

Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Bill 2019

Introduction Print

EXPLANATORY MEMORANDUM

General

The Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Bill 2019 establishes a Remuneration Tribunal and amends the **Parliamentary Salaries and Superannuation Act 1968** (PSS Act), the **Members of Parliament (Register of Interests) Act 1978** (MPRI Act), the **Public Administration Act 2004** (PA Act) and the **Parliamentary Administration Act 2005**, and makes related amendments to certain other Acts.

The aim of the Bill is to comprehensively reform and strengthen the allowances and standards regime for Victorian Members of Parliament (Members).

Clause Notes

Part 1—Preliminary

Clause 1 provides that the main purposes of the Bill are to—

- establish the Victorian Independent Remuneration Tribunal (Tribunal) to—
 - determine salaries, work-related parliamentary allowances and the Budget for Members of Parliament under the **Parliamentary Salaries and Superannuation Act 1968**; and

- determine remuneration bands for executives employed in prescribed public entities
- determine remuneration bands for executives employed in public service bodies; and
- perform such other functions as are specified; and
- amend the **Parliamentary Salaries and Superannuation Act 1968** to—
 - rename the Act and provide for the purpose of the Act; and
 - insert a Statement of Principles in relation to the use of public resources by Members of Parliament; and
 - provide for work-related parliamentary allowances and the Budget;
 - create a new parliamentary travel allowance to support the travel of Members of Parliament where necessary for the performance of their public duties; and
 - replace the resettlement allowance with a separation payment;
 - establish a monitoring, compliance and enforcement system to be administered by the relevant Officer; and
 - provide for a Compliance Officer (CO) to hear and determine appeals in relation to determinations; and
- amend the **Members of Parliament (Register of Interests) Act 1978** to promote public trust and confidence in Members of Parliament by—
 - renaming the Act and providing for the objective of the Act; and
 - inserting a Statement of Values for Members of Parliament; and

- updating the Code of Conduct for Members of Parliament; and
- expanding the Register of Interests for Members of Parliament; and
- making other necessary amendments; and
- amend the **Parliamentary Administration Act 2005** to clarify the role of electorate officers; and
- amend the **Public Administration Act 2004** to clarify the employment of Parliamentary advisers; and
- consequential amendments to certain other Acts.

Clause 2 provides the relevant commencement dates for Parts and sections of the Act.

Parts 1, 2, 3, 4 and 5, sections 46 and 47, Parts 7 and 8 and sections 83 to 85 come into operation on the day after the day on which this Act receives the Royal Assent. This is intended to facilitate the timely commencement of the Tribunal's operations, the reforms to the **Members of Parliament (Register of Interests) Act 1978**, and amendments to clause 30 of the **Parliamentary Administration Act 2005** to clarify the role of electorate officers.

Section 61 is to be taken to have come into operation on 1 July 2018. This will ensure that changes to the superannuation arrangements for Members is aligned with the commencement of the 2018-19 financial year.

Section 55 is to be taken to have come into operation on 23 November 2018. This will ensure that Members who lose their seat at the 2018 election will be entitled to receive the separation payment.

The remaining provisions of the Act come into operation approximately 6 months after Royal Assent, which will allow sufficient time to implement the reforms, and will ensure that most of the reforms to the **Parliamentary Salaries and Superannuation Act 1968** will be aligned with the first MP Tribunal determination taking effect.

Clause 3 provides for various definitions to facilitate the operation of the Bill, including *additional salary*, *basic salary*, *Budget*, *Member*, *specified parliamentary office*, *specified parliamentary office holder*, and *work-related parliamentary allowances*.

Clause 3 amends the definition of *specified parliamentary office* to reflect changes to the arrangements for third parties under the **Parliamentary Salaries and Superannuation Act 1978** in clause 47 of the Bill.

Clause 3 also inserts definitions of *public entity* and *public service body Head*, which are consistent with the PA Act.

Clause 3 further contains definitions of the following terms—*Chair*, *Compliance Officer*, *Determination*, *prescribed*, *specified occupational group*, *Tribunal*, *Tribunal member*, and *Tribunal officer*.

Part 2—Victorian Independent Remuneration Tribunal

Clause 4 establishes the Tribunal.

Clause 5 determines that the Tribunal will be an independent and impartial body, and that the Tribunal and its members will not be subject to the direction or control of any person, to ensure the Determinations made by the Tribunal are independent and objective.

Clause 6 describes the functions and powers of the Tribunal.

The Tribunal has the following functions—

- inquire into and determine the basic salary and the value of work-related parliamentary allowances for Members;
- inquire into and determine the additional salary and value of parliamentary allowances for specified parliamentary office holders;
- inquire into and determine the Budget;
- inquire into and determine the remuneration bands for executives employed in prescribed public entities;
- issue guidelines with respect to the placement of executives within the remuneration bands determined under paragraph (d);

- at the request of the Minister, inquire into and determine the remuneration package for a Chief Executive Officer employed in a prescribed public entity;
- inquire into and determine the remuneration bands for executives employed in public service bodies;
- issue guidelines with respect to the placement of public service body Heads and other executives within the remuneration bands determined under paragraph (g);
- provide advice about requests to approve remuneration for public service body Heads and other executives which is above the relevant remuneration band;
- make recommendations to the Minister about the remuneration of any specified occupational group;
- conduct reviews and analyse public sector remuneration trends in relation to any specified occupational group;
- provide advice to the Minister on any matter relating to the remuneration of any specified occupational group;
- prepare and publish information on any matter relating to the remuneration of any specified occupational group.

The Tribunal will not have the power to make determinations in relation to matters that are within the jurisdiction of the Commonwealth Fair Work Commission.

- Clause 7 provides that the Tribunal will consist of up to 3 members, including a Chair. This ensures that matters decided by the Tribunal will have a deciding vote, and is largely consistent with Tribunals in other jurisdictions. Members will be appointed by the Governor in Council on recommendation of the Minister.
- Clause 8 outlines the eligibility criteria that individuals must meet to be appointed as a Tribunal member. This criteria aims to ensure that Tribunal members have specialist expertise in a relevant field. To ensure independence, the criteria further disqualifies individuals who would be affected by the Determinations of the Tribunal.
- Clause 9 establishes the terms and conditions under which a Tribunal member is appointed, including terms of remuneration, and eligibility for re-appointment.

- Clause 10 establishes the conditions under which a Tribunal member ceases to hold office, resigns or is removed from office. These conditions are consistent with modern workplace arrangements, and are included to safeguard against misconduct, neglect of duty or an inability to perform the duties that the position requires.
- Clause 11 outlines the conditions under which the Governor in Council or responsible Minister may appoint an acting Tribunal member, and provides that an acting Tribunal Member may exercise all the powers, and perform the functions of the office of a Tribunal member. This provides operational flexibility, and ensures the Tribunal can continue to operate if a Member cannot fulfil their duties for any reason.
- Clause 12 outlines the structure of meetings of the Tribunal, including the role of the Chair and that 2 Tribunal members constitutes a quorum. To allow for operational flexibility, the Tribunal will determine its own procedure.
- Clause 13 states that while performing the functions of the Tribunal, the Tribunal may inform itself in any manner, and is not required to conduct proceedings in a formal manner. This is to ensure that the Tribunal has operational flexibility, and is consistent with methods of inquiry for some other special bodies established under the **Public Administration Act 2004**.
- Clause 14 pertains to the disclosure of interest of Tribunal members. It states that if a Tribunal member has an interest (financial or otherwise), in a matter to be considered by the Tribunal, and the interest could conflict with the proper performance of the Tribunal member, the nature of the interest must be disclosed at a meeting of the Tribunal. The affected Tribunal member must not take part in the consideration of the decision without the consensus of the other members. This provision is to ensure that the Tribunal members remain objective and accountable in their decisions, and are not unduly influenced by conflicting interests.
- Clause 15 states that the Secretary of the Department must make employees available to assist with the functions of the Tribunal (known as Tribunal officers). It is intended that these officers will be part of the Secretariat that supports the Tribunal.
- The Chair will be able to delegate powers, except for the powers listed (such as the power of delegation).

To ensure that the Tribunal remains independent (while supported by a Secretariat provided to it by the Department), there will be a clear delineation of the roles and functions of the Tribunal and Secretariat respectively, and Tribunal officers will be exempt from relevant parts of the VPS Code of Conduct (which is consistent with arrangements for Formal Reviews under the **Inquiries Act 2014**).

Part 3—Determinations

Clause 16 grants the Tribunal the power to make Determinations as outlined in Part 3 and specifies that a Determination is not a legislative instrument within the meaning of the **Subordinate Legislation Act 1994**.

Subordinate Legislation Act requirements are designed to provide safeguards for legislative instruments which affect the general population or a large group of people. Tribunal Determinations will only affect current or former Members and executives of prescribed public service entities. The Bill mirrors Subordinate Legislation Act requirements where appropriate (for example, by publishing and tabling Member Determinations) to promote transparency.

Clause 17 outlines the Tribunal's jurisdiction for making Determinations relating to Members, including setting the value of salaries, allowances and the Budget made available to Members. This ensures that Members no longer determine their own salaries and allowances, will establish a more independent regime, and will bring Victoria into line with other Australian jurisdictions.

Subsection (2) specifies that a Tribunal Determination may provide differential values for—

- the additional salary for specified parliamentary office holders according to the office held, or in accordance with any other prescribed criteria; and
- the additional salary for specified parliamentary office holders that are Chairs or Deputy Chairs of committees, according to the committee in which the office is held; and

- work-related parliamentary allowances based on the area of the electorate represented by the Member, the number of electors represented by a Member, the place at which a Member usually resides or in accordance with any other prescribed criteria.

Subsection (3) requires that the Tribunal must—

- not set basic salary at a rate higher than the basic salary for Commonwealth Members. This is consistent with recent Parliamentary practice to set salaries for Victorian Members below Commonwealth Members, recognising that Commonwealth Members serve a larger jurisdiction;
- take into account the salary and allowances for, and roles and responsibilities of, Members of the Commonwealth and other states and territories;
- take into account existing guidelines and rulings governing the use of parliamentary allowances, including any relevant Australian Taxation Office rulings; and
- ensure that individual Members are in an overall position that is no less favourable than under current arrangements, taking into account basic salary, additional salary, work-related parliamentary allowances, the Electorate Office Communication Budget, pension and superannuation.

This provides additional safeguards for the total package of salaries and allowances received by Members and will ensure that Members' salary and allowances are in line with community expectations, and the practices of other jurisdictions.

Subsection (4) clarifies that, following the first determination, the Tribunal can determine the value of an allowance, including the electorate allowance, be set at zero, or that there is no change to the value of allowances or salaries between determinations or annual adjustments.

Subsection (5) stipulates specific requirements for the Tribunal's first determination, namely that the Tribunal must—

- set the value of the electorate allowance at not less than \$20 000;

- set a portion of basic salary that will be defined as "basic salary" for the purpose of the Parliamentary Contribution Superannuation Fund scheme;
- provide for the annual indexation of the basic salary portion; and
- undertake a comprehensive review of the existing basic salary, additional salaries, work-related Parliamentary allowances and Member superannuation and pension arrangements. This has the aim of limiting the discrepancies between Members on the PCSF and those who are part of the contribution scheme.

Clause 17(6) also provides that the first MP Determination will take effect 180 days after Royal Assent. This allows the Tribunal time to begin its operations, complete its comprehensive review of allowances currently available to Members, and will align with the first determination regarding remuneration bands for executives employed in public service bodies.

Clause 17(7) provides that the Tribunal will make subsequent comprehensive Determinations within 6 months after the first sitting day of each subsequent Parliament.

Clause 18 provides that the Tribunal must make an annual adjustment in relation to Members, of the value of salaries, additional salaries, work-related parliamentary allowances and the Budget. To ensure adjustments do not occur within a short space of time, the provision further states that an annual adjustment must not be made within 9 months of a Determination.

Clause 19 outlines the Tribunal's jurisdiction for making Determinations for remuneration bands for executives employed by prescribed public entities. It states that alongside a new Determination, the Tribunal must produce a comprehensive review analysing the roles of public sector executives employed by prescribed public entities and existing remuneration.

Clause 19 also mandates that the Tribunal must make a new Determination for these executives every 4 years.

Clause 20 determines that the Tribunal must make an annual adjustment to remuneration bands for executives employed by prescribed public entities. This is intended to reflect increases in inflation. To ensure that multiple adjustments do not occur within a short

space of time, the provision further notes that an adjustment must not be made if a Determination has been made in the preceding 9 months.

Clause 21 provides that the Tribunal must make a new Determination setting the values of remuneration bands set for the executives in public service bodies. It states that alongside a new Determination, the Tribunal must undertake a comprehensive review of the roles of executives in public service bodies and existing remuneration.

Clause 21 further states that the Tribunal must make a new Determination for these executives every 4 years.

Clause 22 determines that the Tribunal must make an annual adjustment to remuneration bands for executives in public service bodies. This is intended to reflect increases in inflation. To ensure that multiple adjustments do not occur within a short space of time, the provision further notes that an adjustment must not be made if a Determination has been made in the preceding 9 months.

Clause 23 provides that the Minister may request the Tribunal make a Determination in relation to any matter relating to remuneration of executives employed in prescribed public entities and executives employed in public service bodies being a matter of which the Tribunal has the power to make a determination. This facilitates the Tribunal in having a role, amongst other things, in analysing potential new trends and issues related to remuneration and allowances for public sector executives, and clarifies that the Minister cannot request a Tribunal determination in relation to Members and parliamentary office holders. The requirements in clauses 24 and 26 will not apply to determinations made under clause 23.

Clause 24 outlines requirements for when the Tribunal is considering, and publishing a Determination. It is intended that there is reasonable opportunity for groups of people affected by the Determinations of the Tribunal, to make submissions to the Tribunal. The Tribunal must consider various factors in the Determination-making process and their deliberations and assessment of factors are required to be published in a public statement of reasons that accompany a Determination.

- Clause 25 outlines when specific Determinations for the various occupational groups under the Tribunal's jurisdiction take effect. Determinations will be staggered and will generally take effect on the day specified in the Determinations. The first comprehensive Determination for public service executives will take effect 6 months after Royal Assent. The first comprehensive Determination for executives in prescribed public entities will take effect 12 months after Royal Assent. Annual adjustment Determinations will take effect on 1 July of the year in which it is made.
- Clause 26 ensures that the Tribunal remains accountable and transparent in its decision-making, by requiring that the Chair of the Tribunal provide a copy of a Determination about Members to the Clerk of each House of Parliament, for tabling on the next sitting day. All Determinations will also be published online, to ensure the public has access to these decisions, and they are consolidated and available in a single location.

Part 4—Compliance Officer

- Clause 27 establishes the office of Compliance Officer (CO) attached to the Tribunal.
- Clause 28 outlines the functions and powers of the CO. The CO will initially hear and determine appeals regarding the separation payment, and will also hear and determine appeals regarding the misuse of work-related parliamentary allowances and the Budget once the compliance regime for these commences 6 months after Royal Assent.

Clause 28 also provides that the CO is not bound by the rules of evidence, may conduct a proceeding with as little formality as considered appropriate, and is not subject to direction or control of any person. This ensures that the CO is an independent adjudicator, and can undertake its functions without undue influence from outside parties.

Clause 28 further notes that the function of the CO will be performed by the primary CO, and if the primary CO is unable to hear an appeal, the secondary CO will perform the functions of the office. This ensures that the functions of the CO can still be completed even if the primary officer cannot, for any reason, acquit the duties of the position.

Clause 29 outlines that a primary and secondary CO will be appointed by the Governor in Council, on the recommendation of the Minister.

Clause 29 further states that a person is eligible to be appointed as a CO if they are, or have been, qualified for appointment as a judge of specified jurisdictions in any Australian state or territory or has extensive or specialist knowledge in a relevant field.

This eligibility criteria guarantees that only appropriately qualified individuals will be responsible for determining appeals. Further, a person is not eligible to be appointed as a primary or secondary CO if that person is a Member or nominates for election as a Member. This criteria aims to avoid potential conflicts of interest.

Clause 30 provides the Accountability and Oversight Committee with a veto power over the appointment of a proposed CO. This will assist to secure parliamentary support for decisions of the CO. Consistent with the provisions for the appointment of the IBAC Commissioner, the Premier will consult with the Leader of the Opposition before the Minister makes a recommendation about the appointment of the first CO.

Clause 31 details that a primary or secondary CO can hold office for up to 5 years, is not eligible for re-appointment, and is appointed on a sessional basis. Restricting the period of time an individual can serve as a CO safeguards against the development of personal or professional conflicts of interest, and protects their independence. The remuneration provided to a CO cannot be reduced during their term of office unless they consent, which further safeguards their independence.

Clause 32 outlines the circumstances under which a primary or secondary CO can resign, cease to hold, or be removed from office. These provisions (including becoming insolvent, convicted of an indictable offence, or nominates as a Member) are generally consistent with arrangements for other Victorian office-holders (including Tribunal Members). They provide flexibility for an individual wishing to leave the role, but simultaneously assure that the Governor in Council may remove an individual from the office on the grounds of misconduct, neglect of duty, or an inability to perform the duties of office.

- Clause 33 provides that a CO must avoid any actual or potential conflict of interest with their function as a CO. It also provides that a CO may declare that they are unable to hear an appeal if they believe that they have an actual or potential conflict of interest in relation to any matter relating to the appeal.
- Clause 34 specifies that a CO, in the performance of their functions and duties, and affected parties (including Members and the relevant Officer) in the course of an appeal, will have the same protection and immunity as if they were appearing before the Supreme Court of Victoria. This will support the effective monitoring, compliance and enforcement of the regime,
- Clause 35 provides that any Determination made and published by the CO be absolutely privileged to allow findings to be made public without the threat of legal proceedings.

Part 5—General

- Clause 36 provides that the Tribunal may make and publish guidelines with respect to the use of work-related parliamentary allowances and the Budget. This will support the Tribunal's role in setting the value of allowances, and will provide independent guidance to Members. These guidelines will take effect 180 days after Royal Assent, which aligns with the commencement of most of the reforms to the **Parliamentary Salaries and Superannuation Act 1968**.

Clause 36(2), however, specifies that the Tribunal cannot make guidelines for or with respect to the use of, or any terms and conditions relating to, either the electorate allowance or the expense allowance. This reflects the intention that the Tribunal's role is only to set, and not monitor, these allowances. The clause also anticipates that the Tribunal may, after its first determination, set the value of the electorate and expense allowance at zero.

The Tribunal may also make guidelines regarding the placement of executives employed in prescribed public entities, or public service body Heads and other executives employed in public service bodies, within the remuneration bands set by a Determination. This role complements the Tribunal's Determination-making function, as it allows it to conduct

analysis and publish helpful guidelines in relation to groups under its jurisdiction.

Clauses 36(4) and (5) outline the tabling requirements that the Tribunal must follow in issuing guidelines about the use of allowances and the Budget. They require that the Chair provide the Clerk of each House with a copy of the guidelines as soon as they are made, so that the Clerks may notify Members that guidelines have been made, and circulate the guidelines.

Clause 36(7) provides that the Chair must publish Tribunal guidelines as soon as practicable after the guidelines are made.

Clause 36(8) makes explicit that Guidelines issued by the Tribunal under section 37 of the Act are not legislative instruments under the **Subordinate Legislation Act 1994** and therefore are not subject to the requirements under that Act.

Clause 37 notes that if an employer proposes to pay a relevant executive remuneration that exceeds the maximum of the relevant band as set by the Tribunal for that classification, the employer must apply to the Tribunal for advice. The Tribunal must then provide advice on this application within a reasonable time, and the employer must consider the Tribunal's advice.

Clause 37 also states that the Minister may require the Tribunal to provide advice about any matter relating to the remuneration provided to any specified occupational group. These functions are consistent with the Tribunal's expertise on matters relating to remuneration for Members and executives in the public sector.

Clause 38 provides that the Tribunal may publish reports about any matter relating to remuneration of any specified occupation group within its jurisdiction. This provides flexibility for the Tribunal to undertake research it considers relevant, but that may not be specifically requested by a Minister.

Clause 39 requires the Tribunal to conduct a review and report on Member superannuation and pension arrangements, including potential inequalities and irregularities between Members on different superannuation arrangements. This amendment will supplement but will be separate to the Tribunal's first determination. The review must occur within 18 months of the commencement of clause 39 and cannot consider any option which would result in existing or former Members being worse off.

Clause 40 mandates that as soon as practicable after the end of the financial year, but no later than the following 31 October, the Tribunal must submit an annual report to the Minister containing information including—

- the number of Determinations made;
- details of disclosed interests;
- an operational review;
- the number of Members who have not complied with requests from the CO for information in relation to determinations about the separation payment, or the misuse of work-related parliamentary allowances or the Budget;
- the number of appeals heard by the CO about the separation payment, or the misuse of work-related parliamentary allowances or the Budget; and
- a report on the performance of the function of the CO.

The preparation of an annual report is standard practice for independent entities, and facilitates good practice and transparency about the activities of the Tribunal and CO.

Clause 41 outlines that a Tribunal member, a Tribunal officer, or a CO must not knowingly disclose any information acquired during the performance of their duties, except—

- in carrying out their role;
- if the information is already in the public domain; or
- is otherwise authorised.

This is to ensure the confidentiality of personal or sensitive information, is consistent with procedures for similar bodies.

Clause 42 provides exceptions to the disclosure of information outlined in Clause 41. If a Tribunal member, Tribunal officer or CO considers that information is relevant to the performance of the functions of the body or person that has public or official functions, and considers disclosure is appropriate, they may provide that information. This caveat is designed to provide discretion to the members and officers in determining appropriate circumstances for the disclosure of information, but limits

disclosure to a person or body with public or official functions to ensure that information is disclosed only when appropriate.

- Clause 43 relates to a person to whom the Tribunal member, Tribunal officer, or CO gives information to, during the course of their duties or functions. Unless this information is already available in the public domain, the person must not take advantage of the information to benefit themselves, or another person.
- Clause 44 specifies that the Governor in Council may make regulations for, or with respect to any matter or thing required or permitted by the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**.
- Clause 45 requires the Minister to undertake a review of the Act after 10 years, and cause a copy of the review to be laid before each House of Parliament within 12 months. This review mechanism is consistent with review mechanisms in other reforms (such as the introduction of the Charter of Human Rights and Responsibilities).

Part 6—Amendment of the Parliamentary Salaries and Superannuation Act 1968

- Clause 46 specifies that the Principal Act in Part 6 is the **Parliamentary Salaries and Superannuation Act 1968**.
- Clause 47 establishes consistent treatment of third party office holders and sets out the additional salary and expense allowance for these office holders (which, where appropriate, mirrors current arrangements set out in the Table under section 6 of the **Parliamentary Salaries and Superannuation Act 1968**).
- Clause 47 also inserts a definition of *Compliance Officer*.
- Clause 48 renames the Principal Act the **Parliamentary Salaries, Allowances and Superannuation Act 1968**, to better reflect the intent and jurisdiction of the Act.
- Clause 49 outlines the purpose of the Principal Act, including the provision of salaries, work-related parliamentary allowances, the Budget, and superannuation arrangements for Members.
- It also sets out a Statement of Principles with respect to the use of public resources by Members.

Additionally, it is intended that the Principal Act establish a monitoring, compliance and enforcement scheme in relation to the use of work-related parliamentary allowances and the Budget. This aims to ensure that public resources made available to Members to facilitate them in undertaking their public duties are used responsibly, transparently and in accordance with relevant legal obligations.

Clause 50 amends and inserts definitions necessary for the operation of the Principal Act, including *basic salary*, *additional salary*, *Budget*, *prescribed*, *public resources*, *relevant Clerk*, *relevant Officer*, *specified parliamentary office*, and *work-related parliamentary allowances*.

Clause 50 inserts a definition of *Tribunal Guidelines* to clarify that, in Divisions 4 and 5 of Part 2 of the **Parliamentary Salaries and Superannuation Act 1968**, *Tribunal Guidelines* means any Tribunal guidelines made under section 36(1) of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**. This is intended to distinguish Tribunal Guidelines from guidelines issued by the Minister under Division 5, proposed new section 9L.

Clause 50 further inserts definitions of *Determination* and *Tribunal*.

Clause 50 also inserts a definition of *public duties*, which is consistent with definition in the **Members of Parliament (Standards) Act 1978**.

Clause 51 amends the heading of Part 2 of the Principal Act to reflect that the Part also includes the Budget.

Clause 52 inserts a new Division 1 in Part 2 of the Principal Act that describes a Statement of Principles that applies to the use of public resources by Members. The Principles reflect that—

- Members should receive fair and reasonable recompense for public duties;
- public resources are provided to Members to support them in performing their public duties;

- Members must act ethically, reasonably, and in good faith when using, and accounting for the use of public resources; and
- Members must be responsible and accountable for their use of public resources.

The insertion of a Statement of Principles aims to assist the decision-making of Members when utilising public resources. The introduction of Principles is consistent with recent Commonwealth reforms, and provides overarching guidance for Members when utilising public resources made available to them.

Clause 53 is a consequential amendment, and inserts the title of Division 2 into the Principal Act.

Clause 54 substitutes section 6 of the Principal Act and reflects that a Member is to be paid the electorate allowance and expense allowance (if any) along with a salary (and additional salary, if the Member is an additional office holder). This clause also outlines the allowances that comprise the 'work related parliamentary allowances' made available to a Member to support them in the exercise of their public duties. This complements the principle that Members should receive recompense for their role, and that public resources are made available to them to facilitate their performance of public duties. This is standard practice, and aims to fairly and reasonably pay Members.

The new travel allowance is intended to consolidate and replace the existing Melbourne allowance, general travel allowance, overnight electorate allowance, and commercial transport allowance.

The electorate allowance and expense allowance is excluded from the list of 'work-related parliamentary allowances', to ensure that the electorate and expense allowance are not subject to the monitoring, compliance and enforcement regime under Part 6 of the Bill.

Clauses 54(4) and (5) also sets out requirements for the Leader of the Opposition to notify the relevant Clerk of a House of Parliament in writing of the name of any Member of that House who holds the specified parliamentary office of Shadow Minister within 7 days of the Member holding or ceasing to hold that office.

Clause 54(6) provides that Members may elect to be provided with a vehicle in lieu of receiving a motor vehicle allowance. This ensures that Victoria's motor vehicle allowance provisions are consistent with those that exist at a Commonwealth level.

Clause 55 substitutes a new section 7E and replaces the resettlement allowance with the separation payment.

Consistent with the existing resettlement allowance, the separation payment will be available to eligible Members who are not part of the Parliamentary Contributory Superannuation Fund (the pre-2004 defined benefits scheme).

New subsection 7E(1) provides that section 7E applies to a person who is not a member of the Scheme under Part 3 and who—

- dies whilst in office as a Member of Parliament; or
- otherwise ceases to be a member of either House of the Parliament or does not seek re-election at a general election for any reason, other than corrupt conduct or a significant and wilful breach of the Code of Conduct that applies to Members.

To better reflect the eligibility of the revised allowance, the Bill renames the allowance the "separation payment". New subsection 7E(2) specifies that the separation payment prescribed in subsection (1) is to be calculated in accordance with subsections (3) and (4).

New sections 7E(3) and (4) prescribe the formula for calculation of the separation payment on a pro-rata basis according to the time a Member served in Parliament, with Members receiving 3 months' salary for up to and including one full term, and 6 months' salary for 2 full terms or more. If a Member has served between one and 2 full terms, the Member will receive 3 months' salary for the first full term, and a pro-rata amount for the part of the second term, which is based on the number of months the person served in that term. This ensures that the separation payment is proportionate to the period of service in Parliament, and in line with community expectations.

Proposed new section 7E will be backdated to take effect from 23 November 2018 so that Members who lose or do not recontest their seat at the 2018 election will be eligible to receive the

separation payment. The Bill allows for the recovery of the value of the separation payment (without any penalty) if a former Member is later convicted of a corrupt conduct offence relating to their term as an Member, or significant and wilful breach of the Code of Conduct, as determined by the Clerk of the relevant House, or by the CO at appeal.

This reflects a community expectation that Members not receive a separation payment if they leave Parliament because they have acted unlawfully or otherwise breached the public's trust. Recovery is contemplated due to the expected time lag involved with convictions for corrupt conduct or a finding that a Member has committed a significant and wilful breach of the Code of Conduct during a person's time as a Member.

New subsection 7E(5) provides that a person must repay a separation payment received under this section if, during the Parliament immediately after the general election at which he or she ceased to be a member, the person—

- is declared elected as a result of a declaration of the Court of Disputed Returns under the **Electoral Act 2002**; or
- is re-elected as a member of either House of the Parliament; or
- becomes a member as a result of being chosen under section 27A of the **Constitution Act 1975** to fill a casual vacancy in the Council.

This is to reflect that a person who returns to Parliament no longer requires a bridging payment to transition to non-parliamentary life.

New subsection 7E(6) provides that if a person ceases to be a member of either House of the Parliament because of their death, the separation payment can be provided to either a person or persons nominated in writing to the Clerk by the Member, or the Member's beneficiary or beneficiaries.

New sections 7E(7)–(23) provide that if—

- a former Member is convicted of corrupt conduct in connection with their period in office as a Member; or

- the Clerk of the relevant House of the Parliament or the CO determines that a former Member has committed a significant and wilful breach in connection with their period in office as a Member,

the separation payment made to the former Member becomes a debt due to the State and may be recovered by the Clerk of the relevant House of the Parliament as a debt due to the State in a court of competent jurisdiction.

This reflects that a Member should not obtain the separation payment if they have misused their office during their time as a Member.

New section 7E also sets out the procedure and requirements that apply in relation to determinations and appeals about significant and wilful breaches of the Code of Conduct by former Members. These include—

- allowing the relevant Clerk to request that a former Member provides information;
- allowing the relevant Clerk to determine that a former Member has committed a significant and wilful breach if the Member does not comply with a request for information;
- providing the former Member with reasonable notice of a proposed determination;
- providing the former Member a reasonable opportunity to make submissions in relation to a proposed determination;
- providing the former Member with the opportunity to appeal a determine to the CO;
- allowing the CO to request that a former Member provides information;
- allowing the CO to determine that a former Member has committed a significant and wilful breach if the Member does not comply with a request for information;
- requiring the CO to notify the Member and the relevant Clerk of the findings of an appeal, and providing the CO with a discretion to publish the findings; and

- limiting reimbursement of legal costs.

These provisions are consistent with other provisions in the Bill regarding determinations, such as those in relation to determinations regarding the misuse of work-related parliamentary allowances and the Budget.

New subsection 7E(22) provides that the Clerk of the relevant House of the Parliament must include the following in the annual report of the Parliament—

- the number of Members who received a separation payment;
- the number of determinations made under subsection (8);
- the number of former Members who have not complied with a request under subsection (9).

This aims to improve transparency about the separation payment.

New subsection 7E(23) provides that in this new section 7E—

- *corrupt conduct* has the meaning given in section 4 of the **Independent Broad-based Anti-corruption Commission Act 2011**; and
- *significant and wilful breach* means a significant and wilful breach of the Code of Conduct under the **Members of Parliament (Standards) Act 1978**;
- *general election* includes—
 - a supplementary election held as a result of a failed election at a general election; or
 - a re-election held as a result of a tied election at a general election.

It is intended that the *general election* definition will also draw upon the definition of *general election* in the **Electoral Act 2002**.

Clause 56 inserts new Division 3 in Part 2, which enshrines in legislation the Electorate Office and Communications Budget (Budget) in the Act. The Budget is consistent with the current allowance provided in the *Parliament of Victoria Member's Guide*. The Budget will be made available to Members to fund the

operating costs and maintenance of their electorate offices, and communicate with their electorate in relation to the performance of their public duties. The Budget will continue to be funded in the annual Appropriation (Parliament) Act. The establishment of the Budget in the Act ensures that public resources made available to Members to facilitate them in undertaking their public duties, are consolidated in a single piece of legislation. While the Budget is not strictly an 'allowance' payable to Members, the Budget represents a significant expenditure to enable Members to serve their constituents. Establishing it in legislation will subsequently increase transparency about the allowances available to Members, and the intended purpose of those allowances.

- Clause 57 makes consequential amendments by repealing section 8, 8A and 8B and amending section 31(2)(a)(ii) of the Principal Act.
- Clause 58 amends section 9 of the Principal Act to maintain the Budget's existing source of funding and provide that the Budget will not be funded by a Special Appropriation from the Consolidated Fund.
- Clause 59 inserts new Divisions 4, 5, and 6 into Part 2 of the Principal Act and establishes monitoring, compliance and enforcement provisions relating to work-related parliamentary allowances and the Budget.

Proposed new sections 9A, 9B, and 9C outline legal principles that will underpin the regime relating to the administration of work-related parliamentary allowances and Budget. These include that a Member must obtain value for money, that allowances and the Budget must be used for the dominant purpose of performing their public duties, and that a Member must not make claims or incur expenses in breach of Tribunal Guidelines or terms or conditions.

Members will be required to ensure their use of allowances adheres to these legal principles, and violation may result in a determination by the relevant Officer that misuse has occurred.

Proposed new sections 9C(5) and (6) set out that any terms or conditions imposed by a relevant Officer in relation to work-related parliamentary allowances and the Budget must be consistent with any regulations, and if there is an inconsistency, the regulations will prevail to the extent of the inconsistency.

Proposed new sections 9C(7) and (8) further clarify that any term or condition imposed by a relevant Officer in relation to work-related parliamentary allowances and the Budget must be consistent with any Tribunal Guidelines, and that if there is an inconsistency, the Tribunal Guidelines will prevail to the extent of the inconsistency. This will allow the Tribunal to provide independent advice about the use of parliamentary allowances, and will support the Tribunal's role in setting the value of parliamentary allowances.

Proposed new section 9D determines that a Member may only claim a travel allowance by making a claim for the reimbursement of costs incurred. This provision increases the accountability of Members who undertake travel as part of their public duties, as it ensures that compensation will only occur for certifiable and reasonable costs relating to travel undertaken. This reduces the potential for misuse of the travel allowance.

Proposed new section 9E outlines the procedure for making a claim for a work-related parliamentary allowance or under the Budget. It determines that the claim must be lodged with the relevant Officer, and include a certificate provided by the Member stating that the claim complies with the Act, regulations, any other prescribed documents and the Tribunal Guidelines. The Member must include an explanation for any claims relating to a travel allowance if they have already claimed 68 nights of allowance in a calendar year. All claims relating to work-related parliamentary allowances or the Budget must be accompanied by the prescribed supporting documents (and any additional prescribed documentation if a travel allowance claim of a Member exceeds 68 nights of travel claims in a calendar year).

These stringent compliance mechanisms aim to ensure that the regime is simple, straight-forward, and reflective of modern workplace arrangements. By mandating that a Member include a certificate of compliance when submitting a claim, the responsibility to ensure that costs are appropriate and publicly justifiable is placed with the Member.

Proposed new section 9F outlines that the relevant Officer may request further information in support of, or about the claim for, a work-related parliamentary allowance or the Budget, where the Officer considers it reasonable to determine that claim. If a Member does not comply with this request, the relevant Officer may determine that the claim made by the Member does not

comply with the Act, the regulations, any other prescribed document and the Tribunal Guidelines.

Proposed new section 9G outlines that the relevant Officer must determine whether the claim for a work-related parliamentary allowance or under the Budget, or the conduct in relation to a claim complies with the Act, the regulations, any other prescribed document and the Tribunal Guidelines. If the relevant Officer is satisfied that a claim complies in whole or in part with the Act, the Tribunal Guidelines and other requirements, the relevant Officer will be required to pay the value of the claim that complies with the Act or regulations. However, if a relevant Officer proposes to determine that a claim does not comply with the Act, the Tribunal Guidelines and other requirements in whole or in part, the relevant Officer will be required to notify the relevant Member and provide the Member with a reasonable opportunity to make submissions about the proposed adverse determination. If it is determined that a Member has misused an allowance or the Budget, the Member will be required to repay the amount that was misused, together with a 25% penalty on the amount that was misused. If the Member does not pay the amount, relevant Officers will be allowed to deduct the outstanding amount from future payments to the Member, and if necessary, recover the outstanding amount in a court of competent jurisdiction.

A Member is not entitled to the reimbursement of any legal costs incurred by the Member in relation to a determination. This aims to ensure that these proceedings are as informal as possible.

These provisions ensure there is strict due process, and reasonable opportunity for a Member to clarify their expenditure, or conduct in relation to a claim in consultation with the relevant Officer. Additionally, the application of a 25% penalty is intended to act as a sufficient deterrent for Members to wilfully or inadvertently misuse public resources made available to them in undertaking their public duties.

Proposed new section 9H outlines the appeal procedure available to Members who are aggrieved by the determination of a relevant Officer that a claim does not comply with the Act. A Member may appeal the determination of the relevant Officer to the CO within 28 days of the initial determination that a claim does not comply with the Act.

A Member will be provided reasonable opportunity to make a submission in relation to the appeal. Additionally, the CO may request further information from the Member. The CO must notify the Member and may publish a statement of findings. If the CO determines to reject the appeal, the Member must, within 28 days, repay the amount of the claim received in breach and a penalty that is equal to 25% of the value claimed. If a Member does not make this payment, the relevant Officer may deduct the amount from any salary or allowance payable to the Member. If the CO upholds the appeal, the relevant Officer must pay the amount in question.

These provisions ensure that a Member has reasonable and fair recourse for pursuing an appeal of a relevant Officer's determination that the Member's claim did not comply with the Act.

As above, a Member is not entitled to the reimbursement of any legal costs incurred by the Member in relation to these matters. This aims to ensure that these proceedings are as informal as possible.

Proposed new section 9I provides that every quarter, the relevant Officer must publish the prescribed details in respect to claims for work-related parliamentary allowances and the Budget. The relevant Officer will also publish the amount of expense allowance (if any) and electorate allowance provided to a Member for the relevant quarter. This ensures that public resources received by a Member is publicly available, and increases the accountability and transparency of the overall system.

Proposed new section 9J requires that as soon as practicable after 30 June each year, the relevant Officer tables an annual report which details the claims and determinations for work-related parliamentary allowances, the expense allowance (if any), the electorate allowance and under the Budget lodged during that year, the Members who have submitted claims for a travel allowance which cumulatively exceeds 68 nights, Members who have not complied with a request made by the relevant Officer, and any other prescribed matter. Requiring the publication of an annual report will provide a comprehensive overview use of the allowances regime for a financial year, and consolidate information regarding expenditure of public resources in a

single, easily accessible document, improving transparency and accountability.

Proposed new section 9K provides that the Governor in Council may make regulations for or with respect to any matter or thing required or permitted by Parts 1 or 2 to be prescribed or necessary to be prescribed to give effect to Parts 1 or 2.

This includes prescribing—

- allowances payable;
- the terms and conditions that apply to the provision and use of work-related parliamentary allowances and the Budget;
- the provision of any article, equipment or service to a Member;
- and the terms and conditions which are to apply to the provision and use of the article, equipment or service.

Regulations made under proposed new subsection 9K(2)(a) (which allow additional parliamentary offices to be prescribed for the purposes of the definition of *specified parliamentary office*) can only be made after the Minister has obtained the approval of the Presiding Officers.

If regulations are inconsistent with a Tribunal Determination, the Determination will prevail to the extent of the inconsistency. Further, if any regulations are inconsistent with Tribunal Guidelines, the Tribunal Guidelines will prevail to the extent of any inconsistency. These provisions reflect the primacy of the Tribunal and will support the Tribunal's role in setting the value of, and providing guidance about the use of, parliamentary allowances.

Proposed new section 9K(11) also specifies that the regulations, as with all regulations, are subject to disallowance by Parliament.

Proposed new section 9L provides that the Minister may make guidelines in relation to regulations made in relation to the provision of, and the terms and conditions applying to the provision of motor vehicles. A Member must comply with these Guidelines.

Proposed new section 9M provides that the purpose of new Division 6 is to provide transitional arrangements

Proposed new section 9N provides that, despite the repeal of sections 8 and 8A by section 59(1) of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**, any regulations made under section 8 or 8A and in force immediately before the commencement of section 59(1) of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019** continue in force as if made under section 9K—

- until the regulations are repealed by regulations made in substitution for those regulations under section 9K; or
- except to the extent that they are inconsistent with any Determination made after that commencement.

Proposed new subsection 9N(3) provides that, despite the repeal of section 8B by section 59(1) of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**, any guidelines made under section 8B and in force immediately before the commencement of section 59(1) of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019** continue in force as if made under section 9L—

- until the guidelines are revoked by guidelines made in substitution for those guidelines under section 9L; or
- except to the extent that they are inconsistent with any Determination made after that commencement.

Proposed new section 9O mandates that after the first 10 years of operation of the amendments to Part 2, the Minister must cause a review of Part 2 of the **Parliamentary Salaries and Superannuation Act 1968** and subsequently table the review in Parliament. Reviewing the compliance and enforcement mechanism enshrined in this Part provides an opportunity for reflection on its operation, and allows recommendations for amendments to be made.

Clause 60 amends the definition of *basic salary* as it applies to the Parliamentary Contributory Superannuation Fund scheme to specify that, after the Tribunal's first Determination, the portion of basic salary that is "basic salary" for the purpose of the

Parliamentary Contributory Superannuation Fund is to be annually indexed by the greater of either CPI, or the mechanism prescribed by the Tribunal in its first Determination.

This clause also inserts a new definition of *basic salary portion* as the amount set by the Tribunal in its first Determination under section 17(5)(b) for the purposes of calculating the value of benefits for Members under Part 3 of the **Parliamentary Salaries and Superannuation Act 1968**. After the Tribunal's first determination, the value of the "basic salary portion" will not be reconsidered by the Tribunal in subsequent Determinations, but rather will be automatically adjusted by either CPI or an alternate mechanism prescribed by the Tribunal in its first Determination.

Clause 61 amends sections 30 and 31 of the Principal Act, which relates to the State's obligations to make superannuation contributions. It provides that for the purposes of determining the amount of the contributions for the financial year ending 30 June 2019, the amount of parliamentary salary and additional salary (if any) is to be determined in respect of the whole financial year. Additionally, a Member may request in writing that the State limit employer contributions to the amount specified in the request.

This will ensure that Members can receive the full entitlement above the Commonwealth superannuation concessional cap. Members will then be allowed to choose to "opt out" of being paid the full super contribution above the cap.

Clause 62 inserts a new section 44 into the Principal Act. Proposed new section 44 is a construction provision which provides that any reference to the PSS Act in any Act, subordinate instrument, agreement or other document, so far as it relates to any period after the commencement of section 47 of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**, is to be construed as a reference to the **Parliamentary Salaries, Allowances and Superannuation Act 1968**, unless the contrary intention appears. It also provides for constructing references to "members".

Part 7—Amendment of the Public Administration Act 2004

- Clause 63 amends section 4 of the **Public Administration Act 2004** to insert a definition of *Tribunal* to mean the Victorian Independent Remuneration Tribunal established under section 4 of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**.
- Clause 64 amends section 6 of the **Public Administration Act 2004** so that the Tribunal will be established as a special body. This is to safeguard the independence of the Tribunal.
- Clause 65 amends section 25 of the **Public Administration Act 2004** to insert that remuneration paid to an executive under a contract of employment must be within the relevant remuneration band in a Determination made by the Tribunal, or may exceed the maximum of that band only if the employer of the executive has obtained the advice of the Tribunal. This provision ensures that the jurisdiction of the Tribunal is consistent across relevant legislation.
- Clause 66 amends section 44 of the **Public Administration Act 2004** to provide that remuneration paid to the Commissioner under subsection (1) must be within the relevant band in a Determination made by the Tribunal, or may exceed the maximum of the relevant remuneration band only if the employer of the Commissioner has obtained the advice of the Tribunal. This provision ensures that the jurisdiction of the Tribunal is consistent across relevant legislation.
- Clause 67 amends section 47 of the **Public Administration Act 2004** to provide that remuneration paid to the Acting Commissioner under subsection (6) must be within the relevant band in a Determination made by the Tribunal, or may exceed the maximum of the relevant remuneration band only if the employer of the Acting Commissioner has obtained the advice of the Tribunal. This provision ensures that the jurisdiction of the Tribunal is consistent across relevant legislation.
- Clause 68 amends section 99 of the **Public Administration Act 2004** to clarify employment arrangements for Parliamentary advisers, who are advisers to non-government parties and independent Members of Parliament.

Subclause (1) inserts new provisions in place of the current section 99(1), (2), (2A), (2B) and (2C) of the **Public Administration Act 2004** to clarify how Parliamentary advisers are employed and the entitlement to employ Parliamentary advisers.

New section 99(1) clarifies that Parliamentary advisers are employed "on behalf of the Crown" to reflect the intention that these staff are employed to assist Members to perform their public duties (rather than being employed by Members in their personal capacity) and that the State has a role in supporting these employment arrangements.

New section 99(2) stipulates who may employ a Parliamentary adviser. A Member of the Parliament may employ a Parliamentary adviser if they are—

- the Leader of the Opposition; or
- the Leader of another party represented in the Parliament, or if that party does not have a leader or does not have a leader who is a Member of the Parliament, a member of the party who is nominated by the party for the purpose of employing Parliamentary advisers; or
- an independent Member of the Parliament.

New section 99(2A) and (2B) provides the entitlement to employ a minimum number of Parliamentary advisers. The proposed new section expresses the entitlement as an entitlement to employ "the equivalent" of a specified number of Parliamentary advisers.

The entitlement is intended to be calculated based on the whole number of members in a party. For example, under new section 99(2A)(b)—

- a political party with 2 elected members is entitled to employ the equivalent of 3 Parliamentary advisers; and
- a political party with 3 elected members is also only entitled to employ the equivalent of 3 Parliamentary advisers; and

- a political party with 4 elected members is entitled to employ the equivalent of 4 Parliamentary advisers.

New section 99(2C) clarifies how an equivalent number of Parliamentary advisers can be employed. A Member may employ a higher or lower number of Parliamentary advisers than specified in their entitlement, provided that the total costs attributable to the employment of those Parliamentary advisers does not exceed the total costs reasonably attributed to employing the specified number of Parliamentary advisers on a full-time basis.

For example, if a Member is entitled to employ the equivalent of 2 Parliamentary advisers, the Member could—

- employ 3 Parliamentary advisers, each on a part-time arrangement (or some other arrangement), so that the total costs of employing the 3 Parliamentary advisers does not exceed the total costs of employing 2 full-time Parliamentary advisers; or
- employ one Parliamentary adviser, on a higher rate of salary, so that the total cost of employing that Parliamentary adviser is equal to the total costs of employing 2 full-time Parliamentary advisers.

This will ensure that Members have flexibility in determining the composition of their employment arrangements, while also providing a limit (expressed as the total cost of employing the equivalent number of Parliamentary advisers working full-time) on the number of Parliamentary advisers that may be employed on behalf of the Crown.

These provisions complement amendments to the **Parliamentary Administration Act 2005** to clarify the role of electorate officers as distinct from Parliamentary advisers.

Clause 69 makes a consequential amendment to section 99(2D) of the **Public Administration Act 2004** to reflect the changes made by clause 68.

Clause 70 inserts a transitional provision into the **Public Administration Act 2004**, and provides that despite the commencement of Part 7 of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**, this Act as in force immediately before that commencement continues to apply

in respect of the remuneration of an executive, the Commissioner or the Acting Commissioner until the relevant Determination takes effect under the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2018**.

Part 8—Parliamentary Standards—Amendments to the Members of Parliament (Register of Interests) Act 1978

- Clause 71 states that the **Members of Parliament (Register of Interests) Act 1978** is the Principal Act in Part 8 of the Bill.
- Clause 72 renames the Principal Act, the **Members of Parliament (Standards) Act 1978**.
- Clause 73 inserts a Part heading, and repeals section 1(3) of the Principal Act.
- Clause 74 substitutes the definitions in section 2 of the Principal Act, and inserts definitions including *beneficial interest, debt, domestic partner, family, gift, hospitality, income, listed corporation, official capacity, political donation, prescribed, private superannuation fund, public duties, public superannuation fund, Register, return period, specified person, and trade or professional organisation*.
- Clause 74 further inserts definitions of *Budget, Member, public resources*, and *work-related parliamentary allowances*, which are consistent with the definitions in the renamed **Parliamentary Salaries, Allowances and Superannuation Act 1968** and which take account of the staggered commencement of Parts 6 and 8 of the Bill.
- Clause 75 inserts a new section 3 to provide that the objective of the Principal Act is to ensure that the responsibilities and obligations of Members reflect current community expectations.
- Clause 76 inserts a new Statement of Values, which provides a framework to guide Members' conduct. Proposed new section 4 sets out 7 values that Members should demonstrate when carrying out their public duties—(a) serving the public interest, (b) upholding democracy, (c) integrity, (d) accountability, (e) respect for the diversity of views and backgrounds within the Victorian community, (f) diligence, and (g) leadership. Members should aim to apply these values when considering their actions and obligations under the Code of Conduct.

Clause 77 substitutes a new Part 3 for the existing Part I of the Principal Act, and contains the updated Code of Conduct.

Proposed new section 5 sets out the Code of Conduct that Members must observe when carrying out their public duties, and the manner in which a Member demonstrates the values set out in the Statement of Values.

Proposed new section 5A clarifies that the updated Code of Conduct does not give rise to any legal right or civil cause of action.

Proposed new section 6 determines that Members must uphold democracy and respect others regardless of background.

Proposed new section 7 outlines obligations for Members regarding conflicts of interest. Subclause (1) provides that Members must avoid actual and perceived conflicts of interest with their private interests. Subclause (2) provides guidance on the circumstances where a Member will have a conflict of interest. A Member has a conflict of interest if the Member participates in, or makes a decision in the execution of, the Member's office which furthers their private interests or the private interests of a specified person (*specified person* is defined in section 2 of the Principal Act). Subclause (3) provides further guidance on conflicts of interest, stating that a Member will not have a conflict of interest where the Member or a specified person is affected as a member of the public or as a broad class of persons (i.e. a drivers licence holder, a parent, or a rate payer).

Proposed new section 8 provides that Parliamentary salary, work-related parliamentary allowances, the electorate allowance, the expense allowance (if any), other prescribed allowances, or funds provided under the Budget or any other public resources are not considered to be fees or profits paid to Members.

This reflects that these payments are provided to Members as recompense or to support them in discharging their public duties.

Proposed new section 9 makes provisions in relation to Members' outside employment and activities, and states that Members may engage in employment, business and other activities, but must avoid actual or perceived conflicts of interest from those activities, including where those activities may compromise the Members ability to fulfil their public duties. This is deliberately intended to limit Members' activities outside of Parliament and ensure that any activities that a Member may

participate in outside their public duties do not negatively interfere with their role as an elected representative.

Proposed new section 10 provides that Members must not accept gifts, hospitality or other benefits which create an actual or perceived conflict of interest, or might create a perception of an attempt to influence the Member in the exercise of his or her public duties. This provision prevents a Member being unduly influenced, or perceived to be unduly influenced, by the provision of any gifts, hospitality or benefits.

Proposed new section 11 provides that Members must exercise their influence as Members responsibly and not use their influence to improperly further their own interests or the interests of specified persons.

Proposed new section 12 relates to the use of public resources. Under the provision, a Member must comply with the **Parliamentary Salaries and Superannuation Act 1968**, and any regulations made under that Act. Further, a Member must also comply with any other rule, rule or guidance regarding the use of public resources. This ensures that Members behave lawfully and appropriately use public resources made available to them.

Proposed new section 13 relates to Members' personal conduct. Subclause (1) provides that Members must ensure that their conduct as Members does not bring discredit upon the Parliament. Subclause (2) provides that Members must act ethically, reasonably, and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties, and must not deliberately mislead the Parliament or the public about any matter relating to the performance of their public duties. Subclause (3) provides that Members must be fair, objective and courteous in their dealings with the community and, without detracting from the importance of robust public debate in a democracy, their colleagues. These provisions are to ensure that a Members' conduct reflects community expectations for politeness and respect, and meets a high professional standard.

Proposed new section 14 outlines provisions for the management of confidential and person information. Subclause (1) provides that Members must not use confidential information gained in the performance of their public duties to further their own interests or

the interests of a specified person. Subclause (2) provides that Members must respect the confidentiality of information they receive in the course of their public duties. This is to maintain public trust in the information made available to Members.

Proposed new section 15 provides that a Member must not take improper advantage of any office held as a Member of Parliament after they cease to be a Member. *Improper advantage* is defined as current and former Members who—

- use official information that is not in the public domain, or that was obtained during the course of their official duties, for advantage or benefit to themselves or another person; or
- breach confidentiality obligations regarding information received in the official course of their duties; or
- use their status as a former Member to obtain preferential treatment or privileged access to Government after leaving Parliament.

This ensures that a Member cannot inappropriately obtain advantage from the information and access gained by virtue of being an elected representative. Similar provisions exist elsewhere, and this wording is based on a similar provision in Canada.

Proposed new section 16 provides that nothing in this Part of the Act is intended to repeal, alter or vary, or affect the operation of Division 8 of Part II of the **Constitution Act 1975**.

Clause 78 substitutes Part 4 for the existing Part II of the Principal Act, and provides for the updated Register of Interests.

Proposed new section 17 provides for the submission of primary returns. Each Member of Parliament is required to submit a primary return once. Subclause (1) provides that a person who is a Member as at the commencement of section 78 of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019** must submit a primary return to the Clerk of the Parliaments within 28 days after that commencement. Subclause (2) provides that a person who becomes a Member after the commencement of section 78 of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019** must submit a primary return to the Clerk of the Parliaments within 28 days

after taking and subscribing the oath or affirmation as a Member. This is to ensure that each Member of Parliament efficiently fulfils their obligations to complete a primary return in relation to the Register of Interests.

Proposed new section 18 provides that a Member must submit an ordinary return to the Clerk of the Parliaments within 28 days after 31 January and 30 June each year.

Proposed new section 19 determines that a primary return must be in the prescribed form. The requirements described below in the primary return are intended to ensure increased transparency by detailing the interests of a Member at the time they are elected, so that potential conflicts of interest can be identified, while balancing the need to protect the privacy of Members. The Register provides Members an opportunity to publicly disclose any relevant information. Information required in the primary return is outlined below—

- the source of any income that the Member has or expects to have before 30 June in the year next following, including the name and address of the payer (if the address is a residential address, the Member may provide alternative contact details such as an alternative address like a Post Office box or relevant commercial address) and, where the income arises from service provided by the Member, a description of those services. This ensures a Member is not benefiting financially from an outside entity, which may seek to influence a Member's behaviour as an elected representative;
- the name of any corporation, partnership or other body in which the Member holds a beneficial interest, or in which a private superannuation fund holds a beneficial interest for the benefit of the Member, a description of that interest including an indication of the range in which the value of any shares fall and, except in the case of a listed corporation, the address of the corporation, partnership or body (if the address is a residential address, the Member may provide alternative contact details such as an alternative address like a Post Office box or relevant commercial address), and a description of its objects or activities. Requiring that a Member publicly discloses personal beneficial

interests ensures that the personal interest does not affect a Member's decisions or behaviour in matters that may directly or indirectly affect those interests;

- the location by suburb or town (or where that is not applicable, the nearest town) of any land in which the Member holds a beneficial interest, other than by way of security for a debt, that is used as a primary or secondary place of residence by any person. Requiring a Member to list these items ensures that the public is aware of any potential conflicting interests that the Member may encounter as a land or residential property owner;
- the address or, if there is no address, a precise description of the location of any land, other than land referred to in subclause 19(1)(c), in which the Member holds a beneficial interest, other than by way of security for a debt. This further increases transparency around potential conflicts involving land ownership where land is not used as a primary or secondary residence by any person;
- the name of any corporation, partnership or other body in which the Member holds office, a description of that office and, except in the case of a listed corporation, the address of the corporation, partnership or body, and a description of its objects or activities. This ensures that the public is aware of any past or current entities that the Member has held office with, and aims to safeguard against vulnerability to improper lobbying;
- a description of any personal debt held by the Member, including the name of the creditor;
- a description of any trust under which the Member holds a beneficial interest or any trust where the Member is a trustee and a member of the Member's family holds a beneficial interest, and a description of the activities of the trust. This provides transparency around potential conflicts involving participation of a Member in any trust;

- in the case of a trust referred to in proposed new subsection 19(1)(g)—
 - if it receives or holds any income, beneficial interest (such as private superannuation or shares), or interest in land, as described in subclauses 19(1)(a) to 19(1)(d), the Member must disclose this information; and
 - if it receives or holds any other substantial interest, of which the Member is aware or ought to be aware, where a material conflict between the Member's private interest and their public duties would arise, or would reasonably be seen to arise, the Member must disclose this information;
- the name of an estate in which the Member is appointed as executor and holds a beneficial interest, and a description of that interest. This provides transparency around potential conflicts where a Member is acting as an executor;
- the name of any political party, body or association or trade or professional organisation of which the member is a Member. This guarantees that the public is aware of any involvement of the Member with the outlined bodies, and aims to safeguard against vulnerability to lobbying;
- the name of any other organisation of which the Member is a member or with which the Member is otherwise associated, if a conflict of interest could arise, or reasonably be seen to arise, because of that membership or association. This also aims to safeguard against vulnerability to lobbying;
- a description of any other interest that the Member has where a conflict of interest could arise, or reasonably be seen to arise, because of that interest. This is intended to broadly capture any interest that may be relevant, but is not covered by any other proposed clause.

Proposed new subsection (2) provides that if the trust in which the Member holds a beneficial interest is a blind trust, the Member need only provide the name and address of the person who manages a trust in the Member's primary return.

Proposed new subsection (3) provides that the Member may also include the name of any other organisation of which the Member is a member or with which the Member is otherwise associated, if the Member chooses to do so.

Proposed new subsection (4) provides that proposed new section 20 is subject to proposed sections 22 to 24 dealing with disclosure thresholds to declare interests.

Proposed new section 20 deals with ordinary returns, which are intended to provide regular updates of Member's interests. This section outlines that the information provided in an ordinary return is the information required in the primary return, but additionally includes—

- a description of any gift received by the Member, including the name and address of the donor. This ensures that a record of any gift (the value of which exceeds the relevant threshold) provided to any Member is retained, and available to the public. This aims to prevent the occurrence of, or the perception of, lobbying and ensuring that the independence and objectivity of the Member is maintained; and
- a description of any travel undertaken by the Member outside of Victoria that was funded fully or partially by another person, other than the State or a member of the Member's family, including the dates, destinations and purposes of that travel, and the name and address of the donor of the travel contribution. This further aims to prevent the occurrence of, or the perception of, lobbying and ensuring the independence and objectivity of the Member is maintained.

The provision of information related to gifts and travel is only necessary in the ordinary return. Travel or gifts provided to an individual before they were elected as a Member of Parliament are not required to be declared on the Member's register of interests.

This section also provides for the treatment of blind trusts the same as for a primary return, and also allows the Member to include the name of any other organisation that the Member is a member of or associated with. Section 20 will also be subject to proposed sections 22 to 24.

Proposed new section 21 provides that if a Member becomes aware of a material change in any information required to be submitted under section 19 or 20, the Member must submit to the Clerk of the Parliaments, as soon as is practicable, a description in the prescribed form of the material change. This ensures that the Register stays updated, and accurately reflects the Member's circumstances as relevant to the Register.

Proposed new section 22 outlines the thresholds under which a Member is not required to include information in a return. Proposed new subsection (1) provides that, in relation to the following matters—

- a source of income if the total amount of income from that source does not exceed the threshold amount for income; or
- a beneficial interest in a particular corporation, partnership or other body if the total value of the beneficial interests held in that corporation, partnership or other body does not exceed the threshold amount for beneficial interests; or
- a personal debt with a particular creditor if the total value of personal debts with that creditor does not exceed the threshold amount for debts; or
- a gift from a particular source if the total value of gifts from that source does not exceed the threshold amount for gifts; or
- travel contributions from a particular source if the total value of travel contributions received from that source does not exceed the threshold amount for travel contributions.

For the purpose of this section, the value of any income, beneficial interest or gifts held or received by a trust referred to in proposed section 19(1)(g) (other than a blind trust) is to be taken into account when determining the total value of income, beneficial interests or gifts.

Additionally, a Member is required to include information relating to an interest referred to in subsection (1) if the Member holds or receives on 2 or more occasions, any income, beneficial interests or gifts with or from a particular source and the total amount of the value of that income, beneficial interest or gift exceeds the prescribed threshold amount for those items. For example, if a Member receives 2 gifts from the same individual or company, and the separate value of these gifts is below the relevant threshold, but the combined value exceeds the relevant threshold, the Member must disclose the gifts. This provision ensures that the Member provides a comprehensive account of their accumulated interests.

Proposed section 23 provides details for the threshold amounts for the matters referred to in proposed sections 19(1)(b) and 22 in the year ending 30 June 2019. The threshold amounts for the year ending 30 June 2019 are as follows—

- for matters referred to in section 19(1)(b)(ii)—beneficial interests—
 - (a) \$2000;
 - (b) \$10 000;
 - (c) \$50 000.
- for matters referred to in section 22—
 - (a) for income—\$2000;
 - (b) for beneficial interests—\$2000;
 - (c) for debts—\$2000;
 - (d) for gifts—\$500;
 - (e) for travel contributions—\$500.

Proposed section 24 provides a mechanism for adjusting the threshold amounts by reference to CPI.

Proposed section 25 requires the Clerk of the Parliaments to notify Members of a CPI adjusted threshold before 30 June 2020 and before 30 June for each subsequent year.

Proposed section 26 imposes obligations on the Clerk of the Parliaments in relation to the Register of Interests.

Proposed subsection 26(1) provides that the Clerk of the Parliaments must maintain the Register of Interests.

Proposed subsection 26(2) provides that the Clerk of the Parliaments must enter information submitted in the ordinary and primary returns in the Register.

Proposed subsection 26(3) prevents the Clerk of the Parliaments or any authorised person from communicating any information received under the Act or use that information, other than for its intended purpose.

Proposed subsection 26(4) denotes that for the purpose of Subsection (3), *authorised person* means any person appointed or employed for the purposes of the Principal Act, or authorised to discharge any functions of the Clerk of the Parliaments for or on behalf of the Clerk of the Parliaments.

Proposed section 27 requires the Clerk of the Parliaments to report a Member to the Presiding Officer of the Member's House if—(a) the Member does not submit a return within the required time, and after the Clerk of the Parliaments has given the Member a further reasonable time to submit the return it is still not submitted, or (b) the Clerk of the Parliaments reasonably believes that a Member has submitted an inaccurate or incomplete return and the return remains inaccurate or incomplete after the Clerk of the Parliaments has given the Member a reasonable opportunity to correct it. Providing this power to the Clerk of the Parliaments facilitates their role in ensuring compliance with the Register, and that the Register represents a comprehensive overview of Members' interests.

Proposed section 28 prevents any person from publishing in the Parliament or outside of the Parliament—(a) any information derived from the information entered into the Register unless that information amounts to a fair and accurate summary of the information entered into the Register or (b) any comment on the information entered into the Register unless that comment is fair and published in the public interest without malice. These provisions safeguard against the partisan or malevolent use of information procured through disclosures made to the Register.

Proposed section 29 provides that the Clerk of the Parliaments must cause a return submitted under Part 4 to be laid before each House of Parliament of which the Member submitting the return is a Member—(a) within 14 days of the return being submitted if that House of Parliament is then sitting, or (b) if that House of Parliament is not then sitting, within 14 days of the next sitting of that House of Parliament. Mandating the timely publication of returns increases the transparency and accountability of the system.

Clause 79 substitutes a new Part 5 for the existing Part III of the Principal Act. The new Part 5 relates to general matters, and contains the consequences of a Member's failure to comply with obligations relating to the Code of Conduct and the Register of Interests.

Proposed section 30 provides mechanisms to refer allegations of breaches of Part 3 (Code of Conduct) or Part 4 (Register of Interests) of the Act. Proposed section 30 determines that a Member who considers there has been a contravention of a requirement under Part 3 or 4 may refer the alleged contravention to the Presiding Officer of the House of which the Member alleged to have contravened the requirement is a Member. The Presiding Officer who receives this referral must determine whether to refer the alleged contravention to the relevant Privileges Committee. If the Presiding Officer determines that this referral may involve conduct that may constitute a criminal offence, the Presiding Officer must refer the alleged contravention to the appropriate law enforcement agency. This section will ensure that the referrals of allegations are treated seriously, fairly and proportionately. It reflects that law enforcement, and not Parliament, should investigate any alleged criminal offences.

Proposed section 31 outlines that a wilful contravention of a requirement in Part 3 or 4 by a person is contempt of Parliament. In addition to any other punishment that may be awarded by a House of Parliament for contempt of Parliament, a variety of punishments may be imposed for a contravention.

For the more severe of these punishments (i.e. suspension, or declaring a seat vacant), the motion must be passed by a special majority. This safeguards against the potential for punishments to become political devices. Further, these punishments can be imposed on a person who is no longer a Member of Parliament,

which provides a mechanism to enforce a retrospective punishment for a contravention committed while a Member of Parliament. These punitive measures aim to highlight the expectation that Members comply with the Code of Conduct and the Register of Interests.

Proposed section 32 provides that the Governor in Council may make regulations for, or with respect to, any matter or thing required or permitted by the Principal Act to give effect to the Principal Act.

Proposed section 33 provides that any reference to the MPRI Act so far as it relates to any period after the commencement of section 72 of the **Victorian Independent Remuneration and Improving Parliamentary Standards Act 2019** is to be construed as a reference to the **Members of Parliament (Standards) Act 1978**, unless the contrary intention appears.

Proposed section 34 introduces a new Part 6 into the Principal Act, which requires the Minister to undertake a review of the amendments to the Principal Act after 10 years of operation, and cause a copy of the review to be laid before each House of Parliament within 12 months, which is consistent with other reforms (such as the introduction of the Charter of Human Rights and Responsibilities).

Part 9—Amendments to other Acts and repeal

- Clause 80 amends references to the **Parliamentary Salaries and Superannuation Act 1968** to references to the renamed **Parliamentary Salaries, Allowances and Superannuation Act 1968** in sections 8(2), 12(a) and the definitions of *public resources* and *work-related parliamentary allowances* in section 2 of the **Members of Parliament (Standards) Act 1978**. This is intended to facilitate the transition from existing arrangements.
- Clause 81 amends references to the **Parliamentary Salaries and Superannuation Act 1968** in other legislation to reflect the updated title.

Clause 82 subclause (1) substitutes references to the **Parliamentary Salaries and Superannuation Act 1968** for references to the **Parliamentary Salaries, Allowances and Superannuation Act 1968** in sections 17(5)(b), 28, 34(2) and 39 of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**.

Subclause (2) amends section 28 of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**—

- in subsections (1), (2)(c) and (5), for section 7E of the **Parliamentary Salaries and Superannuation Act 1968** substitute sections 7E and 9H of the **Parliamentary Salaries, Allowances and Superannuation Act 1968**; and
- in subsection (2)(d), for **Parliamentary Salaries and Superannuation Act 1968** substitute **Parliamentary Salaries, Allowances and Superannuation Act 1968**.

Subclauses (3), (4), (5) and (6) make consequential amendments to the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**.

Clause 83 amends the **Protected Disclosure Act 2012** to provide that the Act does not apply to any disclosure regarding conduct that may constitute a criminal offence in relation to an alleged contravention under section 30 of the **Member of Parliament (Standards) Act 1978** that is referred by the Presiding Officer to the appropriate law enforcement agency under section 30(3) of that Act. This enables the Presiding Officers to refer an allegation of potential criminal conduct to an appropriate law enforcement agency without being subject to the **Protected Disclosure Act 2012**.

Clause 84 inserts new subsections into section 30 of the **Parliamentary Administration Act 2005** to prevent a Member from directing an Electorate Officer to perform "party specific activity". The definition of *party specific activity* aligns with the definition of "political expenditure" in section 202 of the **Electoral Act 2002** and defines "party specific activity" as any activity for the dominant purpose of directing how a person should vote at an election by promoting or opposing the election

or any candidate, a registered political party or an elected member.

This clause acquits the Government's commitment to clarify the role of Electorate Officers.

Clause 85 repeals Parts 6 to 9 a year after the all the provisions of the Act come into effect.

The repeal does not affect the continuing operation of the amendments made by these Parts.