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CORRUPTION AND CRIME COMMISSION

OF WESTERN AUSTRALIA

COMMISSIONER JOHN MCKECHNIE QC

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 16 AUGUST 2019, AT 9.52 AM

COUNSEL ASSISTING:

MS KIRSTEN NELSON

MS CLARE STANYER

WITNESS: COLIN PETER MURPHY

THE COMMISSIONER: Please be seated.

MURPHY, COLIN PETER SWORN AT 09.52 AM:

THE COMMISSIONER: Good morning, Mr Murphy?---Good morning, Commissioner.

NELSON, MS: Thank you, Commissioner.

Mr Murphy, can you state your full name please?---My name is Colin Peter Murphy.

Thank you. And you're a member of the Salaries and Allowances Tribunal?---That's correct.

How long have you been a member?---A little over a year, since I retired from the position of the State's Auditor General.

And how long did you hold that position for?---For about 11 years, in opposition.

Thank you. Now, on the table in front of you is 0014^ which is the 2015 determination that Professor Seares was referring to.

0014^

NELSON, MS: And you were in the body of the examination room while she gave her evidence?---Yep.

If we could just go to the accommodation allowances which are at page 19 and following, there seemed to be a range of different accommodation allowances. Are you able to explain generally what they cover, Mr Murphy?---Not in detail, but certainly very generally. I mean, there is an expectation - well obviously Members are dispersed across the State and yet they all need to come to Parliament for the activities of Parliament for a significant part of the year so that's now been incorporated into a specific number of days where there's an allowance paid for all Members to come to Perth for meetings of the Parliament. There's also a recognition that other Members, Members who are part of committees and other parliamentary activities, may need to come to Perth for additional meetings so there's an additional number of nights allowed for that, and then there are separate travel allowances for specific activities that they might be engaged in.

And those allowances are separate to the parliamentary

travel or the imprest, as it was called, allowance?
---Absolutely. Absolutely.

And those accommodation allowances you just articulated, are they claimed or are they given through the payslip system, or is it a mix?---It's a mix because the parliamentary is a fixed number of days that is paid as a - as a fixed allowance; other allowances are claimed, depending on activities.

When you say the parliamentary you mean the accommodation allowance for them to attend Parliament?---Absolutely, yes.

That's what you're referring to?---Yeah, that's a fixed number of days.

And given that we've already had evidence about the electorate allowance allowing some travel for electorate purposes and then we've got the parliamentary allowance, also known as imprest, and then the accommodation allowance which also contemplates travel, where do you see the misconduct risks in relation to parliamentarians' travel allowances - - -?---Look - - -

- - - in global terms?---Look, I'd - I do think you've outlined that a number of these allowances are claimable, they're documented as to what their purpose is. Other allowances, like the former imprest which is now into a specific travel allowance, and the electorate allowance, don't have any specific requirements as to how they'll be spent. The - the Member is able to spend those moneys at their own discretion and there's only the - the "party political purposes exclusion" in the electoral allowance but beyond that it really is a matter of the - of the Member's discretion.

So what do you understand that "exclusion party political purposes" to mean?---Well, it - it would be very, very difficult because all Members are out there representing their electorate. Members are typically Members of a - of a party so a number of their activities would involve promoting, you know, what they're - what they're doing and - and their party activities. Where they step over the line from representing their constituents and into party political would require some judgment but I - I do also take into a fact that we have a - a parliamentary system with opposition and people in the electorate having a good look at what a Member's activities are and - and what they're doing. So I do think there are some eyes on a Member of Parliament, having a look at - at their activities and sort of making their judgments about whether

they are party political purposes. It's perhaps more difficult to then identify whether they've spent their electorate allowance on party political purposes.

And those eyes you referred to, members of the electorate, are there any other eyes?---Members of Parliament and members of the electorate and members of the media.

And if a member of the electorate was to have some concerns about a parliamentarian's travel or how they spent their allowances, where would they go to express those concerns? ---Look, parliamentary travel is a - is a matter and it happens in every jurisdiction that it's an issue of great interest to the media. So there are a lot of eyes and a lot of comments on what Members of Parliament are - are doing so there's lots of opportunity to - to talk to Members of Parliament or the media about issues that are not considered appropriate by members of the electorate or - or Members of Parliament, so there's opportunities to raise these issues. As to then what the consequences are is likely then a matter either for the Parliament if they see something that's - that they need to deal with, or alternatively for the electorate to deal with at the ballot box.

THE COMMISSIONER: Can I ask a question, which will annoy Ms Nelson but she's always gracious enough not to show it?

What you've outlined I entirely agree with and it - and it I think probably stresses the importance of an independent media who are - can be the effective watch-guard but have we, as a State, in effect outsourced the accountability for the \$7.5 million to relatively informal matters?---Look, I - I do think with all matters of public administration there tends to be a pendulum of going one way and then another. I - I think with these allowances I - I find it particularly useful to look back at - at the history which was very bureaucratic, very cumbersome and very approval based. Members of Parliament have been quite rightly indignant that they're required to go to their political opponents to seek approval to do something, indeed to notify them of what their investigation might be which - which they've - they've resisted. So we've come from a system that was bound with a whole lot of rules and regulations and - and approval processes and we've now gone to a situation where there's much less of that and it is a reasonable question to ask as to whether that's gone too far, whether we now have too free and too open a system and whether the checks and balances aren't there. And I do have a personal view which I'm not being asked but I - I do think we are now in a different era of transparency with

the Internet and with the capacity to be able to deal with these things in a different matter - a different manner than existed in the bygone eras where you needed to have those checks and balances and approvals because that was all that was available to them.

It's an interesting question which the Commission is grappling with; has no answers at this stage, may have no answers at the end. You are again quite correct and as Ms Nelson outlined in a - in a democracy Members must be financially assisted and must have discretion over how the money is spent, they can't be dictated to by their political opponents as to how best to spend their electorate allowance in the electorate.

At the same time it is a significant amount of public money, for which at the moment there presently seems to be no effective checks; perhaps the Australian Tax office but that would simply mean in effect that the State has outsourced its accountability to the Federal Government?--- Absolutely. It - look, it is an issue that the Tribunal has been looking at specifically with respect to the travel allowance and the question we've been asking ourselves and it has been asked of us whether the current system which requires no approvals and simply goes directly into a Member's bank account, if that Member chooses not to travel it's an income supplement to them. Now, we recognise and Members of Parliament recognise the benefit to the community of an educated, well-travelled Parliament that can go and have a look at issues and inform themselves and - and learn and bring back that knowledge to the West Australian Parliament and the question that we've asked ourselves and that's being asked of us is have we de-incentivised the travel by putting money into people's bank accounts and taking away that requirement to have a much more public view of what Members' travel entitlements are being spent on.

Thank you.

Sorry, Ms Nelson - yet again.

NELSON, MS: Thank you, Commissioner.

Mr Murphy, you spoke earlier, a couple of answers ago, about the pendulum swinging back and it's useful to look at the history, and isn't it the case that it was only ever with the imprest travel that they needed to go and seek approval, perhaps from the opposite political party, for travel? The electorate allowance has always been at their discretion, has it not?---Yes, I think broadly - broadly

you're right. But I think as was sort of touched on in the - in the earlier testimony, the electoral allowance has grown over time by combining what were separate allowances. So if you go back far enough I think you will find, I'm not a hundred per cent certain on this but I think you will find there will be separate buckets for things like telecommunications, printing, postage and those sorts of things and - and again they've now been rolled in so that we don't - you don't have to spend a fixed amount on printing or - or postage or - or communications or - or what it might be. But it's - it's now been for quite some time that the electoral allowance is - is a significant sum and it's not tied to any particular purpose.

And the discretion exercised by Members doesn't have to be documented anywhere, does it, other than - - -?---No, and - - -

- - - through the invoice?---And we have asked that question and it doesn't appear that it needs to be documented anywhere. There's - there's no - no one within the system within the department or the Parliament or the Tribunal that's having a look at that expenditure.

Thank you. If we could go to page 2 and just the preamble and specifically paragraph 7 where it talks just before the - the three dot points about getting a balance between ensuring Members have capacity to undertake their roles, maintaining standards of accountability and decreasing the administrative burden on Members, could you talk about that a bit please, Mr Murphy? What is meant by that balance? ---Look, I think - I know we spend a lot of time on - on that issue and we - and we certainly have in the past, which is the administrative burden and the requirement for accountability. There's always the trade-off. I mean, accountability actually costs. It has - it has a price. To actually start - even - even transparency, to start recording and making information available there's a cost and a burden to that and the question that the Tribunal needs to look at, and - and others need to look at as well, is how do you find the balance in that? If there's a total, you know, lack of accountability and transparency, obviously you've gone too far. I think in the past there is some evidence that some of our antiquated, cumbersome processes went too far the other way.

What's your understanding of how an MP would deal with travel which has a mixed purpose so - so partly for their role as parliamentarian, partly a private trip?---Look, I - I think that does happen in life from time to time and I - and I think, you know, depending on - on - on rules that

might be in place, putting - putting those aside, it's up to a - a Member to then start doing an assessment of - of the components that might be travel and - and might be otherwise. And I think that the Tax Office, to the best of my knowledge, does this, you know, quite regularly with whether it's a holiday house or a - or an office at home that they require you to go through a process that determines which purposes, what percentage of - of the time and the - and the dollars are spent for - for which purpose. So I think it's incumbent on Members to be conscious about what they're doing and - and what percentage applies to each of the purposes that - when they're mixed.

THE COMMISSIONER: Could I ask you a hypothetical arising out of Ms Nelson's question? Supposing I, as a parliamentarian, want to go overseas for a week of business that will benefit my electorate and I want to take a holiday for a week so I go away for two weeks, how in that hypothetical example do you think it should be properly accounted for by the Member?---Look, I don't think it's a matter of - in - in that example that you've pointed out I don't think it's a matter of - of simple fifty-fifty apportionment. I think it - it really is important to determine the primary purpose of the - of the trip. You know, if - if I had, you know, parents living in Europe and went to see them at Christmas time and decided to also go and do a bit of parliamentary business, then it's clearly a private trip; you know, the - the cost of the trip is private and I've added on a little bit of - of other business. But the other circumstance, you know, travel can be quite telling, you know, it - it can take a toll. So if you're actually doing a fact-finding mission in a number of countries or - or a specific country, then taking one or two days off to have a breather and have a spell and maybe do some sightseeing would be quite reasonable but it wouldn't be - and then I think it would be quite appropriate to measure those costs and say they are a private - a private benefit rather than a public one. So it really is important to understand what the fundamental purpose of the expense is in the first place and if the fundamental purpose is a private one, then it shouldn't be - you shouldn't try and cast it in another light.

Thank you.

NELSON, MS: Thank you.

If I could just take you to page 12 which is back to the electorate allowances and looking at what the base electorate allowance is intended to be used for?---Yep?

So 3.2(2), there's a list there of expenses that are included in the allowance so that means that's not a definitive list. At (c):

Hospitality and entertainment associated with a Member's official business.

Are you aware at all of what the - the ATO's view is on hospitality and entertainment for Members?---I - I am aware that that's a contentious issue so I can explain broadly what - what the issue is. All of the other items on that list - information, communication, technology, awards, electoral management systems, stationery and printing - are quite clear-cut in my understanding of - of the taxation treatment; that if funds are expended in those areas, then they will be claimable as a deduction and there isn't a lot of - a lot of difficulty with that. Hospitality and entertainment is different because the ATO have some strict rules around what they allow in terms of hospitality, so there would be a difference. For example, a Member of Parliament, you know, meeting an acquaintance at a pub, having a beer, discussing, you know, the concerns that a member of the electorate might have may well be a legitimate parliamentary purpose but the ATO, I suspect, would take a dim view of that as a deduction. So the ATO has specific requirements around what can be claimed as hospitality that are narrower than the words that appear on - on this piece of paper.

And - and why is that? Why have the words not been narrowed in the Determination?---In - in terms of for - if - if a Member of Parliament wanted to have a Christmas party for their electorate and invite people and have a drink, the - the electoral allowance allows them to do that. The ATO for its own reasons has decided, you know, that it's going to have a much stricter interpretation on what's allowable as a deduction. So that - that, to me, is the one area of - of difference between the ATO's - well, where the ATO takes a different view as to what's claimable and what's not.

But the current ATO ruling on entertainment expenses says:

A deduction is not allowable for the cost of providing entertainment, food and drink, except where it is incurred in providing entertainment for the public at large.

So in the example you gave that - that would fall within the deductible remit of the ATO, would it not?---It sounds

like it, yes.

And on (e) on that page, can I just ask you what the Electoral Management System is? Is that a - a particular - - -?---They - they would vary. It's largely software systems that run on computers that have contacts from members of the electorate and, you know, document management and the like.

THE COMMISSIONER: Things that really would be required in any electorate office?---Absolutely, yes.

It just seems a bit strange that a Member's entitled to an office, staff, that are not part of the electoral allowance. One would have thought that, well, basic management tools would be included in that rather than in the allowance?---Again, I think there's an evolution there and it - you know, it may be appropriate to examine that matter.

NELSON, MS: Thank you.

I have no further questions, Commissioner.

THE COMMISSIONER: Thank you very much indeed for your attendance this morning, Mr Murphy?---Thank you.

It's been most helpful again.

This investigation will continue for some time. Not every examination will necessarily be a public examination but I thank everybody for their attendance this morning.

(THE WITNESS WITHDREW)

AT 10.13 AM THE MATTER WAS ADJOURNED ACCORDINGLY

**Certificate Made Under Section 50A of the
Evidence Act 1906**

The transcript of Colin Peter Murphy heard on 16 August 2019.

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Certified on this 16th day of August 2019 by: Glenda Judge
and Sheila Robbshaw

Full Name: Glenda Judge
Sheila Robbshaw

Occupation: Transcriber and officer of the Commission under the Corruption, Crime and Misconduct Act 2003 ss 182, 3 who has taken an oath before the Commissioner.

Signature: (Glenda Judge) (Sheila Robbshaw)

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