Parliamentarians and their Regulators: dilemmas of accountability and credibility inside ‘the regulatory state within Westminster’

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**Paper for 68th PSA International Conference, Cardiff 2018 – Do Not Cite**

**ABSTRACT:** In recent years, scandals involving improper use of parliamentary expenses have led to the establishment of new independent regulatory agencies. Two such bodies are the UK’s Independent Parliamentary Standards Authority (IPSA) – set up after the 2009 expenses scandal – and Australia’s Independent Parliamentary Expenses Authority (IPEA) – established after the Susan Ley scandal in 2017. Based on a comparison of these cases, however, I argue that there are clear limits to the independent regulatory approach to parliamentary ethics. Legislatures traditionally serve two roles for independent agencies; empowering them against the executive and legitimating them through democratic accountability. As both of these roles are problematic for parliamentary regulators, policymakers therefore face a dilemma – either create a highly independent ‘free-floating’ regulator (accountability deficit), or make the regulator accountable through the executive (credibility deficit). Results show that IPSA is an example of the former, while IPEA approximates the latter. Comparison of these cases therefore illustrates the dilemmas of credibility and accountability which arise when independent regulatory solutions are applied to parliamentary finance.

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Introduction: parliamentary finance regulation in a distrusting age

‘Politics can either be conducted on an ‘honorary’ basis, which means by so-called ‘independent’, that is, wealthy people, above all those with unearned income. Or access to political leadership can be given to people without private means, in which case it has to be remunerated.’ (Max Weber, ‘The profession and vocation of politics’ [1919] Political Writings, 1994: 320)

‘People don’t like their politicians to be comfortable. They don’t like you having expenses. They don’t like you being paid. They’d rather you lived in a f**king cave’ Malcolm Tucker (Peter Capaldi), The Thick of It, Series 3, Episode 1. BBC (2009).

Over the course of the twentieth century, parliamentary politics in much of the democratic world transitioned from a part-time activity primarily conducted by those with independent status and money to a full-time profession conducted by career politicians (Weber, 1994[1919]: 338; King, 1981; Cairney, 2007). Consequently, while in the past legislators were often financially supported by aristocratic (Wasson, 1991) or local interests (Murphy, 2016: 110), modern legislative bodies directly compensate their members with salary, expenses and pension entitlements commensurate to their central position in the state apparatus (Mause, 2014; Maer and Kelly, 2009). This professionalization was intended to solve the problem of the undue influence of outside moneyed interests, and provide a meritocratic political class open to all (Seaward, 2010). Indeed, many scholars maintain that raising politicians’ remuneration improves the quality of candidates and office holders (Ferraz, 2009; Atkinson and Rogers, 2012; Gagliarducci and Nannicini, 2013).

On the other hand, sociologists emphasise that professional occupations can become self-interested and self-selecting power structures (MacDonald, 1995). As professionals are often in a position to determine (at least in part) who qualifies for inclusion as a legitimate member of a profession, and thus to restrict numbers, they may be able to unfairly manipulate their own access to financial resources. As Larson puts it, ‘professionalization is thus an attempt to translate one order of scarce resources – special knowledge and skills – into another – social and economic rewards.’ (Larson, 1977). The suspicion that modern politicians are just another self-interested, unaccountable professional network accounts for much for the intense dislike of ‘professional politicians’ (Jones, 2007) and the ‘political class’ in general (Oborne, 2007; Flinders, 2012). Against the background of declining institutional trust in some long-lived democracies (Jennings, Clarke and Moss, 2017) – and the global rise of ‘critical citizens’ (Norris, 2011) highly sensitive to ethical standards in government – the remuneration of politicians has therefore become a political flashpoint.

The atmosphere of suspicion is particularly evident in the numerous scandals over the use of parliamentary expenses which have erupted in major democracies in recent years. In an early example, the 1992 US House Banking Scandal resulted in an unexpected level of public anger,
contributing to the high turnover of members in the election that year (Jacobson and Dimock, 1994; Banducci and Karp, 1994) and fuelling the ‘Republican revolution’ two years later. Most prominently, the 2009 UK Expenses Parliamentary Scandal triggered a deep crisis in the British political system, leading to the resignation of the speaker and a similarly high turnover of MPs in the 2010 election (Pattie and Johnston, 2012; Eggers, 2014). More recently, the 2012 Canadian Senate scandal, again involving improperly claimed expenses, led to calls for the abolition of the chamber, and Australia’s ‘Choppergate’ scandal resulted in the resignation of the Speaker of the House in 2015. Much of the 2017 French presidential election also revolved around claims of fraudulent expenses use by major candidates, one (Marine Le Pen) as an MEP and the other (Francois Fillon) in his career as a Deputy.

In response to events like these, parliaments have engaged in administrative reforms to provide greater assurance that politicians’ use of parliamentary finance is fair and appropriate. In particular, new ‘integrity agencies’ (Wettenhall, 2012) have been created, both within legislative institutions and sitting outside of them as statutory agencies (Gay, 2014; Hine and Peele, 2016). In the best known example, the UK adopted a system for statutory regulation after the 2009 expenses scandal. Likewise, in Australia, the accrual of scandals over several years eventually led to substantive reforms passed in 2017. Both reforms established a dedicated independent agency focused on parliamentary finance; the Independent Parliamentary Standards Authority (IPSA) in the UK and the Independent Parliamentary Expenses Authority (IPEA) in Australia.

Yet, while the Australian body was established with the UK precedent in mind, there are important differences between the two agencies which illuminate the dilemmas faced by policymakers in creating independent regulation of parliamentary actors. Independent agencies are insulated from day-to-day political interference in order to ensure they attain credibility as regulators (Majone, 1997; Gilardi, 2002; Maggetti, 2007). At the same time, they must ultimately be accountable to democratic institutions in order to maintain their legitimacy (Majone, 1999). Problematically for parliamentary regulators such as IPSA and IPEA, however, the preferred model for achieving both of these aims simultaneously is that regulatory agency independence should be guaranteed by the parliaments which create them (Wettenhall, 2012). Structuring accountability for parliamentary regulators thus poses difficult principle-agent problems (Gailmard, 2014).

The argument advanced in this paper is that, ultimately, policymakers are faced with a dilemma. On the one hand, they may opt to create a freestanding body ‘over and above parliaments’ (Mxako-Diseko, 2006: 6), risking an ‘accountability deficit’ (Mulgan, 2014). Conversely, they may choose to reverse the standard integrity agency dynamic and create a body accountable to the executive, rather than parliament. However, given the close relationship between the executive and legislative
branches in parliamentary democracies, such a regulator risks a credibility deficit. In order to illustrate this dilemma, this paper analyses the accountability structures of IPSA and IPEA, and demonstrates that the UK body is an example of the former outcome, while its Australian counterpart approximates the latter.

1. The Accountability-Credibility Dilemma in Parliamentary Regulation

Both IPSA and IPEA can be understood as independent regulatory agencies (Scott, 2014). These bodies are defined as ‘highly specialised organisations enjoying considerable autonomy in decision-making’ (Majone, 1997) and ‘insulated from political control’ (Gilardi, 2007). Prominent examples of independent regulatory agencies include independent central banks, competition and markets authorities, and standards setting organisations such as workplace health and safety bodies (Majetti, 2009; Scott, 2014). This model of governance is referred to as the ‘regulatory state’ (Moran, 2001). Parliamentary finance regulators such as IPSA and IPEA, which regulate arms of government, thus constitute examples of the ‘regulatory state within the state’ (Hood et al, 1999) or, at an even finer level of distinction, ‘the regulatory state within Westminster’ (Kaye, 2003).

In the past, constitutional traditions which emphasised parliamentary sovereignty frustrated the emergence of these kind regulatory solutions (Williams, 2002; Drewry and Oliver, 2004; Goldsworthy, 2010; Hine and Peele, 2016: 69-103). In particular, the issue parliamentary privilege, and the attendant concepts of parliamentary self-organisation and non-justiciability of internal parliamentary proceedings, held back attempts to create formal regulatory structures (Gay, 2004; Chafetz, 2007; Parpworth, 2010; Tew, 2011). Parliamentarians in Single-Member District (SMD) electoral systems like the UK and Australia’s lower houses were also thought to be responsible directly to their constituents in relation to their conduct in parliament, including their use of financial resources (Eggers and Fisher, 2011).

Beyond these normative and constitutional considerations, the principle-agent problems inherent in the reality that – in a parliamentary democracy – the regulated actors would always ultimately be responsible for their own regulation made truly independent systems hard to envisage. The resulting lack of willingness to create independent bodies external to parliament led to fragmented and (at best) partially independent regulation of parliamentary finance in by the mid-2000s in the UK and Australia (Gay, 2014; Jones, 2007). Indeed the UK actually went backwards in this regard since the 1980s, when HMRC oversight of the expenses system was removed (Little and Stopforth, 2013). Nonetheless, as the cases of IPSA and IPEA demonstrate, independent parliamentary finance regulators have now begun to join the increasing number of ‘autonomous public institutions [with] delegated authority over a core element of the liberal democratic system’ (Akerman, 2006).
Other examples of such agencies are supreme audit institutions (Stapenhurst and Titsworth, 2002; Reichborn-Kjennerud and Johnsen, 2015), and independent electoral commissions (Clark, 2015). To an even greater degree other regulatory agencies, these bodies require the credibility and insulation from political interference in order to credibly carry out their tasks (Majone, 1997; Gilardi, 2002). In practice, this means they should possess broad regulatory competencies, sufficient finances and organisational capacity, and limited relationships with elected politicians (see Gilardi and Maggetti, 2011: 203). They may also possess statutorily guarantees of autonomy in the form of independent governing boards, long appointment terms for agency heads, and substantial budgetary autonomy (Hanretty and Koop, 2012).

At the same time, even the most independent agencies must ultimately have some accountability to democratic institutions (Mulgan, 2014). In addition to addressing the problem of ‘quis custodiet ipsos custodes? [who is to guard the guards themselves?]’, democratic accountability underpins the basic legitimacy of regulatory structures (Majone, 1999). The most common forms of such accountability place regulatory agencies under obligations to regularly report to parliamentary committees, and/or to provide transparency through accounts of their operations over a given period. Parliaments may also provide to agencies, through legislation, frameworks detailing funding, procedures, timescales or principles according to which regulatory tasks are to be completed.

As a result of the need to balance these two objectives of independence and accountability, and because of the role of legislative bodies in both establishing and maintaining independent regulators, the ‘parliamentary relationship’ has thus been seen as crucial for integrity agencies (Wettenhall, 2012). Consequently, some of the strongest independent regulators within the state are formulated as ‘officers of parliament’ (Beattie, 2006). For example, national audit offices are commonly responsible to parliament in examining government programs, as are electoral commissions in examining the operations of political parties (Steele and Bowman, 1987; Evans, 1990; 1999).

In both of these cases, however, parliament as a body has some separation with the object of regulation; the government bureaucracy and political parties respectively. Conversely, parliament has no obvious incentive to empower and legitimate an agency responsible for restricting its own access to financial resources. While it may be forced to do so in the short term as a result of a sufficiently large scandal, therefore, it is not clear why parliamentarians would bother to maintain such a system over time. Consequently, designs for parliamentary finance regulators must deal with a difficult principle-agent problem (Gailmard, 2014) not faced by other bodies of the ‘regulatory state within the state’ (Hood et al, 1999).
Ultimately, policymakers face a dilemma. On the one hand, they may opt to create a freestanding body ‘over and above parliaments’ (Mxako-Diseko, 2006: 6), with few external lines of accountability and a very high level of operational and strategic autonomy. This will risk an ‘accountability deficit’ (Mulgan, 2014), especially if the body fails to act responsibly. However, it should ensure that parliament has few avenues to weaken the regulation it institutes. Conversely, policymakers may reverse the standard dynamic of the ‘parliamentary relationship’ and create a body accountable to the government through the core executive. They could also place the agency under a strict legislative framework, or divide up competencies between different bodies to avoid creating a ‘super-regulator’. This will avoid an accountability deficit, but risks creating a credibility deficit instead, with the new regulator(s) too weak to institute broad reforms.

The remainder of this paper illustrates this dilemma through an analysis of the divergent accountability structures adopted for independent parliamentary finance regulators in the UK and Australia. As outlined in the first section, in response to scandals both countries have now adopted a regime centred on an independent regulatory agency. However, a detailed examination reveals that while the UK’s Independent Parliamentary Standards Authority (IPSA) approximates the model of an accountability deficit regulator, as defined above, Australia’s Independent Parliamentary Expenses Authority (IPEA) is closer to the credibility deficit type. Finally, the conclusion suggests a potential route around this dilemma, noting the important role of networked regulatory governance in modifying the conclusions reached about each case.

2. Creation of IPSA and IPEA

IPSA and IPEA are both the product of reforms enacted in the wake of scandals involving the misuse of parliamentary expenses. In the UK, the spur of the reforms which created IPSA was the 2009 parliamentary expenses scandal. The scandal primarily involved the widespread misuse of a catch-all parliamentary allowance called the Additional Costs Allowance (ACA). After the passage of the Freedom of Information Act (FOIA) in 2000, it became clear that details of the expenses system would be accessible under the act. In 2004, with freedom of information about to take effect, the House of Commons began publishing totals for MP’s total ACA claims. However, the first FOI requests related to expenses went much further, demanding receipts submitted to the Fees Office by individual MPs. After these requests were initially rejected by the Commons authorities, the Information Commissioner – responsible under FOIA for adjudicating disputes – opened an investigation spanning three years and ultimately resulting in a ruling that MPs full receipts should be published. MPs appealed to the High Court and then overturned its decision when this went against them. Nonetheless, full publication of receipts, was scheduled and then postponed.
At this point, in May 2009, four years of receipts collected as part of the ongoing FOIA process were leaked to the *Daily Telegraph* by an unknown source. The paper began to publish this information from the 8th of May in instalments, initiating a month of intense media scrutiny of almost every MP in parliament. The receipts revealed a number of abuses and dubious claims, the most serious of which related to the use of the ACA to buy London properties under the ‘second home’ provisions of the system. In addition to a number of outright fraudulent claims, a number of MPs came under scrutiny for extravagant expenses which – though technically legal and within the rules in place at the time – were widely seen as gross violations of the alleged basis of the system in providing MPs with reimbursement for expenses occurring “wholly, exclusively and necessarily in the performance of the duties”. Conservative MP Sir Peter Viggers’ ‘duck island’, and his colleague Douglas Hogg’s £2,200 claim for ‘moat cleaning’ in particular became the symbols of a detached and entitled political class who had attempted to use public money on frivolous luxuries.²

While the government and the Commons authorities were initially criticised for a slow response, reforms to the system were in reality introduced with considerable speed. A bill to create an independent statutory body to regulate parliamentary expenses was published on the 23rd of June, only six weeks after the scandal broke, and received royal assent on the 21st July 2009. At the same time, the UK’s independent ethics regulator the Committee on Standards in Public Life (CSPL) began work on a report eventually published as *MPs’ Expenses and Allowances: Supporting Parliament, safeguarding the taxpayer* in the same year (CSPL, 2009). Consequently, the new Independent Parliamentary Standards Authority (IPSA) was established in time for to begin operations after the general election in May 2010 (Gay, 2014).

In Australia, a similar pattern of scandal followed by reform played out, but over a longer period of time. Frequent minor scandals involving the misuse of expenses fed into a series of Australian National Audit Office (ANAO) reviews of the entitlements system from the 1990s (ANAO, 2009; 2015). However, these reviews tended to focus only on particular aspects of the allowances system and considered broader governance issues only tangentially. Nonetheless, the ANAO’s work clearly identified the problem of a complex and opaque system in which overall responsibility for expenses and allowances was unclear. The problems identified in these reports also gained some political traction by the mid-2000s, with the inclusion in the 2007 Australian Labour Party (ALP) national platform of a pledge to create ‘an independent auditor of parliamentary allowances and entitlements with appropriate powers of investigation.’ (ALP, 2007: 181). Though this was later clarified to be a longer term aspiration (ANAO, 2009: 53).

² Contrary to popular memory of the event, neither of these expenses were ever actually paid.
While the need for reform had long been identified in Australia, the impetus for substantive change did not arrive until the Bronwyn Bishop scandal in 2015. Bishop, the Speaker of the House of Representatives, was revealed to have claimed for a helicopter flight to a party fundraising event and, subsequently, a series of other extravagant travel expenses. The scandal led to her resignation from the Speakership, and eventual deselection as a parliamentary candidate for the 2016 Federal election. This time, widespread public outrage resulted in Prime Minister Tony Abbot establishing a full independent review of the allowances system in August 2015. The review was conducted over six months, reporting in February 2016. However, the final report did not recommend the setting up of an IPSA-like system, nor mention the idea of an IPEA. Instead, it focused on the need to clarify the responsibilities of existing regulatory actors – in particular the existing independent body the Remuneration Tribunal (Independent Review, 2016: 5).

Between the independent review commencing and reporting, Abbot was replaced as PM by Malcom Turnbull in a leadership challenge. In addition to the 2016 election, this delayed the timescale of recommended legislative changes and created uncertainty about the future of parliamentary allowances reform. While the new government accepted the recommendations of the review in principle, it seemed that little would be done in the near-term. Once again, however, scandal intervened in the form of the Susan Ley controversy. Ley, a member of the Turnbull government and Minister for Health and Sport, was discovered in January 2017 to have used a publicly funded travel to fund a trip to purchase property on the Gold Coast. It was later revealed that Ley had made numerous trips to the same area (far from her constituency of Farrer), including for two New Year’s Eve parties hosted by a party donor. In response, the Turnbull government moved rapidly to create the Independent Parliamentary Expenses Authority (IPEA). Making explicit reference to the UK example, the Prime Minister announced in January that an independent authority would be created as a ‘compliance, reporting and transparency body… ensuring that taxpayers’ funds are spent appropriately and in compliance with the rules’ (PM of Australia, 13 Jan. 2017). The bill was introduced on Feb 09th 2017, passing both houses on the 16th. The IPEA became a Commonwealth statutory authority on 1st July 2017, timed with the start of the new Australian tax year.

3. IPSA and IPEA Compared

The accountability structures to which IPSA and IPEA are subject can be found in their founding legislation, as well as the broader public governance frameworks of the two countries. In this section I identify and describe these structures and show how this has affected the behaviour of these regulators and the reaction of other actors. In IPSA’s case, its broad powers and lack of strong direct accountability has allowed it to make strategic but controversial decisions. By contrast, IPEA has proven less controversial but may lack the capacity to make lasting reforms to the expenses system.
3.1. IPSA as an Accountability Deficit Regulator

IPSA’s founding legislation is the *Parliamentary Standards Act 2009*. The Act establishes IPSA as a body corporate separate from the crown, and outlines its functions and composition – including an independent board and chief executive appointed by a special parliamentary committee chaired by the speaker. The original act also established another independent body – the Parliamentary Commissioner for Investigations – which would be responsible both for implementing IPSAs determinations, as well as other breaches of Commons ethics rules. In effect, this provision put the existing Parliamentary Commissioner for Standards on a legislative footing. However, revisions to the PSA made as part of the *Constitutional Reform and Governance Act 2010* eliminated the Commissioner post in favour of a Compliance Officer sitting within IPSA but formally independent of its management board and chief executive. The structure of IPSA is therefore twofold; a regulatory and agency which also administers the system, and a tribunal-like body in the form of the Compliance Officer which reviews decisions both on individual cases and on rule changes generally.

The primary oversight structure for IPSA, as established by the *Parliamentary Standards Act* (S. 3(5) and Sch. 3), is the Speaker’s Committee for the Independent Parliamentary Standards Authority (SCIPSA). SCIPSA is a parliamentary body, chaired by the Speaker (Sch. 3(1)(a) and composed primarily of MPs – though three extra-parliamentary members were added as part of the *Constitutional Reform and Governance Act* (s.27(2)). SCIPSA appoints the Chair and CEO of the Authority, and is responsible for reviewing its yearly funding estimates. However, SCIPSA may only modify this if it is not satisfied that the estimate is ‘consistent with the efficient and cost effective’ discharge of IPSA’s functions (s.22(3)). Even then, before doing so, it must consult the Treasury for advice (s.22(5)), and prepare a public statement of reasons and lay this before the House (s.22(7)).

Just as significant is IPSA’s lack of a deep relationship with the government. Agencification has been used extensively throughout the British state, both as a regulatory mechanism for newly privatised industries and to deliver public services (Moran, 2001). Umbrella terms often used for these actors’ are or arms-length bodies (Skelcher, et. al. 2013), non-departmental public bodies (NDPBs), as well as the more unofficial but widely used term quasi-autonomous non-governmental organisation (QANGO). However, according to the official classification used by the UK government, IPSA does not conform to any of these categories (Cabinet Office, 2016a). As a result of its relationship with Parliament, IPSA is considered a Non-Administratively Classified Parliamentary Entity (NACPE) and not part of the government, as is the case with standard NDPBs. As such, it is not listed in *Public Bodies* – the official list of independent entities in the UK government (Cabinet Office, 2016b).

Consequently, in spite of its functions in terms of the regulation of political ethics, IPSA can be more
closely compared to the National Audit Office (another NACPE, reporting to the Audit Committee) than it can to other British political ethics regulators such as the Committee on Standards in Public Life (CSPL) – a division of the Cabinet Office which reports to the government.

The scope of IPSA’s power to regulate parliamentary finance was also deliberately left broad so as to provide the new regulator maximum discretion. Notably, much of the system which IPSA is charged with administering was designed by IPSA itself in the narrow period between its establishment and the 2010 general election when the new arrangements went into full effect. The only other significant input in advance of the first version of the scheme came from the CSPL, whose review of the expenses system ran in parallel to the establishment of IPSA. The central document defining UK parliamentarians’ entitlements is therefore IPSA’s own *Scheme of Business Costs and Expenses* (‘the Scheme’), now in its eighth edition. While it has undergone a number of revisions over the years – most notably in response to external reviews by the National Audit Office (NAO) and the Committee on Members Expenses (CME) discussed below – the Scheme nonetheless represents IPSA’s own vision of the expenses system.

IPSA therefore closely approximates the model of an accountability deficit regulator. This has allowed IPSA to make controversial decisions which may not have been possible for a more closely accountable regulator. Reflecting the broad nature of IPSA’s power over parliamentary finance, and the ability to set broad strategic goals, IPSA increased salaries while pairing back the generosity of expenses (IPSA, 2016). While the latter proved highly unpopular with MPs (Gay, 2014), the former proved equally unpopular with the public. Nevertheless, IPSA’s leadership has argued that this is precisely the kind of long-term thinking which independent regulation allows for (IPSA, 2013a: 3-4).

**Table 1 IPSA’s Net Positivity Relative to other UK Agencies**

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<td>IRA</td>
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<td>Environment Agency</td>
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<td>Competition Commission</td>
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<td>Independent Parliamentary Standards Authority</td>
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<td>Independent Police Complaints Commission</td>
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Source: https://yougov.co.uk
These decisions were the result of extensive deliberation and consultation (IPSA, 2016: 18-21), funded by a ‘special projects’ budget (IPSA, 2016: 41). IPSA launched three separate public consultations on the pay issue, and liaised with a range of public bodies including the Senior Salaries Review Body and the Government Actuary. It also employed the pollsters YouGov to produce public opinion data on MPs financial support (IPSA, 2013b). Ultimately, the agency’s decision rested on, as its first Chair Sir Ian Kennedy articulated, the conviction that IPSA represented ‘an important if small contribution to the constitutional landscape of the country’ (IPSA, 2016: 2), and one that parliament had created it for precisely this purpose (IPSA, 2013a: 4).

Nonetheless, the downside consequences of accountability deficit regulation are also clear from IPSA’s case. In addition to SCIPSA, the Commons possesses several parliamentary committees with some degree of oversight of IPSA. The most significant of these, at least initially, was the dedicated Committee on Members Expenses (CME). This committee was primarily an avenue for MPs to air their grievances against the new regime. It produced a highly critical report in December 2011, detailing a long list of proposed changes, including modifications of the Parliamentary Standards Act (CME, 2012). Likewise, the Committee on Standards produced a similarly critical report at the end of 2011 focusing on IPSA’s procedures for investigations (CS, 2011). While much of this pushback was rejected by IPSA and the government, including the changes to legislation, the CME and CS reports amounted to a strong push back against IPSA’s independence on grounds of an accountability deficit (IPSA, 2016; Hine and Peele, 2016). More worryingly, however, there is little evidence of strong public confidence in IPSA either. YouGov’s reputation tracking data, which runs from December 2013 to May 2016, shows IPSA has an average net positivity rating of -28, well behind a number of comparable independent regulators (see Table 2).

3.2. IPEA as a Credibility Deficit Regulator

In Australia, the legislative basis of the IPEA is superficially similar, but importantly different to its UK cousin. The establishing legislation for the IPEA is the Independent Parliamentary Expenses Authority Act 2017 (IPEA Act). Like the UK Parliamentary Standards Act, it establishes the IPEA as an independent Commonwealth entity, overseen by a board and a CEO. However, rather than the appointments process running through Parliament as in the UK, the IPEA Act requires the Governor-General (i.e. the government) to appoint the members of the board and the responsible minister (Finance) to choose the CEO. This is reinforced by the broader public governance framework, in place under the Public Governance, Performance and Accountability Act 2013, which formalises the relationship between Commonwealth entities such as the IPEA and the government. For the
purposes of that act, the CEO of the IPEA is an ‘accountable authority’ required to keep ministers informed of operations. IPEA’s core operating budget is also drawn from the department for Finance’s estimates, rather than a freestanding appropriation. This closer relationship with government is characteristic of Australian statutory authorities, the merits of which have been variously debated both within government (Uhrig, 2005) and by scholars (Wettenhall, 2005).

IPEA also operates under a more extensive legislative framework than IPSA. An entitlement to salaries is included in the constitution, and basic expenses entitlements are defined (most recently) under the Parliamentary Business Resources Act 2017. The Act was designed to rationalise the expenses system and augment the IPEA Act, as well as to further delineate the duties of the new authority – in particular vis-à-vis the independent Remuneration Tribunal (‘the Tribunal’). The Tribunal, established under the Remuneration Tribunal Act 1973 (RT Act), still has important functions under the new parliamentary finance system. Unlike IPSA, therefore, IPEA has a stronger link to government and a more extensive set of external relationships, both to legislation and other regulatory bodies.

Consequently, the IPEA bears the hallmarks of a being a credibility deficit regulator. In the first place, the IPEA is simply not empowered in the same way as IPSA to make strategic decisions about the system. Somewhat counterintuitively, it does not actually control the level or range of payable expenses. Nor does it set parliamentarians salaries. As the PBR Act (s.31) makes clear, these powers remain with the Remuneration Tribunal. IPEA’s core functions are therefore related to administration and the quasi-judicial function of ruling on particular claims. Under the same section of the Act, IPEA must process MP travel allowances and expenses, as well as designated travel benefits as defined by various laws (s.12 g), as well as pay these benefits (s.12 h, i, j, k, l). It must also provide support functions, notably the provision of personal advice and general advisory documents for parliamentarians on using the expenses it administers (s.12 a, b).

As a result, the IPEA’s public statements in its first year of operation have focused on improving administration of the expenses system and the accuracy of the decisions it produces. It defines its core function as ‘requiring that taxpayer funds be spent appropriately and in compliance with the relevant principles and regulation’ (IPEA, 2017a), in particular the ‘dominant purpose’ test as defined by the Parliamentary Business Resources Act 2017 (s. 25). Likewise, IPEA’s Corporate Plan 2017-18, produced according to the requirements of the PGPA Act 2013, states that IPEA will ‘continually

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3 The most recent relevant determinations are Determination 2017/13 Members of Parliament – Entitlements, establishing the basic scheme, and Determination 2017/16: Members of Parliament – Travelling Allowance, which sets the exact rates. Both came into force at the beginning of the new tax year, simultaneously with the establishment of IPEA (1st July 2017).
assess and seek to materially update our ICT digital working environment to create an infrastructure and system which improves IPEA’s administration, advisory, reporting and audit functions’ (IPEA, 2017b). IPEA’s statements on its transparency and reporting functions are also expressed in terms of improving precision (IPEA, 2017c).

As a result of its narrower focus, the IPEA has proven relatively uncontroversial with no obvious pushback from parliamentarians. The few amendments offered during the passage of the IPEA Act suggested only minor changes to the proposed framework, and neither the Committee on Privileges and Members’ Interests nor the Joint Committee on Public Accounts and Audit have taken much apparent interest in the process of setting up the IPEA. Indeed, since the widely covered announcement of the new body in January 2017 and the passage of the Act the following month, little has so far been said about the IPEA by any official body other than IPEA itself.

On one level, this reflects a degree of success by the Turnbull government in achieving consensus on the way forward for parliamentary expenses regulation. However, some have questioned whether the IPEA really has the power to bring about lasting change (Mulgan, 2017; Sawer and Gauja, 2017), and the Labor Party have now called for a national integrity commission with broader powers along the lines Independent Commissions Against Corruption (ICACs) which exist at the state level (Easton, 2018). While the IPEA seems likely to be left in place therefore, it may not have ended the debate on parliamentary expenses regulation in Australia either.

4. Conclusion: a way out of the dilemma?

In line with the argument that independent regulation of parliamentary actors presents fundamental dilemmas of accountability and credibility, both the IPSA and IPEA models of regulation for parliamentary finance have strengths and weaknesses. In the UK, regulation has been handed over to a ‘constitutionally… novel creature… as close as a Westminster system can get to something that [is] genuinely independent’ (Andrew McDonald, IPSA’s first Chief Executive, quoted in Easton, 2017). By contrast, Australia has created a new statutory regulator, but in the mould of others within the Commonwealth which derive their authority and direction from ministers and act within an overall legislative framework which ties them quite closely to the government.

In the former case, this created a thoughtful regulator which has used its strategic autonomy to bring about widespread changes in the parliamentary finance regime. However, this came at the cost of significant pushback and controversy – and not only from MPs. In the latter case, the new regulator has had an easier birth, facilitated by its tightly tailored remit as a mechanism to improve accuracy and efficiency in the parliamentary expenses system. However, doubts remain about its credibility and the adequacy of its powers to bring about real change.
There are, therefore, clear limits to the independent agency model of parliamentary regulation. At the same time, several additional features of the IPSA and IPEA models indicate some ways in which the dilemma outlined in this paper can be, if not resolved, then at least mitigated. Firstly, both models incorporate to some degree the idea of ‘networked governance’ (Stoker, 2006). Networked governance refers to horizontal, non-hierarchical interactions between regulatory actors (Mulgan, 2014). While some have contended that such interactions may further complicate the issue of accountability (Bovens, 1998: 229) and weaken regulatory credibility (Jordana and Sancho, 2004), others have claimed that networks are an effective alternative route to achieve these ends through cooperation, trust and shared values (Goodin, 2003).

In the case of IPSA, there is considerable evidence that the latter was the case. The initial pushback IPSA received from MPs was balanced by its relationships with other regulators. This came from a variety of sources, the most significant of which being the National Audit Office (NAO) and Committee on Standards in Public Life (CSPL). In the case of the former, its role as the auditor of IPSA’s accounts is set out in the PS Act Section (s.24(1)(2)). In addition to regular auditing, the NAO has also played a role in buttressing IPSA’s independence in the face of parliamentary attacks. In a July 2011 report, for example, while ultimately recommending a relaxation of IPSA’s procedures and the adoption of a more risk-based approach, the NAO praised IPSA for having established a robust and (reasonably) efficient system in a short space of time (NAO, 2011). This greatly aided IPSA in its response to the CME and others later that year (IPSA, 2016).

IPSA has also received support from the Committee on Standards in Public Life (CSPL). The CSPL has had a catalysing effect on British political ethics regulation since it was established in 1994 (Hine and Peele, 2016). Under its own terms of reference, as well as under the PS Act (s.5(4)(b)), the Committee is empowered to review (and be consulted on) the scheme of expenses drawn up by IPSA. It has pushed IPSA to take a tougher line on certain matters, for example on MPs employment of family members. This was originally recommended by the CSPL in its initial report after the scandal, and finally implemented by IPSA after 2017 (CSPL, 2009; IPSA, 2016). Like the NAO, the CSPL has also used its considerable reputation as a guardian of public ethics to support the principle of IPSA’s independence in the face of attacks. Its own initial review of IPSA stated that its establishment was ‘one of the most important steps taken to restore public confidence’ (CSPL, 2011).

In the case of IPEA, it may be too soon to tell whether similar network effects will work to counteract the deficiencies of its design. IPEA is empowered to both to monitor a wider range of expenditure matters, publishing regular reports including into particular issues (s.12 c, d) and to conduct or arrange audits of the system (s.12 f). At this stage, it is difficult to say what use IPEA may make of
these powers. Review and audit can be powerful tools of policy influence in an environment where other decision makers are receptive. The most important relationship in this respect will be with the Remuneration Tribunal. As noted, the post-2017 system compliments the policy functions of the Tribunal with the administrative and review functions of the IPEA. The Tribunal itself is similarly independent when compared with IPEA. As specified by the Remuneration Tribunal Act 1973, it is composed of three members appointed by the Governor-General (s.4(2)) for five year renewable terms (s.4(3)). The appointees cannot hold another public office, including that of a member of parliament (s.4(4)). IPEA has a deliberately close relationship with the Tribunal – indeed, under Section 15(a) of the IPEA Act, the president of the Tribunal sits on the board of the IPEA. While the precise relationship between these bodies is hard to gauge at this stage, therefore, the IPEA and the Tribunal in some ways parallel the close relationship between IPSA and the Compliance Officer in the UK, only with a different division of functions. Thus, in conjunction with the Tribunal, the IPEA may be able to use its power to periodically report on expenses to expand its remit in the future.
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Appendix 1. Glossary of Legislation

*Australian Information Commissioner Act 2010*

*Constitutional Reform and Governance Act 2010*

*Freedom of Information Act 1982*

*Freedom of Information Act 2000*

*Freedom of Information Amendment (Reform) Act 2010*

*Independent Parliamentary Expenses Authority (Consequential Amendments) Act 2017*

*Independent Parliamentary Expenses Authority Act 2017*

*Members of Parliament (Staff) Act 1984*

*Parliamentary Business Resources Act 2017*

*Parliamentary Contributory Superannuation Act 1948*

*Parliamentary Entitlements Act 1990*

*Parliamentary Entitlements Legislation Amendment Act 2017*

*Parliamentary Retirement Travel Act 2002*

*Parliamentary Retirement Travel Act 2002*

*Parliamentary Standards Act 2009*

*Parliamentary Superannuation Act 2004*

*Public Governance, Performance and Accountability Act 2013*

*Remuneration Tribunal Act 1973*