stationery) carry an acknowledgement in a specified font that: *This material has been produced at Australian Government expense by the relevant Senator or Member*;
- providing funding to Finance for it to undertake pre- and post-payment checking of items produced under the Printing Entitlement; and
- the establishment of a non-exclusive panel of printing providers for use by Senators and Members.

Summary of agency response

63. As noted, the proposed report of the audit was issued in July 2009 to relevant Ministers, Finance and PM&C. Extracts of the proposed report were provided to the three most recent former SMOS', as well as the Attorney-General's Department and the Remuneration Tribunal. Formal comments were received from Finance and have been incorporated in the body of the report. Summary comments were also provided, as follows.

Department of Finance and Deregulation

The Department of Finance and Deregulation notes the findings of the audit of the Department's Administration of Parliamentarians' Entitlements. Finance further notes that the ANAO has identified shortcomings in the current overall Parliamentary entitlements framework which the ANAO acknowledges

³⁷ Following the 2007 Federal Election, the newly elected Government amended the Parliamentary Entitlements Regulations to: reduce Members' Printing Entitlement from \$150 000 to \$100 000 per financial year, commencing in 2008-09; remove the capacity for Members to add unspent amounts to their Printing Entitlement for a subsequent financial year; and reduce Senators' Printing Entitlement from \$20 000 to \$16 667 per financial year.

results in it being difficult to understand and manage for both Parliamentarians and Finance. In particular, the ANAO has referred to comments of the Attorney-General's Department on the uncertainties in the legal framework relating to the printing entitlement which is the principal focus of the ANAO report.

With regard to some of the administrative practices this report suggests Finance could have followed in relation to the Printing Entitlement, Finance notes that its administrative practices were based on the preferences of successive Governments that Finance not receive a copy of the printed material either before or after printing had been completed. Finance's guidance to Parliamentarians on, and its administration of, the Printing Entitlement was based on its analysis of the document known as the 31 statements. The document was developed during 2004 by the then Special Minister of State who sought considered advice from Finance on its contents. In preparing its advice to the then Minister, Finance consulted with the Department of the Prime Minister and Cabinet and with the Australian Government Solicitor. The content of the document, as subsequently agreed between the then Special Minister of State and Finance, was incorporated into advice to Senators and Members on entitlements use during an election campaign.

It was only on 22 July 2009 that Finance became aware that another reference point, known as the '42 questions and answers' document, was apparently being relied upon by Parliamentarians in guiding their use of entitlements. The document was never endorsed by Finance, nor was it incorporated into advice provided by Finance to Senators and Members on entitlement use during an election campaign. However, if the components of the 42 Questions and Answers document were read separately by Parliamentarians and relied upon, as we now understand has occurred, then the number of printed items that would fall outside of this guidance would represent a very small proportion of the items sampled by the ANAO.

Finance agrees, or agrees in principle, with the five recommendations of the ANAO report.

Recommendations

Recommendation No. 1
Paragraph 2.92

ANAO *recommends* that the Department of Finance and Deregulation, in progressing the Government decision to undertake a review of the entitlements framework, examine options that will:

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

Agency response: Finance agreed.

Recommendation No. 2
Paragraph 2.108

ANAO *recommends* that the Department of Finance and Deregulation develop options for Government consideration to improve the control framework applying to situations where Parliamentarians and/or their employees are making procurement decisions.

Agency response: Finance agreed.

Recommendation No. 3
Paragraph 3.86

ANAO *recommends* that the Department of Finance and Deregulation develop a stronger control framework for its administration of Parliamentarians Entitlements by:

- (a) adopting a more risk-based approach to planning and undertaking post-payment checking of entitlements use; and
- (b) developing a more robust (and transparent) approach to responding to allegations of entitlements misuse.

Agency response:

Part (a)—Finance agreed.

Part (b)—Finance agreed in principle.

**Recommendation
No. 4**
Paragraph 4.110

ANAO *recommends* that, having regard for the public funding of election campaign expenses that is provided to political parties and candidates through the *Commonwealth Electoral Act 1918*, the Department of Finance and Deregulation, consulting as appropriate with the Australian Electoral Commission and/or the Chamber Departments, prepare options for Ministerial consideration that would pursue the necessary further reform to the entitlements framework so as to effectively address the risk of entitlements being used to meet costs associated with Parliamentarians:

- (a) campaigning for their party, their own re-election and/or the election or re-election of other candidates; or
- (b) campaigning against the election or re-election of another party or candidate.

Agency response: Finance agreed in principle.

**Recommendation
No. 5**
Paragraph 5.145

ANAO *recommends* that, to assist in ensuring appropriate scrutiny and transparency in the use of public funds, the Department of Finance and Deregulation require each Parliamentarian to provide for review a sample of the item printed when submitting invoices for payment under their Printing Entitlement.

Agency response: Finance agreed.

Audit Findings and Conclusions

1. Introduction

This chapter outlines the background to the audit, provides an overview of the Parliamentary Entitlements framework, 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.³⁸ To assist them in effectively carrying out their respective electorate, parliamentary and official duties, Parliamentarians require a range of support services, generally referred to as 'entitlements'.

1.2 While responsibility for the administration and delivery of Parliamentarians' entitlements is spread across a range of Commonwealth agencies, the Department of Finance and Deregulation (Finance) has by far the largest role in the administration and payment of entitlements. Finance's 2009-10 Portfolio Budget Statement reported, under Outcome 3 'An efficiently functioning Parliament',³⁹ estimated entitlements expenses of more than \$331 million for 2008-09, as shown in Table 1.1. After deducting the \$169 million paid to or on behalf of Parliamentarians' staff, the cost of entitlements provided by Finance to Parliamentarians was estimated by that department to be some \$162 million. The amounts paid by Finance do not include salary and electorate allowance, which are paid by the Chamber Departments.

³⁸ For convenience, in this report Senators and Members are referred to collectively as Parliamentarians.

³⁹ Effective from 1 July 2009, the outcome description was changed to: 'This program contributes to the outcome through the provision of, and advice on, the entitlements of Ministers, Senators, Members, office-holders and former Parliamentarians and their respective staff (employed under the Members of Parliament (Staff) Act 1984). This program also provides VIP hire car services for Senators, Members and other office-holders.'

Table 1.1

Estimated Parliamentarians' entitlements expenses: 2008-09

Appropriation type	Administered appropriation expenses	Estimated actual 2008-09 \$ million
Annual	Electorate and ministerial support costs	185.894
Special	<i>Commonwealth of Australia Constitution Act s66</i>	3.200
Special	<i>Parliamentary Entitlements Act 1990</i>	140.130
Special	<i>Members of Parliament Life Gold Pass Act 2002</i>	2.076
TOTAL		331.300
Less: Amounts paid to or on behalf of Parliamentarians' staff		169.633
Total cost of entitlements provided by Finance to Parliamentarians		161.667

Source: Finance and Deregulation Portfolio Budget Statements 2009-10 p 42, and advice to ANAO from Finance.

1.3 Finance provides current Parliamentarians and former Prime Ministers and their staff with a range of support services, including:

- providing advice on entitlements to Senators, Members, office holders and their respective staff, the Minister for Finance and Deregulation and the Special Minister of State (SMOS);
- personnel services including training, advertising of vacant positions and payroll;
- travel allowance and transport services; and
- entitlement processing and reporting.

Previous ANAO audits

1.4 ANAO has examined some or all aspects of the administration of Parliamentarians' entitlements on four previous occasions:

- ANAO Audit Report No.34 1990-91, *Department of Administrative Services: Services to Members of Parliament and their staff*;
- ANAO Audit Report No.23 1997-98, *Ministerial Travel Claims*;
- ANAO Audit Report No.5 2001-02, *Parliamentarians' Entitlements 1999-2000*; and

- ANAO Audit Report No.15 2003-04, *Administration of Staff employed under the Members of Parliament (Staff) Act 1984*.

1.5 The entitlements framework at the time the latter two audits were undertaken is substantially similar to the one that prevails today. Accordingly, for the purposes of this report, the previous relevant audits are ANAO Audit Report No.5 2001-02⁴⁰ and ANAO Audit Report No.15 2003-04.⁴¹ For convenience, they are respectively referred to as the 2001-02 Audit Report and the 2003-04 Audit Report.

Audit objective and approach

1.6 During consultations on the development of ANAO's 2008-09 Planned Audit Work Program, the Senate Standing Committee on Finance and Public Administration suggested that a follow-up of the 2001-02 audit of Parliamentarians' entitlements warranted the Auditor-General's attention. This audit responds to that request. Its objective was to assess whether:

- the entitlements framework is sound, including whether rules and guidance on entitlements are clear and precise;
- entitlements considered as part of the audit are claimed and administered in a cost-effective manner that is consistent with the entitlements framework underpinning them; and
- accountability arrangements (including internal and public reporting, certifications, etc) are effective and appropriate.

1.7 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 *Parliamentary Entitlements Act 1990* (Parliamentary Entitlements Act), both of which are allocated to the Finance and Deregulation portfolio for administration, and determinations of the Remuneration Tribunal (located in the Education, Employment and Workplace Relations portfolio) made under the *Remuneration*

⁴⁰ ANAO Audit Report No.5 2001-02, *Parliamentarians' Entitlements: 1999-2000*, Canberra, 7 August 2001.

⁴¹ ANAO Audit Report No.15 2003-04, *Administration of Staff Employed Under the Members of Parliament (Staff) Act 1984*, Canberra, 1 December 2003.

Tribunal Act 1973. The Chamber Departments are also involved in the provision of some entitlements.

1.8 The focus of this audit was on those entitlements administered by Finance. Similar to the 2001-02 Audit Report, the audit scope did not include entitlements provided to persons employed under the *Members of Parliament (Staff) Act 1984* (MOP(S) Act). It also did not examine the administration of entitlements provided through other agencies (such as Parliamentarians' salary and electorate allowance, which are paid by the Chamber Departments, and entitlements provided to Ministers by their home departments).

1.9 A comprehensive examination was undertaken of the overall entitlements framework. ANAO also examined Finance's administrative controls; analysed Parliamentarians' certification of the use of entitlements included in Management Reports provided to them by Finance; and examined the use of a sample of five entitlements administered by Finance, namely: General Administrative Expenses; Newspapers and Periodicals; Communications Allowance; Car Transportation; and the Printing Entitlement.⁴² This included benchmarking analysis comparing the relative use made of the entitlements by individual Parliamentarians to that of his or her colleagues and other analysis of the use of these entitlements, as well as sampling of transactions in 2007-08.

1.10 In assessing whether Printing Entitlement transactions were at risk of being outside of entitlement, ANAO had regard to legal advice obtained by Finance from AGD which analysed 79 printed items from within the audit sample. ANAO also analysed the full sample of transactions against the officially endorsed and promulgated entitlements framework reflected in statute, Ministerial Instruments, official guidance and conventions which had been used to administer this entitlement for many years.

1.11 In addition, based on publicly available information, ANAO reviewed the models used in the United States, Canada, the United Kingdom and New Zealand. With the exception of New Zealand, each of these countries has a bi-cameral system with an upper and a lower house as does Australia. Appendix 1 provides further information.

⁴² The results of this work resulted in ANAO undertaking a more detailed examination of use of the Printing Entitlement.

1.12 Audit fieldwork was conducted between May 2008 and March 2009. Various Issues Papers were provided to agencies between January 2009 and July 2009. The proposed report of the audit was issued in July 2009 to relevant Ministers, Finance and the Department of the Prime Minister and Cabinet (PM&C). Extracts of the proposed report were provided to the three most recent former SMOS' as well as the Attorney-General's Department and the Remuneration Tribunal.

1.13 Also in July 2009, given the nature of the preliminary audit findings in respect to use of the Printing Entitlement, ANAO wrote to Parliamentarians whose use of this entitlement was examined in detail as part of the audit so as to offer them the opportunity to comment on audit analysis of this use, and/or to offer views on the framework for this entitlement, or more generally. A number of Parliamentarians requested that they be provided with copies of the specific material assessed by ANAO as being potentially outside entitlement, and the specific reasons that the ANAO assessed the material to be potentially outside entitlement. This more detailed information was provided to those Parliamentarians that requested it. Any comments provided by Parliamentarians and other stakeholders were taken into account prior to finalisation of this report.

1.14 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of \$970 000.

2. Entitlements framework

This chapter examines the framework for the provision of entitlements to Parliamentarians, including its complexity and key shortcomings. The chapter also considers improvements that have occurred since previous audits.

Background

2.1 Parliamentarians' entitlements are established pursuant to a legal framework comprising *The Constitution*, Acts of Parliament and Determinations of the Remuneration Tribunal. In many cases, Acts, Regulations and Remuneration Tribunal Determinations simply create an entitlement and are not specific about the quantum of the entitlement or the circumstances of its use. Consequently, further rules or guidance are required. These have been issued by the Prime Minister or the SMOS.⁴³ In addition, aspects of a number of entitlements are governed by 'convention' or 'accepted practice'.

2.2 In the 2001-02 Audit Report, ANAO observed that, to assist Parliamentarians in accessing their entitlements and in providing appropriate accountability for entitlements use, there is a need for clear and unequivocal rules, high quality advice and efficient administrative services.⁴⁴ In addition, in relation to issues that had arisen surrounding the then postage allowance provided to Parliamentarians by decision of government, the High Court concluded in *Brown v West* that:

There can be no doubt that the executive power of the Commonwealth extends to the provision of what is necessary or convenient for the functioning of the Parliament provided that funds for that purpose are appropriated by the Parliament. But it is not self-evident that the executive power extends to the discretionary provision of benefits having a pecuniary value to individual members of the Parliament who may draw upon the benefit as they will. There may be a difference between the provision of facilities for travel and assembly, which are essential to the functioning of the Parliament, and the discretionary

⁴³ The SMOS has responsibility for making a range of determinations, including the terms and conditions of the employment of staff employed under the MOP(S) Act, and rules surrounding the travel and travelling allowance paid to staff. The SMOS also issues Procedural Rules which relate to matters including the use of Private-Plated Vehicles by Parliamentarians.

⁴⁴ ANAO Audit Report No.5 2001-02, op. cit., p. 43.

allocation of a benefit having a pecuniary value to alleviate a pecuniary burden which members incur as an incident of office. There is much to be said for the view that the Parliament alone may make provision for benefits having a pecuniary value which accrue to its members in virtue of their office and which are not mere facilities for the functioning of the Parliament.⁴⁵

2.3 At the time of this 1990 decision, the then Government was advised that, while the High Court was not required to rule on the question, its decision placed in doubt the provision of benefits having a pecuniary value unless provided by or under legislation.⁴⁶ At that time, many of the entitlements and facilities provided to Parliamentarians were not covered directly by legislation or indirectly by any Remuneration Tribunal determination.⁴⁷ To put entitlements not already covered by legislation on a secure legal footing, the Parliamentary Entitlements Act and, subsequently, the *Parliamentary Entitlements Regulations 1997* (Parliamentary Entitlements Regulations) were introduced.

2.4 The 2001-02 Audit Report observed that, at the time of that audit, the legislative framework was a complex mixture of capped and uncapped entitlements set out in a range of legislation, Remuneration Tribunal Determinations, ministerial Determinations, guidelines and conventions.⁴⁸ In addition, ANAO noted that key terms (such as ‘parliamentary business’, ‘electorate business’ and ‘party business’), which establish the eligibility of expenditure under a range of entitlements, had not been defined and insufficient guidance had been provided to Parliamentarians. The 2001-02 Audit Report concluded that:

Current arrangements have evolved in a piecemeal manner and it is timely to re-evaluate the current entitlements model and the provision of services by agencies to support Parliamentarians. ANAO has suggested that there would be merit in a comprehensive review of the framework for Senators’ and Members’ entitlements against approaches adopted in similar jurisdictions as a basis for developing suitable proposals to improve flexibility, transparency and accountability that could be put to the Government and the Parliament.

⁴⁵ *Brown v West* (1990) 169 CLR 195.

⁴⁶ Second Reading Speech, *Parliamentary Entitlements Bill 1990*, House of Representatives Hansard, 8 May 1990, p. 67.

⁴⁷ *ibid.*

⁴⁸ ANAO Audit Report No.5 2001-02, *op. cit.*, p. 71.

This report highlights areas where improvements can be made to the entitlements framework in response to the Senate resolution. Any changes to the framework can only properly be resolved by the Government, the Parliament and, to some extent, the Remuneration Tribunal.⁴⁹

2.5 Various changes have since been made to some individual entitlements, sometimes to provide additional benefits (including to legitimise existing uses of entitlements) or to address particular instances of misuse. In addition, Finance has undertaken work seeking to strengthen or make clear the basis for entitlements. However, no fundamental changes were made by government to the framework in response to either the 2001-02 Audit Report or subsequent 2003-04 Audit Report, which made similar observations in relation to the framework governing the administration of Parliamentarians' entitlements. The result is that the framework remains characterised by:

- a complex legal framework based on a mix of Acts and Regulations, Remuneration Tribunal Determinations, Ministerial determinations, executive decisions, procedural rules, non-binding conventions and 'accepted practices';⁵⁰
- inconsistencies and ambiguities within and between various entitlements;
- reliance on various sign-offs and certifications, with varying levels of compliance with post-payment certification requests; and
- for much of the period since the earlier audits, no significant change in the level and extent of public reporting.⁵¹

Development and consideration of reform options

2.6 Finance has reported that, following the 2007 Federal Election, it provided advice and assistance to facilitate the implementation of the two

⁴⁹ *ibid.*, p. 37.

⁵⁰ In this respect, in May 2006, the Secretary of Finance informed the Senate Finance and Public Administration Legislation Committee that: 'If you want me to agree that ministerial and parliamentary entitlements is one of the most complex areas that I have ever seen in government, then I am very happy to do that, because it is an extraordinarily complex area.' Source: Official Committee Hansard, Senate Finance and Public Administration Legislation Committee, Estimates, 25 May 2006, F&PA 12.

⁵¹ The inaugural MOP(S) Act Annual Report 2007-2008 was tabled in December 2008 and Finance advised ANAO that, from June 2009, the approximated airline loyalty points accrued by Senators and Members would be tabled and that further transparency measures had been approved by the SMOS for implementation when resources were available.

Australian Labor Party (ALP) election commitments directly relevant to the department's *efficiently functioning parliament* outcome.⁵² The first involved proposed amendments to the Parliamentary Entitlements Regulations, which gave effect to the election commitment announced in the ALP's '*Cleaning up Government*' election policy to reduce the Printing Entitlement for Members from \$150 000 to \$100 000 per financial year, and for Senators from \$20 000 to \$16 667 per financial year. The second involved assistance to the then SMOS to give effect to the election commitment to reduce the number of Ministerial staff.

2.7 In terms of broader reform, the ALP 2007 National Platform and Constitution stated that:

In order to enhance the accountability of parliamentarians for their expenditure of allowances, Labor will table details of expenditure of travel and other allowances annually and will establish an independent auditor of parliamentary allowances and entitlements with appropriate powers of investigation.⁵³

2.8 In May 2009, Finance advised ANAO that the *National Platform and Constitution 2007* represents the ALP's long term aspirations for Australia and does not amount to a series of election promises and should, therefore, not be viewed in the same light as documents which made election promises such as '*Cleaning Up Government*'. In this respect, at the time of audit fieldwork, there had been no changes made to the public reporting arrangements for Parliamentarians' entitlements and an independent auditor of entitlements had not been established. In these respects, in April 2009 Finance advised ANAO that the then SMOS had given approval for expanded public reporting of entitlements expenditure once resources were available, and that advice on an auditor of entitlements, or an entitlements adviser, was continuing to be provided to, and discussed between, the SMOS and Finance. In August 2009, Finance commented to ANAO that:

Since November 2007, the Government has expanded the scope of public reporting by publishing the inaugural MOP(S) Act Annual Report 2007-2008 in December 2008, by including approximated airline loyalty points accrued by Senators and Members in the bi-annual tabled documents from June 2009; and

⁵² Department of Finance and Deregulation, *Annual Report 2007-08*, p. 63.

⁵³ Australian Labor Party, *National Platform and Constitution 2007*, p. 181.

publishing the tabling documents online. In addition, as part of its reform package, the Government has taken the decision to table and publish details of all entitlements expenditure.

Entitlements established or governed by conventions

2.9 In April 2009, Finance advised ANAO that:

Ministerial decisions on entitlements are made by his signature to a relevant brief. These decisions are then promulgated to Senators and Members by circular advice and amendments to the handbooks.

There is no requirement for a determination to be made except in relation to decisions made affecting the terms and conditions of employees under the MOP(S) Act.

Items added by the Minister to the personalised stationery menu under the Parliamentary Entitlements Regulations have historically been given effect through a formal instrument and successive briefing has continued this approach.

2.10 As noted at paragraph 2.3, the Parliamentary Entitlements Act was introduced to place on a secure legal footing those entitlements that were not, at that time, being provided directly or indirectly by or under legislation. Nevertheless, at the time of this and the earlier audits, there remained a number of areas of Parliamentarians' entitlements that were the subject of 'conventions' (sometimes referred to as 'accepted practices').⁵⁴

2.11 Many of the conventions applying to the administration of Parliamentarians' entitlements have not been clearly enunciated and are not publicly available. Conventions relied upon in the provision of entitlements to Parliamentarians are also not captured by the *Legislative Instruments Act 2003*. That Act requires the establishment and maintenance of the Federal Register of Legislative Instruments, which is intended to significantly enhance the democratic quality of government at the federal level by requiring the text of

⁵⁴ An example of a convention relied upon in the provision of entitlements to Parliamentarians involves the use of MOP(S) Act staff during election periods. This use has been governed primarily by convention, rather than legislation or other similar means. ANAO's 2003-04 audit of the administration of MOP(S) Act staff found that the risk of those staff being used for duties relating to party political business increases in the periods leading up to, and during, general elections and by-elections. The 2003-04 Audit Report concluded that, under the existing conventions-based approach, there was not an adequate shared understanding and consensus among all relevant stakeholders as to the appropriate use of MOP(S) Act staff, and Parliamentarians' entitlements in general, during election periods (ANAO Audit Report No.15 2003-04, op. cit., p. 17).

delegated legislation and explanatory material to be authoritatively stored and available to people affected by it.⁵⁵ Under the Legislative Instruments Act framework, an instrument is of legislative character if it:

- determines the law or alters the content of the law, rather than applying the law in a particular case; and
- has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

2.12 Whilst conventions affect the provision of an entitlement to Parliamentarians, they are not a legislative instrument as they are not made, or determined, in the exercise of a power delegated by the Parliament. In some cases, the conventions or accepted practices actually create the entitlement. For example, since the retirement of Sir Robert Menzies in 1966, successive governments have provided former Prime Ministers with a range of facilities in recognition of the service they have given to the nation. Finance advised ANAO that these entitlements are provided by the Prime Minister of the day and no purpose is specified.

2.13 There is also no compendium of the various conventions that are believed to exist in relation to Parliamentarians' entitlements. The attendant risks were demonstrated when, in response to concerns about the use of the Printing Entitlement by one Parliamentarian, it was initially stated that there was a convention that permitted the entitlement to be used to communicate with residents in adjoining electorates.⁵⁶ Finance advised its then Minister that it was 'unaware' of any convention that permitted the Printing Entitlement to be used to communicate with residents in adjoining electorates because such a convention did not exist.

2.14 One of the few instances where there has been a documented approach to the development of conventions occurred in 2003 and 2004, in the lead-up to the 2004 Federal Election. Specifically, during that time, the then SMOS and his Office proposed various statements as representing the new 'understood conventions' relating to the use of entitlements by Parliamentarians, especially

⁵⁵ The inclusion of legislative instruments on the Register is important because those that are not registered are not enforceable.

⁵⁶ House of Representatives Hansard, Response to Question Without Notice by Mr Peter Andren, MP, 26 February 2007, p. 39.

during election periods. The conventions agreed between Finance and the then SMOS and his Office over that period (known as the '31 Statements') now form the basis for some of the advice provided by Finance to Parliamentarians, including in letters sent to incumbent Senators and Members once a Federal Election has been announced so as to inform them of their entitlements during the election period. The understood conventions that arose out of the '31 Statements' process have also been reflected in the Senators and Members Entitlements Handbook.

2.15 Whilst the process of developing the '31 Statements' was documented, as outlined below the greater latitude provided by them has contributed to an approach to the use of the Printing Entitlement that has deviated from its principal purpose of facilitating Parliamentarians' capacity to undertake their duties as the elected representative of their constituents, including through the provision of advice and information. In addition, there was a delay in Finance being advised of Ministerial action to increase the Printing Entitlement, with a consequential delay in advice being provided by Finance to all Parliamentarians.

Development of the '31 Statements'

2.16 Finance records indicate that, since 1997, the then Opposition had attempted to establish greater clarity about the conventions relating to the use of entitlements, particularly in the context of an election campaign. In the lead up to the 1998 Federal Election, Ministers indicated to the then Opposition that the issues would be clarified and, to this end, Finance and PM&C produced a draft paper to provide guidance. This paper did not proceed to being finalised and issued.

2.17 In the lead up to the 2001 Federal Election, the then Opposition again sought clarification in relation to the use of Parliamentarians' entitlements. Following the election, at the Estimates hearings of the Senate Finance and Public Administration Legislation Committee on 19 February 2002, the then SMOS agreed to a request from the Committee for a discussion paper to be developed on the use of entitlements for circulation to the Parliamentary parties of the Senate and the House.⁵⁷

⁵⁷ ANAO Audit Report No.15 2003-04, op. cit., p. 98.

2.18 As a result, the paper developed by Finance in 2001 (but not released) in relation to the use of Parliamentarians' entitlements during an election period underwent further development during 2002. At a meeting in late April 2003, the Office of the then SMOS provided Finance with a document entitled 'Guidance on Use of Entitlements—Final'. The document was presented to the department as new 'understood conventions' but it had not been formally endorsed by the then SMOS, and Finance was advised that it was not to be promulgated. It was in the form of 42 Questions and Answers of what may be permissible use of a Parliamentarian's entitlements during an election campaign (see Appendix 2).

2.19 Finance records prepared for an 8 September 2003 meeting with the then SMOS stated that the then SMOS' Office had informed the department that the 42 Questions and Answers document had been agreed with key Opposition figures and that its contents (but not the document itself) would be the basis of information conveyed to their colleagues by the parties involved in the discussions that underpinned the document. In this respect, in July 2009, the current SMOS advised ANAO that:

It is the absence of definitions⁵⁸ which gave rise to the reliance by Parliamentarians on conventions. The definitive guide⁵⁹ provided by the then Special Minister of State in or about mid 2003⁶⁰ to parliamentarians, including the then Opposition, on the permitted use of entitlements was contained in a document headed 'GUIDANCE ON USE OF ENTITLEMENTS'. The 42 questions contained within this document were formulated by the then Opposition in an attempt to obtain greater clarity around the use of entitlements. The answers to the 42 questions were prepared by the then Government and disseminated to parliamentarians by the then Special Minister of State. I understand these answers were accepted by parliamentarians as providing the definitive guidance on the matters raised therein.

2.20 Further advice to ANAO during the course of this audit was that:

⁵⁸ The 42 Questions and Answers document also did not include any definitions of key terms.

⁵⁹ In providing a subsequent set of proposed conventions in the form of 31 Statements to Finance in February 2004, the then SMOS stated that the 2003 42 Questions and Answers document: 'has no official status, but was only an internal working paper for discussions between various offices'.

⁶⁰ The copy of this document provided to ANAO by the current SMOS was dated 15 May 2003.

- the 42 Questions and Answers document had been prepared in response to the then Opposition seeking specific guidance from the then SMOS, given concerns that the existing guidance was either inadequate or ambiguous, together with a view that there was inconsistency in the standards being applied by the then Government and the then Opposition to the use of entitlements (particularly during Federal election campaigns);
- the then Opposition attempted to encapsulate 'grey areas' that had caused controversy into 42 specific questions so as to obtain clear guidance;
- when answers to the questions were received, the then Shadow SMOS and his Office used it as the basis for responding to queries on the use of entitlements from Labor Caucus members and, over the course of 2003 and 2004, a number of seminars were held for Caucus members and their staff to ensure the guidance was known and understood;
- each of the statements provided by the then Government in answer to the then Opposition's 42 questions were interpreted on a 'stand alone' basis as there had been no advice that certain statements were to be read only with reference to others or read down by reference to others; and
- together with the published guidance, the 42 Questions and Answers document was viewed as an integral part of the framework of guidance within which Caucus members had operated since 2003.

2.21 In August 2009, the Shadow Special Minister of State at the time the 42 Questions and Answers document was provided to the then Opposition advised ANAO that the document was presented as providing the then Government's interpretation and understanding of the entitlement rules. ANAO was further advised that:

Once the Guidance was received from the Government, it was used by the Shadow Special Minister of State and his office as the basis for responding to queries on the use of entitlements from members of the Federal Parliamentary Labor Party (FPLP). Over the course of 2003 and 2004 a number of seminars were conducted by senior Opposition parliamentarians to ensure the Guidance was known and understood by all FPLP members and staff.

That advice and the text of the Guidance as provided to the Opposition was never rescinded and was never varied. That same advice was relied on by

Labor members and senators in the lead up to the 2007 election. Between 2003 and the 2004 election, my office and I carefully instructed Labor members and senators seeking advice as what they could and could not print, on the basis of the Guidance.

The Guidance provided by the Government was accepted by the Opposition as a reliable and authoritative basis on which to take decisions about the use of entitlements. It was regarded as supplementing the published guidelines in areas where these were either silent or ambiguous. In the absence of any definition of terms such as "parliamentary business", "electorate business", "newsletter" and "other voting information", the Guidance provided the only clear understanding of how the entitlement rules applied in practice to specific items of material.

In particular, it was clearly understood by the Opposition, in relation to statement 16 of the Guidance document, that campaign-like leaflets were classified as 'newsletters' and could be printed using entitlements. The examples on which guidance was specifically sought were the campaign leaflets printed by Government members and senators in the 1998 and 2001 election campaigns on such matters as the GST, Telstra and border security.

Together with the published guidelines on use of entitlements, the Guidance document has been an integral part of the framework within which FPLP members have operated since 2003. This only highlights the complexity of the composition of the current framework—which involves legislation, regulations, Remuneration Tribunal determinations, Ministerial directives, guidance and conventions.

While I am now aware that a further revised version of the Guidance document was produced by the then Government and provided to the Department of Finance containing "31 Statements", no version of any revised document was ever provided to the Opposition. Nor was the Opposition aware that the Department of Finance had expressed any views about the original Guidance document or was engaged in ongoing discussion with the then Special Minister of State about the document. The Opposition was not aware of any of those discussions, nor of any changes or suggested changes to the Guidance document.

2.22 While understanding that there are Parliamentarians who have relied on the guidance outlined in the 2003 42 Questions and Answers document, the guidance in the document does not sit comfortably with the official records. In particular:

- the records held by Finance do not indicate support for the position that the guidance then provided was 'definitive' given:

- later formal advice from the then SMOS to his department that the document had ‘no official status, but was only an internal working paper for discussions between various offices’, and
- the 42 Questions and Answers were subsequently subject to departmental advice during the remainder of 2003 and the first half of 2004 that resulted in significant changes to the guidance;
- advice to the then SMOS from Finance was that the *Financial Management and Accountability Act 1997* (FMA Act) and the *Parliamentary Entitlements Act 1990* (PE Act) required that a formal process be followed in order to implement those ‘conventions’ which were extensions of the advice currently provided. In addition, the department advised that the principles of ethical administration and the specific arrangements under the FMA Act and the *Public Service Act 1999* (PS Act) meant that a change in the conventions relating to any entitlements administered by the department should be conveyed to all Senators and Members affected by the change; and
- following a formal process of departmental advice to the then SMOS, guidance subsequently issued to all Parliamentarians on the use of entitlements reflected a more restrictive approach than that outlined for certain of the 42 Questions and Answers. This later, more restrictive, guidance was promulgated through Ministerial Circulars and pre-election letters sent by Finance to incumbent Parliamentarians concerning the use of entitlements during the 2004 and 2007 campaign periods (see paragraphs 2.24 to 2.38 and 5.57 to 5.58 and Appendix 3).⁶¹

2.23 In addition to the guidance in the 42 Questions and Answers document not sitting comfortably with the official records, the document did not seek to define the key terms applying to the Printing Entitlement under the Parliamentary Entitlements Regulations, such as ‘newsletter’. The first time that the meaning of key terms was addressed was in legal advice obtained by Finance during the course of this audit (see paragraph 5.100).

⁶¹ Some of the guidance in the 42 Questions and Answers document is not consistent with later guidance formally provided to Senators and Members prior to the 2004 and 2007 Federal elections. Some of the guidance is also inconsistent with a Ministerial Circular issued by the then SMOS in August 2006. In other respects, the officially promulgated guidance was silent on extensions to existing conventions that had been proposed in the 42 Questions and Answers document.

Refining the 42 Questions and Answers document into the 31 Statements

2.24 Following consideration of the 42 Questions and Answers document, Finance's assessment was that four of the questions and answers were matters for other bodies such as the Australian Electoral Commission (AEC); six raised significant concerns; a further five were questionable and the remaining 27 were considered to be either consistent with advice the department had provided, or would provide on the use of Parliamentarians entitlements, or were 'probably okay'. In August 2009, Finance advised ANAO that:

Finance consulted with the Department of the Prime Minister and Cabinet on Finance's consideration/advice on the 31 Statements. It did not consult on any document containing 42 Questions and Answers.

2.25 The departmental file note of a meeting between the department and the then SMOS on 8 September 2003 at which the 42 Questions and Answers document was discussed recorded that:

The Minister explained that the document entitled, 'Guidance on Use of Entitlements—Final' had been constructed after wide consultation and its provision to the Department was intended to provide a reference point for guidance....

We discussed the Department's responsibilities under the *Financial Management and Accountability Act 1997* (FMA Act) and the *Parliamentary Entitlements Act 1990* (PE Act) and that they required that a formal process be followed in order to implement those 'conventions' which were extensions of the advice currently provided. This would involve Ministerial authorisation (i.e. indicating that the extensions represented Government policy).

It was noted that we could (if the Minister so wished) look at the questions/answers and provide advice to the Minister before he made a final decision. It was also noted that Finance would need to consult with the Department of the Prime Minister and Cabinet before coming forward with the advice.

The meeting noted that the principles of ethical administration and the specific arrangements under the FMA Act and the *Public Service Act 1999* (PS Act) meant that a change in the conventions relating to any entitlements administered by the Department should be conveyed to all Senators and Members affected by the change.

2.26 The file note further recorded that the questions and answers identified by Finance as raising significant concerns were discussed, with the then SMOS

indicating that he wished to carefully consider the points made by the department.

2.27 In January 2004, the then SMOS' Office provided Finance with a draft letter from the Minister setting out a revised set of 31 proposed statements on entitlements use. The Finance Secretary was advised that the department would advise the SMOS' Office that it was not appropriate that Finance comment at that stage on the 31 statements because, as had been indicated at the meeting of 8 September 2003, it would need to consult with PM&C before providing advice on any extensions of conventions. The Finance Secretary was further advised that two of the proposed statements that may require significant amendment related to:

- a proposal that 'How To Vote' cards could be printed and distributed using Parliamentarians' entitlements; and
- a suggestion that Senators and Members may have entitlements to seek donations for their campaigns.

2.28 In these respects, Finance considered that:

In each case the convention that resources may be utilised in support of one's own re-election is seen as the justification. This convention has, as its basis, recognition of the fact that in carrying out the Parliamentary and electorate business (that is, the purpose of the entitlement) it is inevitable that an incidental effect will be to enhance their re-election prospects—extending this convention to the pure case of election campaigning warrants particular comment. *[emphasis as per original]*

2.29 In February 2004, the then SMOS formally provided Finance with the revised list of 31 Statements expressing 'understood conventions' on entitlements use, particularly during election periods (Appendix 2, which is based on analysis of Finance records, identifies how the 31 Statements proposed by the then SMOS in February 2004 related to the earlier 42 Questions and Answers document). In providing the 31 Statements to Finance, the then SMOS stated that the 42 Questions and Answers document: 'has no official status, but was only an internal working paper for discussions between various offices'. As outlined in Figure 2.1, the then SMOS sought Finance's considered advice on the 31 proposed Statements.

Figure 2.1

Official request for departmental advice on the 31 Statements proposed by the then SMOS

Further to our discussion of 3 December 2003, this letter is to clarify certain understandings about the use of entitlements, especially during an election period.

You raised with me the status of a document which I understand was provided by my Chief of Staff to Ministerial and Parliamentary Services (M&PS) around the middle of 2003 entitled *Guidelines on use of entitlements – Final*. This document has no official status, but was only an internal working paper for discussions between various offices.

I would appreciate the considered advice of the Department on some matters. There are a number of statements below that I have proposed, on the basis of my current understanding of the legal authority and conventional use of entitlements. I appreciate that it is ultimately a matter for the courts to decide but I also understand that the Department has views on how the conventions can reasonably be interpreted in the absence of specific ‘black letter’ law.

The Department’s views on the following statements would be appreciated.

Source: Letter dated 10 February 2004 from the then SMOS to Finance held in Finance records.

2.30 Following discussions between Finance and the then SMOS’ Office, 29 of the 31 proposed Statements were ultimately either agreed or amended (in some cases, the amended statement related to two or more of the proposed statements) such that they were, in Finance’s view, consistent with the terms of the relevant entitlement.

2.31 Statement 1 had an overarching impact in that, as originally proposed by the then SMOS, it had provided that:

Senators and Members can use entitlements for their own re-election on the basis that it is practically impossible to disaggregate activities which may be for their own re-election and activities which are for purely altruistic purposes.

2.32 This was subsequently reflected in correspondence dated 31 August 2004 from Finance to Senators and Members on the use of entitlements during the 2004 election period as the revised Statement:

A long-standing convention is to regard electorate business as including activities in support of a Member’s own re-election, particularly if those activities are incidental to or part of the provision of service to the constituents of the electorate, but not the election or re-election of another person. In doing

so, a Member may directly solicit a vote for him or herself, but not for another person.⁶²

2.33 A further 21 of the proposed Statements related directly to the use of the Printing Entitlement and the Communications Allowance, with considerable cross-over between Statements due to the concepts (conventions) on which they were based. In particular, proposed Statements 6, 11 and 18 related to the proposed use of entitlements to directly solicit votes, including for the Senator's or Member's political party, and to the application of a '70/30 rule' to allow up to 70 per cent of the material to be 'clearly for electorate or parliamentary business or material in support of one's own re-election' and up to 30 per cent of content to be direct promotion of the party or implicit promotion of another candidate (the revised statement ultimately officially promulgated in this respect is discussed further at paragraphs 2.49 to 2.51 and see also Appendix 3).

2.34 In July 2004, Finance advised the then SMOS that there were five of the proposed Statements 'where further discussion may be required'. These were:

- Statement 3 ('how to vote' cards):⁶³ Finance advised that there was, at that time, no provision that would allow Parliamentarians to print and distribute 'how to vote' cards, but that it would be open to the then SMOS, under the Parliamentary Entitlements Regulations, to approve the addition of such cards to the list of 'additional benefits' for Members of the House of Representatives;⁶⁴
- Statement 4 (use of employees): Finance advised that its discussion paper on this proposed Statement raised an option involving a tightening of staff entitlements, but a liberalisation in the campaign related tasks they may perform. Finance suggested that more work could be done to develop this if the then SMOS wished. Finance

⁶² This convention is discussed further at footnote 73. See also Appendix 3.

⁶³ Statement 3, as proposed by the then SMOS, stated: "How to vote' cards in Federal elections may be printed and distributed by MPs, provided that the 'how to vote' includes advice on how to vote for the MP' (see Appendix 3).

⁶⁴ The then SMOS signed the necessary instrument to create an entitlement for Members of the House of Representatives to print 'how to vote' cards on 3 August 2004, but Finance was not advised of this until 31 August 2004. Finance issued a circular to all Members on 1 September 2004, advising them of the new entitlement. The entitlement to print 'how to vote' cards was extended to Senators in August 2006 (prior to that, the Minister had not had authority under the Regulations to approve additional printed items in relation to Senators' Printing Entitlement). This issue is discussed further at paragraphs 4.56 to 4.69.

advised ANAO that there is no record that any such request was made. Finance's discussion paper on this proposed Statement had further advised the then SMOS that the articulation of relevant conventions relating to use of employees during election campaigns as they were then currently understood was preferred to those being proposed;

- Statement 21 (the use of newsletters printed under a Parliamentarian's Printing Entitlement to interest people in joining a political party): Finance advised that using newsletters in this way would constitute a party political purpose and should be deleted from the Statement;⁶⁵
- Statement 23 (the use of entitlements to seek support in cash or kind): Finance noted that this raised the issue of the propriety of using entitlements provided at the taxpayers' expense to enable a Senator or Member to carry out their Parliamentary or electorate duties to generate a benefit for the Parliamentarian or his or her political party and that Finance did not support the Statement;⁶⁶ and
- Statement 24 (using the Communications Allowance to send material to 'new' constituents where there had been a change to electorate boundaries): Finance advised the then SMOS that, under the terms of the relevant Remuneration Tribunal Determination, the Communications Allowance could not be used for this purpose until the new electorate boundaries were formally gazetted (as opposed to merely announced, as had been contemplated by the proposed

⁶⁵ In this respect, ANAO notes that the items printed using the Printing Entitlement by a sample of Parliamentarians examined by ANAO (as provided to ANAO by the relevant printers) included at least two examples of a Member's newsletter incorporating material that could be read as encouraging new members for the relevant Members' party. One example involved the newsletter printed by a Member for distribution in the Member's electorate in Spring 2007, which incorporated a cut-out coupon titled 'Make Labor Your Party'. The coupon invited constituents to indicate that they would like to join the party or would like more information, and requested that constituents return completed coupons to the Member's electorate office address. This newsletter was the subject of a complaint to the then SMOS in October 2007 from a recipient, in relation to the inclusion of the coupon. Based on advice provided to the then SMOS by Finance that the coupon represented less than 30 per cent of the newsletter (with reference to the 70/30 rule of thumb) and advice from the Member that none of his employees or any office equipment was used in processing the returned coupon, the then SMOS determined in March 2008 that no further action would be taken. The other example involved newsletters printed by another Member in July and August 2007 which included tables setting out the schedule for future meetings of the local branch of the Labor Party and invited members to bring non-members to a future meeting.

⁶⁶ In relation to this proposed Statement, ANAO's audit work identified that some Members have used their newsletters to invite people to volunteer to work on, or provide assistance to, the Member's election campaign.

Statement), but that the Remuneration Tribunal could be asked to consider amending the Determination.⁶⁷

2.35 Subsequently, the revised statements 4, 21 and 24 recommended by Finance (see Appendix 3) were reflected in the 2004 and 2007 pre-election letters, along with the 26 revised statements earlier agreed. Those revised Statements were then reflected in the letters on entitlements use provided to incumbent Parliamentarians upon the calling of the 2004 Federal Election in August 2004 (see Appendix 3). Similar advice was provided in Ministerial Circulars issued in August 2006 and in the pre-election letters provided for the 2007 Federal Election.

2.36 Of the remaining two statements:

- Statement 3 was overtaken by events following the then SMOS' August 2004 approval of the printing of 'how to vote' cards (see paragraphs 4.56 to 4.69); and
- neither the originally proposed Statement 23 or revised statement recommended by Finance (see Appendix 3) were formally endorsed and promulgated.

2.37 In March 2008, Finance advised the then SMOS that:

In July 2004, [*Finance*] developed, in consultation with the then Special Minister of State, the Government Division of the Department of the Prime Minister and Cabinet and the Australian Government Solicitor, statements relating to the use of entitlements by Senators and Members, especially during election periods. These statements form the basis of advice provided by [*Finance*] to Senators and Members at the beginning of Federal election campaigns and are reflected in the *Senators and Members Entitlements Handbook*. [*Finance*] will work towards updating all 31 Statements, and will provide updated versions (reflecting any changes to entitlements since 2004) to you in due course for your consideration.

⁶⁷ The Parliamentary Entitlements Regulations were amended in June 2007 to insert a definition of constituent for the purposes of Members' Printing Entitlement. The definition provides that 'constituent' for that purpose means either (a) a person who lives in the Member's electorate Division; or (b) a person in relation to whom the following circumstances apply: (i) the person does not live in the Member's electorate Division; (ii) a redistribution of the State or Territory that includes the Member's electorate Division has been formally determined in accordance with the Commonwealth law applicable to redistributions, but has not commenced; (iii) the place where the person lives will be included in the Member's electorate Division when the redistribution commences.

2.38 Finance advised ANAO that progress in this regard is dependent on how the Printing Entitlement is reformed and that it is intended that the review of the 31 Statements will be done before the next election when they will be next used/issued. No advice was provided to Finance by any Minister that some Parliamentarians were relying upon the original 42 Questions and Answers document from mid-2003, rather than the guidance that is based upon the 31 Statements as amended in July 2004 following departmental advice.

Definition of key terms

2.39 The permissible use of some entitlements is predicated on the purpose to which they are being put. Table 2.1 sets out the purpose requirements for a range of entitlements, as identified by Finance in its requests to Parliamentarians for their certification of the use of entitlements. In this respect, following the 2007 Federal Election, Finance advised the then SMOS 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.

Table 2.1

Eligible entitlements purposes as reflected in certifications of entitlements use requested of Parliamentarians by Finance

Stated entitlement purpose for certification purposes	Relevant entitlement(s)
Parliamentary, electorate or official business.	Senators and Members Domestic Travel on Scheduled Services. Canberra and Interstate Family Travel to accompany or join Senators and Members. Travelling Allowance.
Parliamentary or official business, or to attend meetings of a parliamentary political party, or of its executive, committees or national conference.	Senators and Members Car Transport (and permitted accompanying persons).
Parliamentary, electorate or official business, family travel and private purposes but not for commercial purposes.	Private-plated Vehicle for Senators and Members.
Parliamentary, electorate or official business, but not for commercial business.	Property operating and general administrative expenses.
Parliamentary or electorate business.	Telephone Services Charge Card (Telecard). Communications Allowance (but not for party business).
Duties as a Member of Parliament but not party political purposes.	Electorate employees.
Parliamentary business.	Private Vehicle Allowance. Overseas Study Travel Expenses.
Electorate business.	Additional Electorate Allowance in lieu of Private-plated vehicle. Electorate Charter.

Stated entitlement purpose for certification purposes	Relevant entitlement(s)
Official purpose/business.	Spouse of a Minister, Opposition Office Holder or Presiding Officer—Domestic Travel on Scheduled Services. Additional travel by a Spouse or Nominee of a Senator or Member to attend an official government, parliamentary or vice-regal function as an invitee. Opposition Office Holder Car Transport. Shadow Ministers and Leaders of a Minority Party Car Transport. Personal Staff. Staff Travel. Official Postage for specified Office Holders. Charter when representing a Minister on official business.
Non-commercial.	Interstate Family Travel to accompany or join Senators and Members who have travelled for parliamentary, electorate or official business.
Representational purposes.	Representational travel by a Spouse or Nominee of a Senator or Member.
In accordance with approval provided by SMOS.	Special Charter (in circumstances such as where there are no scheduled services or where the use of scheduled commercial services would result in undue delays).
No explicit limit on purpose.	Residential telephone services. Flags. Dependent children of a Minister, Opposition Office Holder or Presiding Officer—Domestic Travel on Scheduled Services. Printing Entitlement.

Source: ANAO analysis of Management Reports and transaction-specific certification forms issued by Finance.

2.40 A number of previous ANAO audit reports and other reviews have identified the potential for differing interpretations of key terms to give rise to difficulties for both Parliamentarians and the responsible administrative departments in ensuring the eligibility of expenditure.⁶⁸ Of particular note was that, in 1997, the then Government requested that the Remuneration Tribunal consider defining the key terms ‘Parliamentary’, ‘electorate’ and ‘official’ for the purposes of travel entitlements. In its response, the Tribunal stated:

⁶⁸ ANAO Audit Report No.5 2001-2002 noted that this issue had been a matter of concern for some time in the administration of Parliamentarians’ entitlements (op. cit., pp. 95-96).

The Tribunal considered the question of defining these concepts during the course of its annual review. It has decided, however, that it would be inappropriate (indeed improper) for it to define them to exclusion. Its position on this question essentially revolves around the due reticence which all in the Executive arm of government must have that they do not impede the elected arm in the exercise of its function. While we can give an extensive list of examples of Parliamentary or electorate travel, any such list will not be exhaustive. It is ultimately incumbent on each member to satisfy themselves, with the aid of the Procedural Rules, that the purpose of the travel is truly for parliamentary or electorate business; and likewise for Ministers and office-holders to decide that they are travelling primarily for official purposes.⁶⁹

2.41 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 they are not insurmountable. For example:

- other jurisdictions have been able to develop definitions for key terms that outline the purposes for which entitlements may be used (see further in Chapter 4 of this ANAO audit report);
- Remuneration Tribunal Determination 2006/18 *Members of Parliament – Entitlements* defines ‘official business’ for the purposes of certain travel entitlements as attendance at:
 - (a) properly constituted meetings of a Government advisory committee or task force provided that the senator or member is a member of the committee or task force;
 - (b) functions representing a Minister or a Presiding Officer on official business as a Minister or Presiding Officer, provided that the Minister or Presiding Officer nominates the function in advance in a written request to the senator or member to represent him or her.
- the *Members of Parliament (Life Gold Pass) Act 2002* provides eligible former Parliamentarians with an entitlement to a maximum of 25 domestic return trips per year within Australia, on scheduled transport services, as long as the trip is not for commercial purposes. The Act defines a commercial purpose as ‘a purpose relating to the

⁶⁹ Remuneration Tribunal, *Report on the Fundamental Design and the Administration of Travel Allowances for Members of the Parliament*, October 1997, p. 15.

derivation of financial gain or reward, whether as a board member, an office-holder, an employee, a self-employed person or otherwise'; and

- the Government's June 2008 *Guidelines on Campaign Advertising by Australian Government Departments and Agencies* are based on three principles, including that government campaigns paid for with public funds should not be directed at promoting party political interests. In this respect, the *Guidelines* include sound guidance on what is and is not, in the context of government advertising, party political advertising.

2.42 More recently in respect to Parliamentarians' entitlements, to assist its administration of the Communications Allowance provided to Parliamentarians by Remuneration Tribunal Determination, Finance obtained external legal advice on the interpretation of the term 'party business'. The Remuneration Tribunal has specified that the Communications Allowance may not be used for the purpose of 'party business', but the meaning of that term has not been articulated. The legal advice was confined to the use of a Parliamentarian's Communications Allowance to distribute 'how to vote' cards (which had been approved in August 2004 and August 2006 respectively by the then SMOS as an additional item able to be printed under Members' and Senators' Printing Entitlements). As broader entitlement issues were not considered in forming the advice, Finance advised the then SMOS that the precedent value of the advice is narrow. Nevertheless, the legal advice demonstrates that the value obtained from specifying the purpose for which an entitlement may or may not be used is reduced when the meaning of the relevant purpose term has not been articulated.

2.43 Similar considerations apply to articulating the meaning of other key terms for determining eligibility under an entitlement. For example, the Parliamentary Entitlements Regulations specify that Parliamentarians may use their Printing Entitlement to print 'newsletters for distribution to constituents'. Statement 10 of the 31 Statements proposed by the then SMOS in February 2004 was:

It is acceptable to use entitlements for printing and posting campaign-like material (eg leaflets or other communications on key election issues—Telstra, border security, GST, personal promos). These are all classified as

'newsletters'. The discussion may even include issues of international, state and local significance.⁷⁰

2.44 Finance's assessment of the proposed Statement was:

Statement 10 appears to be asserting that a leaflet which is campaign-like (presumably strenuously putting a point of view) is in fact a newsletter. It is difficult to be comfortable with this view.

However, it would appear to be readily open to the Special Minister of State to approve leaflets under sub-regulation 3(1)(c): *Other printed materials, as approved by the Minister, for distribution to constituents.*

This would appear to be the preferable course.⁷¹

The Regulations do not define 'newsletters' nor prescribe what a newsletter should contain i.e. there would appear to be considerable latitude in terms of form and content. There is nothing in the Regulations which would prevent a Member from using the printing entitlement for printing:

- single issues newsletters;
- discussing issues of international, state or local significance; and
- covering issues which are considered to be 'key election issues'.

In following such a course a Member should have regard to:

1. a newsletter is about conveying information not about campaigning;
2. the long standing convention that entitlements may be used in support of one's own re-election but not that of another person; and
3. the risk of a public perception that an entitlement provided so that a Member can keep the electorate informed is being used for purposes of election campaigns.

Printing using Electorate Office Facilities and Equipment

The use of electoral office facilities and equipment to provide leaflets or signs on key issues (including discussion of international, state or local significance) would appear to meet the prescription in Part 1 Schedule 1 to the

⁷⁰ This had originally been proposed as the answer to question 16 within the 2003 42 Questions and Answers document (see paragraphs 2.18 to 2.26 and Appendix 2).

⁷¹ The Ministerial instrument approving additional printed items for distribution to constituents, made under sub-regulation 3(1)(c) and 3A(1)(c) of the Parliamentary Entitlements Regulations, has not been amended to capture this use as being within entitlement.

Parliamentary Entitlements Act ‘for purposes related to Parliamentary, electorate or official business, but not commercial business.’

In using the electorate office facilities for the production of leaflets Senators and Members should have regard, as with externally arranged printing, to the public perception that the facilities are provided to service constituents (not for production of campaign-like material).⁷²

2.45 However, this assessment was not provided by Finance to inform external legal advice it obtained on the Printing Entitlement during the course of this audit. Finance did, however, provide its legal adviser with extracts from the pre-election letters sent by the department to incumbent Parliamentarians concerning the use of entitlements during the campaign period (sections of which were based on the 31 Statements as amended following departmental advice). In respect to the entitlement to print ‘newsletters for distribution to constituents’, the legal advice noted that:

‘Newsletter’ is not defined in the Parliamentary Entitlements Act or in the Parliamentary Entitlements Regulations. Our researches have not disclosed any judicial authority, or any extrinsic materials relating to the insertion of, or changes to, the relevant regulations or the making of the 2006 Instrument, that would provide clear guidance as to the meaning to be attributed to the word ‘newsletter’.

In our view, ‘newsletter’ should bear its ordinary, everyday meaning, understood in the context of a benefit conferred upon a parliamentarian.

2.46 The March 2009 legal advice outlined the views of the Australian Government Solicitor (AGS) concerning the interpretation of the critical words or phrases in the Parliamentary Entitlements Regulations and the related Ministerial Instrument that, collectively, provide the legal basis for the Printing Entitlement. This interpretation was then used as the basis for AGS providing Finance with its views on whether certain items produced under the Printing Entitlement may or may not be within the terms of the entitlement. It would have been preferable for such advice to have been obtained at the time the

⁷² Finance advised the then SMOS that: ‘In light of the above, the following redraft of Statement 10 may be more appropriate: ‘It is acceptable for a Senator or Member to use the printing facilities provided in electorate offices to produce newsletters and other material (e.g. single issues pamphlets) of international, national, state and local significance. It is also acceptable to use entitlements, particularly the Communications Allowance to distribute such material.’ The redrafted Statement as proposed by Finance was subsequently included in the endorsed guidance officially promulgated to Parliamentarians prior to the 2004 and 2007 Federal Elections (See Appendix 3).

entitlements were introduced, or as changes were made, so that the result could have been conveyed to Parliamentarians (for example, through a circular and/or updates to the Senators and Members Entitlements Handbook), to inform their decisions concerning the use of this entitlement.

2.47 By way of comparison, the question of whether candidate and party election campaign material can be produced using the entitlements of incumbent Parliamentarians has been explicitly considered in each of the four other jurisdictions examined by ANAO, and in three of these, the framework explicitly states that Parliamentary and electorate business does not include Parliamentarians electioneering for themselves, for others or for their party (which has often been referred to as party-political purposes). Further information on this issue is included in Chapter 4 of this report.

2.48 In May 2009, Finance advised ANAO that it agreed that there would be merit in defining and providing guidance on the terms electorate, parliamentary, official and party business but that this is a decision for Government rather than the public service. There would also be benefits to all concerned from the entitlements framework explicitly addressing whether, and, if so, to what extent, public money provided for Parliamentarians' entitlements is able to be used for candidate and election campaigning activities.

2.49 It will be necessary for any improved approach to defining the purpose to which entitlements may eligibly be used, and provision to Parliamentarians of associated guidance, to also address the role played by conventions. For example the ability, through what is referred to as the '70/30 Rule', to include election campaigning material in newsletters printed under the Printing Entitlement for distribution to the relevant Parliamentarian's constituents has evolved over time through conventions.

2.50 As discussed, a series of statements were proposed by the then SMOS in 2004, as part of the '31 Statements' process, which sought to clarify that an eligible use of the Printing Entitlement by Parliamentarians is to promote their own re-election (also discussed at paragraphs 2.31 to 2.32), directly solicit a vote for themselves and/or their party and to use up to 30 per cent of the content of a newsletter to directly promote the party and implicitly promote other candidates (see paragraph 2.33). Finance recommended that, based on the principles the department considered safe in this respect (see further at Appendix 3—Statements 6, 11 and 18), the new accepted convention be expressed as follows:

The newsletter entitlement is provided for printing of newsletters for distribution to constituents. The Regulations do not specify the purpose for which it may be used but long-standing convention has been to regard proper use as relating to Parliamentary and/or electorate business.

It is inevitable that a newsletter will, from time to time, contain material which presents the individual Senator or Member in a positive light and hence will serve to promote his/her re-election.⁷³

It is also open to a Senator or Member to write in positive terms of the Parliamentary or electorate contribution of one or more of their colleagues. It is important that any such reference fall short of exhorting the reader to vote for them. Similar considerations apply in the case of promotion of political parties.

Given that the primary purpose of the printing, and associated entitlements, is to inform and provide a service to the electorate, any use which is primarily more promotional in character should not constitute the greater part of the document. As a general rule the 70/30 rule of thumb has been adopted. Under the rule, **which lacks a legal basis**, material of a promotional character may be included so long as it makes up less than 30 per cent of the overall newsletter or letter. [*ANAO emphasis*]

2.51 This advice was subsequently included in the pre-election letters on entitlements use in the election period issued to Parliamentarians by Finance on 31 August 2004 for the 2004 Federal Election. Very similar wording was used in the 2007 pre-election letters provided to Senators and Members, but with the reference to ‘lacks a legal basis’ being deleted. In this respect, Finance advised ANAO that:

It was not appropriate to have this phrase in the election letters which are supposed to provide guidance to Senators and Members rather than raise issues.

2.52 Ministerial Circulars issued to all Senators and Members on 15 August 2006 also reflected the guidance recommended by Finance in relation to the conventions applying to:

⁷³ In this respect, during the development of the ‘31 Statements’ (see paragraphs 2.16 to 2.35), Finance advised 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*]

- the use of the printing entitlement to incidentally further the Parliamentarian's own re-election, but not in support of the election or re-election of others; and
- restrict the extent of other information included within a Parliamentarian's newsletter, such as writing about the Parliamentary or electorate contribution of one or more of their colleagues or the activities of their political party, to 30 per cent or less of total content.⁷⁴

2.53 On 10 July 2009, Finance provided the current SMOS with proposed draft definitions of key terms, including 'party business', 'electorate business', 'official business' and 'parliamentary business', to aid in the interpretation of all Parliamentary entitlements. Finance advised the SMOS that, to give the definitions maximum weight, they could be included as definitions in the Parliamentary Entitlements Act and the Remuneration Tribunal could also be urged to incorporate the definitions verbatim for the purposes of its determinations. In August 2009, Finance advised ANAO that:

The Government decided, in July 2009, that a fundamental review of the entitlements framework be undertaken. The Terms of Reference of that review include defining, in regulations and/or legislative instruments, key terms.

Framework for the provision of entitlements

2.54 In November 2008, ANAO advised Finance that initial audit analysis of a sample of items produced under the Printing Entitlement by Parliamentarians indicated frequent use of the entitlement to produce material of a party political or electioneering nature. Finance proceeded quickly to activate the Protocol applying to alleged entitlements misuse, including obtaining advice from the Attorney-General's Department (AGD). AGD subsequently advised on several occasions of uncertainties in the legal framework relating to the Printing Entitlement.

2.55 In November 2008, AGD wrote to Finance stating that the primary cause of the potential misuse appeared to be uncertainty under the Parliamentary Entitlement Regulations as to the scope and nature of the Printing Entitlement and suggested it would be prudent to review the wording

⁷⁴ In considering the application of the 70/30 rule, Finance has advised its Minister that the material that is subject to the 30 per cent of content restriction includes information 'such as party policies on certain issues'.

of both the Regulations and the Senators and Members Entitlements Handbook to ensure that both documents provide clear and consistent guidance to Parliamentarians about the extent of the Printing Entitlement.

2.56 Finance subsequently sought further advice as to whether a selection of the printed material examined by ANAO could be considered to be within the relevant entitlement and particularly whether the material could be considered to be ‘other voting information’ or a ‘newsletter’ for the purposes of the Parliamentary Entitlements Regulations. In March 2009, following further analysis, AGD provided Finance with advice from AGS, with AGD’s covering correspondence to Finance stating that:

There are a number of considerations that I would emphasise coming out of AGS’ advice.

- In the majority of cases, AGS considers that there is a real risk that a Court would find the material printed by parliamentarians to be outside entitlement. However, AGS notes there is considerable ambiguity in the regulation, and therefore uncertainty as to the view a Court would take about the scope of the entitlement.
- In relation to the ‘newsletter’ category, AGS notes that this would generally cover information on matters of common interest to the parliamentarian and his/her constituents. This could certainly include party-political commentary, but would have to be prepared by or on behalf of the Member or Senator in question. A document that is limited to appealing for the election of a party would not therefore be a newsletter. Against this, however, AGS admits that the argument could be made a document containing information for constituents in the context of an election without any reference to the Member or Senator do fall within the newsletter category.
- In relation to the ‘other voting information’ category, AGS advises that this relates to the casting of a vote—the actual voting process—and not to ‘flyers’ or similar documents about the relative merits of the parties and their policies. Again, however, this will depend on the precise nature of the document in question, and there is ambiguity as to whether this material could in any case be characterised as a newsletter.
- In relation to the ‘magnetised emergency and community information card’ category, AGS notes that it is likely that the cards could cover emergency or community information, but that they would need to be magnetised in both cases.

In my view, the uncertainty in the law in this area indicates two overriding conclusions. First, although in most of the cases examined a court may find that the printing was done outside entitlement, this is by no means certain. Second, as I indicated in my earlier letter, the priority for resolving this issue should lie in clarifying regulations that are clearly uncertain in scope, rather than in pursuing judicial consideration of the law as it currently stands.

2.57 As noted at paragraph 1.13, given the nature of the preliminary audit findings in respect to use of the Printing Entitlement, ANAO wrote to Parliamentarians whose use of this entitlement was examined in detail as part of the audit so as to offer them the opportunity to comment on audit analysis of this use, and/or to offer views on the framework for this entitlement, or more generally. In light of the ANAO correspondence, PM&C sought further advice from AGD. Correspondence from AGD to PM&C, received in July 2009, reiterated the need for greater certainty in relation to the framework underpinning the Printing Entitlement. The AGD correspondence identified the various guidelines and conventions that purport to provide assistance to Parliamentarians in ascertaining the scope of their entitlements. AGD concluded that ‘the issue of the vagueness of the rules warrants immediate attention.’

2.58 As noted, the March 2009 AGD correspondence had emphasised, amongst other things, that AGS considered that there is a real risk that a Court would find the material printed by Parliamentarians to be outside entitlement. In its July 2009 correspondence, AGD commented that, based on general considerations set out in the AGS advice, there was room to argue that printed documents examined were covered by an entitlement. AGD further commented that:

The larger issue, however, is the difficulty of providing anything approaching a definitive view of the legal position. I take this to be the general import of the AGS advice. The resulting policy question—whether the current statutory regime is fundamentally problematic in failing to provide meaningful guidance to those who must work with it—clearly warrants further consideration.

2.59 Finance also met with the then SMOS on a number of occasions to discuss the issues identified by the audit, and provided briefings on potential misuse of the Printing Entitlement and options for its reform. The initial reform options reflected Finance’s analysis that:

- a large proportion of the printed product was more in the nature of advertising and not intended to inform constituents; and
- the content and presentation of some of that material suggested that there is, at best, widespread confusion about the Printing Entitlement.

2.60 Finance advised ANAO that its analysis that substantial reform of the Printing Entitlement is required was reflected in a ‘smorgasbord’ of options for reform which was developed in March 2009 at the request of the then SMOS for his consideration. In April 2009, the then SMOS agreed that significant reforms should be made to the Printing Entitlement and that Finance would prepare a further brief on options for reform focusing on an approach incorporating a number of elements. On 30 June 2009, Finance provided the current SMOS with a further brief on options and implementation mechanisms for reform of the Printing Entitlement (see paragraphs 4.99 to 4.109).

2.61 As outlined in the following sections, ANAO’s analysis of a selection of other entitlements indicated similar shortcomings to those that AGD identified in relation to the framework underpinning the Printing Entitlement.

Electorate Allowance

2.62 Determinations of the Remuneration Tribunal have provided for each Senator and Member to be paid an Electorate Allowance. Electorate Allowance is an expense of office allowance payable⁷⁵ to reimburse Parliamentarians for costs necessarily incurred in providing services to their constituents.⁷⁶

2.63 From its introduction in 1952 until 1986, Electorate Allowance was not subject to taxation. With the introduction of the Fringe Benefits Tax in 1986, Electorate Allowance became subject to Pay As You Go (PAYG) taxation. Parliamentarians are expected to declare Electorate Allowance as assessable income and claim any expenses that they met from their Electorate Allowance as deductions when submitting their tax returns. If a Parliamentarian does not claim any deductions, he or she is entitled to retain his or her Electorate Allowance, but it is to be taxed as though it was income.

⁷⁵ It is paid by the relevant Parliamentary Chamber Department in equal monthly instalments with the payment of the Parliamentarian’s basic salary. The Senators and Members Entitlements Handbook notes that full accounting of expenditure actually made is required for income tax purposes and that any part of the allowance not accounted for in this way potentially gives rise to a tax liability.

⁷⁶ ANAO Audit Report No.5 2001-02, op. cit., p. 62.

2.64 In April 2009, the Remuneration Tribunal issued Determination 2009/4 in which it announced that it had decided to increase the base rate of Electorate Allowance from \$27 300 to \$32 000 per year.⁷⁷ In its statement accompanying the Determination, the Tribunal said:

The purpose of the allowance is to provide funding to members to cover a range of expenses involved in servicing their electorates. The allowance comprises a base amount plus supplementary amounts for those Members whose electorates exceed 2000 square kilometres in size. At the end of each financial year any part of the allowance which is not expended on genuine electorate expenses to the satisfaction of the Australian Tax Office is regarded as personal income and taxed accordingly. Rates of similar allowances available to members of parliaments and assemblies around Australia vary widely.

The allowance enables members to make modest provision for expenditure at their discretion to address differing needs in their respective electorates. Previous reviews have noted that members spend the allowance in widely varying ways in servicing their electorates.

The Remuneration Tribunal determines the amount of the allowance. There is no automatic mechanism for adjusting it each year and the Tribunal has not varied the amount since January 2000. The Consumer Price Index has since increased by more than 30 per cent; that is, more than 3 per cent annually. This means that the value of the allowance is now over 20 per cent less, in real terms, than it was in 2000.

The Tribunal has no doubt that the costs of meeting the commitments to which members direct their allowance have increased over the same period. Accordingly the Tribunal has decided to lift the basic allowance to \$32,000 per annum, an increase of \$4700. While this is equivalent to a cumulative increase of some 2 per cent per annum since 2000, it still represents a reduction in real terms.

2.65 Finance advised ANAO that it had not been consulted as part of the Remuneration Tribunal's process. In May 2009, ANAO sought advice from the Tribunal Secretary as to whether the Tribunal had access to any data which indicates how many Parliamentarians spent all or part of their Electorate

⁷⁷ Members with large electorates receive supplementary Electorate Allowance: an additional \$6000 for electorates of 2000 to 4999 square kilometres and \$14 000 for electorates larger than 5000 square kilometres.

Allowance in 2007-08 and, if so, provision of this data to ANAO.⁷⁸ In June 2009, the Secretary to the Tribunal advised ANAO that:

The *Remuneration Tribunal Act 1973* affords the Tribunal wide discretion as to how it informs itself in relation to matters under its consideration. You will appreciate, I am sure, that it would therefore be inappropriate for me to comment on either the conclusions reached by the Tribunal or its associated deliberations. Accordingly, I am not in a position to provide advice about the Tribunal's decision to increase Electorate Allowance, beyond the Tribunal's own public statement.

I also note that, while the Tribunal is responsible for enquiring into and determining, or advising upon, matters in its jurisdiction, it is not responsible for the administration of entitlements. In this regard, and noting that Electorate Allowance had not, until this year, been varied since 2000, the Tribunal's Secretariat does not hold details of expenditure of the allowance by Parliamentarians.

2.66 The purposes to which the Electorate Allowance must be put have not been prescribed due to the differing nature of Parliamentarians' electorates and the services Senators and Members may wish to provide to constituents. In its December 1999 report, the Remuneration Tribunal noted that expenses expected to be met from the Electorate Allowance include attendance at electorate functions, as well as expenditures such as donations to appeals and organisations; presentations for school speech days, sporting clubs, senior citizens awards; replacement of home office facilities; and certain travel costs. The Senators and Members Entitlements Handbook in place at the time of ANAO's 2001-02 Audit noted that relevant expenses would also include expenditure on office equipment, telephone, newspaper and postage, additional to the standard supply.⁷⁹ Such guidance is no longer included in the Handbook, with Finance advising ANAO that the guidance was removed as it was considered inappropriate to provide guidance in Finance publications on

⁷⁸ As noted, Electorate Allowance is paid on a monthly basis to Parliamentarians and PAYG tax is levied on the payments. Parliamentarians are expected to declare Electorate Allowance as assessable income and claim any expenses that they met from their Electorate Allowance as deductions when submitting their annual tax return. However, tax returns do not require Electorate Allowance to be separately identified and, in claiming deductions, Parliamentarians are not required to specify those deductions that relate to expenditure from Electorate Allowance as opposed to any other deductions they may claim.

⁷⁹ ANAO Audit Report No.5 2001-02, op. cit., p. 63.

an entitlement which it does not administer⁸⁰ and to which a Tax Ruling applies.

2.67 In 1999, the Australian Taxation Office (ATO) released Taxation Ruling TR 1999/10 which provides guidance to Parliamentarians as to items the ATO considers to be allowable deductions.⁸¹ Many of the items that the ATO regards as allowable deductions are also items which are included in Parliamentarians' entitlements. Where a Parliamentarian can use an entitlement to pay for an item that he or she would otherwise be entitled to claim as a deduction, this would obviate the need to use Electorate Allowance for that purpose.

Newspapers and periodicals

2.68 For many years, Parliamentarians have had an entitlement to be provided with newspapers, separate to any newspapers they may have purchased using their Electorate Allowance. In December 1990, the then Minister for Administrative Services agreed that a 'supplementary publications allowance' be established so as to provide Senators and Members with some flexibility in the publications they receive to assist them in pursuing particular Parliamentary interests and to remain informed of events in their electorates. Accordingly, prior to November 2004, Parliamentarians were entitled to:

- the national newspapers, a weekly news magazine and the metropolitan daily papers for the capital city of the State/Territory in which they resided; and
- a supplementary publications allowance to purchase additional publications to those prescribed, up to the value of \$300 per annum for metropolitan-based Parliamentarians in New South Wales and Victoria, and \$450 per annum for all other Senators and Members.

2.69 In February 2005, the then SMOS agreed to a Finance recommendation that all Senators and Members be provided with maximum flexibility and choice by replacing the menu-based entitlement to newspapers and periodicals with a capped allocation. However, the then SMOS did not agree with the recommended quantum or basis of allocation. Instead, he approved an annual

⁸⁰ The Chamber Departments administer the Electorate Allowance.

⁸¹ TR 1999/10 *Income tax and fringe benefits tax: Members of Parliament—allowances, reimbursements, donations and gift, benefits, deductions and recoupments*, Australian Taxation Office.

entitlement of \$3000 for metropolitan Members, \$4000 for rural/provincial Members and \$4000 for Senators.⁸²

2.70 The terms of this entitlement are broader than those that apply to the Printing Entitlement (where AGD concluded the scope is uncertain⁸³), as follows:

- the Printing Entitlement identifies the types of materials that may be produced ('newsletters for distribution for constituents', 'postal vote applications and other voting information', and so forth), although these terms are not defined. The February 2005 changes in relation to the Newspapers and Periodicals Entitlement meant that there is no prescribed menu of allowable items that may be procured under that entitlement; and
- the Parliamentary Entitlements Act was amended in 2003 to specify that electorate office accommodation, together with the equipment and facilities necessary to operate the office, be used for purposes related to Parliamentary, electorate or official business, but not commercial business. However, the meaning of these terms has not been articulated and the specified purposes are broader than those that originally resulted in the Supplementary Publications Allowance being created (to assist Parliamentarians to pursue particular Parliamentary interests and to remain informed of events in their electorates (see paragraph 2.68)).

2.71 In October and November 2008, ANAO raised with Finance the nature of the use of the Newspapers and Periodicals Entitlement by some Parliamentarians in a sample of three States examined by ANAO.⁸⁴ In particular:

- some of the purchases were neither a newspaper nor a publication but involved items such as cardboard, batteries, plastic, convention name badges and confectionary; and

⁸² The allocations are adjusted each year to reflect Consumer Price Index movements.

⁸³ See paragraphs 2.54 to 2.58.

⁸⁴ In raising the use of the entitlement, ANAO had regard to the advice from Finance in the Senators and Members Entitlements Handbook that Senators and Members should consider both whether use is within any limits on the entitlement, as well as whether the use would be publicly defensible (see Table 2.2).

- some purchases related to books in areas such as children’s and adult works of fiction, travel guides, history and political biographies or periodicals in areas that are at risk of being outside the scope of the entitlement.

2.72 In March 2009, Finance advised ANAO that it had not yet considered the use of the Newspapers and Periodicals Entitlement in response to the audit findings because of the possibility that the audit might conclude that broader entitlements reform was required.

2.73 In July 2009, the Government decided that newspapers and other publications should be required to be purchased for Parliamentary or electorate business, and that the details of purchases should be published.

Office requisites and stationery

2.74 Under Item 7, Part 1, Schedule 1 to the Parliamentary Entitlements Act, Parliamentarians were also to be provided with an entitlement to:

Office accommodation in the electorate, together with equipment and facilities necessary to operate the office, as approved by the Minister.

2.75 This is the head of authority relied upon for a range of entitlements, including for providing Parliamentarians with office requisites and stationery.

2.76 There is no financial limit upon the costs that may be incurred by a Parliamentarian for stationery and general office requisites for their electorate and Parliament House offices. Prior to 2004, Finance relied on administrative decisions by officials regarding the stationery and other office requisites that would be made available to Parliamentarians. In May 2004, Finance obtained the then SMOS’ approval of the categories of stationery and other office requisites that may be obtained under the entitlement.⁸⁵ This list was subsequently expanded.

2.77 The office requisites available to Parliamentarians include unlimited quantities of standard paper products together with unlimited colour printer toner and consumables, with Parliamentarians also being entitled to a

⁸⁵ The original list included 38 items including pens, pencils, staplers and staples, crockery/cutlery, calculators and rubber bands.

photocopier and a colour laser printer.⁸⁶ Similar to the Electorate Allowance and Newspapers and Periodicals Entitlement providing two heads of authority for one type of expenditure, Parliamentarians may choose to use their office equipment and consumables to produce newsletters and other information kits for distribution to constituents instead of, or as well as, accessing their financially capped external Printing Entitlement.⁸⁷ As noted in the 2001-02 Audit Report, where newsletters and other printing work is done using office facilities, the cost of such copying and reproduction is not reflected in the Parliamentarian's expenditure under the Printing Entitlement,⁸⁸ which became financially capped subsequent to that earlier audit. Nor is the specific expenditure on electorate office supplies, facilities and equipment the subject of public reporting.

2.78 In October 2008, ANAO raised with Finance the high degree of variability in Parliamentarians' use of office consumables and photocopy paper under the Office Requisites and Stationery Entitlement (see Figure 2.2). ANAO analysis as part of this audit showed very high usage of the entitlement by a relatively small number of Parliamentarians, with cases of individual Parliamentarians using significant quantities of photocopy paper over the course of the 2007-08 financial year.⁸⁹

⁸⁶ The colour laser printer and the photocopier are both provided under Item, 7 Part 1, Schedule 1 to the Parliamentary Entitlements Act but have different delivery mechanisms. The photocopier is provided by Finance as office equipment, and the colour laser printer is provided by another area of Finance as part of the standard information technology rollout. The November 2007 version of the Senators and Members Entitlements Handbook advises Parliamentarians that: 'Photocopiers may be adversely affected if they are frequently used for very high volume copying, which might otherwise be carried out by a printer. Instead of a standard photocopier, Senators and Members may choose to be provided with: a high-speed copy printer and collator; and a smaller, lower speed photocopier.'

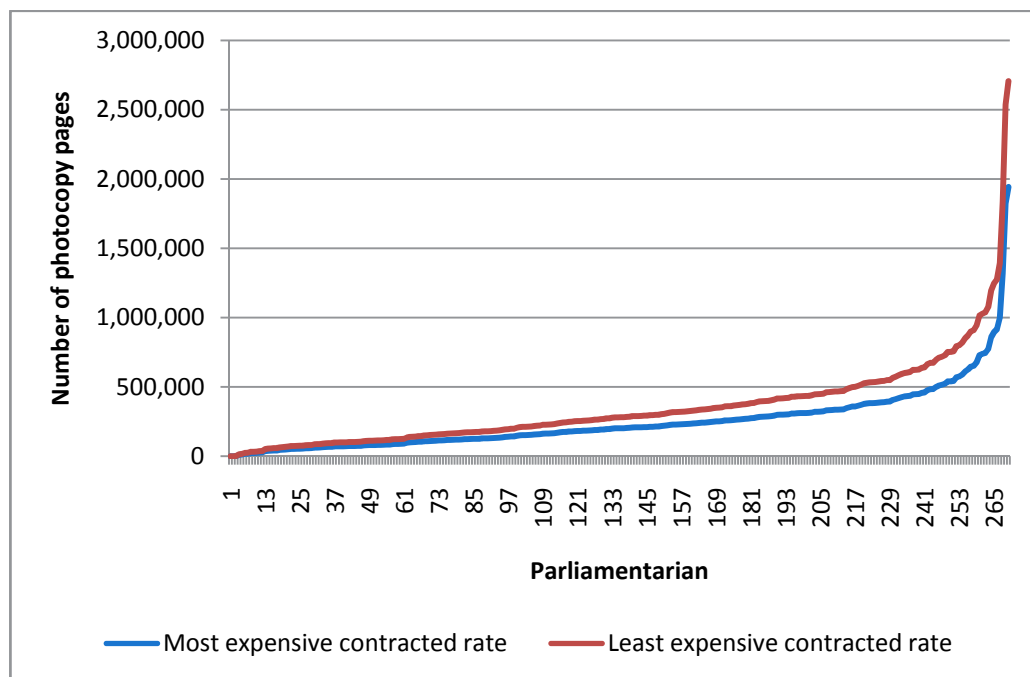
⁸⁷ The ability to use electorate office facilities to produce high quality printed material that may otherwise be charged to the capped Printing Entitlement was enhanced in July 2006 when the then SMOS approved (under Item 7, Part 1, Schedule 1 to the Parliamentary Entitlements Act) the addition of an integrated graphic design and image-editing program to the list of approved electorate office software.

⁸⁸ ANAO Audit Report No.5 2001-2002, op. cit., p. 217.

⁸⁹ Estimated volumes of photocopy paper use were calculated by ANAO by dividing the cost of photocopy paper usage reported in Parliamentarians' Management Reports during 2007-08 with contract prices for the provision of paper specified in a contract that commenced on 1 August 2007.

Figure 2.2

Estimated number of photocopy pages used per Parliamentarian: 2007-08



Source: ANAO analysis of Management Reports and Finance's supply contract.

2.79 The total reported cost in 2007-08 of office consumables, requisites, stationery and photocopy paper was \$6.1 million, a figure more than three times the \$1.87 million reported for the 1999-2000 year examined in ANAO's 2001-02 Audit Report.⁹⁰ Finance advised ANAO that:

The increase to costs incurred by Finance in relation to office consumables can be attributed to changes in technology and the equipment available to each office. Colour printers are now provided as part of the standard suite of machines for each Parliamentarian and together with the black and white printers, a photocopier and copy printer the cost of maintaining these devices has increased proportionally over the past 8 years.

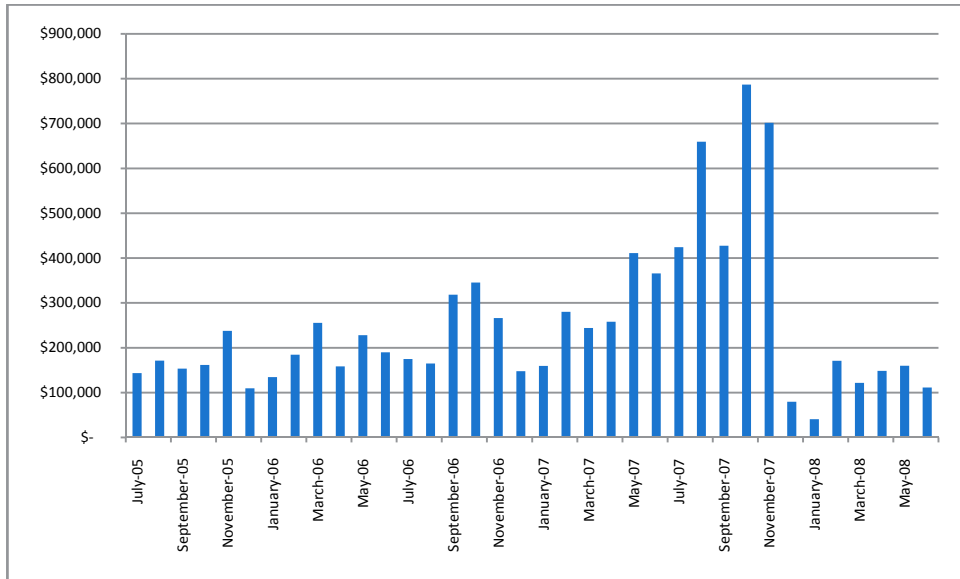
2.80 Whilst the annual cost of photocopy paper consumed by Parliamentarians had increased by 12 per cent since the 2001-02 Audit Report, the major cost increases were in the area of office consumables, requisites and stationery. As illustrated by Figure 2.3 in relation to office consumables, some

⁹⁰ ANAO Audit Report No.5 2001-02, op. cit., p. 217.

of the increased expenditure in 2007-08 compared to the previous two financial years is attributable to a significant increase in expenditure in the months leading up to the November 2007 Federal Election.

Figure 2.3

Office consumables total monthly expenditure: 2005-06 to 2007-08



Source: ANAO analysis of Management Reports provided to Parliamentarians.

2.81 In October 2008, Finance provided the then SMOS with options for the reform of the Printing Entitlement. This advice noted that:

- it was possible for Senators and Members to produce a range of printed material using their electorate office facilities that do not appear on the menu of acceptable printed material under the Printing Entitlement. For Senators, this circumstance is particularly significant as their annual Printing Entitlement was, at that time, capped at \$20 000⁹¹—the three Parliamentarians with the largest expenditure on photocopy paper in 2007-08 were Senators, with two of the three spending more than \$20 000 in 2007-08 on photocopy paper;
- there are no restrictions regarding the content or quantum of the printed material that Parliamentarians may produce using their office

⁹¹ This has now been reduced to \$16 667 per annum (see paragraph 2.8).

facilities, except that it be for Parliamentary, electorate or official business (but not commercial business); and

- the use made of office facilities entitlements by Parliamentarians is not publicly reported.

2.82 In agreeing that the Printing Entitlement should undergo significant reform, the then SMOS also agreed in April 2009 that Finance would consider capping the number of ink cartridges and/or reams of paper available to Parliamentarians under the electorate office facilities entitlement. Subsequently, in July 2009, the Government decided to introduce an indexed limit of \$35 000 per annum for all Senators and Members for the supply of office requisites and stationery for that office.

Communications Allowance and the Printing Entitlement

2.83 In addition to instances of more than one entitlement providing authority for expenditure of a particular nature, there are entitlements that are inter-related but the framework does not recognise this relationship. For example, the Printing Entitlement (provided under the Parliamentary Entitlements Regulations) and the Communications Allowance (provided under Remuneration Tribunal Determination 2006/18) are inter-related, with the former providing for the production of printed material, primarily for distribution to constituents, and the latter entitlement facilitating distribution of this material.

2.84 In March 2008, Finance advised the then SMOS that there are inconsistencies between the two entitlements in that the Printing Entitlement is limited to distribution to 'constituents' (a term defined in the Regulations for the purposes of Members' Printing Entitlement, but not that of Senators), whereas the Communications Allowance uses broader concepts of 'electoral division'. This meant that it may be possible for a Parliamentarian to use his or her entitlements to distribute a newsletter to residents affected by an electoral boundary redistribution, but not to print a newsletter for residents affected by a redistribution.

2.85 Another inconsistency between the two entitlements relates to the purpose for which each may be accessed. In relation to the Communications Allowance, Remuneration Tribunal Determination 2006/18 provides (at paragraph 10.4) that:

a Senator or Member shall be entitled to use commercial services for the distribution of letters, newsletters and parcels and electronic services (including establishment and maintenance of web sites) at Commonwealth expense in relation to Parliamentary or electorate (but not party) business.

2.86 By way of comparison, as noted at paragraph 2.50, long-standing convention has been to regard proper use of the Printing Entitlement as relating to Parliamentary and/or electorate business. However, the Parliamentary Entitlements Regulations and a SMOS determination made under the Regulations outline the types of items that may be printed by a Parliamentarian under the Printing Entitlement, but do not address whether the items are to relate solely to Parliamentary or electorate business, or whether party-political printing is permitted.

2.87 Maintaining an appropriate distinction between the costs that should be met from the respective entitlements is particularly problematic in circumstances where printing firms also provide mailing house services to distribute printed items, or where a mailing house is used to distribute items printed by a separate printing firm. ANAO's examination of the items produced under a sample of invoices paid in 2007-08 under the Printing Entitlement identified that, particularly in the lead up to the 2007 Federal Election, a number of Parliamentarians engaged mailing houses to produce and insert bulk addressed mail out letters, often enclosing campaign brochures also printed using the Printing Entitlement, and for the invoice from the mailing house to be submitted for payment from the Printing Entitlement. In those circumstances, it is evident that costs associated with the distribution of printed items have been, incorrectly, funded through the Printing Entitlement, rather the Parliamentarian's Communications Allowance. The potential for blurring between the two entitlements was recognised in Finance's pre-election letters which advised Parliamentarians that:

Members who arrange for newsletters to be printed and distributed by the same supplier (for example, a newspaper insert) are required to ensure that the invoice separately itemises the printing and distribution costs so that these may be properly attributed to the Printing and Communications Allowance entitlements respectively. If this is not possible, Members are required to provide an explanation at the time of submitting the invoice.

2.88 The nature of the material produced using the Printing Entitlement, and the use of the Communications Allowance to potentially distribute this material, is addressed in Chapter 5. On a related issue, ANAO analysis of invoices that have been paid under the Printing Entitlement, including those

relating to the provision of mailing house services, indicate that it is uncommon for them to separately itemise printing and distribution costs such that the necessary attribution is not occurring. In addition, on occasion printed items have been paid for under the Communications Allowance, along with the cost of distribution.

2.89 In April 2009, the then SMOS agreed to Finance bringing forward a further brief on options for reform of the Printing Entitlement incorporating a number of elements, including

- combining the Printing Entitlement and Communications Allowance into a single entitlement;
- reducing the combined total amount that is to be made available to Parliamentarians to print and distribute material;
- prohibiting the distribution of printed material by Parliamentarians outside of their electorates; and
- maintaining the prohibition on Parliamentarians printing or distributing printed material for commercial purposes.

2.90 On 30 June 2009, Finance provided the current SMOS with a further brief on options and implementation mechanisms for reform of the Printing Entitlement (see further at paragraphs 4.101 to 4.107) In July 2009, the Government made a number of decisions that finalised reforms considered by the then SMOS in April 2009⁹² (see paragraphs 46 and 4.108 to 4.109) in relation to:

- reducing the quantum of the Printing Entitlement by 25 per cent from current levels;
- combining the Printing Entitlement and the related Communications Allowance into a single entitlement; and
- requiring that material produced under the Printing Entitlement (except for personalised letterhead stationery) carry an acknowledgement in a specified font that: *This material has been produced at Australian Government expense by the relevant Senator or Member.*

⁹² In addition, the Government also decided in July 2009 to limit the Printing Entitlement to printing on paper, card up to 700 gsm weight and magnetised material (to allow for the printing of items such as magnetised calendars).

2.91 In addition to changes to the Printing Entitlement and Communications Allowance, and changes to the Newspapers and Periodicals Entitlement (see paragraph 2.73) and Office Requisites and Stationery Entitlement (see paragraph 2.82), the Government agreed to a 'root and branch' review of the entitlements framework.

Recommendation No.1

2.92 ANAO *recommends* that the Department of Finance and Deregulation, in progressing the Government decision to undertake a review of the entitlements framework, examine options that will:

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

Finance response

2.93 Agreed. These options have been included in the Terms of Reference for the review of the entitlements framework.

Supplier selection

2.94 The Commonwealth Procurement Guidelines (CPGs) establish the core procurement policy framework and articulate the Government's expectations for all departments and agencies subject to the FMA Act and their officials when performing duties in relation to procurement. Finance advised ANAO that procurement conducted by Parliamentarians in relation to the use of their entitlements is regulated by the statutory entitlements regime, rather than the CPGs. Nevertheless, Finance's Senators and Members Entitlements Handbook suggests that it is in the Senator's or Member's interest to satisfy him or herself that their use of entitlements is publicly defensible and advises Senators and Members that, in deciding whether or not to access taxpayer-funded entitlements, it would be advisable to adopt a risk-assessment approach, as outlined in Table 2.2.

Table 2.2

Risk assessment approach as advised to Parliamentarians by Finance since 2004

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: Senators and Members Entitlements Handbook, November 2007, p. 8.

2.95 Finance and departmental officials are required to comply with the FMA Act framework when entering into contractual relationships on behalf of the department, including where the supplies or services being procured relate to Parliamentarians. Consistent with the requirements of the FMA Act framework, Finance’s use of centralised contracts for certain supplies can encourage effective, efficient and ethical use of Commonwealth resources. Such arrangements are used in relation to many services and supplies procured in relation to Parliamentarians, such as air travel, stationary supplies, recruitment advertising and flags for presentation to constituents.

2.96 However, for many other entitlements, Senators and Members are able to select their own supplier. For three entitlements, the Senators and Members Entitlements Handbook indicates that the supplier selection process should be undertaken in accordance with Commonwealth procurement policies and guidelines. In particular:

- electorate office furniture and fittings are selected in consultation with Senators and Members, and arranged by Finance, with the Handbook stating that the furniture will be supplied in accordance with government procurement policies and guidelines;
- when an item of electorate office equipment is due for replacement, the Handbook advises that Senators and Members are asked to choose from a range of equipment available in accordance with the CPGs; and
- for the Printing Entitlement, the Handbook states:
A Senator or Member requiring items covered by the printing entitlement must ensure that the selection of the supplier (or printer) has been made in accordance with Australian Government procurement policies and guidelines

(selection was based on value for money, open and effective competition, ethics and fair dealing, accountability and reporting, national competitiveness and industry development and support for other Australian Government policies).

2.97 For other entitlements that involve Senators and Members selecting a supplier, the Handbook does not provide any guidance about the extent to which procurement is to be undertaken in accordance with Commonwealth procurement policies and guidelines. For example, Senators (except those from the ACT) and Members representing electorates of 10 000 square kilometres or more are entitled to use charter transport within and for the service of their electorate. The Handbook advises that family members or staff cannot provide accredited driver services under this entitlement, but otherwise is silent on the procurement processes that are to be employed, other than noting that:

The travel service provider can make bookings for charter transport, including car hire. Alternatively, arrangements can be made directly with a charter transport provider. If making arrangements directly, the account should be sent by the charter transport provider to the Senator or Member's electorate office and attached to the Charter Certification form (Form 37).

2.98 At the time of the 2001-02 Audit Report, in accessing their Printing Entitlement Parliamentarians were:

- requested to certify that the selection of the supplier or printer had been made in accordance with Commonwealth procurement policies and guidelines (that is, selection was based on value for money, open and effective competition, ethics and fair dealing, accountability and reporting, national competitiveness and industry development and support for other Commonwealth policies); and
- advised in the 1998 version of the Senators and Members Entitlements Handbook that written records including details of quotes should be retained.

2.99 However, at the time of this current audit, the framework applying to the selection of suppliers was such that none of the transaction specific certifications asked that the issue of supplier selection be addressed, and there was no guidance in the current version of the Handbook suggesting the retention of any quotes where Parliamentarians are selecting suppliers. Neither did the requested certifications of Monthly Management Reports or the End of Financial Year Management Report address the procurement processes employed by Parliamentarians when selecting suppliers.

2.100 One reason⁹³ that some aspects of the provision of printing services to Parliamentarians was transferred from the Chamber Departments to Finance was that it enabled Senators and Members to direct business towards their local printer.⁹⁴ However, ANAO analysis of the Monthly and End of Financial Year Management Reports for 2007-08 revealed that:

- while 499 printers were used during 2007-08, six printers (1.2 per cent of the total number of printers) undertook more than 21.5 per cent of the work (in terms of value);
- these six printers undertook work for a total of 157 Parliamentarians. There were 41 Parliamentarians who used one of these six printers notwithstanding that the printer was located in a different State or Territory to the Parliamentarian;⁹⁵ and
- each of the six printers undertook work for either the Liberal Party or the ALP, but not both.⁹⁶

2.101 The above analysis related to the use of the Printing Entitlement by Parliamentarians in all States in 2007-08. The six printers identified as representing more than 21.5 per cent of total use of the entitlement, in terms of value, were each located in Sydney, Melbourne or Brisbane, as follows

- three firms were located in Sydney:
 - one involving transactions for 19 Liberal Parliamentarians in New South Wales;

⁹³ In August 2009, Finance commented to ANAO that another reason for the transfer was to provide Members with the capacity to deal directly with printers and not have officials vet the contents of proposed printed material.

⁹⁴ ANAO's 2001-02 Audit Report had recommended that Finance undertake systematic periodic reviews of Members' processes for the selection of printers and value for money assessments (ANAO Audit Report No.5 2001-02, op. cit., p. 204).

⁹⁵ For example, one Parliamentarian whose electorate is in North Queensland used a printer in the western suburbs of Sydney, more than two thousand kilometres from the Parliamentarian's electorate office.

⁹⁶ Returns submitted to the AEC by the two major political parties for the 2007-08 financial year disclosed that five of the top six printers made donations above the disclosure threshold to the political party of Parliamentarians for which it had undertaken printing work during 2007-08. Between 1998-99 and 2007-08, donations made by these five printers to the Liberal Party or the ALP, as relevant, totalled \$306 515. The AEC advised ANAO that the donation figures: 'need to take into account the then disclosure thresholds that came in 2006. That meant that donors could split donations of up to the threshold between the different registered branches of political parties without having to disclose and that the branches would also not have to disclose unless the disclosure threshold was reached. Accordingly, for the 2006-07 and subsequent financial years the amounts disclosed on the returns published by the AEC may not catch all donations made by the printers to the political parties and endorsed candidates.'

- one involving transactions for 29 Liberal Parliamentarians in New South Wales (15) and Queensland (14); and
- one involving transactions for 19 New South Wales Labor Parliamentarians;
- two firms were located in Melbourne:
 - one involving transactions for 32 Liberal Parliamentarians in Victoria (22) and Queensland (10); and
 - one involving transactions for 40 Labor Parliamentarians in Victoria (23), New South Wales (5), Queensland (4), Western Australia (4), South Australia (2), Tasmania (1) and Northern Territory (1); and
- one firm was located in Brisbane—involving transactions for 19 Liberal Parliamentarians in Queensland.

2.102 Of the total number of 2007-08 transactions with each printer reported in the Management Reports across all States, the following proportions occurred in the election campaign period of October and November 2007:⁹⁷

- printer 1—91 per cent;
- printer 2—90.5 per cent;
- printer 3—79 per cent;
- printer 4—65 per cent;
- printer 5—24 per cent (29 per cent of transactions for Parliamentarians in Parliament prior to the 2007 election); and
- printer 6—20 per cent (25 per cent of transactions for Parliamentarians in Parliament prior to the 2007 election).

2.103 While recognising that the CPGs are not applied to Parliamentarians, this situation does not sit comfortably with the principle of ‘non-discrimination’ generally applied to public sector procurement. This principle is outlined in the CPGs as follows:

⁹⁷ This analysis is based on the date of transaction identified in the relevant Parliamentarians’ Management Reports.

All potential suppliers should have the same opportunities to compete for government business and must, subject to these CPGs, be treated equitably based on their legal, commercial, technical and financial abilities. Procurement methods must not discriminate against potential suppliers due to their degree of foreign affiliation or ownership, location or size. The property or services on offer must be considered on the basis of their suitability for their intended purpose and not on the basis of their origin.⁹⁸

2.104 ANAO analysis of a sample of material produced for a sample of Parliamentarians under the Printing Entitlement in three States revealed instances where the choice of printer was made, not by the Parliamentarian or his or her employee, but by the political party to which the Parliamentarian belonged. For example, on 28 September 2007, the Assistant General Secretary of the relevant State Branch of the ALP wrote to three printers in the ANAO sample in the following terms:

I confirm that the [*State Branch of the*] ALP wishes to engage [*name of printer*] to print How To Votes for the forthcoming Federal Election. We intend to allocate your company the following work:

[List of candidates removed]

All other details of the job remain as outlined in our correspondence of 6 September 2007. I will contact you as soon as the election date is announced, to confirm the date for the supply of artwork to you.

2.105 The party advised the printers that they should separately invoice the 15 Members of Parliament included in the electorates allocated to the printers for their 'how to vote' cards; separately invoice one of the non-incumbent candidates; and invoice the ALP Branch for the cost of the How To Vote cards relating to the remaining 23 non-incumbent candidates allocated to those printers. In total, 2.085 million 'how to vote' cards were ordered for the 15 incumbent Members, of which the party had directed 1.975 million were to be invoiced to the Members (for payment from their Printing Entitlement).⁹⁹

⁹⁸ Department of Finance and Deregulation, *Commonwealth Procurement Guidelines*, Financial Management Guidance No. 1, 2008, p. 11.

⁹⁹ The printer was advised to directly invoice a further Member for the cost of printing 110 000 How to Vote cards for that Member. In that case, the Member paid the invoice directly from his own campaign account, rather than claiming the expenditure under his Printing Entitlement.

2.106 In relation to the example above in ANAO's sample:

- the Management Reports prepared by Finance did not capture the full extent of the use of the Printing Entitlement to produce the 'how to vote' cards ordered by the party State Branch in relation to the 15 incumbent Members. Specifically, the Management Reports did not include the quantity printed for a number of the Members such that they reported a total of 1.425 million 'how to vote' cards as being printed in relation to the 15 Members (under-reporting by 28 per cent the number of items ordered); and
- the Management Reports recorded that nine of the Members had used their Printing Entitlement to produce 'how to vote' cards, but that the other six had produced 'other voting information', notwithstanding that the printed items were all 'how to vote' cards. While the printing of 'how to vote' cards was approved as a component of the approval to print 'other voting information', this example illustrates the inconsistent approach Finance has adopted to recording and reporting data for reporting on the use of that entitlement.

2.107 In addition, there is evidence that the invoices provided to Finance by Parliamentarians did not accurately reflect entitlements use. In July 2009, the Government decided that Finance should establish a non-exclusive panel of printing providers for use by Senators and Members. This should significantly tighten the arrangements for this entitlement and provide greater assurance that value for money will be obtained from the expenditure of public funds. There is 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).

Recommendation No.2

2.108 ANAO *recommends* that the Department of Finance and Deregulation develop options for Government consideration to improve the control framework applying to situations where Parliamentarians and/or their employees are making procurement decisions.

Finance response

2.109 Agreed. Finance currently has in place a number of co-ordinated procurement arrangements for parliamentary entitlements for example travel,

office accommodation and facilities management and office requisite supplies. Finance will establish a non-exclusive panel arrangement for printing services. We will also continue to pursue procurement arrangements that will help to ensure that value is secured for the public monies being spent on specific parliamentary entitlements, for example charter.

3. Finance’s administrative control structure

This chapter examines the key elements of Finance’s control structure for Parliamentarians’ entitlements.

Introduction

3.1 The core requirement of a sound administrative and accountability framework for Parliamentarians’ entitlements is that it provides assurance that public funds are only used within the terms of the relevant entitlements. On the one hand, it is incumbent on Parliamentarians to ensure that any benefit claimed is within the terms of the relevant entitlement.¹⁰⁰ In addition, Finance is obligated to ensure that the amounts paid to, and on behalf of, Parliamentarians are properly payable under the relevant entitlement.

3.2 To meet its responsibilities, Finance has developed a control structure aimed at promoting accountability in the use of Parliamentarians’ entitlements, and adherence to the existing entitlements framework. The key components of this control structure are:

- providing Parliamentarians with guidance on their entitlements (through the issuing of various handbooks and circulars, the availability of Entitlements Managers and a help desk function)¹⁰¹;
- use of an entitlements management system for processing of payments;
- reporting on entitlements use:
 - to Parliamentarians via monthly and End of Financial Year Management Reports. These reports provide Parliamentarians with information about expenditure relating to the current financial year under their entitlements, either directly by the Parliamentarian or by or in relation to his or her staff; and
 - publicly, in relation to some aspects of entitlements use;

¹⁰⁰ Senators and Members Entitlements Handbook, Department of Finance and Administration, November 2001, p. 99.

¹⁰¹ In July 2009, the Government decided that Finance should establish an entitlements advisory function to provide written advice to Senators and Members on entitlements matters.

- various certifications requested of Parliamentarians concerning their use of certain entitlements as expenditure is incurred, together with requested certifications of monthly and End of Financial Year Management Reports;
- pre- and post-payment checking of the use of some entitlements; and
- a protocol for responding to allegations of entitlements misuse.

Entitlement handbooks and circulars

3.3 As part of its role, Finance issues various handbooks and circulars that provide Parliamentarians and their employees with information and related administrative procedures and requirements regarding their entitlements, including staff arrangements. The full suite of nine handbooks are:

- Senators and Members Entitlements;
- Ministers of State Entitlements;
- Parliamentary Secretaries Entitlements;
- Opposition Office Holders' Entitlements;
- Shadow Ministers' Entitlements;
- Whips' Entitlements;
- Leader of a Minority Party Entitlements;
- Senators and Members—How to Get Started; and
- a 'pocket' guide cross referenced as necessary to other handbooks.

3.4 The handbooks are intended by Finance to be a guide to the entitlements of Senators and Members. However, they are not authoritative, with Finance previously advising ANAO that they are:

Guidelines to the use of entitlements issued by the Department. They are provided to the Special Minister of State to note, not approve.¹⁰²

3.5 Consistent with this advisory nature, the Senators and Members Entitlements Handbook cautions users that:

¹⁰² ANAO Audit Report No.15 2003-04, op. cit., p. 99.

The information contained in this handbook is provided for general information only. It remains the responsibility of Senators and Members to familiarise themselves with the entitlements provided to them under legislation, Determinations of the Remuneration Tribunal and as otherwise provided by Government. Where you are unsure of an entitlement, please contact your Entitlements Manager before taking any action or decision on the basis of any material contained in this publication alone.

3.6 Accordingly, the handbooks emphasise that, while Finance can provide advice and assistance, it remains the responsibility of the Senator or Member to satisfy him or herself that their use of entitlements is lawful and publicly defensible. In March 2009, Finance advised the then SMOS that:

Perceived deficiencies in [*Finance's*] advisory function, in our view, reflect the complex and often ambiguous entitlements framework, not a lack of competence on the part of Ministerial and Parliamentary Services¹⁰³ or any [*lack of*] willingness to provide definitive advice if that were possible in the circumstances.

3.7 Other factors cited by Finance as contributing to its advice to Parliamentarians on entitlements use being qualified were concerns about whether all necessary information is being provided by the Parliamentarian when seeking Finance's advice and the importance of each Parliamentarian being individually accountable for his or her use of entitlements.

3.8 Finance reissues the handbooks in hard copy after each election. In addition, Finance has a site on the Parliament House intranet to provide Senators and Members with electronic access to important information about facilities and entitlements, including an electronic version of the Senators and Members Entitlements Handbook. The evidence available to ANAO was that Finance's performance in providing timely and appropriate updates to the Handbook has been variable. In April 2009, Finance advised ANAO that:

Updated hard copies of the handbooks were issued immediately after each general election. The electronic versions of the handbook are now updated more frequently. Ministerial and Parliamentary Services does not have the resources to update the handbooks each time a circular is issued. However, Ministerial and Parliamentary Services has developed a new protocol for

¹⁰³ Ministerial and Parliamentary Services is the division within Finance responsible for administering Parliamentarians' entitlements.

replacement pages for the electronic version of the handbook. This will provide timing and content visibility for future updates.

3.9 The handbooks are not publicly available. However, section 9 of the *Freedom of Information Act 1982* requires agencies to issue statements that certain documents are available for inspection and purchase by the general public. Section 9 relevantly states:

(1) This section applies, in respect of an agency, to documents that are provided by the agency for the use of, or are used by, the agency or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the agency, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to which persons are or may be entitled or subject, being:

- (a) manuals or other documents containing interpretations, rules, guidelines, practices or precedents including, but without limiting the generality of the foregoing, precedents in the nature of letters of advice providing information to bodies or persons outside the Commonwealth administration;

...

3.10 In addition to the handbooks, circulars are issued to Parliamentarians and their staff on a range of issues relating to Parliamentary entitlements such as:

- Remuneration Tribunal Determinations providing changed and new entitlements and affecting rates of various entitlements (such as Travelling Allowance);
- amendments to other legislation affecting entitlements (such as the Parliamentary Entitlements Regulations);
- changes and additional entitlements decided by executive authority;
- training opportunities for persons employed under the MOP(S) Act; and
- general changes to administrative arrangements.

3.11 Circulars may be Ministerial (for more significant issues or changes) or departmental. Table 3.1 shows the number of circulars of each type issued during 2006, 2007, 2008 and 2009 (to August). Where circulars related to changes in Remuneration Tribunal Determinations (such as changes to

payment rates), they were issued promptly after the relevant Determination was made.

Table 3.1

Ministerial and Departmental circulars issued 2006 to 2009 (to August)

Year	Circular type		Total
	Ministerial	Departmental	
2006	46	45	91
2007	32	54	86
2008	23	28	51
2009 (to August)	18	39	59

Source: ANAO analysis of Department of Finance and Deregulation records and advice to ANAO from Finance (for 2009).

3.12 In July 2009, the Government decided that Finance should publish, online, details of the entitlements framework. This includes Ministerial instruments and circulars, and the suite of entitlements handbooks (after the handbooks have undergone an enhanced due diligence process).

Entitlements management system

3.13 Finance uses an Entitlements Management System to assist with administering entitlements. The Entitlements Management System interfaces to both the Human Resources Management Information System and also the Financial Management Information System, initially to identify entitled individuals and then to stream payments or recovery items to entitlees.

3.14 The Entitlements Management System is a hierarchical-based system that profiles each entitlee to a unique set of entitlements based on the position held by the individual (for example, a Cabinet Minister, a backbencher, a personal employee based on their seniority level) and the source of entitlement. Finance therefore has various control mechanisms built into the Entitlements Management System that are directed at ensuring that entitlements are processed against the correct individual and are then able to be accurately reported.

3.15 Additionally, some claims processed in the Entitlements Management System undergo a series of checks prior to being processed. These can be a combination of both manual checking by Finance staff and an automated regime set within the system dependent on the nature of the entitlement

claimed and the module the claim is to be processed in. The Entitlements Management System also has the capability to ensure budget-limited entitlements for individual entitlees are not exceeded, and to generate reports with detailed information and warnings on expenditure that is close to any limit as set by entitlement.

3.16 Efforts to introduce greater automation to entitlements processing and reporting have not proven successful, due in part to the high cost of developing Information Technology systems for a complex entitlements framework. Most recently, Finance commissioned a firm of consultants in May 2002 to review its business processes and make recommendations on the most appropriate methodology that could be used to substantially improve processes. A Business Improvement Program to be conducted over three years at a cost of \$12.5 million was planned. Some work was completed (at a cost of \$8 million) and a contract was entered into for the development and support of a new Parliamentary Entitlements Management System (at a cost of \$6.7 million). However, this project was later suspended due to increases in the estimated cost to complete (which would have brought the estimated cost of the entire Business Improvement Program to \$34.7 million, later increased to \$46.2 million). Finance advised that further work on the project will only be undertaken if additional funding is provided.

Reporting on the use of entitlements

Management Reports

3.17 As outlined in the 2001-02 Audit Report, an important element of Finance's administrative framework is the provision of management reports to all Parliamentarians and former Prime Ministers. The management report framework comprises:

- a Monthly Management Report that reports the cost of entitlements use for the relevant financial year that was paid by Finance in that month (which is not necessarily the month in which the expenditure was incurred).¹⁰⁴ The reports include a summary of expenditure in that

¹⁰⁴ Any amounts paid in a particular month that relate to expenditure incurred in the previous entitlement financial year are not reported in that Monthly Management Report, but are included in the relevant Parliamentarian's End of Financial Year Management Report for the preceding financial year, to the extent the expenditure is paid prior to the issuing of the End of Financial Year Management Report.

month against various entitlements, year to date expenditure totals and individual transaction details for costs paid in the month. The Monthly Management Reports are provided, electronically, to Senators and Members to allow them to monitor their use of entitlements throughout the financial year, including in relation to entitlements that have an annual financial cap or budget attached to them. The Senators and Members Entitlements Handbook advises Parliamentarians that checking the accuracy of each monthly report as it is received, and advising Finance immediately of any entries requiring amendment, will help ensure that all use of entitlements is fully accountable; and

- an End of Financial Year Management Report which aggregates the entitlement usage reported in the Monthly Management Reports, together with any additional payments made in respect of the previous financial year's entitlements between the end of the financial year and the issuing of the report. The End of Financial Year Management Reports are typically produced in September or October. This delay allows for any transactions which occurred at the very end of the previous financial year to be processed so that the report is complete and provides the Parliamentarian with a statement of expenditure for the whole financial year.

3.18 There has been a substantial improvement in the quality of the Monthly and End of Financial Year Management Reports since the 2001-02 Audit Report. In particular, between July 2001 and August 2003, Finance improved the content and presentation of the reports. The most significant improvements advised to ANAO by Finance have been:

- the division of reported expenditure into Part A and Part B in order to make it easier for Parliamentarians to identify their own expenditure. Part A reports expenditure that a Senator or Member or family member incurs personally or expenditure of which he or she could be expected to have knowledge. Part B reports expenditure incurred by or in relation to the Parliamentarian's staff and general electorate office, and for office-holders other office costs, much of which is met directly by Finance;
- the inclusion of reporting against the annual budgets applying to the charter travel entitlement, electorate staff travel and the Printing Entitlement;

- the inclusion of Senator or Member contribution data for private plated vehicles;
- the expansion of the Parliamentary Travelling Allowance section to include the number of nights claimed and the relevant clause of the entitlement being relied upon;
- expansion of the content to include overseas travel costs for Ministers, Parliamentary Delegations and usage of the Overseas Study Travel entitlement;
- the inclusion of all office administration costs such as purchase of equipment, machine repair costs, signage and post office box rental;
- the inclusion of a 'Helpful Hints' page to assist Senators, Members and their staff in reading the information provided in the report;
- the provision of entitlements management reports to former Prime Ministers; and
- the inclusion of approximated airline loyalty points for all travellers.

Public disclosure of entitlements expenditure

3.19 Prior to 1984, there was no public disclosure of individual Parliamentarians' use of entitlements. Since then, there has been an increase in the scope of public reporting, as follows:

- in 1984, the then government commenced releasing details of the travel expenses of Ministers, Parliamentary Secretaries, the Leader and Deputy Leader of the Opposition and the Leaders of minority parties and their staff;
- in June 1997, the then Minister for Administrative Services announced that details of Parliamentarians' air and car transport costs and Travelling Allowance payments would be tabled in the Parliament every six months¹⁰⁵;
- in September 2001, as part of the then government's response to the 2001-02 Audit Report, the then Prime Minister announced that details of

¹⁰⁵ The introduction of public reporting followed a series of inquiries into allegations of misuse of travel entitlements by some Parliamentarians.

travel expenditure relating to former Parliamentarians (including Life Gold Pass Holders) would also be tabled every six months;

- in May 2004, the then SMOS announced that reports prepared by Parliamentarians after Overseas Study Trips would be published every six months;
- in December 2008, the first MOP(S) Act Annual Report was tabled (in respect of 2007-08);
- in June 2009, the inclusion of approximated airline loyalty points in the bi-annual tabled documents; and
- in June 2009, the publication online of the bi-annual tabled documents, with Finance advising ANAO that historical documents are to be published progressively (see further at paragraphs 3.29 to 3.31).

3.20 In 2007-08, Finance undertook an internal audit of the process of preparing reports on the travel expenditure of past and present Parliamentarians for tabling in the Parliament. The report of the internal audit noted that:

Due to the level of public scrutiny to which these reports are subjected there is a need to ensure the accuracy of the supporting data. Due to the absence of direct reporting capabilities from the Entitlements Management System, in which the majority of the travel expenditure data is stored, the production and checking of tabling data is a significantly manual, time consuming and resource intensive process.

3.21 The internal audit concluded that the manually intensive process used was, nevertheless, effective and well controlled, and that there was a history of ensuring that the tabled data was:

- an accurate and true representation of travel expenditure; and
- tabled within the required timeframe.

3.22 Improvement opportunities were identified, primarily in relation to the efficiency of the tabling process (see paragraph 3.16 in relation to Finance's attempt to develop a new Entitlements Management System).

Extent of public reporting

3.23 The 2001-02 Audit Report stated:

Public reporting of the cost of Parliamentarians entitlements is an important element in the accountability framework. Accordingly, ANAO considers the

total cost of all categories of entitlements should be publicly reported for all current and former Parliamentarians.¹⁰⁶ [*Emphasis as per original*]

3.24 However, to date, public reporting has remained limited to travel costs. There is no public reporting of the use and cost of other entitlements. In October 2008, Finance advised the then SMOS that:

In 2007-08, public funding in excess of \$300 million was expended on Parliamentary entitlements for Senators, Members, former Parliamentarians, family members and employees. Of this, less than \$29 million in travel costs, below 10 per cent of the total expenditure, was tabled in the Parliament.

3.25 By way of comparison, in the four overseas jurisdictions examined by ANAO, three had instituted public reporting frameworks that provide information on expenditure incurred in relation to Parliamentarians that is considerably more comprehensive than that currently reported in relation to Australian Federal Parliamentarians.

3.26 In that context, there is considerable scope to increase the level of public reporting of entitlements use by Parliamentarians in the Australian Federal Parliament. In this respect, ANAO noted that the ALP's National Platform and Constitution, released prior to the 2007 Federal Election, included an aspirational¹⁰⁷ statement that:

In order to enhance the accountability of Parliamentarians for their expenditure of allowances, Labor will table details of expenditure of travel and other allowances annually.¹⁰⁸

3.27 In October 2008, Finance prepared advice for the Government on enhanced transparency of entitlements use through:

- increased reporting and tabling of expenditure; and
- the publication of details of outstanding certifications of Monthly Management Reports, together with details of certifications made subject to qualifications.

¹⁰⁶ ANAO Audit Report No.5 2001-02, op. cit., p. 126.

¹⁰⁷ See Finance advice to ANAO at paragraph 2.8.

¹⁰⁸ Australian Labor Party, *National Platform and Constitution 2007*, Chapter 11, paragraph 43.

3.28 The then SMOS supported Finance's proposals to enhance the transparency of entitlements use, subject to additional funding being available for this purpose.

Accessibility of public reporting

3.29 Although the travel cost reports are tabled in the Parliament and are classified as Parliamentary Papers,¹⁰⁹ at the time of audit fieldwork they were not made available online either on Finance's website or that of the Parliament. This was notwithstanding that, since April 2000, it has been government policy that 'public accountability-type documents' must be made available online.¹¹⁰ All Australian Government agencies are required to comply with mandatory Online Content Requirements released by the Australian Government Information Management Office which state:

For organisational websites, the following public accountability information must be made available:

...

new non-commercial agency publications, including reports submitted to Parliament, released in print or other formats.¹¹¹

3.30 In the absence of the availability of online copies of the tabled travel reports, any party seeking access to them must do so through the Parliamentary Table office or a state, university or Parliamentary library. The effectiveness of the tabled reports as an accountability mechanism is diminished by the lack of ready public access to them.¹¹² Finance advised ANAO in April 2009 that it had sought additional resources to publish the tabled reports on its website but funding was not approved by the Government. Nevertheless, ANAO considered that there would be benefit in Finance examining the scope to publish the tabled reports online, with the costs being met from within the department's existing resource base.

¹⁰⁹ The Parliamentary Papers Series (PPS) comprises documents which have been tabled which are of a 'substantial nature', see <<http://www.aph.gov.au/House/committee/publ/PPS.htm>> [accessed 27 May 2009].

¹¹⁰ Australian Government Information Management Office, *Government Online: the Commonwealth Government's Strategy*, April 2000, p. 25.

¹¹¹ <<http://webpublishing.agimo.gov.au/>> [accessed 10 March 2009].

¹¹² ANAO Audit Report No. 37 2008-09, *Online Availability of Government Entities' Documents Tabled in the Australian Parliament*, Canberra, 25 May 2009 included the finding that at least 10 per cent of the tabled papers examined in any one year between 2000 and 2008 were not available online.

3.31 Against this background, in July 2009, the Government decided that it would expand the current reporting regime to table, and publish on the Finance internet site, all expenditure administered by Finance on Senators, Members, former Parliamentarians, family members (including surviving spouses and de facto partners) and employees. In August 2009, Finance commented to ANAO that:

Since 25 June 2009, the tabled reports are now made available online and historic data is also being progressively published online. As part of its package of reforms to entitlements, the Government in July 2009 decided to table and publish all entitlements expenditure.

Certifications

3.32 The Senators and Members Entitlements Handbook states that, in administering the various entitlements available to Parliamentarians, Finance frequently relies on a certification by the relevant Senator or Member that use is within entitlement.¹¹³ The Handbook further states that, as well as promoting accountability by Senators and Members, certification is an important process by which Finance seeks to comply with its obligations under the FMA Act.¹¹⁴

3.33 There are a small number of entitlements where certifications are requested to be provided in respect of individual transactions prior to Finance processing the relevant claim. However, the majority of transactions relating to the use of a Parliamentarian's entitlements are not required to be certified by the Senator or Member unless and until they appear in a Monthly Management Report. In this respect, the notes included in the request for certification set out in each Monthly Management Report provided to Parliamentarians state that:

Where you have certified use of an entitlement at a transactional level, you or an authorised person will not be required to certify it again in this Monthly Management Report.

¹¹³ See, for example, page 8 of the November 2007 version of the Senators and Members Entitlements Handbook.

¹¹⁴ *ibid.*, p. 9.

Transaction and entitlement specific certifications

3.34 At the time of the 2001-02 Audit Report, there were seven entitlements in respect of which Finance requested that Senators and Members provide a certification that the expenditure incurred under a specific transaction was within entitlement, either prior to payment being made, or in order for Finance to process reimbursement of the cost of entitlements use. The 2001-02 Audit Report noted that the transaction certifications in place at that time did not cover the full range of Parliamentarians' entitlements.¹¹⁵ As illustrated by Table 3.2, at the time of this current audit, there remained relatively few entitlements where certifications were sought in relation to individual transactions, as opposed to the global certification sought through the Monthly Management Report process.

3.35 Table 3.2 outlines that six transaction-specific certifications are required prior to Finance making payments. As a result, there is little likelihood that the certification will not be provided. As outlined further below, the majority of Parliamentarians' entitlements are not subject to transaction-specific certifications but, instead, the use made of funds for those entitlements is to be certified through the management report certification processes. Whilst Parliamentarians are requested to certify the use of entitlements reflected in their management reports, these reports are (of necessity) provided after payments have been made and Parliamentarians are not required to respond to a request that they provide the requested certification.

¹¹⁵ ANAO Audit Report No.5 2001-02, op. cit., p. 120.

Table 3.2

Transaction-specific certification requirements: 1999-2000 and 2007-2008

Entitlement	2001-02 Audit Finding	Current Audit Finding
Scheduled travel	Post-payment: Travel Declaration Forms were required to be submitted for each occasion on which travel occurred at Commonwealth expense, even if Travelling Allowance was not claimed.	Certification no longer required.
Travelling Allowance	Pre-payment.	Pre-payment.
Private Vehicle Allowance	Pre-payment.	Pre-payment.
Charter	Pre-payment.	Pre-payment.
Overseas Study Travel – Reimbursement of Expenses	No requirement.	Pre-payment.
Communications Allowance	Pre-payment.	Pre-payment: a new form to give effect to this certification was released in January 2009.
Printing Entitlement	Pre-payment.	Pre-payment: Parliamentarians no longer requested to certify that the printer was selected through a process that accords with Commonwealth procurement policies and guidelines.
Photographic services	Pre-payment.	Not applicable. ¹
<p>Note 1: In April 2009, Finance advised ANAO that: ‘since 1 July 2003, Finance has funded Senators’ and Members’ standard photographic entitlement through an annual retainer paid to AUSPIC and it has not been necessary to account for or invoice Senators and Members for individual services provided under the entitlement. AUSPIC is able to provide Senators and Members with other services in addition to the entitlement and these are invoiced directly to the Parliamentarian concerned. Being provided and funded outside the entitlements framework, no certification is necessary for these services.</p>		

Source: ANAO Audit Report No.5 2001-02, p. 24 and ANAO analysis of Finance records.

3.36 Table 3.2 outlines that there has been one instance where an additional transaction-level certification has been introduced since the 2001-02 Audit Report (relating to expenses incurred as part of the Overseas Study Travel Entitlement).

Voluntary nature of certifications

3.37 The Senators and Members Entitlements Handbook notes that certification arrangements were introduced as it is often not possible or desirable for departmental officers to make the sort of independent inquiries that would be needed to make an objective assessment about entitlements use. In respect to this reliance on certifications, the 2001-02 Audit Report noted, particularly in relation to travel entitlements, that most of the payment certifications requested of Parliamentarians were voluntary. The 2001-02 Audit Report concluded that, as the certification requirements are policy requirements only and are not laid down in the relevant legislation or Remuneration Tribunal Determinations, they are not an enforceable control governing the provision of entitlements to Parliamentarians.¹¹⁶ In April 2009, Finance advised ANAO that:

There is no authority for the SMOS to make procedural rules which increase the use of payment certifications. There is also no regulation which would enable the SMOS to compel this.

An amendment to the Parliamentary entitlements legislation and/or Remuneration Tribunal determinations would be required to provide the SMOS with this power.

Management Report certifications

3.38 As outlined at paragraph 3.17, Parliamentarians and former Prime Ministers receive 13 Management Reports each year: one for each month and one End of Financial Year Management Report. Apart from certifying that payments for Cabcharge used by staff¹¹⁷ were in accordance with the provisions establishing the entitlement, no certification is sought from former Prime Ministers. In this latter respect, Finance advised ANAO in April 2009 that:

Since the retirement of Sir Robert Menzies in 1966, successive governments have provided former Prime Ministers with a range of facilities in recognition

¹¹⁶ ANAO Audit Report No.5 2001-02, op. cit., p. 23. In 2002, Finance recommended to the then SMOS that the Remuneration Tribunal be asked to consider strengthening the legal basis for certifications. However, the then SMOS declined the recommendation and no request was made to the Tribunal in this respect.

¹¹⁷ In April 2009, Finance advised ANAO that the Cabcharge certification in the former Prime Ministers' Monthly Management Reports relates to use by their staff only and was initiated following an internal audit review of Cabcharge processing.

of the service that they have given to the nation. These entitlements are provided by the Prime Minister of the day and no purpose is specified. Finance could not therefore sensibly seek a certification that use had been within entitlement.

3.39 The Management Reports provided to current Parliamentarians state that:

Certification is an important process by which Ministerial and Parliamentary Services is able to comply with its obligations under the *Financial Management and Accountability Act 1997*. The certification process is also an integral part of the accountability framework that serves to protect you from unwarranted criticism regarding your use of entitlements.

3.40 As noted at paragraph 3.32, similar wording is included in the Senators and Members Entitlements Handbook.

3.41 At the time of the 2001-02 Audit Report, Parliamentarians were being requested to certify their End of Financial Year Management Report, but not their Monthly Management Reports. Accordingly, in the 2001-02 Audit Report, ANAO concluded that:

The reliance that can be placed upon the aggregate certification [*in Management Reports*] as a key control and accountability tool in respect of each transaction is diminished given its remoteness from the point at which the expenditure occurred, and by errors in the information reported in the Monthly Management Reports.¹¹⁸

3.42 Shortly prior to the 2001-02 Audit Report being tabled, Finance advised ANAO that the then Government had made an in-principle decision to implement monthly certifications, but that the timing and form of these certifications had not yet been finalised.¹¹⁹ Following a protracted process, a final format for the monthly certification of Management Reports was introduced from August 2003.¹²⁰

3.43 The certification requested to be provided by the Senator or Member in relation to a Monthly Management Report and the End of Financial Year Management Report is identical. An example is illustrated at Figure 3.1.

¹¹⁸ ANAO Audit Report No.5 2001-02, op. cit., p. 25.

¹¹⁹ *ibid.*, p. 123.

¹²⁰ ANAO Audit Report No.15 2003-04, op. cit., p. 73.

Figure 3.1

Example of Management Report Certification

<p>CERTIFICATION OF USE OF ENTITLEMENTS 2007-2008 FINANCIAL YEAR</p>
<p>I,.....[print name] confirm that in relation to the 2007-2008 End of Financial Year Management Report:</p> <ul style="list-style-type: none"> • I have read and understand the following <i>Certification Explanatory Statement</i> that describes the essential elements of each entitlement report; • I have examined the transaction details*; and • The transactions described** were accessed in accordance with the relevant legislation. <p>I understand that:</p> <ul style="list-style-type: none"> • It is not appropriate for an authorised person to certify their own use of entitlements; and • Knowingly giving false or misleading information is a serious offence under the <i>Criminal Code</i>.
<p><u>Senator or Member Certification</u></p> <p>Part A and Part B (in respect of use of entitlements by an authorised person or all use of entitlements if there is no authorised person)</p> <p>Certified by: Date:..... Senator or Member</p>
<p><u>Authorised Person Certification</u></p> <p>Part B (Where completed by authorised***person)</p> <p>Certified by: Date:..... Authorised person</p>
<p>* Not including the <i>LeasePlan Transaction Report</i> which is provided for information only. ** If you identify a discrepancy in the Monthly Management Report, please sign the certification 'subject to qualification'. You should then fax or email the details of the discrepancy to your Entitlements Manager or the Entitlements Management Branch on facsimile (02) 6267 3279 or email emb@finance.gov.au. The record will be reviewed and, if necessary, an updated record sent to you. *** Please be aware that a specific authorisation for signing Monthly Management Reports is required.</p>

Source: Department of Finance and Deregulation.

3.44 Figure 3.1 shows that certification may be provided in one part or two. The Parliamentarian is able to certify to all use of entitlements reported in the Report, or limit his or her certification to Part A (which includes the expenditure that a Senator or Member or family member incurs personally or expenditure of which he or she could be expected to have knowledge such as their own and their spouse’s travel). A person authorised by the Senator or Member is able to certify Part B of the Report (which relates to staff use of entitlements, other than their own, and general office/administrative costs) on behalf of the Parliamentarian.

3.45 The format of the Management Report certification asks Parliamentarians to confirm that they have read and understood an attached three page *Certification Explanatory Statement* which details what the Parliamentarian is being asked to certify to in relation to each entitlement. This

approach is necessary due to the disparate sources from which entitlements arise and the variable approach taken to specifying the purpose for which an entitlement may be used (with no purpose being specified in some cases). For example, one of the certification statements refers to the legal entitlement arising under both legislation and a Remuneration Tribunal Determination; six refer to legislation (including determinations made under legislation); eleven refer to a Remuneration Tribunal Determination; and two do not reference any source for the entitlement and certification that is being sought.

3.46 As is outlined in Chapter 2, certifications are sought by Finance in relation to 27 entitlements¹²¹ with 12 different purposes referenced¹²² including official purpose/business (eight entitlements), 'Parliamentary, electorate or official business' (three entitlements) and 'Duties as a Member of Parliament but not party political purposes' (one entitlement). The Certification Explanatory Statement clarifies for the Parliamentarian what, if any, limitations of purpose he or she is certifying to in relation to the use of each entitlement.

Response by Parliamentarians

3.47 It should be noted that, as seen in Figure 3.1, in completing the Management Report certification (whether in respect of part A or part B of the report), the Parliamentarian or his or her authorised person is not being asked to certify that the *amounts* in the Management Report are correct. Rather, they are being asked to certify that the transactions described were accessed within the relevant legislation; that is, that the *use* made of the funds was within the terms of the relevant entitlement.

3.48 It is relatively common for Parliamentarians to qualify their certification statement in some way.¹²³ Although a qualified certification does not provide assurance that the use made of the funds was within the terms of

¹²¹ Seven are sought through transaction-specific certifications (see Table 3.2) and the remainder through the Management Reports.

¹²² For three entitlements, the certification request does not refer to any limit on the purpose for which the entitlement may be used.

¹²³ Most often, this has involved the Parliamentarian adding the words 'as far as I am aware' or 'to the best of my knowledge' to their certification. Other approaches observed have involved: amending the first sentence of the certification so that it reads: 'I have not read nor understood the following...'; striking a line through the certification and replacing it with the words: 'I have no reason to think these were not claimed in accordance with entitlement'; and striking through the certification and replacing it with an alternative form of words.

the relevant entitlement, Finance records such certifications as capable of being relied upon, and also includes them in advice the department provides to Senate Estimates on certifications it has received. In April 2009, Finance advised ANAO that:

Given certifications are not legally or legislatively based and that Parliamentarians did certify (albeit qualified), there is no reason to consider that the certifications were not valid. Further, the nature of certifications is such that someone cannot be forced to certify, that is there must be a discretion to be exercised (that is, to certify or not to) and that must extend to the nature and extent of the certification, if it is given. Any consideration to making certifications obligatory or that they must be in only one form only, seems inconsistent with the nature of certifications, that is they are given to assert the truth or correctness of something.

3.49 The 2001-02 Audit Report examined entitlements expenditure for the 1999-2000 financial year. This was the first year that Parliamentarians had been asked to certify their End of Financial Year Management Report. The 2001-02 Audit Report found that, two months after certifications were due, only 36 per cent of Parliamentarians had provided the requested certification. Finance advised ANAO that, three months later, the response rate had improved to 80 per cent.

3.50 The introduction of voluntary certification on a monthly, rather than annual, basis provided a means of reducing the length of time between most transactions occurring and Finance receiving assurance through the provision of a certification. Nevertheless, the 2003-04 Audit Report found that:

As at August 2003, 12 current and former Parliamentarians were yet to provide an annual certification for 1999-2000. The timely return by current and former Parliamentarians of the certifications requested of them continues to be an area of concern. As at August 2003, 34 per cent had yet to certify their End of Financial Year Management Report for 2000-01 and 39 per cent had yet to provide a certification for 2001-02.¹²⁴

3.51 There remains a continuing high incidence of Parliamentarians not certifying their End of Financial Year Management Reports. Specifically, for 2007-08, fewer than 30 per cent of End of Financial Year Management Report certifications were submitted on or before the due date. Further, by 29 May

¹²⁴ ANAO Audit Report No.15 2003-04, op. cit., p. 14.

2009, almost ten months after the end of the year and nearly eight months after the due date, 57 Parliamentarians (21.2 per cent of the total number in Parliament at some time during 2007-08) had not certified their End of Financial Year Management Report. This level of non-response is an improvement compared with that seen in the 2003-04 Audit Report. Nevertheless, there remains a significant incidence of reports not being certified.

3.52 Monthly Management Reports relating to transactions are sent to Parliamentarians on the 15th day of the following month.¹²⁵ Whilst Finance asked Parliamentarians to return the 2007-08 End of Financial Year Management Report certification within 21 days of the report being issued, Parliamentarians were not asked to return Monthly Management Report certifications in any particular timeframe. In April 2009, Finance advised ANAO that:

A due date is indicated for the end of financial year report as it is the last report for a particular year. In the case of monthly reports, there is a schedule of certifications at the front of the document which provides an ongoing record and reminder of which reports have been certified, and which are outstanding, for that year.

3.53 In May 2007, the then SMOS issued a Circular to all Parliamentarians noting that there had been some recent media focus on the certification of Monthly Management Reports and reminding Senators and Members of the importance of these certifications. However, in the period July 2007 to March 2009 examined by ANAO:

- as at 29 May 2009, Finance had not received a certification in respect to about 14 per cent of Monthly Management Reports provided to Parliamentarians; and
- Finance's records indicated that there were 12 Parliamentarians who did not submit any of the Monthly Management Report and End of Financial Year Management certifications requested of them in relation to their use of entitlements.

¹²⁵ In the case of the 15th being a Saturday, Sunday or Public Holiday, Finance sends the Monthly Management Reports to Parliamentarians on the first available working day prior to the 15th.

3.54 In the absence of a statutory or other obligation requiring the timely submission of valid Management Report certifications, Finance's options for dealing with Parliamentarians who do not comply are limited. Finance includes in each Monthly Management Report and the End of Financial Year Management Report a table that identifies those certifications that have been received from the relevant Parliamentarian and those that have not been received. While this initiative has promoted more timely receipt of certifications overall, there remain Senators and Members who do not respond to this reminder.

3.55 The responsiveness of Parliamentarians in certifying their Monthly Management Reports and End of Financial Year Management Reports has been an issue raised regularly in Senate Estimates hearings over recent years by then Senator Andrew Murray from the Australian Democrats. Although Senator Murray has retired from the Parliament, the issue of Management Report certifications was again raised during the February 2009 Additional Estimates hearing of the Senate Standing Committee on Finance and Public Administration. In response to a question about whether Parliamentarians who did not submit Management Report certifications should be named in the Parliament, the then SMOS said:

I certainly would not want to be a parliamentarian so named and that of itself, I think, would be a significant sanction. The department obviously will continue to make their best efforts to ensure that this important process works at its best. It may be that you or another senator placing a question on notice about genuine recalcitrants in this area will have a positive impact. I recall, as you would, that when these matters have been discussed in the committee there has been a genuine reluctance to do that. No-one wants to see people named and shamed. What people want to see is the management reports certified and provided to the department. That is the name of the game, and hopefully the sort of focus that this issue has received in this committee assists in that.¹²⁶

Pre- and post-payment examination of entitlements use

3.56 The use of certifications by the entitlee is also common to each of the four overseas entitlement frameworks examined by the ANAO. Nevertheless,

¹²⁶ Official Committee Hansard, Senate Standing Committee on Finance and Public Administration, Estimates, 24 February 2009, F&PA 99.

in the United Kingdom, the Members Estimates Committee, which is chaired by the Speaker of the House of Commons, has recognised that:

...the essential weakness is that an MP's signature certifying that the claimed expenditure is "wholly, exclusively and necessarily incurred to enable the Member to perform their Parliamentary duties" is effectively the last word on the validity of the claim. We are convinced by the argument that this arrangement can no longer be sustained. Viewing a gentleman's word as his bond, beyond all further challenge, belongs more to a 19th century club than to a 21st century legislature.¹²⁷

3.57 In the Australian context, as outlined above, ANAO's analysis is that the certification processes have been insufficiently effective given:

- Management Report certifications remain voluntary; delays in certifications being provided are common; and there are a significant proportion of Management Reports that are never certified. By way of comparison, asking Parliamentarians to certify their transactional use of a small number of entitlements in order for payment (to the Parliamentarian or his/her supplier) to proceed has proven more effective in actually securing a certification; and
- it is difficult to rely on a certification that use is within entitlement when there are ambiguities in the terms and conditions applying to many entitlements; shortcomings in the legal basis for some entitlements; and the meaning of key terms governing the purposes to which various entitlements may be used has not been articulated (issues explored in Chapter 2).

3.58 In these circumstances, a system of pre- and post-payment checking of entitlements use is important to provide assurance that the framework is understood and is effective at informing and regulating decisions concerning entitlements use.

Pre-payment controls

3.59 Certain travel entitlements are subject to systematic pre-payment checks, with payment not proceeding until Finance is satisfied that particular

¹²⁷ Quoted in House of Commons Members Estimate Committee, *Review of Allowances, Third Report of Session 2007-08*, June 2008, p. 20, paragraph 43.

criteria have been met. This often involves following up issues with individual Senators and Members until all validating material is received.

3.60 The entitlements concerned are Travelling Allowance, Charter Transport, Overseas Study Travel and Private Vehicle Allowance. In April 2009, Finance advised ANAO that other entitlements, particularly travel on domestic scheduled services, cannot practicably be checked prior to payment (as the accounts are received in large electronic files and Finance has contractual obligations to pay the travel service provider in a specified timeframe). As a result, Finance aims to apply a considerable focus to post-payment checking that travel undertaken was within entitlement (for example, that family members of Senators and Members and spouses or de facto partners of Life Gold Pass holders had accompanied or joined the entitlee and that travel was within the capped entitlement; or that MOP(S) Act employees travelled within entitlement in relation to destination and standard of travel). This is a reasonably common approach where there is an established and/or ongoing relationship.

Post-payment checks

3.61 Both the 2001-02 and 2003-04 Audit Reports made a number of recommendations to Finance for the development and implementation of a regime of risk-based post-payment checking of entitlements use (see Table 3.3). In addition, there is an ongoing debate about whether an Auditor of Parliamentary Entitlements should be established (discussed further at paragraphs 3.73 to 3.76).

Table 3.3

Previous ANAO recommendations for post-payment checking of entitlements use

2001-02 Audit Report	2003-04 Audit Report
Recommendation 10: A risk-based program of periodic audits of payments in relation to Parliamentarians' entitlements.	Recommendation 6: Regular risk-based reviews of payments to MOP(S) Act staff, with formal reports being prepared of the findings of each review.
Recommendation 11: Routine benchmarking of entitlements expenditure as part of a risk-based compliance system for the full range of Parliamentarians' entitlements.	Recommendation 7: Risk-based procedures for cross-checking between relevant payments made to, or on behalf of, MOP(S) Act staff.
Recommendation 13: For travel entitlements: <ul style="list-style-type: none"> • risk-based payment procedures to provide reasonable assurance that travel is in accordance with the proposed itinerary and in accordance with entitlements; and • where cost-effective, adopt systematic data matching to ensure accurate and consistent data is provided for certification and to identify possible non-compliance for further inquiry. 	Recommendation 8: Regular, structured analysis of the management reports provided to Parliamentarians to assist in the timely identification of transactions that warrant further investigation.
Recommendation 18: For office management entitlements: benchmarking reporting to individual Parliamentarians of their expenditure.	
Recommendation 20: For the Printing Entitlement: systematic periodic reviews of Members' processes for the selection of printers and value for money assessments.	

Source: ANAO Audit Report No.5 2001-02 and ANAO Audit Report No.15 2003-04.

3.62 In July 2005, Finance provided the then SMOS with its first six-monthly report of its post-payment checks of the use of Parliamentarians' entitlements. As at February 2009, Finance had undertaken this exercise a total of seven times. The items examined for each six month period had remained essentially the same over this period.¹²⁸ At the time of audit fieldwork, the most recent checking related to the six months to 31 December 2008. The total number of

¹²⁸ A check relating to staff overtime claims was discontinued in 2007 because overtime was abolished as a result of the MOP(S) Staff Certified Agreement.

transactions checked in that period was 40 245, which represents approximately seven per cent of all transactions for the period. In terms of value, Finance 'checked' claims worth \$7.371 million.

3.63 Finance's checking has resulted in a small quantum of recoveries in terms of both Parliamentarian and staff travel (\$63 588 and \$61 056 respectively). At one level, this level of recovery indicates that the pre-payment controls are functioning effectively. However, ANAO analysis is that Finance's testing is narrow in scope, is not risk-based and key aspects of entitlements use are not being examined.

Selection of entitlements for checking

3.64 Relatively few entitlements are subject to post-payment checks. Due to resourcing issues, the regular entitlements post-payment checks undertaken relate to payments that are processed in Finance's Canberra office—State offices undertake pre-payment checking of some entitlements use but are not in a position to undertake any post-payment checking of entitlements use. Checking is directed towards those aspects of particular entitlements where there is some clarity about the scope of the entitlement, and any limits.

3.65 As a result of these circumstances, those entitlements that are reviewed are neither the largest in dollar terms, nor those that exhibit a higher potential for widespread misuse. For example, while there are a range of office facilities entitlements available to Parliamentarians, there has been no post-payment checking of the use of those entitlements, which are provided under the Parliamentary Entitlements Act for Parliamentary, electorate or official business. In this respect:

- the most financially significant office facilities entitlement is the Printing Entitlement, with 2007-08 total reported expenditure of \$23.6 million. The Printing Entitlement is also one of the more high risk entitlements, as is reflected in its use being regularly subject to allegations to the SMOS of misuse. In addition, ANAO analysis of a sample of items produced under the Printing Entitlement revealed frequent use of the entitlement to produce material for election campaigning activities; and
- as the 2001-02 Audit Report noted, Parliamentarians may choose to use their office copying facilities to produce newsletters and other

information for distribution instead of, or as well as, accessing their Printing Entitlement.¹²⁹ ANAO analysis as part of this audit showed very high usage of the Office Requisites and Stationery entitlement by some Parliamentarians, with cases of individual Parliamentarians using an estimated volume of photocopy paper in excess of 1 million A4 sheets over the course of the 2007-08 financial year (equivalent to 40 reams of paper every week). In terms of this entitlement, in April 2009 Finance advised ANAO that:

Office copying facilities come under the *Parliamentary Entitlements Act 1990* (Schedule 1, part 1, Item 7) which provides for 'Office accommodation in the electorate, together with equipment and facilities (including for personal staff) necessary to operate the office, as approved by the Minister for purposes related to parliamentary, electorate or official business, but not commercial business.' In the absence of definitions against which to test a Senator or Member's use of office facilities, Finance has no basis on which to undertake post payment checks of office facilities.

3.66 Another example of Finance's post-payment checking being focused on a relatively low value entitlement involves Parliamentarians travelling by car. The Senators and Members Entitlements Handbook outlines that the Remuneration Tribunal provides four entitlements that allow Senators and Members to travel by car:

- Car Transport (total expenditure of \$280 678 in 2007-08);
- Private Vehicle Allowance (total expenditure of \$18 421 in 2007-08);
- Private Plated Vehicle (total expenditure of \$3.99 million in 2007-08); and
- Charter Aircraft/Drive Yourself Vehicles (total expenditure of \$3.10 million in 2007-08).

3.67 Two of these entitlements (Private Vehicle Allowance and Charter Transport) are subject to pre-payment checks. In addition, Car Transport may be subject to post-payment checking. That entitlement comprises Car-with-Driver Transport and Short-term Self Drive Hire Cars. Finance has undertaken post-payment checking in relation to the Car-with-Driver Transport entitlement, but not Short-term Self Drive Hire Cars. Most recently, in the six

¹²⁹ ANAO Audit Report No.5 2001-02, op. cit., p. 217.

months to June 2008, 62 per cent of the transactions reviewed related to Cabcharge use by Parliamentarians (947 transactions) or their staff (16 449 transactions). Cabcharge is one way of making payment for the use of taxis¹³⁰ which, in turn, is one way of Parliamentarians accessing their Car-with-Driver Transport entitlement.

Testing procedures are not risk-based and are not robust

3.68 Finance's sample selection process is 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 indicates a greater likelihood of misuse. In respect to the use of benchmarking and similar analysis to inform the post-payment checking of entitlements use, in April 2009 Finance advised ANAO that:

The Entitlements Management System (EMS) does not have the facility for Finance to undertake benchmarking. Enhancements to EMS are costly and require a long lead time given the age of the system and the difficulty in obtaining support staff who can program in an outdated language. In the absence of systems' support Finance does not have the resources available to undertake the type of manual benchmarking ANAO is suggesting. The suspended Parliamentary Entitlements Management System project should deliver this functionality.¹³¹

3.69 The testing procedures also do not, for all but one of the entitlements examined, involve independent examination.¹³² For the review of Travelling Allowance claims, the checking is focused on whether Parliamentarians who did not provide receipts when claiming the allowance are able to provide the receipts when requested to do so. For other entitlements, Finance's 'checking' may not extend any further than the department writing to Parliamentarians asking them to certify use was within entitlement.

¹³⁰ The Senators and Members Entitlements Handbook states that: 'Payment can be made with a Cabcharge card issued by [Finance], which in most cases will electronically record details of the trip. If payment is made by any other means, (or if a Cabcharge card is processed manually by the driver), then at the conclusion of travel the passenger should sign the driver's travel docket detailing the kilometres, time and cost of the trip and ensure that these details are forwarded to [Finance].'

¹³¹ See paragraph 3.16.

¹³² The only entitlement where Finance analyses information separately and independently of the Senator or Member involved is in relation to the review of use of the family reunion travel entitlement. For that entitlement, Finance compares data on the Parliamentarian's travel to that held on the reunion travel to confirm that the Senator/Member has accompanied or joined each nominated family member on each trip, as well as comparing the number of reunion trips taken to the relevant limit.

3.70 In this respect, it is noted that the reliability of evidence for auditing and related purposes is influenced by its source and by its nature, and is dependent on the individual circumstances under which it is obtained. While recognising that exceptions may exist, the following generalisations about the reliability of evidence have been found to be useful within the auditing profession:

- evidence is more reliable when it is obtained from independent sources—for example, written confirmation concerning balances or transactions being sought from third parties rather than certifications from the entitlee, such as those employed by Finance;
- evidence obtained directly is more reliable than evidence obtained indirectly or by inference; and
- evidence is more reliable when it exists in documentary form.

3.71 In August 2009, Finance advised ANAO that:

Following the ANAO audit of MOP(S) Act employee entitlements, Finance sought the assistance of Internal Audit in developing a quality assurance plan. While Finance is satisfied that the checking it has undertaken has driven changes in behaviour (eg reduced staff travel at a class outside entitlement, family travel outside budget) it has advised that it recognises that it is timely to review its methodology for undertaking post payment reviews.

3.72 In July 2009, the Government decided that an enhanced auditing and checking function should be established within Finance. Given the findings of this ANAO performance audit, there would be benefit in Finance, when establishing the enhanced auditing and checking function, seeking to adopt a more risk-based approach to planning and undertaking post-payment checking of entitlements use.

Parliamentary Entitlements Auditor

3.73 Research by Finance indicates that the concept of a Parliamentary Entitlements Auditor had its genesis in the late 1990's, in an environment where the accountability and integrity of the Parliamentary entitlements framework was under repeated scrutiny as a result of various allegations concerning misuse of entitlements. In addition, the enforcement of the former Government's Ministerial Code of Conduct had given rise to allegations of conflict of interest.

3.74 Establishing an auditor of Parliamentary entitlements has been a long-standing ALP policy. Specifically:

- in November 2000, the ALP introduced legislation to establish an office of Auditor of Parliamentary Allowances and Entitlements so as to help restore community confidence in the way in which Members of the Commonwealth Parliament use their various entitlements.¹³³ It was proposed that the Auditor would investigate complaints relating to the use of entitlements; inquire into any matter referred by the Minister or Parliament; undertake sample audits of the use of entitlements by Parliamentarians; undertake inquiries on his or her own initiative; make recommendations for changes to the entitlements system; and provide advice to Parliamentarians on ethical issues associated with the use of their entitlements.¹³⁴ The Bill was not passed by the Parliament; and
- the ALP's platforms for each of the 1998 Federal Election, 2004 Federal Election¹³⁵ and 2007 Federal Election¹³⁶ included an identical commitment that:

In order to enhance the accountability of parliamentarians for their expenditure of allowances, Labor will table details of expenditure of travel and other allowances annually and will establish an independent auditor of parliamentary allowances and entitlements with appropriate powers of investigation.

3.75 Various options have been investigated by Finance as a possible response to the long-standing ALP policy to establish an Auditor of Parliamentary Entitlements. One option considered has been the establishment of the Parliamentary Entitlements Auditor within the ANAO, although (following discussions between Finance and ANAO) it has been recognised that this approach does not sit comfortably with the usual role of ANAO in examining systemic issues rather than investigating individuals.

¹³³ Explanatory Memorandum, circulated by the Hon K C Beazley, *Auditor of Parliamentary Allowances and Entitlements Bill 2000*, p. 1.

¹³⁴ *ibid.*

¹³⁵ Australian Labor Party, *National Platform and Constitution 2004*, March 2004, p. 271.

¹³⁶ Australian Labor Party, *National Platform and Constitution 2007*, p. 181.

3.76 In April 2009, Finance advised ANAO that following further discussions with the then SMOS and his staff, as at March 2009 the options for implementing ALP policy on the issue of an auditor of Parliamentarians' entitlements were still being considered. Included in the reforms agreed by the Government in July 2009 was the establishment of an entitlements advisory function within Finance to provide written advice on entitlements matters in response to a written request.

Responding to allegations of entitlements misuse

3.77 In June 1998, following an exchange of correspondence with the then Attorney-General, the then SMOS approved a Protocol to be followed when an allegation of misuse of entitlements by a Member or Senator was received. The stated objective of the Protocol was to provide for an 'arms-length' process to ensure allegations were handled in a way that could not invite allegations of partisanship.¹³⁷ It was tabled in the Senate on 31 October 2000 in response to questions about the process being employed to respond to allegations of the misuse of a Telecard issued to the then Minister for Employment, Workplace Relations and Small Business.

3.78 Between June 2005 and March 2009, 76 allegations of entitlements misuse were considered by Finance. Most of the allegations came from Parliamentarians or political parties (49 per cent), the media (18 per cent) or members of the public (17 per cent). As this is not a complaint resolution process, Finance does not inform any complainant of the ultimate outcome of the consideration of their allegation.

3.79 The allegations were evenly divided between the major political parties (47 per cent related to alleged misuse by Liberal Parliamentarians and 42 per cent related to alleged misuse by ALP Parliamentarians). A large proportion (24 allegations or 32 per cent) were received in an election year (2007), or were made in 2008 relating to use of entitlements by Parliamentarians who retired or were defeated at the 2007 Federal Election. Allegations relating to the Printing

¹³⁷ The last of the 42 questions set out in the 2003 42 Questions and Answers document (see paragraphs 2.18 to 2.38 and Appendix 2) was: 'What procedures will be followed in the case of breaches of these guidelines?'. The answer proposed in the 2003 42 Questions and Answers document did not refer to the Protocol tabled in the Senate on 31 October 2000, but stated that: 'As is the case now, the Minister, on the advice of the Department, will send a 'please explain' letter. If an acceptable explanation is not forthcoming, the Member or Senator will be asked to refund the cost of the breach. Allegations of breaches of these guidelines would be raised on an office-to-office basis, rather than in public forums, at first instance.'

Entitlement dominated, with 51 (67 per cent) relating to that entitlement, of which 47 also involved the related Communications Allowance. Allegations relating to the provision of electorate office facilities were also common (46 instances, 33 of which also related to both the Printing Entitlement and Communications Allowance).

3.80 Under the Protocol, a High Level Committee of Finance officials has a range of actions available to it, as follows:

- deciding to seek or not to seek an explanation from the individual Parliamentarian(s);
- potentially seeking the advice of the Attorney-General's Department as to whether the matter(s) warrant referral to the Australian Federal Police; and/or
- writing to all affected Parliamentarians advising of a particular issue and providing them with an opportunity to address any irregularities by, for example, making a voluntary repayment.

3.81 However, the Protocol does not require the High Level Committee to sit on every occasion. The High Level Committee operates only in relation to serious allegations. For more routine matters, the Protocol requires that the Senator or Member be invited to comment on their use of entitlement.

3.82 Of the 76 allegations, Finance recommended to the relevant SMOS that no further action be taken in 22 instances (29 per cent), most commonly because Finance's initial assessment was that the action complained of did not appear to be outside entitlement.

3.83 There were a total of 54 allegations (71 per cent) where Finance recommended, and the relevant SMOS agreed, to write to the affected Parliamentarian. In respect to these:

- 17 allegations required correspondence from the SMOS additional to the first letter, usually because the Parliamentarian did not respond to the first letter or further clarification was required based on the response that was provided. On some occasions, multiple follow-ups were required (in one instance, the former Parliamentarian has not responded to any of the SMOS' correspondence) and Parliamentarians do not always respond to all aspects of the alleged misuse;
- there were five allegations where a former SMOS had written to the Parliamentarian but the Parliamentarian had either not responded, or

had not provided a satisfactory response, prior to the commencement of the caretaker period for the 2007 Federal Election. The incoming SMOS was not briefed by Finance on these allegations, with Finance advising ANAO that the department does 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. This situation represents a gap in the framework, noting that, in one instance, the most recent correspondence on the allegation had occurred more than a year before the 2007 caretaker period commenced;

- Finance also does not action any allegations received during the caretaker period until after a new government is formed. Twelve allegations were received during the caretaker period for the 2007 Federal Election. In each case, advice was provided by Finance to the SMOS in January 2008; and
- there were 15 instances where the Parliamentarian agreed or offered to repay some or all of the cost relating to the alleged misuse. A total of \$12 376 was recovered, with individual recoveries averaging \$832 and ranging from \$2 to \$3 178. In nine instances, the amount repaid was considered to be the full cost of the transactions subject to the allegation. In the remaining six instances (all relating to the Printing Entitlement and/or Communications Allowance), the amount repaid was a percentage of the transaction cost, with this percentage ranging from five per cent to 35 per cent of the total cost. This was because the 70/30 rule was applied to determine the proportion of content that was outside entitlement.

3.84 The Protocol was employed again during the course of this ANAO performance audit in response to ANAO raising with Finance in November 2008 the results of early audit analysis indicating frequent use of the Printing Entitlement to produce material for election campaigning activities, and instances of material being produced to campaign for the election of individuals who did not at the relevant time have a Printing Entitlement.¹³⁸ The

¹³⁸ Whilst representative of the types of issues that had arisen to that time, ANAO emphasised to Finance that the audit was at fieldwork stage such that the folder of printed items provided to Finance for its consideration at that time represented a sub-set of the printed items that had been obtained to that date, and that a substantial number of printers had yet to provide the requested information.

process of considering the issues identified by ANAO revealed a shortcoming in Finance's existing practice of not obtaining copies of the material being produced under the Printing Entitlement given that, once potential misuse is identified, the department's capacity to obtain relevant material from printing firms is limited because it does not have relevant legislative powers. In this respect, Finance advised ANAO that it had been the intent of successive governments that the department not sight or vet any printed material.

3.85 In July 2009, the Government decided that the current protocol for handling allegations of entitlements misuse be referred for consideration as part of a review of the entitlements framework. It will be important that the review of the current protocol seek to develop a more robust and transparent approach to responding to allegations of entitlements misuse particularly with respect to:

- responding in a consistent and timely way during the caretaker period for general elections; and
- obtaining the documentation and any other material necessary to comprehensively assess use of entitlements in terms of what is permitted under the applicable framework.

Recommendation No.3

3.86 ANAO *recommends* that the Department of Finance and Deregulation develop a stronger control framework for its administration of Parliamentarians Entitlements by:

- (a) adopting a more risk-based approach to planning and undertaking post-payment checking of entitlements use; and
- (b) developing a more robust (and transparent) approach to responding to allegations of entitlements misuse.

Finance response

3.87 Part (a): Agreed. In implementing recommendations of Audit Report No.15 of 2003-04, Finance sought the assistance of Internal Audit in developing a quality assurance plan. While Finance is satisfied that the post payment checking of entitlement use which it has undertaken, based on that quality assurance plan, has been effective, we agree that it is timely to review our methodology for undertaking post payment reviews.

3.88 Part (b): Agreed in principle. 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. The use of entitlements for election campaigning activities

This chapter examines the framework for, and administration of, the use of entitlements by Parliamentarians during the 2007 Federal Election campaign. It considers the use of Parliamentarians' entitlements to meet costs associated with campaigning for their own re-election and the election or re-election of other candidates and their party, in the context of political parties and candidates then receiving public funding under the Commonwealth Electoral Act 1918 for each vote received in order to assist in meeting the costs of campaigning.

Introduction

4.1 ANAO's 2001-02 Audit Report concluded that a particular need for greater clarity and certainty related to the use of entitlements by Parliamentarians during periods of by-elections and general elections. As part of this current audit, ANAO reviewed the entitlements models used in the United States, Canada, the United Kingdom and New Zealand.¹³⁹ ANAO found that the entitlements framework in three of these countries explicitly stated that Parliamentary and electorate business does not include Parliamentarians campaigning for themselves, for others or for their party (which has often been referred to as party-political purposes).¹⁴⁰

United States

4.2 In the United States House of Representatives, each Member receives a single Member's Representational Allowance (MRA) 'to support the conduct of official and representational duties to the district from which elected'.¹⁴¹ The MRA may not be used for campaign or political expenses.

¹³⁹ Summaries of the models of Parliamentary entitlements used in the United States, Canada, the United Kingdom and New Zealand are included in Appendix 1.

¹⁴⁰ In Canada, the Board of Internal Economy (BOIE), which is a multi-party Committee of Members chaired by the Speaker of the House of Commons, issues binding by-laws. One of these by-laws states that: 'Partisan activities are an inherent and essential part of the activities and Parliamentary functions of a member.'

¹⁴¹ Similarly, United States Senators receive three allowances, which can generally be used as a single fund but most of the expenses of Senators' state offices are paid for directly by the Senate.

4.3 Both Members and Senators can use their allowance to pay for printing (including newsletters), which they can distribute using an official mail allowance, known as ‘the frank’.¹⁴² In keeping with the statutory purpose of the frank as being for the ‘official business, activities and duties of the Congress’, strict rules apply to material which can be distributed using the frank, such as:

- items must not ‘seek political support, mention candidacy, solicit funds or electioneer (for example, advocate someone’s election or defeat)’;
- when the item is a ‘mass mailing’ (defined to be a distribution of 500 or more), the item must be submitted for approval to the Congress’ Franking Commission;
- all mass mailings must bear the words: ‘This mailing was prepared, published and mailed at taxpayer expense’;
- any member who fails to submit a sample of a mass mailing for prior approval will be required to pay for it personally; and
- ‘unsolicited mass communication’—such as advertising, mailouts, or printing of leaflets—may not be funded from the MRA in the 90 days before an election.

United Kingdom

4.4 Members of both the House of Lords and the House of Commons are not permitted to use their printing and postage entitlements for party-political purposes. This is outlined in the following extracts from the official guidance on use of the Communications Allowance:

...Parliamentary resources may not be used for communicating information about your political activities or those of the party to which you belong...

The content of any communications paid from the allowances must not seek to compare the Member’s party favourably with another, promote one party at the expense of another or seek to undermine the reputation of political opponents...

¹⁴² The right of Members and Senators to use ‘the frank’ is contained in the legislation establishing the US Postal Service as follows: ‘It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of the official business, activities and duties of the Congress of the United States’.

...If you wish to include material which is not allowed under these rules, you must fund the whole cost from another source.¹⁴³

New Zealand

4.5 In New Zealand, a Mixed Member Proportional (MMP) electoral system took effect at the 1996 general election, replacing the traditional first-past-the-post method used in countries such as Australia. MMP is a party-based electoral system under which each elector gets two votes, one for an electorate MP and one for a party. Members enter Parliament in two different ways, either as 'list' Members or 'electorate' Members. The overall result is designed so that each party's share of Members is proportional to its share of the party votes cast for all parties winning seats.¹⁴⁴

4.6 Some of the relevant key features of the New Zealand entitlements framework are that:

- it is explicitly recognised that Parliamentary and Ministerial communications take place in a political environment but that taxpayers do not pay for political parties' publicity, except to the extent that it derives indirectly from the proper conduct of Parliamentary or Ministerial business;
- Parliamentary business is defined, with this definition explicitly excluding 'electioneering', which has been defined as something that is intended to persuade a voter to favour a candidate or party in an election (and is not limited to material that expressly solicits votes)¹⁴⁵; and

¹⁴³ *The Communications Allowance and the use of House Stationery*, House of Commons Department of Finance and Administration, 2007, pp. 5, 13 and 16.
<<http://www.parliament.uk/documents/upload/HofCCommunicationsAllowanceBooklet.pdf>> [accessed 29 August 2009]

¹⁴⁴ A voter's party vote helps decide how many seats each party has in Parliament. Every voter in every general electorate and every Māori electorate has the same selection of parties to choose from. A party will get seats in Parliament based on its party vote if it wins: five percent or more of all the party votes, or one or more electorate seats.

¹⁴⁵ The full definition is that: '**Electioneering** means any communication that explicitly:

- (a) seeks support for the election of a particular person or persons;
- (b) seeks support for the casting of a party vote for a particular political party or political parties;
- (c) encourages a person to become a member of a particular political party or political parties; or
- (d) solicits subscriptions or other financial support.'

- it has been recognised that the theory and practice of communications and marketing has become increasingly multi-dimensional as technology and audiences have become more sophisticated. This has meant that:
 - mass advertising by pamphlet, poster and through the mainstream media is routinely supported, or supplemented, by websites and a range of other information and that Parliamentarians routinely communicate with the public and constituents through the internet;
 - readily available computer software enables attractive, professional-looking material—from newsletters to booklets to fridge magnets and desk calendars—to be produced at low cost for quick and easy distribution; and
 - the use of branding techniques in the form of logos, colour schemes and slogans is prevalent with the intention of more subtly electioneering than printed items that directly solicit votes.¹⁴⁶

4.7 Items printed or distributed using public funds are also required to 'be identified at the time of communication as having been paid for by the Parliamentary Service'. Members can seek 'pre-approval' from the Parliamentary Service for material they propose to distribute but are not required to do so. However, if they choose not to seek pre-approval and the material is found to not comply with the rules, the member will be asked to repay the cost. Conversely, if the member sought and received pre-approval but the material later is found not to comply, the member does not have to reimburse the cost.

4.8 In June 2005, the New Zealand Controller and Auditor-General presented a report to Parliament in which he expressed concern that the administrative framework for government advertising was weak.¹⁴⁷ In

¹⁴⁶ See Controller and Auditor-General for New Zealand, *Government and parliamentary publicity and advertising*, report under the authority of section 20 of the *Public Audit Act 2001* (NZ), June 2005 and *Advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election*, report presented to the House of Representatives pursuant to section 20 of the *Public Audit Act 2001* (NZ), October 2006.

¹⁴⁷ Controller and Auditor-General for New Zealand, *Government and parliamentary publicity and advertising*, report under the authority of section 20 of the *Public Audit Act 2001* (NZ), June 2005.

particular, the New Zealand Controller and Auditor-General noted that, while ‘party political, promotional or electioneering material for the purpose of supporting the election of any person’ was expressly excluded from the definition of ‘Parliamentary business’:

...there is clear potential for MPs’ and Parliamentary parties publicity and advertising in the weeks and months leading up to a dissolution to bring considerable party benefit.¹⁴⁸

4.9 In October 2006, the New Zealand Controller and Auditor-General tabled a report entitled *Advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election*.¹⁴⁹ In that report, the Auditor-General stated that, despite his June 2005 report, widespread examples had been found by all but one party of publicity and advertising that he considered to be unlawful in that it breached the terms of the appropriation. He went on to say:

My inquiry established that significant breaches of the appropriations administered by the Service occurred in the period 16 June to 16 September 2005. The expenditure that I found to be outside the scope of the appropriations related to a range of types of advertising, and was incurred on behalf of all but one of the parliamentary parties.

The total value of the breaches I identified for the 2004-05 financial year was \$443 462 (including GST), and the total value of the breaches I identified for 2005-06 financial year was \$730 136 (including GST). Overall, \$1 173 598 of unlawful expenditure was incurred.

I am concerned that I found a substantial amount of material that amounted to electioneering. A number of advertisements and newsletters expressly solicited votes. However, even where no express soliciting of votes occurred, a large number of advertisements contained material that could only be described as election platforms and promises. I was particularly disappointed to find that the Service paid for significant amounts of newspaper advertising by some parties in the last week before the General Election. That advertising

¹⁴⁸ *ibid.*, p. 55.

¹⁴⁹ Controller and Auditor-General for New Zealand, *Advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election*, report presented to the House of Representatives pursuant to section 20 of the *Public Audit Act 2001* (NZ), October 2006.

was incontrovertibly of an electioneering nature, and I could not discern a legitimate parliamentary purpose for it.¹⁵⁰

Australian approach

4.10 The functioning of an incumbent federal government during an election period is governed by ‘Caretaker Conventions’¹⁵¹, the aim of which is to ensure that the incumbent government’s actions do not unduly bind an incoming government and limit its freedom of action.¹⁵² In respect to financial entitlements, the Caretaker Conventions provide that:

During the caretaker period, **agency provision of entitlements** for Ministers and their staff should be assessed on a case-by-case basis. Agencies should not cover claims relating to the election campaign or a political event, as these costs are to be borne by the respective political party. Examples of claims that would not be covered include requests for additional laptop computers or mobile telephones for Ministers or their staff unless there was a demonstrable official purpose. [*emphasis as per original*]

4.11 The guidance in the Caretaker Conventions does not, given its purpose, address the use of entitlements by Parliamentarians for election campaigning. In this respect, as noted, the 2001-02 Audit Report concluded that a particular need for greater clarity and certainty related to the use of entitlements by Parliamentarians during periods of by-elections and general elections. The risks have been exacerbated by changes to the entitlements framework since 2004 that have resulted in Parliamentarians using their entitlements to attract votes for themselves and their political party, with their party then receiving public funding from the AEC for each vote they have attracted, regardless of whether the Senator or Member was successful in gaining re-election. This provides two sources of public funding for the same types of election campaigning expenses.

¹⁵⁰ *ibid.*, pp. 6-7.

¹⁵¹ See <http://www.dpmc.gov.au/guidelines/docs/caretaker_conventions.pdf> [accessed 28 May 2009].

¹⁵² ANAO Audit Report No.14 2007–08, *The Regional Partnerships Programme*, Canberra, 15 November 2007, Volume 2—Main Report, p. 136.

Commonwealth Electoral Act

4.12 Electoral expenditure is defined, for the purposes of the *Commonwealth Electoral Act 1918* (Electoral Act), as including expenditure incurred (whether or not incurred during the election period) on, among other things,:

- the production of any material that is required under section 328 of the Electoral Act to include the name and address of the author of the material or of the person authorising the material and that is used during the election period; or
- the production and distribution of electoral matter that is addressed to particular persons or organisations and is distributed during the election period.¹⁵³ Section 4 of the Electoral Act defines 'electoral matter' as:

matter which is intended or likely to affect voting in an election.

4.13 Subsection 328(1) of the Electoral Act stipulates that:

(1) A person shall not print, publish or distribute or cause, permit or authorize to be printed, published or distributed, an electoral advertisement, handbill, pamphlet, poster or notice unless:

(a) the name and address of the person who authorized the advertisement, handbill, pamphlet, poster or notice appears at the end thereof; and

(b) in the case of an electoral advertisement, handbill, pamphlet, poster or notice that is printed otherwise than in a newspaper—the name and place of business of the printer appears at the end thereof.

4.14 In 1984, in light of the increased costs of political advertising, Part XX of the Electoral Act was introduced.¹⁵⁴ The stated intent was that:

Public funding ensures that different parties offering themselves for election have an equal opportunity to present their policies to the electorate. Without it, worthy parties and candidates might not be able to afford the considerable sums necessary to make their policies known. In this way, public funding contributes to the development of an informed electorate. As well, it helps counter the problem created by the mounting costs of political campaigning

¹⁵³ *Commonwealth Electoral Act 1918*, section 308(1)(e) and (f).

¹⁵⁴ Sally Young, *The Persuaders: Inside the Hidden Machine of Political Advertising*, 2004, pp. 115-119.

due to the increased use of television as a medium of communication between the people and the politicians seeking their endorsement.¹⁵⁵

4.15 Part XX of the Electoral Act appropriates public money to help finance the election campaigns of parties and independent candidates, and provides for financial disclosure of selected revenue and expenditure items incurred by participants in the Federal electoral process.¹⁵⁶ Originally, public funding was provided for election campaigns on the basis of reimbursement of expenditure incurred on the campaign up to the limit of entitlement.¹⁵⁷ That approach was later changed to funding being paid as a grant in proportion to votes received.¹⁵⁸ Specifically, the public funding entitlement is now calculated by multiplying the total number of formal first preference votes received by the funding rate (where the four per cent threshold has first been reached).¹⁵⁹ Election funding is paid to the party where the candidate or Senate group is endorsed by a registered political party, and in other cases is paid direct to the candidate or Senate group (or their agent).¹⁶⁰ As a result of the 2007 Federal Election, public funding payments totalling \$49 million were made to political parties and independent candidates, of which the ALP received \$22 million, the Liberal Party \$18.1 million and the National Party \$3.2 million.

4.16 Printed items, such as direct mail to residents, now comprise a significant proportion of election campaign expenditure for which candidates and parties receive public funding under Part XX of the Electoral Act.¹⁶¹ This is because direct mail, backed up by the data the major political parties have collected on individual voters and stored on their electoral databases, has become increasingly precise and effective such that it is viewed as one of the

¹⁵⁵ The Hon Kim Beazley MP, Second Reading Speech, Commonwealth Electoral Legislation Amendment Bill 1983, Hansard of the Commonwealth Parliament quoted in the Australian Labor Party submission to the *Electoral Reform Green Paper: Donations, Funding and Expenditure*, December 2008, p. 6.

¹⁵⁶ Australian Electoral Commission, *Funding and Disclosure Report Election 2004*, p. 2.

¹⁵⁷ Australian Electoral Commission, Submission to the Joint Standing Committee on Electoral Matters inquiry into Disclosure of Donations to Political Parties and Candidates, 26 April 2004, p. 5.

¹⁵⁸ Registered political parties are entitled to election funding where their endorsed candidate or Senate group receives at least four per cent of the formal first preference votes. Independent candidates and Senate groups are also entitled to election funding if they receive four per cent of the vote.

¹⁵⁹ The base funding rate of \$1.50 (set in 1995) is adjusted each six months in line with changes in the consumer price index. It was 210.027 cents per vote for the 2007 Federal Election.

¹⁶⁰ Source: <http://www.aec.gov.au/Elections/federal_elections/2007/Election_Funding_Payment.htm> [accessed 25 June 2009].

¹⁶¹ Sally Young, op. cit., p. 68.

most valuable campaigning tools.¹⁶² For example, direct mail has been described as a ‘powerful political weapon’ because it creates ‘an air of intimacy, interest and action’, and allows ‘a unique edge to be put on the campaign by “personally” addressing and “personally” signing letters to an individual’ and it allows candidates to target voters with messages specific to their interests.¹⁶³

4.17 However, in addition to candidates and political parties receiving public funding to assist in paying for these and other election campaign expenses, direct mail and other election campaigning material has been charged to Parliamentarians’ Printing Entitlement. Increased use is also made of Parliamentarians’ office accommodation and facilities during election periods.¹⁶⁴ In addition, whilst the use of MOP(S) Act electorate employees for party political business is not within entitlement, ANAO’s 2003-04 Audit Report made reference to various conventions that have been applied in relation to the use of MOP(S) Act employees during election periods, including that:

- staff may work at Parliament House, the electorate office, the capital city office or, for personal staff, in campaign headquarters if engaged on official business (for example, as a conduit between the Minister and the party headquarters in respect of portfolio-related policy issues);
- staff may undertake activities in support of their employing Parliamentarian’s re-election, but not in the election or re-election of others; and
- once an entitlement has been accessed for a bona fide purpose, it is open to a Senator or Member to undertake other related functions provided there is

¹⁶² *ibid.*, pp. 67-76.

¹⁶³ G. Gray, *Direct mail and the local campaign*, Australian Labor Party, Barton, ACT 1998 cited in Sally Young, *op. cit.*, pp. 67-68.

¹⁶⁴ For example, in its 2007-08 Annual Report, Finance commented that: ‘Finance’s Ministerial and Parliamentary Services network of state offices also bore a significant election-related workload in 2007-08. The state offices were responsible for ensuring that all electorate office machines were functioning effectively during this peak period...’. (Source: Department of Finance and Deregulation, *Annual Report 2007-08*, p. 63.) In June 2009, Finance commented to ANAO that: ‘by convention, the Senator or Member is able to use these facilities for their own re-election (previously categorised as being either Parliamentary/electorate business).’

no additional cost to the taxpayer.¹⁶⁵

4.18 During the 2007 election campaign, the AEC received complaints about the apparent use of allowances and benefits under the Parliamentary Allowances Act and the Parliamentary Entitlements Act to send election material to constituents. This included personalised letterhead, postage, Postal Vote Applications (PVAs) and other stationery. Legal advice obtained by the AEC on a range of issues relating to the disclosure of gifts and donations under the Electorate Act noted (in relation to amounts paid to the major political parties under the Australian Political Parties for Democracy Program, grants-in-aid program to entities associated with political parties, and electorate staff training paid to political party secretariats) that:

The definition of 'electoral expenditure' in s 308(1) of the Electoral Act includes the production of any material that is required by ss 328, 328A or 332 to include the name and address of the author of the material or of the person authorizing the material and that is used during the election period and also the production and distribution of electoral matter that is addressed to particular persons or organisations and is distributed during the election period. Accordingly, expenditure covered by this definition could apply to at least some of the former Members of Parliament¹⁶⁶ that attract the payment of allowances and benefits under the Parliamentary Allowances Act and the Parliamentary Entitlements Act.

4.19 Of the printed items produced by Parliamentarians using their Printing Entitlement examined by ANAO (of which at least 53.33 million individual copies were produced), 76 per cent (involving at least 42.54 million individual copies) carried a declaration for the purposes of the Electoral Act. Some items examined by ANAO were not subject to the Electoral Act. Other items were electoral matter, such as direct mail letters to voters in a Parliamentarian's electorate, but were not required to include a declaration under the Act. In particular, subsection 328(3) of the Electoral Act stipulates that the disclosure

¹⁶⁵ In June 2009, Finance advised ANAO that the following view was expressed by the Remuneration Tribunal in its 1992 Report (paragraph 46): '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.'

¹⁶⁶ The term 'former Members of Parliament' was used by the advice to refer to Parliamentarians who had been a Member of the House of Representatives prior to its dissolution (the entitlements continue to be available up to the day before polling day for those Members that are standing for re-election).

requirements set out in subsection 328(1) do not apply in relation to, among other things:

(c) letters and cards:

- (i) that bear the name and address of the sender; and
- (ii) that do not contain a representation or purported representation of a ballot-paper for use in an election for the Parliament.

4.20 Of those items in ANAO's sample that did include a declaration for the purposes of the Electoral Act, 35 per cent (involving at least 18.64 million individual copies—44 per cent of individual copies that carried a declaration) were authorised by the Federal or State party campaign director or another party official. Of the remaining items that carried a declaration, 44 per cent were authorised by the Senator or Member whose Printing Entitlement was used to print the item. The remaining items were authorised by either a MoPS Act employee of the Senator or Member or another person associated with the Senator's or Member's re-election campaign.

Use of entitlements to produce and distribute Postal Vote Applications together with campaigning material

4.21 Postal voting provisions in the Electoral Act date back to the *Commonwealth Electoral Act 1902*. Postal voting is one of two mechanisms (the other being pre-poll voting) that enable electors who cannot attend a polling place on polling day to vote. There are two mechanisms for obtaining a postal vote:

- completing a Postal Vote Application (referred to as a PVA) after an election has been announced, or the writs have been issued, whichever occurs first; or
- applying to become a General Postal Voter (referred to as a GPV) such that, once registered, the elector will be sent a postal voting package automatically at each election.

4.22 Of the 12 930 814 votes counted for House of Representatives candidates in the 2007 Federal Election, 5.46 per cent (706 466) were postal votes.

Convention permitting Parliamentarians to distribute PVAs

4.23 There had been a longstanding convention that Parliamentarians were permitted to use their Communications Allowance to distribute PVA forms produced by the AEC, as well as a reply-paid envelope for the constituent's use (in the event they decided to apply for a Postal Vote Package to be sent to them (by the AEC)). This practice was seen as providing a service to constituents and was therefore seen as being consistent with the permitted use of the Communications Allowance, being for 'Parliamentary or electorate (but not party) business'.

4.24 The AEC produces PVAs for each election, and makes them available on announcement of the election at AEC offices, Post Offices, and the AEC website.¹⁶⁷ Additionally, the AEC automatically issues some PVAs, with AEC reply paid envelopes, to all federal Members and Senators. Restocking is allowed on request.¹⁶⁸ On request, PVAs are also provided to independent candidates, and state and territory Members' offices.¹⁶⁹ Accordingly, in providing a service to constituents wishing to undertake postal voting, Parliamentarians do not need to produce PVAs using their Printing Entitlement and, until August 2004, there was no entitlement to do so.

Distribution of campaigning material with PVAs

4.25 In 1998, the Electoral Act was amended to include Section 184AA. Section 184AA(1) provides that:

An application form for a postal vote may be physically attached to, or form part of, other written material issued by any person or organisation.

4.26 This provided the capacity, for the purposes of the Electoral Act, for political parties and their candidates to include campaigning material with PVAs they were sending to voters. However, there was no entitlement that provided for the public funding of the cost of an incumbent Parliamentarian producing the actual PVA. According to the AEC, at the 2001 Federal Election:

¹⁶⁷ Australian Electoral Commission, *Submission to the inquiry by the Joint Standing Committee on Electoral Matters into the 2007 Federal Election*, 20 June 2008, pp. 34-35.

¹⁶⁸ *ibid.*

¹⁶⁹ *ibid.*

The AEC received numerous complaints from electors in relation to the distribution of PVAs by political parties. Many of the complaints were in relation to the fact that some PVAs were sent out in envelopes marked 'Important Voting Information' and the envelopes bore the Commonwealth Coat of Arms. The letters were from incumbent Members. While this did not contravene the Electoral Act, there was clear community concern about the use of Parliamentary letterheads and mailing entitlements which the AEC referred directly and appropriately to the Ministerial and Parliamentary Services Group of the Department of Finance and Administration. This issue was also extensively discussed in the media.¹⁷⁰

Extension of Members' Entitlements to include printing of PVAs

4.27 Statement 2 of the 31 Statements that were developed across 2003 and 2004 by the Office of the then SMOS was:

It is permissible to send out postal vote applications, on the basis that MPs are providing a community service related to their own re-election.

4.28 Finance's advice to the then SMOS in relation to the proposed Statement was that, as the provision of an application form for a postal vote in a Federal election, or of a form to register as a general postal voter, was 'clearly electorate business', the use of the Communications Allowance to send out PVA forms to constituents would therefore appear reasonable.¹⁷¹ Finance suggested that there could be value in making explicit the fact that this would relate to PVAs for Federal elections and restricting usage to one's own re-election, suggesting that a form of words could be:

Senators and Members may use the Communications Allowance to provide to their constituents, postal vote applications for Federal election.

4.29 On that basis, it is clear that the department understood the intention behind Statement 2 to be that Parliamentarians would be advised that it would be permissible within their existing Communications Allowance entitlement to distribute PVA forms and forms to register as a general postal voter at Federal elections to residents in their electorate.¹⁷² Both forms were already available

¹⁷⁰ Australian Electoral Commission, *Submission to the Joint Standing Committee on Electoral Matters: Conduct of the 2001 Federal Election*, 12 July 2002, p. 34.

¹⁷¹ Finance also noted that subsection 184AA(1) of the Electoral Act makes express provision for the issue of postal vote application forms 'by any person or organisation'.

¹⁷² In May 2009, the AEC advised ANAO that it does not provide General Postal Voter forms to Parliamentarians. Instead, Parliamentarians must print these from the internet if they send them out.

through the AEC and, as discussed, it was an already established practice for Parliamentarians to distribute PVAs using their Communications Allowance.

4.30 On the afternoon of 31 August 2004¹⁷³, Finance received a copy of a determination made by the then SMOS dated 3 August 2004 that approved the printing of the following materials under Members' Printing Entitlement:

postal vote applications and other voting information.

Extension to Senators of the entitlement to print PVAs

4.31 The 3 August 2004 determination was made under Regulation 3(1)(c) of the Parliamentary Entitlements Regulations and, therefore, only applied to Members of the House of Representatives. The Printing Entitlements of Senators are prescribed under Regulation 3A and, at the time of the 3 August 2004 determination, were administered through the Department of the Senate. At that time, the Regulations did not provide the SMOS with the authority to approve additional printing benefits for Senators.

4.32 The Parliamentary Entitlements Regulations were amended in August 2006 to align the provisions relating to Senators under Regulation 3A with those set out under Regulation 3 for Members (except in relation to quantum), including providing the Minister with the authority to approve additional printed items for Senators. The then SMOS signed an instrument on 15 August 2006 which extended the entitlement to print 'postal vote applications and other voting information' to Senators.

Extent of production of PVAs using of entitlements

4.33 The printing of PVAs was reported in Monthly Management Reports in 2007-08 for 100 Parliamentarians (44 per cent), comprising 94 Members and six Senators. These Parliamentarians were from each of the two major political parties, the National Party and also included two independents. 'Party' PVAs (that is, postal vote application forms that were initially received by the relevant party and then forwarded to the AEC, rather than being received directly by the AEC from the voter involved) were received by the AEC from each of these sources for the 2007 election.

¹⁷³ The date of the 2004 Federal Election was announced by the then Prime Minister on 29 August 2004 and the caretaker period commenced at 5:00 pm on 31 August 2004, following the issuing of the writ.

4.34 The Management Reports provided to 126 Parliamentarians indicated that no PVAs had been produced using their Printing Entitlement.¹⁷⁴ No PVAs were reported in the Management Reports as having been produced by Parliamentarians from either the Australian Greens or the Australian Democrats, and the AEC did not receive any 'party' PVAs from either the Australian Greens or Australian Democrats.

4.35 ANAO's examination of Management Reports on entitlements use provided to Parliamentarians revealed that, based on the invoice descriptions from printers and certifications provided by the Senator or Member, a substantial number of PVAs were produced for the 2007 Federal Election by Parliamentarians using their Printing Entitlement. The aggregate amount charged to all Parliamentarians' Printing Entitlements for the printing of PVAs in 2007-08 was \$1.04 million.¹⁷⁵ In terms of the value and effectiveness of this use of Parliamentarians entitlements, ANAO's analysis was that:

- at least 8.23 million PVA documents were produced by Parliamentarians in 2007-08 using their Printing Entitlement, providing the capacity for 16.5 million¹⁷⁶ applications to be made to the AEC for a Postal Voting Pack, meaning that Parliamentarians printed 2.9 million more postal vote application forms than the number of voters enrolled for the election;¹⁷⁷

¹⁷⁴ ANAO analysis of a sample of items produced using the Printing Entitlement in 2007-08, and the associated printer invoices, revealed that not all PVAs produced using this Entitlement have been accurately described on paid invoices received from printers and therefore reported in the Management Reports as relating to PVAs. Specifically, ANAO's sample included 69 invoices for the printing of PVAs for 68 Parliamentarians. Of those, 51 of the invoices were reported in the Management Reports as being for PVAs, but the remaining 17 instances in ANAO's sample of a Parliamentarian having PVAs printed under their Printing Entitlement were not paid by Finance under the entitlement to print 'postal vote applications and other voting information' and were not reported as relating to the printing of PVAs. Instead, those 17 invoices were paid under the entitlement to produce other types of printed items, such as 'newsletters for distribution to constituents', and were reported as such in the Management Reports.

¹⁷⁵ There were instances where the Monthly Management Report recorded that PVAs had been produced, but the quantity was not captured. ANAO's examination of a sample of material produced under the Printing Entitlement also identified instances where: items recorded as a PVA were not actually a PVA, and, as noted, PVAs were produced but were not invoiced and/or not described as such in the Management Report.

¹⁷⁶ Each of the PVA documents printed by Parliamentarians and political parties in the audit sample included two separate tear-off application forms for a Postal Voting Pack. Each application form may only be used in relation to one voter.

¹⁷⁷ There were 13 645 073 enrolled voters for the 2007 Federal Election (Source: Australian Electoral Commission, *Certified List Elector Count by Division, Age Groups and Gender for Election 2007*, at <www.aec.gov.au> [accessed 14 March 2009]).

- the Monthly Management Reports indicated that 91 Members used their Printing Entitlement to have sufficient PVAs produced that would have enabled every enrolled elector in their electorate to apply for a Postal Voting Pack. In two instances, the number of PVAs produced would have enabled every enrolled voter in the electorate to have submitted more than four applications for a Postal Voting Pack; and
- the AEC received 400 775 'party' PVAs for the 2007 Federal Election, meaning that, at best,¹⁷⁸ 97.6 per cent of applications for a Postal Voting Pack printed and distributed by Parliamentarians were not used by voters. By way of comparison, in 2007-08 the AEC wrote to more than three million people as part of its roll review and roll stimulation activities and received back slightly more than 700 000 completed application forms, but did not consider this rate of response to be sufficiently efficient or effective.¹⁷⁹

4.36 Analysis of documentation provided to ANAO by a sample of printers indicates that PVAs distributed by political parties, including through the use of the entitlements of an incumbent party candidate, very often included material campaigning for the relevant party and/or candidate, with the major political parties organising the printing of PVAs in a similar format for both incumbent Parliamentarians and other party candidates. This occurs as part of a coordinated campaign to win, or retain, government.

4.37 The high number of PVAs being printed by Members compared to the number of enrolled electors indicates a risk that PVAs may have been printed using one Parliamentarian's entitlement for distribution in the electorates of other Parliamentarians and/or in electorates being contested by non-incumbent party candidates who did not have an entitlement to have PVAs (and associated campaign advertising material) printed at public expense. There was some evidence of this having occurred for transactions included in the audit sample. In respect to the potential instances of this occurring identified by ANAO, in December 2008 the then SMOS was advised by Finance that AGS had advised that:

¹⁷⁸ As PVAs may also have been produced by the parties using their own resources, including for distribution in electorates not currently held by the relevant party and, as noted, ANAO analysis of a sample of printed items showed that some PVAs printed using Parliamentarians' Printing Entitlements were not recorded as such in the Management Reports.

¹⁷⁹ *Proof Committee Hansard*, Joint Standing Committee on Electoral Matters, 17 March 2009, p. EM3.

If the PVAs identified by the ANAO were for distribution to persons in the electorate Division in which the non-incumbent candidates were standing rather than in the Member's own electorate Division they would not, in our view, be covered by the additional benefit [*provided to Parliamentarians under the Printing Entitlement*].

4.38 The situation is more complicated for Senators given:

- Senators (other than those from the ACT and Northern Territory) are elected for six year terms, compared to the three year terms of Members of the House of Representatives, and as a result about half of the Senate is not required to stand for re-election at each Federal election, unless there is a double dissolution; and
- Senators represent a State or Territory rather than an electoral Division.

4.39 One Senator's Monthly Management Reports for 2007-08 stated that a total of 347 701 PVAs were printed using the Printing Entitlement (the most reported for any Parliamentarian). Of these, the Senator made a financial contribution towards the cost of 347 201 of the PVAs under a single invoice, which was included in the audit sample. Notwithstanding that the Senator whose entitlement was used was standing for re-election, the PVAs printed under this invoice were each attached to party-coordinated election campaign material, with no mention being made of the particular Senator. In this respect, the December 2008 advice from Finance to then SMOS was that AGS had advised as follows:

In relation to Senator [*name removed from this extract*], we think there is a reasonable argument that [*the Senator's*] benefit would have covered the distribution of PVAs in the House of Representatives electorate Divisions in circumstances where the PVAs referred to [*the Senator*] as well as other persons. However, we think there is a real risk that a court would find that the PVAs did not fall within [*the*] Senator's benefit as the PVA distributed had no connection with [*the Senator*].

4.40 There were also two Senators in the audit sample who were not seeking re-election at the 2007 Federal Election (in one case, because the Senator's position was not required to be contested at the 2007 election and the other Senator was retiring), each of whom had PVAs and/or related party advertising material (in the form of a party political mail out letter) printed using their Printing Entitlement to assist one or more non-incumbent candidates in a marginal seat. Apart from the name of the local Liberal candidate for the relevant House of Representatives seat in which the resident

to whom the letter was addressed resided, the content of the letters sent by each Senator was identical, as follows:

There is a clear difference between the Howard-Costello team, with its proven record of economic management, and the most inexperienced and union dominated Labor Opposition in a generation.

The recent turbulence on world stock markets reminds us that we need strong and careful economic management. As part of John Howard's team, I am committed to ensuring jobs and the economy are protected.

The union-dominated Labor Opposition, with 70% of its front bench as former union officials, makes all its decisions—on the economy, interest rates, debt, immigration and education—based on what the trade union leaders want. If we were to listen to them, the consequences for small business, our \$1.1 Trillion economy and the local families who depend on its stability will be disastrous.

The careful economic management of the Howard Government has allowed us to do more locally. Your local Liberal Candidate, [name changed according to the electorate], and I will fight to:

- **Deliver extra funding for local roads** to improve safety and reduce traffic congestion;
- **Improve local school facilities and services** so our children can have a high quality learning environment; and
- **Invest in additional local health services** so families can readily access these vital services.

Unlike Labor's poorly thought through policies, dangerous inexperience and union domination, the proven balance of the Howard-Costello team will continue to take Australia forward with strength and confidence.

I will continue to work to do more to strengthen our economy and local community.

4.41 In each instance, the work relating to the production of the above letter was originally invoiced by the relevant printer/mailing house as being 'Print and insert of letter'. Finance queried this description with the Office of each Senator, advising that letters are not an item permitted to be produced under the Printing Entitlement. Each Senator or their Office responded to Finance advising that the printed materials involved the production of PVAs, including through the provision of replacement invoices on which the description was revised to 'Postal Votes' (although this was not the case). Finance did not ask to see the actual items that had been produced under the relevant invoice. In this respect, Finance advised ANAO that it had been the intent of successive governments that the department not sight or vet any printed material.

Nature of items printed using entitlements and distributed with PVAs

4.42 In its first submission to the Joint Standing Committee on Electoral Matters' inquiry into the conduct of the 2004 Federal Election, the AEC stated that the distribution of PVAs with other material by candidates and political parties had become 'a ubiquitous campaign tool'.¹⁸⁰ Similarly, in its submission to the inquiry by the Joint Standing Committee on Electoral Matters into the 2007 Federal Election, the AEC commented that:

Political parties and candidates wishing to produce PVAs may obtain a camera-ready copy of the approved form from the AEC. It is now common practice for major political parties to undertake large-scale reproduction and distribution of their own version of the official AEC PVAs, typically attached to campaign material. This practice began as a strategy in marginal seats, and has now spread to most divisions.¹⁸¹

4.43 This advice followed the AEC's submission to the Joint Standing Committee's inquiry into the 2001 election, which had raised concerns that political parties and their candidates distributing PVAs together with campaigning material had led to a:

blurring between the political and the electoral. The production and distribution of PVAs, which are part of the mechanics of voting, are tasks of the AEC, along with providing pre-poll voting centres and mobile polling facilities. Campaigning and the distribution of material about candidates is, quite rightly, a matter for the parties and candidates. The AEC is concerned that there is an undesirable blurring between the political and the electoral in the eyes of the elector.¹⁸² [*emphasis as per original*]

4.44 ANAO's analysis of a selection of material produced for a sample of Parliamentarians in three States under the Printing Entitlement in 2007-08 confirmed the AEC's view that 'party' PVAs, as distributed to residents, usually have material campaigning for the relevant party and/or Parliamentarian attached to the actual postal vote application form designed

¹⁸⁰ Australian Electoral Commission, *First Submission to the Joint Standing Committee on Electoral Matters' Inquiry into the 2004 Federal Election and Matters Related Thereto*, 31 March 2005, p. 13.

¹⁸¹ Australian Electoral Commission, *Submission to the inquiry by the Joint Standing Committee on Electoral Matters into the 2007 Federal Election*, 20 June 2008, p. 35.

¹⁸² Australian Electoral Commission, *Submission to the Joint Standing Committee on Electoral Matters: Conduct of the 2001 Federal Election*, 12 July 2002, p. 35.

by the AEC, and may also be enclosed with a party-scripted bulk mail out letter. In addition to providing a reason, and vehicle, for transmitting campaign material to voters, the practice of inviting voters to return 'party' PVAs to the AEC via the party through self-addressed reply paid envelopes (rather than directly to the AEC) assists political parties to collect additional data on those voters and, in some respects, their likely voting intentions.¹⁸³

4.45 In respect to this analysis, the sample examined by ANAO included a total of 68 invoices that related to the printing of documents incorporating PVA forms for the 2007 Federal Election. Those invoices involved 67 Parliamentarians—two Senators and 65 Members. The quantity of PVA documents printed totalled at least 4 313 777¹⁸⁴, at a total cost of \$460 804. All of the PVAs in the sample examined by ANAO were printed by Parliamentarians from the Liberal Party, the Nationals or the ALP, of which the two major parties represented 97 per cent. Analysis of those PVAs highlighted two significant aspects to this use of the Printing Entitlement, as follows:

- there was a co-ordinated approach to the use of PVAs by each party, with standardised designs and common printers being generally used within a party; and
- the distribution of PVAs was used by both of the two major parties as a vehicle for the wide-spread distribution of party campaign advertising material, which reflected the key elements of their respective election campaign strategies.¹⁸⁵

4.46 Excluding an invoice that did not identify the quantity printed, the voter enrolment for the 2007 Federal Election in the 64 electorates involved totalled 5 845 247 voters.¹⁸⁶ The PVAs in ANAO's sample printed by those

¹⁸³ Advice to ANAO from Dr Sally Young, a political scientist and lecturer in Media and Communications at Melbourne University, was that, if both political parties send PVAs to an elector, it is considered that the elector is likely to return the PVA to the party whose candidate he/she is most likely to vote for.

¹⁸⁴ One of the invoices in the sample did not identify the quantity of PVAs printed. This was not questioned by Finance prior to paying the invoice, with the entry for that invoice in the Member's Monthly Management Report not identifying the quantity printed. This was the case for a total of 17 invoices for this Member from the same company in 2007-08, for costs totaling \$64 199.

¹⁸⁵ In August 2009, Finance advised ANAO that: 'of themselves, the use of particular firms, involvement of party officials and reflecting acknowledged campaign strategies, are not outside the terms of the Printing Entitlement as currently defined.'

¹⁸⁶ Australian Electoral Commission, *Certified List Elector Count by Division, Age Groups and Gender for Election 2007*, at <www.aec.gov.au> [accessed 14 March 2009].

Members for distribution in their electorate totalled 3 881 076 at a cost of \$423 002. Each PVA document printed using the relevant Member's Printing Entitlement provided the capacity for two separate voters to apply to make a postal vote. Accordingly, the PVAs printed by Members in the sample examined by ANAO provided the capacity for 133 per cent of the total enrolled voters in the relevant electorates to apply to make a postal vote. In that context, rather than providing constituents with a relevant service, the use of Parliamentarians' Printing Entitlements for the production and distribution of PVAs and associated material during the 2007 election campaign period was, in large part, a supplementary funding source for the overall campaign strategies of the relevant political parties and of the individual Members and Senators as incumbent party candidates.

Party co-ordination of PVA production and distribution

4.47 Although the PVAs within the sample examined by ANAO were printed using a Member or Senator's Printing Entitlement, a key feature was the extent to which the design, production and distribution of the PVAs was co-ordinated through the relevant party election campaign machinery. In particular, Table 4.1 illustrates that, for each of those parties, the printing of PVAs in the sample examined by ANAO was largely concentrated with a small number of printing firms (reflecting the pattern identified more broadly in relation to the use of the Printing Entitlement in 2007-08, as discussed at paragraphs 2.94 to 2.107). In addition to the concentration of the printing of PVAs with a small number of printers, a further feature of Table 4.1 is the use of a printer to produce PVAs for Parliamentarians within a particular party who are not from the State in which the printer is located.

Table 4.1

Printers used in the printing of PVAs in ANAO’s sample

Party	Total printed in sample	State	No. of Members / Senators	Printer	Quantity printed	Percentage of total in State in ANAO sample (%)
Liberal	2 558 254	1	15	Printer 1	830 254	100.0
		2	13	Printer 2	905 000	100.0
			10		710 000	86.3
		3	1	Printer 3	58 000	7.0
			1	Printer 4	55 000	6.7
ALP	1 691 523	1	11	Printer 5	951 723	89.8
			2	Printer 6	107 800	10.2
			1	Printer 7	500	0.5 ¹
		2	7	Printer 8	414 500	86.4
			1	Printer 9	59 000	12.3
			1	Printer 10	6 000	1.3
		3	2	Printer 11	152 000	100.0 ²
Nationals	135 000	1	1	Printer 12	62 000	100.0
		3			68 000	93.0
			1	Printer 13	5 000	7.0

Notes:

- Does not add due to rounding.
- This excludes a third invoice in ANAO’s sample which did not state the quantity printed.

Source: ANAO analysis of samples of printed items provided to ANAO by printers and Finance records.

4.48 Particularly in the case of the Liberal and Labor parties¹⁸⁷, the design of the PVA, and associated material reflected the campaign strategy of the relevant party. Specifically:

¹⁸⁷ The PVAs printed by two of the Nationals Members in ANAO’s sample, both of which used Printer 12, included the photograph and contact details of the relevant Member, but did not include overt electioneering for the Member or Party. However, each was accompanied by a bulk mail out letter to residents from the relevant Member whose primary purpose was to electioneer for the Member’s re-election and that of the Coalition Government. The third Nationals Member in ANAO’s sample used a similar design, but it was altered to include a panel electioneering for the Member and the Coalition as being committed to supporting families, retirees, small business and workers in the electorate.

- the approach taken by the Liberal Party involved the PVA document itself, with detachable postal vote application forms, including a section soliciting votes for the candidate, but with the bulk of the election campaigning messages being delivered through a standardised party-scripted mail out letter accompanying the PVA document that:
 - positioned the Liberal party as proven economic managers and the Labor Party as too inexperienced to manage the Australian economy;
 - criticised the Labor Party as being too heavily influenced by the unions; and/or
 - sought to persuade voters that a change to Labor would be too great a risk; and
- the approach generally taken by the ALP was to incorporate campaign advertising material as a component of the printed PVA document. The document also incorporated a detachable reply paid envelope for the return of completed postal vote application forms to the ALP, rather than directly to the AEC.¹⁸⁸ Of the PVA documents produced using the Printing Entitlements of Labor Parliamentarians in ANAO's sample:
 - 90 per cent referenced Labor's industrial relations policy, including the abolition of the WorkChoices legislation;
 - 90 per cent referenced Labor's education revolution policy, including the establishment of trades centres in high schools;
 - 87 per cent referenced Labor's climate change policies;
 - 84 per cent referenced Labor's cost of living policies, including commentary about John Howard being out of touch with working families;
 - 77 per cent referenced seniors, including through the inclusion of photographs of the relevant Member with a senior; and

¹⁸⁸ Other aspects of the design of PVAs printed for the 2007 election using the Printing Entitlement of Labor Parliamentarians varied between States.

- 65 per cent referenced Labor’s policies for economic management.¹⁸⁹

4.49 Based on documentation provided to ANAO by various printers, in many cases the PVA material produced for use in a party’s election campaign did not differ between that produced in relation to an incumbent candidate, which was publicly funded using the relevant Parliamentarian’s Printing Entitlement, and non-incumbent candidates, primarily funded by the party and/or candidate. For example:

- documentation provided by one of the printers shown in Table 4.1 indicated that the production of Labor PVAs was co-ordinated by the party State Branch. In one case in ANAO’s sample, this included the State Branch advising the printer to allocate part of the total cost of producing PVAs for distribution in a number of non-Labor electorates to a Senator, with those costs subsequently being met from the Senator’s Printing Entitlement. The printer was instructed to invoice the remainder of the costs associated with the PVAs to the Branch of the Labor Party. Although the Senator involved was standing for re-election at the 2007 election, none of the PVAs on the relevant invoice made any reference to the Senator, but did reference the Labor candidate in the relevant electorate. In those circumstances, the costs met through the Senator’s Printing Entitlement represented a funding contribution to the party election campaign; and
- documentation provided to ANAO by another of the printers in Table 4.1 identified that the production of standard-design party PVAs to be used in connection with the campaigns of both incumbent and non-incumbent Liberal party candidates in two States were processed as part of the same job by that printer. In at least one case in ANAO’s sample, this involved the costs of a party PVA printed for distribution in a marginal Labor electorate being met from the Printing Entitlement of a Liberal Senator not required to stand at the 2007 election.¹⁹⁰

¹⁸⁹ These aspects of the respective election campaigns were discussed from the perspective of both parties in the National Press Club Addresses given following the 2007 election by the ALP National Secretary on 4 December 2007, and the Federal Director of the Liberal Party on 19 December 2007.

¹⁹⁰ The same printer produced a party-scripted mail out letter for distribution in the same electorate, printed on the Senator’s letterhead and promoting the Liberal Party candidate for that electorate. Those costs were also met from the Senator’s Printing Entitlement (see further at paragraphs 4.40 and 4.41).

4.50 Using the Printing Entitlement (and related Communications Allowance) in the above ways was not consistent with the stated premise that the distribution of PVAs was permissible on the basis that Parliamentarians are providing a community service (see paragraph 4.27).

‘How to vote’ cards

4.51 Members of the House of Representatives are elected through a preferential system of voting. Under that system, voters are required to place a number against every candidate on the ballot paper, in order of preference. A nomination of ‘1’ against a candidate gives that candidate a primary, or first preference, vote. To be elected to represent the electorate in which he or she is standing, a candidate must secure an absolute majority, or 50 per cent plus one, of valid votes cast. If no candidate secures an absolute majority of primary votes, the candidate with the least number of primary votes is eliminated, and his or her votes are distributed or reallocated in accordance with the second preferences indicated on ballots cast in their favour. This process continues until a candidate has, through primary and preference votes, secured 50 per cent plus one of the total votes.

4.52 The party or coalition of parties that is able to secure a majority of seats in the House of Representatives through this process forms government. Accordingly, in many cases, the allocation of preferences by voters can be just as important in determining the outcome of the vote for a particular House of Representatives electorate, and of a Federal Election, as the primary votes that are cast.

4.53 Senators are elected through a proportional voting system, with the allocation of preferences being critical to determining which candidates achieve the required quota to take one of the Senate seats available in the particular State or Territory in which they are standing. As opposed to the House of Representatives, Group Voting is allowed in relation to the Senate, such that voters are able to indicate which group of candidates they prefer. No further allocation of preferences by the voter is required. Where voters choose this option, the allocation of preferences is determined by the political parties through the Group Voting Tickets registered with the AEC.

4.54 As a result, an important aspect of the Australian political context has been that political parties and candidates will seek to determine the preference allocation by voters that would be most beneficial to their chances of election and engage in negotiations with other parties and/or candidates to reach

agreement on the exchange of preferences. These preference allocations are recommended to voters by political parties and candidates through the distribution of 'how to vote' cards. Traditionally, 'how to vote' cards (or flyers) are produced for distribution, at the polling station, to voters in a specific House of Representatives electorate and consist of:

- a representation of the green ballot paper used in House of Representatives elections, with numbers placed against the candidates names in the order of preference the candidate's party, or the candidate, is recommending to voters. Typically, this consists of a '1' being placed against the name of the relevant candidate and the remaining candidates being allocated numbers in decreasing order of preference; and
- a representation of the white ballot paper used in Senate elections, with a '1' placed against a particular group (typically, the party to which the House of Representatives candidate belongs).

4.55 The production of 'how to vote' cards has, accordingly, played an important part in the election campaigns of all political parties and candidates at Federal Elections. Until August 2004, the cost of producing and distributing 'how to vote' cards for all candidates, whether they be incumbent or non-incumbent candidates, was supposed to be met by the political parties and/or the candidate either from public funding provided under the Electoral Act or other (non-entitlement) sources.

Introduction of an entitlement to produce 'How To Vote' cards

4.56 The 42 Questions and Answers document provided to Finance in April 2003 by the Office of the then SMOS (see paragraphs 2.16 to 2.26) proposed, as one of the new 'understood conventions', that it was acceptable for Parliamentarians to send out 'how to vote' cards provided that the cards include advice on how to vote for the Parliamentarian undertaking the mail-out. This subsequently became Statement 3 of the 31 Statements on entitlements use proposed by the then SMOS in February 2004 (see paragraphs 2.27 to 2.38), expressed as follows:

Similarly, 'How To Vote' cards in Federal elections may be printed and distributed by MPs, providing that the 'How To Vote' includes advice on How To Vote for the MP.

4.57 Finance's assessment of that proposed Statement advised the then SMOS that the printing entitlements of Senators and Members provided under the Parliamentary Entitlements Regulations could not be used for the printing of 'how to vote' cards. Finance further advised that, on balance, the printing of 'how to vote' material using the Senator or Member's electorate office facilities was seen as, at best, 'borderline'. Finance suggested that the Statement be amended to read:

Printing entitlements should not be used to print 'How To Vote' cards.

Moreover, care should be taken in using entitlements to distribute 'How To Vote' cards to ensure that such action is incidental to the primary purpose for accessing the entitlement. Care should also be taken to ensure that only 'How To Vote' cards relating to the Senator's or Member's own re-election are distributed.

4.58 On 8 July 2004, Finance advised the then SMOS that the Minister's Office had met with departmental officials on 23 June 2004 and indicated general agreement with the recommendations contained in the discussion papers prepared by the department in relation to the 31 proposed statements. As noted at paragraph 2.34, Finance further advised that there were five of the statements in respect of which further discussion may be required, including Statement 3 relating to the printing and distribution of 'how to vote' cards, and advised the then SMOS:

There is no provision, at present, which would permit Members to use their printing entitlement to produce 'How To Vote' cards. It would be open to you to issue an approval, under Parliamentary Entitlements Regulation 3, and this would appear the most satisfactory course. The printing entitlements of Senators is, at present, administered by the Department of the Senate—if you decide to transfer the administration to Finance under parallel arrangements to those applying to Members then the Regulation 3 approval could be extended to Senators.

4.59 On 12 August 2004, Finance sought the then SMOS' approval of a draft answer to a Question on Notice submitted on 3 August 2004 by the Member for Batman which had asked:

How many Members used their printing entitlement to print their How To Vote cards for the House of Representatives elections held in (a) 1996, (b) 1998, and (c) 2001 and which political parties did those Members represent at each election?

4.60 Finance advised the then SMOS that under neither of the regimes governing Members' printing entitlements that applied at the time of the 1996, 1998 and 2001 elections had there been an entitlement for a Member to have 'how to vote' cards printed. The department further advised that:

Since December 1995, when Members were enabled to arrange their printing directly [*rather than*] through Ministerial and Parliamentary Services, the arrangements have been essentially self-regulatory. Members arrange their own printing and in submitting the account to Ministerial and Parliamentary Services for payment certify that the goods were provided and that the printing was within entitlement. There is no requirement that Ministerial and Parliamentary be supplied with a copy of the printing or an itemised account.

It is possible that some Members may have used the printing entitlement to print How To Vote cards. However, the records held by Ministerial and Parliamentary Services would not be adequate or conclusive.

It is consequently considered that the most satisfactory way of responding to [*the Member's*] question is to point out that no entitlement to print How To Vote cards existed.

4.61 On 18 August 2004, the Minister's Office requested advice from the department as to whether it would be factually correct to provide the following answer to the Question on Notice:

For the period of time in question, Finance did not request, nor did they receive as a matter of course, copies of all material printed under the printing entitlement. It is, therefore, not possible to provide an accurate total of Members of the House of Representatives, if any, who used their printing entitlement to produce how-to-vote cards between 1996 and 2001.

4.62 On 27 August 2004, Finance advised the Minister's Office that:

If such a statement were used to answer question on notice 3711 of 3 August 2004 it could imply or at least suggest that printing of how-to-vote cards was/is within entitlement.

For that reason the Department prefers the original formulation of the answer contained in [*the brief provided earlier*].

4.63 The answer to the Question on Notice approved by the then SMOS on 30 August 2004 reflected the answer proposed to the department by the Minister's Office on 18 August 2004.

4.64 The date of the 2004 Federal Election was announced by the then Prime Minister on 29 August 2004 and the caretaker period commenced at 5:00 pm on

31 August 2004. A departmental file note of 1 September 2004 recorded the following:

On 30 August 2004 immediately after the [*Finance*] SES strategy meeting I telephoned [*the then Minister's Office*] concerning the issue of the use of the printing entitlement by Members to print How To Vote cards.

[*The Office*] advised that an instrument had been signed which had the effect of including the 'how-to-vote' cards in the menu of 'other printed materials as approved by the Minister for distribution to constituents' provided for in Parliamentary Entitlements Regulations 3(1)(c).

[*The Office*] said that the instrument was amongst the papers [*held by the Office*] and that [*it*] would provide a copy to us. We briefly discussed promulgation and [*the Office*] acknowledged, as [*it*] had before, that we would need to advise all Members.

4.65 A minute to the Finance Secretary, also dated 1 September 2004, advised that, on the afternoon of 31 August 2004, the department had received:

- a copy of a determination dated 3 August 2004 made by the then SMOS to allow the printing of 'how to vote' cards at Australian Government expense; and
- a memorandum to the department from the then SMOS dated 4 August 2004.

4.66 The Secretary was further advised that departmental officials had discussed the option of the Minister granting an approval for the printing of how to vote material at a meeting on 4 August 2004.

4.67 As noted at paragraph 4.30, the 3 August 2004 determination approved the printing of 'postal vote applications and other voting information' under the Printing Entitlement. The 4 August 2004 memorandum from the then SMOS advised Finance that:

After discussions between my office and [*Finance*], this memo is to clarify one point in relation to the attached determination.

It is my intention that a House of Representatives Member may explain how to vote for the Senate in the State in which his/her electorate is located, even if this actively solicits a vote for one or more Senate candidates.

Therefore, traditional 'How To Vote' cards, which deal with the relevant House of Representatives seat and have a panel dealing with the Senate, should be considered a legitimate printing entitlement.¹⁹¹

4.68 Finance was advised of the Minister's 3 August 2004 approval of the printing of 'postal vote applications and other voting information', and the 4 August 2004 memorandum clarifying that this approval included traditional 'how to vote' cards, on 30 August 2004. In this respect, the 1 September 2004 minute to the departmental Secretary advised that, following the then Prime Minister's election announcement on 29 August 2004, the department had followed up with the then Minister's Office to inquire as to whether the Minister intended to make a determination to include 'how to vote' cards on the list of approved items. The minute further advised that:

[The Minister's Office] advised that the Minister had signed a determination but that it was amongst the papers *[held by the Office]*.

The determination was subsequently received in the Department on the afternoon of 31 August—after letters had been despatched to Senators and Members outlining the conventions applicable to their use of entitlements during the election campaign.

4.69 The department had despatched the pre-election letters, in relation to the use of entitlements during the election period, on 31 August 2004. To ensure all affected Parliamentarians were made aware of the increased entitlement, the department issued a circular to all Members of the House of Representatives on 1 September 2004 advising of the then SMOS' approval of the inclusion of 'postal vote applications and other voting information' in the categories of printed materials which could be printed for distribution to constituents under the Parliamentary Entitlements Regulations. The circular advised Members that:

¹⁹¹ In this respect, the then SMOS advised the 15 February 2005 Additional Estimates hearing of the Senate Finance and Public Administration Legislation Committee that, in approving the printing of 'postal vote applications and other voting information': 'My intentions were to deal with the mechanics of voting—how to cast a valid vote for the House of Representatives and the Senate. It stands to reason that potentially rather than actual voting with numbers there might be a situation where there is a controversial referendum on the republic, for example. In those circumstances it might be appropriate for people to know how their local member feels on that particular issue and how they would encourage them to vote for the future of the country. That would be another mechanical aspect of voting for a referendum. Other than that, I do not see that its meaning would have a broader application than that which is already an entitlement by way of newsletter entitlement.' (Official Committee Hansard, Senate Finance and Public Administration Legislation Committee, Additional Estimates, 15 February 2005, F&PA 82.)

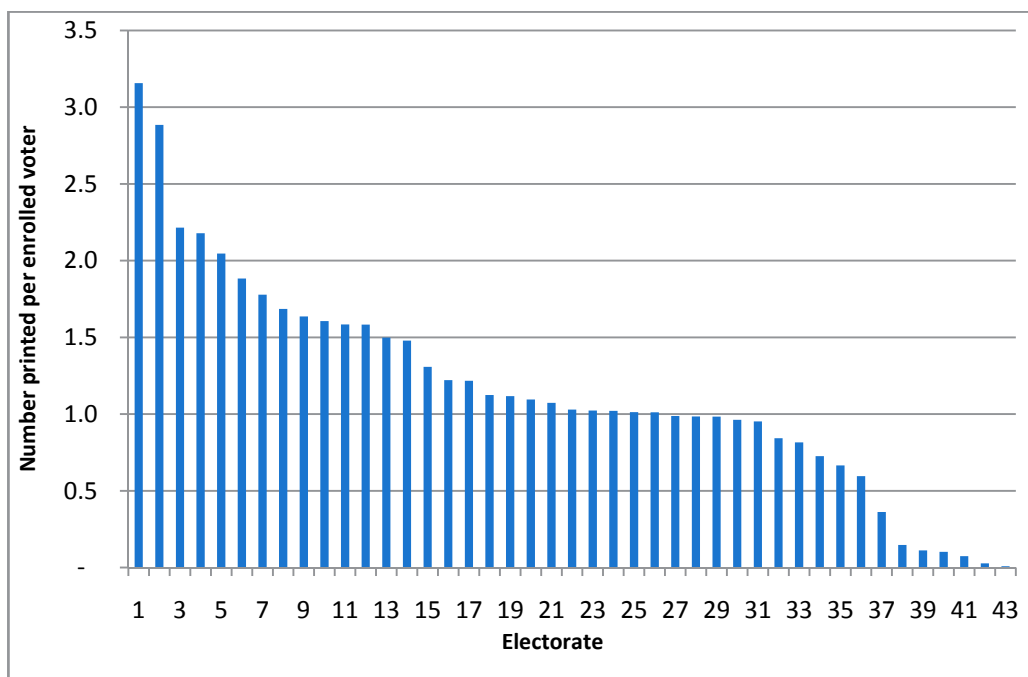
Other voting information includes 'How To Vote Cards'. In approving the inclusion of this material, the Minister has indicated that, in addition to How To Vote information in relation to the Member's seat, the card may also include a panel dealing with How To Vote for the Senate in the state or territory in which the Member's electorate is located.

Extent of use of Printing Entitlement to produce 'how to vote' cards and 'other voting information'

4.70 According to the Management Reports for 2007-08, 43 Members (29 per cent) used their Printing Entitlement to produce a total of 4.6 million 'how to vote' cards for the 3.97 million registered voters in the electorates represented by those Members. As illustrated by Figure 4.1, 31 of those 43 Members produced (according to the Management Reports) one or more 'how to vote' cards for each registered voter in their electorate. The Management Reports of one Member stated that the Member had printed 318 457 'how to vote' cards for distribution to the 100 916 registered voters in the Member's marginal electorate. The Management Reports also stated that this Member had used the Printing Entitlement to produce 128 173 PVA forms enabling 256 346 people to potentially request a Postal Voting Pack from the AEC. It was similarly common for some other Members to produce high numbers of both PVAs and 'how to vote' cards, both of which also incorporated election campaigning material.

Figure 4.1

Number of ‘how to vote’ cards reported by Finance as being produced for each registered voter in a House of Representatives Division



Source: ANAO analysis of Management Reports and data from the AEC.

4.71 In addition to ‘how to vote’ cards, the Management Reports for 35 Parliamentarians stated that ‘other voting information’ had been printed using their Printing Entitlement. ANAO’s examination of a sample of these items revealed that, in most instances, the ‘other voting information’ printed was a ‘how to vote’ card. Adjusting for those Parliamentarians where the Management Reports included both production of ‘how to vote’ cards and ‘other voting information’, there were 69 Parliamentarians where the Reports indicated the production of one or both.

Nature of use of Printing Entitlement to produce ‘how to vote’ cards

4.72 ANAO’s examination of a sample of material printed under the Printing Entitlement by a number of Parliamentarians identified a number of cases of traditional ‘how to vote’ cards being produced for the 2007 Federal Election, comprising representations of the House of Representative’s ballot

paper for a particular electorate and the Senate ballot paper for the State in which the electorate was located.

4.73 The role of ‘how to vote’ cards as an important tool in the election campaign strategy of political parties was reflected in the organised and co-ordinated approach taken to the production of these items. Within the sample examined by ANAO, which involved Parliamentarians from three States, there were standardised versions of ‘how to vote’ card designed for use by both incumbent and non-incumbent candidates of each of the major political parties. The slogans and images included on those standard designs reflected the acknowledged election campaign strategies of the relevant party.

4.74 For example, there were two standard forms of ‘how to vote’ card printed in ANAO’s sample for Labor Parliamentarians using their Printing Entitlement, as follows:

- those printed for candidates from two States were based around promoting the leadership of the then Opposition leader with a prominent, central photograph of Mr Rudd, and a key slogan from the party’s campaign: ‘Kevin Rudd and Labor. New Leadership for Australia’s Future.’ The name and photograph of the relevant Member was inserted at the top right corner of the ‘how to vote’ card, above the House of Representatives ballot paper. Some included further election campaign material on the reverse side, based on the Labor election campaign strategy of promoting ‘Kevin Rudd’ and ‘A Plan for Australia’s Future.’;¹⁹² and
- those printed for candidates from the third State were also based around the Opposition Leader, with a photograph of the candidate with Mr Rudd beside the slogan ‘how to vote for Kevin Rudd and Labor’, with the Member’s name and title. The slogan across the bottom

¹⁹² See, for example, the comments by Mr Tim Gartrell, then ALP National Secretary in his address to the National Press Club on 4 December 2007: ‘Part of this was the recognition that Labor was changing—positioned at the centre of Australian politics. That Kevin Rudd was the leader of a modern, forward-thinking Labor Party with a plan for the future. Our research was telling us that people though Kevin Rudd was different to the old Labor Party; a new style of Labor leader with an agenda that connected with people.’

of the standard card also reflected a key element of the Labor election campaign strategy, 'Standing up for working families'.¹⁹³

4.75 Similarly, the 'how to vote' cards printed for Liberal Parliamentarians in ANAO's sample reflected key elements of the party's election campaign strategy, as follows:

- those printed for candidates from one State were based on the Liberal campaign strategy of highlighting the then Prime Minister and then Treasurer as careful managers of Australia's \$1.1 trillion economy, including the party campaign slogan 'Go for Growth. Vote Liberal'. Each also solicited primary votes for the candidate through a slogan used throughout the election advertising material produced in relation to Liberal candidates as part of a strategy to highlight past achievements, 'I need your vote to do more.'¹⁹⁴ In the case of one Member in ANAO's sample, the reverse side of the 'how to vote' card also reproduced a standard Liberal party election campaign advertising flyer promoting the party's 'Bold 9-Point Plan to build and grow Australia'; and
- a number of the Liberal Members from another State in ANAO's sample used their Printing Entitlement to produce tear-off 'how to vote' cards that were attached to personalised letterhead on which a bulk mail out letter was overprinted. The letter provided information on pre-polling including, in most cases, the location of pre-poll voting centres in the relevant electorate, but the bulk of the letter's content did not differ between Members and was standard text directed at persuading the resident that voting for Labor was a gamble with Australia's future, as the Labor party was said to be inexperienced (including in relation to the influence of trade unions on the Labor front

¹⁹³ See, for example, the comments by Mr Tim Gartrell, then ALP National Secretary in his address to the National Press Club on 4 December 2007: 'What the Government didn't understand was what Kevin Rudd knew—that people are doing it tough, particularly in outer-metropolitan and regional areas where our feedback was that family finances were tightening significantly. That's why the Howard/Costello negative attacks on Labor's competence to manage the economy fell on deaf ears.'

¹⁹⁴ See, for example, the comments by Mr Brian Loughnane, Federal Director of the Liberal Party of Australia, in his address to the National Press Club on 19 December 2007: 'In fact, the Coalition's strength as an economic manager remained one of our strongest positive vote drivers on election day.'

bench) and highlighting the Liberal team's experience in economic management.¹⁹⁵

4.76 As noted (see footnote 191), the then SMOS has stated that, in approving the printing of 'postal vote applications and other voting information', his intentions were to deal with the mechanics of voting—how to cast a valid vote for candidates for election to the House of Representatives and/or the Senate. Similarly, legal advice provided to Finance in the course of this audit considered the meaning of the approved category of 'other voting information' and concluded that:

- items produced under this part of the menu of allowable items should have a sufficiently direct connection to the actual voting process; and
- it seems unlikely that it was intended that a Parliamentarian's Printing Entitlement was intended to be used to fund a political party's general campaign material.

Other items carrying 'how to vote' information

4.77 ANAO also observed, within the sample examined, a number of other forms of document printed under Parliamentarians' Printing Entitlement in which a representation of a completed House of Representatives or Senate ballot paper, soliciting primary votes for the Parliamentarian and indicating the preferences allocations recommended by the relevant political party, was reproduced.

4.78 Some of the items provided to ANAO by the relevant printers for Labor Members in the sample represented an alternative form of voting information card, which was mailed to residents in advance of polling day, and incorporated how to vote information and polling booth locations. These items arguably fall within the entitlement to print 'other voting information'.

4.79 Also within the sample examined by ANAO was a 2-sided card providing how to vote and where to vote information for a particular electorate, and incorporating a section on 'Kevin Rudd's Plan for Australia's

¹⁹⁵ See, for example, the comments by Mr Brian Loughnane, Federal Director of the Liberal Party of Australia, in his address to the National Press Club on 19 December 2007: 'Simply labeling themselves as "Economic Conservatives" did not remove the concerns the Australian community still has with Labor when it comes to managing our economy. There also remains deep-seated and genuine concern, particularly in small business, about the influence of the more militant trade unions on Labor's policy direction.'

Future' or other party policy promotion. Based on the samples of printed items provided to ANAO by relevant printers, versions of this item were printed using the Printing Entitlement of five Labor Members within the sample examined. These items were variously paid by Finance under the entitlement to print:

- postal vote applications;
- other voting information, including How To Vote cards; and
- magnetised community information cards.

4.80 However, in one case the printed item provided to ANAO by the printer related to a non-incumbent Labor candidate, rather than the electorate of the Member invoiced for the item.

4.81 Other means of printing and distributing 'how to vote' cards used by a range of Members from various parties involved their inclusion in brochures or flyers that also contained high levels of campaign advertising, such that attracting votes for the relevant party and Member from the demographic targeted by the item became its primary purpose, rather than informing voters on how to cast a vote for the Member. In other cases, a representation of a 'how to vote' ballot paper for the Member was included as one section within a promotional newsletter or brochure printed under the Member's Printing Entitlement (including examples that were distributed through local newspapers). These items were variously paid by Finance under the entitlements to print:

- magnetised community information cards;
- other voting information, including How To Vote cards; and
- newsletters for distribution to constituents.

Newsletters for distribution to constituents and community information cards

4.82 One of the most significant categories of item printed using Parliamentarians' Printing Entitlement relates to the entitlement provided under the Parliamentary Entitlements Regulations to print 'newsletters for distribution to constituents'. The term 'newsletter' is not defined in the Regulations. In that respect, Finance has advised the SMOS that, by convention:

it has been interpreted broadly to include any material that is not a letter, such as surveys, leaflets and other similar material.¹⁹⁶

4.83 As a consequence, the newsletter entitlement has been used by Parliamentarians to print a broad range of items. This was reflected in the sample examined by ANAO of items printed by a sample of Parliamentarians in three States in 2007-08, of which about 66 per cent were paid under the entitlement to print newsletters.

4.84 A further 13 per cent of the sample examined was paid under the entitlement to print 'magnetised emergency and community information cards'.

4.85 ANAO's examination identified that, particularly in the lead up to and during the 2007 election campaign period, the production of items claimed under those entitlements exhibited similar election campaigning activity patterns as discussed in relation to PVAs and HTVs. This included, for example, the use of:

- Parliamentarians' entitlements to produce and distribute centrally designed and co-ordinated party election campaign advertising reflecting the campaign strategy of the relevant party. This involved the printing of both material that was directly soliciting votes for the Parliamentarian's party and material that was directly attacking another party and its policies, associates or platforms. In many cases, there was no reference made to the Parliamentarian whose entitlement was used to print the item and/or to the electorate represented by that Parliamentarian. In other cases, nominal reference to the Parliamentarian was inserted into the party-designed item, following a standard formula;
- standard party designs for the production of brochures promoting both incumbent and non-incumbent candidates within a particular party, including for the direct solicitation of votes;
- Parliamentarians' Printing Entitlement, rather than the Communications Allowance, to meet mailing house costs associated

¹⁹⁶ If done for Parliamentary, electorate or official business, Senators and Members are permitted to use the electorate office facilities to print letters on letterhead produced under the Printing Entitlement (and these letters may be distributed using the Communications Allowance, to the extent that they relate to Parliamentary, electorate or official business).

with the production and insertion of addressed bulk mail out letters, often as a vehicle to distribute other items also printed using the Printing Entitlement;

- Senator or Member electorate newsletters as a vehicle for party campaign advertising and promotion of the Parliamentarian's own re-election. In a number of cases examined by ANAO, material of this nature represented the sole or overwhelming content of the item printed;
- items claimed as either newsletters or community information cards that directly attacked an opposing candidate;
- items printed by Senators (in some cases, the Senator was retiring or not required to stand) and retiring Members as a vehicle to raise the profile within the relevant electorate of a party candidate; and
- Parliamentarians' Printing Entitlement to undertake market research (in the form of surveys) to assist in the development of party and/or Member election campaign strategies or to promote a political message.

4.86 As outlined at paragraphs 2.16 to 2.38, there was evidence of Parliamentarians arranging their printing based on more liberal guidance covering entitlements use that was communicated between the then Government and then Opposition in mid-2003. Under the terms of that 42 Questions and Answers document, many of the printed items assessed by ANAO as at risk of being outside entitlement would have been viewed as within entitlement.

4.87 However, particularly in respect to the use of newsletters for election campaigning purposes, there are some significant differences between the document communicated between the then Government and then Opposition in mid-2003, and the officially promulgated entitlements framework. Two key questions and answers¹⁹⁷ included in the 2003 document were as follows:

- 'campaign-like' leaflets and other communications on key election issues were to be classified as newsletters and could be printed using entitlements; and

¹⁹⁷ ANAO was advised during the course of this audit that there was no guidance that certain of the answers outlined in the 42 Questions and Answers document were to be read only with reference to others, or to be read down by reference to others.

- at least 70 per cent of a newsletter must be clearly electorate or Parliamentary business, or material in support of one's own re-election, and up to 30 per cent of a newsletter could be direct party promotion or implicit promotion of another candidate.

4.88 In respect to the former, after being asked by the then SMOS to advise on the issue in 2004, Finance indicated that it would be 'difficult to be comfortable' with a view that a leaflet that is campaign-like is a newsletter. Finance recommended that a revised statement (relating to the use of electorate office printing facilities, not the Printing Entitlement, to produce newsletters and other material such as single issue pamphlets, but with reference to campaign material being omitted) be issued. This revised statement was issued and Finance has administered the Printing Entitlement on this basis. As the department was unaware that some Parliamentarians had either been provided with the 42 Questions and Answers document or advised to rely on its terms, no guidance was issued to Senators and Members informing them that the entitlement to produce 'newsletters for distribution to constituents' did not provide the authority for Parliamentarians to produce election campaign leaflets, flyers and/or brochures. Nevertheless, there were clear indications to Ministers and Parliamentarians that campaign-like materials were not accepted by the department as being within entitlement. Specifically:

- Finance declined to pay various invoices submitted by Parliamentarians that described items as being flyers, brochures or leaflets; and
- in response to allegations of entitlements misuse, Finance has recommended (and Ministers have acted upon) situations where items claimed as a newsletter were devoid of any information concerning the local Member but, rather, criticised the policies of another party or were primarily directed at promoting the policies of the Member's own party.

4.89 In advice to the then SMOS, Finance also expressed concerns about the re-interpretation of the 70/30 rule.¹⁹⁸ The department proposed that the existing approach be retained, including the principle that self-promotion may be considered Parliamentary and electorate business only where the self-

¹⁹⁸ See paragraph 2.33.

promotion was incidental to the primary purpose of the communication. In this respect:

- the pre-election letters issued to incumbent Parliamentarians concerning their use of entitlements during the 2004 and 2007 Federal election campaign periods reflected the principles recommended by Finance to the then SMOS. Again, as the department was unaware the 42 Questions and Answers document had been provided to Parliamentarians or was being relied upon, it did not issue guidance to Parliamentarians that directly informed those relying upon the 42 Questions and Answers document that the guidance in it on this point had not survived to be included as part of the officially endorsed and promulgated guidance;
- Ministerial Circulars issued on 15 August 2006 advised Parliamentarians that a newsletter 'will often contain material which presents the Senator or Member in a positive light and therefore incidentally furthers their candidacy. In doing so, the newsletter may be used in support of a Senator or Member's own re-election but not in the election or re-election of others'. This directly contradicted that part of the 42 Questions and Answers document which stated that up to 30 per cent of a newsletter could be direct promotion of the party or implicit promotion of another candidate;¹⁹⁹ and
- in response to allegations of entitlements misuse, Finance asked its Minister to write to various Parliamentarians as a precursor to commencing recovery action in situations where the 70/30 rule, as understood by the department, appeared to have been breached.²⁰⁰

¹⁹⁹ The Circular further advised that: 'If a Senator or Member wishes to include other information, such as writing about the Parliamentary or electorate contribution of one or more of their colleagues, or the activities of their political party, such use should not constitute the greater part of the document.', with this aspect being governed by the 70/30 rule. In this respect, the reference to the capacity for Parliamentarians to include material about 'the Parliamentary or electorate contribution of one or more of their colleagues' would appear to relate to the activities of an existing Senator or Member, not to a non-sitting party candidate. Similarly, writing about 'the activities of their political party' is not equivalent to the 'direct promotion of the party'.

²⁰⁰ In considering the application of the 70/30 rule, Finance has advised its Minister that the material that is subject to the 30 per cent of content restriction includes information 'such as party policies on certain issues';

Arrangements allowing the amount of capped entitlements to be increased

4.90 Two changes have been made to enable the amount available under both the Printing Entitlement and the related Communications Allowance to be increased. Both changes were able to provide further assistance to incumbent Senators and Members in undertaking election campaigning activities.

4.91 The first such change was made in December 2001 to address the situation where a Senator or Member had exhausted their annual allocation of Communication Allowance in the lead up to an election, resulting in a nil budget remaining for a re-elected Parliamentarian until the following 1 July. The change made was to permit a Senator or Member to call forward up to 25 per cent of the following financial year's entitlement (which is then reduced by the amount called forward).

4.92 For 2007-08, there were 31 re-elected Parliamentarians who called forward some of their 2008-09 Communications Allowance into 2007-08. All but five of these Parliamentarians requested the maximum call forward of 25 per cent of their 2008-09 Allowance. The total amount called forward by the 31 Parliamentarians was \$314 960, which was debited against their following year's entitlement.²⁰¹

4.93 The second change made was in relation to the Printing Entitlement. Specifically, with effect from 1 July 2006, the annual cap on Members' Printing Entitlement was increased from \$125 000 to \$150 000 and a new entitlement was introduced allowing Members to carry forward up to 45 per cent of the value of the entitlement from one year to the next (should any unspent funds remain at the end of a financial year). This meant that, for 2007-08, Members had a maximum possible Printing Entitlement of \$217 500.²⁰²

4.94 The ability to carry forward unspent Printing Entitlement was reflected in 149 of the 150 Members carrying funding forward from 2006-07 into

²⁰¹ In June 2009, Finance advised ANAO that: 'This provision was recently amended to clarify that the funds may be called forward to cover expenditure incurred after the election'.

²⁰² The incoming Government, with effect from 1 July 2008, reduced Members' Printing Entitlement to \$100 000 per annum and Senators' Printing Entitlement to \$16 667, and also removed the ability for Members to rollover unspent Printing Entitlement funds from the 2007-08 financial year to the 2008-09 financial year, and for future years.

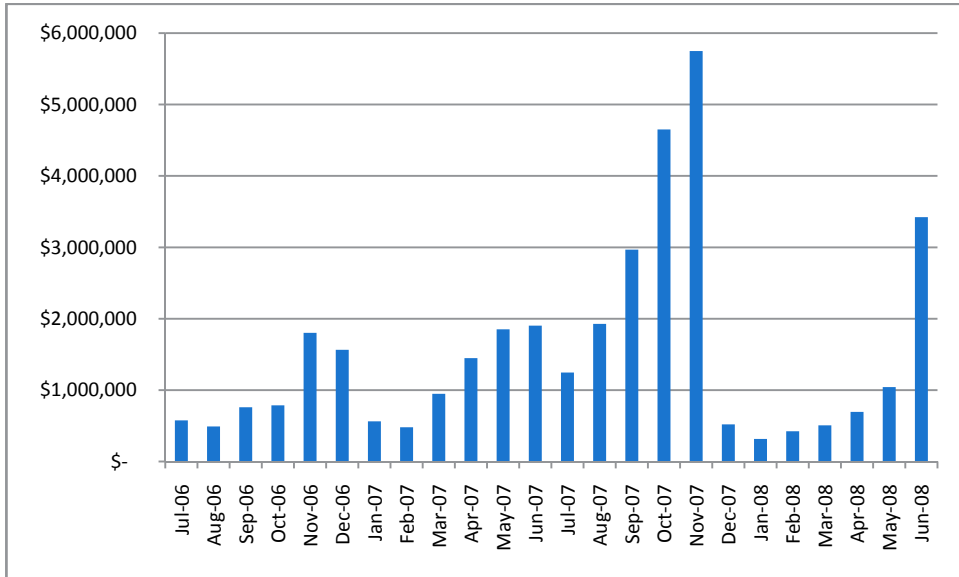
2007-08.²⁰³ Of these, 71 Members had sufficient balance remaining to carry forward the maximum allowable of 45 per cent (\$67 500), with the remaining 78 Members carrying forward the full amount of their unspent 2006-07 capped amount.

4.95 The use of the Printing Entitlement for election campaign purposes (for which, as noted, the Electoral Act already provides public funding) was apparent from both the nature of items printed using the entitlement in the period leading up to, and during, the 2007 election campaign (as outlined above and further examined in Chapter 5), as well as the surge in spending under the Printing Entitlement in the months prior to the November 2007 Federal Election (see Figure 4.2). More than 70 per cent of total reported annual expenditure for 2007-08 related to transactions in the five months to November 2007, and 44 per cent in October and November 2007 alone. These percentages would have been higher but for an increase in Printing Entitlement expenditure in June 2008 (amendment regulations made on 5 March 2008 removed the provision for Members to rollover up to 45 per cent of their 2007-08 Printing Entitlement into 2008-09).

²⁰³ The remaining Member had fully spent her 2006-07 budget of \$150 000 such that there was no available balance to carry-forward.

Figure 4.2

Total Printing Entitlement Expenditure by Month: 2007-08



Source: ANAO analysis of Monthly Management Reports and End of Financial Year Management Reports (Note: date relates to the date of the transaction included in the Management Reports).

Options for reform

Proposed legislative reform

4.96 The *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009* proposes to amend the *Electorate Act* to, amongst other things:

- introduce a claims system for electoral funding and tie funding to electoral expenditure (as defined);
- extend the range of electoral expenditure that can be claimed and prevent existing members of Parliament from claiming electoral expenditure that has been met from their Parliamentary entitlements, allowances and benefits; and
- introduce a biannual disclosure framework in place of annual returns and reduce timeframes for election returns.

4.97 The Bill is essentially a revised version of the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* that was defeated in the Senate in March 2009.²⁰⁴ Should it be enacted, the Bill will include the following condition in the definition of ‘electoral expenditure’ which Finance advised ANAO is intended to prevent ‘double dipping’:

However, expenditure is not electoral expenditure if:

(d) a member of either House of the Parliament incurs expenditure of a kind mentioned in paragraph (a), (b) or (c) of this definition; and

(e) the expenditure has been, or will be, met by allowances (other than those relating to remuneration), entitlements or benefits received by the member in his or her capacity as a member.

4.98 In that context, reform of the entitlements framework and the sharing of information between the AEC and Finance would complement such an approach.

Entitlements reform

4.99 Since the 2007 Federal Election, Finance has developed possible reform options for combining the Printing Entitlement and Communications Allowance and, on four separate occasions, options for reforming the Printing Entitlement. Of particular relevance, in March 2008, Finance advised the then SMOS on the merits of removing PVAs and other voting information from the list of approved items that may be printed under the Printing Entitlement. The two most recent advices to reform the Printing Entitlement, provided to the respective SMOS’ in March and June 2009, had been developed following a Ministerial request in the light of Printing Entitlement usage issues identified by this ANAO audit. In the March 2009 advice, Finance advised that the sample of the material obtained by ANAO that was examined by Finance:

suggests that a large proportion of the printed product is more in the nature of advertising and not intended to inform constituents.

4.100 Accordingly, the March 2009 proposals contemplated major reforms to the entitlement, including in relation to defining the purpose for which the Printing Entitlement may be used; revising the amount of funds available to

²⁰⁴ Department of Parliamentary Services, *Bills Digest—Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009*, 18 March 2009, p. 3.

Parliamentarians under the Entitlement; the establishment of a panel of printers; tabling of aggregate expenditure; and requiring printed material to acknowledge it was printed at taxpayers' expense.

4.101 In April 2009, the then SMOS agreed that significant reforms should be made to the Printing Entitlement and that Finance would prepare a further brief on options for reform. This further advice was to focus on an approach incorporating a number of elements including removing the 'menu' of items that can be printed as specified in the November 2006 Ministerial instrument, and moving to a listing of items that cannot be printed. Other elements the Minister agreed should be included in a further briefing included:

- requiring a statement on the bottom of each item of printed material along the lines of 'Printed at Commonwealth expense by MP/Senator under entitlement;
- prohibiting the use of the Printing Entitlement for producing PVAs and HTVs; and
- restricting the printing of material to printers approved by Finance through a competitive tender process.

4.102 However, while the record of the then SMOS' 30 April 2009 decision stated that the prohibition on Parliamentarians printing or distributing printed material for commercial purposes was to be maintained, it did not address the use of the Printing Entitlement for election campaigning purposes. In this respect, while the then SMOS agreed that the use of the entitlement to print PVAs and 'how to vote' cards should be prohibited, ANAO also observed (as outlined above) the use of the Printing Entitlement to print other items for election campaign purposes including:

- a number of other forms of documents printed under Parliamentarians' Printing Entitlements in which a representation of a completed House of Representatives or Senate ballot paper, soliciting primary votes for the Parliamentarian and, in many cases, the relevant party in the Senate and indicating the preferences allocations recommended by the relevant political party, was reproduced; and
- the entitlements to print newsletters and magnetised emergency and community information cards being used in the lead up to and during the 2007 election campaign period to produce similar election campaign

material as was found to have been distributed in association with PVAs and 'how to vote' cards.

4.103 The Minister's 30 April 2009 decision also agreed that consideration be given to combining the Printing Entitlement and Communications Allowance, with a reduced combined total amount to be made available to Parliamentarians to print and distribute material. In that context, the Parliamentary Entitlements Regulations had been amended in 2008 to remove the carry forward capacity in relation to the Printing Entitlement.

4.104 On 30 June 2009, Finance provided the current SMOS with a further brief on options and implementation mechanisms for reform of the Printing Entitlement.

4.105 A related reform area was raised in earlier advice to the then SMOS from Finance. Specifically, in October 2008 Finance had raised the need to address the potential for printed material to be produced at public expense through means that are in addition to the Printing Entitlement, including through:

- Senators and Members using their office facilities entitlements. As discussed earlier, there is no cap on the extent to which these entitlements may be used for producing printed material, with Parliamentarians having access to an unrestricted supply of photocopy paper and other office supplies, together with no public disclosure of the expenditure involved; and
- Members accessing the 'in-house' printing service provided by the Department of the House of Representatives'. Material printed using this in-house service was to be produced for Parliamentary or electorate business.

4.106 Finance has recognised that the provision of an 'in-house' printing service to Members by the Department of the House of Representatives raised an equity issue between Senators and Members. Finance has also advised that having more than one source of funding for the public funding of printed material produced by Parliamentarians eroded Finance's ability to provide comprehensive entitlements advice; may have created confusion, which in turn could lead to entitlements misuse; and reduced the transparency of the entitlements framework.

4.107 The April 2009 Ministerial decision included that Finance would consider capping the number of ink cartridges and/or reams of paper available to Parliamentarians under the electorate office facilities entitlement. In July 2009, Finance advised ANAO that, in June 2009, the Clerk of the House of Representatives had written to the Minister for Finance and Deregulation proposing to cease provision of in-house printing services to Members as part of an efficiency dividend.

4.108 In July 2009, the Government made decisions that finalised reforms considered by the then SMOS in April 2009 in relation to:

- removing the entitlement to produce ‘how to vote’ cards;
- limiting the number of PVAs that may be printed to 50 per cent of the number of enrolled voters in a Senator or Member’s electorate, with further reform of the production of PVAs to be considered as part of the review of the entitlements framework;²⁰⁵ and
- use of the Printing Entitlement being limited to Parliamentary or electorate business, but not party business or electioneering.

4.109 The proposed definition of electioneering to be included in the amended Regulations as provided to ANAO by Finance in August 2009 focuses on explicit electioneering activities.²⁰⁶ In particular, the proposed definition provided to ANAO was that:

electioneering means a communication that explicitly:

- (a) seeks support for, denigrates or disparages:
 - (i) the election of a particular person or persons; or
 - (ii) a particular political party or political parties; or
- (b) encourages a person to become a member of a particular political party, or political parties; or
- (c) solicits subscriptions or other financial support.

²⁰⁵ The then SMOS’ April 2009 decision had been that Finance would provide further advice on options for reform, including (as noted at paragraph 4.102) the possibility of prohibiting the printing of PVAs.

²⁰⁶ As a result, the proposed definition does not address: the use of party-political slogans or images; the use of entitlements in a way designed to influence public support for a political party, a candidate for election, a Minister or a Member of Parliament; or referring to or linking to the websites of political parties.

Recommendation No.4

4.110 ANAO recommends that, having regard for the public funding of election campaign expenses that is provided to political parties and candidates through the *Commonwealth Electoral Act 1918*, the Department of Finance and Deregulation, consulting as appropriate with the Australian Electoral Commission and/or the Chamber Departments, prepare options for Ministerial consideration that would pursue the necessary further reform to the entitlements framework so as to effectively address the risk of entitlements being used to meet costs associated with Parliamentarians:

- campaigning for their party, their own re-election and/or the election or re-election of other candidates; or
- campaigning against the election or re-election of another party or candidate.

Finance response

4.111 Agreed in principle. It is important to make a distinction between funding available under the *Commonwealth Electoral Act 1918* and that available under the *Parliamentary Entitlements Act 1990*, in the form of entitlements to Parliamentarians. Broadly speaking, Commonwealth Electoral Act funding is available to political parties or candidates, whereas entitlements under the Parliamentary Entitlements Act are available to individual Parliamentarians. Further the funding and entitlements, respectively, are provided at different times and it cannot be assumed that funding available to political parties under the Commonwealth Electoral Act will be made available to individual Parliamentarians who are members of political parties. In any event, a bill (the Political Donations Bill 2009) which is currently before the Parliament will, if passed, remove any possible duplication between the two sources of funding.

5. Printing Entitlement

This chapter discusses the entitlement provided to Senators and Members under the Parliamentary Entitlements Regulations 1997 to print various items at public expense for distribution to their constituents. It examines the use made of the entitlement in 2007-08 by a sample of Parliamentarians in three States, particularly in the period leading up to the 2007 Federal Election, and the administration of the entitlement by the Department of Finance and Deregulation.

Introduction

5.1 The Printing Entitlement is one of the more financially significant entitlements in respect of which Parliamentarians are able to exercise some discretion within the legislated parameters of the entitlement. In that context, it is recognised that dialogue between elected representatives and the public is a valid and fundamental aspect of a democracy.²⁰⁷ In particular, Parliamentarians are expected to inform their constituents of their activities in Parliament; assist them to access government programs and services, funding or other assistance; and provide residents with a convenient source for information about their community and current issues or events. Items, such as electorate newsletters, which may be printed for distribution to constituents, can play an important role in assisting Parliamentarians in undertaking this role.

5.2 Reflecting this, other than for personalised letterhead stationery, a fundamental requirement of the Printing Entitlement is that it be used for the printing of eligible items that are for distribution to the constituents of the particular Senator or Member whose entitlement is used.

5.3 The total number of electors enrolled to vote in the 24 November 2007 Federal Election was 13 645 073.²⁰⁸ The average number of electors in each electorate varied, with the average electorate enrolment across the country being 90 967 voters (see Table 5.1).

²⁰⁷ See, for example, Controller and Auditor-General for New Zealand, *Government and parliamentary publicity and advertising*, report under the authority of section 20 of the *Public Audit Act 2001* (NZ), June 2005, p. 14.

²⁰⁸ Australian Electoral Commission, *Certified List Elector Count by Division, Age Groups and Gender for Election 2007*, at <www.aec.gov.au> [accessed 14 March 2009].

Table 5.1**Average electorate enrolments on election day, 24 November 2007**

State	Total Enrolment	Number of House of Representatives electorates	Average electorate enrolment
New South Wales	4 495 336	49	91 742
Victoria	3 442 096	37	93 030
Queensland	2 612 300	29	90 079
Western Australia	1 312 942	15	87 529
South Australia	1 075 968	11	97 816
Tasmania	349 788	5	69 958
Australian Capital Territory	238 742	2	119 371
Northern Territory	117 901	2	58 951
Total	13 645 073	150	90 967

Source: Australian Electoral Commission, *Certified List Elector Count by Division, Age Groups and Gender for Election 2007*, and ANAO analysis.

5.4 In that context, the Management Reports provided to Parliamentarians by Finance indicated that at least²⁰⁹ 206 million copies of various items were printed using Parliamentarians' Printing Entitlements in 2007-08. Of those, 50 per cent (103 million) were printed in the two month period of October and November 2007.

Basis of the Printing Entitlement

5.5 Prior to 1990, personalised letterhead stationery for Senators and Members was printed and supplied under an administrative convention by the relevant Parliamentary chamber department (the Department of the Senate or the Department of the House of Representatives). This primarily involved the use of in-house printing facilities. In June 1989, the then Minister for Administrative Services agreed that the printed stationery items supplied by the Department of the House of Representatives would be supplemented without limit through the then Department of Administrative Services (DAS).

²⁰⁹ A number of the transactions reported under the Printing Entitlement did not specify the quantity printed and others specified a quantity for multiple items, such that is not clear how many of each item were actually printed.

Under those arrangements, the Department of the House of Representatives met the cost of stationery for each Member up to an initial limit, and then sought reimbursement from DAS for any additional costs for each Member. The Speaker of the House of Representatives and the Minister for Administrative Services each approved a menu of items able to be printed by Members under their respective components of the entitlement.

5.6 The passing of the Parliamentary Entitlements Act in 1990 formalised Parliamentarians' entitlement to personalised letterhead stationery. In 1992, the then Speaker advised Members that the range of items which could be included in the House of Representatives entitlement had been expanded to allow other forms of printed communication with voters, including newsletters and calendars.

5.7 In September 1995, the then Minister agreed to a request from the then Chief Government Whip for the inclusion of newsletters in the approved menu available through the unlimited component of the entitlement administered by DAS. The then Minister further indicated that when a Member exhausted his or her printing allocation administered by the House of Representatives, they would have the option of directing further printing accounts to the then DAS (now Finance).

Parliamentary Entitlements Regulations

5.8 The legislated Printing Entitlement was expanded in 1997 with the commencement of the Parliamentary Entitlements Regulations. The entitlement to personalised letterhead stationery previously provided under the Act was replaced with an entitlement under Regulation 3 to print, at public expense:

- personalised letterhead stationery;
- newsletters for distribution to constituents; and
- other printed material, as approved by the Minister, for distribution to constituents.

5.9 Under current administrative arrangements, the relevant Minister in this respect is the SMOS.

Members of the House of Representatives

5.10 At the time of ANAO's 2001-02 Audit Report, Members were, by administrative arrangement, required to access the first \$3 850 of the Printing

Entitlement provided under the Regulations through the Department of the House of Representatives. Once that limit had been exhausted, Members could elect to access any further expenditure under the (then unlimited) entitlement through the Department of the House of Representatives, Finance, or both. The 2001-02 Audit Report further recognised that the Department of the House of Representatives also provided Members with an in-house printing service, which was not provided under the auspices of the Parliamentary Entitlements Act or Regulations, but by long-standing convention as an additional service to Members out of its departmental funds.

5.11 In May 2000, the Department of the House of Representatives advised Finance of a number of concerns it held in regard to the then existing arrangements and proposed that, as it provided Members with extensive in-house printing services that were often used to provide products not covered by the Printing Entitlement prescribed in the Regulations, the Department of the House of Representatives assume full administrative responsibility for that entitlement as well.²¹⁰ That proposal was not progressed. The 2001-02 Audit Report found that the then existing arrangements did not assist in providing a cost-efficient and effective means of servicing Members' requirements under the entitlement, or in providing a comprehensive information base to support appropriate oversight of the expenditure of Commonwealth funds.²¹¹

5.12 ANAO recommended that Finance and the Department of the House of Representatives undertake a review of the costs and benefits of rationalising the management of Members' printing entitlements and services under a single department which might then be put to Government for consideration.²¹² In disagreeing with the recommendation, Finance commented that:

the current framework and the arrangements governing the usage of printing entitlements are complex. The issues highlighted by the ANAO as worthy of a review by their nature include the scope for the imposition of restrictions in terms of how much and how entitlements can be accessed under the current legislative and policy framework. Given the potential sensitivities to be

²¹⁰ ANAO Audit Report No.5 2001-02, op. cit., pp. 195-196.

²¹¹ The cost of in-house printing undertaken by the Department of the House of Representatives for Members in 1999-2000 was not separately recorded (ibid., pp. 196 and 198).

²¹² ANAO Audit Report No.5 2001-02, op. cit., p. 196.

addressed by such a review, it would need the joint agreement of the Government and the House of Representatives for it to proceed.²¹³

5.13 Subsequently, the administration of all aspects of Members' Printing Entitlement as provided under the Parliamentary Entitlements Regulations was rationalised under Finance. However, the Department of the House of Representatives continued to also provide a separate in-house printing service to Members, funded from its departmental appropriations, which was not subject to the terms of the Regulations.

5.14 In October 2008, Finance advised the then SMOS that it had been unaware of the continued existence of the in-house printing entitlement, after this had been identified in the 2001-02 Audit Report.²¹⁴ As discussed at paragraph 4.106, Finance has advised that, from a policy perspective, having additional entitlements provided by other departments is less than ideal as it erodes Finance's ability to provide comprehensive entitlement advice, may create confusion (which, in turn, can lead to an increased risk of unintentional misuse of an entitlement) and reduces the transparency of the entitlements framework. Finance also advised that the in-house printing entitlement provided to Members created a parity issue between Senators and Members, as Senators did not receive an additional entitlement from the Department of the Senate.

5.15 As noted at paragraph 4.107, Finance advised ANAO that, in June 2009, the Clerk of the House of Representatives wrote to the Minister for Finance and Deregulation proposing to cease provision of in-house printing services to Members as part of an efficiency dividend.

Senators

5.16 At the time of ANAO's 2001-02 Audit Report, printing services for Senators were administered by the Department of the Senate. In December 2001, the Parliamentary Entitlements Regulations were amended to include Regulation 3A, which prescribed an entitlement for Senators to:

- unlimited personalised letterhead and newsletter mastheads; and

²¹³ *ibid.*

²¹⁴ In July 2009, Finance advised ANAO that: 'Finance had assumed that when the administration of the entitlement was centralized under [*Finance*] in February 2002 and the House of Representatives had ceased drawing on the administered appropriation under the [*Parliamentary Entitlements Act*], that it had discontinued providing any printing services for Members.'

- a further entitlement to other printed material (including small calendars) and photocopying, which was limited by paper volume.

5.17 The entitlements provided by the amended Regulations replaced the entitlement to personalised letterhead stationery previously provided under the Parliamentary Entitlements Act. However, Senators' use of the Printing Entitlement continued to be administered by the Department of the Senate. The Regulations were further amended in August 2006 to align the provisions relating to Senators under Regulation 3A with those set out under Regulation 3 for Members, except in relation to quantum (see Figure 5.1). In association with this amendment, the administration of Senators' Printing Entitlement was transferred to Finance.

Figure 5.1

Parliamentarians' Printing Entitlement as provided by the Parliamentary Entitlements Regulations

<p>3 Additional benefits for Members of the House of Representatives—printing</p> <p>(1) For subsection 5(1) of the Act, the following additional benefits for a Member of the House of Representatives are prescribed:</p> <ul style="list-style-type: none"> (a) personalised letterhead stationery; (b) newsletters for distribution to constituents; (c) other printed materials, as approved by the Minister, for distribution to constituents. <p><i>[Subsection 2 stipulates the value of the entitlement; Subsection 4 defines constituent for the purposes of this Regulation]</i></p> <p>3A Additional benefits for Senators—printing</p> <p>(1) For subsection 5(1) of the Act, the following additional benefits for a Senator are prescribed:</p> <ul style="list-style-type: none"> (d) personalised letterhead stationery; (e) newsletters for distribution to constituents; (f) other printed materials, as approved by the Minister, for distribution to constituents. <p><i>[Subsection 2 stipulates the value of the entitlement]</i></p>
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Source: *Parliamentary Entitlements Regulations 1997.*

Additional benefits approved by the Minister

5.18 Between 1997 and 2001, the Regulations provided the SMOS with the authority to approve additional printed items for both Senators and Members. Following the December 2001 amendment, the capacity for the SMOS to approve additional printed materials for distribution to constituents only applied to Members (under Regulation 3(1)(c)), but was later again extended to

the Printing Entitlement of Senators in August 2006 (under Regulation 3A(1)(c)). The Ministerial decisions made under authority of those provisions have, over time, further expanded the use that may be made of Parliamentarians' Printing Entitlement.

5.19 The first Ministerial Instrument, made on 19 November 1997, provided an additional entitlement to print:

- magnetised calendars; and
- magnetised emergency and community information cards.

5.20 No further additional benefits were approved until 3 August 2004, when the then SMOS signed a revised Instrument providing Members with an additional entitlement to print 'postal vote applications and other voting information'. A minute dated 4 August 2004 from the then SMOS advised Finance that it was intended that this include the printing of traditional 'how to vote' cards (see paragraphs 4.56 to 4.69).

5.21 Following the 2006 amendment of the Regulations, a further revised Instrument was signed by the then SMOS on 15 August 2006 to provide Senators with each of the additional entitlements previously approved for Members. The August 2006 Instrument also:

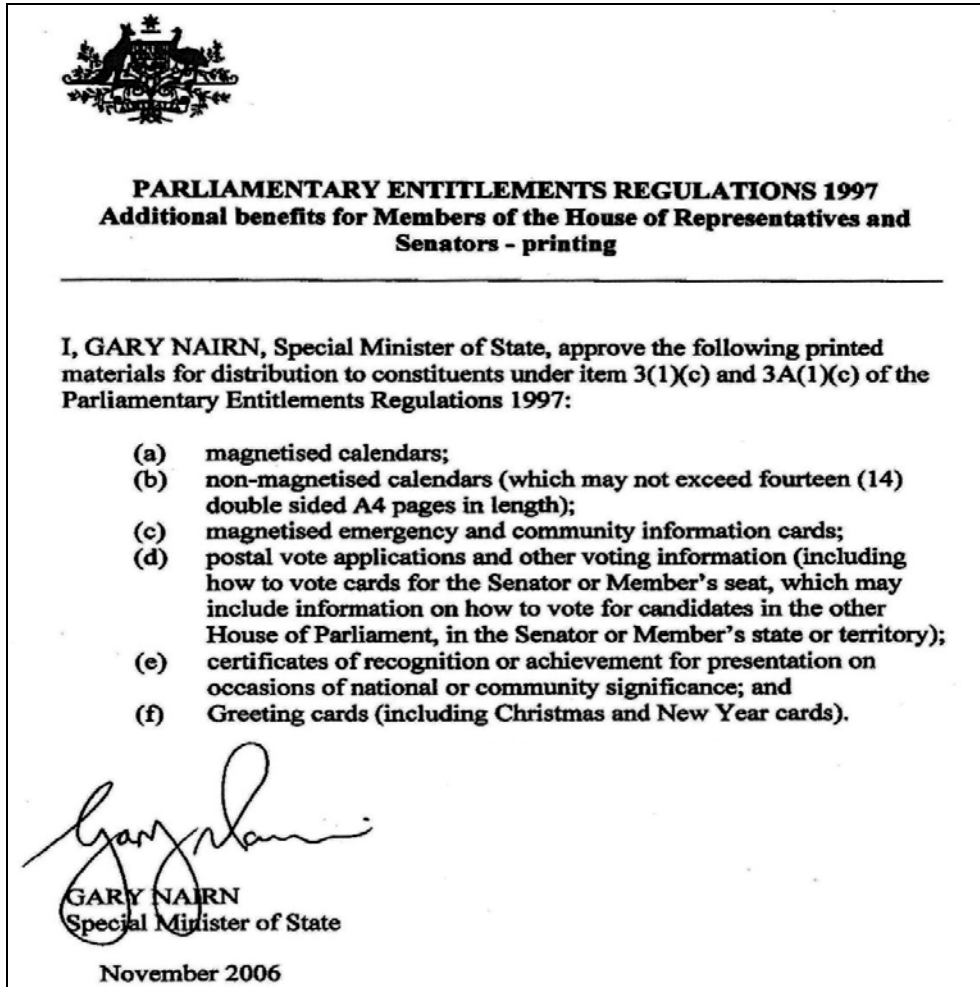
- incorporated into the Instrument itself the former SMOS' clarification in relation to the entitlement to print 'other voting information' by stating that it was to include 'how to vote' cards for the Senator or Member's seat, which may include information on how to vote for candidates in the other House of Parliament in the Senator or Member's state or territory; and
- approved the use of the Printing Entitlements of both Senators and Members to print two further categories of items, being:
 - certificates of recognition or achievement for presentation on occasions of national or community significance; and
 - greeting cards (including Christmas and New Year cards).

5.22 The most recent Ministerial Instrument, signed in November 2006, provided a further entitlement for Senators and Members to print 'non-magnetised calendars (which may not exceed 14 double sided A4 pages in length'. The current Ministerial Instrument approving a menu of additional

items for printing using Parliamentarians' Printing Entitlements is at Figure 5.2.

Figure 5.2

November 2006 Ministerial instrument approving additional items for printing under Parliamentarians' Printing Entitlement



Source: Ministerial Instrument made in November 2006.

Conventions relating to the Printing Entitlement

5.23 As discussed in Chapter 2 (see paragraphs 2.2 to 2.3), the Parliamentary Entitlements Act was introduced, following the High Court's decision in *Brown v West*, to provide a secure legislative basis for a range of entitlements then

being provided to Parliamentarians. The Parliamentary Entitlements Regulations subsequently introduced in 1997 were intended to:

establish the entitlement of members of parliament to stationery (including personalised letterhead stationery) and printed items and allow for greater transparency in the administration of such entitlements.²¹⁵

5.24 In that context, a number of the entitlements provided to Parliamentarians may only be legitimately accessed for a specified purpose, such as electorate, parliamentary or official business. However, the Regulations do not specify the purpose for which the Printing Entitlement is required to be used. A further shortcoming in the framework is that key terms for the purposes of the prescribed entitlement are not defined, including:

- 'personalised letterhead stationery';
- 'newsletter'; and
- 'other voting information'.²¹⁶

5.25 In the absence of clear parameters to govern the use of the Printing Entitlement being articulated in the legislation, a series of conventions or 'accepted practices' have evolved in relation to its administration. The principal conventions that have been used, in various forms over time, in the administration of the Printing Entitlement are:

- that its proper use should be related to the Parliamentarian's electorate or parliamentary business, but not party business. However, the meaning of the terms 'electorate business', 'parliamentary business' and 'party business' has not been articulated;
- that the electorate business of a Parliamentarian may include the printing of material concerned with his or her own re-election where this is incidental to the undertaking of electorate or Parliamentary

²¹⁵ Explanatory Statement, Statutory Rules 1997 No. 318, Issued by the authority of the Minister for Finance and Administration, *Parliamentary Entitlements Act 1990*, Parliamentary Entitlements Regulations.

²¹⁶ There is also no definition of 'constituent' in relation to Senators' Printing Entitlement. The Regulations were amended in June 2007 to include Regulation 3(4) which defines 'constituent' for the purposes of Members' Printing Entitlement as either: (a) a person who lives in the Member's electorate Division; or (b) a person in relation to whom the following circumstances apply: (i) the person does not live in the Member's electorate Division; (ii) a redistribution of the State or Territory that includes the Member's electorate Division has been formally determined in accordance with the Commonwealth law applicable to redistributions, but has not commenced; and (iii) the place where the person lives will be included in the Member's electorate Division when the redistribution commences.

business, but not material concerned with the election or re-election of anyone else; and

- a proportional approach to determining the eligibility of newsletter²¹⁷ content such that, as long as the majority of content is considered to relate to the Parliamentarian's parliamentary or electorate business, other material may also be included.²¹⁸

Printing Entitlement expenditure in an election year

5.26 The 2001-02 Audit Report found that a consistent and significant characteristic of the use of the office management entitlements reviewed was the significant variation in the level of expenditure incurred by individual Parliamentarians.²¹⁹ In particular, ANAO noted that the high disparity in expenditure between Members under the then uncapped Printing Entitlement. Average expenditure per Member in 1999-2000 was \$37 287, but the highest cost incurred by an individual was \$219 004, and the lowest \$1294. The average cost to the Department of the Senate for all personalised stationery and printing for Senators in 1999-2000 was \$7103 per Senator.²²⁰

Introduction of a financial cap

5.27 As part of the then Government's response to the 2001-02 Audit Report, the Parliamentary Entitlements Regulations were amended in December 2001 to introduce an annual financial cap on the Printing Entitlement of Members of the House of Representatives. For the period 1 January 2002 to 30 June 2002, a Member's entitlement was limited to a value of \$61 986, and in subsequent financial years, commencing in 2002-03, to a value of \$125 000.

5.28 In introducing Regulation 3A, prescribing Senators' Printing Entitlement, the 2001 amendments also specified that Senators were entitled to

²¹⁷ In addition to these conventions, Finance records state that the undefined term 'newsletter' is to be interpreted broadly to include any material that is not a letter, such as surveys, leaflets and other similar material. In this respect, Finance has previously advised some Parliamentarians that letters are not an allowable item under the Printing Entitlement and has declined to pay invoices under that entitlement which described the item produced or service provided as relating to letters.

²¹⁸ A further convention has been that 'personalised letterhead stationery' may include: letterhead paper, envelopes, business cards for the Senator or Member and compliments slips.

²¹⁹ Audit Report No.5 2001-02, op. cit., p. 180.

²²⁰ *ibid.*, pp 181-182.

unlimited quantities of personalised letterhead and newsletter mastheads, but were limited to 10 reams of paper per month²²¹ in relation to a further entitlement to other printed material, including calendars, and photocopying.

5.29 In 2003, the then Government proposed amendments to the Regulations to, among other things, increase the annual cap for Members from \$125 000 to \$150 000 per annum and introduce a mechanism to allow for the carry-forward of up to 45 per cent of a Member's entitlement to the next financial year. However, these amendments were disallowed in the Senate.

5.30 The average printing expenditure by Members in 2005-06 was \$84 707. Of the 150 Members:

- 69 (46 per cent) spent between \$100 000 and the cap of \$125 000;
- 47 (31 per cent) spent greater than \$50 000 but less than \$100 000; and
- 34 (23 per cent) spent less than \$50 000.

5.31 In 2006, the then Government reintroduced its previously proposed amendments and was successful in having the Regulations amended to increase the annual cap for Members to \$150 000, commencing in 2006-07, and provide a carry-forward mechanism of up to 45 per cent of the entitlement. Under these arrangements, the maximum amount a Member was able to carry forward was \$67 500, bringing the maximum limit of the Member's Printing Entitlement in the following year to \$217 500. The first (and, ultimately, only) year in which this maximum entitlement was available was 2007-08.

5.32 Under the amendments, as of 1 September 2006, a Senator's entitlement to specified quantities of paper per month was replaced with a single, capped entitlement of: expenditure up to \$16 667 for the period 1 September 2006 to 30 June 2007; and \$20 000 per annum for each subsequent financial year, commencing in 2007-08.

Printing Entitlement in an election year

5.33 Section 7(1) of the Parliamentary Entitlements Act provides that a person is entitled to a benefit²²² during the whole time when the person is

²²¹ An increased monthly limit of 20 reams was prescribed for specified office holders in the Senate.

²²² Other than a benefit for a Parliamentary office-holder or a Minister.

entitled to an allowance under the Parliamentary Allowances Act.²²³ Under section 5 of that Act:

- Members standing for re-election to the House of Representatives retain access to their entitlements, including the Printing Entitlement and related Communications Allowance, during the election campaign period;
- Members not standing for re-election to the House do not have access to their entitlements once the House has been dissolved;
- under the more usual circumstances in which the Senate is not dissolved but, by rotation, about half of Senate positions are filled at an election for effect from the subsequent 1 July, all Senators retain access to their entitlements during the election campaign, regardless of whether they are standing for re-election, retiring at the end of their current term or not required to stand in that rotation; and
- in the case of a double dissolution, Senators that are standing for re-election to the Senate retain access to their entitlements during the election campaign. Senators not standing for re-election do not have access to their entitlements once the Senate has been dissolved.²²⁴

Printing Entitlement expenditure by Members in 2007-08

5.34 As noted, the 2001-02 Audit Report observed that expenditure by Members under the then uncapped Printing Entitlement was highly variable. This has continued to be the case. As noted at paragraph 5.30, the average

²²³ Section 5(A) of the Parliamentary Allowances Act provides that: 'The allowances payable to a member of the House of Representatives who is a member of that House immediately before the dissolution or expiration of that House and is a candidate for election as a member of the House of Representatives at the next following general election shall be reckoned to and including the day immediately preceding the day of his or her re-election or, if he or she is not re-elected, the day immediately preceding the day fixed for the polling at that general election.' Section 5(2) of the Parliamentary Allowances Act provides that: 'The allowances payable to a senator who is a member of the Senate immediately before a dissolution of the Senate and is a candidate at the next following Senate election shall be reckoned to and including the day immediately preceding the day fixed for the polling at that election.' This provision would only apply where there was a double dissolution, rather than the usual half-Senate election by rotation. In normal circumstances, in which the Senate is not dissolved, sections 5(1)(b) and 5(1)(c) of the Parliamentary Allowances Act provide that the allowances of a Senator commence at the start of their term (usually the first day of July following his or her election). Those allowances continue until the end of their term, including during the period of an election held during that term.

²²⁴ Other than in the case of a double dissolution, a Senator standing for election to the House would have access to their entitlements as a Senator during the election campaign; a Member standing for election to the Senate would not have access to their previous entitlements during the election campaign; and in the case of a double dissolution, neither would have access to their entitlements during the campaign.

expenditure incurred by Members in 2005-06 was \$84 707, with the expenditure of individual Members ranging between \$10 432 and \$128 163.²²⁵ The Printing Entitlement available to Members in 2006-07 increased to \$150 000. However, average expenditure decreased slightly to \$83 775, with the lowest expenditure being \$19 483 and the highest \$150 000.

5.35 The Printing Entitlement available to individual Members in 2007-08 ranged between a maximum of \$217 500; and a minimum of \$150 000 for incumbent Members as of 1 July 2007.²²⁶ Regardless of the amount available to a Member in a given financial year, each has complete discretion as to when, and whether, they spend that amount within the financial year. Further:

- a Member has the full amount for the financial year available to him or her as of 1 July. In an election year, this continues to be the case irrespective of whether he or she has nominated to stand for re-election; and
- Members that have nominated for re-election are able to continue to print items using their entitlement during the election campaign period, after the House has been dissolved (see paragraph 5.33).

5.36 These factors were reflected in the expenditure patterns of a number of Parliamentarians in 2007-08.

5.37 Total reported expenditure under the Printing Entitlement in 2007-08 was \$23.6 million. This level of expenditure was considerably higher than that reported in the two previous (non-election) years (\$12.7 million in 2005-06 and \$13.3 million in 2006-07). More than 70 per cent of total reported annual expenditure for 2007-08 related to transactions in the five months to November 2007, and 44 per cent in October and November 2007 alone.

5.38 The 24 November date for the 2007 election was announced by the then Prime Minister on 14 October 2007. The election campaign period commenced on 17 October 2007, following the issuing of the writs and the dissolution of the House. In total, 129 Members stood for re-election. Of those:

²²⁵ This amount exceeded the maximum available under the entitlement by \$3 162.87. In June 2009, Finance advised ANAO that it had subsequently recovered this amount from the Member involved.

²²⁶ In total, 71 Members had \$67 500 or more of their 2006-07 Printing Entitlement remaining as unspent such that they had the maximum amount of \$217 500 available for use in 2007-08. Of the remaining 79 sitting Members, one had exhausted the 2006-07 entitlement such that no amount was available to be carried forward. The remaining 78 Members carried forward amounts ranging from \$65 828 to \$54.77.

- 21 were defeated and, consequently, had their Printing Entitlement available for approximately 40 per cent of the 2007-08 financial year. On average, the relevant Members spent 82 per cent of their 2007-08 entitlement during the period 1 July to 23 November 2007,²²⁷ with one Member spending 100 per cent and nine others spending greater than 90 per cent. All but one of the defeated Members spent more than 63 per cent of their 2007-08 Printing Entitlement. The average total expenditure for 2007-08 incurred to November 2007 by defeated Members was \$162 564, 67 per cent higher than the average expenditure incurred by those Members in the full 2006-07 financial year (\$97 469—against a cap of \$150 000) and 51 per cent higher than the average expenditure by those Members in the full 2005-06 financial year (\$108 624—against a cap of \$125 000). The 2007-08 expenditure incurred by individual defeated Members ranged from \$61 183 to \$214 493; and
- 108 were returned and, accordingly, had the Printing Entitlement available for the full financial year. Average expenditure for 2007-08 incurred by those Members was \$142 516, which was 67 per cent higher than the average expenditure by the same Members in 2006-07 (\$85 476) and 70 per cent higher than their average expenditure in 2005-06 (\$83 873).²²⁸ The 2007-08 expenditure incurred by individual Members that were returned at the 2007 election ranged from \$24 134 to \$212 226.

5.39 A total of 42 Members were elected at the 2007 election and were entitled to a pro-rata Printing Entitlement for the period 24 November 2007 to 30 June 2008 of \$90 411. Average expenditure incurred by those Members was \$66 519, with expenditure by individual Members ranging from \$16 495 to \$90 105.

²²⁷ The date of expenditure is based on the transaction dates reported in the Management Reports.

²²⁸ Of the 108 returned Members, 36 spent between 90 and 100 per cent of their respective 2007-08 Printing Entitlement. This included five Members who had the maximum entitlement of \$217 500 available to them, with the remaining 31 Members having available entitlements ranging from \$212 887 to \$150 000. Average expenditure by these 36 Members in 2007-08 was \$181 676, compared to an average expenditure for the same Members of \$112 092 in 2006-07 and \$115 722 in 2005-06. Three of those Members spent 100 per cent of their available entitlement, with the remaining 33 Members spending between 99.99 per cent and 90.86 per cent of their available entitlement. Based on the Management Reports, of the total 2007-08 expenditure by those 36 Members of \$6 540 343, 81.6 per cent (\$5 338 144) was incurred in the period July to November 2007.

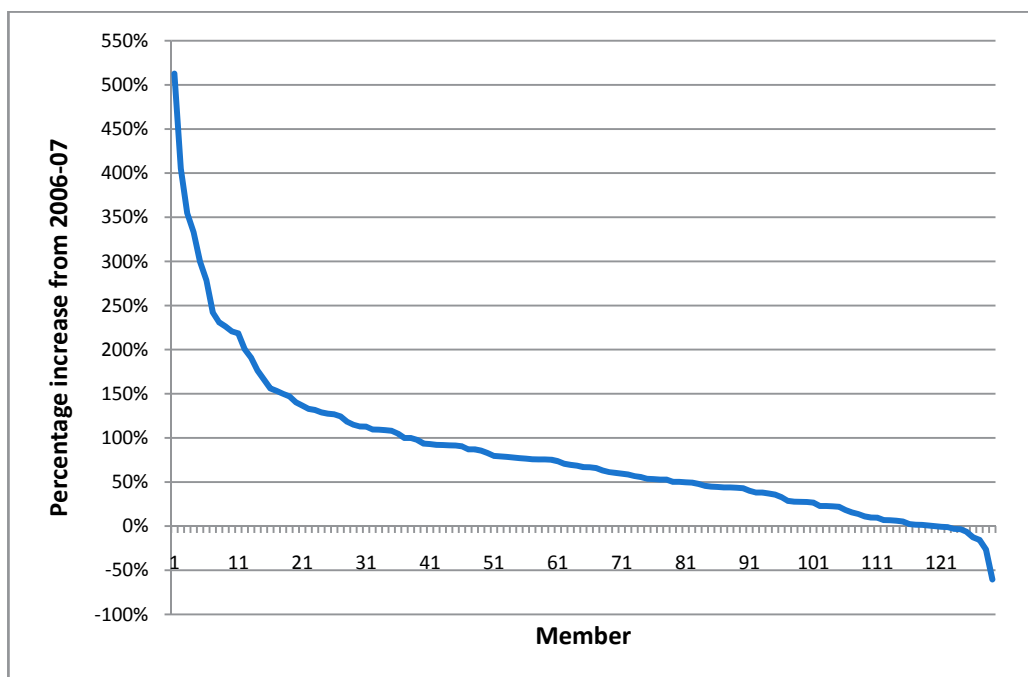
5.40 The above analysis highlights that there is still significant variability in the extent to which individual Members choose to access their Printing Entitlement in servicing their respective electorates. In total, 16 Members spent less than 50 per cent of their available entitlement in each of the 2007-08, 2006-07 and 2005-06 financial years. Each of those Members had the maximum entitlement of \$217 500 available in 2007-08, but spent sums ranging from \$24 134 to \$101 305. Conversely, 13 Members spent 80 per cent or more of their available entitlement in each of those financial years, including between 100 per cent and 95.62 per cent of their 2007-08 entitlement. Some Members spent virtually all of the total entitlement of \$425 000 available over the financial years 2005-06 to 2007-08.²²⁹

5.41 Overall, excluding those that did not stand for re-election but including defeated Members, all but nine sitting Members as at 1 July 2007 increased their Printing Entitlement expenditure in 2007-08 over that incurred in the previous financial year. In a number of cases, the increase was very significant, with 43 of the 129 Members that stood for re-election spending at least 50 per cent more than they had in 2006-07, and 37 spending at least twice as much as in the previous year (see Figure 5.3). This expenditure reflected the effect of the 2006 changes to the Parliamentary Entitlements Regulations providing the capacity for Members to carry forward up to 45 per cent of their 2006-07 Printing Entitlement into 2007-08. Nine Members that stood for re-election incurred less expenditure than in the previous financial year, by amounts ranging between 0.7 percent and 60.3 per cent.

²²⁹ For example: one Member expended all but \$20.16 of the total available entitlement of \$425 000 across the three financial years; another Member expended all \$28.19; and a third expended all but \$56.88.

Figure 5.3

Increase in individual Members' 2007-08 Printing Entitlement expenditure over the expenditure each Member incurred in 2006-07



Source: ANAO analysis of Management Reports provided to Members by Finance.

5.42 Members that are not standing for re-election to the House of Representatives are not able to access their Printing Entitlement from the day the House is dissolved. In total, 21 Members either left the House prior to the election being called or did not stand for re-election in November 2007. For the 2007 election, entitlements ceased upon dissolution of the House at 12 noon on 17 October 2007. Accordingly, each retiring Member had the full amount of their 2007-08 Printing Entitlement available for expenditure during the period 1 July to 17 October 2007. The extent to which those Members chose to access their entitlement was highly variable, with expenditure by individual retiring Members ranging from no expenditure by three Members to \$151 876.

Printing Entitlement expenditure by Senators in 2007-08

5.43 Senators are elected to represent a State for a six year term, such that, except in the case of a double dissolution, only about half of the Senate is

required to stand for re-election at each Federal Election.²³⁰ In this context, Senators have traditionally been provided with a substantially lower Printing Entitlement in terms of value than that provided to Members. As noted at paragraph 5.32, under the 2006 amendments, the Printing Entitlement of a Senator was increased to \$20 000 for the 2007-08 financial year.

5.44 Of the 76 Senate positions, 40 were to be contested at the 2007 Federal Election. However, except in the case of a double dissolution, Senators' terms do not expire until the 30 June following an election. Accordingly, Senators that contested the election and were defeated remained in the Parliament, and retained all relevant entitlements, until 30 June 2008.

5.45 Average Printing Entitlement expenditure by all Senators in 2007-08 was \$14 601.²³¹ However, there was considerable variation between Senators as to the extent to which they accessed their 2007-08 Printing Entitlement. The lowest expenditure incurred by a person in the Senate for the full year was \$1 356.50 and the highest was the maximum entitlement of \$20 000.

Reduction in financial cap

5.46 Following the 2007 Federal Election, the newly elected Government further amended the Parliamentary Entitlements Regulations to:

- reduce Member's Printing Entitlement from \$150 000 to \$100 000 per financial year, commencing in 2008-09;
- remove the capacity for Members to add unspent amounts to their Printing Entitlement for a subsequent financial year; and
- reduce Senators' Printing Entitlement from \$20 000 to \$16 667 per financial year.²³²

5.47 As a result of these amendments, Finance had advised the previous SMOS that the maximum total expenditure under the Printing Entitlement in any one year would be \$16.3 million.

²³⁰ The exceptions are the Senators representing the Northern Territory and the Australian Capital Territory, which are elected for three year terms and are required to stand for re-election at each election.

²³¹ This average includes the separate expenditure incurred by two incumbent Senators that left the Senate during 2007-08 and the expenditure incurred by their respective replacements.

²³² As noted at paragraph 2.6, the reduction in annual expenditure for Members had been announced in the ALP's '*Cleaning up Government*' election policy.

Analysis of entitlement use

5.48 The Printing Entitlement provided under the Parliamentary Entitlements Regulations is based on a specified menu of approved printable items (see Figure 5.1 and Figure 5.2). Both the form and content of an item must conform to one of the approved categories in order to be considered within entitlement.

5.49 Of the Printing Entitlement transactions reported in Management Reports for 2007-08, 37 per cent were identified as relating to personalised letterhead stationery. Of the remaining transactions, the majority were reported as relating to the entitlements to print 'newsletters for distribution to constituents' and 'magnetised emergency and community information cards for distribution to constituents'. Table 5.2 sets out the distribution of Parliamentarians' reported use of eligible categories of printed items in 2007-08.

Table 5.2**Distribution of Parliamentarians' reported use of eligible categories of printed items in 2007-08**

Eligible category of printed item	Percentage of reported transactions ¹
Newsletters for distribution to constituents	44.6%
Personalised letterhead stationery	37.1%
Magnetised emergency and community information cards for distribution to constituents ²	6.7%
Postal vote applications and other voting information for distribution to constituents	5.0%
Greeting cards for distribution to constituents	3.8%
Magnetised and non-magnetised calendars for distribution to constituents	1.9%
Certificates of recognition or achievement for presentation on occasions of national or community significance	0.9%
Notes:	
<ol style="list-style-type: none"> 1. Three transactions were identified in the relevant Management Reports as relating to the printing of address labels, envelope labels and invitations, respectively. The eligible category under the Printing Entitlement under which those transactions were paid was not identified in the Management Report. 2. This included transactions that were variously reported as: magnetised emergency and community information cards; magnetised emergency cards; emergency cards; emergency information cards; emergency and community information cards; magnetised community information cards; community information cards; magnetised community cards; community cards; information cards; fridge magnets; Tax plan community cards; small business community cards; families tax community cards; compare community cards; 9 point community cards; and Wall community cards. This reflects an inadequate assessment by Finance of the eligibility of items for payment under a particular category of the entitlement, together with an inadequately robust approach to identifying in the Management Reports provided to Parliamentarians the eligible category under which an item has been paid. 	

Source: ANAO analysis of Management Reports provided to Parliamentarians for 2007-08.

ANAO sample

5.50 To inform the audit analysis, ANAO examined the items printed, or services provided, under a sample of 1235 invoices²³³ claimed in 2007-08 for payment under the Printing Entitlement of 144 Parliamentarians in a sample of three States, primarily in the months leading up to and during the 2007 election campaign period. This analysis was based upon examination of a

²³³ Some invoices encompassed two or more items.

sample of the printed item and other relevant advice obtained directly from the vendors involved.²³⁴ Of the items examined:

- 65.6 per cent were paid under the entitlement to print ‘newsletters for distribution to constituents’;
- 13.2 per cent were paid under the entitlement to print ‘magnetised emergency and community information cards’;
- 11.2 per cent were paid under the ‘postal vote applications and other voting information’ category; and
- the remaining items were paid under the categories relating to personalised letterhead stationery (8.8 percent); greeting cards (0.8 per cent); and magnetised and non-magnetised calendars (0.4 per cent).

5.51 ANAO examined both the form and content of each item or service having regard for a number of parameters, including:

- the terms of the entitlement as expressed in the Regulations and associated Ministerial Instrument. This included consideration of the context in which items were considered for approval and any relevant statements from the responsible Minister in relation to the intended purpose of an approved item;
- principles proposed in legal advice provided to Finance in the course of this performance audit for interpreting the terms of some categories of items able to be printed under the Regulations or Instrument;
- the conventions and guidelines relating to acceptable use of the Printing Entitlement that had been officially articulated and promulgated to Parliamentarians. In this respect, to further inform the audit analysis, ANAO also examined the contextual material identifying the premise on which those conventions and guidelines had been based; and

²³⁴ All but four of the printers who produced items in the audit sample complied voluntarily with ANAO’s request to be provided with copies (electronic or hard copy) of the material produced under the relevant invoice. There were four entities where ANAO issued a notice under Section 32 of the *Auditor-General Act 1997* compelling the production to ANAO of this material.

- any discernable patterns in the use made of the Printing Entitlement by Parliamentarians in the sample, including for Parliamentarians from the same political party. This included consideration of:
 - identified commonality in regard to the form and content of printed items;
 - identified commonality in regard to the use of particular firms to provide printing and/or mailing house services;
 - evidence of involvement by party officials, including election campaign directors, in the design, production and/or authorisation of printed items and in the selection of printers and service providers; and
 - the extent to which items in the sample reflected the acknowledged campaign strategies and associated advertising material of the political parties for the 2007 Federal Election.

5.52 In respect to the latter points, in July 2009 Finance advised ANAO that:

Of themselves, the use of particular firms, involvement of party officials and reflecting acknowledged campaign strategies, are not outside the terms of the Printing Entitlement as currently defined.

5.53 The eligible category under which an invoice is to be paid is generally determined by Finance based on the item description set out on the invoice submitted to the department by the Parliamentarian, together with a completed certification form. In many instances within the sample examined, an invoice was claimed under a category to which the actual printed item did not relate and under which it would not, therefore, be eligible. For example, some items that were claimed under the entitlement to print 'postal vote applications' were not postal vote application forms but rather party-scripted election campaign letters to constituents, some enclosing party-designed PVA documents incorporating further election campaign material. Similarly, 90 per cent of the items in the sample that were claimed under the entitlement to print 'magnetised emergency or community information cards' were actually another form of printed item that would need to be eligible under a different category in order to be considered likely to be within entitlement.

5.54 In that context, in considering the potential eligibility of invoices under the Printing Entitlement, ANAO had regard for the substance of the items printed under each invoice, together with any further advice provided by the

printer in relation to the ordering and production of the item or other services provided. As noted at paragraph 5.48, the Printing Entitlement is menu-based, with certain prescriptive requirements. Accordingly, ANAO also assessed whether the form of the printed item was in accordance with the entitlement. In these respects, ANAO assessed that:

- the majority (56 per cent) of items were in a form²³⁵ that was within entitlement; but
- a high proportion (72 per cent) of sampled items did not include content that was demonstrably within the entitlement.

5.55 Of the sample of items examined, some 26 per cent were either clearly within entitlement, or were likely to be within entitlement. However, 74 per cent of sampled items were at varying levels of risk of being outside of the entitlement.²³⁶ Examples of some the items assessed as being at risk of being outside of entitlement are included at Appendix 4.

5.56 The most significant factor in items being assessed as at risk of being outside of the entitlement related to the content of printed material. Examples included high levels of material promoting party political interests and/or directly attacking or scorning the views, policies or actions of others such as the policies and opinions of other parties. The items assessed by ANAO as being at real risk were mostly claimed and paid against the newsletter and magnetised community information card entitlements. Only one was claimed against the 'other voting information' entitlement.

5.57 In this respect, in July 2009, the current SMOS commented to ANAO that many of the items identified by ANAO as being at real risk of being outside entitlement could be described as newsletters within the meaning of the 42 Questions and Answers document.²³⁷ Specifically, the 42 Questions and Answers document proposed that it was acceptable to use entitlements for

²³⁵ See footnote 33.

²³⁶ In total, ANAO assessed that 132 Parliamentarians in the sample had printed items that were at risk of being outside of their Printing Entitlement, involving 938 transactions (some transactions involved multiple printed items, which have been separately assessed by ANAO) with an aggregate value of \$4.64 million.

²³⁷ See reference to the 42 Questions and Answers document at paragraphs 2.18 to 2.26.

printing and posting campaign-like material.²³⁸ However, Finance subsequently advised the then SMOS that it was ‘difficult to be comfortable’ with the view that campaign-like leaflets were, in fact, a newsletter²³⁹ but that it was open to the Minister to amend the Ministerial Instrument to specify that such leaflets were within the terms of the entitlement. This was not done. Instead, the originally proposed convention was, based on advice from Finance, ultimately redrafted to the following statement:

It is acceptable for a Senator or Member to use the printing facilities provided in electorate offices to produce newsletters and other material (e.g. single issues pamphlets of international, national, state and local significance). It is also acceptable to use entitlements, particularly the Communications Allowance, to distribute such material.²⁴⁰

5.58 This guidance was officially communicated to Parliamentarians in the pre-election letters on entitlements use in the election period issued by Finance on 31 August 2004 for the 2004 Federal Election. It was also included in the pre-election letters for the 2007 Federal Election. However, as Finance was unaware that the two major political parties were operating on the basis of the 42 Questions and Answers document, the department did not advise Senators

²³⁸ This related to the proposed answer to question 16 of the 42 Questions and Answers document, which asked: ‘Is it OK to use entitlements for printing and posting campaign-like material (eg leaflets or other communications on key election issues—Telstra, border security, GST, personal promos)?’ The answer to that question proposed in the 2003 paper was: ‘YES. These are all classified as ‘newsletters’. The discussion may even include issues of international, state and local significance.’ This proposed convention was subsequently re-presented as proposed Statement 10 of the 31 Statements provided to Finance by the then SMOS in February 2004 for the department’s considered advice (see paragraphs 2.43 to 2.44 and Appendices 2 and 3). In providing the 31 Statements to Finance, the then SMOS stated that the 2003 42 Questions and Answers document: ‘has no official status, but was only an internal working paper for discussions between various offices’.

²³⁹ Finance advised the then SMOS that: ‘The Regulations do not define ‘newsletters’ nor prescribe what a newsletter should contain i.e. there would appear to be considerable latitude in terms of form and content. There is nothing in the Regulations which would prevent a Member from using the Printing Entitlement for printing: (1) single issue newsletter; (2) discussing issues of international, state or local significance; and (3) covering issues which are considered to be ‘key election issues’. In following such a course, a Member should have regard to:

- (1) a newsletter is about conveying information not about campaigning;
- (2) the long standing convention that entitlements may be used in support of one’s own re-election but not that of another person; and
- (3) the risk of a public perception that an entitlement provided so that a Member can keep the electorate informed is being used for election campaigns.’

²⁴⁰ See Proposed Statement 10, Finance’s considered advice to the then SMOS, and the subsequently promulgated revised statement in Appendix 3.

and Members that the redrafted guidance was considered to replace the proposition included in the 42 Questions and Answers document.

5.59 The current SMOS also commented to ANAO that ‘other voting information’ is a very broad term and that he had been advised by his Parliamentary colleagues that it covers many of the items identified by ANAO as being at real risk of being outside entitlement. In respect to ‘other voting information’ and whether it covered the items identified as at real risk of being outside entitlement, the March 2009 comments by AGD were that:

AGS advises that this relates to the casting of a vote—the actual voting process—and not to ‘flyers’ or similar documents about the relative merits of the parties and their policies.²⁴¹

5.60 Examples where the form of the item produced or service provided under an invoice was assessed as at risk of being outside of entitlement included items that were not identifiable as being from the Parliamentarian whose entitlement was used; the use of the Printing Entitlement for the production of direct mail letters and other ineligible distribution-related costs; and the printing of a range of items (including various forms of booklets, posters and charts, bookmarks, shopping or Christmas lists, and songbooks) for distribution to constituents that did not conform to the menu of approved printable items.

5.61 In addition to having regard to the framework in place and formally documented through the regulations, Ministerial instruments, official guidance to Parliamentarians and various conventions, ANAO’s assessment was consistent with Finance’s past administrative practices of:

- advising certain Parliamentarians that the Printing Entitlement did not extend to meeting the costs of producing letters, flyers, brochures or leaflets; and
- in response to allegations of entitlements misuse, asking its Minister to write to various Parliamentarians as a precursor to commencing recovery action in situations where the 70/30 rule²⁴² appeared to have been breached. This included situations where items claimed as a

²⁴¹ See further at footnote 191 in relation to statements made by the then SMOS regarding his intentions in approving the ‘postal vote applications and other voting information’ category.

²⁴² See paragraphs 2.33 and 2.49 to 2.51.

newsletter were devoid of any information concerning the local Member but, rather, criticised the policies of another party or were primarily directed at promoting the policies of the Member's own party.²⁴³

Printing of election campaign materials

5.62 ANAO's analysis has highlighted the considerable concentration of Printing Entitlement expenditure during the 2007 election campaign period.²⁴⁴ While permissible under current arrangements, this situation carries heightened risks of intentional or unintentional misuse of the entitlement, particularly given the role played by the distribution of printed material in the modern political context.²⁴⁵ In that context, legal advice provided to Finance in March 2009 advised:

- it would seem generally difficult to treat a document as a 'newsletter' if it was devoid of any information about a particular parliamentarian or parliamentarians but rather merely contained an appeal for the election or re-election of a party, as the case may be, or merely contained commentary on the policies or candidates of an opposing party; and
- it seems unlikely that it was intended that a parliamentarian's printing entitlement was intended to be used to fund a political party's general campaign material.

²⁴³ In considering the application of the 70/30 rule, Finance has advised its Minister that the material that is subject to the 30 per cent of content restriction includes information 'such as party policies on certain issues'.

²⁴⁴ In July 2009, Finance advised ANAO that: 'It is logical that Parliamentarians would want to access this entitlement at this time.'

²⁴⁵ For example, in examining advertising undertaken by Parliamentarians in the lead up to a general election, the New Zealand Controller and Auditor-General has reported: 'I recognised that MPs remained MPs once the House had been dissolved, and that it was important that their availability and their services to the public continued to be advertised. However, I found it difficult to accept that the extensive advertising by some MPs and parties during the six weeks before the Election had a legitimate parliamentary purpose. It is well understood that politicians are focused keenly on the Election during this time. Advertising in the final weeks before the Election almost certainly had an element of electioneering unless it was of the most mundane type.' Source: Controller and Auditor-General for New Zealand, *Advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election*, op. cit., p. 35.

5.63 Of the items in the sample that were considered to be at varying levels of risk of being outside of the entitlement, 88 per cent involved the printing of election campaign materials.²⁴⁶ This included items that were:

- solely campaigning for the relevant Parliamentarian's party;
- solely campaigning for both the Parliamentarian's party, and the Parliamentarian by association;
- solely campaigning for the Parliamentarian's re-election;
- solely campaigning against another party and/or candidate; or
- other items, such as electorate newsletters, in which a substantive proportion of the content involved election campaign material. In some cases, all content was comprised of election campaign material.

5.64 Of those items, 23 per cent made no reference to the relevant Parliamentarian.

5.65 The major parties adopted defined campaign strategies for the 2007 Federal Election, including for use in printed advertising material. Those strategies were discussed, from their respective perspectives, in National Press Club addresses given by the ALP National Secretary²⁴⁷ and the Federal Director of the Liberal Party²⁴⁸ following the November 2007 Federal Election. Both addresses highlighted the important role played in the outcome of the election by the approaches taken by the parties to the consistent delivery of key campaign messages and themes. In that context, there was a significant occurrence within the sample examined of items that reflected these party-wide advertising strategies. This was accompanied by strong indications of centralised party co-ordination such that items comprised of common text and artwork designed to promote the electoral interests of the party and, in some cases, party candidates (including incumbent Parliamentarians) were:

- centrally printed (using various Parliamentarians' Printing Entitlements). In this context, centralised printing arrangements are

²⁴⁶ This includes items printed prior to the commencement of the election campaign period but which involved the co-ordinated dissemination of party-based material.

²⁴⁷ Speech to the National Press Club, Mr Tim Gartrell, ALP National Secretary, Canberra, 4 December 2007.

²⁴⁸ Address to the National Press Club, *The 2007 Federal Election*, Mr Brian Loughnane, Federal Director of the Liberal Party of Australia, Canberra, Wednesday, 19 December 2007.

not, of themselves, outside the current Printing Entitlement. However, this approach was reflected in 50 per cent of the total volume of items printed for 144 Parliamentarians under the invoices in ANAO's sample being produced through seven firms. In many instances, an item was produced using the Printing Entitlements of a number of Parliamentarians under a single job number; and/or

- distributed to Parliamentarians for inclusion in items printed using their Printing Entitlement, including both standalone flyers and brochures, and electorate newsletters.

5.66 In this respect, excluding PVAs and 'how to vote' cards,²⁴⁹ 74 per cent of sampled items that were considered at risk of being outside of entitlement and which related to election campaign material were identifiable as versions of party-designed and/or authorised standalone flyers or brochures and direct mail letters that were produced in various forms using the Printing Entitlements of multiple Parliamentarians.²⁵⁰ These items involved the printing of at least 25 117 488 individual copies at a total cost of \$2.3 million.²⁵¹ In other cases in the sample, all or part of a party-designed flyer, brochure or letter, or versions of the same text and/or artwork, were reproduced within newsletters, direct mail letters and other items prepared on behalf of individual Parliamentarians.

5.67 There were two main approaches taken to the production of party-based campaign material in the sample examined. The first involved the production of common flyers that made no reference to the Parliamentarian whose entitlement was used. ANAO's sample included 199 examples of such items being printed, with a total of at least²⁵² 7 765 022 individual copies being

²⁴⁹ The highly centralised approach taken by the respective parties to the design and printing of PVAs how to vote cards using the Printing Entitlements of Parliamentarians is discussed in Chapter 4 (see paragraphs 4.21 to 4.81).

²⁵⁰ This includes associated items, such as envelopes and letterhead, printed under the same job as a party-based brochure and then used in its distribution, including through the production and insertion of a commonly scripted direct mail letter using the relevant Parliamentarian's letterhead, or other letterhead.

²⁵¹ A further 20 invoices did not identify the quantity printed.

²⁵² A further eight invoices did not identify the quantity printed.

printed using the entitlements of 71 of the 144 Parliamentarians in the sample, at a total cost of \$4.74 million.²⁵³

5.68 The other technique typically used was to include an incidental reference to the relevant Parliamentarian within the standardised text of the item. This was primarily done through the formulaic insertion of a photograph and, in some cases, title block and/or inclusion of their name in a party campaign slogan. In some cases, the relevant electorate was referenced (often only in the Member's title). In other cases, there remained no reference to the electorate. Some Members personalised a party-designed brochure to a greater extent than others. However, in each case, the item remained clearly identifiable as a localised version of a party-designed brochure or flyer.

5.69 ANAO's sample included examples of a party flyer or brochure that included no reference to the relevant Parliamentarian and other examples of the same item in which a reference to the Parliamentarian had been inserted. In that context, suggestions that the mere insertion of incidental reference to a Parliamentarian is capable of transforming the essential character of an item that was designed for the purposes of party campaign advertising would appear artificial and capable of exposing the entitlement to potential misuse.²⁵⁴

5.70 In other examples in ANAO's sample, newsletters, brochures and flyers printed by Parliamentarians were used to varying degrees as vehicles for the

²⁵³ In some cases, the Parliamentarian was identified as the authoriser of the document for the purposes of the Electoral Act. In this respect, legal advice provided to Finance advised: 'In the circumstances we think that a mere 'authorisation' done for the purposes of the *Commonwealth Electoral Act 1918* is probably not sufficient for the contents of the document reasonably to amount to a 'newsletter'.'

²⁵⁴ The technique of localising centrally-designed party campaign material is well established in the Australian political context. For example, in discussing the increasing role of direct mail as an election campaign tool, Dr Sally Young, a political scientist and lecturer in Media and Communications at Melbourne University, recounted an example from the 1998 Federal Election campaign, as follows: 'One example of this is a letter sent to campaign offices by the ALP's national secretary in 1998. Campaign teams were advised: 'Footy season is here and with people attending local matches, campaigns now have a captive audience to get the GST message across.' A pamphlet was attached to the letter from the ALP head office. It was headed 'Don't let John Howard put the boot into your favourite footy team' and showed how much it would cost, with a ten per cent GST, for a family going to the football including the extra cost on footy tickets, food..., the football record...as well as transport and footy merchandise...In an ironic touch, which nicely illustrates the relationship between the control of campaigns at the central levels of the party and the 'return to localism', the letter from the ALP national secretary that was sent with the pamphlet reminded local campaign offices: 'Please do not forget to personalise the pamphlets with your own labels in the space provided on the back of each pamphlet.' (Source: Sally Young, *The Persuaders: Inside the Hidden Machine of Political Advertising*, 2004, pp. 68-69). With technological advances since 1998, parties and candidates are able to be more sophisticated in their approach, with the 'localisation' of an item able to be easily incorporated into the generic artwork as required.

distribution of material campaigning for their party and/or against another party, and with their own candidacy being promoted by association.

Application of conventions

5.71 As noted at paragraphs 5.51 to 5.54, in assessing the potential for printed items to be at risk of being considered outside of entitlement, ANAO had regard to a number of factors, including the conventions and guidelines relating to acceptable use of the entitlement that had been officially articulated and promulgated to Parliamentarians.

5.72 The principal conventions that have been used, in various forms over time, in the administration of the Printing Entitlement were outlined at paragraph 5.25. Each of these conventions has evolved over time and ANAO's analysis has highlighted that their original premise has become blurred in both intent and implementation. As a result, rather than providing a sound framework within which the entitlement may be administered, the greater latitude provided over time has contributed to an approach to using the Printing Entitlement that has deviated from its principal purpose of facilitating Parliamentarians' capacity to undertake their duties as the elected representative of their constituents.

5.73 As discussed in Chapter 2 (see paragraphs 2.49 to 2.52 and Appendix 3), the 31 Statements of new 'accepted conventions' proposed by the then SMOS in February 2004 included proposal of a '70/30 rule of thumb' to support the inclusion in Parliamentarians' newsletters of up to 30 per cent of material that directly promotes their party or implicitly promotes another candidate. In considering that proposal in 2004, Finance advised:

There is nothing magical about the 70/30 rule—which at various times has manifested itself as the 60/40 rule or 80/20 rule. The notion appears to be that if a document is overwhelmingly concerned with bona fide business then it has been properly accessed.

5.74 Finance further advised the then SMOS at that time that the principles the department considered to be safe in this regard included that:

in considering whether a given action is acceptable or not the onus is on the individual Parliamentarian and the question should be:

- is this genuinely for Parliamentary or electorate business; or
- is it a device to circumvent the rules and use entitlements for one's own, one's colleague or one's party's promotion?

5.75 As noted at paragraphs 2.49 to 2.52, a revised statement setting out more restrictive guidance in relation to the application of the 70/30 rule was proposed by Finance and subsequently officially promulgated to Parliamentarians by way of pre-election letters from the department and Ministerial Circular.

5.76 There were a significant number of items in the sample examined that, on ANAO's analysis, fell outside of the 70/30 convention previously advised to Parliamentarians by way of Ministerial Circular and the department. In other cases, it was less clear whether a particular item would be considered to fall within the terms of the convention. In that context, the use of a proportional approach to guide the acceptable content of items printed at public expense is unhelpful in ensuring the Printing Entitlement is accessed for purposes relating to the role of a Parliamentarian as the elected representative of their constituency.²⁵⁵

5.77 A proportional approach of this nature is also inherently difficult to administer. This is particularly the case given the absence of coherent guidance as to what constitutes electorate or Parliamentary business.²⁵⁶ There are also administrative difficulties in measuring proportional content (number of words, amount of space used etcetera). A better approach would be to stipulate that the Printing Entitlement should not be used for election campaign purposes, but recognising some incidental benefit may arise. This approach has been taken overseas.

Campaigning for the Parliamentarian's own re-election

5.78 As discussed, one of the conventions that has evolved in relation to the use of Parliamentarians' entitlements is that they may be used in support his or her own re-election where this is incidental to the undertaking of electorate or Parliamentary business, but not the election or re-election of anyone else. The

²⁵⁵ For example, considerable electoral advertising benefit can be derived by a party or another candidate from the inclusion in a Parliamentarian's newsletter of party campaign logos, slogans, images, photographs and/or referrals to party or campaign web site, without those references necessarily comprising the bulk of the content. In this respect, ANAO's sample included a number of examples in which a newsletter produced by a Senator for distribution in a particular electorate within their State or by a retiring Member in the period immediately prior to the calling of the election included prominent references to the relevant party's candidate in that electorate. Such references may fall short of calling for the reader to vote for that candidate, but are of considerable assistance in elevating the candidate's local exposure by means that do not represent an expense to the candidate or the party.

²⁵⁶ In July 2009, Finance advised ANAO that successive governments had not agreed to provide such guidance.

underlying premise of this convention related to the reasonable proposition that it is not possible, from a practical perspective, to avoid incidental benefits accruing to an incumbent Senator or Member in the exercise of their electorate and parliamentary duties, not that furthering one's own candidacy is one of those purposes (see paragraphs 2.31 to 2.32, footnote 73 and Appendix 3).

5.79 In that context, it would not be acceptable for a Parliamentarian to use their entitlements to print and distribute items that are entirely for the purpose of promoting their own re-election. To suggest otherwise would appear to extend the benefits of incumbency well beyond that which would seem reasonable within a Parliamentary system that requires incumbent Senators and Members to present themselves as a candidate on equal footing with any other candidate.²⁵⁷ In this respect, the letters on entitlements use provided to Members by Finance upon the calling of the 2007 Federal Election advised:

Given that the primary purpose of the printing, and associated entitlements, is to inform and provide a service to the electorate, any use which is primarily more promotional in character should not constitute the greater part of the document. As a general rule the 70/30 rule of thumb has been adopted. Under the rule, material of a promotional character may be included so long as it makes up less than 30 per cent of the overall newsletter or letter.

5.80 However, within the sample examined by ANAO, it was apparent that many Parliamentarians have viewed this convention as supporting the use of the Printing Entitlement to produce brochures, leaflets and other forms of printed material that had a primary or, in a number of cases, exclusive purpose of campaigning for their own re-election through:

- endorsement statements from selected members of the community and/or party leaders and colleagues;
- a recitation of the Member's past achievements in securing funding for organisations, with a request for the reader's vote in order to be able to

²⁵⁷ For example, under the alternative view, it would be open to a Parliamentarian to spend the entire funds available in a given year (including an election year) under both their Printing Entitlement and Communications Allowance to print and distribute material solely devoted to campaigning for their own re-election. In the case of a Member, in 2007-08 that may have involved use of a Printing Entitlement of \$217 500 (the maximum available in that year) and a Communications Allowance of \$189 589 (this was the largest amount available to a Member in 2007-08, based upon that Member having the capacity to combine his Charter and Communications Allowance as representative of a large electorate, and a significant carry forward of unspent funds from 2006-07), for combined expenditure of \$407 089. Such a suggestion would seem contrary to the essential purposes of both entitlements and to community expectations.

do more as the re-elected Member. In most cases, this effectively involved the re-announcement of funding awarded to organisations within the electorate in the three years since the 2004 election. In other cases, the funding being re-announced related to grants awarded over a substantially longer period;

- a recitation of the Member's undertakings in relation to the issues he or she will support or fight for in the future; and/or
- the promotion of a commitment by the Member's party to provide funding for a specified project in the electorate if the party is elected or re-elected to government.

5.81 In addition to candidate promotion brochures that are included in the party-designed items discussed at paragraph 5.66,²⁵⁸ ANAO's sample included 63 examples of other types of brochure or flyer that had the sole purpose of promoting the relevant Member's re-election in the manner described above. This involved the use of the Printing Entitlements of 30 Members to print at least 2 468 780 copies at a total cost of \$383 908.

5.82 ANAO's analysis of items printed by Parliamentarians in the period leading up to, and during, the 2007 election campaign illustrates the risks inherent in the use of 'accepted conventions', to govern the use of public funds by Parliamentarians. Specifically, the risk that has been realised in relation to the Printing Entitlement is that the original premise for the convention is lost.

Production of letters

5.83 The Parliamentary Entitlements Regulations provide Parliamentarians with an explicit entitlement to print personalised letterhead stationery.²⁵⁹ Senators and Members are also provided with electorate office facilities,

²⁵⁸ For example, the Liberal and National parties developed a series of standardised brochures for use by both incumbent and non-incumbent candidates in campaigning for election. Based on samples provided to ANAO by relevant printers, the format of the brochures remained the same for all party candidates, with space allocated to the insertion of relevant photographs and slogans relating to the candidate in question and, in some versions, for the relevant candidate's version of a local action plan and/or a map of previous grant funding in the electorate. The sample examined by ANAO included a total of 2 821 820 individual copies of various versions of these candidate-promotion brochures printed using the Printing Entitlement of 26 Liberal and Nationals Members in three States, at a total cost of \$463 594. Similarly, ANAO's sample included the use of the Printing Entitlements of six Labor Members in one State to produce versions of a standardised Member promotion brochure entitled either three or four 'Good Reasons to Vote for [Member]'. This involved the printing of 390 000 individual copies at a total cost of \$54 112.

²⁵⁹ Regulation 3(1)(a) in relation to Members, and Regulation 3A(1)(a) in relation to Senators.

including computers, copiers and printers, under Schedule 1 of the Parliamentary Entitlements Act, which are required to be used for ‘purposes related to Parliamentary, electorate, or official business, but not commercial business’. In combination, these entitlements provide Parliamentarians with the capacity to produce correspondence in the course of undertaking their Parliamentary, electorate or official duties.

5.84 Separately, Parliamentarians are provided with a Communications Allowance under clauses 10.4 to 10.13 of Remuneration Tribunal Determination 2006/18. Clause 10.4 provides that:

a senator or member shall be entitled to use commercial services for the distribution of letters, newsletters and parcels and electronic services (including establishment and maintenance of web sites) at Commonwealth expense in relation to parliamentary or electorate (but not party) business.

5.85 The Communications Allowance is financially capped as follows:

- as at 1 July of each year, Members are entitled to a maximum allowance per annum based on the number of enrolled voters, as at the last working day in March of that calendar year, within the electoral boundaries for the Member's electorate in place at the last general election, multiplied by fifty five cents (prior to September 2008, the Allowance was based on fifty cents per enrolled voter)²⁶⁰; and
- Senators are entitled to a maximum allowance of \$27 500 per annum.²⁶¹

5.86 In broad terms, the Communications Allowance provides Members with the capacity to distribute one to two letters, newsletters or other items to each constituent in a given financial year.

5.87 The entitlement to print newsletters for distribution to constituents is provided under a separate provision of the Regulations²⁶² from that which provides the capacity to print personalised letterhead stationery. In that context, Finance has previously advised the SMOS that:

²⁶⁰ Members representing electorates of 10 000 km² or more are able to elect to aggregate their Communications Allowance and the entitlement to Charter transport set out in clause 6.2 of the Determination.

²⁶¹ Unspent amounts may be carried forward to the following financial year.

²⁶² Regulations 3(1)(b) for Members and 3A(1)(b) for Senators.

The term newsletter is not defined in legislation, however, it has been interpreted broadly to include any material that is not a letter, such as surveys, leaflets and other similar material. [ANAO *emphasis*]

5.88 This position was also reflected in advice provided by Finance to several Parliamentarians in ANAO's sample in relation to invoices submitted for payment under the relevant Parliamentarian's Printing Entitlement (see further at paragraphs 5.126 to 5.129).

5.89 However, of the items in ANAO's sample considered at risk of being outside of the Printing Entitlement, 17 per cent related to the production of letters, including letterhead printed specifically for use in production of a direct mail letter as part of a package to distribute party campaign materials.²⁶³ This represented a total of at least 4.6 million individual letters (with four of the relevant invoices not identifying the quantity produced), at a total cost of at least \$638 037.²⁶⁴ Based on the samples provided to ANAO by the relevant printer or mailing house, 90 per cent of the letters were for delivery through addressed direct mail, with the remaining letters appearing to be for delivery through letterbox drop.²⁶⁵

5.90 Of the letters in the sample, 92 per cent were produced in October or November 2007. This was largely reflective of a particular aspect of the co-ordinated nature of one party's election campaign strategy evident from the sample examined which involved the extensive use of Parliamentarians' Printing Entitlements for the centrally co-ordinated production and distribution of party-scripted direct mail letters overprinted on the letterhead of the relevant Parliamentarian. In a number of cases, the letter also enclosed one or more of the party-designed campaign flyers or brochures discussed at paragraph 5.66. There were also examples in ANAO's sample of letters produced using a Parliamentarian's Printing Entitlement that were not on that Parliamentarian's letterhead, but rather on another form of letterhead and

²⁶³ If done for Parliamentary, electorate or official business, Senators and Members are permitted to use the electorate office facilities to print letters on letterhead produced under the Printing Entitlement (and these letters may be distributed using the Communications Allowance, to the extent that they relate to Parliamentary, electorate or official business).

²⁶⁴ In a number of cases, letterhead was produced on the same invoice as another election campaign brochure for use in production of the direct mail letter to residents enclosing the brochure. However, the cost of printing the letterhead was not separately itemised on the relevant invoice.

²⁶⁵ However, this was not always clear from the documentation provided such that some of these letters may also have been distributed through direct mail using the services of another service provider.

which were presented as signed by the then Prime Minister and then Treasurer or by the then Leader of the Opposition.

Mailing house distribution costs claimed under Printing Entitlement

5.91 The production of direct mail letters is typically undertaken using the services of a mailing house or a printer that also provides similar services. This generally involves the overprinting of supplied text, artwork, addresses and barcodes onto supplied letterhead and envelopes, and insertion of the letter and any enclosures into the envelopes for delivery by Australia Post or other postal service. These costs primarily relate to distribution costs. Within ANAO's sample, there were examples of:

- firms that provide both printing and mailing house services being used to print letterhead, envelopes and a party-based brochure for multiple Parliamentarians under a single job, with the costs being attributed and invoiced to the relevant Parliamentarians; and separately invoicing the Parliamentarian for the production and insertion of a standardised direct mail out letter enclosing the brochure; and
- the use of one printing firm to produce a brochure relating to a particular party policy area for one or more Parliamentarians under a single job, with each Parliamentarians being separately invoiced, with a separate mailing house then being used to produce and insert a standardised direct mail letter enclosing the brochure.

5.92 ANAO's sample also included invoices that related to a mailing house preparing items previously printed by another firm for distribution, also using the relevant Parliamentarian's Printing Entitlement. This included services such as overprinting of bar codes and address details and insertion in envelopes. In those circumstances, it is evident that costs associated with the distribution of printed items have been incorrectly funded through the Printing Entitlement, rather than the capped Communications Allowance.

Other items printed using Parliamentarians' Printing Entitlement

5.93 The sample of items examined by ANAO also included a number of other items printed for distribution to the relevant Parliamentarians' constituents which did not appear to conform to the menu of items approved for printing. In particular, the items did not appear to bear the characteristics of a newsletter from the relevant Parliamentarian and it was doubtful that they

would be covered by another benefit specified under the Regulations or Ministerial Instrument.²⁶⁶

5.94 Items in this category represented six per cent of sample items assessed as at risk of being outside of the Printing Entitlement, and involved the printing of a variety of items including:

- various forms of family posters and charts including:
 - representations of a children’s height measuring chart in the form of a giraffe;
 - a wall chart of the times tables; and
 - wall charts on phrases that can be used to praise a child;
- pads of shopping or Christmas lists;
- songbooks;
- tide chart;
- bowls scorecards;
- personal medication lists;
- booklets, brochures and cards providing various types of general advice to young people and parents;
- bookmarks; and
- note pads bearing the Parliamentarian’s photograph and contact details that were for distribution to constituents rather than being for the Parliamentarian’s own use.

5.95 The use of the Printing Entitlement to produce items of this nature appears to be a further reflection of the uncertainty and confusion among Parliamentarians as to the precise terms of the Printing Entitlement. In July 2009, Finance advised ANAO that:

The confusion arises from the marked reluctance of successive governments to provide clarity around the terms of the Printing Entitlement.

²⁶⁶ This was confirmed in legal advice provided to Finance in relation to some of the items in ANAO’s sample. The remaining items in this category in the sample bore similar characteristics to those considered by the legal adviser.

5.96 In that context, a further area of uncertainty relates to the use of the entitlement to produce stand-alone survey forms and petitions. The pre-election letters provided to Parliamentarians upon the calling of the 2007 Federal Election advised that:

Surveys may be included in newsletters produced using the Printing entitlement. Such surveys should clearly be for parliamentary and/or electorate business.

5.97 ANAO's sample included examples of surveys of this nature being included in Member newsletters. However, the question appears to be less clear where the survey is (a) a standalone item and/or (b) appears likely to be used for the purposes of informing party and/or Member election campaign strategies and/or disseminating election campaign policies. In this respect, Statement 26 of the 31 Statements proposed by the then SMOS in 2004 (see paragraphs 2.14 to 2.35) proposed that: 'Surveys may be included in newsletters.' In commenting on that proposal, Finance advised the then SMOS that:

It is important to recognise that a newsletter is about providing information to constituents rather than eliciting information from persons in the electorate. Thus the inclusion of a survey in a newsletter should be incidental to the main purpose of putting out the newsletter.

It is also important to note that any survey included in a newsletter would need to conform with the other provisions and conventions relating to the content of newsletters, i.e. the general framework within which entitlements may reasonably be accessed would indicate that surveys should be constructed so as to be clearly for Parliamentary and/or electorate business and not party business.

5.98 In that context, ANAO's sample included a number of items that were comprised solely of a survey or questionnaire, rather than being an incidental inclusion in a broader newsletter. A common approach was for the primary purpose of the survey to be asking residents to prioritise nominated issues, which in some cases were expressed to reflect and/or promote party election campaign policies. ANAO's sample also included a party-based small business survey distributed using the Printing Entitlement of a number of Parliamentarians, but which appeared likely to be a mechanism for providing information to assist in the development of the relevant party's election campaign strategy. Similarly, there were examples in ANAO's sample of Parliamentarians using their Printing Entitlement to produce petitions for

signature by residents. The question of whether petitions may be printed using the entitlement has not been addressed in guidance provided to Parliamentarians.

Printing Entitlement reform

5.99 ANAO's analysis has highlighted that both the current ambiguity in the terms of the entitlement, and the manner in which it has been administered, have contributed to a pattern of use that has deviated from the essential premise of the Printing Entitlement.

5.100 At the request of Finance, through the Secretary of AGD, the Australian Government Solicitor (AGS) examined 79 of the printed items obtained by ANAO. AGS considered that:

...we are not able to express a clear view as to whether a court would find that a particular document was covered by the benefit. All we are able to do is express the possible outcome in terms of risk.

5.101 In respect to 89 per cent of these, AGS concluded that either there was a real risk that a court would find the documents to be outside the parameters of the Printing Entitlement; AGS was unaware of any basis for the item under the Parliamentary Entitlements Act or Regulations; or the eligibility of the item was doubtful or at some risk.

5.102 As discussed in Chapter 2 (see paragraphs 2.54 to 2.58), in response to a referral by Finance under the protocol to be followed when an allegation of misuse of entitlements by a Member or Senator is received, AGD advised Finance in November 2008 that it was not certain that a court would find that the printing was done outside entitlement, and that it would be prudent to review the wording of both the Regulations and the Senators and Members Entitlements Handbook to ensure that both documents provide clear and consistent guidance to Parliamentarians about the extent of the Printing Entitlement (see paragraph 2.55). As noted, AGD has further commented that:

- the priority for resolving this issue should lie in clarifying regulations that are clearly uncertain in scope (advice to Finance in March 2009—see paragraph 2.56); and
- the larger issue is the difficulty of providing anything approaching a definitive view of the legal position. In this respect, AGD considered that the resulting policy question as to whether the current statutory regime is 'fundamentally problematic in failing to provide meaningful

guidance to those who must work within it clearly warrants further consideration' and that 'the issue of the vagueness of the rules warrants immediate attention' (advice to PM&C in July 2009—see paragraphs 2.57 to 2.58).

5.103 As discussed in Chapter 4 (see paragraphs 4.101 to 4.107), the then SMOS agreed in April 2009 that significant reforms should be made to the Printing Entitlement and that Finance should prepare a further brief on options for reform based on a series of proposed elements. It was also agreed that Finance would consider the merits of further restricting the use of the entitlement to material printed for parliamentary and electorate business. On 30 June 2009, Finance provided the current SMOS with a further brief on options and implementation mechanisms for reform of the Printing Entitlement.

5.104 The implementation of the proposed reforms, together with the broader recommendations outlined in Chapters 2, 3 and 4 of this audit report, would resolve many of the issues identified in relation to the framework underpinning the Printing Entitlement.

5.105 In that respect, one of the proposed elements for a reformed Printing Entitlement canvassed by the then SMOS in April 2009 was removal of the 'menu' of items that can be printed as specified in the November 2006 Ministerial Instrument, and moving to a listing of items that cannot be printed. However, in the absence of reform to the Regulations, there would continue to be an entitlement to print the undefined categories of:

- personalised letterhead stationery; and
- newsletters for distribution to constituents.

5.106 Given the issues observed in this performance audit, if that approach is to be retained it will important for greater clarity to be introduced in relation to the nature and extent of each of those entitlements, including incorporating definitions of the key terms. As outlined at paragraph 2.53, in July 2009 Finance provided the current SMOS with proposed draft definitions of key terms, including 'party business', 'electorate business', 'official business' and 'parliamentary business', to aid in the interpretation of all Parliamentary entitlements.

Finance's administration of the Printing Entitlement

5.107 Finance is responsible for administering the Printing Entitlement provided to Senators and Members under the Regulations. This includes the department paying the invoices submitted by Parliamentarians for items printed under the entitlement and reporting that expenditure in the Management Reports. Finance also provides advice to Parliamentarians in relation to their use of the entitlement through:

- the Senators and Members Entitlements Handbook;
- departmental and Ministerial Circulars;
- letters regarding use of entitlements during an election campaign which are sent to each Parliamentarian once an election has been called;
- correspondence or other advice where there is a query in relation to an invoice submitted for payment; and
- through the help desk inquiry services available to Parliamentarians and their staff.

5.108 As discussed, the Printing Entitlement provided under the Regulations is based on a specified menu of approved printable items (see paragraph 5.48). The Communications Allowance, which provides Parliamentarians with the capacity to distribute printed items, may only be used for parliamentary, electorate or official business, but not party business. However, Finance's administrative approach has relied on the certification by each Senator and Member that they have accessed their entitlements appropriately. This approach has provided the department with little visibility over how these related entitlements have been used. In this respect, Finance advised ANAO that it had been the intent of successive governments that the department not sight or vet any printed material.

Oversight of items printed and distributed using public funds

5.109 Some jurisdictions either require their Federal Parliamentarians to submit samples of items proposed to be distributed at public expense for pre-approval in order to ensure their eligibility under the terms of the relevant entitlement, or provide the capacity for this to occur on a volunteer basis. For example, as discussed in Chapter 4:

- Members of the United States Congress are not permitted to use their allowances for campaign or political expenses and must submit any

item proposed for ‘mass mailing’ (defined to be a distribution of 500 or more) for approval to the Congress’ Franking Commission. Any member who fails to submit a sample of a mass mailing for prior approval will be required to pay for it personally and all mass mailings must bear the words ‘This mailing was prepared, published and mailed at taxpayer expense’ (see paragraphs 4.2 and 4.3); and

- New Zealand Members can seek ‘pre-approval’ from the Parliamentary Service for material they propose to distribute but are not required to do so. However, if they choose not to seek pre-approval and the material is found to not comply with the rules, the member will be asked to repay the cost. Conversely, if the member sought and received pre-approval but the material later is found not to comply, the member does not have to reimburse the cost. Similar to the United States, items printed or distributed using public funds are also required to ‘be identified at the time of communication as having been paid for by the Parliamentary Service’ (see paragraph 4.7).

5.110 The current entitlements framework does not require Parliamentarians to provide Finance with a copy of items printed using the Printing Entitlement and/or distributed using the Communications Allowance, either before or after payment of the relevant invoice. Further, in relation to the Printing Entitlement provided under the Regulations, there is currently no equivalent arrangement to those existing in the two jurisdictions noted above under which Parliamentarians are able to obtain pre-approval of proposed printed items, such that they may proceed with confidence in relation to the assessed eligibility of the item.

5.111 As was noted in the 2001-02 Audit Report, this reflects the self-regulation approach taken under the current entitlements framework to the administration of the Printing Entitlement (and other entitlements) in which the onus is placed upon the individual Parliamentarian to determine and certify to the eligibility of their entitlements use. However, the 2001-02 Audit Report also noted that the Chamber departments had adopted a different approach to this issue.

Practices at the time of the 2001-02 Audit

5.112 At the time of the 2001-02 Audit, the process undertaken in order for a Member of the House of Representatives to access their Printing Entitlement was that the Member selected the printer and provided Finance with one

written quote for a given job, which was required to be accompanied by a certification. The department then raised a purchase order on the nominated printer, with payment being made upon receipt of an invoice and certification from the Member's office that the goods had been received.²⁶⁷ In this respect, the 2001-02 Audit Report noted:

In lieu of requiring Members to submit proposed text for review, Finance requires Members to provide it with a certification at the time of submitting printing requests to the effect that the expenditure is within his or her entitlement and will be for parliamentary or electorate business, but not party business. As noted...these terms have not been defined, and to date Parliamentarians have been provided with general guidance only on what constitutes parliamentary, electorate and party business. Finance does not sight or retain a copy of the material printed using the entitlement. Finance advised ANAO that:

What Finance does do is actively refer all allegations of use outside of entitlement to the Special Minister of State who follows up formally with the Parliamentarian to seek a response.²⁶⁸

5.113 The 2001-02 Audit Report further observed that the Chamber departments had taken a different approach to overlooking the eligibility of material printed by Parliamentarians using public resources. In particular, at the time of that audit, the Department of the Senate required proposed content to be submitted for review before it would be accepted for printing,²⁶⁹ as follows:

Guidelines issued to Senators by [*Department of the Senate*] provide that printing and photocopying services are restricted to the preparation of parliamentary material associated with Senators' parliamentary duties, and that material related to political party or election campaign matters cannot be accepted. [*Department of the Senate*] advised ANAO that the guidelines are consistent with the Parliamentary Entitlements Act and the requirement to avoid use of appropriations for party political purposes. The department's

²⁶⁷ ANAO Audit Report No.5 2001-02, op. cit., pp.191-192.

²⁶⁸ *ibid.*, p.199. As outlined at paragraphs 3.77 to 3.84 and reflected in Recommendation No. 4, there would be benefit in Finance developing a more robust (and transparent) approach to responding to allegations of entitlements misuse.

²⁶⁹ As noted, until 2006, printing services for Senators were administered by the Department of the Senate (see paragraphs 5.16 to 5.17).

guidelines were considered by the Senate Appropriations and Staffing Committee in April 2000, with no changes resulting.

[*Department of the Senate*] requires Senators to submit the proposed text of newsletters and other printing requests to the Deputy Usher of the Black Rod for clearance. Where the text is considered to be outside of the guidelines provided, the Senator is required to revise the text before the printing will be undertaken.²⁷⁰

5.114 The 2001-02 Audit Report further noted that, for printing provided to Members via its in-house printing service, the Department of the House of Representatives also undertook a content review process against guidelines issued by the Speaker which provided that newsletters containing reference to party political or election campaign matters could not be accepted for printing, and that material that was defamatory or not in keeping with parliamentary standards would not be accepted. To that end, the department required a sample of the material to be printed to be submitted with printing requests. Where the department considered the material proposed for printing to be outside of a Member's entitlement, it requested changes before approving the printing.²⁷¹

5.115 As noted at paragraph 5.7, the then Minister for Administrative Services decided in September 1995 that Members would be able to deal directly with the then DAS in accessing printing once their initial allocation through the Department of the House of Representatives was exhausted. In November 1995, the then Minister agreed to arrangements under which a Member would select the printer and certify that the goods had been received and that the invoice was for printing which met the Member's personalised letterhead stationery entitlement under the Parliamentary Entitlements Act. Under this arrangement, Members would not be required to provide copies of proposed printing to either department. On 9 November 1995, the Department of the House of Representatives advised DAS of a number of concerns it had about the proposed changes, including:

The Department is primarily concerned that the current departmental administrative arrangements which prevent the use of publicly funded entitlements for party political and campaign purposes will not be maintained

²⁷⁰ ANAO Audit No.5 2001-02, op. cit., p.199.

²⁷¹ *ibid.*

under the proposed arrangements. Newsletters are currently available for funding from the initial entitlement. However, newsletters containing references to party political or election campaign matters cannot be accepted for printing from the personalised letterhead stationery entitlement.

5.116 At the time of the 2001-02 Audit Report, Members were still able to elect to use the Department of the House of Representatives to access external printing under the Printing Entitlement provided under the Regulations once the initial allocation provided through the Department of House of Representatives had been exhausted.²⁷² In this respect, the 2001-02 Audit Report noted that:

Since November 1999, however, for external printing services accessed by Members under the entitlement provided by the Regulations, [*Department of the House of Representatives*] has undertaken a similar process to that of Finance. At that time, [*the department*] advised Members that, as the requirement to submit a sample of proposed text for external printing was not imposed by Finance, in future Members need only provide [*Department of the House of Representatives*] with a certification. [*The department*] advised Members that this placed the onus on them, but that [*departmental*] staff would continue to provide advice on these matters if requested. [*Department of the House of Representatives*] advised ANAO that it had changed its policy in respect of printing undertaken under the Regulations because the differing requirements had contributed to significant confusion and duplication of effort, with Members questioning the requirement for review by [*Department of the House of Representatives*] when Finance did not impose that requirement. [*Department of the House of Representatives*] also undertakes reviews of allegations of misuse of Members' printing entitlement received from external parties. Material requested by Members to be printed by [*the department*] through the in-house printing service continues to be assessed prior to acceptance.²⁷³

Current Finance practice

5.117 Under current arrangements, Parliamentarians or their offices directly engage firms to undertake printing under the Printing Entitlement. Payment is made upon the submission to Finance of an invoice accompanied by a completed certification signed by the Parliamentarian. The approach of not

²⁷² As noted at paragraph 5.10, Members were required to access the first \$3 850 of their annual expenditure under that entitlement through the Department of the House of Representatives but could elect to access further printing under the entitlement through either that department or Finance.

²⁷³ ANAO Audit Report No.5 2001-02, op. cit., p.200.

requiring Parliamentarians to provide a copy of the printed item, either before or after payment of the relevant invoice, has continued. This was reflected in advice the department provided to the then SMOS in August 2004:

Since December 1995, when Members were enabled to arrange their printing directly [*rather than*] through [*Finance*], the arrangements have been essentially self-regulatory. Members arrange their own printing and in submitting the account to [*Finance*] for payment certify that the goods were provided and that the printing was within entitlement. There is no requirement that [*Finance*] be supplied with a copy of the printing or an itemised account.²⁷⁴

5.118 In this respect, in July 2009 Finance advised ANAO that:

...it was the intent of successive governments that Finance not sight/vet any printed material. When the newsletter entitlement was introduced in 1995 (in preparation for the next federal election) by the then Minister for Administrative Services, a key feature was that Members would deal directly with printers to ensure that officials did not censor content.

Reliance on invoice descriptions

5.119 Invoices submitted for payment are required to be accompanied by a completed certification form, signed by the relevant Parliamentarian, certifying as to when the goods were received, that the charge is correct and that the invoice is within the terms of his or her entitlement under the Regulations.²⁷⁵ In the absence of a sample of the printed material, in determining the eligibility under the entitlement of an invoice submitted for payment, Finance relies upon:

²⁷⁴ In respect to obtaining reliable information concerning actual use of the Printing Entitlement, in September 2008 Finance advised ANAO that: 'If we were to require copies of printed material to be provided and were then asked to do some sample based auditing we would be required to determine whether something was outside of entitlement relying on quite subjective criteria, for example the 70/30 convention in which its not clear what the 70/30 relates to. We are in no position to make judgements about such matters and this would place us in a very difficult position. Invoices would need to be paid, regardless of the likelihood of a subsequent challenge as to the legitimacy of the product. Were we then to determine that printed material appeared to be outside of entitlement, we would be obliged to seek recovery from the Senator or Member concerned, in many cases having nothing on which to base our position other than a subjective view against loosely defined criteria.'

²⁷⁵ Until November 2007, the certification form did not require the Parliamentarian to nominate which of the eligible categories the item related to. A new certification form issued in November 2007 included a check list of eligible categories. Given the concentration of 2007-08 Printing Entitlement expenditure in the months leading up, and during, the election campaign period for the 24 November 2007 Federal Election, ANAO's sample was focussed primarily on items printed during that period. As a result, the majority of invoices examined involved use of the earlier version of the certification form. However, some invoices in the sample did involve use of the new version. This included at least one example in which none of the eligible categories had been ticked by the relevant Member.

- the item description set out on the invoice; and
- the certification and other advice provided by the relevant Parliamentarian and/or their Office.²⁷⁶

5.120 ANAO noted a number of aspects of this administrative approach that have not contributed to effective and transparent oversight of Parliamentarians' use of the Printing Entitlement.

Requests for replacement invoices

5.121 Of the 1 235 invoices examined, there was evidence of Finance querying one or more aspects of 115 (9.3 per cent). In relation to 100 of those invoices (87 per cent), the matters queried related to one or more aspects of the eligibility of the printed item, as follows:

- the description on the invoice not appearing to relate to one of the eligible categories under the Printing Entitlement (91 per cent);
- the size of the printed item appearing to exceed the maximum number of pages for a newsletter as set out in the Handbook (eight per cent);
- whether an item had been printed within the pagination of a newspaper, rather than being a separately printed insert as required under the Handbook (two per cent);
- the proportion of the invoice the Member wished to pay from his Printing Entitlement (one per cent); and/or
- the apparent inclusion of ineligible distribution costs on the invoice (one per cent).²⁷⁷

5.122 In querying those 100 invoices, Finance requested that the relevant Parliamentarian either provide advice of the eligible category to which the

²⁷⁶ In this respect, legal advice to Finance during the course of the audit was that a Parliamentarian certifying as to what he or she has used their Printing Entitlement to produce (such as a newsletter for distribution to constituents) is not determinative.

²⁷⁷ The remaining queries in ANAO's sample related to: the absence of a quantity printed on the invoice (six per cent); clarification of the date the goods were received (six per cent); and invoices submitted by more than one Parliamentarian from the same firm bearing identical invoice numbers (one per cent). However, Finance was not consistent in relation to the matters that it required to be clarified before payment of an invoice would be processed. For example, ANAO's sample included 42 invoices for which no quantity was provided on the invoice provided to Finance but this information was not sought by Finance before processing the payment, with the relevant Management Report entries accordingly not disclosing a quantity. Information on the quantity of items being printed can be useful for analytical purposes as part of Finance's overall management of the entitlement, and in advising on possible reforms.

Parliamentarian considered the invoice related, including in regard to matters such as the size limit for newsletters set out in the Handbook, or for such advice to be provided by the printer (through the Member), including through the issuing of a revised invoice. Where the query was raised by way of letter (79 instances), the letter listed the menu of eligible categories.

5.123 In each case, the claimed amount was subsequently paid under the relevant Parliamentarian's Printing Entitlement based on either:

- a re-issued invoice from the relevant firm with a revised description reflecting the eligible category descriptors advised to the Parliamentarian by Finance (57 invoices);²⁷⁸ or
- advice received from the Parliamentarian or his or her Office as to the nature of the printed item/s and/or eligible Printing Entitlement category to which the invoice related (43 invoices).

5.124 Noting Finance's advice to ANAO that successive governments intended that the department not sight or vet any printed material, in none of the cases in ANAO's sample did the department request a copy of the printed item to assist in clarifying its eligibility. Nor did Finance seek any information in relation to the services provided or item printed under the invoice directly from the relevant firm. This use of this latter approach was reinforced to State Managers in the following advice provided by Finance's Canberra office in March 2007:²⁷⁹

I've had a look at Printing processing in 4 State offices and I'm pretty comfortable with what I've seen. Our understanding of the entitlement is good, we deal with invoices quickly and effectively, and our records are complete and readily accessible. There are some minor variations in process from State to State—not significant and not unexpected considering the process is not covered in current State Office Guidelines.

²⁷⁸ A further six amounts in the sample were paid on the basis of invoices that had been re-issued following Finance queries in relation to other aspects of the originally submitted invoice (see footnote 277).

²⁷⁹ The advice was provided following a review of practices in four State Offices for the administration of the Printing Entitlement in the context of media coverage of allegations of misuse by certain Parliamentarians. In July 2009, Finance advised ANAO that: 'the intent of the email was to strengthen practices for handling printing invoices that did not appear to be within entitlement. The email sought to ensure that the matter was referred back to the Parliamentarian concerned and maintain reliance on them to see that the invoice correctly described the printed material rather than asking relatively junior staff, who had not seen the material, to exercise such judgements on the Parliamentarian's behalf.'

...I'd like to see all State Offices adopt a standard approach as of now. If any of you believe this would represent such a significant change that Senators and Members should be informed in writing, please discuss with me.

The key points are:

- The original invoice and certification are required for payment to be processed.
- The Senator or Member must sign the certification form personally.
- A clear description of the printed materials supplied must be included on the invoice.
- The description in PSS [*the system used to process payments and generate the transaction details included in Management Reports provided to Parliamentarians*] of the materials provided must match exactly one of the allowable items.
- If the invoice does not specify letterhead stationery, envelopes, or one of the allowable items, it should be returned to the Senator or Member with a covering letter listing those printed materials that may be covered by the entitlement. Depending on the original description provided, the requirement will be for a new invoice or a clarification of the existing invoice, signed by the Senator or Member. **Under no circumstances should [Finance] contact the supplier.** [ANAO *emphasis*]
- The original of the invoice and certification form will be stored in [*Finance transaction record*] number order. The papers should clearly identify the [*Finance*] action officers. Where there has been contact between [*Finance*] and the Senator/Member's office, reference must be made to call register entries and/or copies of correspondence attached.

5.125 In adopting this approach, Finance has encouraged Parliamentarians to provide it with invoices that reflected the 'form' of the entitlement through the use of specific descriptors, rather than attempting to establish eligibility based on the substance of the item printed and/or services actually provided under the invoice (by examining a copy of what was actually printed).

5.126 For example, as discussed at paragraphs 5.83 to 5.92, letters are not considered to fall within the menu of eligible printed items, and costs associated with distributing printed items may not be met from the Printing Entitlement. In that context, for ten of the 100 invoices in the sample for which Finance queried the eligibility of the description, the item provided to ANAO by the relevant firm confirmed that the invoice had involved the provision of

mailing house services to prepare direct mail letters and/or previously printed items for despatch. Four of the firms involved specialise in mailing house services. The other two firms provide both printing and mailing house services.²⁸⁰

5.127 Six of those invoices had described the services provided as relating to the printing and/or insertion of letters. In five instances, Finance recorded that it provided verbal advice to the relevant Parliamentarian's Office that 'letters' were not an allowable item. In the other instance, Finance wrote to the relevant Member advising that the invoice description 'Letter Mailing—[*Electorate, Member*], Print and insert of letters' did not appear to fall within the eligible categories.

5.128 In five of the six cases, the Parliamentarian provided a re-issued invoice from the relevant firm which carried a revised description of either 'Newsletter' or 'Postal Votes', which were each then paid by Finance and recorded against those categories in the respective Parliamentarians' Management Reports. In the other case, the Parliamentarian provided written advice to Finance that the invoice 'related to the printing of information about postal votes'.²⁸¹ Finance subsequently requested a revised invoice as the invoice originally provided carried the same number as an invoice issued to another Parliamentarian.²⁸² The revised invoice had an amended invoice number, but still carried the item description 'Print and insert of letters'. Finance paid that invoice without further query under the Parliamentarian's entitlement to print 'postal vote applications'.

5.129 In each case, the item provided to ANAO by the relevant firm as having been produced under the invoice was an addressed version of a party-

²⁸⁰ In one case, the originally submitted invoice included separate charges for 'Newsletter—Dental', 'Mailing Services' and overprinting of an envelope. Finance queried the 'mailing services' item, advising the Member that the Printing Entitlement may not be used to meet costs associated with the distribution. A re-issued invoice subsequently provided by the Member added the costs previously identified as 'mailing services' to the cost of producing the 'newsletter' and reference to mailing services was deleted. Finance approved the invoice for payment under the Member's entitlement to print newsletters for distribution to constituents. However, the item provided for this invoice to ANAO by the firm involved is an addressed and bar coded direct mail letter to residents from the Member.

²⁸¹ In this case, although the text of the letter produced under this invoice was very similar to that used in the other letters, it did not make any reference to postal votes. In the other examples, the enclosure of a PVA was noted as a post script to the letter.

²⁸² That invoice, also in ANAO's sample, involved the production of the same party-based letter for distribution in a different electorate in the same State. In each case, the letter prominently promoted the party's candidate in the relevant electorate.

scripted direct mail letter for use in distributing party-designed PVA documents (which in most cases in the sample had also been printed using the Parliamentarian's Printing Entitlement). Accordingly, the original invoice descriptions had accurately reflected the nature of item produced.

5.130 Further examples of this approach in ANAO's sample material are set out in Table 5.3. In each case, the item provided to ANAO by the relevant printer as having been printed under the invoice in question reflected the description on the original invoice.

Table 5.3

Examples of revised invoice descriptions on re-issued invoices compared to nature of printed item for a selection of items at varying levels of risk of being outside entitlement

Original invoice description	Description on re-issued invoice	Nature of printed item	ANAO risk assessment
Labor Can't Manage Money	Electorate newsletter	Version of Liberal party election campaign flyer 'Labor Can't Manage Money'	Real risk
Community Information DL Flyers (Interest Rates)	Newsletter for distribution to constituents	ALP election campaign flyer on interest rate increases	Real risk
DL Flyers	Newsletter		
Small Business "10 Things" Brochure	Newsletter for Distribution to Constituents Who Own a Small Business in [Electorate]	Liberal party campaign brochure ('10 Things You Need to Know About Labor's Plans for Your Small Business')	Real risk
Brochures 'What Labor Will Do to Business'	Newsletters		
Community Brochure	Community Information Card		
Flyers "Fresh Ideas on Education"	Community Information Card	Campaign flyer promoting Member & Labor education policies	Some risk
9 Point Plan Community Information	Community Information Card	Party campaign brochure 'The Liberals' 'Pro-Growth' 9-Point Plan'	Some risk
Trade Flyers	Newsletters	Brochure promoting Labor policy to build Trades Training Centres in schools	Some risk
Community letter	Community Information Card	Flyer announcing an election commitment	Some risk
Pads of personal stationery Re: Shopping Lists	Personal Stationery	Pads of shopping lists for distribution to constituents	Real risk
Children's Information Charts	Community Information Cards	A3 chart of times tables	Real risk

Source: ANAO analysis of Finance records and samples of printed items provided by relevant printers.

5.131 In other cases within the sample examined, Finance did not query the item description on the invoice, apparently on the basis that the word ‘newsletter’ was used. This was despite the description raising the potential that the item related to party election campaign material rather than a newsletter intended to provide information to the Parliamentarian’s constituents. For example, Finance did not question the description ‘Anti ALP No. 2 Newsletters’ carried on invoices submitted by four Liberal Parliamentarians.²⁸³ In this respect, in August 2009, Finance commented to ANAO that:

In the environment that Finance operates in, there is nothing unusual about descriptions referred to in this text. Finance has no reason to query the description.

5.132 The absence of query where an invoice uses one of the acceptable ‘descriptors’ has also resulted in the cost of printing identical items being paid under different categories within the menu of approved items. For example, ANAO’s sample included instances of:

- a party election campaign flyer being claimed under some Parliamentarians’ entitlement to print ‘newsletters for distribution to constituents’ whereas the same flyer was claimed under other Parliamentarians’ entitlement to print ‘magnetised community information cards’;²⁸⁴ and

²⁸³ The four invoices related to the same printer. The item provided to ANAO by the printer under each invoice was a party election campaign flyer ‘Labor Can’t Manage Money, You Pay For It’. In each case, the brochure made no reference to the Senator or Member or their electorate and have been assessed as being at real risk of being outside of entitlement.

²⁸⁴ An example of this is illustrated at Table 5.3 in relation to the Liberal party election campaign brochure ‘10 Things You Need to Know About Labor’s Plans for Your Small Business’, which was printed using the Printing Entitlements of 19 Liberal Parliamentarians in the sample examined, but did not make reference to the relevant Parliamentarian or their electorate. Based on legal advice provided to Finance in the course of this audit, that brochure would not be considered to be covered by the terms of the entitlement to print ‘magnetised community information cards’ and there is also a real risk that it would not be regarded as a ‘newsletter’ for the purposes of the Printing Entitlement. Similarly, a Labor party election campaign flyer critical of the WorkChoices legislation was printed by eight Labor Parliamentarians in ANAO’s sample—four claimed the flyer as a ‘newsletter’ while the other four claimed it as a ‘community information card’. The flyer made no reference to the relevant Parliamentarians, other than as authoriser in one case. Based on legal advice provided to Finance in the course of this audit, that flyer would also not be covered by the terms of the entitlement to print ‘magnetised community information cards’ and there is also a real risk that it would not be regarded as a ‘newsletter’ for the purposes of the Printing Entitlement.

- the artwork for an item being claimed under one category, while the printing of the item was claimed under a different category.²⁸⁵

5.133 In July 2009, Finance advised ANAO that the department:

did not seek information directly from the relevant firm because it would have been inappropriate to do so. Payment is made on the basis of certification by the Member. A printer is unable to say, on behalf of a Member, that an article described as a brochure, could also be described as a newsletter within the framework.

5.134 In August 2009, after ANAO pointed out that this practice may have encouraged Senators and Members to submit incorrect invoices, Finance provided ANAO with evidence that it recently changed its approach such that the department now advises Parliamentarians that it is unable to make payment for items that are not consistent with the menu of approved printable items and returns the relevant invoice to the Senator or Member for their personal attention.

Use of default descriptors

5.135 The focus adopted by Finance, and communicated to Parliamentarians and their Offices, on invoices submitted for payment carrying one of the accepted descriptors appears to have contributed to some Parliamentarians using default descriptors on most invoices they submit, irrespective of the actual nature of the item printed. However, there is no evidence of Finance having identified that issue or undertaken inquiries to ensure printing is being appropriately recorded and claimed.

5.136 For example, the entitlement to print ‘magnetised emergency and community information cards’, as set out in the Ministerial Instrument made under the Regulations, is narrow in its terms such that the relevant item must set out emergency or community information, be in the form of a card and be magnetised in order to fall under this entitlement.²⁸⁶ This was reflected, for example, in advice provided to a Member by Finance in October 2007 that: ‘Magnetised emergency and community information cards would normally

²⁸⁵ For example, the invoice for artwork for an endorsement brochure campaigning for the re-election of a Member carried the item description ‘community leaflet’. That invoice was paid by Finance as a ‘community information card’. The invoice for the printing of the endorsement brochure (which was titled ‘Why we’re supporting [Member]...’ carried the description ‘Brochures—Why’. It was paid by Finance as a ‘newsletter’.

²⁸⁶ This was confirmed in legal advice provided to Finance in the course of this performance audit.

consist of a single page affixed to a magnet.²⁸⁷ However, Finance has not consistently sought to ensure all items claimed under this entitlement meet the necessary form and content requirements.²⁸⁸

5.137 For example, 27 of the 32 invoices from one Member in the sample examined were paid as 'community information cards'. None of the invoices identified that the item had been magnetised. Of those invoices:

- 25 carried the description 'community information card';
- one carried the description 'community information leaflet', which was paid by Finance as a community information card; and
- one carried the description 'Personalised DL Cards Printed—Your Strong Local Voice (Postage Paid)'. Following a Finance query advising that the description did not appear to fall within the eligible categories, the Member provided a re-issued invoice with the revised description 'community information card'.²⁸⁹

5.138 In total, those 27 invoices involved the printing of 737 375 individual copies in 2007-08. If accurately described, that would have involved the printing of nearly eight magnetised community information cards for each of the electors enrolled in that Member's electorate for the 2007 election. However, the invoices did not accurately describe the nature of the items printed, with none involving the production of magnetised community information cards. Of the 27 items, 20 related to Member and party election

²⁸⁷ The Member had submitted an invoice for payment that carried a description indicating the item printed was a 14 page booklet, but the invoice had been annotated by the Member or the Member's Office as relating to a 'community information card'.

²⁸⁸ This is reflected in the high instance of items being paid under this entitlement category, but reported in the Management Reports of Parliamentarians using a variety of descriptions, few of which include reference to magnetisation (see Table 5.2). This is despite the requirement advised to State Offices in March 2007 that: 'The description in PSS of the materials provided must match exactly one of the allowable items' (see paragraph 5.124), and the department's acknowledgment in advice provided to the then SMOS in March 2008 that there is a requirement for any items claimed under this entitlement to conform to those requirements. That advice had proposed that, as part of potential reforms to the Printing Entitlement, the Minister consider revising the terms of this entitlement to 'emergency and community information cards (which may be magnetised)'. In proposed this amendment, Finance commented: 'Senators and Members should have the flexibility to produce non-magnetised emergency and community information cards.'

²⁸⁹ The item printed under that invoice, as provided to ANAO by the printer, was a version of a party election campaign flyer in the form of a postage paid post card campaigning for the Member and the party using slogans 'Your Strong Local Voice' and 'Vote 1' for the Member's party.

campaign materials including one involving the printing of 'how to vote' cards.

5.139 More broadly, as noted at paragraph 5.52, 90 per cent of the 187 items in ANAO's sample that were paid as 'community information cards' were actually a different form of printed item. This involved the printing of 3 387 128 individual copies, of which 71 per cent were comprised wholly or largely of election campaign materials.

Improvement opportunities

5.140 In that context, the appropriate application of reasonableness tests and other analytical techniques that have regard for the nature of each Printing Entitlement category, including comparing the reported use of a category by Senators and Members to a comparable cohort, would assist Finance in identifying anomalies that would merit further examination. This would also assist in alerting Parliamentarians to potential issues in relation to their use of, and accountability for, the Printing Entitlement.

5.141 Further, having regard for the extent of items assessed as being at varying levels of risk of being outside of the Printing Entitlement identified in the course of this audit, including where Finance has queried relevant invoices based on the item description but not otherwise sought to substantiate the eligibility of the printed item, the department's oversight of the entitlement would be substantially improved by requiring Parliamentarians to provide it with a sample of all printed items. This could reasonably be required as a condition of submitting the relevant invoice for payment, together with certification of the receipt of goods and the entitlement category under which the Parliamentarian is claiming the item. This will assist in improving the department's capacity to:

- undertake appropriate pre and post-payment checking of payments made under this entitlement;
- provide comprehensive advice to the SMOS in relation to any allegations of misuse of the entitlement; and
- provide a basis for identifying patterns of use or other anomalies that may suggest systemic issues, such as those identified in this performance audit, that indicate the need to provide Parliamentarians with additional guidance in relation to their use of the entitlement.

5.142 In this respect, the New Zealand Controller and Auditor-General has commented as follows in circumstances where administering agencies were not obtaining examples of materials being produced prior to making payments:

It is the Service's responsibility to ensure that expenditure is within the authority provided by the Parliament. I do not accept that the authorisation of advertising expenditure by an MP or parliamentary party staff member absolves the Services of this responsibility.

This position is no different from any other type of 'other expense' appropriation under which an administering department makes payments to other organisations under the appropriations. It is incumbent on the administering department in all circumstances to ensure that the payments are consistent with the appropriations and for a lawful purpose.²⁹⁰

5.143 In June 2009, Finance advised ANAO that:

Finance rejects the ANAO's assessment that its administration of the entitlement has contributed to potential use of the printing entitlement outside entitlement.

Reform of the Printing Entitlement and its administration

5.144 In July 2009, the Government decided on reforms of the Printing Entitlement that involve:

- reducing the quantum of the Printing Entitlement by 25 per cent from current levels;²⁹¹
- combining the Printing Entitlement and the related Communications Allowance into a single entitlement;
- changing the Printing Entitlement from a menu-based approach to a purpose-based entitlement (that is, for Parliamentary and electorate business but not for party business or electioneering purposes);²⁹²

²⁹⁰ Controller and Auditor-General for New Zealand, *Advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election*, op. cit., p 48.

²⁹¹ Following the 2007 Federal Election, the newly elected Government amended the Parliamentary Entitlements Regulations to: reduce Members' Printing Entitlement from \$150 000 to \$100 000 per financial year, commencing in 2008-09; remove the capacity for Members to add unspent amounts to their Printing Entitlement for a subsequent financial year; and reduce Senators' Printing Entitlement from \$20 000 to \$16 667 per financial year.

²⁹² See paragraph 4.109.

- limiting the Printing Entitlement to printing on paper, card up to 700 gsm weight and magnetised material (to allow for the printing of items such as magnetised calendars);
- requiring that material produced under the Printing Entitlement (except for personalised letterhead stationery) carry an acknowledgement in a specified font that: *This material has been produced at Australian Government expense by the relevant Senator or Member;*
- providing funding to Finance for it to undertaken pre- and post-payment checking of items produced under the Printing Entitlement; and
- establishing a non-exclusive panel of printing providers for use by Senators and Members.

Recommendation No.5

5.145 ANAO *recommends* that, to assist in ensuring appropriate scrutiny and transparency in the use of public funds, the Department of Finance and Deregulation require each Parliamentarian to provide for review a sample of the item printed when submitting invoices for payment under their Printing Entitlement.

Finance response

5.146 Agreed. The Government has already accepted Finance's recommended reforms to the printing entitlement which, inter alia, requires a sample of the printed material to be attached to invoices for payment.



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8 September 2009

Appendices

Appendix 1: Summary of Parliamentarians' entitlements models, selected countries

This appendix sets out a summary of the Parliamentary entitlement models used in each of the United States, Canada, the United Kingdom and New Zealand.

United States

1. The United States Congress has two chambers: the House of Representatives and the Senate.

House of Representatives

2. Each Representative receives a single Member's Representational Allowance (MRA) 'to support the conduct of official and representational duties to the district from which elected'.²⁹³ The MRA is composed of three elements:
 - a flat-rate *personnel allowance* for the employment of 18 permanent employees and up to 4 additional employees (these limits are set by legislation). In late 2007, this allowance was US\$842 244 for all Representatives;
 - a variable *office expenses allowance*, at a base rate of US\$210 189 in 2007. A travel component is based on the distance from the capital, and was set at a minimum of US\$6 200, while a component for office rental is based on the office rent charged in a Representative's district; and
 - an *official mail allowance* ('the frank'), based on the number of non-business addresses in a Representative's district. This component averaged US\$157 523 in 2007.²⁹⁴
3. The main restrictions on using the MRA are that it may not be used for campaign or political expenses. Unlike some Australian Parliamentarians' entitlements (such as the Communications

²⁹³ Committee on House Administration, *Member's Handbook* [Internet], House of Representatives, Washington, DC, 2008, available from <http://cha.house.gov/members_handbook.aspx> [accessed 7 November 2008], p. 6.

²⁹⁴ Michael L. Koempel and Judy Schneider, *Congressional deskbook*, 5th edition, TheCapitol.Net, Inc, Alexandria, VA, 2007, pp. 113–14. Ida A. Brudnick, *Congressional Salaries and Allowances. CRS Report for Congress* [Internet], updated 30 August 2007, Center for Democracy & Technology, Washington, DC, available from <http://assets.opencrs.com/rpts/RL30064_20070830.pdf>, accessed 7 November 2008, pp. 2–5.

Allowance), none of the MRA is transferable between years: it can neither be called forward from the following year nor carried over from the previous year.

4. A key difference between the MRA and the Australian system is that, with few restrictions, Representatives may transfer funds between the three components of the MRA to best suit their circumstances. However, Representatives may not exceed their global MRA budget, as follows:

If a Member incurs an obligation to the U.S. House of Representatives and the amount of the obligation incurred exceeds the MRA, the Member shall pay the obligation from personal funds.²⁹⁵

5. The House of Representatives' Office of Finance monitors expenditure from the MRA and will notify a Representative if he or she is projected to overspend.

Senate

6. The system of allowances for United States Senators is very similar to that for Representatives: Senators receive three allowances, which can generally be used as a single fund, as follows:
 - the *administrative and clerical assistance allowance*, for the payment of staff salaries, is allocated according to the population of a Senator's state. In 2007, it ranged from US\$2 million (States with a population of under five million) to US\$3.3 million (State with a population of over 28 million);
 - the *legislative assistance allowance*, which is a flat figure (US\$481 977 in 2007) for the employment of up to three legislative assistants; and
 - the *official office expense allowance*, which is determined principally by State population and the distance from Washington DC to that State and covers travel, stationery and other expenses, including US\$50 000 for mass mailings. In 2007, this allowance ranged from US\$128 607 to US\$467 873. Most of the expenses of Senators' State offices are paid for

²⁹⁵ *ibid.*

directly by the Senate, which explains why Representatives receive a higher allowance.²⁹⁶

Public reporting

7. A key component of the accountability mechanisms under the United States allowances model is the degree of public reporting of expenditure. ANAO obtained a copy of the Statement of Disbursements of the House from 1 January 2007 to 31 March 2007. This quarterly document, which has three volumes and totals more than 4 000 pages, lists every transaction paid for from every Member's MRA, down to a transaction as small as the purchase of a drawer organiser for a cost of \$US4.60. This report is currently produced under the provisions of a statute passed in 1964. The report is not yet available online, but on 3 June 2009 the Speaker of the United States House of Representatives instructed that the Statement of Disbursement would be made available online 'at the earliest date'. The document has been used by interest groups such as the National Taxpayers' Union, which has published an online *House Office Expense Study*²⁹⁷ which includes lists such as:

- the Top 50 mass mailers;
- the Top 50 postage users;
- the Top 50 savers (ie lowest spenders); and
- 99 per cent+ spenders (i.e. those members who spent 99 per cent or more of their MRA in the year).

Restrictions on use

8. Another aspect of the United States model which is different from the Australian approach is in relation to printing. Both Members and Senators can use their allowance to pay for printing (including newsletters), which they can distribute using 'the frank'.²⁹⁸ In keeping

²⁹⁶ *Congressional Salaries and Allowances*, op. cit., pp. 6–8; *Congressional Deskbook*, op. cit., pp. 116–17. Note that there are only two Senators per State, whereas in Australia there are twelve Senators per State.

²⁹⁷ <http://www.ntu.org/main/misc.php?MiscID=5>.

²⁹⁸ The right of Members and Senators to use 'the frank' is contained in the legislation establishing the US Postal Service, as follows: 'It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of the official business, activities and duties of the Congress of the United States'.

with the statutory purpose of the frank as being for the 'official business, activities and duties of the Congress', strict rules apply to material which can be distributed using the frank, such as:

- items must not 'seek political support, mention candidacy, solicit funds or electioneer (for example, advocate someone's election or defeat)';
- when the item is a 'mass mailing' (defined to be a distribution of 500 or more), the item must be submitted for approval to the Congress' Franking Commission;
- all mass mailings must bear the words: 'This mailing was prepared, published and mailed at taxpayer expense';
- any member who fails to submit a sample of a mass mailing for prior approval will be required to pay for it personally; and
- 'unsolicited mass communication'—such as advertising, mailouts or printing of leaflets—may not be funded from the MRA in the 90 days before an election.

Canada

9. As a former 'sovereign democracy' of Great Britain, the Canadian political system is loosely based on the British one and comprises a Senate with 105 members and a House of Commons with 308 members. Although some basic information is available online, ANAO obtained additional information about the allowances of members of the House of Commons from the Canadian Parliament.

House of Commons

10. Members of the House of Commons have two forms of expenditure allowance: a 'Member's Office Budget' and 'Goods and Services provided by the House'.
11. The basic annual Member's Office Budget was C\$280 500 in 2008–09. Some Members receive supplements to this sum based on the size of their electorate, the number of electors within their electorate, or the far-flung nature of their electorate. In 2008–09, these supplements ranged from C\$4 740 to C\$52 120. The Member's Office Budget may be spent in four major areas:
 - staff and other expenses;

- constituency travel;
 - advertising (limited to 10 per cent of the Member's Office Budget); and
 - leasing of constituency offices.
12. A Member's travel-related costs, such as accommodation and meals, are charged to a Travel Status Expenses Account within the Member's Office Budget, to a maximum of C\$25 092. Up to five per cent of the Member's Office Budget may be carried over to the next financial year.
13. Accounting of expenditure under the Member's Office Budget is done by Financial Management Operations (an administrative unit of the House of Commons), to whom requests for reimbursements must be submitted with original receipts.
14. The Goods and Services provided by the House come under six main headings:
- travel to Ottawa and travel expenses (limited by number of trips and a maximum amount of expenses);
 - telephones;
 - printing of newsletters (including up to four mail-outs to constituents per annum);
 - supplies for both Ottawa and constituency offices;
 - the Constituency Office Furniture and Equipment Improvement Fund (up to C\$5 000 per annum); and
 - other.
15. Each financial year, the House of Commons publishes 'Individual Member's Expenditures'.²⁹⁹ This document provides, for each Member, their total expenditure for the year for each of the ten categories covered by the Member's Office Budget and the Goods and Services provided by the House. In this context, the complexity of the Parliamentary entitlements model and the degree of public reporting in

²⁹⁹ The 2007-08 issue can be found at:

<http://www.parl.gc.ca/information/about/process/house/GeneralInformation/MembersExpenses-2007-2008-e.pdf>

the Canadian system lies somewhere between Australia and the United States.

16. The authority for determining how the financial and administrative resources of the House are to be applied and adhered to is the Board of Internal Economy (BOIE) which issues binding by-laws.³⁰⁰ By way of comparison to the United States model, which explicitly precludes the printing of party political or electioneering material, BOIE by-law 102 states, as one of a number of over-arching principles:
 - Partisan activities are an inherent and essential part of the activities and Parliamentary functions of a member.
17. BOIE by-law 103 limits the four mass-mailouts allowed each Member in a given year by prohibiting non-federal election campaign material as well as solicitations of membership or donations to any political party.

United Kingdom

18. The United Kingdom Parliament comprises the House of Lords and the House of Commons.

House of Lords

19. Members of the House of Lords do not, in general, receive a salary.³⁰¹ Allowances payable to Lords are shown in Table A 1.

³⁰⁰ The BOIE is a multi-party Committee of Members, chaired by the Speaker of the House of Commons.

³⁰¹ The exception is where a Member of the House of Lords also holds an official office, such as Minister.

Table A 1**Entitlements of members of the House of Lords as at April 2009**

Allowance	Description
Day subsistence	Up to £86.50 per day to cover meals, refreshments and short trips during sitting periods.
Night subsistence	Up to £174.00 per night during sitting periods.
Office costs allowance	Up to £75.00 per day during sitting periods Up to £75.00 for a maximum of 40 days per year during non-sitting periods.
Travel	Own motor vehicle: 40p per mile for the first 10 000 miles; 25p per mile thereafter (lesser rates apply for motorcycles and bicycles). Road, rail and air travel in the United Kingdom: unlimited (but advance approval is required for trips other than to the main place of residence). Road, rail and air travel overseas: two trips per year to any Parliament in Europe; trip limits also apply for other travel not covered above. Spouse and dependent travel: up to 15 return trips for spouse and each dependent between Westminster and home.
Postage	Up to 100 postage-paid envelopes per day.
Broadband	No charge for an ADSL connection, or up to £15.00 per month for a cable connection.
Language training	Full cost of approved courses.

Source: House of Lords, *Members' Reimbursement Allowance Scheme: General Guide*, Eighth Edition, 2009 (<http://www.publications.parliament.uk/pa/ld200809/ldpeers/ldpeers.pdf>).

House of Commons

20. A summary of the allowances payable to members of the House of Commons is shown in Table A 2.

Table A 2

Entitlements of members of the House of Commons as at April 2009

Allowance	Amount (maximum) £	Description
Personal Additional Accommodation Expenditure (PAAE)	24 222	To meet additional expenses incurred in being away from home base.
Staffing Expenditure	103 812	For employment of up to 3.5 full time staff.
Administrative and Office Expenditure (AOE)	22 393	Office accommodation, equipment, supplies, maintenance and other services. Receipts required for amounts over £25.
London Costs Allowance (LCA))	7 500	Automatically paid to inner-London members, who may not receive Personal Additional Accommodation Expenditure. Other members may choose between PAAE and LCA.
Winding Up Expenditure	42 068	To meet costs incurred in winding-up Parliamentary duties when leaving Parliament.
Resettlement Grant	N/A	To assist with adjusting to 'non-Parliamentary life': between 50 per cent and 100 per cent of final salary depending on length of service.
Travel	N/A	Own motor vehicle: 40p per mile for the first 10 000 miles; 25p per mile thereafter (lesser rates apply for motorcycles and bicycles). Road, rail and air travel in the UK: unlimited (but advance approval is required for trips other than to the main place of residence). Road, rail and air travel to Europe: three trips per year to any Parliament; trip limits also apply for other travel not covered above. Spouse and dependant travel: up to 15 return trips for spouse and each dependent between Westminster and home. Staff travel: staff may share up to 24 single journeys each year between London and the constituency; additional journeys may be claimed from AOE or Staffing Expenditure.
Communications Expenditure	10 400	Covers costs associated with communicating with constituents, including printing and postage. First made available in April 2007. May not be used in the 28 days before an election for the European, Welsh, Scottish or Northern Ireland legislatures, or a local-government election.
Stationery and Postage		A cash-limited provision of House stationery and pre-paid envelopes is made available to Members for their parliamentary duties. Each Member is entitled to a total sum each year which includes the cost of the various types of stationery and the postage costs of pre-paid envelopes.

Source: *Members' pay, pensions and allowances*, Factsheet M5, House of Commons Information Office, revised May 2009 (<http://www.parliament.uk/documents/upload/M05.pdf>); *The Green Book: A guide to Members' allowances*, House of Commons, March 2009 (<http://www.parliament.uk/documents/upload/GreenBook.pdf>).

21. There is scope for members to transfer funds from specific allowances to another, as well as to carry forward up to 10 per cent of certain funds.
22. As in the United States and New Zealand, members of both the House of Lords and the House of Commons are not permitted to use their printing and postage entitlements for party-political purposes. This is outlined in the following extracts from the official guidance on use of the Communications Allowance:
- ...Parliamentary resources may not be used for communicating information about your political activities or those of the party to which you belong...
- The content of any communications paid from the allowances must not seek to compare the Member's party favourably with another, promote one party at the expense of another or seek to undermine the reputation of political opponents...
- ...If you wish to include material which is not allowed under these rules, you must fund the whole cost from another source.³⁰²
23. The Communications Allowance came into being in April 2007. Its operation was tightened in April 2009 to require prior approval of the content of printed matter for distribution to constituents for amounts over £1000. Members are also encouraged to seek advice from the staff of the House of Commons Department of Finance and Administration before using the allowance.

Recent developments

24. Since 2007, there has been public debate about the salaries and allowances of United Kingdom Members of Parliament (MP). This debate was initiated by revelations that an MP had misused his staff allowance by paying his son a salary while the son was engaged in full time university study.³⁰³ Later it was revealed that MPs routinely used

³⁰² *The Communications Allowance and the use of House Stationery*, House of Commons Department of Finance and Administration, 2007, pp. 5, 13 and 16 (<http://www.parliament.uk/documents/upload/HofCCommunicationsAllowanceBooklet.pdf>) [accessed 29 August 2009].

³⁰³ On 27 May 2007, the *Sunday Times* reported that Derek Conway MP was paying his son as a research assistant despite the fact that the son was a full-time undergraduate at Newcastle University. On 31 January 2008, Mr Conway was suspended from the House for ten sitting days, and was required to repay some £10 000.

their Additional Costs Allowance (ACA)³⁰⁴ to pay for furniture for second homes (the mortgage interest of which was also met from the ACA).

25. In December 2002, preparing for the implementation of the *Freedom of Information Act 2000* (FOI Act), the House of Commons had decided to release the total sum for each allowance which each Member had used for each financial year. The first such release of details of individual Members' expenses occurred on 21 October 2004. In January 2005, when the FOI Act came into force, several FOI requests were made by journalists and others for a breakdown of individual MPs' expenses on taxis, trains, flights and other transport. The House of Commons attempted to legislate for Parliament's exemption from the FOI Act, but did not succeed.³⁰⁵ The FOI requests were rejected, but separate decisions of the Information Tribunal in 2007 and 2008 ordered the release of the data.³⁰⁶ The Information Tribunal commented that

...the ACA system is so deeply flawed, the shortfall in accountability so substantial and the necessity of full disclosure so convincingly established, that only the most pressing privacy needs should in our view be permitted to prevail.³⁰⁷

26. The House of Commons (through its Corporate Officer) appealed the Tribunal's decision to the High Court, which upheld the Tribunal's decision.³⁰⁸
27. As a consequence of this litigation, the House of Commons was in the process of preparing to place five years of itemised information about MPs' expenses online by 1 July 2009. However, the material was leaked to the London *Daily Telegraph*, which began publishing extracts from 8 May 2009.

³⁰⁴ Now known as the Personal Additional Accommodation Expenditure.

³⁰⁵ Freedom of Information (Amendment) Bill 2006-07.

³⁰⁶ *House of Commons v Information Commissioner and Norman Baker MP* [2007] UKIT EA_0006_0015 (16 January 2007) (<http://www.informationtribunal.gov.uk/DBFiles/Decision/i83/HoC.pdf>).

³⁰⁷ *Corporate Officer of the House of Commons v Leapman & Ors* [2008] UKIT EA_2007_0060 (26 February 2008) at para. 82 (<http://www.informationtribunal.gov.uk/Documents/decisions/hocfinaldecisionwebsite260208.pdf>).

³⁰⁸ *Corporate Officer of the House of Commons v The Information Commissioner & Ors* [2008] EWHC 1084 (Admin) (16 May 2008) (<http://www.bailii.org/ew/cases/EWHC/Admin/2008/1084.html>).

28. In January 2008, the Speaker of the House had referred the issue of Members' allowances to the Members Estimate Committee (MEC) (a House of Commons Standing Committee of which the Speaker is Chair). The MEC submitted its report in June 2008.³⁰⁹ The MEC made 18 recommendations, including that:

- there should be a robust new system of practice assurance involving regular financial health checks on records kept and processes used in Members' offices, with outside professional teams covering about 25 per cent of Members each year and every Member each Parliament;
- the House extend the scope of the audit engagement³¹⁰ so that it is the same as for other public bodies;
- the Green Book³¹¹ be revised to specify more detailed rules and that the new version be brought into effect by 1 April 2009;
- the rules governing the Communications Allowance be tightened in respect of not publishing during election periods, and that claims for the cost of production of any publication costing more than £1 000 only be met if the publication has been cleared in advance; and
- the Additional Costs Allowance be 'adapted' into an overnight expenses allowance comprising a £19 600 maximum budget for accommodation (excluding furniture, household goods and capital improvements), but operating on the basis of itemised reimbursement and a flat rate of £30 for daily subsistence.

29. In relation to the Additional Costs Allowance, the MEC noted that one of the failings in its administration was that the House of Commons Department of Finance and Administration relied on certification by MPs that the amounts being claimed were within their entitlement. In that respect, the MEC commented:

...the essential weakness is that an MP's signature certifying that the claimed expenditure is "wholly, exclusively and necessarily incurred to enable the

³⁰⁹ Members Estimate Committee, *Review of Allowances*, 25 June 2008.

(<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmmemest/578/578i.pdf>)

³¹⁰ Of the National Audit Office, the British equivalent of the ANAO.

³¹¹ The Green Book is the British equivalent of Finance's *Senators and Members Entitlements Handbook*.

Member to perform their Parliamentary duties” is effectively the last word on the validity of the claim. We are convinced by the argument that this arrangement can no longer be sustained. Viewing a gentleman’s word as his bond, beyond all further challenge, belongs more to a 19th century club than to a 21st century legislature.³¹²

30. The MEC report on allowances was debated in the Commons on 3 July 2008, with the Commons effectively rejecting the main recommendations of the review.³¹³ A second vote in the Commons, on 16 July 2008, approved the abolition of reimbursement for furniture and household goods and accepted external financial audit by the National Audit Office.³¹⁴

31. Subsequently, on 8 August 2008, the Office of the Leader of the House of Commons published a consultation document entitled *Audit and Assurance of MPs’ Allowances*. The report noted the ‘essential components of an assurance regime’ put forward by the Comptroller and Auditor General as comprising:

- clear rules and guidance as to what is and what is not acceptable;
- robust management controls and processes designed to ensure compliance with the rules;
- checks and testing of the controls, to ensure that they are adequate and effective; and
- reporting on the outcome of those checks to those wanting the assurance.³¹⁵

32. The consultation document made significant comments about a new assurance system that would command public respect:

Improved assurance to the House of Commons and its Members needs to be achieved in two ways. Firstly, by strengthening and clarifying the rules and guidance as to what are acceptable expenses for MPs and by enhancing the

³¹² Members Estimate Committee, *Review of Allowances*, 25 June 2008, p. 20, para. 43.

³¹³ This is the MEC’s summary of the debate: House of Commons, *Members Estimate Committee* [Internet], <http://www.parliament.uk/parliamentary_committees/mec.cfm> [accessed 5 June 2009].

³¹⁴ United Kingdom, *Parliamentary Debates*, House of Commons, 16 July 2008, col. 255–315.

³¹⁵ Office of the Leader of the House of Commons, *Audit and Assurance of MPs’ Allowances*, Cm 7460, London, August 2008, p. 11.

framework of controls exercised by the House Authorities to ensure compliance with these rules.

Secondly, by enhancing the scope of the work undertaken by Internal Audit and External Audit, in effect allowing the House Authorities, and Internal and External Auditors to look behind the Member's signature. Without this change, any improvements to controls would not provide more assurance than the current arrangements, as those checking the application of controls would not be able to look at the evidence, to support the assertion that the claims processed are in accordance with the rules set down by the House. They would not, therefore, be able to give the greater assurance which the MEC is seeking.³¹⁶

33. The document concluded by recommending an expansion in the scope of external audit of records held by the House of Commons; testing a sample of allowance transactions to ensure that evidence was available to support the validity of the claim; and also to check that that transaction had been processed in accordance with the framework of rules.³¹⁷
34. On 22 January 2009, a number of changes were made to the United Kingdom Parliamentary entitlements system, including:
- the categories of disclosure of global summaries of expenses were expanded in number from nine to 26;
 - a new edition of the Green Book was approved, to take effect from 1 April 2009, and to be supplemented by Practice Notes which would be approved by the Finance and Services Committee;
 - a new system of audit and assurance was approved, enabling the National Audit Office to 'provide an audit opinion based on a full scope audit carried out on the same basis that applies to other public bodies', and tasking the Internal Audit service with considering all allowances every year, and with sampling a percentage of MPs for audit³¹⁸; and

³¹⁶ *ibid.*, p. 30

³¹⁷ *ibid.*, p. 33.

³¹⁸ The audit proposals approved were contained in Members Estimate Committee, *Revised Green Book and audit of Members' allowances*, HC 142, 12 January 2009.

- a Committee on Members' Allowances was set up to assist the Members Estimate Committee.
35. The new edition of the Green Book, an expansion of 30 pages on the previous edition, contains sections on the overall principles, as well as some guidance on the concept of parliamentary duties. These are stated to exclude 'anything which is done for personal benefit or for electioneering or for the direct support of a political party'. The fact that the FOI Act applies to entitlements expenditure is cited as a guide to deciding whether to make a claim. This edition contains a new provision permitting transfer of up to 10 per cent of certain funds into the following financial year.
36. On 23 March 2009, the Committee on Standards in Public Life announced an inquiry into MPs' expenses, noting that the:
- changes that are due to come into effect in April are significant steps towards greater transparency and—for the first time—a proper system of audit. But these changes, by themselves, will not satisfy current concerns about the way MPs are supported to do their jobs. Nor will they restore public confidence.
37. On 21 April 2009, the Prime Minister made a YouTube announcement about interim changes, including the replacement of the second-homes allowance with a new daily payment. These proposals were debated on 30 April 2009, with Parliament resolving that:
- from 1 July 2009, MPs would declare the hours worked on second jobs and the amount earned;
 - MPs' staff should henceforth be employees of the House of Commons;
 - from 1 April 2010, outer-London MPs will be stopped from claiming the full £24 000 second-homes allowance (PAAE), receiving instead the much smaller London allowance; and
 - from 1 July 2009, receipts would be required for any payment of allowances or expenses, rather than the existing threshold of £25.
38. The Government's initial intention to replace the second-homes allowance with a daily attendance allowance of £150 was dropped.
39. The official release of detailed data on MPs' expenses over the previous five years occurred on 18 June 2009, and the inquiry by the Committee on Standards in Public Life is due to report by the end of 2009.

New Zealand

40. Unlike all the other countries examined, New Zealand has a unicameral system: that is, it only has one Parliamentary chamber which is the House of Representatives.
41. Under the New Zealand system, the Parliamentary Service centrally administers a number of specific entitlements. These are:
- furnished office accommodation in Parliament House;
 - one executive assistant in the Parliament House Office;
 - two 'out of Parliament' staff for each Constituency Member and one for each List Member³¹⁹;
 - one personal computer for each Member and each of his or her staff;
 - travel (including unlimited domestic air travel and unlimited international travel (with prior approval) on Parliamentary business³²⁰; and
 - telephones and call costs (four lines for each Constituency Member, three for each List Member and one mobile phone for every member).
42. All other Parliamentary costs are met from one or more of the following four entitlements:
- Individual Member's support allocation funding (currently \$NZ64 250 per Constituency Member and \$NZ40 932 per List Member);
 - a lump sum Leadership funding allocation to each leader of a party represented in the Parliament³²¹ of \$NZ100 000 plus \$NZ64 320 per party member;

³¹⁹ Under New Zealand's Mixed Member Proportional System, each elector votes for a specific Party: these votes decide how many seats each Party gets in Parliament. These members are known as list members. In addition, each elector votes for a candidate in his or her local electorate: these members are known as constituency members. Since list members do not represent a specific electorate, their entitlements are less than those of constituency members.

³²⁰ Members are also entitled to a rebate on international travel for private (but not commercial) purposes. The level of the rebate depends on years of Parliamentary service and rises to 90 per cent for 12 or more years' completed service.

³²¹ There are seven parties in the current New Zealand Parliament.

- a lump sum Party and Group funding allocation of \$NZ22 000 per member; and
 - a lump sum Relief Overload allocation to each party of \$NZ5 500 per member to cover staff leave absences.
43. There is considerable flexibility permitted in the use of these entitlements, with each member permitted to transfer some or all of his or her Individual Member's support allocation to another named member or to the party. The three lump sum allocations to parties may in essence be spent as the parties see fit, with the proviso that spending is for a Parliamentary purpose. However, the Speaker's Directions (which set out the directions for use of entitlements) do not contain any reference to rolling unspent entitlements from one year to the next nor to calling funds forward from the following year's entitlement.
44. New Zealand is one of the few jurisdictions which has specifically defined what is meant by Parliamentary business. The definition states:
- parliamentary business** means the undertaking of any task or function that a member could reasonably be expected to carry out in his or her capacity as a member of Parliament, or a party could be reasonably be expected to carry out as a party, and that this complements the business of the House of Representatives.³²²
45. The definition also sets out examples of what is considered to be Parliamentary business and also stipulates that Parliamentary business does not include:
- (i) work undertaken for personal or private benefit;
 - (ii) work directly related to the administration or management of a political party; or
 - (iii) electioneering.³²³
46. 'Electioneering' is further defined as follows:
- Electioneering** means any communication that explicitly-

³²² *Directions and Specifications for Services and Funding Entitlements for the House of Representatives, its Members, Former Members and Certain Electoral Candidates 2008* (<http://www.parliament.nz/NR/rdonlyres/BCEA476B-0FE7-4BC8-838A-DFC155E6EB83/94402/Directions2008Final4.pdf>).

³²³ *ibid.*

- (a) seeks support for the election of a particular person or persons; or
 - (b) seeks support for the casting of a party vote for a particular political party or political parties; or
 - (c) encourages a person to become a member of a particular political party or political parties; or
 - (d) solicits subscriptions or other financial support.³²⁴
47. Items printed or distributed using public funds are also required to 'be identified at the time of communication as having been paid for by the Parliamentary Service'.
48. Members can seek 'pre-approval' from the Parliamentary Service for material they propose to distribute but are not required to do so. However, if they choose not to seek pre-approval and the material is found to not comply with the rules, the member will be asked to repay the cost. Conversely, if the member sought and received pre-approval but the material later is found not to comply, the member does not have to reimburse the cost.
49. In June 2005, the New Zealand Controller and Auditor-General presented a report to Parliament³²⁵ in which he expressed concern that the administrative framework for government advertising was weak. In particular, the New Zealand Controller and Auditor-General noted that, while 'party political, promotional or electioneering material for the purpose of supporting the election of any person' was expressly excluded from the definition of 'Parliamentary business':
- ...there is clear potential for MPs' and Parliamentary parties publicity and advertising activities in the weeks and months leading up to a dissolution to bring considerable political benefit.
50. In October 2006, the New Zealand Controller and Auditor-General tabled a further report entitled '*Advertising expenditure incurred by the*

³²⁴ *ibid.*

³²⁵ Controller and Auditor-General for New Zealand, *Government and parliamentary publicity and advertising*, report under the authority of section 20 of the *Public Audit Act 2001* (NZ), June 2005 (<http://www.oag.govt.nz/2005/govt-publicity/>).

Parliamentary Service in the three months before the 2005 General Election.³²⁶ In that report, the Auditor-General stated that, despite his June 2005 report, widespread examples had been found by all but one party of publicity and advertising that he considered to be unlawful in that it breached the terms of the appropriation. He went on to say:

My inquiry established that significant breaches of the appropriations administered by the Service occurred in the period 16 June to 16 September 2005. The expenditure that I found to be outside the scope of the appropriations related to a range of types of advertising, and was incurred on behalf of all but one of the parliamentary parties.

The total value of the breaches I identified for the 2004-05 financial year was \$443 462 (including GST), and the total value of the breaches I identified for 2005-06 financial year was \$730 136 (including GST). Overall, \$1 173 598 of unlawful expenditure was incurred.

I am concerned that I found a substantial amount of material that amounted to electioneering. A number of advertisements and newsletters expressly solicited votes. However, even where no express soliciting of votes occurred, a large number of advertisements contained material that could only be described as election platforms and promises. I was particularly disappointed to find that the Service paid for significant amounts of newspaper advertising by some parties in the last week before the General Election. That advertising was incontrovertibly of an electioneering nature, and I could not discern a legitimate parliamentary purpose for it.

In my view, the Service has not correctly interpreted the scope of the relevant appropriations as they apply to advertising expenditure. I am concerned that the Service does not satisfy itself, before expenditure is incurred, that advertising proposed by MPs and parliamentary parties is for purposes consistent with the relevant appropriations. It is the Service's responsibility to ensure that expenditure is within the authority provided by Parliament. I do not accept that the authorisation of advertising expenditure by an MP or parliamentary party staff member absolves the Service of this responsibility.

It is clear that an incorrect interpretation of the scope of the appropriations administered by the Service coupled with processes for managing advertising expenditure that were designed on the basis of that incorrect understanding

³²⁶ Controller and Auditor-General for New Zealand, *Advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election*, report presented to the House of Representatives pursuant to section 20 of the *Public Audit Act 2001* (NZ), October 2006 (<http://www.oag.govt.nz/2006/election-spending/>).

were significant factors in allowing the breaches to occur. These factors helped to create an environment in which the Service could not exercise the judgement required to ensure that expenditure was appropriately incurred.

However, the failures on the part of the Service are not the only cause of the breaches in appropriation. The accountability framework for the administration of the Vote – which should involve separate but complementary roles for both the Service and the responsible Minister – has been confused, and lacks transparency. This is unacceptable.

I have found the nature and extent of electioneering advertising expenditure put through the Service by MPs and parliamentary parties disturbing. In this regard, party-generated advertising produced by Leaders' offices was of most concern.

I am aware that inadequate guidance is available to MPs and parliamentary parties about what constitutes appropriate advertising, particularly in the pre-election period. But the guidance clearly prohibits electioneering. I find it hard to accept that, despite my 2005 Report and the message to be careful about advertising expenditure in the pre-election period, behaviour did not change.

[Controller and Auditor-General for New Zealand]

Appendix 2: April 2003 '42 Questions and Answers' proposing conventions on use of entitlements

This appendix sets out the '42 Questions and Answers' document on the new 'understood conventions' relating to use of entitlements provided to Finance by the Office of the then SMOS in April 2003. Finance was advised that the document was not endorsed and it was not intended that it be promulgated by the department. Following further consideration of the '42 Questions and Answers' document throughout the remainder of 2003, in February 2004 the then SMOS provided Finance with a revised list of 31 Statements expressing 'understood conventions' on entitlements use for its considered advice. In providing the document to Finance, the then SMOS stated that the 42 Questions and Answers document: 'has no official status, but was only an internal working paper for discussions between various offices' (see paragraphs 2.18 to 2.27 and 5.57 to 5.58). This appendix identifies the extent to which each of the 42 Questions and Answers was reflected in the subsequently proposed '31 Statements' (Appendix 3 maps the 31 Statements proposed by the then SMOS to the revised statements recommended by Finance).

No.	Question	Convention proposed in the non-endorsed 2003 '42 Questions and Answers' document	Proposed in '31 Statements' (see Appendix 3)
1	Is it okay to send out postal vote applications?	Yes, for Federal Elections.	Proposed Statement 2
2	Is it OK to send out 'how to vote' cards in Federal Elections?	Yes—provided the 'how to vote' includes advice on how to vote for the MP doing the mail-out.	Proposed Statement 3
3	Can electorate office contact details (address, phone number) be included on postal vote application material?	Yes.	Nil
4	Can a return addressed envelope carrying the address of party HQ be sent out with postal vote applications?	Yes.	Nil

No.	Question	Convention proposed in the non-endorsed 2003 '42 Questions and Answers' document	Proposed in '31 Statements' (see Appendix 3)
5	Can MoPS staff work on State campaigns without taking leave?	Part III (personal) staff—No Part IV (electorate) staff—Staff should not devote extensive periods of time to assisting on State campaigns, although they may assist in a limited amount of work.	Nil.
6	Can MoPS staff work on Federal campaigns other than their employer's?	There is no legal restriction on the use of MoPS Part III (personal) staff, who work at the direction of their employers. Part IV (electorate) staff are not able to work to support the election or re-election of a person other than their employing Senator or MP, without taking leave. This leave can include 'time off in lieu'. Staff of Senators could be deployed temporarily to the office of another MP in that state, but their primary purpose cannot be to work to support the election or re-election of a MP or Senator (other than their own Senator). Thus a Senate staff member could work for the re-election of their Senator and incidentally do work which supports the re-election of the local member.	Proposed Statement 4
7	Can Members and Senators use their entitlements (including travel and charter) to assist with mobile polling, especially in WA, NT and North Queensland?	Yes, as there is no practical restriction ('parliamentary or electorate business') on travel by an MP or Senator within their electorate at any time.	Proposed Statement 5

No.	Question	Convention proposed in the non-endorsed 2003 '42 Questions and Answers' document	Proposed in '31 Statements' (see Appendix 3)
8	Can Members and Senators directly solicit a vote in the printed material they send out?	<p>They can for themselves and/or their party. They cannot for someone else. However (subject to the 70/30 rule—see below), they can use language that stops short of directly soliciting a vote.</p> <p>Not OK: "Vote for Joe Bloggs"; "Joe Bloggs needs your vote"; "Send Joe Bloggs to Canberra"; "Next Saturday, remember Joe Bloggs when you go to vote".</p> <p>OK: "I urge you to support Joe Bloggs"; "Joe Bloggs understands the needs of the community"; "Joe Bloggs listens to what people want"; Joe Bloggs will continue to work for our future".</p>	Proposed Statements 1 & 6 (see also 11 & 18)
9	Can the Electorate Office contact details be used in campaign material which a Member or candidate distributes using party funds?	Yes.	Nil
10	Can Electorate Office facilities be used for campaign purposes? (eg by campaign volunteers for enveloping campaign material, for photocopying campaign material, etc)?	Yes, but only for your own campaign.	Nil
11	Is there any need for MPs to set up a separate campaign office?	No.	Nil
12	Is it OK to display campaign advertising outside the Electorate Office?	AEC-size posters or A-frame style posters are OK, but only for one's own re-election.	Proposed Statement 7
13	Is it OK to display party political material inside the Electorate Office?	Yes.	Proposed Statement 8

No.	Question	Convention proposed in the non-endorsed 2003 '42 Questions and Answers' document	Proposed in '31 Statements' (see Appendix 3)
14	Is it OK to use the Electorate Office number as a contact for party functions?	Only if it is a local electorate function related to one's own re-election, not if it is a general fundraiser for the Party.	Nil
15	Can Electorate Office facilities be used by community groups, eg for meetings, printing, photocopying?	Yes. But the Member or Senator needs to exercise judgement about what is reasonable use.	Proposed Statement 9
16	Is it OK to use entitlements for printing and posting campaign-like material (eg leaflets or other communications on key election issues—Telstra, border security, GST, personal promos)?	Yes. These are all classified as 'newsletters'. The discussion may even include issues of international, state and local significance.	Proposed Statement 10
17	Is it appropriate that this sort of material be authorised by MPs?	Yes—AEC requires authorisation, which may be by the MP or a party representative.	Nil
18	Can Senators and Members promote each other in newsletters and letters?	Yes. Subject to the 70/30 rule and as long as it is not explicit campaigning.	Proposed Statement 11 (see also 6 & 18)
19	Is it OK to attach a 'Senate Report' by a Senator to a Member's newsletter?	Yes—such an inclusion can be characterised as a matter of both electorate and parliamentary business.	Proposed Statement 12
20	Is it OK to use a Senator's entitlements to subsidise the cost of a mailout/newsletter for a Member within the Senator's state?	Yes. A Member can pay for the cost of printing a newsletter, and if it contains material from a Senator, that Senator can pay for the postage/distribution costs. However, the newsletter could not explicitly canvas support for the MP's re-election (as this would violate the requirement that entitlements—in this case the Senator's postage—not be used to support the election or re-election of others).	Proposed Statement 13

No.	Question	Convention proposed in the non-endorsed 2003 '42 Questions and Answers' document	Proposed in '31 Statements' (see Appendix 3)
21	Can a resigning/retiring Member use their entitlements on behalf of the new candidate, after the issue of the writs for election?	No.	Proposed Statement 14
22	Is it OK to promote or attack state governments?	Yes. As long as the material is issues-based and does not promote or attack individual candidates.	Proposed Statement 15
23	Is it OK to deal with state issues in newsletters?	Yes.	Proposed Statement 16
24	Can you have paid advertisements in newsletters?	No.	Proposed Statement 17
25	Can donors sponsor newsletters?	Yes. As long as this is declared as a donation/gift.	Nil
26	Does the 60/40 rule still apply?	No. It is 70/30, ie at least 70 per cent of a letter/newsletter must clearly be for electorate or parliamentary business or material in support of one's own re-election and up to 30 per cent can be direct promotion of the party or implicit promotion of another candidate. The 70/30 rule applies only to individual documents (letter or newsletter), not, for example, to the various contents of an envelope.	Proposed Statement 18 (see also 6 & 11)
27	Can the Commonwealth crest be used on the same page as a party logo?	No.	Proposed Statement 19

No.	Question	Convention proposed in the non-endorsed 2003 '42 Questions and Answers' document	Proposed in '31 Statements' (see Appendix 3)
28	Can invitations for fundraisers be sent out on entitlements?	Only if the fund-raiser relates to the re-election of the Senator/Member, not general fundraising for the Party. Also, there should be some other primary purpose for the communication, relating to parliamentary or electorate business. For example, including an invitation with a newsletter, not just sending the invitation out by itself.	Proposed Statement 20
29	Can material be sent out to party branch members?	Yes. Notices of meetings and minutes can be sent out by MPs to their local branch members, and by Senators to branch members in electorates not held by the Senator's own party. Senators may also send out material to the local branch of which they are a member.	Nil
30	Must such material be accompanied by a compliments slip?	No.	Nil
31	Is it OK to solicit party membership/renewals?	No. However the practice of asking if people would like additional information about the party or about joining the party, particularly in questionnaires, is permitted.	Proposed Statement 21
32	Is it OK to send out membership applications with other material?	No.	Proposed Statement 22
33	Is it OK to seek support (donations, help) for one's own campaign?	Yes.	Proposed Statement 23

No.	Question	Convention proposed in the non-endorsed 2003 '42 Questions and Answers' document	Proposed in '31 Statements' (see Appendix 3)
34	Can material be sent out to constituents in an area which is about to become part of the electorate?	Yes—once the decision of the Augmented Electoral Commission on the new boundaries has been publicly announced (not necessarily Gazetted).	Proposed Statement 24
35	Can distribution costs for a newsletter (eg an insert in a newspaper) be folded into the one invoice for printing?	No. The distribution costs must be itemised separately in the invoice. If they are not, the department will seek an explanation.	Proposed Statement 25
36	Can you include surveys in newsletters?	Yes.	Proposed Statement 26
37	Can you mention a visit by a Leader or Minister/Shadow of the same party?	Yes.	Proposed Statement 27
38	Is it OK to promote a function during such a visit?	Yes.	
39	Can an entrance fee be charged for functions?	Yes. But it should not be for general party fund-raising.	Proposed Statement 28
40	Can staff claim overtime for attending Party meetings?	No.	Proposed Statement 29
41	Can the unlimited postage available for Ministers, Opposition Office Holders, Presiding Officers, Leaders of minority parties and Whips be used for mass mailouts?	No.	Proposed Statement 30

No.	Question	Convention proposed in the non-endorsed 2003 '42 Questions and Answers' document	Proposed in '31 Statements' (see Appendix 3)
42	What procedures will be followed in the case of breaches of these agreed guidelines?	As is the case now, the Minister, on the advice of the Department, will send a 'please explain' letter. If an acceptable explanation is not forthcoming, the Member or Senator will be asked to refund the cost of the breach. Allegations of breaches of these guidelines would be raised on an office-to-office basis, rather than in public forums, at first instance.	Proposed Statement 31

Source: ANAO analysis of Department of Finance and Deregulation records.

Appendix 3: The ‘31 statements’ on entitlements conventions proposed by the then SMOS in February 2004 and revised statements recommended by Finance

The table in this appendix sets out the 31 Statements on entitlements conventions proposed by the then SMOS in February 2004 following consideration of the 42 questions and proposed answers set out in Appendix 2, extracts of Finance’s advice in relation to each proposed Statement and the recommended and revised statements provided to the then SMOS in July 2004. The table also indicates those revised statements that were endorsed and promulgated in pre-election letters provided to Parliamentarians prior to the 2004 Federal Election. Similar advice was provided prior to the 2007 Federal Election.

Proposed Statement 1: Senators and Members can use entitlements for their own re-election, on the basis that it is practically impossible to disaggregate activities which may be for their own re-election and activities which are for purely altruistic purposes.	
Extract of Finance advice	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—i.e. the essential concept is that the entitlements be used for Parliamentary and electorate purposes <u>NOT</u> that furthering one’s own candidacy is one of those purposes, i.e. the key concept is that in using entitlements for Parliamentary and/or electorate purposes it is inevitable that an <u>incidental effect</u> may be to further one’s own candidacy. [<i>emphasis as per original</i>]
Recommended revised statement	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. ¹
Proposed Statement 2: It is permissible to send out postal vote applications, on the basis that MPs are providing a community service related to their own re-election.	
Extract of Finance advice	The provision of an application form for a postal vote in a federal election would appear to be clearly electorate business. Provision of a form to register as a general postal voter at federal election would also be considered electorate business.
Recommended revised statement	Senators and Members may use the Communications Allowance to provide his/her constituents with postal vote applications for federal elections. ¹

Proposed Statement 3: 'How To Vote' cards in federal elections may be printed and distributed by MPs provided that the 'How To Vote' includes advice on How To Vote for the MP.	
Extract of Finance advice	<p>At present there is no authority for Senators and Members to use the printing entitlement provided under the Parliamentary Entitlements Regulations for the printing of 'how to vote' cards. On balance the printing of 'how to vote' material using in-house facilities is seen as at best borderline. If entitlements are used for this purpose it must be for the election of the Senator or Member concerned <u>NOT</u> for another person i.e. it should be 'confined' to advice on 'how to vote' for the actual Senator or Member concerned.</p> <p>Printing entitlements should not be used to print 'how to vote' cards. Moreover, care should be taken in using entitlements to distribute 'how to vote' cards to ensure that such action is incidental to the primary purpose for accessing the entitlement. Care should also be taken to ensure that only 'how to vote' cards relating to the Senator's or Member's own re-election are distributed.</p> <p>Note: <i>This was overtaken by events. On 3 and 4 August 2004, the then SMOS approved the use of the Printing Entitlement to print 'postal vote applications and other voting information', with the latter being clarified to cover the printing of traditional 'how to vote' cards.</i></p>
Recommended revised statement	<p>Proposed Statement 4: Staff can work on federal campaigns in a wide variety of roles. This situation was acknowledged by the Australian National Audit Office in their Report No. 15 2003-2004, pp 96-97. There are no legal restrictions on the use of MOP(S) Part III (personal) staff, who work at the direction of their employers. Part IV (electorate) staff are not able to work to support the election or re-election of a person other than their employing Senator or MP, without taking leave. This leave can include 'time off in lieu'. Staff of Senators could be deployed temporarily to the office of another MP in that state, but their primary purpose cannot be to work to support the election or re-election of a MP or Senator (other than their own Senator). Thus a Senate staff member could work for the re-election of their Senator and incidentally do work which supports the re-election of the local member.</p>
Extract of Finance advice / Recommended revised statements	<p>Finance advised that the articulation of relevant conventions as they were then currently understood was preferred. For personal staff—may work at Parliament House, the electorate office, the capital city office or in campaign headquarters if engaged on official business (for example, as a conduit between the Minister and the party headquarters in respect of portfolio-related policy issues); and may travel on official duties as directed by the employing Parliamentarian. For electorate staff—may undertake activities in support of their employing Parliamentarians' re-election but not in the election or re-election of others.¹</p> <p>(Note: <i>Finance advised the then SMOS that its discussion paper on Statement 4 raised an option involving a tightening of staff entitlements, but a liberalisation in the campaign related tasks they may perform, and that it could undertake more work to develop that option, should the Minister wish it to. Finance advised ANAO that there is no record that any such request was made. The use of staff was not examined as part of this audit.</i></p>

Proposed Statement 5: Senators/Members may use their entitlements (including travel and charter) to assist with mobile polling, especially in WA, NT and North Queensland.	
Extract of Finance advice	On the surface, the statement appears reasonable i.e. for a Senator or Member to provide assistance with mobile polling would reasonably seem to be a service to constituents (i.e. electorate business). However, there are a number of issues which suggest the statement needs to be more tightly prescribed.
Recommended revised statement	A Senator or Member may, in support of his/her own re-election, travel within his/her electorate by scheduled services and charter (if applicable) and claim electorate travel allowance. Action in support of a Senator or Member's own re-election would include providing assistance to party campaign workers at mobile polling stations (especially in WA, NT and North Queensland). ¹
Proposed Statement 6: Senators/Members may directly solicit a vote for themselves and/or their party in the printed material they send out. They cannot solicit a vote for someone else. However, subject to a reasonable apportionment (the 70/30 rule), they can use language that stops short of directly soliciting a vote. (For example: Not acceptable: 'Vote for Joe Bloggs', 'Joe Bloggs needs your vote'. 'Send Joe Bloggs to Canberra'. Next Saturday, remember Joe Bloggs when you go to vote' Acceptable: 'I urge you to support Joe Bloggs', 'Joe Bloggs understands the needs of the community', 'Joe Bloggs listens to what people want', 'Joe Bloggs will continue to work for our future').	
Proposed Statement 11: Senators/Members may promote each other in newsletters subject to 70/30 and as long as it is not explicit campaigning	
Proposed Statement 18: A newsletter entitlement which has been accessed for a legitimate purpose must substantially be used for that purpose. However, incidental matters may also be included. For the sake of convenience, at least 70 per cent of a letter/newsletter must clearly be electorate or Parliamentary business or material in support of one's own re-election and up to 30 per cent can be direct promotion of the party or implicit promotion of another candidate. The 70/30 rule applies only to individual documents, not, for example, to the various contents of an envelope.	
Extract of Finance advice	<p>Statements 6, 11 and 18 were considered collectively by Finance: The first sentence of Statement 6 is covered in the analysis of Statement 1. The remainder of that statement and the other two statements relate to the 70/30 rule in relation to letters and newsletters... The principles which are safe are: (1) printing entitlements may be used for Parliamentary and electorate business; (2) the communications entitlements may be used for Parliamentary and electorate, but not party business; (3) sometimes use of entitlements will, <u>incidental</u> to the Parliamentary and electorate business, involve a Senator or Members' self-promotion; (4) use of the entitlements in support of another person is not acceptable, i.e. to promote another person's candidacy breaches the convention; to write positively about them may be acceptable if it is clearly with the purpose of providing helpful information to the constituents; and (5) in considering whether a given action is acceptable or not the onus is on the individual Parliamentarian and the question should be:</p> <ul style="list-style-type: none"> - is this genuinely for Parliamentary or electorate business; or - is it a device to circumvent the rules and use entitlements for one's own, one's colleague or one's party's promotion? <p>With the above in mind it is suggested that statements 6, 11 and 18 be combined and read as follows:</p> <p><i>[Emphasis as per original]</i></p>

<p>Recommended combined revised statement</p>	<p>The newsletter entitlement is provided for printing of newsletters for distribution to constituents. The Regulations do not specify the purpose for which it may be used but long-standing convention has been to regard proper use as relating to Parliamentary and/or electorate business.</p> <p>It is inevitable that a newsletter will, from time to time, contain material which presents the individual Senator or Member in a positive light and hence will serve to promote his/her re-election.</p> <p>It is also open to a Senator or Member to write in positive terms of the Parliamentary or electorate contribution of one or more of their colleagues. It is important that any such references fall short of exhorting the reader to vote for them. Similar considerations apply in the case of promotion of political parties.</p> <p>Given that the primary purpose of the printing, and associated entitlements, is to inform and provide a service to the electorate any use which is primarily more promotional in character should not constitute the greater part of the document. As a general rule the 70/30 rule of thumb has been adopted. Under the rule, which lacks a legal basis, material of a promotional character may be included as long as it makes up less than 30 per cent of the overall newsletter or letter.¹</p>
<p>Proposed Statement 7:</p>	<p>It is acceptable to display campaign advertising outside an electorate office. For example, AEC-size posters or A-frame style posters are permitted but only for one's own re-election.</p>
<p>Extract of Finance advice</p>	<p><i>Outside the boundaries of the property:</i> The placement of structures on the footpath or placement of posters in public places are matters for the relevant local government authority.</p> <p><i>Within the boundaries of the electorate office property (i.e. on the external walls, within the grounds or on the fence:</i> ...it has however been a long-standing view that it is inappropriate to use the external walls (or perimeter) for the display of campaign material...A major difficulty in permitting the display of campaign material in this manner is that the electorate office could take on the appearance of a campaign headquarters i.e. the public perception of what it is could therefore significantly change and its primary purpose could be lost during the election campaign period.</p>
<p>Recommended revised statement</p>	<p>The display of campaign material beyond the perimeter of the electorate office is a matter for decision by the individual Senator or Member having regard to lease conditions and local government regulations.¹</p>

Proposed Statement 8: It is acceptable to display party political material inside an electorate office.	
Extract of Finance advice	<p>There needs to be a balance between:</p> <ul style="list-style-type: none"> (1) the primary purpose for which the electorate office is provided i.e. providing a service to constituents; and (2) the recognition that during an electoral campaign the sitting Senator or Member, who is a candidate, will inevitably and reasonably wish to promote his/her candidature. <p>Further issues arise, for example: (1) a Senator who is not seeking re-election; (2) a Senator promoting the House of Representatives candidate from his/her party for the electoral division in which the Senator's office is located; and (3) a Member promoting the Senate ticket of his/her party. In these circumstances the use of notice boards etcetera for the display of campaign material would appear reasonable but the wholesale conversion of the electorate office to a quasi-campaign headquarters would not.</p> <p>The issue is one of degree and what a reasonable person would consider is appropriate in all the circumstances.</p> <p>It is recognised that Senators and Members may wish to display campaign material inside the electorate office. If they do so they should have proper regard to the fact that the office is provided primarily so they may provide a service to constituents by carrying out Parliamentary and/or electorate business. It has long been accepted, in keeping with the principle that a Senator or Member may use entitlements in support of his/hr own re-election, that campaign material may be displayed for this purpose.¹</p>
Recommended revised statement	<p>It is recognised that Senators and Members may wish to display campaign material inside the electorate office. If they do so they should have proper regard to the fact that the office is provided primarily so they may provide a service to constituents by carrying out Parliamentary and/or electorate business. It has long been accepted, in keeping with the principle that a Senator or Member may use entitlements in support of his/hr own re-election, that campaign material may be displayed for this purpose.¹</p>
Proposed Statement 9: Electorate office facilities may be used for community groups, e.g. for meetings, printing, photocopying, but the Member or Senator needs to exercise judgement about what is reasonable use.	
Extract of Finance advice	<p>There is a long-standing view and recognition of a long-standing practice, that electorate office facilities may be used by community groups as falling within the broad framework of electorate business. It is important to recognise that the electorate office (and equipment and facilities) is provided to the Senator or Member, to enable him/her to provide a service to the electorate, but should not be transferred to another person or organisation i.e. it may be used to assist a local organisation or cause but not ceded to it. In practice, this means that since Australian government resources are being consumed, that a Senator or Member, as well as exercising judgement as to what is reasonable use he/she is responsible to ensure proper oversight of their use.</p>
Recommended revised statement	<p>A Senator or Member who considers that his/her provision, to a community group, of access to the electorate office and/or facilities would constitute a service to the electorate may do so. It is important to recognise that the Senator or Member assumes accountability for any such use. An electorate office and its equipment and facilities may not be used for commercial purposes. In making the electorate office facilities available to a community group it is the responsibility of the Senator or Member to ensure that the group is a non-profit organisation; and if a non-profit organisation then its particular purpose for using the electorate office facilities is not fund-raising.¹</p>

Proposed Statement 10: It is acceptable to use entitlements for printing and posting campaign-like material (eg leaflets or other communications on key election issues—Telstra, border security, GST, personal promotions). These are all classified as ‘newsletters’. The discussion may even include issues of international, state and local significance.

Statement 10 appears to be asserting that a leaflet which is campaign-like (presumably strenuously putting a point of view) is in fact a newsletter. It is difficult to be comfortable with this view.

However, it would appear to be readily open to the Special Minister of State to approve leaflets under subregulation 3(1)(c) [of the *Parliamentary Entitlements Regulations 1997*]. This would appear to be the preferable course.

The Regulations do not define ‘newsletters’ nor prescribe what a newsletter should contain i.e. there would appear to be considerable latitude in terms of form and content. There is nothing in the Regulations which would prevent a Member from using the printing entitlement for printing:

- (1) single issues newsletters;
- (2) discussing issues of international, state or local significance; and
- (3) covering issues which are considered to be ‘key election issues’.

In following such a course a Member should have regard to:

- (1) a newsletter is about conveying information not about campaigning;
- (2) the long standing convention that entitlements may be used in support of one’s own re-election but not that of another person; and
- (3) the risk of a public perception that an entitlement provided so that a Member can keep the electorate informed is being used for purposes of election campaigns.

The use of electoral office facilities and equipment to provide leaflets or signs on key issues (including discussion of international, state or local significance) would appear to meet the prescription in Part 1 Schedule 1 to the *Parliamentary Entitlements Act 1990* ‘for purposes related to Parliamentary, electorate or official business, but not commercial business’. In using the electorate office facilities for the production of leaflets Senators and Members should have regard, as with externally arranged printing, to the public perception that the facilities are provided to service constituents (not for production of campaign-like material).

In light of the above, the following redraft of Statement 10 may be more appropriate:

It is acceptable for a Senator or Member to use the printing facilities provided in electorate offices to produce newsletters and other material (e.g. single issues pamphlets) of international, national, state and local significance. It is also acceptable to use entitlements, particularly the Communications Allowance, to distribute such material.’

Extract of Finance advice

Recommended revised statement

Proposed Statement 12: A 'Senate report' by a Senator may be attached/included in a Member's newsletter, as such an inclusion can be characterised as a matter of both electorate and Parliamentary business.	
Extract of Finance advice	There is no provision which would prohibit such action provided the Senator's Report itself conforms with the prescriptions which apply to the entitlements concerned. It would be prudent to modify the statement.
Recommended revised statement	A Member may include in his/her newsletter a report from a Senator and this may be distributed using the communications entitlement provided the Senator's Report itself meets the prescription that it is related to Parliamentary and electorate business and not party business. ¹
Proposed Statement 13: A Member may pay for the cost of printing a newsletter, and if it contains material from a Senator, that Senator can pay for the postage/distribution costs. However, the newsletter could not explicitly canvass support for the MP's re-election, as this would violate the requirement that entitlements—in this case, the Senator's postage—not be used to support the election or re-election of others.	
Extract of Finance advice	The statement is supported.
Recommended revised statement	No change recommended. ¹
Proposed Statement 14: A resigning/retiring member may not use their entitlements on behalf of the new candidate after the issue of writs for election.	
Extract of Finance advice	There is no legislative provision which enables a Member, who is not standing for election at the forthcoming general election, to access his/her entitlements as a Member once the House is dissolved or expires. The writs must be issued within ten days of the expiry or dissolution of the House i.e. there may be a period of up to ten days between expiry or dissolution of the House (when access to entitlements ceases) and the issue of the writs. The construction of the statement suggests, or at least raises the possibility, that the entitlement may be used on behalf of the new candidate before the access to entitlements ceases. There is no legislative provision which would such a view. To avoid a possible misinterpretation and to recognise the technical difference between the dissolution of the House and the issue of writs a preferable formulation [<i>is proposed</i>].
Recommended revised statement	The entitlements of a sitting Member who is not contesting a seat in the forthcoming general election cease on the expiry or dissolution of the House. ¹

Proposed Statement 15: Senators/Members may promote or attack state governments as long as the material is issues-based and does not promote or attack individual candidates.	
Proposed Statement 16: State issues may be discussed in newsletters given the funding and policy inter-relationship between state and federal governments.	
Extract of Finance advice	<p><i>Finance considered Statements 15 and 16 together:</i> The broad framework for most entitlements is that they are provided to facilitate a Senator or Member in carrying out his/her parliamentary and electorate business and that a broad interpretation of these somewhat elusive terms is appropriate. Nevertheless, as the Parliament recognised in passing the <i>Remuneration Tribunal Act 1973</i> the allowances and entitlements are provided to Senators and Members by reason of their membership of the Commonwealth Parliament—i.e. the entitlements are provided so that Senators and members may carry out their Commonwealth parliamentary business and their Commonwealth electorate business—i.e. there is a Commonwealth dimension to be recognised. It is suggested that statements 15 and 16 be placed in context as follows:</p> <p>In using the entitlements a Senator or Member should bear in mind that the entitlements are provided by reason of his/her membership of the Commonwealth Parliament.</p> <p>Within that framework:</p> <ol style="list-style-type: none"> (1) Senators and Members may promote or attack state governments, as long as the material is issues-based and does not promote or attack individual candidates. (2) State issues may be discussed in newsletters, given the funding and policy inter-relationship between state and federal governments. <p>Note: <i>Neither the originally proposed statement or recommended revised statement were subsequently formally endorsed and promulgated.</i></p>
Proposed Statement 17: Paid advertisements may not appear in newsletters.	
Extract of Finance advice	<p>The statement could be seen as carrying a suggestion that a newsletter would carry an advertisement in respect of which payment had not been received. It may be desirable, therefore, to broaden the statement to cover any advertisement of a commercial character. Moreover there would be significant issues raised if the Communications Allowance was used to meet the cost of distribution of a newsletter carrying a paid advertisement. The statement is support. An alternative formulation, which may be preferable, is <i>[proposed]</i>.</p> <p>Advertisements of a commercial nature, including any paid advertisement, may not appear in newsletters produced using the entitlements.¹</p>
Recommended revised statement	

Proposed Statement 19: The Commonwealth crest may not be used on the same page as a party logo.	
Extract of Finance advice	The statement is supported—depending on its readership it may be desirable to express it as follows:
Recommended revised statement	The Commonwealth crest, which is formally known as the Commonwealth Coat of Arms, may not be used on the same page as the logo of a political party. ¹
Proposed Statement 20: Invitations for fundraisers may only be sent out using entitlements if the fundraiser relates to the re-election of the Senator/Member, not general fundraising for the party. Also, there should be some other primary purpose for the communication, relating to Parliamentary or electorate business. For example, including an invitation with a newsletter, not just sending out the invitation by itself.	
	The main issues raised in relation to this statement are similar to that raised in relation to statement 23, i.e. the propriety of using entitlements...provided at taxpayers' expense to generate a financial benefit to the Senator or Member. There are other aspects of the statement, which are discussed below:
Extract of Finance advice	<ol style="list-style-type: none"> (1) The Communications Allowance may be used for Parliamentary or electorate but not party business—hence the statement excludes 'general fundraising for the party'. (2) There is a long-standing convention that entitlements may be used in support of one's own re-election but not the re-election of another person—hence the proviso that the fundraiser must relate to the re-election of the Senator/Member concerned. (3) The long-standing convention in (2) is usually qualified that the use of entitlements in support of one's own re-election should be an incidental outcome of the main purpose for accessing the entitlement (i.e. for Parliamentary or electorate business)—hence the qualification 'that there be some other primary purpose for the communication, relating to Parliamentary or electorate business. <p>...The use of facilities provided at taxpayer expense for a commercial purpose sits uneasily with the overall framework, even though the Remuneration Tribunal Determination has not explicitly prohibited such action—it could well be that it sees the exclusion of party business as covering fundraising for the party or the Member. A possible approach could be to recast the statement as follows:</p>
Recommended revised statement	<p>Invitations to events arranged in support of one's own re-election may be included with material sent to constituents. Such material should relate to Parliamentary or electorate business.</p> <p>In using entitlements such as the communications entitlement grounds for perception that Commonwealth funding is being used for one's own financial benefit or that of the particular party should be avoided. Thus if an entrance fee is charged at a function advertised using entitlements then the price should be set no higher than to recoup costs (i.e. not to make a financial profit).¹</p>

Proposed Statement 21: Entitlements may not be used to solicit party memberships/ renewals, however, the practice of asking if people would like additional information about the party or about joining the party, particularly in questionnaires, is permitted.	
Extract of Finance advice	The first part of the statement is supported. The second part, dealing with trawling for interest in a particular political party is potentially unsafe.
Recommended revised statement	Entitlements may not be used to solicit party membership/renewals. ¹
Proposed Statement 22: Senators/Members may not send out membership applications with other material.	
Extract of Finance advice	The statement is supported—it would be worthwhile to link it to entitlement use as follows:
Recommended revised statement	Senators and Members may not use entitlements to send out party membership applications—either with other material or singly. ¹
Proposed Statement 23: Senators/Members may seek support (donations, help, volunteers, etc) for one's own campaign on the basis that it is for their re-election.	
Extract of Finance advice	The heart of the matter is the use of taxpayer funds to generate a financial benefit or a benefit in kind. This is explicitly precluded in respect of some entitlements and would not be advised for any entitlement. While it is possible, in a theoretical sense, to posit ways that soliciting financial or other support may be justifiable, a clear statement that entitlements should not be used for these purposes is preferable.
Recommended revised statement	Senators and Members may not use entitlements to seek support (donations, help, volunteers, etc) for an election campaign. Note: <i>This recommended revised statement was not subsequently endorsed and promulgated. However, the originally proposed statement was similarly not formally endorsed and promulgated.</i>

Proposed Statement 24: Material may be sent out to constituents in an area which is about to become part of the electorate once the decision of the Augmented Electoral Commission on the new boundaries has been publicly announced (not necessarily gazetted).	
Extract of Finance advice	<p>As clause 10.9 of Remuneration Tribunal Determination 14 of 2004 is currently framed it would be more appropriate for the statement to read:</p> <p>Material may be sent to constituents, in an area which is to become part of the electorate at the next General Election, once the decision of the Augmented Electoral Commission on the new boundaries has been formally determined (i.e. the date on which the decision is published in the Australian Government Gazette).¹</p> <p>Note: <i>The above recommended revised statement related to use of the Communications Allowance determined by the Remuneration Tribunal to distribute material to constituents. In relation to the entitlement to print specified items for distribution to constituents provided under the Parliamentary Entitlements Regulations, the Regulations were amended in June 2007 to include Regulation 3(4) which defines 'constituent' for the purposes of Members' Printing Entitlement as either: (a) a person who lives in the Member's electorate Division; or (b) a person in relation to whom the following circumstances apply: (i) the person does not live in the Member's electorate Division; (ii) a redistribution of the State or Territory that includes the Member's electorate Division has been formally determined in accordance with the Commonwealth law applicable to redistributions, but has not commenced; and (iii) the place where the person lives will be included in the Member's electorate Division when the redistribution commences.</i></p>
Proposed Statement 25: Distribution costs for a newsletter (eg an insert in a newspaper) may not be aggregated into the one invoice for printing. The distribution costs must be itemised separately in the invoice. If they are not, the department will seek an explanation.	
Extract of Finance advice	<p>The entitlements to printing are quite separate from the entitlement to distribute material. This may generate a difficulty when a combined printing and distribution service is carried out by an external service provider. The most common case being an insert in a newspaper. There appears to be no alternative but to request members to arrange for an external account that differentiates the printing from the distribution costs so that each may be properly attributed... It is desirable administratively that if the invoice does not provide the break-up, that the Member provides the expenditure at the time it is submitted for payment.</p>
Recommended revised statement	<p>Members who arrange for newsletters to be printed and distributed by the same supplier (for example, a newspaper insert) are required to ensure that the invoice itemises the printing and distribution costs so that these may be properly attributed to the printing and communications entitlements respectively. If this is not possible Members are required to provide an explanation at the time of submitting the invoice.¹</p>

Proposed Statement 26: Surveys may be included in newsletters.	
Extract of Finance advice	<p>In summary, the legislation provisions contain no prohibition against the use of surveys in newsletters...it is important to recognise that a newsletter is about providing information to constituents rather than eliciting information from persons in the electorate. Thus the inclusion of a survey in a newsletter should be incidental to the man purpose of putting out the newsletter.</p> <p>It is also important to note that any survey included in a newsletter would need to conform with the other provisions and conventions relating to the content of newsletters, i.e. the general framework within which entitlements may reasonably be accessed would indicate that surveys should be constructed so as to be clearly for Parliamentary and/or electorate business and not party business. (See also statement 21).</p> <p>It would be preferable, to avoid misunderstanding or misinterpretation, to reformulate the statement as follows:</p> <p>Surveys may be included in newsletters. Such surveys should clearly be for Parliamentary and/or electorate business and not party business.¹</p>
Recommended revised statement	Surveys may be included in newsletters. Such surveys should clearly be for Parliamentary and/or electorate business and not party business. ¹
Proposed Statement 27: Mention may be made of a visit by a Leader or Minister/Shadow of the same party, and promoting a function during such a visit is also permitted.	
Proposed Statement 28: An entrance fee may be charged for functions but it should not be used for general party fundraising.	
Extract of Finance advice	<p><i>Finance considered statements 27 and 28 together:</i> There is no provision which would prevent the printing, in a newsletter, of a function to coincide with a visit of the Leader or Minister or Shadow Minister to an electorate. Moreover, providing advice to constituents about such a function could, depending upon the nature of the function, be related to Parliamentary and electorate business. Moreover, if an entry fee is charged, set simply to meet reasonable costs—i.e. not for a commercial benefit—then promotion of such function would appear reasonable.</p> <p>As indicated in the discussion of statements 20 and 23, it appears unreasonable to use taxpayer funds for a commercial benefit either to oneself or to the political party represented. It is suggested that 27 and 28 be combined to read:</p>
Recommended revised statement	<p>Mention may be made in newsletters of the visit to the electorate of the Leader of the Party or Minister or Shadow Minister and it is also permitted to advise constituents about the function which may be taking place during the visit.</p> <p>If a charge is being made for attendance at the function, care needs to be taken to ensure that taxpayer funds are not used for personal benefit or for the financial benefit of the political party.</p> <p>A charge set to cover the reasonable costs of staging the function could be made.¹</p>

Proposed Statement 29: Staff may not claim overtime for attending party meetings.	
Extract of Finance advice	It would appear more appropriate to place the focus on the employing Senator or Member's power of direction. It is therefore suggested that the statement read:
Recommended revised statement	Senators and Members may not require electorate staff to attend party meetings. Any such attendance does not count as official duty and overtime allowance is not payable. ¹
Proposed Statement 30: The unlimited postage available for Ministers, Opposition Office Holders, Presiding Officers, Leaders of minority parties and whips may not be used for mass mailouts.	
Extract of Finance advice	Item 7 of Part 2 of Schedule 1 of the <i>Parliamentary Entitlements Act 1990</i> originally provided that the Minister and specified Office Holders were entitled to the cost of postage in relation to official business. With effect from 1 July 2003, Regulations were made which further qualified their use by adding 'other than postage for a bulk mail-out'.
Recommended revised statement	The postage entitlements to Ministers, Opposition Office Holders, Presiding Officers, Leader of a minority party (of at least five members) and Government and Opposition Whips may be used in relation to official business, other than postage for a bulk mail-out. ¹
Proposed Statement 31: The procedures to be followed in the case of alleged misuse of entitlements shall be, as is the case now. The Minister, on the advice of the Department, will send a 'please explain' letter. If an acceptable explanation is not forthcoming, the Member or Senator will be asked to refund the cost of the breach. This is in line with the section of the Minchin protocol dealing with 'relatively minor' allegations.	
Extract of Finance advice	It is to be noted that if an allegation of misuse of entitlements is made, judged to be credible and of a relatively minor nature than the Senator or Member is invited to provide an explanation. It may not be appropriate to follow that procedure in more major allegations of misuse of entitlements—and indeed the tabled protocol envisages quite difference machinery in such cases. It is recommended that the statement be re-cast to make clear that it only applies to allegations of relatively minor misuse of entitlements. Morevoer, it would be useful to specify what the cost of the breach' is.

<p>Recommended revised statement</p>	<p>The overall handling of allegations of misuse of entitlements is set out in the Protocol tabled in the Senate on 31 October 2000. In the case of an allegation of a relatively minor misuse of entitlements the Special Minister of State will write to the Senator or Member concerned:</p> <ol style="list-style-type: none"> (1) outlining the allegation; (2) outlining the provisions relating to entitlements which may have been used; and (3) inviting the Senator or Member to comment (i.e. provide a satisfactory explanation). <p>If the Senator or Member does not provide an explanation which satisfies the Special Minister of State he/she will be requested to repay the direct cost incurred in providing the entitlement to the Senator or Member.</p> <p>Note 1: These revised convention statements were reflected in the letters on entitlements use provided to incumbent Parliamentarians upon the calling of the 2004 Federal Election. Similar advice was included in the pre-election letters for the 2007 Federal Election, adjusted as necessary for amendments to approved entitlements.</p>
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Source: ANAO analysis of Department of Finance and Deregulation records.

Appendix 4: Examples of items assessed as being at varying levels of risk of being outside of entitlement

This appendix sets out examples of printed items in the sample examined that have been assessed as being at varying levels risk of being outside of entitlement (see paragraphs 5.48 to 5.106). The first six examples were assessed as being at higher risk than the last two examples. The categories of the Printing Entitlement under which the items illustrated were paid are also discussed (see paragraphs 5.119 to 5.139).

Figure A 2

Occurrence in sample: 1 114 835 reproductions by 23 Parliamentarians in two versions, involving 29 printed items at a total cost of \$53 049. All 29 invoices were paid under the relevant Parliamentarians' entitlements to print newsletters for distribution to their respective constituents.

Side 1



Side 2



Figure A 3

Occurrence in sample: at least 185 000 reproductions by seven Parliamentarians (with a further invoice not stating the quantity printed). This involved eight printed items (three stand-alone versions and the reproduction of both sides of this version in a Member newsletter that was overwhelmingly comprised of election campaign material) at a total cost of \$21 576. Of the eight invoices involved, four were paid under the entitlement to print 'magnetised emergency and community information cards' and four under the entitlement to print newsletters.

Side 1

John Howard MP has *lost touch* with working families

John Howard MP voted **13 times** to support unfair workplace laws, despite Australian families urging him not to. He no longer understands how hard things are for working families.

VOTED 13 TIMES

Workplace Relations Amendment (Work Choice) Bill 2005

Abbott, A.J.	Gambaro, T.	Hartsuyker, L.
Andrews, K.J.	Georgiou, P.	Hockey, J.B.
Baird, B.G.	Hardgrave, G.D.	Hull, K.E.
Baldwin, R.C.	Howard, J.W.	Ley, S.P.
Bartlett, K.J.		Lloyd, J.E.

Source: House of Representatives Hansard

Side 2

Source: House of Representatives Hansard

John Howard MP voted 13 times for extreme and unfair workplace laws

John Howard's extreme and unfair workplace laws have already . . .

- **CUT** penalty and overtime rates;
- **CUT** annual wage increases; and
- **CUT** unfair dismissal laws.

DON'T REWARD JOHN HOWARD

Authorised by F. Gaird, Level 3, 181 Lincoln Circuit, Canberra ACT 2600 - Posted by Farrell Probert

Figure A 4

Occurrence in sample: 136 952 full or partial reproductions by 19 Members. This involved 21 printed items (two stand-alone versions and one instance in which a Member printed page 2 of this brochure within a newsletter that was overwhelmingly comprised of election campaign material) at a total cost of \$31 792. Of the 21 invoices involved, two were paid under the entitlement to print 'magnetised emergency and community information cards' and 19 under the relevant Parliamentarians' entitlements to print newsletters for distribution to their respective constituents. A further invoice relating to the distribution of the brochure and associated printed envelope was paid under the entitlement to print envelopes as personalised letterhead stationery.

Pg 1

Can your small business afford a Labor/Union Government?

10 THINGS YOUR SMALL BUSINESS

CALL 0800 00 8000 ASK FOR LEO'S STAR KIT

1. Return of Better Dismissal laws
Labor will restore the protections for small business, making it easier for employers to dismiss employees who are unproductive. This again, small business owners will benefit. *(Source: Labor website page 12, 2004/05)*

2. Flexible Workplace Agreements will be scrapped
Labor will abolish Flexible Workplace Agreements (FWAs) for small businesses to replace flexible working arrangements with enterprise. *(Source: Labor website page 12, 2004/05)*

3. Collective bargaining re-instituted
The Howard Government's policies give business owners the right to decline to enter into a collective agreement with a union. But Labor is going to change that. This is called collective bargaining in the workplace. *(Source: Labor website page 12, 2004/05)*

4. You will be a recruitment agent for unions
Labor will force unions to give their employers' information about how to find a union - including personal details. The staff will also be required to supply bargaining lists. Don't be misled - it's not just your members. *(Source: Labor website page 12, 2004/05 and also direct election, 1/03/05)*

5. Union right of entry to your business
Labor will restore the current procedure for consent to union access to your business including to your business premises and access to your business records regardless of whether you already employ union members. *(Source: Labor website page 12, 2004/05)*

6. Secondary boycott protections will be restored
Labor will restore the protections against secondary boycotts currently in the Labor Protection Act. The secondary boycott provisions currently apply only when that change small businesses that go caught up in them. Small business can't afford a union in the workplace in the past. *(Source: Labor website page 12, 2004/05)*

7. Compulsory awards and pattern bargaining will return
Labor will restore compulsory awards and pattern bargaining. Awards will be more complex with more conditions, allowing unions to take dispute resolution to you starting, reducing the role of your own award conditions across all smaller small businesses than awards. *(Source: Labor website page 12, 2004/05)*

8. So-called 'Good Faith Bargaining'
Labor will restore small business to make it compulsory bargaining. That's the public message, you will be required to negotiate with union members under separate laws. It's not fair to be in a world where you're not allowed to negotiate in the workplace. *(Source: Labor website page 12, 2004/05)*

9. Centralised Wage Fixing restored
Labor's restored centralised wage fixing will mean that you will have to accept a centralised wage fixing system. You will be required to accept a centralised wage fixing system. You will be required to accept a centralised wage fixing system. You will be required to accept a centralised wage fixing system. *(Source: Labor website page 12, 2004/05)*

10. Union muscle - anything goes!
Labor will restore the traditional union power of the workplace. Unions will be able to do anything they want to do. Unions will be able to do anything they want to do. Unions will be able to do anything they want to do. *(Source: Labor website page 12, 2004/05)*

Can your business survive the Labor-Union onslaught?

Pg 2

Almost 70% of Labor's front bench are ex-union officials.

Since 1998, unions have contributed more than \$46 million to Labor - with a lot more to come in this election year.

Small business fears cost blow-out

We'd restore dismissal laws, says Labor

Back to last old days of union unrest

IR roll-back is economic misery

Union deals to be 'forced' on bosses

"I intend to throw out Mr Howard's industrial relations laws lock, stock and barrel."
*Kevin Rudd, Labor Leader
Speech to Labor's National Conference, 27/04/07*

"I reckon we need to run the country a while back. I reckon it wouldn't be bad if we did run it."
*Clayton Leitch, Member of Parliament
Labor Release on Industrial, 28/04/07*

"I welcome particularly the policy that lets us put anything back in agreements that we can coerce our friendly employers to put back in. That's going to be fun."
*Peter Hodgson, State Secretary, Electrical Trades Union
Speech to Labor's National Conference, 28/04/07*

"You wait till Kevin Rudd's elected. I'll be back!"
*John McInnes, Building & Construction Trades Union
Sydney, 28/04/07*

SMALL BUSINESS CAN'T AFFORD A LABOR/UNION GOVERNMENT.

Figure A 5

Occurrence in sample: 388 100 full or partial reproductions by seven Parliamentarians (involving seven printed items—three standalone versions and one instance in which a Member reproduced page 2 of this version in a newsletter that was overwhelmingly comprised of reproductions of party campaign flyers) at a total cost of \$27 367. Including an invoice for artwork, one invoice was paid under the entitlement to print ‘magnetised emergency and community information cards’ and the remaining seven under the relevant Parliamentarians’ entitlements to print newsletters for distribution to their respective constituents.

Side 1



Side 2

How much further will the Liberals take **WorkChoices**?

During the last election campaign John Howard said nothing – **not one word** – about introducing WorkChoices.

John Howard’s extreme WorkChoices laws stripped away penalty rates, overtime, protection from unfair dismissal and lowered the take home pay of many working families.

You can’t believe Howard and Costello will stop there.

DON'T LET THEM TAKE WORKCHOICES FURTHER

Authorised by S Newsham 360 King St West Melbourne 3003. Printed by Hoskoin Printing 43-69 Rouse St Port Melbourne 3207

Figure A 6

Occurrence in sample: 915 000 reproductions in three versions by 14 Parliamentarians, involving 15 printed items at a total cost of \$57 038. All 15 invoices were paid under the relevant Parliamentarians' entitlements to print newsletters for distribution to their respective constituents.



Inside foldout






Figure A 7

Occurrence in sample: at least 2 038 079 full or partial reproductions by 25 Parliamentarians (a further four invoices did not state the quantity printed) at a total cost of \$245 452. This involved 40 printed items (seven standalone versions, two instances of partial reproduction within Member newsletters that were overwhelmingly comprised of election campaign material, and one instance of the generic inside panel of this version being reproduced on the reverse side of a Member's how to vote flyer). One invoice was claimed under the entitlement to print 'magnetised emergency and community information cards', with the remainder being claimed under the relevant Parliamentarians' entitlements to print newsletters for distribution to their respective constituents.

Generic front panel—Version 1	Generic inside page—Version 1
	
Generic first fold panel—Version 1	
	
Example of back panel with Member reference inserted	
	

Figure A 8

Occurrence in sample: at least 1 760 250 reproductions by 25 Parliamentarians (with a further two invoices not stating the quantity printed) at a total cost of \$164 786. This involved 46 printed items, primarily as standalone campaign flyers or brochures in various shapes and forms (including 11 that made no reference to the relevant Parliamentarian), but also including instances in which a version of this brochure was reproduced within newsletters that were either primarily or exclusively comprised of election campaign material. Including invoices for related artwork, 12 invoices were paid under the entitlement to print 'magnetised emergency and community information cards'; one was paid as a 'with compliments slip'; and the remaining 35 were paid under the relevant Parliamentarians' entitlement to print newsletters for distribution to the respective constituents.

<p>Example of front panel</p>	<p>Example of inside page</p>
	<p>"I have a Plan for Australia's Future."</p> <p>Maintaining our national security I will work with our allies and neighbours to strengthen Australia's national security. I will negotiate the phased withdrawal of our combat troops from Iraq in consultation with our allies.</p> <p>A strong economy that delivers for working families I'm an economic conservative committed to budget surpluses and maintaining the independence of the Reserve Bank - all designed to put downward pressure on interest rates. I will keep the economy strong by investing in skills and infrastructure. I'll also make sure our economy delivers for working families with policies on housing affordability and the cost of living.</p> <p>An education revolution My goal is for Australia to be the best educated nation in the world. We need an education revolution that starts at pre-school, includes state-of-the-art trades training centres in every Australian secondary school and flows through to TAFE and university.</p> <p>A national plan to fix our hospitals I will end the buck passing between Caribers and the States by investing \$2 billion to take pressure off emergency departments and reduce waiting lists. If States don't cooperate I'll seek a mandate for the Commonwealth to take over delivery of health care services.</p> <p>Decisive action on climate change and water I will ratify Kyoto, set emissions targets, support clean coal technology, renewable resources like solar and wind power. I'll also act to help secure our water supplies.</p> <p>Balance and fairness in the workplace I support balance and fairness in the workplace. I will get rid of the unfair WorkChoices laws and AWAs. Our unfair dismissal laws will provide special protections for small business.</p> <p>For more details go to www.kevin07.com.au</p> 
<p>Example of first fold panel</p>	
	
<p>Example of back panel with reference to Parliamentarian inserted</p>	
	

Appendix 5: Formal comments on the proposed report

Department of Finance and Deregulation

1. The Department of Finance and Deregulation contributes to Outcome 3 of the Portfolio Budget Statement through the provision of, and advice on, the entitlements of Ministers, Senators, Members, office-holders and former Parliamentarians and their respective staff (employed under the Members of Parliament (Staff) Act 1984). This program also provides VIP hire car services for Senators, Members and other office-holders. In administering parliamentary entitlements Finance needs to balance ease of access to entitlements with the need for proper accountability.
2. Finance notes that Australian National Audit Office (ANAO) report concludes that the current parliamentary entitlements framework is *difficult to understand and manage for both Parliamentarians and Finance* (paragraph 12) and is *complex and overdue for reform* (paragraph 18). The ANAO has also noted that *Finance's ability to provide clear advice to Parliamentarians has been impeded by the difficulties involved in interpreting and applying the framework to individual circumstances* (paragraph 32). We agree with these conclusions.
3. Finance further notes that the ANAO has recognised that there have been continuing improvements made to aspects of Finance's administration of Parliamentarians' entitlements (paragraph 15) and that Finance has developed a control structure aimed at promoting accountability in the use of Parliamentarians' entitlements (paragraph 31). The main elements of this control structure are written guidance through handbooks and circulars; monthly management reports; certifications; and an entitlements management system for processing of payments. The ANAO has acknowledged the *substantial improvement in the content of the Monthly and End of Financial Year Management Reports since the 2001-02 Audit Report* (paragraph 3.18).
4. The framework is overly complex—based as it is on mixture of primary legislation, regulations, Remuneration Tribunal determinations, procedural rules, executive decisions, accepted conventions and administrative practices. Components of the framework do not sit comfortably with one another and, in some cases, there is overlap, duplication, inconsistency and gaps. The framework has evolved over time to permit greater flexibility in the use of entitlements. However,

and partly because of that evolution, many of the entitlements lack clear boundaries and there are shades of grey that can contribute to breaches of the entitlements rules—the consequences of which have the scope to damage the reputations of parliamentarians generally.

5. There has not been a comprehensive review of parliamentary entitlements since 1971. The Government has accepted Finance's proposal, in July 2009, for a fundamental review of entitlements, including defining key terms such as parliamentary, electorate and official business.
6. The ANAO undertook an examination of the overall entitlements framework and examined a sample of five entitlements and focussed primarily in this report on the administration of the Printing Entitlement as it *is one of the more financially significant entitlements over which Parliamentarians are able to exercise some discretion within the legislated parameters of the entitlement* (paragraph 16). The ANAO has stated at various points in the report (paragraphs 16, 17, 18, 51, etc) that aspects of Finance's administration of the Printing Entitlement contributed to the confusion and lack of clarity around the entitlement. The ANAO has expressed the view that Finance's administration was 'gentle'. However, Finance has advised the ANAO that its administrative practices were in accordance with the wishes of successive Governments. When the newsletter entitlement was introduced in 1995 by the then Minister for Administrative Services, a key feature was that Members would deal directly with printers and only provide accounts to Finance. That practice continued under subsequent governments. Following dissatisfaction expressed by Senators about the vetting arrangements applying to their Printing Entitlement, which was then administered by the Department of the Senate, Senators' Printing Entitlement was transferred to Finance from 1 September 2006 so that the administrative arrangements reflected those for Members.
7. Finance's guidance to Parliamentarians on, and its administration of, the Printing Entitlement was based on the document known as the '31 statements'. The document was developed during 2004 by the then Special Minister of State who sought considered advice from Finance on its contents. In preparing its advice to the then Minister, Finance consulted with the Department of the Prime Minister and Cabinet and

with the Australian Government Solicitor. The content of the document, as subsequently agreed between the then Special Minister of State and Finance, was incorporated into advice provided to Senators and Members on entitlements use during an election campaign.

8. It was only on 22 July 2009 that Finance became aware that another reference point, known as the '42 questions and answers' document, was apparently being relied upon by Parliamentarians in guiding their use of entitlements. This document had been provided to Finance by the office of the then Special Minister of State in 2003 as an internal working paper with no particular status. The document was never endorsed by Finance, nor was it incorporated into advice provided by Finance to Senators and Members on entitlement use during an election campaign. However, if the components of the 42 Questions and Answers document were read separately by Parliamentarians and relied upon, as we now understand has occurred, then the number of printed items that would fall outside of this guidance would represent a very small proportion of the items sampled by the ANAO.
9. Finance has provided options to the current Government for consideration for reform of the Printing Entitlement. On 28 July 2009, the Government agreed to a major reform of the parliamentary entitlements framework, including significant changes to the Printing Entitlement. The key features of the reform package are: to replace the menu basis of the entitlement with a purpose based approach; to further reduce the Printing Entitlement by 25 per cent; to amalgamate it with the Communications Allowance; to remove how-to-vote cards from the entitlement; to limit the printing of postal vote applications; and to require all printed material to carry an acknowledgement that the item has been produced at Australian Government expense. In addition the Government agreed to the public reporting of all entitlements expenditure; to limit the newspapers and other publications entitlement to parliamentary or electorate business; and place a cap on office requisites. The Government also agreed to a root and branch review of the parliamentary entitlements framework that is expected to report in the first quarter of 2010.
10. Finance provides additional comments on the following subjects covered in the report to put ANAO's observations into context:

- Instructions to State Offices re invoices that did not appear to be within entitlement

Finance is concerned at the ANAO's misinterpretation of the intent of an email of March 2007 to the State Offices. The ANAO is effectively suggesting that [the officer] was instructing State Offices to collude with Senators and Members in the misuse of the entitlement.³²⁷ Finance states that the intent of the email was to strengthen the practices for handling printing invoices that did not appear to be within entitlement. Finance has provided evidence to the ANAO from State Office staff that the email had been interpreted in the manner intended. The email sought to ensure that the matter was referred back to the Parliamentarian concerned and maintain reliance on them to see that the invoice correctly described the printed material rather than asking relatively junior staff, who had not seen the material, to exercise such judgements on the Parliamentarian's behalf. Finance did not seek information directly from the relevant firm because it would have been inappropriate to do so because payment is made on the basis of certification by the Member. Therefore a printer would be unable to say, on behalf of a Member, whether an article described as a brochure, could also be described as a newsletter within the framework.

However, after the ANAO pointed out to Finance in June 2009 that this practice may have inadvertently encouraged Senators and Members to submit incorrect invoices, Finance changed its process, in July 2009, so that it now advises Parliamentarians that it is unable to make payment for items that are not consistent with the menu of approved printable items and returns the relevant invoice to the Senator or Member for their personal attention.

- Checking of entitlements

³²⁷ ANAO comment: The substance of the email instruction is reproduced at paragraph 5.124 with ANAO noting at paragraph 5.125 that (irrespective of Finance's intent) the department's approach has encouraged Parliamentarians to provide it with invoices that reflected the 'form' of the entitlement through the use of specific descriptors, rather than the department attempting to establish eligibility based on the substance of the item printed and/or services actually provided under the invoice (by examining a copy of what was actually printed). Finance recently changed its approach such that the department now advises Parliamentarians that it is unable to make payment for items that are not consistent with the menu of approved printable items and returns the relevant invoice to the Senator or Member for their personal attention.

In a framework which is largely self regulatory, Finance's powers to test use of entitlements is limited. The ANAO fails to acknowledge the difficulties this imposes on Finance in its checking of parliamentary entitlements and the fundamental difference between this environment and a typical Commonwealth agency which is likely to have legislative powers to compel the production of information or certain actions. The Government's decision to agree to an enhanced and checking function of entitlements will strengthen Finance's capacity and authority to undertake more thorough post payment checking of entitlements use.

- Use by political parties of particular printing firms, involvement of party officials and reflecting acknowledged campaign strategies

The ANAO has referred several places in the report to *evidence of involvement by party officials, including election campaign directors, in the design, production and/or authorisation of printed items and in the selection of printers and service providers; and the extent to which items in the sample reflected the acknowledged campaign strategies and associated advertising material of the political party for the 2007 Federal Election*. Finance notes that of themselves, these arrangements are not outside the terms of the printing entitlement as currently defined.

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