



WESTERN AUSTRALIA

**CCC** | Corruption and  
Crime Commission

# Misconduct risks in electorate allowances for Members of Parliament

17 December 2019



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# INTRODUCTION

## A serious misconduct risk exists

- [1] \$7.5 million a year. Unaccountable to the State. Unaudited by the State. That is the annual cost of the electorate allowances paid to Members of Parliament. There are rules for its use. But no one checks to see if the rules are followed.
- [2] The intention is that this money assists a local Member of Parliament to serve the electorate in the manner that the member considers most appropriate under the constraints of the *Determination of the Salaries and Allowances Tribunal On Remuneration of Members of Parliament* (the determination). The Salaries and Allowances Tribunal's (SAT) intention is not always acted upon.
- [3] The Commission has identified a serious misconduct risk that the community is not reaping the benefit of all electorate allowance funds. By way of example, this interim report tells a story of how some electorate allowance funds were inappropriately used by a member of the Legislative Council during the period May 2013 to May 2017. While some electorate allowance funds may have benefitted the electorate, a significant portion was used by the then member to fund his personal lifestyle. Using electorate allowance funds to visit an exotic strip club, fund the travel and entertainment of female companions and treat staff to lavish, private Christmas parties, is not appropriate. This is a diversion of State resources for private use.
- [4] The SAT determines the nature and amount of allowances paid to Members of Parliament and sets the criteria for expenditure. Both Parliamentary Services and the Department of the Premier and Cabinet (DPC) have a role in administering various allowances.
- [5] A Member of Parliament has wide discretion in the performance of the functions of the office. Merely negligent discharge of the functions of office is not corruption. Serious misconduct must involve conduct that would be regarded by a reasonable person as corrupt.<sup>1</sup>
- [6] Actions or dereliction of the proper performance of the duties of office that occur over a sustained period may go beyond mere negligence. The evidence examined for this interim report shows that a former Member of Parliament repeatedly used his electoral allowance for private purposes that had no connection with, or benefit for his electorate. A

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<sup>1</sup> *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 4.

misuse of power for private purposes may be corrupt when the power is exercised not in good faith for public purposes but for an improper personal purpose.

- [7] The Commission considers that the public interest requires that it report, to the extent which it is able, on serious misconduct risks with electorate allowances and the actions of a former Member of Parliament. Necessarily this is an interim report because the Commission does not have access to significant material lawfully obtained by the Commission which the Legislative Council has ordered to be surrendered to it.
- [8] This report is based on the testimony of 14 witnesses taken in public and private examinations, on source documents, together with selected telecommunications lawfully intercepted under warrant. Before this report was finalised, any person adversely named was provided with the relevant portions of the draft report. Where appropriate, the Commission has amended the draft to reflect any submissions made by those persons, or their legal representatives.
- [9] This interim report concerns the conduct of a former public officer, primarily as an illustration of the misconduct risk in State money provided for a specific purpose, to use at the member's discretion to benefit the member's electorate, when there are no checks as to whether that money is spent subject to the requirements of the SAT determination.
- [10] Operation Betelgeuse is a continuing operation utilising all powers available to the Commission. This interim report does not conclude the Commission's investigation.
- [11] Moreover, when Supreme Court proceedings instituted by the President of the Legislative Council against the Commission are resolved, and if the Legislative Council decides to release any material it holds to the Commission, that material will be evaluated. The Commission believes there is significant evidentiary material contained on the former member's laptop computer and two hard drives that were in his possession until recently.

# CHAPTER ONE

## Commission jurisdiction

- [12] The Commission has jurisdiction over members of both Houses of Parliament.<sup>2</sup>
- [13] Each House of Parliament is exclusively empowered to punish members for a contempt for any offences committed by a member of the House or by any other person<sup>3</sup>. This includes disobedience to any order of either House, refusing to be examined before either House, assaulting, obstructing, insulting any member in coming to or going from the House and offering a bribe to or attempting to bribe a member.
- [14] The Commission does not have jurisdiction to investigate the conduct of former Members of Parliament where the conduct is concerned with, or connected with, proceedings in Parliament. The other side of the same coin is that the Commission may investigate allegations of serious misconduct by Members of Parliament when the conduct is part of their function as a public officer, but outside the business they conduct in Parliament.
- [15] Serious misconduct is defined:
  - Misconduct occurs if -*
    - (a) *a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment; or*
    - (b) *a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person to cause a detriment to any person; or*
    - (c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment.<sup>4</sup>*
- [16] The main purpose of the *Corruption, Crime and Misconduct Act 2003* (CCM Act) is to continuously improve the integrity of the public sector, and reduce the incidence of misconduct.
- [17] In February 2019, the Commission commenced an investigation into allegations of serious misconduct by certain Members of Parliament. An aspect of the investigation is to identify any serious misconduct risks and

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<sup>2</sup> *Criminal Code* s 1.

<sup>3</sup> *Parliamentary Privileges Act 1891* s 8.

<sup>4</sup> CCM Act s 4(a)(b) and (c).

draw them to the attention of appropriate authorities.<sup>5</sup> This operation is known as Operation Betelgeuse.

- [18] In all investigations, the Commission obtains relevant records compulsorily under statutory powers that include execution of search warrants and the issuing of notices to produce records (NPRs). As part of this investigation, in April, June and August 2019, the Commission served NPRs on the Director General of DPC. These NPRs sought access to historical records stored by DPC.
- [19] The validity of the NPRs issued to the Director General of DPC is in contention; the Legislative Council has challenged their lawfulness.
- [20] The Legislative Council required the Director General of DPC to produce all documents captured by the NPRs to the Council, and has required the Commission to deliver a copy of all material produced in response to the NPRs. At this time, given the Council's challenge to the validity of the Commission's statutory power, the Director General has been permitted to comply with two of the three NPRs. Consequently, the Commission has been denied access to records from DPC necessary for the investigation, and which had been sought up to seven months ago.
- [21] In September 2019, NPRs were served on the Clerk of the Legislative Council, Mr Nigel Pratt. The NPRs sought all documents which had been produced to the Legislative Council by the Director General but which were not subject to parliamentary privilege. These NPRs have not yet been complied with.
- [22] The Legislative Council also required the Commission to surrender to it a laptop computer and two hard drives lawfully seized from the residence of a former Member of Parliament, Mr Phillip Edman, by Commission officers pursuant to a search warrant issued by a Supreme Court judge. Mr Edman was a member of the Legislative Council from 2009 to 2017.
- [23] The Commission believes that material of significant relevance to its investigation may be contained within the records withheld from the Commission. During a private examination, Mr Edman gave information about some of the contents of the laptop. The general information Mr Edman asserted under oath was contained on the laptop cannot be currently verified by the Commission. Without access to the records sought under the NPR's and the items seized under the search warrant, the Commission cannot conclude its investigation.

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<sup>5</sup> CCM Act s 18.

[24] The lawfulness of the Commission's exercise of an aspect of its powers is now the subject of two separate Supreme Court actions. The President of the Legislative Council, the Hon Kate Doust MLC, has commenced proceedings in the Supreme Court against the Commission in relation to the lawfulness of the exercise of the Commission's statutory powers where they intersect with the *Parliamentary Privileges Act 1891*. Earlier, the Attorney General commenced proceedings against the Hon Kate Doust asserting that the Legislative Council had exceeded its powers. The Commission expressly makes no comment on these actions or the decisions of the Legislative Council in this interim report.<sup>6</sup>

### **A Commission proposition**

[25] The Commission can only act on allegations<sup>7</sup> as defined. It has no power, for example, to initiate an audit covering Members of Parliament generally, or indeed to investigate any public officer without a proper basis.

[26] The Commission may make a proposition that serious misconduct:

- a) *has or may have occurred; or*
- b) *is or may be occurring; or*
- c) *is or may be about to occur; or*
- d) *is likely to occur.*<sup>8</sup>

[27] If the Commission makes a proposition it is treated as an allegation.<sup>9</sup>

### **An allegation of serious misconduct requires reasonable grounds for suspicion**

[28] Any person may report to the Commission any matter which that person suspects on reasonable grounds concerns or may concern serious misconduct that has, or may have occurred.<sup>10</sup> The state of mind necessary to ground an allegation is partly subjective and partly objective.

[29] A person must hold a suspicion (subjective), and there must be reasonable grounds for that suspicion (objective). As to what is a suspicion, in *Queensland Bacon Pty Ltd v Rees (1966) 115 CLR 266*, Kitto J stated at 303:

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<sup>6</sup> *Bill of Rights 1688* (UK), Article 9.

<sup>7</sup> CCM Act ss 3, 18.

<sup>8</sup> CCM Act s 26.

<sup>9</sup> CCM Act s 3 (1)(b).

<sup>10</sup> CCM Act s 25(1).

*A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to a "slight opinion, but without sufficient evidence".*

- [30] In *Hussein v Chong Fook Kam* [1970] AC 942, Lord Devlin stated at 948:  
*Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; "I suspect but cannot prove."*
- [31] Facts which can reasonably ground a suspicion may be quite insufficient to reasonably ground a belief; *George v Rockett* [1990] 170 CLR 104.
- [32] The requirement for reasonable grounds for suspicion is absent from the power to make a proposition. A proposition may be based on the Commission's own experience and knowledge, or assessment of a received matter, and independently of any allegation reported to it under s 26.<sup>11</sup>
- [33] Nevertheless, the practice of the Commission is to require at least a reasonable suspicion of misconduct before a proposition is adopted. Generally, a higher standard is applied. In order to make a proposition, the Commission requires that there must be reasonable grounds for believing that serious misconduct has occurred.
- [34] In the course of a separate Commission investigation, Operation Overton, the Commission discovered material that suggested some former Members of Parliament may have been involved in serious misconduct. That material was carefully analysed.
- [35] The Commission made a proposition that serious misconduct may have occurred, applying the higher standard of reasonable belief. Operation Betelgeuse was then initiated.

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<sup>11</sup> CCM Act s 26.

## CHAPTER TWO

### The role of the Salaries and Allowances Tribunal

- [36] The expenditure of a parliamentary electorate allowance is a matter exclusively for the member at his or her discretion, constrained only by the requirement that the use of the allowance has a connection to the representation of the member's electorate.
- [37] Parliament has no oversight over the use, acquittal or accounting of the parliamentary electorate allowance paid fortnightly to each member. The entire system of setting allowances available to members was removed from Parliament with the establishment of the SAT under the *Salaries and Allowances Act 1975*. The acquittal of electorate allowances is an administrative matter for the member.

#### **Determination of the Salaries and Allowances Tribunal as to remuneration to Members of Parliament**

- [38] Until recently, SAT made an annual determination covering members' remuneration. The conditions of the allowances remained the same, but amounts differed. Since 2017, there has been a statutory freeze on salaries and allowances for those within the jurisdiction of SAT, including Members of Parliament.

#### **Travel allowance**

- [39] In 2013, the SAT assumed responsibility for setting the Parliamentary Travel Allowance, previously known as the "imprest allowance". This allowance is additional to the base electorate allowance and was provided to enable members to undertake interstate or international travel while on official business and to attend conferences or short courses.<sup>12</sup> 'Official business' was a defined term in the determination meaning:

*the usual business of a Member of Parliament, which includes business related to a Member's Parliamentary, electorate or office holder roles; and*

*excludes party business, other than meetings of a Parliamentary political party. Or of its executive or committees, or formal meetings of a political party.<sup>13</sup>*

- [40] This was the travel allowance during a former member's second term of office. For each four year term of Parliament, a member was entitled to draw down on the Parliamentary Travel Allowance to a specified

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<sup>12</sup> Members of Parliament Tribunal Determination No.1 of 2017, clause 7.1.

<sup>13</sup> Members of Parliament Tribunal Determination No.1 of 2017, clause 1.5.

maximum amount, approximately \$27,000. Approval to draw on the allowance required a travel proposal by the member and approval by the Premier or Director General of DPC. Following the travel, a report to Parliament was required.

- [41] SAT altered the basis of the travel allowance on 1 December 2017.
- [42] A member now does not have to seek approval before using the travel allowance. It is capped at \$6,750 per annum, amounting to \$27,000 over a four year term. The electorate allowance may also be used for travel at the member's discretion for the purpose of informing and assisting a Member of Parliament in the performance of their parliamentary business relevant to their electorate.

### **The electorate allowance**

- [43] An electorate allowance is specified in the SAT determination 3.1:<sup>14</sup>

#### **3.1 General**

- (1) *A Member is entitled to an Electorate Allowance to assist in the effective representation of their electorate.*
- (2) *The Electoral Allowance may be used at the Member's discretion, but shall not be used for campaigning, electioneering, or political party promotion.*

#### **3.2 Base Electorate Allowance**

- (1) *In addition to the base remuneration specified in Part 2, a Member shall be paid a Base Electorate Allowance of \$78,000 per annum.*
- (2) *It is intended that this Allowance will be used for expenses incurred to assist with serving the electorate including:*
  - (a) *information and communication technology, including mobile phone use, newsletters and internet publications;*
  - (b) *awards and support for community groups or individuals;*
  - (c) *hospitality and entertainment associated with the Member's official business;*
  - (d) *advertising, other than for the purposes of campaigning, electioneering or political party promotion;*
  - (e) *safety equipment for motor vehicles;*
  - (f) *costs associated with Electoral Management Systems; and*
  - (g) *stationery and printing.*

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<sup>14</sup> Members of Parliament Tribunal Determination No.1 of 2017 (current).

- [44] Quite different rules from the travel allowance govern the electorate allowance.
- [45] The State (SAT) sets the amount and the parameters for which an electorate allowance may be used.
- [46] How the allowance is expended within those parameters is a matter for the discretion of the member.
- [47] The Australian Taxation Office (ATO) for tax purposes treats the allowance as income from which deductions can be made within the parameters of the ATO Taxation Ruling.<sup>15</sup>
- [48] A member who treats an electorate allowance as income to be expended as he or she wishes, in the Commission's respectful opinion, misunderstands the nature and parameters of an electorate allowance.
- [49] An electoral allowance is public money disbursed for a specific purpose. Although the ATO treats the allowance as income for taxation purposes, Western Australia allocates the money to assist in the effective representation of the electorate.

### **Evidence from the Salaries and Allowances Tribunal**

- [50] The Commission was assisted by the evidence of the Chair of SAT, Professor Margaret Seares, and a Tribunal Member, former Auditor General, Mr Colin Murphy.

***Professor Margaret Seares***

- [51] Professor Seares<sup>16</sup> explained 'The role of the tribunal is fundamentally to set both the salary and terms and conditions for Members of Parliament ... through ... determinations.'
- [52] She elaborated that SAT goes about making a determination by looking at public sector wage policy statements, wage price indexes, Department of Treasury State economic and fiscal outlook statements and the government's financial projections. SAT looks at other officer holders in the eastern states, and also areas such as local government.
- [53] On occasion, the SAT uses a statutory advisor, a former politician, who normally has long experience in the Parliament and can give SAT advice and warnings, or alerts. There is no statutory adviser at present; the most recent statutory adviser resigned in June 2019.

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<sup>15</sup> ATO Taxation Ruling 1999/10 Taxation Ruling Income Tax and Fringe Benefits Tax: Members of Parliament - Allowances, Reimbursements, Donations and Gifts, Benefits, Deductions and Recoupments.

<sup>16</sup> Transcript of Professor Seares, 16 August 2019.

[54] Professor Seares noted there are currently about 26 allowances.

[55] The base electorate allowance is \$78,000. That allowance is made up of a series of different allowances that were aggregated some years ago to make one large allowance.

[56] Professor Seares explained the purpose of the electorate allowance:

*A Member is entitled to an electorate allowance to assist in the effective representation of their electorates.*

*Well, in addition to their salary, it would be seen as unreasonable if a Member were to spend their actual income, salary income, on the management of their electorate, and the running of their electorate. People expect a lot of their politicians, not only in the metropolitan area, but in particular in the regions, and there are a lot of requests put upon them for a range of things to be provided. There's also information that needs to be provided by the MP to their electorate, so there are a range of that type of costs that need to be accounted for in a way different to the salary, the base salary of an MP. So in talking about the effective representation of their electorate, it's actually talking about representing the electorate, and also informing themselves about their electorate. In particular some of the very large electorates we have in this State, a new Member has to spend a lot of time informing them so that they can be an effective representative for their electorate. So there are a lot of costs involved in being a Member and some Members do it differently than others. Some Members you will hear will present books annually at their school, school books, prizes and so forth that has to come out of their electorate allowance. Other Members support local groups in different ways, printing, stationary, advertising, for the local group that has to come out of the electoral allowance. So that is really what is talking about the effective representation of their electorate.*

[57] Additional allowances are granted for regional members and are set according to the size of the electorate, and to some extent, the distance from Perth. They range from \$10,400 for the Warren-Blackwood district in the south, up to \$25,350 for the Mining and Pastoral Region, a very large region in the north.<sup>17</sup>

[58] The Parliamentary Travel Allowance is not specific to an electorate. Professor Seares' evidence is that it is about the Western Australian community, and it is intended to enable members to inform themselves either about specific issues that they might be involved with in the Parliament, or broader, general issues to do with good governance. This may include education, government administration, public administration, policy. The allowance is to increase and broaden a member's awareness that they can bring back to the community.

[59] Professor Seares' understanding is that all new members have an induction process delivered jointly by Parliamentary Services, SAT and

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<sup>17</sup> Members of Parliament Tribunal Determination No.1 of 2017, clause 3.3(3).

DPC, including access to information as to what allowances the member is entitled to and how it is intended those allowances will be spent. The Commission has seen evidence of email communications concerning new SAT determinations sent from the DPC to Members of Parliament and their electorate officers.

- [60] Professor Seares gave evidence about the oversight of compliance with the determination 'This [electorate] allowance must not be used for campaigning, electioneering, electorate business or personal business.'
- [61] Professor Seares said that to her knowledge, this prohibition was not enforced:

*The Tribunal has no role in enforcing or inspecting any of the expenditures. We set the determination, they're then administered by DPC or Parliament House, and we have no role other than setting that determination.*

- [62] Professor Seares thought the expectation would be that all documentation substantiating allowance expenditures would be kept in accordance with usual ATO requirements, so that the members were able to demonstrate that the allowance had been expended as required. SAT has no relationship with the ATO.

***Mr Colin Murphy***

- [63] The Commission was also assisted by the evidence of Mr Murphy.<sup>18</sup>
- [64] Mr Murphy explained difficulties in the provision that the allowance must not be used for campaigning:

*It would be very difficult, because all Members are out there representing their electorate. Members are typically members of a party, so a number of their activities would involve promoting what they're doing and their party activities. Where they step over the line from representing their constituents and inter-party political would require some judgment.*

- [65] Mr Murphy noted that the Westminster parliamentary system allows for some scrutiny by politically opposite members. People in the electorate can have a good look at what a member's activities are and what they are doing. However, this is only possible if the member reports their activities to Parliament or is otherwise transparent and accountable for their expenditure. In practice, only a subset of travel is reportable to Parliament and there is no regular mechanism for members to publicly announce electorate allowance expenditure. It is even more difficult to identify whether the electorate allowance has been spent on party-political purposes.

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<sup>18</sup> Transcript of C. Murphy, 16 August 2019.

[66] Mr Murphy discussed the travel allowance:

*We looked back at the history. It 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 about. ... So we have come from a system that was bound by a whole lot of rules and regulation and approval processes ... to a situation where there's much less of that, and it's 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.*

*The electorate allowance is an issue that the Tribunal has been looking at specifically with respect of the travel allowance, and the question we have been asking ourselves ... [is] if that Member chooses not to travel, it is 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 learn and bring back that knowledge to the West Australian Parliament, and the question that we've asked ourselves, and that is 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?*

[67] Mr Murphy noted the need to strike a balance:

*I know we have spent a lot of time on that issue, and we certainly have in the past, which is the administrative burden and the requirement for accountability. There is always the trade-off. Accountability actually costs, it has a price. ... To start recording and making information available, there's a cost and burden to that, and the question that the Tribunal needs to look at, 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. (**emphasis added**)*

[68] Mr Murphy was clear in his opinion how to view whether travel was for a business or personal purpose:

*It's really important to determine the primary purpose of the trip. ... 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 you shouldn't try and cast it in another light.*

## CHAPTER THREE

### The tax treatment of allowances for Members of Parliament

- [69] The ATO has published clear and specific rules on the tax treatment of allowances and entitlements enjoyed by Members of Parliament. The receipt of an allowance does not in itself entitle a member to a deduction.
- [70] Member misuse of the ATO personal income tax deductibility rules can be a means of misusing public office to obtain a corrupt personal benefit. In particular, by allowing personal expenses to be falsely represented as work-related expenses, a member may be abusing their office by corruptly seeking a financial advantage.

#### **ATO Taxation Ruling 1999/10 Taxation Ruling Income Tax and Fringe Benefits Tax: Members of Parliament - Allowances, Reimbursements, Donations and Gifts, Benefits, Deductions and Recoupments**

- [71] The ruling is a public ruling legally binding on the Commissioner of Taxation.
- [72] The ruling applies to members of the State Legislative Assembly and Legislative Council.
- [73] Within the ruling<sup>19</sup> it is noted that parliamentary allowances may include an electorate allowance and travel allowance. Clause 11 states:

*Members should return allowances (and Parliamentary 'salaries'), with the exception of those allowances referred to in paragraph 12, as assessable income. The fact that Members may claim certain deductions in respect of losses or outgoing arises from the activity to which the allowance is directed. It does not affect assessability.*

- [74] The starting position is that the ATO considers allowances paid to members for spending at their discretion to be income. It will be assessed as taxable income, along with the member's salary, unless the member can satisfy the ATO that the activity which the allowance paid for was incurred while performing their role as a Member of Parliament.
- [75] If in spending the electorate allowance the expenses incurred are connected with carrying on the member's role as a parliamentarian, then the member may claim deductions for those expenses in his or her income tax return.
- [76] A deduction is only allowable if a loss or outgoing:

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<sup>19</sup> ATO Taxation Ruling 1999/10, clause 11.

- a) is actually incurred;
- b) meets the deductibility tests; and
- c) satisfies the substantiation rules where applicable.<sup>20</sup>

[77] Allowances that are claimable as reimbursements are not taxed. Reimbursements and accommodation allowances are not part of a parliamentarian's personal assessable income for tax purposes. The reimbursement is paid at fixed daily rates set by the ATO and generally followed across the whole of government when public officers travel for work.

[78] Examples of expenses which are deductible under the ruling include donations, gifts and contributions to constituents and organisations where the outgoings are directly connected with a member's work-related activities and are not private or domestic in nature.

[79] Examples of expenses which are **not** deductible under the ruling include:

- purchase of conventional clothing and footwear;
- recreational club membership fees;
- entertaining guests in the parliamentary dining room;
- entertainment such as business lunches, social functions and travel, unless it is food and accommodation incurred during overnight work related travel; and
- acquiring or renewing a driver's licence.

### **The role of the Salaries and Allowances Tribunal determination**

[80] A member is not required to return any unspent electorate allowance. The SAT determination provides no sanction for Members of Parliament who spend the allowance on private and personal pursuits. However, submissions to the Commission made on behalf of SAT state the clear expectation that the electorate allowance will be used as intended under the determination.

As the electorate allowance is received untaxed fortnightly by the member, it is likely they will receive a substantial tax bill at the time of lodging a personal tax return, unless the entire allowance is claimed as a deduction. The motivation to reduce personal income tax is significant.

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<sup>20</sup> ATO Taxation Ruling 1999/10 Taxation Ruling, clause 24.

## CHAPTER FOUR

### Operation Betelgeuse

#### **The scope and purpose of Operation Betelgeuse: misconduct risks surrounding an electorate allowance**

[81] The scope and purpose of Operation Betelgeuse is to identify whether any public officer has, is or may have engaged in serious misconduct in relation to, but not limited to, corruptly taking advantage of their public office for their own personal benefit, or in any other function in their capacity as a public officer. The Commission was also to consider and report on any corruption risk surrounding the electorate allowance.<sup>21</sup>

#### **The importance of the electorate allowance**

[82] The Commission is conscious of the valuable and necessary position Members of Parliament hold in our democratic system. As representatives of all Western Australians, it is important that this high office attracts talented, hardworking people from all walks of life. Financial support should be given to members so they can perform their role. This is especially so for members who represent a regional electorate where expenses are higher than for those members representing urban electorates.

[83] The principal role of a member is to represent his or her electorate by performing functions for the electorate, their political party and attending Parliament. Representation involves many varied activities: meeting with constituents, attending electorate activities and keeping informed as to how to deliver valuable public policies. A member of a political party is also expected to organise and sustain branches of the party, and help formulate policy through party committees. As a result, a member owes duties to Parliament, the electorate and their political party.

[84] In order to assist them perform effectively in serving their electorate, a Member of Parliament receives allowances in addition to their salary.

[85] The Commission investigation does not question the appropriateness of members obtaining parliamentary allowances, nor question whether the amounts are or were reasonable.

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<sup>21</sup> Before the Commission conducts an examination of a witness for the purposes of an investigation, the Commission is to inform the witness of the general scope and purpose of the investigation, CCM Act s 138.

[86] The parliamentary allowance system is granted for a specific purpose. The foundational rule is that the allowance is provided to assist in serving their electorate.

### **Accountability of allowances**

[87] The Member of Parliament is the decision maker as to how the electorate allowance is spent.

[88] Allowances are paid from State monies. Accountability is nonexistent for electorate allowance expenditure but otherwise dependent on how the allowances are drawn down by the member. Some allowances are ongoing expenses paid directly by DPC to a service provider on the member's behalf. For example, DPC pays the line rental for telephones in a member's electorate office.

[89] Other allowances are pay slip allowances processed by Parliamentary Services at Parliament House, and paid directly in to the member's bank account with their salary.

[90] The process of reimbursing parliamentarians for travel allowance expenditure had some in-built accountability prior to the change from the imprest system. Allowances paid regularly through members' pay slips lack a process of transparent accountability.

[91] Apart from a lack of transparency, there is an absence of definitive policies and procedures relating to the use of these discretionary funds with the exception of the SAT determination. The determination provides guidance as to what expenses may be included by using the advisory phrase 'expenses incurred to assist with serving the electorate'. Guidance rather than prescriptive direction is consistent with the nature of privilege to be exercised at discretion. However, the misconduct risk is obvious. Unlike accountability measures common in other areas of the public sector, where public officers exercise discretion in expenditure subject to controls, transparency and accountability, there is no mechanism to deal with misuse or corrupt conduct in spending the allowances.

### **The limits of the Commission's investigation**

[92] The issue for the Commission's investigation is whether the entitlement system has allowed, or is allowing, corruption to flourish.

[93] Has any member knowingly used the electorate allowance for a wholly private purpose unrelated to the electorate? This conduct would be an abuse of the privilege of the electorate allowance. The misconduct risk is

the lack of transparency in the present system that may allow a member to corruptly take advantage of his or her office to obtain a benefit.<sup>22</sup>

- [94] What gives rise to a misconduct risk is not the obtaining of a benefit but the fact that it might be obtained corruptly. 'Corruptly' is an adverb meaning purposefully doing an act which the law forbids as tending to corrupt. Dishonesty is not required.<sup>23</sup> However, evidence of dishonesty may indicate the act was done deliberately and purposefully.
- [95] Dictionary definitions of 'corruption' provide a range of meanings from 'dishonest' or 'without integrity' to 'infected' or 'tainted'.<sup>24</sup> The description of corruption to a set of facts or circumstances is the attribution of a value judgment to those facts.
- [96] If a Member of Parliament used their electorate allowance to pay for private dinners, personal travel or personal entertainment, the member would be using the electorate allowance to fund personal lifestyle expenses and obtaining a benefit by using State money for a purpose not specified in the SAT determination.
- [97] If the member then claimed the private dinners, personal travel or personal entertainment as an expense incurred whilst serving their electorate, that may be evidence of serious misconduct. Deceiving the ATO as to the use of the electorate allowance, claiming a business purpose for a private or personal expense, may be evidence of a corrupt purpose. It may also be evidence of an offence carrying a possible term of imprisonment of two years or more.<sup>25</sup>
- [98] The tax treatment of allowances is one mechanism by which a member can take advantage of their office, by corruptly claiming monies were spent for electorate purposes.
- [99] It may also be misuse of public office for a member to claim a reimbursement allowance (such as for travel) for expenses that were personal or private and not related to their parliamentary role.

#### **Public monies given for specific purposes: a misconduct risk**

- [100] The breadth of a member's discretion as to how the electorate allowance should be spent can exist comfortably with a process of accountability in respect of State money. It is an allowance, not salary.

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<sup>22</sup> CCM Act s 4(a).

<sup>23</sup> *R v Wellburn* (1979) 69 Cr App R 254 (CA) at 265.

<sup>24</sup> *Independent Commission Against Corruption v Margaret Cunneen & ORS* [2015] HCA 14.

<sup>25</sup> CCM Act s 4(c); *Criminal Code Act 1995 (Cwlth)* ss 134.2, 135.1.

[101] The Commission has information that some members or former members equate the electorate allowance with salary. For instance, Mr Edman considered there were no rules on how an electorate allowance was to be spent other than avoiding a liability to the ATO. In other words, he saw the allowance as assessable income to be spent on any purpose, private or public, that he saw fit. His motivation for spending the allowance was likely driven by a desire to reduce his personal tax liability, rather than considering the benefit for his electorate.

*Did you see the electoral allowance essentially as an extension of your salary, Mr Edman?---Not really. It was a - an electoral allowance was there to run the office and to do whatever I needed to do for my job. But I could spend it as I pleased. It was just what I claimed for tax purposes at the end of the financial year.<sup>26</sup>*

[102] On an earlier occasion, Mr Edman said that the purpose of the electorate allowance was 'to run our office'.<sup>27</sup>

[103] A view has been expressed that the allowance, being a matter for the member, should not be subject to scrutiny by the executive arm of government, and that the matter is entirely a private one between the member and the ATO. This may be an entrenched view. If so, it ignores the actual SAT determination and the limits placed by the determination on the discretion as to how the electorate allowance will be disbursed.

#### **Educating and inducting members and electorate office staff: a misconduct risk**

[104] Mr Edman gave evidence that he had no formal induction as to the use of the electorate allowance and relied on the advice of more experienced Members of Parliament. Information obtained from Parliamentary Services and other evidence held by the Commission suggest Mr Edman did in fact receive induction training from Parliament.

[105] The information suggests that all new members receive induction training in relation to the SAT determinations, their allowances and generally in relation to the operation of their office as Members of Parliament.

[106] Annual SAT determinations are published on the website and were communicated by email to members and electoral office staff at the time of publication. As an example, on 1 July 2015, Mr Edman was emailed a memorandum regarding changes to the SAT determination surrounding reimbursement for accommodation expenses. Mr Edman forwarded the

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<sup>26</sup> Transcript of P. Edman, 24 October 2019, p 15.

<sup>27</sup> Transcript of P. Edman, 12 February 2019, p 11.

memorandum to his electorate office staff stating 'Any trips I do in wa (sic) now can be claimed - keep this for a rainy day.'

- [107] The responsibility to expend and acquit the allowance is that of the member, not his staff or personal accountant. Electorate office staff do not have access to the member's allowances unless the member has allowed this to occur.
- [108] Mr Edman predominately expended his electorate allowance by his personal credit card. His electorate officer did not have access to Mr Edman's allowance. There is evidence that Mr Edman's electoral officer had taken appropriate steps to inform herself as to aspects of the ATO tax ruling on allowable deductions for members. Electorate officers took steps to pass this information to Mr Edman. In 2014, an electoral officer informed Mr Edman by email of the ATO tax ruling on deductions allowable for clothing expenses.
- [109] In particular, in 2011, early in Mr Edman's parliamentary career his electoral officer had obtained information on the restrictions surrounding allowable deductions for meals and entertainment. The electoral officer created a document that correctly stated the ATO did not allow deductions for 'entertainment' which included food, drink, recreation, accommodation, business lunches or social functions, unless it was a meal purchased during overnight work-related travel. The Commission has evidence of numerous instances where Mr Edman flouted this ruling during his final term of office.

#### **Looking to the future: finding the right balance**

- [110] There is clearly a need to balance the accountability for the expenditure of State money with the independence of a member to fulfil their duties without direction or influence by the executive branch of government. It is a question whether the balance at present sufficiently pays regard to both of these objects.
- [111] In the Commission's opinion, the purposes for which the electorate allowance may be used lacks clarity. The vagueness of the allowance coupled with the lack of any controls represents a significant misconduct risk to the State that is not ameliorated by the ATO tax ruling.
- [112] The Commission suggests that SAT consider clarifying the relationship of salary to electorate allowance. The Commission also suggests that SAT consider reviewing the electorate allowance determination to make permitted and non-permitted expenditure more explicit. The Commission notes the ATO tax ruling is very explicit.

- [113] A form of audit or verification of the electorate allowance might ensure that State money is used for State purposes, benefitting or having a connection to the electorate.
- [114] An official credit card for each member to use might achieve a similar result.
- [115] The Commission recognises that any innovation might affect, to an unacceptable degree, the independence of a Member of Parliament, crucial in a democracy.
- [116] SAT has broad powers to hold an inquiry into the performance of its functions, which are limited to inquiring into and setting remuneration.<sup>28</sup> However, as an allowance forms part of a member's remuneration, SAT, not the Commission, is the appropriate body to consider whether there should be any change to the current determination on electoral and other allowances. The Commission's role is to advise of serious misconduct risks.
- [117] As an aspect of the Commission's misconduct function, this report, and any subsequent reports, will be provided to SAT. It will also be provided to the Director General of DPC and to Parliamentary Services who together are responsible for the administration of the payment of salary and the range of allowances for members.

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<sup>28</sup> *Salaries and Allowances Tribunal Act 1975* s 10.

## CHAPTER FIVE

### A case study in misconduct risk

- [118] Mr Phillip John Edman was elected to the 38th Parliament as a member of the Legislative Council representing the South Metropolitan Region. His term commenced on 22 May 2009 and concluded on 21 May 2017. He was a member of the Liberal Party.
- [119] During the period of his office, the Liberal Party formed Government. From March 2013, Mr Edman was the Government Whip in the Legislative Council.
- [120] Mr Edman maintained a business during his term as a member but kept private business operations and financial affairs separate from his electorate office. During the period of office, he largely focused on his position as a member. Mr Edman maintained a separate bookkeeper for his business so acquittal of those expenses was isolated from his parliamentary business, including allowances and salaries.
- [121] The Commission's investigation relates only to Mr Edman's use of his electorate allowance, parliamentary travel allowance and motor vehicle allowance (to a lesser extent).
- [122] Claims for deductions to the ATO made by Mr Edman have been considered. In the absence of any mechanism to transparently account for his use of the electorate allowance, Mr Edman's claim to the ATO presumes that at the time of lodging his return he regarded each expense claimed was connected to his work as a member. From the information currently available, the Commission does not accept Mr Edman honestly held this view for all deductions sought.
- [123] As a member, Mr Edman was entitled to the assistance of an electorate officer and a research officer. These officers were notionally employed by DPC who was responsible for their pay and entitlements. However, in practice, and similar to most members, Mr Edman selected his staff.
- [124] His electorate officer was employed throughout the term under consideration. She was responsible for electorate affairs, maintaining the office, answering constituent inquiries, keeping Mr Edman's calendar and generally acting as his assistant. She was also given responsibility for preparing a spreadsheet of electorate allowance, travel allowance and motor vehicle allowance expenses compiled from bank statements and credit card statements she received from Mr Edman.

## **Payment of allowances**

- [125] Mr Edman's salary, electorate allowance and motor vehicle allowance were paid fortnightly through Parliamentary Services, into one bank account in his name entitled his 'Complete Access account'. Travel allowance was paid into that account as imprest travel expenses were periodically approved for reimbursement. There was a cheque book connected to the account. Mr Edman was the sole signatory.
- [126] Mr Edman used a separate credit card account to pay expenses associated with his parliamentary office, personal expenses and some expenses associated with his business. He paid this account by transferring funds from his Complete Access account. The credit card account had two credit cards in Mr Edman's name attached, a MasterCard and an American Express Card. All transactions were itemised on one statement. Mr Edman was the only signatory on the credit cards. No one else in the electorate office had electronic access to Mr Edman's account statements.

## **Mr Edman directed how the allowances were accounted**

- [127] Mr Edman said<sup>29</sup> it was his usual practice to print out bank statements for the credit card account and the Complete Access account. These statements were provided to his electorate officer. This occurred at irregular intervals. Generally, the electorate officer reminded Mr Edman in the last quarter of the financial year to provide her with his bank statements.
- [128] During examination Mr Edman stated the electorate officer perused the entries on the credit card statements and made an initial judgment as to whether a particular expense was related to Mr Edman's work in Parliament. If an expense was related to Mr Edman's parliamentary role, the electorate officer would add the item to the spreadsheet by entering the date the expense was incurred, the description of the expense and the amount.
- [129] The expense spreadsheet was organised chronologically into monthly tabs covering a financial year. Included on the spreadsheet were the allowance payments and travel reimbursement credits made by either DPC or other parliamentary colleagues to Mr Edman's access account.
- [130] The spreadsheet served two purposes.
- [131] Firstly, it provided Mr Edman with an end of month tally showing allowance expenditure against the monies he received. On occasion

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<sup>29</sup> Transcript of P. Edman, 23 October 2019, p 8.

Mr Edman requested updates on the running tally of his electorate allowance spending during the course of the financial year.<sup>30</sup>

- [132] Secondly, the spreadsheet provided a comprehensive account of all his claimed deductible expenses in respect of his electorate allowance and motor vehicle allowance. The spreadsheet would be forwarded to Mr Edman's accountant, Keith Jackson and Associates for inclusion in Mr Edman's tax return under 'work related deductions'. He said 'the accountant could work out what was deductible if used in my line of work as a parliamentarian.'
- [133] Not all expenses on the credit card statements were migrated to the electorate allowance spreadsheet.
- [134] During examination, Mr Edman tried to distance himself from decisions made to include any particular credit card statement expense on the spreadsheet.
- [135] At first Mr Edman denied having seen the electorate allowance spreadsheet whilst in office. On 23 October 2019 Mr Edman was shown the allowance spreadsheet for the financial year ending 30 June 2014:

*Now, have you seen a document like this before?---I can't recall. Is it a Visa card statement?*

*No, (the electorate officer) had told the Commission that is actually the spreadsheet that she prepared under your direction from your credit card statements and the chequebook account?---Mr Edman: Yeah. I've never seen these, but that's probably what went to the accountant.*

*You've never seen them before?---No.<sup>31</sup>*

- [136] This was untrue. Mr Edman was shown an email sent to him and his accountant by the electorate officer in March 2013. The email had the allowance spreadsheet for the financial year ending 30 June 2012 attached. Mr Edman's response was that he never looked through the spreadsheets whilst he was a Member of Parliament.
- [137] Mr Edman indicated that he took little interest in directing the electorate officer as to how to acquit expenses because he was busy and largely left the decision as to what items appeared on the spreadsheet to her. At examination Mr Edman stated 'there was too many other serious, busy things that I was dealing with as an MP.'<sup>32</sup> He said he has little recollection of highlighting expenses on bank statements for inclusion.

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<sup>30</sup> Example 24 October 2013 - emailed Electorate Officer 'show me the final amount left from last financial year ASAP.'

<sup>31</sup> Transcript of P. Edman, 23 October 2019, p 13.

<sup>32</sup> Transcript of P. Edman, 23 October 2019, p 25.

[138] For the reasons detailed below the Commission does not accept this assertion.

[139] Mr Edman was asked how the electorate officer was able to form an opinion as to whether an expense on his bank statement was personal, related to his parliamentary duties, or related to his cabinetry business. Mr Edman said that the electorate officer formed a view in one of several ways:

*(She) generally had a good idea and, you know, after she had been in the office for the first year, she would have an idea of what goes on and what doesn't;*<sup>33</sup> or

*Well, she probably would have had the receipt for it...;* or

*the expense description was obviously electorate office related.* For example Mr Edman said: '*Rocky News was only ever used for something for our office.*'<sup>34</sup>

[140] These explanations lack veracity. While the electorate officer could enter regular repetitive payments such as fuel and Telstra invoices onto the spreadsheet, the majority of spreadsheet entries were not obviously work-related on the bare description. As an example: how could the electorate officer know to include 'Parakeelia Pty Ltd \$1,818.00' (5 May 2016), 'M/M Entertainment \$577.50' (2 April 2016), or 'JohKil Pty Ltd Darwin \$294.40' (15 December 2014) on the spreadsheet? Specific direction from Mr Edman was required.

[141] The electorate officer informed the Commission that data used to populate the allowance spreadsheet was obtained by Mr Edman providing highlighted bank statements, providing receipts or from receipts she obtained when using cash to buy milk, paper and stationary for the electorate office.<sup>35</sup>

[142] On occasion, the electorate officer would discuss with Mr Edman how to categorise an expense should she query how a highlighted expense related to his parliamentary work. Queried entries for Mr Edman's attention were indicated by her in italicised and bold font on the spreadsheet.<sup>36</sup>

[143] The electorate officer would print a spreadsheet and discuss particular entries with Mr Edman in person, or by phone, or sometimes queries would be raised by email. If she queried whether an expense was personal and Mr Edman agreed with her, that item would be removed

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<sup>33</sup> Transcript of P. Edman, 23 October 2019, p 8.

<sup>34</sup> Transcript of P. Edman, 23 October 2019, p 8.

<sup>35</sup> Transcript of Electorate Officer, 14 October 2019, p 39.

<sup>36</sup> Transcript of Electorate Officer, 14 October 2019, p 54.

from the spreadsheet. If he disagreed, it would remain on the spreadsheet.

[144] Mr Edman's electorate officer told the Commission that the first step in the process was Mr Edman printing a copy of his monthly bank statements and highlighting or 'marked off' the items that he instructed her to be included in the spreadsheet.<sup>37</sup> The electorate officer did not attempt to enter expenses from Mr Edman's bank account before that occurred. In any event, she could not gain access to his bank statements electronically. Mr Edman did not receive hard copy bank statements in the mail.

[145] The electorate officer stated that Mr Edman provided her with highlighted bank statements every two to three months.

[146] Mr Edman's evidence was consistent on the question as to the preparation of the spreadsheet for his accountant. He maintained it was done exclusively by the electorate officer. However, his evidence was unreliable on the question of how a decision was made as to which credit card statement expenses were to be included in the spreadsheet.

[147] When asked whether he highlighted entries on his bank statements for the inclusion in the spreadsheet he was vague:

*I guess, that - yeah, that's probably what also happened;*<sup>38</sup>

*Like I said, these were left at a very last minute, because I was really, really busy. Were they highlighted by me? I simply can't remember;*<sup>39</sup>

*Maybe sometimes, yeah, I have. Yeah;*<sup>40</sup> and

*I don't believe they were always highlighted.*<sup>41</sup>

[148] The Commission does not regard as credible, Mr Edman's evidence that he did not review the allowance spreadsheets emailed to him by his electorate officer.

[149] The Commission has access to limited email correspondence between the electorate officer and Mr Edman as well as some file notes that were made by the electorate officer.<sup>42</sup> These indicate that the electorate officer added items to the statement at Mr Edman's direction. The file notes confirm her evidence that Mr Edman gave direction by highlighting bank

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<sup>37</sup> Transcript of Electorate Officer, 14 October 2019, p 37.

<sup>38</sup> Transcript of P. Edman, 23 October 2019, pp 8-9.

<sup>39</sup> Transcript of P. Edman, 23 October 2019, pp 8-9.

<sup>40</sup> Transcript of P. Edman, 23 October 2019, p 9.

<sup>41</sup> Transcript of P. Edman, 23 October 2019, p 10.

<sup>42</sup> Other emails may be in the material held by the Legislative Council.

statements or answering specific queries, and Mr Edman reviewed the completed spreadsheet prior to it being emailed to the accountant:

A file note from 1 October 2013 referencing the allowance spreadsheet states: '*Phil said we need to go over the figures before they go to the accountant*';

A file note from 2 October 2013 states: '*Showed Phil the spreadsheet and that he has money left over of about 18,000. I need to double-check all figures, add in the year's expenses even if I had not paid for them as yet as they are still an expense to that financial year. Need to add all bank fees to the account as well*';

A file note on 24 October 2013 states: '*After meeting showed Phil the questions that needed to be answered. Add RAC to each month. Add insurance to the spreadsheet*';

An email from 31 March 2014 states: '*Phil I have placed all the information into the spreadsheet that you asked me to. Statement shows at the end of February is the amount as -\$2968.11*';

An email from 1 July 2014 states: '*I have placed all accounts that you highlighted into the Monthly Allowance sheet and added any international transaction fees*';

An email from 2 March 2016 states: '*Phil Need to look at printing off your bank statements and marking them so that the Monthly allowance can be started for this financial year. Other than the cheques and visa receipts given to me nothing has been done.*'

A file note from 14 March 2016 states: '*In staff meeting reminded Phil that the statements need doing he needs to mark what he wants me to add to the list as none done for this financial year - Phil said yes he will do something about the statements he needs to work on it*';

A file note on 11 June 2016 states: '*Phil printed off the rest of the statement for Visa payments for me and marked them*'; and

A file note from 24 June 2016 states: '*Phil printed and marked more statements for the monthly allowance asked for a balance by the end of the day said may not be able to do this - Phil said let him know on Monday then*'.

- [150] The electorate officer did not include on the spreadsheet all Mr Edman's travel expenses that appeared on his credit card statement. At times expenses on Mr Edman's credit card statement relating to an entire trip were not migrated to the spreadsheet. An example is a trip to Bali in August 2014 and a trip to Broome in October 2015. The logical explanation is that the electorate officer omitted them from the spreadsheet as a result of Mr Edman's instruction due to these being private trips.
- [151] Decisions made as to which expenses were migrated to the allowance spreadsheet were Mr Edman's responsibility. This was the electorate officer's firm view held as recently as 24 September 2019. It was not her

decision. In an intercepted telephone conversation between Mr Edman and the electorate officer on 24 September 2019:

*Officer: Yeah but the thing is, I mean, Phil the whole point is that you are, what goes on that thing is up to your discretion.*

*Edman: Yeah, well that's it but you know*

*Officer: And that's, that's you know, I mean that's basically it.*

*Edman: Yeah.*

*Officer: It's, it's your discretion whether or not it's included or whether or not it's not included.*

[152] The electorate officer has always held this view and acted accordingly. The electorate officer periodically made this clear to Mr Edman. In an email from 17 September 2014:

*Phil*

*With the financials remember I did question when you paid for the Japan trip extra expense as per the email below.*

*Have calculated them in the expense listings for the financial year of 2013-14*

*Up to you if they stay in or not?*

*Kind regards,*

[153] The extra expense for the Japan trip was an invoice for JPY600,730 (approx. AUD\$6,285) sent to Mr Edman from the WA Trade Office in Japan after a delegation of parliamentarians had visited in April 2014. Mr Edman paid the invoice, received reimbursement from other members, and then claimed the entire amount as a work-related deduction on the spreadsheet. Mr Edman told the Commission that he instructed his electorate officer to claim the expenses for this trip.<sup>43</sup>

[154] Mr Edman directed the electorate officer to send the electorate allowance spreadsheet to the accountant. It was usual for the electorate officer to commence the new financial year spreadsheet and then, on Mr Edman's request, consult him as to various entries. The completed spreadsheet was given to Mr Edman for perusal before it went to Mr Jackson. Sometimes it was emailed by the electorate officer and on other occasions by Mr Edman.

[155] Mr Edman engaged Keith Jackson and Associates, a small accountancy firm, to prepare and lodge his annual tax returns. The work was mainly done by an accountant employed by Mr Jackson but Mr Jackson would

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<sup>43</sup> Transcript of P. Edman, 25 October 2019, p 95.

check over the work. Mr Jackson and his staff relied on the accuracy of the electorate expense spreadsheet prepared in Mr Edman's electorate office.

[156] Mr Jackson:

*That's what he says he spent on his political situation, on his political work and that's what I accept...he gave me the - the list of the deductions, I looked at the list. If there was anything which I thought was dubious or something like I might query it, but other than that I accepted what he gave me.*<sup>44</sup>

[157] On the purpose of travel, Mr Edman's word had to be taken at face value by his electorate office staff and by his accountant. As Mr Jackson stated under examination 'if the politician says that - that these were expenses, travel, for political reasons, you know, how am I - how am I to dispute it?'<sup>45</sup>

#### **Mr Edman's use of others for local travel**

[158] Mr Edman employed a number of research officers during his term of office. The research officers would, as the name implies, research matters on which they were directed. They would also organise his travel arrangements. For a period, Mr Edman lost his driver's licence and at his direction, a research officer would drive him to engagements. This would be done by the research officer driving to Mr Edman's house in their own car, taking the official car, driving him to the engagement and returning. On many other occasions Mr Edman used transport companies such as Uber, where he incurred thousands of dollars in fees which he claimed as parliamentary/electorate expenses. In fact these trips were often simply to get to and from work and to attend private functions.<sup>46</sup> Travel between home and a normal place of work is not a deductible expense.<sup>47</sup>

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<sup>44</sup> Transcript of K. Jackson, p 12.

<sup>45</sup> Transcript of K. Jackson, p 46.

<sup>46</sup> In two and a half years Mr Edman claimed \$14,668.68 in fee for service transport.

<sup>47</sup> ATO Taxation Ruling 1999/10, clause 29.

## CHAPTER SIX

### Claims on allowances generally

- [159] In the course of its investigation, the Commission focused on a number of trips where Mr Edman appears to have used his position as a member to obtain a significant benefit for himself. These trips were funded by the parliamentary travel allowance or the electorate allowance.
- [160] The Commission has also examined other electorate allowance deduction claims, including claims for the use of his motor vehicle, Christmas functions, PayPal purchases, new clothing, lotto syndicate purchases, home insurance costs, private yacht expenses, and meals with family and friends. These aspects of the investigation have been hampered by the inability to access relevant material held by the Legislative Council.
- [161] Nevertheless, the Commission is confident in the veracity of the document exhibits it has examined, confirmed by the direct testimony of witnesses.

### Misuse of allowance by travel

- [162] Mr Edman had a number of specific interests as a member. One interest was the historical importance of Point Peron during World War II when it was the site of a gun battery. Mr Edman formed a committee in February 2015 and promoted the importance of the site. He also worked with volunteers removing sand and generally restoring the site. A related ambition was to create a museum and to this end Mr Edman collected memorabilia including firearms, photographs, old medical supplies and other memorabilia.
- [163] Another interest was a waste disposal facility in Rockingham which led him to inspect similar facilities on visit to Japan in 2014.
- [164] Mr Edman, with others, campaigned for the reinstatement of a Trade Commissioner in Indonesia. In this they were successful and in January 2015, the then Premier reversed the decision to close the Trade Commission. This decision, acknowledging the work of Mr Edman and others, was the subject of publicity including in Mr Edman's own electorate newsletter in March 2015.
- [165] Mr Edman travelled extensively during the course of his parliamentary career within the State, Australia and internationally to Indonesia (Bali and Jakarta) and Japan.

[166] There are two ways in which travel expenses may be recouped.

### **The imprest system**

[167] During Mr Edman's first term, the imprest system was operational and required approval by the Premier for travel that 'assisted a member to perform parliamentary business'. The costs of approved travel were reimbursed to the member. At the commencement of Mr Edman's last term, the SAT determined imprest travel was to be replaced by the Parliamentary Travel Allowance administered by the DPC. During Mr Edman's last parliamentary term, a member was entitled to access a sum of \$27,000 for travel.

[168] There were conditions to the imprest system. Members were required to submit an application form for approval by the Director General of DPC and to certify that the purpose of the travel was for parliamentary business.

[169] A member had to submit a travel plan to the Director General of DPC with the application form. If approved, a member received the funds from DPC at the daily travel rates determined by the ATO. The amount was not assessed as income by the ATO. Nor could it be claimed as a deduction. On return from imprest funded travel, a member was required to make a report to Parliament.<sup>48</sup>

[170] Mr Edman was made aware of the SAT determination change to the Parliamentary Travel Allowance (formerly known as imprest) by email on 12 September 2013 and again by email from his research officer on 17 February 2014.

### **The electorate allowance or salary**

[171] The second funding source for member's travel is the member's remuneration: electorate allowance or salary. If business travel is undertaken using this allowance, a claim for a deduction may be made to the ATO. 'Business travel' for a Member of Parliament is travel that assists the member effectively represent their electorate. Business travel must be a 'work-related' activity. This is a well-known premise of Australia's tax system. The ATO tax ruling for Members of Parliament clearly states 'Travel expenses that are unconnected with a Member's work-related activities are not allowable deductions.'<sup>49</sup>

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<sup>48</sup> For the 40th Parliament and after, Mr Edman had concluded his term of office. The imprest system was abolished by SAT and members given \$6,750 per annum paid as an allowance to assess their own need to use the allowance.

<sup>49</sup> ATO Taxation Ruling 1999/10, clause 311.

[172] Where a member receives a paid allowance for travel under the imprest/parliamentary travel allowance scheme, the amount is not shown in the member's assessable income. Members colloquially referred to the parliamentary travel allowance as 'imprest' despite the official name change.

### **Double dipping - parliamentary travel allowance**

[173] Mr Edman received his full parliamentary travel allowance entitlement over his last parliamentary term and also claimed all travel expenses as work-related deductions. In effect, he 'double dipped':

- October 2013 trip to Brisbane/Gladstone to meet CSIRO - received \$5,181 in parliamentary travel allowance and claimed expenses of \$5,185 in electorate deductions;
- November 2013 trip to Indonesia to attend the Indonesia Business Council conference - received \$4,643 in parliamentary travel allowance and claimed expenses of \$4,515 in electorate deductions;
- March 2014 trip to Port Hedland - received \$922 in parliamentary travel allowance and claimed expenses of \$913 in electorate deductions;
- April 2014 trip to Japan with five member delegation - received \$10,519 parliamentary travel allowance and claimed expenses of \$10,570 in electorate deductions;
- November 2014 trip to Jakarta, Indonesia to meet with Australia Indonesia Business Council - received parliamentary travel allowance of \$5,007 and claimed expenses of \$6,034 in electorate deductions;
- Canberra 2015<sup>50</sup> - received parliamentary travel allowance of \$597 and claimed expenses of \$5,369 in electorate deductions.

[174] Mr Edman was queried by his electorate officer about 'double dipping'. In preparing his electorate spreadsheet for the financial year ending June 2014, the electorate officer asked Mr Edman the following, which she italicised in bold:

**03-Sep-13 Visa Qantas Air Australia \$2,895.00 payment. Work or Personal - If work did you not get reimbursement for this - if you did you should not be claiming as double.**

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<sup>50</sup> It is noted that the Commission has not been able to verify the approved purpose for travel without access to documentation being held by the Legislative Council.

- [175] This payment was the airfare for the trip to Brisbane/Gladstone to meet the CSIRO. Mr Edman had been reimbursed for this expense directly but it was also claimed as a deduction. Mr Edman ignored the electorate officer's warning regarding claiming double.
- [176] On one trip to Japan in 2014 as part of a parliamentary delegation, Mr Edman received a parliamentary travel allowance to reimburse the costs of travel, accommodation and food from DPC, yet he claimed all those costs as deductions, and extra expenses for which he had been reimbursed by other members. From this trip, Mr Edman wrongly claimed deductions of over \$13,600.
- [177] Following the April 2014 trip to Japan with other members, the Office Manager from the WA Trade Office in Tokyo sent Mr Edman an invoice for transportation and interpreter fees. The total invoice was the equivalent to approximately AUD\$6,285. Mr Edman immediately sought and received \$1,257 from each of the other four members into his bank account.
- [178] The electorate officer queried Mr Edman by email on 3 September 2014 as to how she should deal with this expense. On 17 September 2014 Mr Edman replied 'email me last year's financial sheet 2013/2014'. She followed this with a further query on the \$6,285 expense - 'Have calculated them in the expense listings for the financial year of 2013-14. Up to you if they stay in or not?'
- [179] With regard to this invoice, the amount paid by Mr Edman was in fact AUD\$6,673.29 (an increase due to the fluctuating currency exchange). However Mr Edman did not make this payment until 11 July 2014, despite claiming the \$6,285 as being incurred on 30 June 2014 (within the previous financial year).
- [180] Mr Edman performed a similar transaction in June 2015 when he claimed AUD\$1,595.56 in additional expenses incurred during his travel to Japan in June 2015. Mr Edman claimed this amount on 30 June 2015 but did not make the actual payment until 2 July 2015 (of \$1,573.56).
- [181] Mr Edman's spreadsheet for the expense claimed on 30 June 2015 notes 'Reimbursement Request Japan Trip Phil said place in this year's financials'. Mr Edman was reimbursed by others for their share of this extra expense, but claimed the full invoice cost as a deduction instead of only his portion of the expense.
- [182] The funds Mr Edman received as parliamentary travel allowance and reimbursements from other members were not considered as assessable income during the respective taxation years and, as such, Mr Edman was

not entitled to claim associated expenses as deductions. The claim for an allowable deduction for monies for which he had been reimbursed is an example of Mr Edman using his position to obtain a private benefit for himself. If he was not a public officer, there could have been no claim for a deduction.

### **Creating opportunities for personal benefit**

- [183] Whilst a Member of Parliament, Mr Edman created opportunities for travel interstate to facilitate intimate relationships with various women. Mr Edman typically paid some or all expenses for the women accompanying him, including: airfares, accommodation, food and entertainment. On four travel occasions during his last term of office Mr Edman claimed these expenses as electorate allowance deductions.
- [184] Private relationships are not serious misconduct.
- [185] Mr Edman's personal intimate relationships are of relevance to the Commission's investigation only to the extent that he funded this lifestyle from his electorate allowance rather than benefitting the electorate.
- [186] Legitimate electorate allowance expenses are those 'connected with representing the electorate'. This has a wide meaning but does not extend to personal activities. Without access to further records, the Commission is not in a position to determine conclusively whether these trips had a predominately private purpose or were improperly disguised as legitimate parliamentary travel.
- [187] Regardless of the legitimacy of his own travel expenses on these occasions, Mr Edman should not have claimed a deduction for any expense incurred on behalf of his travelling companions.

### **Introduction by website prior to travel**

- [188] Mr Edman created aliases and/or pseudonyms during his time as a parliamentarian. In some cases, Mr Edman used these aliases to post travel reviews on Trip Advisor, as well as to engage with women via online 'adult' dating sites, which included a paid subscription website titled 'Seeking Arrangement'. The website markets itself as a matchmaking website for attractive girls and 'wealthy benefactors' who are 'generous and successful'.<sup>51</sup>
- [189] One woman, who met Mr Edman through the website, told the Commission 'generally, you would go on that site seeking someone who

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<sup>51</sup> Website: <https://www.seeking.com>.

could possibly help you out financially.<sup>52</sup> Some generous payments by Mr Edman for women he met were claimed by him as electorate allowance expenses.

#### **Mr Edman's relationship with Ms Z in 2014**

- [190] Mr Edman had an intimate relationship with Ms Z whom he met through the 'Seeking Arrangement' website. Mr Edman arranged to initially meet Ms Z briefly at a hotel in Perth in May 2014 and the relationship became intimate. There were other such meetings. The duration of the relationship was four months.<sup>53</sup>
- [191] During examination, Mr Edman's attention was drawn to an item in his bank statement on 14 May 2014 for the Canning Bridge Auto Motel, Applecross (this was the venue which Ms Z said she first met Mr Edman). Mr Edman said 'With the benefit of hindsight, I should've taken greater interest and care...I trusted paid professionals to look after it for me.'<sup>54</sup>
- [192] Mr Edman assumed he had claimed this expense as a tax deduction. This expense had, in fact, properly not been included on Mr Edman's electorate allowance spreadsheet. However a five day all expenses trip to Melbourne, a restaurant meal in Victoria Park and some of Ms Z's personal bills, were included as legitimate electoral allowance deductions.
- [193] Prior to the initial meeting, Ms Z said she and Mr Edman had a discussion regarding the financial terms of their relationship. It was agreed that Mr Edman would pay her an amount of money for sex. Later this arrangement was modified to an agreement that Mr Edman would pay some of her bills instead of giving her cash.<sup>55</sup> Mr Edman was also to pay for any activity they did together.
- [194] He regards them still as friends. She does not.
- [195] As Mr Edman properly pointed out during his examination, relations between consenting adults are private matters.
- [196] The reason the Commission is reporting on this matter is because Mr Edman used, or the Commission would characterise it, misused, his electorate allowance to pay various bills on her behalf and to pay the flights, accommodation and meals for her on a visit to Melbourne in June 2014. He later claimed these expenses as a tax deduction.

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<sup>52</sup> Transcript of Ms Z, 16 October 2019, p 3.

<sup>53</sup> Transcript of Ms Z, 16 October 2019, p 6.

<sup>54</sup> Transcript of P. Edman, 23 October 2019, p 15.

<sup>55</sup> Transcript of Ms Z, 16 October 2019, pp 3-4, 6.

[197] During the four month relationship period, Mr Edman paid for Ms Z's car registration, electricity bills, telephone bills and traffic fines. He claimed the car registration and traffic fines as electorate expenses. Enquiries regarding the other expenses are ongoing.

### **Travel to Melbourne and Bali with Ms Z (June-August 2014)**

[198] Ms Z told the Commission that Mr Edman asked her where she would like to go on holiday in Australia and she picked Melbourne.<sup>56</sup>

[199] In June 2014, Mr Edman travelled to Melbourne with Ms Z for a number of days. The couple flew business class (largely on Mr Edman's frequent flyer points) and stayed at the Grand Mercure, Docklands for an extended weekend. They ate at restaurants such as Shark Fin House and Ginza Teppanyaki. The bill for the latter establishment was \$465. Altogether Mr Edman claimed expenses of \$2,450.67 on his electorate allowance for accommodation, meals and taxis.

[200] Ms Z told the Commission that Mr Edman was with her during the entire period they were in Melbourne. From her evidence, it appears the only thing the couple did together that might relate to electorate business was to go on a public tour of the Victorian Parliament building. Ms Z was aware that Mr Edman was a politician but she did not discuss his role with him. She was unaware which political party he was affiliated with. She has no recollection of him undertaking any work activities whilst in Melbourne.

[201] In examination, Mr Edman admitted Ms Z was with him in Melbourne but was adamant that the purpose of the trip was business related. He stated he visited a cancer clinic being built by the Plenary Group and the visit was arranged through Everingham and Partners. He said:

*Well, I must have been there for a conference or a work - for a meeting. I know there was a cancer ward that I was watching in Melbourne as well at the time, because they wanted - that was the Plenary Group and they wanted to build our stadium in Perth.<sup>57</sup>*

[202] He said he also attended a dinner.

[203] The Commission is unable to confirm or refute Mr Edman's claim that he visited a cancer ward. Accepting it to be correct, there was no basis to claim expenses incurred on behalf of Ms Z as legitimate expenditure on the public purse.

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<sup>56</sup> Transcript of Ms Z, 16 October 2019, p 10.

<sup>57</sup> Transcript of P. Edman, 23 October 2019, p 11.

- [204] During the course of the relationship with Ms Z, Mr Edman demonstrated an ability to be deliberative and selective as to expenses claimed on the allowance spreadsheet.
- [205] Another trip was taken by Mr Edman and Ms Z to Bali in early August 2014. Aside from one expense of \$99.76 that was incurred in Bali, none of the Bali expenses were migrated to the spreadsheet. Again, Mr Edman had paid for business class flights, accommodation and meals for Ms Z on his credit card.
- [206] Expenses claimed for the Melbourne trip appeared on the same credit card statement as the flights to Bali. The Melbourne expenses were claimed but the Bali expenses were not.
- [207] In accordance with their agreement, Ms Z gave Mr Edman a number of personal bills. Mr Edman paid two driving offence fines incurred by Ms Z and the registration of her vehicle. He claimed these expenses totalling \$423.70 as electorate allowance deductions.
- [208] The totality of the expenses claimed on the spreadsheet that involved Ms Z was \$2,874.37.

#### **Travel to Darwin to meet Ms Y (14-18 December 2014)**

- [209] Mr Edman visited Darwin in December 2014 for five days at a cost claimed on his electorate allowance of \$8,159.56. When asked the purpose of the trip he stated 'I was there looking at the museum and the batteries of Darwin'.<sup>58</sup> The inference was the visit was relevant to a Point Peron rehabilitation project. When asked why he needed to travel in December 2014, he initially avoided answering the question and then said 'I can't remember. Maybe cos Parliament wasn't sitting.'<sup>59</sup>
- [210] Mr Edman's trip to Darwin was arranged hastily. On 1 December 2014 he had asked his research officer to arrange a meeting 'ASAP' with the President of the Chamber of Commerce in Rockingham. The President had indicated he could assist Mr Edman with the rehabilitation of the old Point Peron Army camp site.
- [211] During examination Mr Edman consistently emphasised this project as a priority of his tenure as a parliamentarian. It informed many of his activities.
- [212] The research officer immediately arranged a meeting in Mr Edman's electorate office for two weeks hence - 15 December 2014. The research

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<sup>58</sup> Transcript of P. Edman, 25 October 2019, p 98.

<sup>59</sup> Transcript of P. Edman, 25 October 2019, p 98.

officer confirmed this was suitable with Mr Edman on the afternoon of 1 December and it was placed in his diary.

- [213] On 7 December 2014 Mr Edman booked himself a business class return flight to Darwin to travel from Friday 12 December 2014 and return on Thursday 18 December 2014. The airfare of \$2,626.77 was claimed as a parliamentary allowance deduction.
- [214] Mr Edman planned the trip to Darwin without informing his electorate office staff and despite having made an appointment to meet someone who could assist him with his Point Peron project. That meeting had to be rescheduled to accommodate Mr Edman's Darwin trip.
- [215] During 2014 Mr Edman had met Ms Y on the internet site 'Seeking Arrangement'. Ms Y is a European national who was then visiting Perth as a student. Mr Edman met with her a couple of times in Perth. On one occasion she recalls they had dinner on his boat.
- [216] During December 2014 Ms Y was working as an *au pair* in Darwin for one month. She told the Commission that Mr Edman decided to come and visit her in Darwin for a week. The visit was not planned in advance. She took the week off work and stayed with him in a hotel. At the time they had a sexual relationship. He hired a rental car, and they visited the National Park, went on boat cruises, shopping, out to bars and to dinner.
- [217] Ms Y stated that she did not know what Mr Edman did for a living, except she knew it had some connection with the Government. During the week together in Darwin she was not aware of Mr Edman doing any work except for answering 'a couple of emails'. Analysis of the emails currently in the possession of the Commission indicates that in the period from 10-15 December 2014, Mr Edman sent a couple of emails to his business partner in his cabinetry business, emailed his electorate officer with a complaint regarding the Avis rental car he had hired in Darwin, and emailed his research officer and a local journalist regarding a media story on the 'sex rampage' at Rockingham beaches.
- [218] Mr Edman claimed all accommodation costs of the stay at Sky City Casino in Darwin (\$4,468.25), rental car and meals, including a \$294.40 dinner at Char Restaurant.
- [219] When asked in examination if Ms Y had stayed with him in his hotel room he replied - 'I don't think she stayed but she - she - we had some drinks in my room...I can't remember. I don't think so.'<sup>60</sup>
- [220] Mr Edman was asked the purpose of his trip. He said it was work-related.

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<sup>60</sup> Transcript of P. Edman, 25 October 2019, p 100.

*What was the purpose of that trip?---I was there looking at the museum and the batteries of Darwin. Because of Point Peron. Because of Battle for Australia.*<sup>61</sup>

- [221] Mr Edman had not contemplated the travel on 1 December 2014 when he agreed to meet with the President of the Chamber of Commerce on 15 December. Mr Edman booked his air ticket on 7 December 2014 and paid on 8 December 2014 for a portion of the accommodation at the Casino.
- [222] At the time Mr Edman booked the trip to Darwin he was unaware what exactly in Darwin could assist with the Point Peron project. It was not until the following day (9 December 2014) that Mr Edman requested his research officer find the most basic of information:
  1. *Info on museums/battery to visit*
  2. *Industrial park where and any similarities to WTC eg AMC section*
  3. *Shell supply base (looks after some WA plants).*<sup>62</sup>
- [223] The research undertaken was open source material and included museum locations and opening times, Darwin's aviation history and geographical layout.
- [224] The Commission concludes the trip to Darwin was motivated for a private purpose, that is to meet with a woman with whom he had an intimate relationship. There was no other valid reason advanced as to why the travel needed to occur in December 2014. The purported parliamentary purpose was a façade.

#### **Travel to Canberra to meet Ms X (8-15 April 2015)**

- [225] Mr Edman visited Canberra in April 2015 and claimed electorate allowance expenses totalling \$5,359.65 of which \$597.68 was reimbursed directly as parliamentary travel allowance or imprest. This exhausted Mr Edman's entire parliamentary travel allowance for the term of Parliament ending May 2017. Given Mr Edman obtained some parliamentary travel allowance for this trip, he was required to have submitted an application for travel approval.
- [226] Mr Edman booked his air ticket on 13 February 2015 for travel to Canberra from Wednesday 8 to Saturday 11 April 2015. He was to travel alone. Mr Edman then told his electorate and research officers - 'Here is e ticket to Canberra. Need to organise someone to show me around at war memeriol (sic) .. anything relevant to point peron . (research officer

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<sup>61</sup> Transcript of P. Edman, 25 October 2019, p 98.

<sup>62</sup> Email from P. Edman to research officer, 9 December 2014.

to sort) just have really thursday and friday but will start late on thursday.<sup>63</sup>

- [227] A clear intention to work only the Thursday (9 April) and Friday (10 April) was indicated to the research officer.
- [228] Mr Edman claimed that the travel purpose was to visit the Australian War Museum (AWM) and meet with the person who was in charge of the army's historical society in 'D-Node'.<sup>64</sup> He wished to visit the AWM to obtain information that would further his project of restoring Point Peron as an integral part of recognising the Battle for Australia.
- [229] Mr Edman did visit the AWM and D-Node. However this took a limited portion of the trip and was formally completed by Friday 10 April 2015. A day prior to leaving Perth, Mr Edman extended his stay in Canberra until 15 April 2015. It is not known whether his application for parliamentary travel allowance was amended.
- [230] Mr Edman claimed the accommodation for his entire stay, meals and some entertainment expenses on his electorate allowance. It was deceptive to characterise all expenses claimed as work-related. Effectively, Mr Edman disguised a predominately private trip as having a legitimate work-related purpose. At the least, the extension of his trip from the 10-15 April 2015 was for private purposes.

***The reason given for travel to Canberra was tenuous***

- [231] Mr Edman engaged his electorate officer in February 2015 to make arrangements and do research. Her research showed that there was little purpose in Mr Edman going to Canberra having regard to the response she received from the museum from her request for information.
- [232] By email on 20 February 2015, an Assistant Director at the AWM indicated that much of the information on Point Peron was stored in the National Archives of Australia, the Fremantle area war diaries had been digitised and were available online, and that the AWM did not hold any records or objects specifically relating to the battery at Point Peron. Not to be deterred, Mr Edman's research officer then asked about the availability of viewing Second World War displays, particular anti-aircraft guns and search lights.
- [233] By 31 March 2015, a formal itinerary was devised for Mr Edman's activities at AWM on 9 April 2015. No other formal appointments were

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<sup>63</sup> Email from P. Edman to electorate officers.

<sup>64</sup> Transcript of P. Edman, 23 October 2019, pp 50-51.

made for Mr Edman other than a visit to D-Node the following Friday morning.

***Mr Edman changed his flight home to 15 April 2015***

- [234] The day prior to leaving Perth for Canberra, Mr Edman changed his flight home from Saturday 11 April 2015 to Wednesday 15 April 2015. No reason was expressed for extending his stay in Canberra.
- [235] In evidence, Mr Edman justified this extra time because he spent 'a fair bit' of time in the AWM library<sup>65</sup> looking at their computers. This is despite his research officer being told the collection was digitised and accessible over the internet. Mr Edman did not indicate he had spent time in the library on the computers when he initially gave evidence to the Commission in February 2019.

***Mr Edman arranged a female companion for Canberra***

- [236] On 26 March 2015 Mr Edman visited the website 'Seeking Arrangement' and met online with a woman, Ms X, who lived in the Canberra area. Mr Edman would have had to have changed his geographical setting to Canberra in order to search for women in this area. Mr Edman arranged to meet with Ms X in Canberra over the weekend commencing Friday evening 10 April 2015. About a week before he departed Western Australia, Mr Edman contacted Ms X to ask her weight, this being necessary for a helicopter trip he was proposing.
- [237] They entered into an arrangement. Ms X would stay with him for a period of time in Canberra and he would cover the costs.
- [238] Mr Edman stated he met Ms X for the first time in a bar on 9 or 10 April 2015 in Canberra.<sup>66</sup> Under examination, Ms X confirmed that she met Mr Edman, as arranged, for the first time on Friday 10 April 2015 in the hotel bar and stayed with him at the Crowne Plaza until Sunday afternoon. Ms X was unaware why Mr Edman was in Canberra, other than he had some business at the AWM. On the Friday evening Ms X and Mr Edman went to Ottoman Cuisine restaurant. Mr Edman claimed the meal cost of \$465 as a parliamentary related expense.
- [239] Mr Edman and Ms X took a helicopter journey on Saturday 11 April 2015 at the cost of \$1,030.00. The helicopter flew over Canberra but its principal purpose was to take the couple to and from the winery, Lerida Estate at Lake George, for lunch (\$172.50) and to Poacher's Pantry

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<sup>65</sup> Transcript of P. Edman, 23 October 2019, pp 56, 59.

<sup>66</sup> Transcript of P. Edman, 23 October 2019, p 52.

for afternoon tea (\$58.70). Mr Edman claimed the total cost of the helicopter trip and meals as a parliamentary-related expense.

[240] Ms X stated that the helicopter departed from Northbourne Avenue and did a circle of Canberra before heading straight to the winery at Lake George. Mr Edman said in evidence that it was necessary to take the helicopter tour so that he could see the AWM from the air and D-Node from the air. Having regard to the arrangements he had made prior to leaving Western Australia, the Commission does not accept this explanation. In any event, the helicopter ride would seem to provide dubious benefit to Mr Edman's electorate.

***Mr Edman tried to hide from the Commission that he had a companion staying with him in Canberra***

[241] Mr Edman vehemently denied that Ms X stayed with him at his accommodation in Canberra.<sup>67</sup> In Ms X's evidence to the Commission she stated that she had an intimate relationship with Mr Edman.

[242] The Crowne Plaza hotel records supported what Ms X had told the Commission; she was his guest for two days and nights. After being shown evidence from the valet carpark and one invoice for two room service breakfasts, Mr Edman amended his evidence to say that he could not recall whether anyone stayed with him. Having seen the records held by the Crowne Plaza hotel the Commission is satisfied that Ms X stayed with Mr Edman the evenings of both 10 and 11 April 2015. After having breakfast with Mr Edman on Sunday 12 April 2015, and attending a local football game with Mr Edman, Ms X left the hotel.

[243] From 10-15 April 2015, Mr Edman was upgraded to a superior room at the Crowne Plaza hotel.

[244] Under one of his pseudonyms 'Paulfreo', Mr Edman posted on Trip Advisor an adverse review of the hotel concerning their service and room conditions.<sup>68</sup> Records from Crowne Plaza Canberra indicate that on 10 April 2015, during a dispute with the hotel in relation to the temperature of his hotel room, Mr Edman identified himself as being in an 'important Govt. Position in WA govt.' and he subsequently received a room upgrade as part of resolving his dispute. At the time of the dispute, hotel staff offered to check his room however Mr Edman refused. The hotel noted Mr Edman saying 'it's too inconvenient as his wife (was) already asleep'.<sup>69</sup> The notes made by the hotel are indicative that Mr Edman was not staying at the hotel alone, despite his claims

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<sup>67</sup> Transcript of P. Edman, 23 October 2019, p 57.

<sup>68</sup> Trip Advisor Review - Paulfreo, 12 April 2015.

<sup>69</sup> Crowne Plaza hotel notes of account P. Edman, 10 April 2015.

otherwise to the Commission during his private examinations in February and October 2019.

***Mr Edman entertained an unidentified second woman in his hotel room***

- [245] On 11 April 2015, Mr Edman sent Mr Craig Peacock, WA Trade Commissioner in Japan, an image of a woman in his room at the Crowne Plaza hotel. The image is not of Ms X. During this SMS exchange with Mr Peacock, Mr Edman conceived the trip to Japan he later took in June 2015.
- [246] Mr Edman denied having a female in his hotel room. Whilst giving evidence in February 2019 to the Commission, he was shown the image of the woman. Mr Edman stated 'it's a fake. It's a picture off Google. There was nobody there...it's a fake image'.<sup>70</sup>
- [247] It is not a fake image. After inquiry, the Commission is satisfied the photograph was taken by Mr Edman at the Crowne Plaza Canberra in the same hotel room he occupied from 10-15 April 2015. The denial that he had taken a photograph of a woman in his room is one of the matters the Commission has taken into account in assessing Mr Edman's credibility as a witness. His credibility is important in assessing his evidence concerning deductions in his taxation returns and, where relevant, his evidence that certain expenses related to his parliamentary duties and were legitimate claims of his electoral allowance. His denial reflects adversely on his credibility.

***Mr Edman attempted to prevent the Commission obtaining records of his Canberra expenditure***

- [248] Another matter that reflects adversely on Mr Edman is his attempt to prevent the Commission obtaining records that demonstrated expenses incurred on the Canberra trip were claimed on the parliamentary allowance spreadsheet. The basis for this assertion is outlined in Chapter Eight.
- [249] Nevertheless, Mr Edman claimed it was necessary to go to Canberra; some parliamentary travel allowance was approved; and the Commission accepts Mr Edman did spend the day at the AWM and some time at D-Node. He also said he spent some time in the library on another day gathering information, which he found helpful, finding photographs which had not previously been seen by him, and arranging for a video. His

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<sup>70</sup> Transcript of P. Edman, 12 February 2019, p 48.

electorate officer said that she subsequently ordered those items online and received them.

[250] There may have been a public or business aspect to the trip. However its real purpose is apparent from Mr Edman's actions in relation to Ms X and arrangements made before he left Western Australia.

[251] The Commission concludes that Mr Edman used part of the parliamentary electorate allowance for his own private purpose but acquitted the expenses as parliamentary business for the purpose of claiming a tax deduction. His expenditure in relation to Ms X had no benefit for his electorate.

#### **Travel to Indonesia and Japan (June 2015)**

[252] Mr Edman travelled in company with two other members to Indonesia and Japan in June 2015. The travel had minimal public purpose. The claimed business purpose of the travel may have been a façade to disguise a predominantly private purpose through:

- evidence of Mr Edman's initial purpose for taking the trip as indicated by the tenor of the instructions he gave the WA Trade Commissioner in Tokyo to commence making arrangements for the trip;
- the circumstances in which the itinerary came into being; and
- attempts to circumvent the proper process of approval by either DPC or the Department of State Development.

[253] By way of contrast in April 2014, Mr Edman accompanied four other members on a five day trip to Japan. The itinerary of five days included a half day travelling by train between Kobe and Tokyo and had one day of free time. The trip included eight meetings, two working meals and only three nights in Tokyo. It also included a meeting on the day of arrival and the one day of free time happened to be a Sunday.

[254] This trip was taken under the Parliamentary Travel Allowance scheme or imprest which required each Member of Parliament to seek approval for the travel. They were required to fill out a form detailing the projected expenses and apply to DPC for approval by the Director General at least a fortnight prior to travel. For the April 2014 trip, this approval process was undertaken almost three months in advance. It is not suggested there was anything improper in this travel. It is included in contrast to the next travel to Indonesia and Japan the following year.

[255] By all accounts, the June 2015 trip was largely left to Mr Edman to organise on behalf of his colleagues. Initially however, Mr Edman was prepared to travel to Tokyo by himself.

#### **Mr Edman plans a trip to Tokyo for June 2015**

[256] Whilst in Canberra, and on 9 April 2015 at 4.34 pm, Mr Edman sent an email from his parliamentary email account to Mr Peacock, Commissioner at the West Australian Government Trade Office in Tokyo. The email was short and to the point 'thinking of coming up for a trip to Tokyo..can u put a small itinerary together??'

[257] Mr Edman was a friend of Mr Peacock and they corresponded regularly by email, SMS or iMessage. Two days later on 11 April 2015, having not heard from Mr Peacock, Mr Edman sent him a text message. The reference to 'DSD' is a reference to the Department of State Development:

*did u get message about me and Tokyo trip, not impressed but electorate allowance???*

*So need to do trip before end of June which means DSD can go fuck themselves????*

*No need for them to control need to spend some \$\$\$ ASAP*

*I mean Imprest not impressed?????*

[258] Under examination in October 2019, Mr Edman asserted that he was not talking about spending his electorate allowance but imprest allowance which, at the time of writing the message, he did not know had been extinguished already.<sup>71</sup> However, this interpretation does not make sense. In the message to Mr Peacock, Mr Edman clearly states he is not wanting to spend imprest. Further, in an examination on 12 February 2019, Mr Edman told the Commission 'There was no imprest left for me for this trip, I had to pay for the whole thing out of my own pocket.'<sup>72</sup> Mr Edman had been told by DPC that the Canberra trip would exhaust his imprest/parliamentary travel allowance prior to travelling to Canberra in April 2015.<sup>73</sup>

[259] One motivation for Mr Edman to travel to Japan was to spend his electorate allowance before the end of the financial year, claim the expenses as work-related deductions, and benefit from the taxation rules. This is the plain reading of his message to Mr Peacock.

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<sup>71</sup> Transcript of P. Edman, 23 October 2019, p 77.

<sup>72</sup> Transcript of P. Edman, 12 February 2019, p 8.

<sup>73</sup> Transcript of P. Edman, 12 February 2019, p 38.

[260] Mr Edman's parliamentary allowance spreadsheet prepared by his electorate officer indicates that, as at 30 March 2015, Mr Edman had a credit balance in the sum of \$11,647.61. Effectively this was the running total of the electorate allowance sum that Mr Edman had received but was yet to spend or claim. On this analysis, at the time he messaged Mr Peacock, the electorate allowance needed to be spent and Mr Edman was currently 'in the black'.

[261] During the month of April 2015, Mr Edman received \$7,666.68 in electorate and motor vehicle allowances and expended \$21,327.87 in claimed deductions, which included the expenses Mr Edman incurred in Canberra as well as purchasing his flight to Japan for June 2015. Mr Edman's running balance as at the end of April 2015 was \$2,013.58 in debit.

[262] Having received Mr Edman's message on 11 April 2015, Mr Peacock replied immediately 'got the message mate' and 'yes we can do it!'.

[263] Mr Edman immediately followed up with 'Oh ok' and 'Domo arigato'<sup>74</sup> (accompanied by an image of the Shogun Teppanyaki grill restaurant in Canberra) then 'But fuck DSD' and 'I'm in Canberra atm'. An image of a woman was then attached followed by 'don't ask.'

[264] Mr Peacock replied: 'I won't but...and yes, fuck DSD.'

[265] On 16 April 2015 Mr Peacock asked Mr Edman by text if there was 'any update on a trip this way?' Mr Edman replied 'need a date from you June is good between 5<sup>th</sup> and 12<sup>th</sup> of June? Tokyo only' and 'Kawasaki would be nice to meet?'. Kawasaki is a Japanese corporation.

[266] This was the first request by Mr Edman that indicated the trip was to have any business purpose. Chat continued by text between Mr Peacock and Mr Edman and discussion led to a request by Mr Edman that Mr Peacock put a war museum on the agenda. Mr Peacock stated 'of course. Amazing place. We could spend 3-4 hours there. Will be great to have you here mate.' Mr Edman then asked Mr Peacock to draw up an itinerary 'Kewl. Just draw up some kind of agenda is not Imprest so it doesn't need DPC tick off.'

[267] The remainder of the message included a promise by Mr Peacock that he would send an itinerary the following week, a request by Mr Edman that he stay at the Imperial Hotel, further talk about obtaining some war museum memorabilia whilst in Japan and having some meals at Mr Peacock's residence. Mr Edman signed off the conversation by stating

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<sup>74</sup> Meaning 'thank you very much'.

'once I have your agenda etc I will book my flights ASAP' (emphasis added).

[268] By 22 April 2015 Mr Edman became aware that another member wished also to visit Tokyo with a private businessman. Mr Edman complained to Mr Peacock by text 'I will be the poor bugger that has to organise now from this end...but will be fun and educational regardless. Shows Japan we visit them more than they visit us'.

[269] Five minutes later Mr Edman sent an official email from his parliamentarian email address to Mr Peacock stating:

Hi Craig, (name redacted) has informed me that he is also coming to Japan in the first week of June. He is bringing (reference to a business person) and two growers up with them. We are aware (name redacted) is coming up on Friday as well. Maybe be I join that group to save you time. I just want to see the museum and any memorabilia I can bring home. Cheers Phil.

[270] The itinerary for the June 2015 trip was quite light and never made its way past being a draft. On 23 April 2015 Mr Edman informed Mr Peacock by text that:

*(name redacted) now coming*<sup>75</sup>

*Get me the itinerary*

*(Names redacted) spoke to ABC tonight going to Jakarta first to check on Trade Office then Tokyo.<sup>76</sup>*

- [271] Mr Peacock replied that the draft itinerary was coming, adding 'I've tried to make it as meaningful as possible'. Mr Peacock then sent a draft itinerary through to Mr Edman on 24 April 2015. This was the first version of the itinerary and it barely changed except for the activity scheduled for 6 June 2015 (which was a Saturday) was swapped with the activity for the afternoon of Tuesday 9 June 2015 in the further draft itinerary produced.
- [272] Mr Peacock emailed the initial itinerary on 24 April 2015 from his work email address to Mr Edman at his parliamentarian email address. However within two minutes he had messaged Mr Edman by text stating 'just send the draft by email mate. Of course it's a draft that would hopefully pass any scrutiny.'
- [273] Within eight minutes of receiving the original email and within five minutes of getting the text Mr Edman replied by text to Mr Peacock 'yep

<sup>75</sup> Former member of the Legislative Council.

<sup>76</sup> Former members of the Legislative Council.

I'm happy with it. Ok mate just waiting on (name redacted) and (name redacted) but looks good.<sup>77</sup>

- [274] The itinerary indicated Mr Edman arrived in Tokyo the morning of Friday 5 June. The following day was a scheduled visit to steel works and Tokyo Tower. Mr Edman said in evidence that the visit to Tokyo Tower did not occur; the steel works visit was on the following Tuesday; and they visited a shrine on the Saturday. The Sunday was a scheduled visit to Kamakura retail area, Monday had two meetings scheduled and a visit to the Parliament, Tuesday 9 June was a meeting with the Minister for Agriculture and the visit to the shrine that Mr Edman had earlier requested.
- [275] Mr Peacock and Mr Edman then had a discussion by text during which Mr Peacock stated that he had left Sunday night open for Mr Edman to come to his place for dinner and Mr Edman congratulated Mr Peacock on preparing the itinerary 'on such short notice.' Mr Edman also stated 'hopefully I can still look at the museum' and Mr Peacock replied 'have basically given you the afternoon there on the 9<sup>th</sup>.'
- [276] Mr Edman stated 'I can now sort out the Indonesian part of the trip.' Further messaging referenced a particular restaurant that Mr Peacock had reserved for the Saturday night and which airport he should land in in Tokyo. Mr Edman sent Mr Peacock an image of his Garuda flight details and stated during the latter part of the text exchange 'staying extra for holidaying' and 'Repongi here I cum hehehehe'. This was a reference to 'Repongi', an entertainment and nightclub district. Mr Peacock replied 'I will let them know' and 'all the tarts better get ready, Phil in the house!' Mr Edman replied by sending an image of himself drinking sake.
- [277] Mr Edman purchased a flight to Japan for \$3,703.08 on 29 April 2015. This flight was claimed as a deduction.

#### **Paying for a visit to 'Soaplands'**

- [278] Some of the interaction between Mr Edman and Mr Peacock has been set out in the Commission's previous report *Report on the Trade Commissioner in Japan*. As previously reported, the Commission was investigating the use of state resources to arrange this private activity.

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<sup>77</sup> Former members of the Legislative Council.

[279] The itinerary prepared by Mr Peacock stated that Sunday 7 June 2015 was a scheduled visit to the Kamakura retail area. Rather, it was the day of the visit to the 'soaplands' bathhouse.<sup>78</sup>

[280] The Commission can find no evidence that the Members of Parliament did take an inspection tour of the supermarket and retail industry in Kamakura.

[281] Kamakura retail area is approximately 1 and ¼ hours travel time south of the Imperial Hotel where the Members of Parliament were staying. Mr Edman sent a message to Mr Peacock at 11.45 am stating that he had been to the 'shrine and museum' that morning and confirms Mr Hashimoto will meet him at the Imperial Hotel at 2.00 pm. It is very unlikely that a Kamakura retail tour involving 2.5 hours travel occurred prior to meeting Mr Hashimoto.

[282] The 'soaplands' visit is relevant to this report because it is a further example of Mr Edman's conduct during travel paid for by the State through the electorate allowance. As Mr Edman conceived of the Japan trip back in Canberra in April 2015, it provides context to the question of whether the trip was for private purposes. Further, it is another instance of private activity by Mr Edman that occurred together with several other private activities during the trip.

[283] Mr Edman told the Commission the bathhouse visit was not for a sexual purpose but a traditional Japanese massage, and it was private activity that was deserved -

*Well, it's - it's a bit of private time after our itinerary. We're entitled to have some leisure time and that's what we've done, and we wanted to go to a traditional Japanese bathhouse.*<sup>79</sup>

[284] Mr Peacock had told Mr Edman to 'prepare cash' for the 'soaplands' visit.<sup>80</sup> It was to be a cost of JPY70,000 (approximately AUD\$800) each for two hours. On Saturday 6 June 2015, Mr Edman obtained JPY50,000 (AUD\$528.92) cash from an ATM machine in Tokyo. On Sunday 7 June, he obtained exactly the same amount. A combined total of JPY100,000 (AUD\$1,057.84). It is open to infer this cash was used for the 'soaplands' visit. Mr Edman told the Commission the cash 'was purely for entertainment expenses for myself' and was not claimed as part of his

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<sup>78</sup> Soaplands is a colloquial term used in Japan to describe a business where men are massaged by naked women for a fee, and for a further fee, they can obtain sexual services. It was the term used in June 2015 discussions between C. Peacock and T. Hashimoto.

<sup>79</sup> Transcript of P. Edman, 12 February 2019, p 70.

<sup>80</sup> Message between C. Peacock and T. Hashimoto on 6 June 2015 at 7:58 am.

electorate allowance for tax purposes.<sup>81</sup> Mr Edman had been using his credit card for other expenses in Tokyo.

- [285] Mr Edman's parliamentary allowance spreadsheet has an entry on 30 June 2015 for \$1,057.80 under the description 'Parliamentary Refreshments'. There is an invoice for the Parliamentary Refreshments Rooms for the period ending 30 June 2015 for the amount of \$1,057.80. However payment of these invoices are not normally made until the middle of the subsequent month. In the allowance spreadsheet for July 2015, the exact entry appears for a second time on 16 July 2015 - 'Parliamentary Refreshments' - \$1,057.80.
- [286] Either the parliamentary invoice has been mistakenly entered twice or Mr Edman has claimed through his parliamentary allowance the cash he used at a bathhouse in Tokyo. Mr Edman was adamant that the mistake was his electorate officer's mistake.<sup>82</sup>

#### **Two working days in the entire itinerary**

- [287] The itinerary for Monday 8 June 2015 was the most scheduled day of the entire trip with two meetings with corporations, Mitsubishi Corporation and Mitsui & Co, a courtesy call on the Speaker of the National Diet (Parliament) and a dinner with the Kansai-WA Parliamentary League members at a restaurant.
- [288] A photograph was taken of the three members in the foyer of a building, possibly Mitsubishi Corporation, and Mr Edman tasked his research officer back in Perth with preparing a media release addressing 'that we are in Japan. Update Canning Basin Project in the Kimberley. Discussion regarding potential AG business opportunities arising out of the FTA photos I will email. Beef it up the best u can'. The research officer in Perth sought more information and sent through a draft release and images that was then vetted by Mr Peacock between meetings on the morning of 8 June 2015.
- [289] The text exchange from later in the evening between Mr Peacock and Mr Edman suggests that Mr Edman went to bed early on the night of Monday 8 June 2015.
- [290] On Tuesday 9 June 2015, the itinerary stated that there was a tentative 10.15 am meeting with the Ministry of Foreign Affairs of Japan followed by a lunch at Salt restaurant and then a tour of the Nippon Steel Kimitsu Steelworks. Mr Edman does not recall whether the meeting with the

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<sup>81</sup> Transcript of P. Edman, 14 February 2019, p 72.

<sup>82</sup> Transcript of P. Edman, 24 October 2019, p 23.

Ministry of Foreign Affairs of Japan actually occurred. There is a photograph of the members at the steel works.

- [291] On 9 June 2015, the chat message between Mr Edman and Mr Peacock referred to rearranging the night's activities so they could go to a karaoke restaurant rather than a fancy restaurant. There was no reference to any meeting with the Minister for Foreign Affairs or anyone else from that Government office.
- [292] Mr Edman states 'I'm off to repongi to hurt myself.' An arrangement was made to meet at Mr Peacock's office at 6.30 pm but later Mr Edman states that he will meet Mr Peacock at a restaurant. After some more organisation they agreed to meet at a restaurant nearby which Mr Peacock had booked. Afterwards Mr Edman attended a karaoke bar.
- [293] No work appears to have been engaged in after 9 June 2015. The following morning on 10 June 2015 at approximately 9.00 am Mr Peacock made contact by text message with Mr Edman stating 'What are you doing and what happened last night?' Mr Edman ignored the second half of the question and stated he was 'About to head to Disney.'
- [294] Mr Peacock asked him to join him at 'the Club' for a drink tonight. Mr Edman replied 'I will be still in Disneyland.'
- [295] Mr Edman returned from Disneyland stating 'I'm completely fucked! Just got back 8 hours straight walking around Disney.' Mr Peacock again asked him to 'jump in a taxi and come for a drink mate.'
- [296] During the course of that day Mr Edman had sent Mr Peacock three images of Disneyland - one of a spinning teacup ride, one of Mickey Mouse and one of Mr Edman in a rollercoaster cab.
- [297] It appears that Mr Edman did not go to the Club as at about 8.00 pm he texted Mr Peacock stating 'Alicia says hi' and then five minutes later 'did you know that Japanese girls are good at doggy style?'. Accompanying that message was an image of a Japanese girl and a male having sex. Also sent to Mr Peacock at the same time was an image of Mr Edman and a girl sitting in a bar. Mr Edman is waving at the camera. A few minutes later he sent an image of a liquor glass and states 'knocking back a 3k cognac'. Mr Peacock responds half an hour later with 'see you morning.'
- [298] Late in the evening of 10 June 2015, Mr Peacock and Mr Edman entered into a chat which commenced with Mr Edman starting at 10.00 pm 'Alicia say hi again'. He then continues with 'Might stay another year. Alicia is winning my heart mate mmmm.' Mr Edman ends the chat by sending an image of himself and Alicia. From the analysis of records held by the

Commission, including photographic evidence, it is understood that Alicia is a person that Mr Edman met and spent time with during his trip to Japan in 2015.

- [299] Mr Edman left Japan on the morning of Thursday 11 June 2015 and arrived in Bali later that afternoon.
- [300] On 12 June 2015 at 9.55am, Mr Peacock chatted to Mr Edman about the full page media release that appeared in the Rockingham local paper regarding the trip to Japan and specifically the meetings they attended on the Monday and the Tuesday. Later that afternoon Mr Edman sent a photograph of himself in the pool at the hotel in Bali accompanied by the caption 'working hard'.
- [301] Mr Edman claimed two nights at a hotel in Bali on his electorate allowance. In total, the electorate allowance deductions claimed by Mr Edman for the June 2015 trip to Japan and Indonesia were \$9,537.84.

#### **Department of the Premier and Cabinet unaware of Mr Edman's trip to Japan**

- [302] On 8 June 2015, in the early evening at 7.40 pm, Mr Peacock heard from one of the officers of DPC. The officer wrote:

*Craig - Premier's office have picked up on some tweets from Phil Edman about meetings with Mitsui and Mitsubishi - they have asked what involvement you had in creating itinerary and setting up meetings with this group. Apparently DSD and PO were not advised about it. Can you let me know the history please ASAP.*
- [303] Mr Peacock replied soon thereafter:

*Hi(name redacted), I was advised just over a month ago that MLC's (names redacted), and (including) Edman were travelling to Japan privately and wished to meet some of the people they met last year to receive an update on where we now stand with the FTA. Both Mitsui and Mitsubishi were happy to provide that update and both meetings were relatively short and courteous, but also touched upon some potential investment in Agribusiness, especially in the grain area.*

*DSD are aware of the visit and I advise that no action was necessary as we had everything in hand the MLCs did not require pre-departure briefing.<sup>83</sup>*

#### **The stated purpose of the trip not substantiated**

- [304] Mr Edman claimed that the purpose of the trip was business-related. He and other members accompanying him kept appointments made for him by Mr Peacock.

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<sup>83</sup> Email from C. Peacock.

[305] The legitimacy of the trip as a business trip is open to question. The Commission does not accept it had a predominantly business purpose. Any business conducted was a façade for what was in essence a private trip. Mr Edman initially gave evidence that the purpose for his trip to both Jakarta and to Tokyo was related to the Jakarta Trade Office:

*When did you decide to go on this trip?--This one? When we found out that the Premier was going to shut down our trade office in Jakarta.<sup>84</sup>*

[306] When asked to clarify the connection he said he took a particular interest as a member in both Japan and Jakarta:

*Well, as I was saying, we could have gone to the trade office well before, but to get out best value for money and bang for buck, especially the fact that I was paying for it out of my own pocket, I thought that it would be best, with the other gentlemen, that we hit two birds with one stone and put it off.<sup>85</sup>*

[307] The Commission does not accept Mr Edman's explanation. Mr Edman stated that his purpose in breaking his journey in Jakarta was to speak to the WA Trade Commissioner for Indonesia in an attempt to force the Government to change its mind about the abolition of that post. However the Premier had reversed that decision months earlier in January.

[308] When confronted with the media release from the Premier dated 2 February 2015, Mr Edman altered his evidence to say that it was necessary to visit because it was thought that the WA Trade Commissioner might be operating out of the Austrade office. This was not an explanation he had advanced on his previous examination before the Commission, although he had said that he had a heated meeting with Austrade during the Jakarta visit.<sup>86</sup> This meeting was not referred to in his Twitter feed.

[309] When examined in February 2019 Mr Edman was firm that the trip to Jakarta had been the subject of arrangement with the acting Trade Commissioner for Indonesia, and the Australia Indonesia Business Council representative. He stated 'She knew exactly why we were coming.<sup>87</sup>

[310] The reality established by email correspondence is different. On 28 May 2015 (merely days before arrival on 3 June) the Acting Trade Commissioner wrote to Mr Edman:

*Realistically, if the aim is to build relationships, which I believe it is, then this visit should be postponed until the new DG of Ag is in place (and settled in!) and the DG*

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<sup>84</sup> Transcript of P. Edman, 12 February 2019, p 12.

<sup>85</sup> Transcript of P. Edman, 12 February 2019, p 14.

<sup>86</sup> Transcript of P. Edman, 12 February 2019, p 15.

<sup>87</sup> Transcript of P. Edman, 12 February 2019, p 18.

*of international trade cooperation is back from leave so as to give this opportunity the best possible hearing.*

...

*Very happy to help with a rescheduled visit.*

*Phil, (names redacted) - I am still happy to see you and have asked the embassy to fit in 45 mins on Wed or Thursday...I'm working primarily on fresh and fine food at the moment and could drag you around a supermarket to show you where the opportunities are?*

- [311] Mr Edman's Twitter account has evidence of him doing exactly this.
- [312] The business council representative did not accompany Mr Edman on the trip to Jakarta.

#### **Assertion trip paid 'out of my own pocket' not correct**

- [313] The Commission does not accept that Mr Edman paid for the trip from his own funds. He used his electorate allowance despite telling the Commission that the electorate allowance was not designed for that purpose:

*And was it the purpose of that electorate allowance, for you to take trips such as this?---No, it wasn't designed for that at all. That's what the Imprest travel was for. No, but if there was some money left, then you could use it.<sup>88</sup>*

- [314] Mr Edman claimed a total amount of AUD\$9,537.84 on expenses related to Tokyo, Jakarta and Bali. Accommodation in Jakarta at the Shangri-La hotel was \$1,149.19. Accommodation in Japan at the Imperial Hotel was \$2,314.24. Mr Edman stayed in Bali for two nights as a journey break on the way home. No work was done. The expenses of two nights at the Kartika Plaza (\$880.41) were claimed.<sup>89</sup>

#### **Sydney - seizing an opportunity (28-30 July 2016)**

- [315] Mr Edman travelled to Sydney with two other members in July 2016. While the two other members used the imprest/parliamentary travel allowance to have their expenses reimbursed, Mr Edman used the electorate allowance.
- [316] The benefit of this travel to Mr Edman's electorate was dubious and his attendance appeared to be hastily arranged at a late stage.
- [317] When asked, Mr Edman said that the purpose of the trip was 'to learn about Fire and Emergency Services...and also had a tour of their facilities.

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<sup>88</sup> Transcript of P. Edman, 12 February 2019, p 38.

<sup>89</sup> Transcript of P. Edman, 23 October 2019, p 83.

We also went to Parliament. We had some meetings with (redacted).<sup>90</sup> Later in evidence Mr Edman said he did not attend this meeting.

- [318] By 12 July 2016 the other members had sought approval to travel from the Director General of DPC. The itinerary and application was sent to Mr Edman. The following day, Mr Edman's electorate officer made a file note 'Phil said he may attend this when I printed it off and placed it on his desk. He will let me know.'
- [319] A later note states: 'Phil said he's now going to attend the trip to Sydney with (names redacted). He will book his flight and send it to me.'
- [320] After booking his flight Mr Edman left for a trip to Bali.
- [321] The itinerary included arrival in Sydney on Thursday 28 July 2016 and a parliamentary dinner that evening. The next day was a meeting with the NSW Rural Fire Service. Saturday had a meeting scheduled before returning on an afternoon flight.
- [322] Mr Edman complained to one member that the itinerary was full. On 26 July 2016 Mr Edman sent an email 'Seems a lot in just a few days?? Need R&R.' (name redacted) replied 'Mate you just had a week of R&R. Need some work to keep it real.'
- [323] Mr Edman did not go to the meeting. He claimed a total of \$1,559.92 for the trip. Included in the allowance spreadsheet was a trip to the Powerhouse Museum, accommodation at the Sir Stamford Hotel in Circular Quay and refreshments.
- [324] From 19-23 July 2016 Mr Edman had been in Bali. He claimed \$3,909.36 expenses under his imprest/parliamentary travel allowance for accommodation, airfare and restaurant meals. Days after the event a member referred to the trip as 'R&R'. Mr Edman told the Commission that this was an example of many mistakes in his electorate allowance spreadsheet and the Bali trip should not have been claimed as a work-related expense.
- [325] This is contrary to information Mr Edman recently gave to his new accountant. Two weeks before giving evidence at the Commission, Mr Edman told his new accountant it was a legitimate parliamentary business trip because it was a conference concerning the Australia and Indonesia Business Council (AIBC).<sup>91</sup> The Commission has not been able to verify this claim but notes that the AIBC website indicates the 2016 biennial conference was held in Perth during November 2016. On the

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<sup>90</sup> Transcript of P. Edman, 24 October 2019, p 62.

<sup>91</sup> Transcript of P. Edman, 24 October 2019, p 49.

basis of Mr Edman's recent instructions to the new accountant, the travel expenses were included as legitimate business travel in an amended tax return.

### **A pattern emerges**

- [326] When Mr Edman's travel paid by the State is examined, a pattern emerges. There is a visit to some organisation or place to give the façade of electorate business when the main purpose is personal pleasure. The façade disguises the true nature of the travel and is, at best, a tenuous link to a legitimate use of the electorate allowance.
- [327] Mr Murphy, in his evidence before the Commission, gave what might be regarded as a common-sense view that the purpose of particular travel should be examined. If the travel was undertaken mainly for private purposes with a parliamentary or business purpose or tour arranged as a façade, then a question arises whether the state should fund such a trip.

### **A visit to South Australia: Wine Tour (30 August-2 September 2016)**

- [328] Mr Edman went to South Australia from 30 August 2016 to 2 September 2016. He was accompanied by two other members of the Legislative Council. They travelled over two days on the Great Southern Rail and returned by air. Organised by one member, it was referred to as '(name redacted) Penfolds Wine Tour' and a booklet prepared with that title.
- [329] Mr Edman claimed \$7,115.89 on his electorate allowance for this trip. Wine purchases account for \$4,003.00. Restaurant meals claimed by Mr Edman were a total of \$973.62. He stated the purpose was work-related but the Commission can find no evidence at this stage to suggest any parliamentary or electorate related work of substance was done.
- [330] Mr Edman stated:  
*It was a trip of us going to the vineyards and having a look at their infrastructure and - and the councils - and it was a bit of fun...It was good learning all about the wine regions of South Australia, and how they put all the different signage up, so the Chinese could understand it.*<sup>92</sup>
- [331] It is the Commission's view that for Mr Edman this was a private trip. Mr Edman was a prolific photographer. His photos give a fulsome picture of the activities in South Australia. He agreed they were an accurate record of the trip as he did not recall making any notes.<sup>93</sup>

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<sup>92</sup> Transcript of P. Edman, 24 October 2019, p 76.

<sup>93</sup> Transcript of P. Edman, 25 October 2019, p 2.

[332] During the three full days Mr Edman was in South Australia, he visited d'Arenberg Winery, St Hugo's Winery, Accolade Wine, St Hallett's Winery and Penfolds winery. Mr Edman stated that at each winery he tasted some wines, 'had a good look around' and talked to the winemaker. At Penfolds, he went to look at their wine museum. In addition he visited Adelaide Casino, Goodieson Brewery, and had an eight course degustation dinner at Penfolds' Magill Restaurant. Following his visit to this restaurant, Mr Edman posted a favourable review on Trip Advisor under his pseudonym 'Paulfreo' indicating he had spent \$500 on the Penfolds' dinner, which included Grange wines. On 30 August 2016, Mr Edman communicated with Mr Peacock via a sequence of phone messages that he 'blew' \$1,000 at a winery and was also about to visit a strip club:

*Edman - In SA. Got train here.*

*Peacock - Wow, long ride? Are you joining (redacted)? Looks like you are at d'Arenberg.*

*Edman - Yep Went to Hardys Blew \$1000*

*Peacock - Would be easy to do!*

.....

*Edman - On white now. Now going to titty bar.*

*Peacock - How are you guys? Wish I was there. Love you blokes.<sup>94</sup>*

[333] Once Mr Edman became aware of the Commission's investigation he was concerned that the trip might be highly scrutinised.<sup>95</sup> In a telephone call to one of the other trip participants on 17 August 2019 at 8.55 am Mr Edman expressed his concerns that the Commission would expose the wine trip:<sup>96</sup>

*Edman - But that's what they're going to come down on us mate. That's the problem see I I've, I've figured it out now. Like he's got my computer he's got everything you know you can say well look here they are in Bali uhm you know here's a bloody wine trip with (indistinct) that whole itinerary's on that fucking computer.*

*(Name redacted) - Yeah.*

*Edman - Uhm (name redacted) Wine Trip uhm you know. And I know we claimed it I know we bloody claimed we would have claimed the airfares or something on it uhm. And (name redacted) should be shitting himself as well. I've text (name redacted) I said (name redacted) I don't expect you to text me back and I*

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<sup>94</sup> Phone Message between P. Edman and C. Peacock, 30 August 2016.

<sup>95</sup> Transcript of P. Edman, 24 October 2019, p 75.

<sup>96</sup> Transcript of intercepted telephone call.

*understand why I said but here's a letter to Kate Doust about the computer and they've got it and all your shit and my shit and everything's on it and so is (name redacted). So I sent it to him but he hasn't replied but he's got it.*

*(Name redacted) - Yeah.*

*Edman - He can't reply.*

*(Name redacted) - No no.*

*Edman - Uhm*

*(Name redacted) - and uhm you know what it is what it is mate it's uhm 'cause*

*Edman - That's what's going to happen and that McKechnie will expose it all. You know it'll be on the news you know (name redacted) Wine Trip this and that. That's that's that's the main thing I'm I'm getting prepared for is that friggin wine trip. (laughs)*

*(Name redacted) - (laughs)*

*Edman - And and (clears throat) you know we're gonna have to explain it and just say well the train we get it for free we don't have to you can you can have that as a holiday it's, it's an entitlement, uhm.*

- [334] As Mr Edman said later in the call on 17 August 2019: 'Was a little bit of a study tour but yeah we had a shitload of fun.'
- [335] Because the Legislative Council holds the laptop computer, the Commission is unable to verify the accuracy of Mr Edman's comments about its contents.
- [336] Once Mr Edman became aware of the Commission's investigation into parliamentary allowances, he sought advice from a new accountant. An amended tax return for the financial year 2016/2017 was filed. On the basis of Mr Edman's instructions the accountant reversed claims made previously for wine valued at \$2,148. Mr Edman said this wine was for his private consumption.
- [337] The balance of wine bought remained a parliamentary allowance expense on the basis it was:

*given away as gifts for - cos we're getting up - ready for an election...so they go to help fundraise. They'd have many fundraisers for the Liberal Party.*

*And what type of gifts were they?---Bottles of wine. Sometimes tea boxes like I was explaining. Ties. Tie pins. All sorts of things.*

*So from the South Australian trip how many bottles of wine do you think you gave away as gifts?---During this- during the election campaign, there was a lot. You wouldn't want to come empty-handed to any of them, not as an MP.*

*How many bottles are we talking about?---I can't remember. But you'd have at least two or three functions a week, especially during when we were campaigning; and you would bring something for the – for the chook raffle, especially if it was an auction.<sup>97</sup>*

- [338] Mr Edman agreed that he had failed to tell his previous accountant that a proportion of the wine purchases were gifts.<sup>98</sup> Three months after returning from Adelaide the electorate officer printed out the electorate spreadsheet for Mr Edman. This contained the (name redacted) Penfolds Wine Tour entries. Mr Edman chose to leave the expenses in the electorate allowance spreadsheet that went to his previous accountant.
- [339] In his amended tax return for 2016/2017 Mr Edman claimed as gifts bottles of wine to the value of \$2,716.

#### **Travel to Japan (June 2017)**

- [340] In June 2017 Mr Edman visited Japan on holiday with his family.
- [341] Prior to his completing his term as a member, Mr Edman had booked and paid for the trip. He subsequently claimed the cost of the airfares and accommodation as allowable deductions from his electorate allowance. The total amount is \$5,901.69.
- [342] There are two issues that arise. The first is that it was a purely private trip by Mr Edman and his family. The second is that the travel was undertaken at a time when he had ceased to be the Member for the South Metropolitan Region and therefore had no electorate for which to claim expenses.
- [343] Mr Edman's explanation for the claim is 'Do not know why it is in the spreadsheet, it is a mistake. Hopefully the new accountants will have taken it out.'<sup>99</sup>
- [344] The previous accountant specifically asked about this travel, and Mr Edman told him it was a legitimate electorate expense for travel. On 7 July 2017 Mr Keith Jackson emailed Mr Edman, stating 'Phil, I have had a look at your political expenses and there are some large amounts. What are these for: 03/04/17 Garuda Aitix Aust 4252.'
- [345] Mr Edman answers 'Garuda is travel.'
- [346] His claim of mistake is hard to accept. The flights were booked in April. The trip took place in June, and Mr Jackson queried Mr Edman in July.

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<sup>97</sup> Transcript of P. Edman, 24 October 2019, p 87.

<sup>98</sup> Transcript of P. Edman, 25 October 2019, p 18.

<sup>99</sup> Transcript of P. Edman, 25 October 2019, p 111.

[347] Mr Edman sought to lean on the WA Trade Commissioner's office in Tokyo for assistance in planning this holiday. On 8 May 2017, during a SMS chat between Mr Peacock and Mr Edman, they discussed Mr Edman's family trip to Japan which was to occur later in the year of 2017. Mr Edman said to Mr Peacock:

*Really looking forward to being with my mate in Tokyo! I'm sad Got so much to tell u! Hope (redacted) and (redacted) and kids can head out while we share some time So important we have a few nights alone mate*

*Do u think u can take a few days off work Or a long lunch Maybe leave office at 12pm etc*

*we sneak out at 12pm etc ??? then you go back to work next day? Mate it's just a bullshit excuse to tell staff We are not working. DSD can fuck themselves.*

[348] On 30 May 2017 Mr Edman was in contact with Mr Peacock and they discussed again his trip to Japan. During the course of that discussion:

[349] Mr Edman says 'mate I miss you I feel so guilty I can't watch Japan but you are my friend and I'm no longer some bullshitting MP but still your friend.'

[350] Mr Peacock replies 'Appreciate all that you did mate.'



## CHAPTER SEVEN

### Misuse of allowance to fund lifestyle

#### The Black Hand Gang

- [351] Members are entitled to claim expenses on the parliamentary allowance for attending seminars and for certain meals and entertainment, particularly if the entertainment is open to the general public. In general a meal for the member is not an allowable deduction.
- [352] Mr Edman was part of a loose grouping of Legislative Council members known to themselves as the "Black Hand Gang". This group would hold functions twice a year described as 'seminars' and dine together at a private room in a restaurant. As Government Whip, Mr Edman was responsible for arrangements.
- [353] During one exchange between members, one member raised caution about the seminars as being perceived as 'frivolous frequent taxpayer funded excuse for an expensive piss-up in some exclusive private dining area of a fancy restaurant.' This was not Mr Edman's characterisation. Mr Edman's description was 'some policy is discussed. It's a social event as well. It's a team-building, I guess, exercise too. It's a meal, there's drinks. There's also a trophy presentation.'<sup>100</sup>
- [354] Typically Mr Edman would cover the cost of meals with his credit card and then be reimbursed by other members of the Black Hand Gang. As he was reimbursed for the expense, there was no basis for him to claim a business deduction on his parliamentary allowance. Yet he did so. Repeatedly.
- [355] Mr Edman claimed a total of \$17,942.13 on his parliamentary allowance between December 2013 and June 2016 for Black Hand Gang dinners held at the Midori Japanese restaurant, Lamonts, Matilda Bay Restaurant and Silks, Burswood. Mr Edman was reimbursed all but \$800 of that amount.
- [356] Mr Edman was able to claim the deductions to which he was not entitled because of his position as a public officer.
- [357] Mr Edman ran a Black Hand Gang lotto syndicate over a number of years. He agreed in evidence that it was not appropriate for these lotto expenses to have been claimed on his parliamentary electorate

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<sup>100</sup> Transcript of P. Edman, 25 October 2019, p 68.

allowance. Mr Edman accepted an entry for lotto that appeared on the allowance spreadsheet was 'a mistake'.<sup>101</sup>

#### **Mr Edman's boat "Prime Minister"**

[358] Mr Edman maintained a berth for his yacht, named "Prime Minister", at the South of Perth Yacht Club. Berthing and other maintenance expenses were claimed on his electorate allowance. Mr Edman accepted that the expenses on the boat should not have been claimed from the electorate allowance.

#### **Vehicle registrations and traffic infringements**

[359] Over his last parliamentary term, Mr Edman claimed a total of \$10,776.60 for vehicle registrations and speeding fines received by himself, his wife and Ms Z. The vehicle registrations included his wife's vehicle, a box-top trailer, his boat and Ms Z's vehicle. The notices which he paid from his credit card were claimed as an electorate expense. In evidence, Mr Edman said that claiming this expense on his electorate allowance was a mistake.

#### **Staff Christmas functions**

[360] Mr Edman gave evidence that Christmas parties involved constituents, mayors, CEOs, public servants, directors general and police. However, in 2013 Mr Edman, in a flier to staff, arranged a trip to the Leeuwin Estate via a private charter plane for his electorate office and WA Cabinets business staff for morning tea, lunch and a tour of the winery. The claim on his parliamentary allowance for this event was at a cost of \$2,842.50.

[361] He said the airfare was claimed as an electorate allowance expense but lunch was put through his business. He thought the airfare was claimable. It was his judgment at the time to take the staff for a reward.

[362] The claim was therefore a deliberate decision by Mr Edman, not a mistaken entry.

[363] In November 2014 Mr Edman took his electorate office and WA Cabinets staff to Rottnest. An amount of \$3,165.83 was claimed as electorate allowance expenses including accommodation overnight and meals. Mr Edman said this was a working trip, and the majority of the day they were looking at the Rottnest tunnels as part of Fortress Fremantle. Other evidence from Mr Edman's former staff members suggests that the tour was no longer than one to two hours.

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<sup>101</sup> Transcript of P. Edman, 25 October 2019, pp 80-82.

## M&M Entertainment - Penthouse Club Perth

- [364] Photographic evidence and financial records confirm that between April and October 2016, Mr Edman attended the Penthouse Club Perth (an exotic strip club located in Northbridge) on four separate occasions. On at least two of those occasions he entertained other persons within one of the club's 'champagne rooms'.<sup>102</sup>
- [365] The expenses appeared on Mr Edman's credit card under the descriptor 'M&M Entertainment P/L'. He claimed a total of \$2,908.50 incurred via separate transactions as deductions from his electorate allowance.
- [366] Mr Edman blamed his electorate officer. If she wanted to highlight a matter, he would have regard to it, but otherwise he left it to her.<sup>103</sup> He said it was her mistake that these expenses were included on his allowance spreadsheet.
- [367] Mr Edman's explanation for these and other claims is that he was very busy, had little input into the categorisation and 'left it to the professionals', meaning his electorate officer and Mr Jackson (his then accountant).
- [368] The Commission does not accept this evidence and prefers the evidence of the electorate officer that she prepared a spreadsheet of income and expenditure but sought guidance from Mr Edman as to what was an allowable deduction. On occasion she would query him as to a specific item, but if he said it was deductible she would so treat it. Further, in this instance, it would not have been readily apparent to Mr Edman's electorate officer, or his accountants, what these expenses were for, noting the description was recorded as 'M&M Entertainment', and not Penthouse Club Perth.
- [369] Moreover, in the Commission's opinion, the expenditure of State money - the allowance - for this purpose was an abuse of his office.

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<sup>102</sup> [www.penthouseclubperth.com/about-us](http://www.penthouseclubperth.com/about-us): 'The Audrey & Marilyn Rooms are located on the 1st Floor where the magic of the private lap dances happen. The Audrey & Marilyn Rooms feature leather seating and privacy when you require it the most during your private lap dance.'

<sup>103</sup> Transcript of P. Edman, 25 October 2019, p 107.



## CHAPTER EIGHT

### The role of Mr Edman's accountant and interference by Mr Edman

- [370] The Commission may seek information or issue a summons that includes a notation to the effect that disclosure of information about the notice or summons, or about any official matter connected with it, is prohibited except in the circumstances, if any, specified in the notation.<sup>104</sup>
- [371] Mr Edman has attempted to deflect the Commission's investigation. He involved himself in his previous accountant's responses to Commission compulsory notices and initially failed to provide the Commission with full disclosure of material in his control. Despite non-disclosure notations in place, Mr Edman proceeded to inform and warn many interested parties of the progress of the investigation, including a member of the Legislative Council's Procedure and Privileges Committee.
- [372] The actions of Mr Edman during the course of the Commission's investigation are matters the Commission has taken into account in assessing his credibility as a witness and the explanations he has given for particular conduct or claims. On the balance of probabilities, the Commission has concluded that Mr Edman knew that he was using the electorate allowance for private purposes, was not entitled to claim private expenses and was trying to avoid particular instances from coming to attention.

#### Keith Jackson and Associates

- [373] Mr Jackson was Mr Edman's accountant for many years, including during his time as a parliamentarian. Mr Jackson did not assess the accuracy of the material supplied to him on the spreadsheet or other material provided by Mr Edman's electorate office. Mr Jackson emphasised to the Commission that he was not engaged to conduct an audit on Mr Edman's affairs, but as his taxation agent he largely accepted the content of the spreadsheets that he had been supplied by Mr Edman.
- [374] Mr Jackson asked Mr Edman at the end of each financial year for a list of his electorate allowance expenses. On occasion, he queried Mr Edman about particular line entries, but largely accepted the spreadsheet as a correct depiction of Mr Edman's claimed deductions. The spreadsheet had been designed by Mr Edman and his office to capture all legitimate work-related expenses. Mr Jackson relied on this. As a result, every item on the spreadsheet was calculated by the accountant as a deduction.

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<sup>104</sup> CCM Act s 99.

[375] At the conclusion of the process Mr Jackson sent Mr Edman the draft return for his perusal. Mr Edman signed the declaration on each tax return submitted on his behalf, and in doing so acknowledged the legal obligations that 'the information provided to my registered tax agent for the preparation of this tax return, including any applicable schedules is true and correct.'

**Mr Jackson receives a notice**

[376] At 3.10 pm on 1 April 2019, Mr Jackson was served by the Commission with a compulsory NPR for certain records. The NPR contained a non-disclosure notation. Commission officers explained to Mr Jackson the requirements of the NPR and also the non-disclosure provision attached. Mr Jackson acknowledged his legal obligations and signed the Record of Service confirming it.

[377] The Commission executes the service of NPRs on relevant entities as required when undertaking investigations and/or inquiries. An NPR compels the recipient to produce all records contained in the attached 'Schedule'.

[378] The Commission's NPR served on Mr Jackson required him to produce all records related to Mr Edman's personal income tax for the financial years ending 30 June 2014, 30 June 2015, 30 June 2016 and 30 June 2017.

[379] Within half an hour of the NPR being served, Mr Jackson's de facto wife and business partner, Ms Delffina Nix, became aware of the existence of the Commission's NPR. Despite Mr Jackson not being authorised to release this information to Ms Nix, and despite Mr Jackson denying that he directed her to communicate with Mr Edman, Ms Nix contacted Mr Edman via email. In effect, Ms Nix became the communication conduit between Mr Jackson and Mr Edman in circumstances where Mr Jackson had earlier been informed of his obligation to maintain secrecy. In the subsequent email exchange, Ms Nix stated:

*Hi Phil*

*Between you and me - my partner is pretty concerned about being stuck in the middle of all of this - he is trying to be as loyal as possible to you as you have been a client for a long time - but he's worried about the legal implications that may arise.*

[380] At 4.25 pm that afternoon, Mr Edman forwarded this email to his solicitor, and in doing so informed him that his taxation accountant, Mr Jackson, had been served with a Commission NPR requiring the production of his (Mr Edman's) records. Just over an hour later it became evident that Mr Edman was aware of the content of the NPR schedule.

[381] At 5.37 pm, Mr Edman used the information that he had received concerning subject content from Mr Jackson's NPR to send a sequence of group telephone messages to three recipients who had all accompanied him on travel. The messages were simple:

*June 2015 Trip Jakarta and Tokyo (name redacted), (name redacted), me*

*October 2015 was trip to Jakarta with premier, (name redacted) and me.*

*June 2016 Trip to Bali (name redacted) and me*

*July 2016 trip to Sydney fire issues (name redacted), (name redacted) me*

*August 2016 Trip to Adelaide (name redacted), (name redacted) and me*

*2014 trip to Bali, Tokyo (name redacted), (name redacted), (name redacted), (name redacted) and me*

*That's everything*

*Furthermore!! There are no tweets on Adelaide trip!*

*Only areas of interest are 2014 to 2016*

*Will keep you guys up to date if possible*

[382] Mr Edman says that Mr Jackson had texted him before the documents were served to say the CCC was serving documents.<sup>105</sup> Within two hours after the documents were served on Mr Jackson, Mr Edman had become aware of their content.

[383] Mr Jackson instructed his personal assistant to send Mr Edman a copy of documents provided to the Commission. This was done by email on 29 July 2019.

[384] The return of the NPR to the Commission by Mr Jackson was incomplete. Mr Jackson omitted three crucial months from the allowance spreadsheet which coincided with the visit to Japan in June 2015, half of the Canberra expenses from April 2015 and some expenses from Darwin in December 2014. Mr Jackson claimed that the information had been "lost in the ether" and he did not deliberately omit the documents. However Mr Jackson had the material at the time he prepared that year's accounts, and the missing spreadsheet months were later found in electronic form at Mr Edman's premises. Mr Edman was served with an NPR in relation to Operation Overton and also failed to produce that material. This led the Commission to issue an NPR to the Director General of DPC in order to see whether such material existed in another form, perhaps attached to an email.

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<sup>105</sup> Transcript of P. Edman, 25 October 2019, p 116.

- [385] In an email exchange with Mr Jackson's office at 3.59 pm on 1 April 2019 Mr Edman was told by Ms Nix 'Hi Phil, Will check out tax returns as discussed.' Mr Edman later said to Ms Nix that he will 'drop over' tomorrow.
- [386] When questioned whether he went over to Mr Jackson's office on 2 April and looked at some documents he replied 'I – I can't recall what he was doing. He was preparing something. Did I go through all the files and sit down with him? No.'<sup>106</sup>
- [387] Mr Edman was very worried about Mr Jackson doing the wrong thing because of the non-disclosure notation. He suggested on several occasions to Mr Jackson that he write to the Commission to ask for the non-disclosure notation to be lifted. He asserts that he definitely did not ask for documents to be emailed to him. This is directly contradicted in a telephone call with Mr Jackson's assistant in which Mr Edman states:

*I need two things from Keith...I want a copy of the order that was given to Keith back in April 2019 asking for my financials and the second thing is I want is a copy of the letter that's dated this month from the triple C.*

- [388] In private examination, Mr Jackson admitted breaching the NPR with its notation on several occasions. It is surprising that a professional accountant would do so.
- [389] The Commission recommends that consideration be given to a prosecution of Mr Jackson for breach of the CCM Act.<sup>107</sup>

#### **Mr Edman tells others**

- [390] From an early stage in the investigation, Mr Edman texted a former member and had conversations over the phone warning him of the Commission's interest in his accountant. He kept another former member informed. He informed his bookkeeper for WA Cabinets. He rang Mr Jackson to get updated. He spoke to media contacts.
- [391] He also sent through several texts to a current member of the Legislative Council who attended more than one trip with Mr Edman. The member apparently received those texts, but did not respond. Mr Edman said that the member will not talk to him. He tried to make contact and texted him, but he does not reply. According to Mr Edman, this member is a very close friend.

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<sup>106</sup> Transcript of P. Edman, 25 October 2019, p 118.

<sup>107</sup> A recommendation made by the Commission is not a finding and is not to be taken as a finding that a person has committed or is guilty of a criminal offence: CCM Act s 43(6).

### Mr Edman is concerned about a laptop computer and hard drive

[392] After the Commission executed a search warrant at Mr Edman's business and residence seizing, amongst other items, a laptop, Mr Edman enlisted a former member and another Liberal Party official to contact various sitting members to warn them.

[393] Mr Edman was concerned that the Commission had access to his laptop and hard drive, not because of the disclosure of any material that may be subject to Parliamentary Privilege, but because it may portray members, current and former in an unflattering light.

[394] To a former member on 16 August 2019:

*but I just wanted to send a warning to (name redacted) that they have got the MP, my MP computer...which stores everything, **its got everything, all the emails between all of us, Black Hand Gang dinners, its got the video...***

[395] In reference to the President of the Legislative Council, during the course of a telephone call to a former member on 4 September 2019:

*that's good she's got the laptop. I think once she gets the laptop she should probably chuck it in the Swan River is probably what she should be doing...You always have a little shit file in case you need it on people that fucken piss you off.*

[396] To a former member on 5 September 2019 he said:

*See, see personally (name redacted), I should really just fucken, I've never said this. If I was being a cunt, right, I should've never rang you and got you to phone (name redacted) and tell him that there's shit in that computer that's gonna fucken kill them all off but as you know I've got a good side to me and I'm not vindictive...I need you to ring (name redacted) and explain this to him...even though they've managed to get the computer back from the triple C there's a, there's a back-up drive...Cause the back-up drive has still got all the videos and all the other fun-loving stuff on there as well.*

[397] To a businessman on 5 September 2019:

*And there's enough stuff on that fucken computer to bury fucken a lot of people and ruin their political careers forever...There's videos and pictures and lots of lovely little collections that I've got on there.*

[398] Mr Edman went out of his way to make sure a member of the Legislative Council who had travelled with him had information about the Commission investigation:

[399] On 4 September 2019 at 7.30 pm Mr Edman sent the first of a series of text messages to the member 'Few fun videos on that laptop.'

- [400] On 5 September 2019 at 8.14 am another 'Ccc also has the back up drive for the MP computer.'
- [401] On the same day at 5.18 pm 'Wine trip.'
- [402] Two further text messages were sent to the member on 6 September 2019 at 7.25 am and on 13 September 2019 at 8.44 pm. The member received the messages but did not respond.
- [403] The Commission is of the opinion that Mr Edman has actively tried in many ways to keep the Commission from acquiring relevant information for this investigation or information that might identify possible serious misconduct. This is relevant to assessing his credibility generally.

**Mr Edman engages a new firm of accountants: a tax return is amended**

- [404] On 20 September 2019, Mr Edman was served with a summons to attend a private examination to be held during October 2019. Within a day of being served, Mr Edman contacted a firm of accountants and subsequently met with one of the directors of that firm. Following this meeting, Mr Edman produced his files containing various financial records stretching over a three year period and asked that accountant to, in effect, re-do his earlier taxation returns, and to ensure that only matters which could be properly claimed as deductions were claimed.
- [405] Mr Edman's new accountant professionally followed those instructions, however, under the taxation rules, Mr Edman could only amend his 2016/2017 tax return and not the earlier tax periods.
- [406] In relation to the financial year ending 30 June 2017, the new accountant recommended that:
 

*the deductions claimed for expenses relating to your parliamentary duties needs to be reduced from \$115,731 to \$41,997 to correctly position you for valid tax deduction claims for that tax year.*
- [407] The evidence of the new accountant was that Mr Edman's taxable income for the 2017 financial year should have been considerably higher than originally reported to the ATO. This was due to the new accountant reversing previously claimed deductions. The reduction of \$73,734 (63.7%) in claimed deductions for this sole financial year, along with related adjustments, has resulted in Mr Edman having a potential liability to the ATO of approximately \$61,623.13. This amount is a combination of the new tax payable amount by Mr Edman (\$11,757.32), plus the amount Mr Edman was originally refunded for the 2017 financial year (\$49,865.81).

## CHAPTER NINE

### Conclusions on the evidence and a continuing misconduct risk

- [408] In the Commission's opinion, decisions on the original accounts and claims for parliamentary allowance deductions made under them were entirely made by Mr Edman. The Commission has taken evidence from the electorate officer, the research officers, Mr Jackson, Mr Jackson's partner, Mr Jackson's accountant employee, and Mr Edman's new accountant, together with the bookkeeper for Mr Edman's business. It has compared their evidence to that of Mr Edman as to his knowledge of what he claimed as deductions each financial year.
- [409] As detailed earlier, Mr Edman was taken to a series of emails indicating his interaction with the detail in the allowance spreadsheets. His evidence was that he could not remember going over the spreadsheets with a fine-line detail. He did concede that he might have had some input into the decision making. He noted that the electorate officer would ask for all the statements and would ask questions. She had his appointment diary and would know who he was meeting and had a good grasp of his affairs. She would have kept a diary of travel. He would leave it to her as to how those matters were categorised.
- [410] The electorate officer gave evidence that she raised questions in bold font on the spreadsheet for deductions claimed in the 2013/2014 financial year. Mr Edman claimed that he did not know why the entries were in bold. He did however concede that on some occasions there were issues discussed over the deductions. Sometimes he would give her instructions but the majority of times she would add things. He would not always give her statements that were highlighted. If she raised something, he would answer questions. It was done at the last minute. The electorate officer gave evidence that she would ask Mr Edman to account for the expenditure so that they could add it into the spreadsheet. This is corroborated by emails she sent him on occasion and the subsequent entries.
- [411] Mr Jackson was at pains to point out that he was not conducting an audit of the electorate allowance and relied upon Mr Edman, who in the end declared that the deductions were truthful. The Commission accepts that it is not the role of a taxation accountant to perform an audit function. Taxation accountants routinely accept on face value the instructions of their clients as to the purpose of expenses claimed.

- [412] Mr Edman initially gave evidence that he left everything to his electorate officer and his accountant (Mr Jackson), and due to the pressure of work, he had very little time to examine the spreadsheets and the claims for deductions.
- [413] Under examination, and after being presented with numerous exhibits that corroborated the evidence of other witnesses, Mr Edman altered his evidence significantly to the extent where the Commission considers that while he did leave routine matters to the electorate officer, she did question him about expenses and take direction from him as to whether they should be included in the spreadsheets as tax deductions that were then forwarded to Mr Jackson each financial year.
- [414] The Commission has carefully considered Mr Edman's evidence in this respect. He repeated many times during his examination that he was inattentive and the fault lay with his electorate officer and previous accountant's mistakes.
- [415] He conceded that on occasions, his electorate officer would ask him for details of a particular item of expenditure, and that he would give it to her. He said that on those occasions, he paid insufficient attention to the item. He also said that she would largely fill out the spreadsheet without direction to him.
- [416] He made similar claims in respect of Mr Jackson.
- [417] Mr Edman is adamant that while he takes ultimate responsibility for the deduction claims made to the ATO, they were due to his carelessness, not due to deliberate decisions he has made. He relied on others, his electorate officer and Mr Jackson and they failed to properly advise him.
- [418] The Commission does not accept his explanations. While they might account for one or two wrongfully-expended occasions, the large volume and nature of them are so numerous as to indicate a sustained course of improper action. It is to be noted that in an email to Mr Peacock, advising of the trip to Japan in 2015, he said 'Dollars to spend.'
- [419] This was not referring to the imprest account, which had been exhausted, and must have been referring to his electorate allowance. It indicates that each year his claims against the electorate allowance were maximised to give him a taxation benefit. The assessable income from the electorate allowance was matched by the claimed expenditure. This occurred even when the expenditure was plainly for private purposes, and the electorate allowance should not have been used.

[420] In the Commission's opinion, the evidence overwhelmingly establishes that the deductions claimed by Mr Edman were done so intentionally by him, not by others. They were instruments by which his will was carried out.

[421] The evidence leads to an inference on the balance of probabilities that Mr Edman knew each year that he used his electorate allowance for personal matters beyond the SAT determination, and nevertheless claimed those expenses as deductible electorate expenses. It is the receipt of the money for private purposes which is the benefit. Mr Edman, as a public officer, has also improperly gained a financial benefit from the ATO by claiming personal expenses as costs incurred by him in his official performance of his public office.

[422] The Commission's misconduct jurisdiction is in relation to possible corrupt behaviour. It may be accepted that Mr Edman gained a benefit when a non-claimable allowance was claimed, and also when monies set aside for electorate purposes were used for something different. Carelessness, lack of attention to detail, even incompetence, are not the states of mind sufficient to form an opinion of corruption. Corruption must involve a guilty state of mind.

[423] In respect of Mr Edman's conduct as a public officer relating to his parliamentary allowances, the Commission has formed an opinion of serious misconduct.

[424] An opinion of serious misconduct is not, and is not to be taken as, a finding that a person has committed or is guilty of an offence.<sup>108</sup>

[425] The principal purpose of this interim report is to illustrate the significant misconduct risks that attach to the present system of electorate allowances and to bring to the attention of Parliament and SAT this conduct so that each of them, if they wish, may take such action as they think appropriate. Mr Edman's use of the electorate allowance has been set out to illustrate the risks associated with the significant expenditure of State money without any transparent or accountable procedure whatsoever to ensure the allowance is used for the purposes specified in the SAT determination.

[426] The evidence indicates by spending the allowances on his personal lifestyle Mr Edman denied his constituents the potential benefit of public funds. This money should have been directed to improving the electorate and Mr Edman's representation of the electorate.

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<sup>108</sup> CCM Act s 217A.

- [427] Neither SAT, DPC or Parliament conduct audits of electorate allowance expenditure. It is therefore impossible to say whether or not the behaviour illustrated in this report is representative of a widespread use of the electorate allowance for private benefit.
- [428] This is an interim report. Operation Betelgeuse is ongoing.