



Report on electorate allowances and management of electorate offices

26 November 2020



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CHAPTER ONE

Introduction

- [1] In December 2019, the Commission tabled an interim report on *Misconduct risks in electorate allowances for Members of Parliament* (First Report).
- [2] As a case study, the Commission exposed the misuse by Mr Phillip Edman of the electorate allowance and travel allowance through the diversion of State resources to fund his private lifestyle. The Commission demonstrated that over the course of three years, Mr Edman's electorate and travel allowance monies funded private travel, expensive meals, entertainment, private boat costs, and gifts for female companions.
- [3] At the time, the Commission indicated the investigation was ongoing.
- [4] This is the second report arising from the Commission's investigation. It details the progression of the investigation and complements the previous findings on misconduct risks relating to the electorate allowance.
- [5] This report highlights the lack of understanding by some Members of Parliament of the purpose behind parliamentary allowances. This has allowed some members to feel entitled to apply public money to fund private expenses. Some members attempted to justify the expenditure with tenuous or deceptive links to parliamentary purpose.
- [6] Chapter Five of this report details the continuing investigation of the misconduct risks in the electorate and travel allowances associated with the trip to Japan in 2015, as identified in the First Report.
- [7] The Commission's investigation has also identified that the discretion exercised by members to recruit electorate office staff is a serious misconduct risk, when combined with a lack of accountability for that employment relationship. An example is the recruitment of office staff for an improper personal purpose. This is dealt with in Chapter Two.
- [8] Operation Betelgeuse arose from an investigation into the corrupt activities of the former WA Trade Commissioner to Japan, Mr Craig Peacock (Operation Overton).¹
- [9] Mr Peacock appeared before the Commission for examination in December 2018.

¹ Corruption and Crime Commission, *Misconduct risks in electorate allowances for Members of Parliament*, 17 December 2019, [34]-[35].

[10] From that time, there has been a sustained level of interference that has ensured the Commission has been hampered in investigating serious misconduct allegations concerning former members of the Legislative Council. Some of that conduct was outlined in the First Report. More interference is detailed in Chapter Six of this report.

[11] This report examines the conduct of the following persons:

- The Hon Ricky Mazza MLC, who is a member of the Legislative Council for the Agricultural Region.
- Mr Brian Ellis, who was a member of the Legislative Council for the Agricultural Region from 2007 to 2017.
- Mr Nigel Hallett, who was a member of the Legislative Council for the South-West Region from 2005 to 2017.

[12] The Commission has made a finding of serious misconduct against Mr Brian Ellis and Mr Nigel Hallett. No finding of serious misconduct has been made against the Hon Ricky Mazza MLC.

[13] This report was based on the testimony of 11 witnesses, in addition to those examined for the First Report. The Commission has also considered source documents and telecommunications lawfully intercepted under warrant.

[14] Any person adversely named in this report was given an opportunity to view the relevant portions of the report and make submissions. Where appropriate, the Commission amended the draft report to reflect any submissions made.

[15] The First Report noted that on 14 August 2019 Commission officers executed a search warrant issued by a Supreme Court judge at the residence of Mr Edman.

[16] The Legislative Council required the Commission to surrender to it a laptop computer and two hard drives seized during the execution of that search warrant. The Legislative Council contends that some of the material contained in that laptop is, or may be subject to parliamentary privilege. The Commission has complied with the requirement of the Legislative Council.

[17] In the First Report it was noted that the Commission was the subject of litigation in the Supreme Court brought by the President of the Legislative Council. The litigation concerned Notices to Produce Records issued by the Commission seeking relevant documentary evidence as part of

Operation Betelgeuse. Efforts to resolve those proceedings have not been successful and the litigation is ongoing.

- [18] The Commission has not been able to examine the contents of the laptop, which the Commission understands is still in the possession of the Clerk of the Legislative Council.
- [19] Compared to other jurisdictions, such as New South Wales, the Commission's oversight of elected members is narrow. The Parliament retains exclusive power relating to matters determinable by a House of the Parliament, by reason of s 3(2) of the *Corruption, Crime and Misconduct Act 2003* (WA).
- [20] The Commission may investigate allegations of serious misconduct by members of Parliament when the conduct is part of their function as a public officer, only where the investigation would not impeach or question debates or proceedings in Parliament, and does not relate to a matter determinable by a House of Parliament. This investigation concerns the activities of certain elected members of Parliament in their capacity as public officers.
- [21] The Commission does not have power to investigate the conduct of former members of Parliament where to do so would impeach or question debates or proceedings in Parliament, or would relate to a matter determinable by a House of Parliament.
- [22] While this is the second report in connection with Operation Betelgeuse, the investigation is not complete and cannot be completed until the Commission has been able to examine two hard drives which the Commission understands are still in the physical custody of the Clerk of the Legislative Council. If those materials become available to the Commission and if those materials reveal serious misconduct the Commission will investigate further.

CHAPTER TWO

Employment of electorate staff

| Serious misconduct risks | |
|--------------------------|--|
| | <ul style="list-style-type: none">• Lack of oversight of employment processes• Electorate officers' performance largely unsupervised• Risk of sham employment of electorate officers• Mismanagement of confidential information• Poor management of conflicts of interest• Absence of Code of Conduct for electorate officers |

- [23] Significant demands are placed on Members of the Legislative Council.
- [24] Members of Parliament spend considerable time out of the electorate attending Parliament or performing other duties. Members require professional office assistance to manage their electorate office.
- [25] Members of Parliament receive staffing and electorate office resources. An electorate office and the equivalent of two full-time employees are paid for from State resources managed by the Department of the Premier and Cabinet (DPC).
- [26] Staff occupy one of two types of position.
- [27] Electorate officers are appointed to assist a member to deal with constituency matters.
- [28] Research officers undertake the collation, research and analysis of information about the various issues of concern to their electorate.
- [29] Mr Hallett's electorate office consisted of one full-time electorate officer and up to three research officers who, as part-time employees, occupied together the equivalent of one full-time officer. Mr Hallett's electorate office was located in Mandurah.
- [30] Mr Ellis' electorate office had one full-time electorate officer and a part-time research officer. Mr Ellis' electorate office was located in Geraldton.

- [31] The Hon Ricky Mazza MLC's electorate office employs one electorate officer and two research officers.² The Hon Ricky Mazza MLC's electorate office is located in West Perth.
- [32] Unlike other public sector employees, electorate and research officers are employed outside the public sector workforce employment policies, instruments and frameworks. However, they are paid using public monies.
- [33] There are significant misconduct risks in relation to the engagement of electorate office staff and their employment.

Appointment and supervision of electorate staff

- [34] The appointment of electorate staff is governed by the *Parliamentary and Electorate Staff (Employment) Act 1992*, the *Electorate and Research Officers General Agreement 2019*, the *Electorate Officers Award 1986* and a contract of employment. Under the legislation, the President of the Legislative Council is the employer of each officer appointed to assist a Member of the Legislative Council deal with constituency matters.
- [35] The President of the Legislative Council has delegated to the Director General of the DPC the powers and duties conferred by the Act on the President. The delegation from the President allows the Director General to enter into a contract of employment with electorate staff and to manage the administrative processes. The Director General makes a recommendation to the President regarding the engagement of electorate officers.
- [36] Under the delegation, the President is to be informed of any matter relating to criminal conduct, serious misconduct or other conduct of electorate officer that would give rise to disciplinary action or termination of employment.
- [37] The administration of electorate staffs' leave entitlements and salaries are undertaken by DPC, but otherwise, staff are answerable to their respective member. DPC has told the Commission that it is made clear to all members that they are expected and required to manage the day-to-day operations of their respective electorate offices, including electorate staff. DPC offers assistance to members.
- [38] Practically speaking, electorate staff are employed at the behest of the member for whom they work. This is understandable in a small office environment where there must be a degree of compatibility between the member and his or her staff. It may also be important for electorate

² R J Mazza transcript, private examination, 26 June 2020, pp 3-4.

officers to be politically aligned with the member in whose office they work.

- [39] There are no mandated legislative or quasi-legislative procedures required to be applied when electorate staff are employed.
- [40] The rigour applied to the engagement of electorate office staff differed considerably.
- [41] Individuals who work as electorate staff are sometimes 'inherited' from former members who retire or leave office.
- [42] Others are sought through the actions of the member directly. Mr Hallett's electorate officer, for example, was a teacher at a local high school when Mr Hallett approached her about a position.³
- [43] Engagement can also be through a member's existing staff. In another example, one of the part-time research officers in Mr Hallett's Mandurah electorate office did not meet Mr Hallett for several weeks after her employment commenced:

Counsel assisting: Just going back to when you were employed, if you didn't meet Mr Hallett prior to your employment, who was it that employed you in that position?

Ms X: I went into the office and literally filled out some paperwork and started working there, and there was almost like a note on the desk explaining some of – it was – now, looking back, it was very unusual, but I did – there was no process whatsoever. I just started one day, basically.⁴

- [44] Once appointed, formal management of the electorate officers' employment is undertaken by the Director General of the DPC. Conditions of pay and leave are determined by the relevant industrial agreement and award, and are centrally managed by DPC.
- [45] DPC has set minimal performance benchmarks but accountability measures are currently the responsibility of the member.
- [46] DPC does not have practical oversight of the officers' performance. DPC has told the Commission that upon commencement, all members are provided with a copy of the Parliamentary Offices Handbook. The Handbook is a set of best practice guidelines addressing obligations and responsibilities concerning management of staff.

³ Ms W transcript, private examination, 18 June 2020, p 3.

⁴ Ms X transcript, private examination, 16 June 2020, p 3.

- [47] The circumstances in which the work is carried out also varies between each electorate office.
- [48] Electorate office employees might manage an office in a geographically isolated electorate by themselves and only see their member irregularly. Or, they might share the duties on a part-time basis with two or three others in a city electorate office with regular access to their member.
- [49] The Commission examined seven former electorate office employees concerning their role and office administrative processes. There was a wide disparity in how electorate offices were managed. Expectations differed as to performance, duties undertaken, access to electoral office allowances, knowledge of their member's daily activities, and involvement in the business of Parliament. Some electorate officers managed their member's parliamentary email accounts on a daily basis, while others had no access.
- [50] Practically, an employee in the electoral office of a Member of the Legislative Council is subject to the oversight of the member. Oversight can be patchy with no one taking any active role in setting work expectations or accounting for standards of performance within individual electorate offices.

Example - "Research officer", Ms Bonnie Cornwall

- [51] The employment by Mr Hallett of Ms Bonnie Cornwall as a part time electorate officer exemplifies the misconduct risk associated both with the appointment of electorate officers and the management of their ongoing employment.
- [52] Ms Cornwall was employed in Mr Hallett's electorate office for half a day per week for over seven years. Between 2009 and 2017, Ms Cornwall received payments from DPC totalling \$63,944.88.
- [53] Ms Cornwall appeared to be employed as a research officer. She received a regular salary from DPC at the rate of one day a fortnight to undertake work as instructed by Mr Hallett. Ms Cornwall accrued leave and other usual entitlements over the course of seven years. Despite engaging in minimal work, or no work at all, Ms Cornwall was a public officer for the purposes of the Commission's investigation, as she was employed and paid by the State of Western Australia.
- [54] Ms Cornwall's employment was, however, a mere convenience for both Mr Hallett and herself. The Commission considers that her employment was a sham, a device enabling Mr Hallett to provide benefits to a person with whom he had an intimate friendship.

[55] The Commission has formed the view that the employment was a sham because:

- a) Mr Hallett and Ms Cornwall had an intimate friendship.
- b) Mr Hallett provided Ms Cornwall entertainment and meals.
- c) Mr Hallett gave Mr Cornwall gifts.
- d) The Commission has been unable to locate any evidence of parliamentary work done by Ms Cornwall over a seven year employment period.
- e) Ms Cornwall did not attend Mr Hallett's electorate office in Mandurah.
- f) Ms Cornwall did not use her government-issued email account during the entire period of employment.
- g) Ms Cornwall was substantively employed by a private company during the period of her employment by DPC.

[56] This conduct was indicative of a personal, rather than a business, relationship and was funded through Mr Hallett's electorate allowance. The material supporting these conclusions is discussed below.

[57] Private relationships are not serious misconduct, but the misuse of public monies and public position to facilitate a private relationship is serious misconduct.

[58] It is not suggested that, in this case, the relationship between Mr Hallett and Ms Cornwall was not consensual. However, the apparently unfettered discretion exercised by members about the engagement of staff and their management, coupled with the possibly remote location of electorate officers, creates an opportunity for abuse of the power disparity between members and their staff.

[59] In this case, the relationship led to the improper expenditure of Mr Hallett's electorate allowance. It also meant that Mr Hallett was not able to properly supervise or review Ms Cornwall's performance. Conflicts of interest were not recognised or dealt with appropriately.

[60] The sham employment by Mr Hallett of Ms Bonnie Cornwall as an electorate office staff member over many years is an example of an egregious abuse of his position as a public officer.

Mr Hallett and Ms Cornwall were intimate friends

[61] Ms Cornwall met Mr Hallett in the early 2000s, well before he became a parliamentarian. They both told the Commission they had a short lived intimate relationship before she was engaged by Mr Hallett. Mr Hallett and Ms Cornwall described the relationship otherwise as 'just good friends':

Counsel assisting: So you say you're just friends?

Cornwall: We are still today, just friends.

Counsel assisting: And would you describe that friendship as a very close friendship?

Cornwall: Yeah, he's be one of my best friends, yeah.⁵

[62] However, the tone of communication between Mr Hallett and Ms Cornwall was very intimate, including during the period she was employed as a research officer.

[63] In a WhatsApp message from February 2013 Mr Hallett wrote: "Bon. You r the person that I love to bits. Darling I luv u. Xxx."⁶

[64] On 7 May 2014 Mr Hallett wrote: "Luv u darl Hope u slept well xxx Could cuddle up Maybe let u take advantage also!!!! Just thinking of u All good and odd naughty thought!!! Xx"⁷

[65] Later that month, Mr Hallett wrote: "Great to c u U r a horny lady Bon xxx."⁸

[66] When questioned about this message, Mr Hallett gave evidence that: "I'd say the same thing to her today."⁹

[67] Ms Cornwall attended social functions with Mr Hallett.¹⁰ However, when pressed, Ms Cornwall admitted she attended primarily as a guest to accompany Mr Hallett, rather than as an employee:

Counsel assisting: What type of events were they?

Cornwall: I recall going to - yeah, look, I went to some - some functions, some dinners, some parliamentary things. Yeah.

Counsel assisting: What was your role in attending those, what were you expected to do?

⁵ B L Cornwall transcript, private examination, 19 June 2020, p 37.

⁶ WhatsApp message from N C Hallett to B L Cornwall, 13 February 2013.

⁷ WhatsApp message from N C Hallett to B L Cornwall, 7 May 2014.

⁸ WhatsApp message from N C Hallett to B L Cornwall, 28 May 2014.

⁹ N C Hallett transcript, private examination, 23 September 2020, p 107.

¹⁰ B L Cornwall transcript, private examination, 19 June 2020, p 66.

Cornwall: *There was no expectation. I was just an invited guest.*

Counsel assisting: *A guest of Mr Hallett?*

Cornwall: *Yeah.*

Counsel assisting: *So like his partner for the evening?*

Cornwall: *Yeah, with - yeah.¹¹*

[68] Ms X, another of Mr Hallett's electorate staff, recalls meeting Ms Cornwall towards the end of Mr Hallett's term as a parliamentarian. She saw Ms Cornwall at a Melbourne Cup lunch in Perth, not in an office environment.

Mr Hallett provided dinners and entertainment

[69] Consistent with an intimate friendship, Mr Hallett and Ms Cornwall had dinner together fortnightly whilst he was a parliamentarian.¹² They frequented restaurants such as Perugino, The Royal India and Maurizio in West Perth.

[70] Examples include:

- a) Dinner at Perugino for \$305 on 27 February 2015.¹³
- b) Dinner at Perugino for \$257 on 8 May 2015.¹⁴
- c) Dinner at Maurizio for \$400 on 21 May 2015.¹⁵
- d) Dinner at The Royal India for \$195 on 17 May 2016.¹⁶

[71] These dinners were paid for using Mr Hallett's electorate allowance. Mr Hallett, on occasion, claimed these dinners as a tax deduction on the basis they were electorate expenses. This was a misuse of the electorate allowance.

[72] In the handwritten electorate expense schedule he prepared for his accountant, Mr Hallett described the dinners with Ms Cornwall as 'meeting expenses'.

[73] Mr Hallett justified the expenses as a deduction on the basis he and Ms Cornwall "were going through some of [her] work stuff",¹⁷ "it's so

¹¹ B L Cornwall transcript, private examination, 19 June 2020, p 66.

¹² N C Hallett transcript, private examination, 22 September 2020, p 110.

¹³ N C Hallett transcript, private examination, 22 September 2020, p 115.

¹⁴ N C Hallett transcript, private examination, 22 September 2020, p 116.

¹⁵ Exhibits 1600941, 1027 and 0647.

¹⁶ N C Hallett transcript, private examination, 13 October 2020, p 10.

¹⁷ N C Hallett transcript, private examination, 22 September 2020, p 115.

close to both work" and "[Maurizio's is] a very common eating place for politicians to go."¹⁸

- [74] In November 2015, Mr Hallett used his electorate allowance to pay for two tickets for himself and Ms Cornwall to attend a Neil Diamond concert.
- [75] Mr Hallett invited only Ms Cornwall to attend. Mr Hallett entered the expense in his November 2015 electorate expense journal. He then claimed the cost (\$330) as a tax deduction under the coy description, 'Tickets function'.¹⁹
- [76] The Commission concludes that the expenses were not incurred for the purposes of the electorate.

Counsel assisting: So you wrote down the Neil Diamond tickets as an electorate expense?

Hallett: Yep, which I'm allowed.

Counsel assisting: Can you explain for the Commission why tickets to Neil Diamond are an electorate expense?

Hallett: Same as anyone else. You're entitled to take that out of your electorate account.²⁰

- [77] After much debate, Mr Hallett admitted in evidence that the Neil Diamond tickets were of no benefit to his electorate.

A/Commissioner: Okay. Mr Hallett, how does it benefit your electorate?

Hallett: Well it's of no consequence

A/Commissioner: You didn't answer my question. I ask you again, how did it benefit the electorate if at all?

Hallett: Straight up front, there's no benefit to the electorate.²¹

Mr Hallett provided gifts

- [78] As further evidence of the close nature of their relationship and Mr Hallett's motivation to continue Ms Cornwall's employment, he took opportunities to provide her with gifts. Mr Hallett paid for these gifts using his electorate allowance and instructed his accountant to claim a deduction on the basis they were a business expense rather than a gift to Ms Cornwall. Gifts were disguised as legitimate work-related expenses.

¹⁸ N C Hallett transcript, private examination, 22 September 2020, p 117.

¹⁹ N C Hallett Handwritten Electorate Expense Schedule, November 2015.

²⁰ N C Hallett transcript, private examination, 22 September 2020, p 114.

²¹ N C Hallett transcript, private examination, 22 September 2020, p 114

[79] On 28 June 2014, Mr Hallett sent a WhatsApp message to Ms Cornwall: 'Hi do u want WiFi plus cellular model I pad. Screen 9.7 or 7.9.'²²

[80] The following day Mr Hallett wrote: 'Hi. Getting your iPad tom!!! Do u want to cum or trust me????'²³

[81] On 30 June 2014, Ms Cornwall sent a WhatsApp message to Mr Hallett: 'In bed now!!! Thank you for my very thoughtful gift! I will love it - thank you from my heart.'²⁴

[82] In the same message Mr Hallett wrote: 'Hi, darling. Love you. XXX'

[83] When questioned about claiming the iPad given to Ms Cornwall as an electorate expense, Mr Hallett stated defiantly: "Which I'm quite entitled to." And later: "There is absolutely nothing wrong with what I've done there. No - nothing wrong."²⁵

[84] Mr Hallett spent \$938 at the Apple store in Booragoon on 30 June 2014.²⁶ Mr Hallett entered this line item in his electorate allowance journal as 'Apple Store - Lap top - office 938'.²⁷ The description under which Mr Hallett entered the expense was an attempt to disguise the gift to Ms Cornwall as a legitimate work-related expense. It was in fact a misuse of the electorate allowance.

[85] Mr Hallett later said he bought the iPad for Ms Cornwall's work and that she took notes on it.²⁸ Ms Cornwall did not mention an iPad when questioned about the resources and equipment she used to carry out her work for Mr Hallett.²⁹

[86] The email conversation surrounding the gift of the iPad indicates that the relationship was not an employer/employee relationship.

[87] Mr Hallett also gave Ms Cornwall a printer from his electorate office. This is discussed further below in the context of the resulting disclosure of personal information.

Ms Cornwall did not appear to do any electorate work

[88] It is not apparent to the Commission that Ms Cornwall did any work while she was employed as a research officer.

²² WhatsApp message from N C Hallett to B L Cornwall, 28 June 2014.

²³ WhatsApp message from N C Hallett to B L Cornwall, 29 June 2014.

²⁴ WhatsApp message from B L Cornwall to N C Hallett, 30 June 2014.

²⁵ N C Hallett transcript, private examination, 23 September 2020, p 7.

²⁶ N C Hallett QANTAS AMEX Statement of Account, 5 June to 6 July 2014.

²⁷ Handwritten electorate expenses schedule, June 2014.

²⁸ N C Hallett transcript, private examination, 13 October 2020, p 23.

²⁹ B L Cornwall transcript, private examination, 19 June 2020, p 41.

[89] Ms Cornwall was asked what work she did for Mr Hallett during the seven years of employment. She nominated: "Well, single-handedly, we brought in crop insurance into Australia, so a lot of my focus was on crop insurance" and that she "instigated the entire - everything from the beginning."³⁰

[90] When pressed, Ms Cornwall's contribution to the issue of crop insurance on Mr Hallett's behalf was largely administrative and very vague. Ms Cornwall was unable to assist the Commission to establish evidence of any productive output by her:

Counsel assisting: So what expertise did you bring to help him with the crop insurance?

Cornwall: Well, I made the connections and the appointments with the insurance company and the contacts and blah blah blah.

...

Counsel assisting: And given that you most probably started working for Mr Hallett as a research officer in 2010, what year do you think you did the crop insurance project work for him?

Cornwall: Well, we - I started that within a couple of years and it took probably five.³¹

[91] Open source records reviewed by the Commission indicate that crop insurance has been in existence within Australia for well over 100 years.

[92] Mr Hallett was equally vague, and suggested that Ms Cornwall "introduced meetings, introduced issues."³² Apart from introducing a contact in Quebec for the crop insurance work, Mr Hallett was unable to articulate any other specific piece of work undertaken by Ms Cornwall:

Counsel assisting: You said she was the initial point of contact for Quebec and then what did she do for the next seven or eight years in relation to crop insurance?

Hallett: When old - [another electorate officer] came on board, she took over, and then Bonnie would have done other things.³³

[93] The 'other things' were not identified by Mr Hallett.

[94] Apart from the crop insurance task, Ms Cornwall recalls she "contributed with ideas of promoting, you know, re-election" and "writing speeches

³⁰ B L Cornwall transcript, private examination, 19 June 2020, p 38.

³¹ B L Cornwall transcript, private examination, 19 June 2020, p 40.

³² N C Hallett transcript, private examination, 22 September 2020, p 103.

³³ N C Hallett transcript, private examination, 22 September 2020, p 104.

and just things that seemed to be important at the time."³⁴ When pressed, the detail of the work she performed was lacking, or basic:

Counsel assisting: What speeches do you recall writing?

Ms Cornwall: No, I didn't write an entire speech, but I contributed with - helped with - my punctuation was quite good, ...just helping with ideas.³⁵

[95] However, Ms Z, the full-time research officer at the Mandurah electorate office, told the Commission that she was the one who drafted speeches for Mr Hallett or edited drafts he had handwritten in long form.

[96] Mr Hallett's electorate officers located in his Mandurah electorate office confirmed they had not seen any of Ms Cornwall's work³⁶ and they were only aware that she had performed any work because Mr Hallett said so:

Counsel assisting: And did she [Ms Cornwall] continue working for him [Mr Hallett] until he left Parliament?

Ms Z: Yes.

Counsel assisting: How did you know that?

Ms Z: Because Nigel told me.³⁷

[97] Ms W, one of Mr Hallett's research officers, who started to work for him shortly after his election to Parliament in 2005, stated that she gained an understanding of the work that Ms Cornwall performed for Mr Hallett "from what Mr Hallett told us."

Counsel assisting: What did Mr Hallett tell you about Bonnie Cornwall?

Ms W: That she had a lot of contacts in Perth, she handled some of his parliamentary business.

Counsel Assisting: What kind of parliamentary business?

Ms W: I actually don't know. I couldn't tell you that. He, Nigel, used to say that she had very good contacts in Perth, so - I am sorry, I don't know any more than that.³⁸

[98] This is an extraordinary situation, given that Ms W worked for Mr Hallett for a large portion of his parliamentary career, ostensibly alongside Ms Cornwall.

³⁴ B L Cornwall transcript, private examination, 19 June 2020, pp 47-48.

³⁵ B L Cornwall transcript, private examination, 19 June 2020, p 48.

³⁶ Ms Z transcript, private examination, 19 June 2020, p 20.

³⁷ Ms Z transcript, private examination, 19 June 2020, pp 19-20.

³⁸ Ms W transcript, private examination, 18 June 2020, p 26.

- [99] In fact, Ms Cornwall confirmed she never assisted the other electorate or research officers who worked for Mr Hallett. She claimed that she worked exclusively with Mr Hallett.³⁹
- [100] Ms Z did not see any independent evidence of Ms Cornwall's work, where she performed any work, or any email traffic from Ms Cornwall's official email account in the three years that Ms Z worked for Mr Hallett.⁴⁰

Ms Cornwall did not attend the electorate office

- [101] Ms Cornwall claimed she sometimes went to parliamentary related meetings with Mr Hallett but also gave evidence that she only went into the Bunbury electorate office twice, and into the Mandurah electorate office "maybe twice", in the whole of her employment.⁴¹ Mr Hallett agreed with this estimate.
- [102] Other office employees gave evidence that this estimate was overstated.
- [103] Ms X, who worked part-time in the Mandurah electorate office from 2014 to 2016 was asked if she ever saw Ms Cornwall in the office. She said:

Ms X: *No. I met her once though, but I never saw her in the office.*

Counsel assisting: *And when did you meet her?*

Ms X: *... We've had the electorate officers' Christmas lunch... It was after a Christmas lunch at Parliament House... then we went to Black Tom's and the two [other electorate office employees] left and I was waiting for my husband to pick me up and then Bonnie was there then. And then Nigel and Bonnie said that my husband and I should go out for dinner with them, which we did.⁴²*

- [104] Ms X was asked how she knew Ms Cornwall existed. She stated that "Nigel [Hallett] spoke about her, maybe":

Counsel assisting: *So what work did you understand that she did?*

Ms X: *I honestly didn't know. I – it was a mystery to me. I didn't know.*

Counsel assisting: *So you never saw any pieces of work with her name on it?*

Ms X: *No.⁴³*

- [105] Ms Z started work in Mr Hallett's Mandurah electorate office in December 2014. She worked full-time, five days a week. She first met Ms Cornwall

³⁹ B L Cornwall transcript, private examination, 19 June 2020, p 48.

⁴⁰ Ms Z transcript, private examination, 18 June 2020, p.9.

⁴¹ B L Cornwall transcript, private examination, 19 June 2020, p 43.

⁴² Ms X transcript, private examination, 16 June 2020, p 10.

⁴³ Ms X transcript, private examination, 16 June 2020, p 11.

two years later in 2016 at drinks after the office Christmas function. In total, she estimates she met Ms Cornwall only twice.⁴⁴ The second time was a social event at a restaurant with Mr Hallett's associates and friends.

[106] Mr Hallett accepted under questioning that his other electorate office employees never saw Ms Cornwall attend his Mandurah electorate office. While being questioned, Mr Hallett became increasingly belligerent on the topic of Ms Cornwall's contribution to his parliamentary work:

Counsel assisting: Your electoral officers and research officer at the time didn't see Ms Cornwall attend the electorate office?

Hallett: No

Counsel assisting: Do you accept that?

Hallett: Yeah.

Counsel assisting: And do you have any evidence to give to the Commission about that?

*Hallett: No, and I don't have to.*⁴⁵ (emphasis added)

[107] The 'parliamentary meetings' referred to by Ms Cornwall that the Commission has seen discussed in email correspondence are dinner and lunch social functions.

[108] Ms Z believed Ms Cornwall worked 'in Parliament House' but only because 'Nigel told me'. Ms Z was asked why she did not question Mr Hallett about Ms Cornwall's role in the electorate office. Ms Z replied: "I didn't think it was my business."⁴⁶

[109] The electorate staff in Mr Hallett's electorate office had Friday office lunches which Mr Hallett attended from time to time. Ms W was asked if Ms Cornwall ever attended these lunches, she replied "Ms Cornwall, Bonnie, never. She never attended our lunches."⁴⁷

[110] Ms Cornwall indicated that she did most of her work for Mr Hallett on his laptop in the Parliament House office he occupied.

Counsel assisting: And so you worked in an office for Mr Hallett?

Cornwall: Well, I did a lot on my laptop, wherever - wherever I happened to be. It was only a half day a week, so it didn't - yeah, I would go up to Parliament House, yes, into the office up there.

Counsel assisting: Where is the office in Parliament House that Mr Hallett had?

⁴⁴ Ms Z transcript, private examination, 19 June 2020, pp 20-23.

⁴⁵ N C Hallett transcript, private examination, 23 September 2020, p 10.

⁴⁶ Ms Z transcript, private examination, 19 June 2020, p 21.

⁴⁷ Ms W transcript, private examination, 18 June 2020, p 30.

Cornwall: *I don't know the floor - up the stairs - up the stairs, down the corridor to the right.*⁴⁸

- [111] Given the length of time Ms Cornwall worked for Mr Hallett, her inability to accurately describe the location of his parliamentary office suggests that her employment was not genuine.
- [112] The Hon Ricky Mazza MLC was also asked whether he knew Ms Cornwall. Although he would not have been as familiar with the operation of Mr Hallett's electorate office, he and Mr Hallett were both members of the Shooters and Fishers Party. He said that, "Bonnie is a friend of Nigel Hallett's."⁴⁹
- [113] The Hon Ricky Mazza MLC said that he had met Ms Cornwall "on a couple of occasions" when she was a guest of Mr Hallett's in Parliament House. The Hon Ricky Mazza MLC was unaware that she had any formal role on Mr Hallett's staff and stated "there may have been a dinner that I went to where she was present. That's about all I can remember."⁵⁰

Ms Cornwall did not use her Department of the Premier and Cabinet email account

- [114] Ms Cornwall had a DPC email account but the Commission has seen no evidence that she used it. DPC has informed the Commission that the email account was not active: emails were not sent from the account and the few emails received were unopened. It was a ghost mailbox. Ms Cornwall admitted that none of the other electorate or research officers employed in Mr Hallett's Mandurah office emailed her about work-related matters and she could not recall Mr Hallett doing so:

Counsel assisting: *Did you have a government issued email account, Bonnie?*

Cornwall: *I don't know if I did. I - I can't - I don't know.*⁵¹

...

Counsel assisting: *Well, your own Parliament issued email address would be bonnie.cornwall@mp.wa.gov.au?*

Cornwall: *Correct.*

Counsel assisting: *Do you have a recollection of that?*

Cornwall: *No, not really.*

Counsel assisting: *Is that because you didn't use that email address?*

⁴⁸ B L Cornwall transcript, private examination, 19 June 2020, p 39.

⁴⁹ R J Mazza transcript, private examination, 26 June 2020, p 74.

⁵⁰ R J Mazza transcript, private examination, 26 June 2020, p 74.

⁵¹ B L Cornwall transcript, private examination, 19 June 2020, p 45.

Cornwall: *Yeah, probably. Yeah.*⁵²

- [115] Mr Hallett was not a user of email, but his staff used it as a matter of course.
- [116] Ms Cornwall did not specifically recall using Mr Hallett's email address.
- [117] The Commission can find no evidence of Ms Cornwall using Mr Hallett's email account to undertake work as a research officer.

Ms Cornwall worked elsewhere

- [118] Ms Cornwall worked for another employer whilst she was employed by Mr Hallett in his parliamentary office. She was the business manager at a furniture business from 2012, working at least 20 hours per week.⁵³
- [119] In part, this other employment provided an opportunity that Mr Hallett sought to exploit:

Hallett: *... Her contact list was great.*

Counsel assisting: *In what way? Why was her contact list great?*

Hallett: *Well, it broadens what I - work I do. Now, from her boss was one of WA's biggest importers of furniture. You've actually got to meet that chain, how it works.*⁵⁴

- [120] The connection between Ms Cornwall's contacts in the furniture business and crop insurance, the main item of work identified by her, is not obvious.
- [121] DPC standards do not prohibit a part time electorate officer engaging in other paid employment. DPC has advised that staff in such circumstances were encouraged to advise of any secondary employment or potential conflicts of interest. Declarations were not mandatory.

Employment risks: conflicts of interest

- [122] The nature of Ms Cornwall's engagement also created other, ongoing, employment risks.
- [123] DPC asked members to undertake performance reviews of their employees.
- [124] Mr Hallett approved the incremental pay increase for Ms Cornwall by signing the form sent to him by DPC as a matter of routine.

⁵² B L Cornwall transcript, private examination, 19 June 2020, p 47.

⁵³ B L Cornwall transcript, private examination, 19 June 2020, p 36.

⁵⁴ N C Hallett transcript, private examination, 22 Sept 2020, p 101.

- [125] Even if Ms Cornwall had been legitimately employed, Mr Hallett's relationship with Ms Cornwall was not purely professional and for this reason, he was not in a position to assess, in an objective manner, Ms Cornwall's entitlement to a salary increase.
- [126] Amongst intimate messages, Mr Hallett informed Ms Cornwall that he had approved her receiving a pay rise from DPC on 18 June 2014: "No. Always happy. Just miss u xx. Free?? U have a pay rise effective 2/7 level to fifth year have signed off. Works hard !!!"⁵⁵
- [127] The pay rise was presented as a personal favour.
- [128] Annual pay increments for electorate officers are subject to the 'good conduct, diligence and efficiency' of the employee.⁵⁶ Mr Hallett's signature on the DPC salary increment form attested to that in relation to Ms Cornwall. The Commission can find no independent evidence to support this assertion. Mr Hallett was the only person who has claimed to have seen Ms Cornwall's work.
- [129] Mr Hallett never carried out performance reviews of any of his employees, and was never made accountable by the President of the Legislative Council or DPC for this omission. He was unrepentant:

Counsel assisting: So you didn't do performance reviews for your employees?

*Hallett: No need to. No need to.*⁵⁷

...

Counsel assisting: And did the Department ever follow up with you on these requirements?

*Hallett: Nup.*⁵⁸

- [130] Neither Mr Hallett nor Ms Cornwall declared their relationship to DPC at the time of her recruitment. Mr Hallett's attitude was "I didn't have to."⁵⁹
- [131] If a conflict of interest had been declared to DPC by Mr Hallett or Ms Cornwall, measures could have been considered and implemented to manage the conflict and to regularise the employment.

⁵⁵ WhatsApp message from N C Hallett to B L Cornwall, 18 June 2014, document 1598964.

⁵⁶ *Electorate Officers Award 1986* clause 10(3).

⁵⁷ N C Hallett transcript, private examination, 22 September 2020, p 99.

⁵⁸ N C Hallett transcript, private examination, 22 September 2020, p 109.

⁵⁹ N C Hallett transcript, private examination, 22 September 2020, p 102.

[132] Asked if Mr Hallett declared the relationship at any stage he replied: "Didn't have to."⁶⁰ This is unsatisfactory, but correct. Members are given a wide discretion in the administration of their electorate office.

[133] There was also a potential conflict of interest arising out of Ms Cornwall's secondary employment. While declarations of dual employment by electorate staff are voluntary, no declaration was made.

Confidential information disclosed

[134] Public officers have access to confidential information in the course of performing their official functions. If public officers have external employment in the private sector, the potential conflicts of interest that may arise are normally carefully managed. The current Electorate Officers Handbook sets out the obligations and responsibilities of electorate office staff concerning confidentiality. Mr Hallett saw no need to impose these restrictions on Ms Cornwall.

[135] The Commission is not able to determine whether Mr Hallett thought the employment of Ms Cornwall was outside the rules, or whether Ms Cornwall never had access to confidential material because she performed no parliamentary work. In either case, Mr Hallett failed to manage the potential risk of the unlawful disclosure of confidential information.

[136] Members are advised by DPC prior to an election that should they retire, resign or lose their seat, they should dispose appropriately of all records. Mr Hallett did not put any processes in place to protect the confidentiality of constituents' personal details after he left office.

[137] This is reminiscent of Mr Edman's electorate laptop which was left in his possession after he left office, allegedly containing parliamentary privileged material. This is a serious misconduct risk. DPC advises that the department requires all assets provided to members to be returned when they retire, resign or lose their seat at an election. This practice only extends to assets owned by DPC and not to assets purchased using the electorate allowance.

[138] During an intercepted telephone call on 9 August 2019 between Mr Hallett and Ms Cornwall, they discussed a printer originally from Mr Hallett's electorate office, which was purchased using the electorate allowance and was given to Ms Cornwall:

⁶⁰ N C Hallett transcript, private examination, 22 September 2020, p 102.

Cornwall: *No that saved me a shit load of money so you know I really appreciate that but if you're not using it well you know it's good, good outcome for all.*

...

Hallett: *I don't know what that one cost Bon, but if I said I would have thought about fifteen hundred for gut feel.*

...

Cornwall: *I know how to you know put in email addresses, I, I actually know it.*

Hallett: *Yeah well it's probably all the constituent ones are in there.*

Cornwall: *Yeah probably but that's okay I'll get rid of them all.*

...

Hallett: *Yeah, so I'd say you've probably got about four hundred addresses in there.⁶¹*

- [139] In addition to failing to dispose of confidential information in his possession when he left office in 2017, two years later Mr Hallett then gave Ms Cornwall the printer containing private constituent details when she was no longer employed as an electorate officer. Ms Cornwall was not entitled to receive this information. Mr Hallett had no control over how the confidential information would be used after he disclosed it.
- [140] Unlike other public sector employees, electorate office staff are not governed by a Code of Conduct. The result is the absence of a level of accountability and clear statement of expectations regarding behaviour.
- [141] Further, and unlike other Australian parliamentary members (both State and Federal), there is no Code of Conduct for members of the Legislative Council of Western Australia.

⁶¹ Transcript of intercepted telephone call.

CHAPTER THREE

Misconduct risk: parliamentary allowances

| Serious misconduct risks |
|---|
| <ul style="list-style-type: none">• Expenditure of parliamentary allowances for purposes other than electorate purposes• Electorate allowance purpose misunderstood• Members accountable to the people of WA, not only to the Australian Taxation Office• Responsibility is that of the Member, not their accountant |

[142] The Salaries and Allowances Tribunal (SAT) determines the salary figure, allowance types and allowance amounts to be paid to members of Parliament. Some allowances are paid from Parliamentary Services on a pro-rata basis, either monthly or fortnightly together with the parliamentarian's salary for the member to use within the purpose defined by SAT. Others are paid by way of claim and reimbursement administered by DPC.

[143] Member's salaries and salary allowances (such as the electorate allowance and motor vehicle allowance) are paid from monies held by their respective House of Parliament. The administration (disbursement) is facilitated by the Chief Financial Officer of Parliamentary Services on a pro-rata fortnightly or monthly basis. In contrast, all Electorate and Research Officer's salaries are paid and administered by DPC.

[144] Electorate allowances are paid together with a member's salary.

[145] The purpose of the electorate allowance is to assist members in the effective representation of their electorate. As stated in evidence by SAT member, Mr Colin Murphy:

It is really 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.⁶²

[146] The First Report detailed the role of SAT to set a determination as to the remuneration of Members of Parliament through allowances, and the criteria for its expenditure.⁶³ While the Determinations state that, on

⁶² C P Murphy transcript, private examination, 16 August 2019.

⁶³ Corruption and Crime Commission, *Misconduct risks in electorate allowances for Members of Parliament*, 17 December 2019, Chapter Two.

payment, salary and allowances become the property of the member, the SAT Determination on the electorate allowance states that the purpose of the allowance is for the benefit of the electorate.

[147] In the 2014 Determination it is stated:

In consideration of the obligations of a Member to effectively represent the needs of an electorate and to undertake parliamentary duties, the amounts specified in this Part are provided in the form of an Electorate Allowance, to be utilised as the Member sees fit.⁶⁴ (emphasis added)

[148] The 2015, 2016 and 2017 Determinations state:

3.1(1) A member is entitled to an Electorate Allowance to assist in the effective representation of their electorate.

3.1(2) The Electorate Allowance may be used at the Member's discretion but shall not be used for the campaigning, electioneering or political party promotion.

[149] Each Determination states that it is intended that the electorate allowance will be used for expenses incurred to assist with serving the electorate and then sets out classes of expenses for which the electorate allowance may be used at the member's discretion.

[150] The general purpose of the electorate allowance is not novel. Allowance entitlements paid to Members of Parliament in addition to salary commenced under a legislative scheme in 1953. The allowances were for 'expenses incurred in discharging Parliamentary duties'.

[151] The First Report detailed the Australian Taxation Office (ATO) Rulings applicable to members of Parliament.⁶⁵ Members are subject to specific rules regarding the ability to deduct expenses in personal income tax returns.

[152] The treatment of individual expenses in a member's business records, including tax claims, is relevant to the Commission's investigation because it shows that the member allocated an expenditure to the activity or expense claimed. Scrutiny by the ATO is also the only accountability measure currently in place for the electorate allowance.⁶⁶

⁶⁴ SAT Determination Part 3, s 1.1.

⁶⁵ Corruption and Crime Commission, *Misconduct risks in electorate allowances for Members of Parliament*, 17 December 2019, Chapter Three.

⁶⁶ The Salaries and Allowance Tribunal conducted a review of allowances and has proposed to rename the Electorate Allowance the 'Members Allowance'. The Members Allowance will no longer be provided with salary but will be available quarterly on a drawdown basis following a Member's certification that use of the allowance will conform to the principles governing its intended purpose: *Report on Allowances Provided to Members of Parliament*, 10 August 2020.

- [153] Further examples of the serious misconduct risk concerning electorate allowances are detailed in Chapters Four and Five.
- [154] The method of payment of each allowance is relevant to the misconduct.

Allowances paid with salary

- [155] Allowances paid at the same time as a member's salary include the electorate allowance, parliamentary travel allowance (since the 2017 election), and the motor vehicle allowance. While these allowances and the member's salary are paid at the same time, the member can direct that the salary and the allowances be paid into separate bank accounts. Allowances appear as a separate item to salary on the member's payslip and on the annual pay summary.
- [156] Allowances paid with salary are considered part of a member's assessable income for ATO purposes. However, unlike salary, the allowances are not taxed under the PAYG system prior to disbursement by Parliamentary Services. The members receive the whole of such allowances. In the case of the electorate allowance, this treatment is consistent with an assumption that the allowance will be spent on (deductible) electorate purposes. If the member does not spend the allowance for deductible electorate purposes, the member will be left with a substantial tax bill at the end of the financial year.
- [157] For personal tax purposes, legitimate parliamentary and electorate expenses paid by the member from his or her personal or salary allowance monies are deductible from the member's income in accordance with the ATO rules.
- [158] The electorate allowance received by all members in FY 2015/16 started from a base of \$78,000 per annum, plus an additional loading ranging from \$10,400 to \$25,350 depending on the member's regional electorate. For the FY 2014/15 the basic electorate allowance was \$67,000 per annum, plus an additional amount depending upon the electoral region. Like salary, the electorate allowance was paid pro-rata on a fortnightly or monthly basis. Unlike salary, tax was not taken out before payment.
- [159] During the financial years up to and including May 2017, the motor vehicle allowance was \$25,000 per annum, paid at the same time as salary on a pro-rata basis.
- [160] Accommodation allowances were paid by one of two methods - through the member's payslip or as a claimable expense that was reimbursed by DPC. The regional accommodation allowance was paid as an allowance

and appeared on payslips. The purpose was for regional office holders with a residence in their electorate to receive an allowance associated with expenses incurred whilst on official business in the Perth metropolitan area.

- [161] Calculation of accommodation allowances is complex as the amount received is dependent on the location of the member's 'place of residence' and the location of the event being attended for which accommodation is required. 'Place of residence' is set in the SAT Determination as a criterion for accommodation allowances. A regional member may maintain a place of residence in Perth and in the country. Adding to the complexity is the fact there are also several types of accommodation allowances to navigate. While this complexity creates some risks, this report does not examine accommodation allowances.
- [162] The Parliamentary Travel Allowance (previously known as 'imprest') has historically been disbursed using varying methods. Up until 2017, the Parliamentary Travel Allowance was drawn down over the course of the parliamentary term, after members had approval to undertake travel that 'assisted a member to perform parliamentary business' and submitted a claim for expenses to DPC. Thereafter the allowance was changed so that an allowance of \$6,750 was paid per annum as a payslip allowance on a pro-rata basis. Members were to assess their own need to use the allowance.

Allowances paid by reimbursement

- [163] DPC arranges the payment of a parliamentarian's reimbursement allowances. These are to cover specific expenses incurred by the member and are drawn down after meeting a claim threshold.
- [164] Reimbursement allowances include accommodation allowances of varying types, an air charter transport allowance and parliamentary travel allowance (up until the 2017 election). DPC provides electoral travel support for regional members.
- [165] Eligibility for the various accommodation allowances is dependent on whether the member is a metropolitan or regional member.
- [166] Reimbursement allowances are not part of a member's assessable income for ATO purposes because claimed expenses are reimbursed to the member in full from DPC. If a member claims a reimbursed expense as a deduction for personal income tax purposes, the member is receiving a financial benefit to which they are not entitled.

[167] In addition to salary and reimbursement allowances, members receive the benefit of other financial resources from DPC in order to maintain the electorate office. Electorate office leasing costs, and utility costs are paid directly by DPC to the service provider. DPC pays the salaries and entitlements of electorate officers.

Acquittal of the electorate allowance

[168] As previously reported by the Commission, the responsibility to expend and acquit the electorate allowance is that of the member, not his or her staff or personal accountant.

[169] Each of the members investigated by the Commission applied varying degrees of rigour and accountability to this task.

[170] The process by which each member received, expended, acquitted, accounted for and recorded the electorate allowance is discretionary. There is no 'best practice' protocol. As a result, different processes were put in place within each electorate office.

[171] The decision process as to how a member dealt with an expense is relevant to the Commission because it indicates that at that time the member had decided to use his electorate allowance to pay for a particular expense.

The Hon Ricky Mazza MLC's electorate allowance acquittal process

[172] The Hon Ricky Mazza MLC represents the Agricultural Region and is paid an annual electorate allowance of \$98,000.

[173] The Hon Ricky Mazza MLC's electorate allowance was paid by DPC into a specific cheque account, referred to by the Hon Ricky Mazza MLC as his 'electorate allowance account'.

[174] Other payslip allowances, such as some accommodation allowances, motor vehicle allowance and office allowances, were also paid into this account. Salary was not paid into the same account.

[175] The Hon Ricky Mazza MLC paid for electorate expenses using a personal credit card or direct bank funds transfer.

[176] When the Hon Ricky Mazza MLC received his personal credit card statement in paper form, he noted which line items he wished to have paid through his electorate allowance by highlighting transactions. After marking the bank statements, he ensured that a description and amount was entered into each line item using accounting software.

[177] The Hon Ricky Mazza MLC's accountants were able to access the accounting software and view the list of expenses entered as electorate allowances expenses.

Mr Hallett's electorate allowance acquittal process

[178] As the member for the South West region, Mr Hallett was paid an annual electorate allowance of \$90,250 from FY 2015/16.

[179] The process to account for and acquit his electorate allowance spending was undertaken by Mr Hallett personally. His electorate office staff had no role.⁶⁷

[180] Mr Hallett paid for both personal and electorate expenses using his credit cards. He regularly went through the monthly credit card statements and noted individual line expenses that were for an electorate purpose. Using these noted credit card expenses, as well as bank statements and receipts where possible, Mr Hallett transferred the expenses to a handwritten schedule of expenses (titled "Electorate") incurred on a month by month basis that were relevant to his electorate allowance. Generally, he did this task at the end of the week when he was in his Mandurah electorate office. No one else in his office helped him with that task.

[181] Mr Hallett submitted the handwritten electorate expense schedules to his personal accountant.⁶⁸ He also sent his credit card statements to his accountant.

[182] The handwritten electorate expense schedules provided to his accountant each year were used in totality to calculate the annual electorate expense amount that was subsequently claimed by Mr Hallett as a tax deduction.⁶⁹

[183] Mr Hallett's instructions to his accountant to claim deductions in respect of his parliamentary allowance were on the basis of the notation of each expense item detailed in Mr Hallett's handwritten electorate expense schedules. Mr Hallett's accountant used the schedules to prepare Mr Hallett's tax return.⁷⁰

Mr Ellis' electorate allowance acquittal process

[184] Mr Ellis received an annual base electorate allowance of \$78,000 from the FY 2015/16 with an additional electorate allowance of \$20,000 each year as a regional member. In FY 2014/15 Mr Ellis received an allowance

⁶⁷ Ms Z transcript, private examination, 19 June 2020, p 28.

⁶⁸ N C Hallett transcript, private examination, 15 February 2019, p 6.

⁶⁹ N C Hallett transcript, private examination, 23 September 2020, p 24.

⁷⁰ N C Hallett transcript, private examination, 23 September 202, p 12.

of \$67,000 per annum with an additional allowance of \$15,150 per annum. Mr Ellis received the allowance (untaxed) into his personal bank account, together with his salary (taxed). Also included in his salary allowances each year was a motor vehicle allowance of \$25,000 per annum (untaxed).

- [185] Mr Ellis' electorate allowance acquittal process was managed by his electorate officer.
- [186] Mr Ellis paid for electorate expenses using a nominated credit card and cheque account. He maintained a separate credit card for personal expenses.⁷¹ Mr Ellis regularly transferred money into the electorate cheque account, so that the electorate credit card could be paid in full each month from the cheque account. Mr Ellis' electorate officer paid the credit card on his behalf, but Mr Ellis kept a close watch by checking the accounts through internet banking as well as when he visited his Geraldton electorate office.⁷²
- [187] From the electorate credit card statements and electorate cheque account statements Mr Ellis' electorate officer prepared spreadsheets (one for each account) detailing all associated electorate expenses and motor vehicle expenses. This was updated on a monthly basis. It was scrutinised by Mr Ellis on a monthly basis when he attended the Geraldton office, if not more often.⁷³
- [188] These electorate and motor vehicle expense spreadsheets were sent to Mr Ellis' accountant as a summary of his electorate allowance spending over the financial year. His accountant used these spreadsheets to calculate the tax deduction claimed for electorate expenses. The totality of Mr Ellis' salary allowances was assessable income for tax purposes and appeared on his PAYE tax summary from Parliamentary Services. In Mr Ellis' FY 2014/15 tax return it was noted he had received salary allowances totalling \$107,150. This reflected electorate allowance (\$67,000) additional electorate allowance (\$15,150) plus \$25,000 motor vehicle allowance.

Electorate allowance misunderstood and abused

- [189] There was significant ongoing abuse of the electorate allowance by Mr Hallett and Mr Ellis.

⁷¹ B C Ellis transcript, private examination, 22 June 2020, p 13.

⁷² B C Ellis transcript, private examination, 22 June 2020, p 13.

⁷³ B C Ellis transcript, private examination, 22 June 2020, p 12.

- [190] Mr Hallett and Mr Ellis deliberately chose, to varying degrees, to use the electorate allowance to fund personal lifestyle expenses but then to characterise the personal spending as spending for the benefit of the electorate to avoid a possible taxation liability. They could do this because they occupied public office.
- [191] The members have justified their conduct by relying on misconceptions and misinterpretations of the purpose and operation of the electorate allowance.

Misconception 1 - the electorate allowance is paid with salary, therefore it is all 'my money'

- [192] DPC disburses salary and electorate allowance monies into the personal bank accounts as nominated by members.
- [193] The payment of electorate allowance into the same personal bank account that the member receives salary, and at the same time, allows the member to disingenuously state: 'I used my own money' to fund an expense while at the same time claim that expense as a tax deduction on the basis it was related to parliamentary duties.
- [194] The real purpose of the electorate allowance fades into the background and is forgotten.
- [195] The Hon Ricky Mazza MLC and Mr Ellis argued that the Commission mischaracterised the electorate allowance as 'public monies' because, once the allowance was paid to them, the money became the property of the member and, consequently, they were lawfully entitled under the terms of the Determination to spend the money as they saw fit in the same way that they might deal with their salary.
- [196] However, the electorate allowance is treated differently to salary in the Determination. The Determination makes no statement as to how salary is to be spent. The allowance happens to be disbursed with salary because that is convenient. Salary is taxed under the PAYE scheme but the allowance is not. Exclusion of the electorate allowance from PAYE taxation is consistent with the allowance being spent on deductible expenses related to the member's electorate.
- [197] The Determination prohibits expenditure on 'campaigning, electioneering or political party promotion', which would not be feasible if the allowance had become the absolute property of the member for all purposes.⁷⁴

⁷⁴ SAT Determination Clause 3.1(2).

[198] Further, the Determination explicitly states the general purpose for which the allowance may be expended: 'serving the electorate.'⁷⁵ The Determination also sets out the 'intention' for which the electorate allowance is to be expended. It includes, within the permitted range of expenditures items such as 'safety equipment for motor vehicles'. Provisions such as these would be unnecessary if the allowance had become the property of the member for all purposes.

[199] It is correct that the Determination does not provide an exhaustive list of all permissible items of expenditure. The member is given responsibility and discretion by the Determination as to how spending the allowance may best serve the electorate. However, the overarching purpose identified in the language of the Determination is that the allowance assists the member to effectively represent their electorate. The Determination does not direct how that is to be achieved. The member is presumed to know the needs of their own electorate.

[200] The member is not obliged to spend the allowance on his electorate or refund any portion not spent on electorate matters. But if the allowance is not spent on the member's electorate, then the expense should not be referred to by the member as an electorate expense and should not be entered into tax schedules as an electorate expense. Electorate allowance not spent under the purposes of the Determination attracts a tax liability.

[201] The First Report addressed a trip to Japan and Indonesia in 2015 by Mr Edman, Mr Ellis and Mr Hallett. This trip is also the subject of Chapter Five of this report. In a telephone call with a journalist,⁷⁶ Mr Ellis was asked about how he funded the Japan/Indonesia trip in 2015. He stated "I only spent private money."

[202] During examination, Mr Ellis was asked what he meant in the telephone call when he denied using the electorate allowance or travel allowance to fund the trip:

Counsel assisting: What I mean is that's just semantics, that in fact you used your electorate allowance which is not your personal money?

Ellis: It is your personal money.⁷⁷

[203] During his examination Mr Ellis maintained that by 4 June 2015 (and prior to the Jakarta/Japan trip) he had spent all of his yearly allocated \$82,150 electorate allowance. He argued, therefore, that he was spending his own

⁷⁵ SAT Determination Clause 3.1(2).

⁷⁶ Transcript of intercepted telephone call.

⁷⁷ B C Ellis transcript, private examination, 22 June 2020, p 30.

money on the trip to Japan. The submissions provided by his lawyers also put this argument. Mr Ellis' position and the submission show that Mr Ellis considered the electorate allowance to be a fund of money separate from his own money.

- [204] The spreadsheet prepared by Mr Ellis's electorate officer, vetted by him and sent to his accountant to prepare his tax return, indicates that, by 30 June 2015, Mr Ellis had spent \$95,781.38 on electorate expenses, more than the yearly electorate allowance he would receive. However, this is an incomplete picture. The electorate spreadsheet prepared by Mr Ellis' electorate officer includes a monthly car lease repayment withdrawal. Mr Ellis received from Parliament a car allowance of \$25,000 per annum in addition to his electorate allowance. Thus, Mr Ellis received allowances in total of \$107,150 in FY 2014/15.
- [205] Mr Ellis' global spending on electorate expenses for the year ending 2014/2015 specified in his spreadsheet fell short of the \$107,150 in total salary allowances he was given. Mr Ellis claimed approximately \$9,000 from the 2015 Japan/Indonesia expenses as an electorate allowance tax deduction.
- [206] Mr Ellis did not spend his own money on the trip to Jakarta and Japan in 2015. He spent his publicly funded electorate allowance monies. The fact that he used his electorate credit card account, instructed his electorate officer to include the Jakarta and Japan expenses on his electorate allowance spreadsheet, and forwarded this to his accountant to claim the expenses as an electorate tax deduction, indicates that Mr Ellis used his electorate allowance. Further, he had allowance to spend before the close of the 2014/15 financial year.
- [207] The Commission does not maintain that the members who used the electorate allowance for private purposes 'stole' money that belonged to the State. As discussed in the First Report, 'corruption' does not require dishonesty in this sense.⁷⁸ Using the electorate allowance to pay for private dinners, personal travel or personal entertainment is to use the allowance for purposes not contemplated by the Determination. Pretending that monies were expended on electorate purposes and deceiving the ATO as to the use of the electorate allowance may be evidence of a corrupt purpose and of the commission of an offence carrying a term of imprisonment of two years or more.⁷⁹

⁷⁸ Corruption and Crime Commission, *Misconduct risks in electorate allowances for Members of Parliament*, 17 December 2019, p 17.

⁷⁹ CCM Act s 4(c); *Criminal Code Act 1995* (Cth) ss 134.2, 135.1.

Misconception 2 - "my accountant should tell me whether I can justify an expense as electorate related"

- [208] The next common misconception was that a member's personal tax accountant should be able to look at the spreadsheet or schedule prepared by the member and determine what is, or is not deductible, as an electorate allowance expense from the description of the expense entered. However, under the Determination it is the member who is responsible for the funds received in their official capacity as a public officer. It is not the accountant who is the public officer subject to the Determination.
- [209] The Hon Ricky Mazza MLC stated: "you have an accountant that goes through and assesses what's deductible and what's not deductible."⁸⁰
- [210] All accountants examined by the Commission have stated that they relied on the member, their client, to inform them as to what individual expenses were legitimately incurred from electorate allowances. The accountants did not perform an audit of these expenses - this was not their function.
- [211] In the case of Mr Edman, Mr Ellis, Mr Hallett and the Hon Ricky Mazza MLC, each gave evidence as to how they did an initial assessment of their bank statements to categorise certain expenses as electorate expenses. A summary of so-called legitimate electorate expenses were provided to the respective accountants in the form of a spreadsheet, table or cloud-based accounting software.
- [212] Mr Edman and Mr Ellis utilised their respective electorate officers to assist in preparing, on the member's instruction, the spreadsheet summaries for the respective accountants. In the case of Mr Hallett and the Hon Ricky Mazza MLC, they completed that process themselves. Mr Hallett prepared handwritten expense schedules, whilst the Hon Ricky Mazza MLC used an accounting software platform.
- [213] Once a member has identified a particular expense, and documented this on the summary with a description that accords with a parliamentary or electorate purpose, such as 'function' or 'meeting', then the accountant receiving the summary schedules accepts this information on face value. Descriptions of expenditures were crafted to suggest electorate, rather than private, expenditure. The accountant is not generally provided with additional or sufficient information to form an independent view as to the legitimacy of the claimed expenses. The member is best placed to characterise the spending as personal and private, or public and for the

⁸⁰ R J Mazza transcript, private examination, 26 June 2020, p 14.

benefit of the electorate. It was the member, not the accountant, who spent the money.

[214] It is noted that Mr Hallett's accountant was provided credit card statements as well as electorate summary schedules. However, the accountant did not cross reference or perform an audit. Mr Hallett's accountant claimed the totality of expenses itemised by Mr Hallett on this electorate summary schedules as deductions.

[215] In Mr Hallett's case, he gave evidence to the Commission in answer to questions from his lawyer that he did not even take the time to verify his tax returns after he gave his accountant his electorate allowance spending schedules:

O'Sullivan: Ultimately, a taxation – an income tax return was produced, was it, in relation to?

Hallett: Yes.

O'Sullivan: each relevant year?

Hallett: Yeah.

O'Sullivan: And you signed that document?

Hallett: Yes. Yes.

O'Sullivan: Yes? And what steps did you take to make sure the document was accurate insofar as you could ascertain?

Hallett: Nil.

O'Sullivan: Nil? All right. Why nil?

Hallett: Because there's several lodgements and I just – that's his job, that's what I pay him for ...⁸¹

[216] It is disingenuous of the witnesses before the Commission to blame their personal accountants, when each accountant was acting on instructions and the information with which they were provided by the member. Generally, the tax accountant was performing the submission of their client's tax returns, they were not performing a forensic audit.

Misconception 3 - a member can claim an expense as a tax deduction even though the expense has been directly reimbursed by the Department of the Premier and Cabinet

[217] This is not correct.

⁸¹ N C Hallett transcript, private examination, 13 October 2020, p 19.

- [218] On occasion, such as parliamentary travel related to a member's participation on a parliamentary committee, DPC will reimburse some expenses directly incurred by members ('reimbursed expenses').
- [219] These reimbursements were made after the member had made a direct claim to DPC for those expenses.
- [220] Once a member has received funds for an expense from DPC, it is no longer an 'expense' for the member. It is a 'reimbursement'. The member cannot claim a deduction unless the member is out of pocket.
- [221] With the Parliamentary Travel Allowance, there was usually an approval process to be satisfied through DPC before the claim for reimbursement was lodged. The expenses incurred were then directly repaid to the member.
- [222] Effective 1 December 2017, SAT altered the basis of the Parliamentary Travel Allowance so that the member did not need to seek approval before using the travel allowance. From March 2021, the future administration of the parliamentary travel entitlement is to be determined by SAT.⁸²
- [223] Reimbursed expenses do not appear as 'income and allowances' on the member's personal Pay Summary received at the end of the financial year from Parliamentary Services, and therefore the amounts received are neither taxable nor claimable as a deduction.
- [224] A member claiming a tax deduction for reimbursed expenses is to gain a benefit to which that member is not entitled. The benefit is a reduction in assessable income. In colloquial terms, the member has 'double dipped' if they have received the funds for an expense in one hand, while the other hand is palm outstretched to the ATO requesting a deduction for that expense.

Misconception 4 - it is a private matter between the member and the Australian Taxation Office as to whether the member can justify specific electorate allowance expenses

- [225] A common misconception was that the parliamentarian was only accountable to the ATO for the acquittal of the electorate allowance.
- [226] The Hon Ricky Mazza MLC stated:

It is part of your assessable income, and it's between you and the Australian Tax Office to justify your claims ... so the assumption, and I'm sure that I wouldn't be

⁸² Salaries and Allowances Tribunal, *Report on Allowances Provided to Members of Parliament*, 10 August 2020.

*the only member with that assumption, is that it is part of our salary package, which we have to justify with the Australian Tax Office for deductions.*⁸³

- [227] The Hon Ricky Mazza MLC's view was that the allowance became the property of the member once paid, that the Determination made no distinction between salary and the electorate allowance, and that the use of the electorate allowance for personal purposes was not prohibited.
- [228] It may be accepted that there was no 'parliamentary police officer' standing between a member's conscience and the ATO. That was one of the issues raised in the First Report. Whilst the Determination provides no sanction for failing to spend the allowance for the benefit of the electorate, this does not relieve the member from the duty to comply with the intention of the Determination. The lack of a sanction for non-compliance does not mean that there is no obligation to comply.
- [229] Mr Hallett stated to the Commission: "What you don't understand is that electorate allowance is our money. You know, you think we misappropriate. What I don't spend I keep. We pay tax on it. Now, if that's not claimed it's fine."⁸⁴
- [230] Mr Ellis similarly stated: "All the allowances are mine."⁸⁵ Mr Ellis told the Commission that the SAT Determination supported this view as it stated that the electorate allowance may be used 'at the Member's discretion'.
- [231] The Determination⁸⁶ distinguishes between salary and allowances and treats the two differently. Nothing in the Determination directs members how to spend their salary. The Determination clearly articulates the intention that members spend that allowance to assist in 'the effective representation' and management of their electorate.
- [232] The Determination states: 'It is intended that this Allowance will be used for expenses incurred to assist with serving the electorate'. The electorate allowance is paid by Parliament 'in accordance with the determination'. The allowance is paid to members under the terms of the determination. In other words, it is public money disbursed for particular electorate purposes. Historically, the electorate allowance has always had this purpose, in line with the nature of the public office undertaken by members of Parliament when elected to serve their constituents and the people of Western Australia.

⁸³ R J Mazza transcript, private examination, 26 June 2020, p 14.

⁸⁴ N C Hallett transcript, private examination, 23 September 2020, p 8.

⁸⁵ B C Ellis transcript, private examination, 22 June 2020, p 30.

⁸⁶ SAT Determination 3.1.

- [233] Members prepare summaries of electorate allowance spending for their accountant. If a particular expense appears on the summary the member has instructed his accountant to claim that expense as a tax deduction on the basis of its connection to electorate business.
- [234] A tax deduction can only be claimed if the electorate allowance expense was for a purpose connected with a parliamentarian's functions. The actions taken by a member to claim a deduction indicate that it was the intention of the member to use electorate allowance funds to pay for their private expenses.

CHAPTER FOUR

Abuse of electorate allowances

- [235] The abuse of the electorate allowance by Mr Hallett and Mr Ellis is shown by their conduct during a wine tour of South Australia in 2016, and by using the electorate allowance to fund entertainment at high end restaurants. Mr Ellis and Mr Edman also used their electorate allowance to fund trips to the Penthouse Club in Northbridge.
- [236] In addition, Mr Hallett used his electorate allowance to wine and dine his 'sham employee' Ms Cornwall. This is detailed in Chapter Two.

A wine tour to South Australia

- [237] In 2016, Mr Edman, the Hon Ricky Mazza MLC and Mr Hallett travelled to Adelaide on the Indian Pacific train and returned by air after staying in Adelaide. The trip was undertaken between 30 August and 2 September 2016.
- [238] This trip was known as 'Nigel's Penfolds Wine Trip'. Mr Hallett's electorate office prepared a schedule for each member titled 'Nigel's Wine Tour', and made restaurant bookings.
- [239] The one way train ride on the Indian Pacific train to Adelaide was an entitlement as a function of their office at that time, afforded to members at no cost, apart from the food and wine consumed, irrespective of the purpose for which the travel was undertaken.
- [240] The Commission has formed the view that the essential purpose of the trip was for a private purpose and not legitimately connected with benefitting their respective electorates or for a parliamentary purpose. Each member used electorate allowance for the travel expenses, other than the train ride on the Indian Pacific, even though they were not legitimately for the benefit of their electorates.
- [241] Each member claimed the majority of expenses incurred and were unable to provide any cogent evidence of parliamentary or electorate business undertaken.
- [242] As each member's associated expenses appeared in their respective electorate expense schedules, the Commission concludes that each member used the electorate allowance to fund the trip.

[243] Mr Edman claimed \$7,115.89 on his electorate allowance for this trip. Wine purchases accounted for \$4,003. Mr Edman's spending was detailed in the previous parliamentary report.

The Hon Ricky Mazza MLC

[244] The Hon Ricky Mazza MLC claimed travel, meal and wine expenses totalling \$2,809.65 as electorate expenses. His expenses included accommodation, meals, wine, car hire and a Qantas flight. He claimed this total amount as a tax deduction.

[245] The Hon Ricky Mazza MLC conceded that the trip was predominately private:

Counsel assisting: What was the purpose of that trip?

Mazza: The purpose of that trip was actually a - primarily it was a private trip.⁸⁷

[246] While the Hon Ricky Mazza MLC accepted the trip was paid for from the electorate allowance, he contended that it was permitted under the Determination. The words of the Determination do not prohibit the use of the electorate allowance for private or personal purposes.

[247] While the Determination does not prohibit, it places a positive obligation on members to use the allowance for electorate purposes. The use of the allowance for a private purpose is contrary to the Determination.

[248] The Hon Ricky Mazza MLC went further than merely using the electorate allowance. He claimed a tax deduction on the basis he had used the electorate allowance for the benefit of his electorate. He had not used the electorate allowance for the benefit of his electorate.

[249] The Hon Ricky Mazza MLC also sought to justify using the allowance by indicating that he met with his Shooters, Farmers and Fishers party colleagues in South Australia to talk about party and political issues. In his view, the short meeting justified claiming all other expenses associated with the travel. The Hon Ricky Mazza MLC stated he sought the opinion of his accountant at the time the First Report was published as to the deductions claimed, and now accepted it is likely the claim for the amount of \$2,809.65 was in error, a mistake not done intentionally.

[250] The Hon Ricky Mazza MLC gave vague evidence about who he met in Adelaide and admitted he did not take any meeting notes. He said that he met for an hour in 'a bar or a café' but could not recall specifically, and

⁸⁷ R J Mazza transcript, private examination, 26 June 2020, p 12.

Mr Hallett did not attend this meeting, despite being a colleague in the same political party:⁸⁸

Counsel assisting: So your evidence is, as a result of this one-hour long meeting, you were entitled to claim the deductions relating to your airfares and meals and accommodation?

Mazza: Yes, that is my evidence, but in addition to that, as I have said, there is a lot of experiences that MPs have, so you know, just the fact that you travel and go to another city ...⁸⁹

Mr Hallett

[251] Mr Hallett denied that the trip had a private purpose, for him at least. During examination, Mr Hallett referred to a fact-finding travel purpose that was a combination of 'amalgamation of Local Government' and the state of the wine industry in WA, which he said "was on its knees."⁹⁰ At the time there was evidence of strong growth in WA's premium wine exports.

[252] Mr Hallett said he met with local government representatives in South Australia but he could not recall who they were, how many meetings they had, what local governments he met with 'or what we did with them'.⁹¹

[253] Mr Hallett felt entitled to spend electorate funds, as is illustrated by the following exchange:

Counsel assisting: So that's what you did on this trip? You talked to people at the winery?

Hallett: No - no, just in general, wherever we stopped, had a coffee, or whatever. Wherever we stopped, we talked to different people, yeah, not a problem.

Counsel assisting: But you referred earlier to local government people?

Hallett: Yeah. It's easy to talk to local government people. Usually, the small businesses in a town are attached – those guys are attached to local government. You can just stop and talk to them. If I went into IGA or Dumbleyung Hardware, I'd just about guarantee that guy's on local government, and you sit and talk to him for a few minutes.

Counsel assisting: So if you spent money there, you could claim it on as an electorate expense, because you talked to someone?

⁸⁸ R J Mazza transcript, private examination, 26 June 2020, p 15.

⁸⁹ R J Mazza transcript, private examination, 26 June 2020, p 16.

⁹⁰ N C Hallett transcript, private examination, 23 September 2020, p 60.

⁹¹ N C Hallett transcript, private examination, 23 September 2020, p 60.

*Hallett: It depends what it is. It depends what it is. If I've driven a couple of hours, yeah.*⁹²

[254] During this wine trip to South Australia with Mr Edman and the Hon Ricky Mazza MLC, Mr Hallett sent the following text message to his electorate officer:

*As we continue our agricultural tour of fact-finding challenges, we will place ourselves in a position of debate. Who has the best red? The results have taken their toll with team members needs a little nap before our next assignment, Penfolds.*⁹³

[255] Mr Edman's photographs show a private wine trip rather than electorate activities.



Ordering wine at Penfolds

⁹² N C Hallett transcript, private examination, 23 September 2020, p 75.

⁹³ Text message from N C Hallett to Ms Z, 1 September 2016.



Wine tasting at d'Arenberg



Wine tasting at St Hallett



Goodieson Brewery

[256] During this trip, the three men had a degustation dinner with matching wines at the Penfolds' Magill Estate restaurant. The Hon Ricky Mazza MLC claimed \$525.16 for the dinner as an electorate expense. Mr Hallett claimed \$527.17 in connection with this dinner on his electorate allowance with the description - 'meeting expense':

Counsel assisting: You were on a trip with these two men. You spent the whole time together. We've seen countless photos of you drinking wine together on Nigel's Penfolds trip. And you're sitting down to dinner with these two same gentlemen and you call it a meeting?

Hallett: Yeah, I have no problem with that.⁹⁴

[257] Mr Hallett and Mr Ellis discussed the Commission's interest in the wine trip during an intercepted telephone call on 12 September 2019:

Hallett: You know Phil's, Phil's off you know this tangent now the wine trip. I said for fucks sake Phil shut up.

Ellis: Hmm yeah just don't tell them (laughs).

Hallett: (laughs) Yeah.

Ellis: Oh (indistinct) (laughs).

⁹⁴ N C Hallett transcript, private examination, 22 September 2020, p 86.

Hallett: *You know as I said to him, okay from own point of view and Norman tried to tell him and*

Ellis: *Yeah.*

Hallett: *You know he said you can buy three boxes of wine, give it out as prizes uhm, you know donations and whatever just 'cause you happen to drink it doesn't matter but*

Ellis: *It doesn't matter.*

Hallett: *You know, it's only uhm **they've gotta prove, prove it** and uhm oh (sighs) he just opens himself up the whole time.⁹⁵*

- [258] This evidence suggests that the wine trip was not really for electoral purposes. It also is indicative of Mr Hallett's attitude towards his electorate allowance - he would claim whatever he thought he could get away with.
- [259] The Commission does not accept that any fair interpretation of the Determination would allow the expenses of a private wine tasting trip interstate, taken over four or five days, to be justified as electorate allowance spending.

Meals at high end restaurants

- [260] In the course of its investigation, the Commission examined electorate allowance deduction claims for restaurant dining.
- [261] Over the course of four years, Mr Hallett spent over \$51,000 on meals funded from his electorate allowance.⁹⁶ The Commission has not undertaken an audit of all meal expenses claimed on the electorate allowance, and does not suggest all meals were a misuse of the electorate allowance.
- [262] Historically, there has been no accountability mechanism to allow transparency over those expenses. The ATO expects a minimal level of description of the purposes for which expenses are incurred. For a number of years, DPC and Parliament required nothing. As an example, in the 2015/16 financial year, Mr Hallett claimed electorate expenses of \$57,144.88 that he described as 'Meeting Expense' and \$12,654.26 as 'Electoral Expense'. A generic description of the expense purpose results in the member's description being taken at face value. The generalisation or mischaracterisation of expenses by a member is an opportunity for expenses to be hidden.

⁹⁵ N C Hallett transcript, private examination, 22 September 2020, p 85.

⁹⁶ Document 00615-2019-0657.

[263] Mr Ellis was questioned about restaurant meals that appeared on his electorate expense schedule. He told the Commission that on his electorate allowance credit card, there were 'a lot of meals where I took constituents as well out for a meal'. On other occasions, he said he may have taken politicians out for a meal. Mr Ellis considered this was a legitimate use of the electorate allowance.

[264] Establishments to which Mr Ellis said he may have taken constituents included the Print Hall in Perth city (\$561), Gordon Street Garage in West Perth (\$313), Olive Tree Restaurant in West Perth (\$622.50), Crown Perth Silks Restaurant (\$806.10) and Romany Restaurant Northbridge (\$917.40).⁹⁷

[265] These meals were funded from Mr Ellis' electorate allowance. Mr Ellis was asked how he decided which constituents to take out to dinner at a restaurant like Silks: "Depending. I'd been, you know, in contact with a lot of constituents and ... I'd quite often say, well, if you're in Perth give us a call and I'll take you out. I felt sorry for them."⁹⁸

[266] The Commission accepts that providing food for indigent constituents might fall within the intended purpose of the allowance under the Determination. However, Mr Ellis' explanation as to how he selected constituents and the venues which he chose make this explanation implausible.

[267] The electorate allowance was routinely used by the group of Legislative Council members to pay for expensive meals and entertainment for each other. In Mr Ellis' words: "We took it in turns sometimes of buying each other's meals when we went out after Parliament."

Counsel assisting: So you paid for Mr Edman, Mr Hallett and Mr Mazza?

Ellis: Yes. As I was saying, we took it in turns.

Counsel assisting: And then you claimed that meal?

Ellis: Yes.⁹⁹

[268] When Parliament was sitting, Mr Ellis, Mr Edman, Mr Hallett and the Hon Ricky Mazza MLC regularly had dinner together on a Wednesday evening at the conclusion of the sittings. They typically took turns to pay the cost of the restaurant meal. These expenses were paid for using the electorate allowance. The Hon Ricky Mazza MLC contends that the electorate

⁹⁷ B C Ellis transcript, private examination, 22 June 2020, p 77.

⁹⁸ B C Ellis transcript, private examination, 22 June 2020, p 77.

⁹⁹ B C Ellis transcript, private examination, 22 June 2020, p 63.

allowance is permitted to be used for this purpose and that he was restrained in his spending.

[269] Examples of the meals that were enjoyed and claimed as electorate expenses include the C Restaurant on 10 November 2016 when Mr Edman paid \$1,340 on his electorate credit card for the four members. Another example, on April 2016, is detailed in the next section of this Report.



Taken at the C Restaurant - Mr Edman claimed \$1,340 on electorate allowance

[270] The Commission accepts that members often sit late in Parliament, into the dinner hour and sometimes beyond. However, the size of the expenses claimed on behalf of each other, the venues chosen and the other conduct of the members described in this Report and the First Report suggest these were not 'working' meals or business meetings.

The Penthouse Club, Perth

[271] On 8 April 2016, Mr Ellis used his electorate allowance credit card at the Penthouse Club in Northbridge. The amount recorded on his credit card was for \$1,995 under the description 'M&M Entertainment P/L Northbridge'.

[272] Mr Ellis claimed the expense as a tax deduction and consequently an electorate expense.

[273] He sought to justify the expense as having a benefit for the electorate. During his examination, Mr Ellis said the following:

I did go along to catch up with a couple of farmers, and there was three insurance representatives, insurance company representatives, as well. One had left when I arrived, because I got there later. They had been out for a meal together, and I had been - I had met with one of the representatives of the insurance company that morning in parliament.

...

He said 'Meet you at this address' which, when I got there I realised it was this striptease place. And I still went in to meet them, and I did offer, as we were leaving ... that I would pay their account for them.¹⁰⁰

[274] Mr Ellis' evidence conflicts with the billing processes of the Penthouse Club. Commission investigations reveal that the Penthouse Club operates on a 'pay as you go' basis for the refreshments and services obtained by patrons of that establishment.

[275] Mr Ellis said he gave the electorate credit card 'to the girl' and paid. He went outside to wait for a taxi and realised he had been doubled charged. Mr Ellis then went back into the Penthouse Club and spoke to the Manager who gave him a refund of \$1,000 on to the electorate allowance credit card.

[276] Mr Ellis confirmed that the actual charge should have been \$997.50, and that it was not what he personally incurred but "that was their bill ... these farmers had been through a pretty difficult time, but there was no problem with paying the bill."¹⁰¹

[277] Mr Ellis had not used his own salary to pay the Penthouse Club bill, he had used public monies - the electorate allowance.

[278] He told the Commission that it did worry him, but his accountant had confirmed he could claim a tax deduction as he had had a meeting with constituents:

Counsel assisting: And - so what was it that you actually said to [accountant]?

Ellis: I just said I had some concerns about where this place was, and - yeah.

Counsel assisting: Did you tell him what type of place it was?

Ellis: Yeah.

Counsel assisting: ... that it was a strip joint?

¹⁰⁰ B C Ellis transcript, private examination, 22 June 2020, pp 56-57.

¹⁰¹ B C Ellis transcript, private examination, 22 June 2020, pp 56-57.

Ellis: I said it was a strip joint, but he said, "Well, did you spend it on your electorate?" They were constituents from my electorate on a matter - well, I know it was more a social meeting, but they were there to discuss and familiarise themselves with the insurance plan that the company was offering.¹⁰²

- [279] Mr Ellis' accountant had no recollection of any such conversation.
- [280] When pressed for the names of the farmers, Mr Ellis said he could not remember, but even so, he would not tell the Commission because, he claimed, it was parliamentary privileged information. He could not recall the name of the insurance company or the insurance company representative who was present.
- [281] Mr Ellis' evidence about receiving a refund of half the charge of \$1,995 is not true. The \$1,000 'refund' to the electorate allowance credit card was in fact a direct transfer from one of Mr Ellis' personal bank accounts, not a payment from the Penthouse Club.
- [282] Mr Ellis' evidence about the expenditure at the Penthouse Club defies belief. Spending State money for this purpose was an abuse of office.
- [283] Mr Ellis denied paying for any sexual activity at the Penthouse Club on any occasion, or that anyone else paid for him to receive sexual activity. As will be seen below, this is also untrue.
- [284] On 17 August 2016 evening, Mr Ellis, the Hon Ricky Mazza MLC, Mr Edman and Mr Hallett had dinner at the Old Brewery Bar and Restaurant in Crawley, Perth.
- [285] Mr Ellis paid the restaurant invoice on his electorate allowance credit card for the four members in the amount of \$978.50. He expensed the cost of the meal through his electorate allowance.
- [286] After dinner, Mr Edman and Mr Ellis went to the Penthouse Club in Northbridge.
- [287] Mr Edman paid \$997.50 for use of a private room for himself and Mr Ellis. As described in the First Report, Mr Edman paid using his electorate allowance monies.¹⁰³ For this sum, Mr Ellis got a nude lap dance from one of the employed dancers. This expense was subsequently claimed as an electorate allowance expense by Mr Edman.

¹⁰² B C Ellis transcript, private examination, 22 June 2020, p 58.

¹⁰³ Corruption and Crime Commission, *Misconduct risks in electorate allowances for Members of Parliament*, 17 December 2019, p 63.

[288] When asked if Mr Edman paid for the sexual activity on 17 August 2016, Mr Ellis replied "He must have done."¹⁰⁴

[289] The Commission has a photograph of Mr Ellis taken in the private room at the Penthouse Club on that particular evening. Mr Ellis is lying on his back with a naked woman astride his lower body. He has his right hand on one of her buttocks. When shown the photograph, Mr Ellis stated: "I don't know whether you would call that sexual activity."¹⁰⁵

[290] The trip to the Penthouse Club with Mr Edman, funded by the electorate allowance, echoes his attendance at a brothel, known as 'Soapland', with Mr Edman the year earlier in Tokyo, Japan.¹⁰⁶ Mr Ellis' activities in Tokyo are discussed in the next chapter.

[291] The Commission asked Mr Ellis this question:

Counsel assisting: It seems to me, Mr Ellis, that it's very similar behaviour to what you've alleged to have done in Japan when you went to Soapland to have the massage on the Sunday afternoon?

Ellis: Well, it wasn't.

A/Commissioner: How was it different?

Ellis: Well, I had a massage.

Counsel assisting: And again the money was used, cash was used to pay for the massage which then appeared on your spreadsheet which you again said was a mistake, similar to...

Ellis: It was a mistake, yes.

Counsel assisting: to what you have said about the Penthouse Club line item as well?

Ellis: There was an error there, yes.¹⁰⁷

[292] The Commission considers that Mr Ellis is not a witness of the truth.

Conclusion

[293] The permissive parameters of the purpose of the electorate allowance and the lack of oversight of expenditure resulted in some members using the allowance to pay for private lifestyle expenses with marginal benefit to the electorate or none at all.

¹⁰⁴ B C Ellis transcript, private examination, 22 June 2020, p 61.

¹⁰⁵ B C Ellis transcript, private examination, 22 June 2020, p 64.

¹⁰⁶ <https://www.collinsdictionary.com/dictionary/english/soapland>, Collins dictionary accessed: 5 November 2020.

¹⁰⁷ B C Ellis transcript, private examination, 22 June 2020, p 64.

CHAPTER FIVE

Indonesia and Japan 2015

- [294] In the Commission's interim report tabled in late 2019, the Commission reported on the misuse of the electorate allowance during travel.
- [295] One example was a trip planned by Mr Edman for travel to Indonesia and Japan in June 2015 with two other members. They were former Legislative Council members, Mr Hallett and Mr Ellis.
- [296] There are two aspects of this travel which concern the Commission. First, the trip was for predominately private purposes, yet the claimed business purpose was a façade. Second, during the trip the members undertook private activities that were funded by the electorate allowance or imprest travel allowance.
- [297] Mr Hallett was given funds from the parliamentary travel allowance to reimburse him for the cost of the travel. Mr Ellis and Mr Edman used electorate allowance.
- [298] The Commission reported that in the case of Mr Edman, the claimed business purpose of the travel was a façade to disguise a predominately private purpose. The Commission holds the same view in relation to the purpose of the travel for Mr Hallett and Mr Ellis.
- [299] The three men arrived in Jakarta, Indonesia on 3 June 2015 for a two night stay. They flew into Tokyo on Friday 5 June 2015. Meetings were scheduled for the following Monday and Tuesday. The three men left Tokyo on Thursday 11 June 2015 and arrived in Bali for a stopover on the way home. Mr Edman and Mr Ellis stayed two nights in Bali. Mr Hallett stayed one night.
- [300] Mr Edman claimed a total of \$9,537.84 in electorate allowance deductions for the June 2015 trip.
- [301] From records examined by the Commission, Mr Hallett received a total of \$9,553 in parliamentary travel allowance for this primarily personal trip. He appears to have also improperly claimed more than \$7,000 as electorate allowance deductions.¹⁰⁸
- [302] Mr Ellis claimed a total of \$9,851.90 in electorate allowance deductions.¹⁰⁹

¹⁰⁸ N C Hallett, Westpac Earth Black Credit Card, June 2015.

¹⁰⁹ B C Ellis, ANZ Credit Card, Electorate Allowance Spreadsheet, 1 March to 31 August 2015.

[303] Once a member claims an expense as an electorate allowance tax deduction, it shows that the activity was funded from the electorate allowance, or the member intended that to be so.

[304] A private trip is, by definition, not for the benefit of the electorate and does not involve parliamentary business.

[305] At most, the Tokyo visit had one or two days of meetings in a total visit of six days. Those meetings were arranged by Mr Peacock at Mr Edman's request to give the appearance of legitimacy to justify the trip.

[306] The Commission has concluded that the trip had a predominately private, recreational purpose because:

- a) The stated purpose of the trip by Mr Ellis and Mr Edman was to pressure the Barnett Government to keep open the WA Trade Office in Indonesia. This decision had already been made (and publicised) months earlier by the Government and was being implemented.¹¹⁰
- b) A written report as to activities undertaken provided to DPC was inaccurate.
- c) There were concerted attempts to mislead the Commission as to activities undertaken in Japan.
- d) Lack of a formal itinerary for Indonesia and draft itinerary only for Japan.
- e) The draft itinerary was prepared to create a façade of propriety.

[307] The evidence to support each conclusion is indicated below.

Purpose for travel

[308] The Commission has previously reported that the idea of a trip to Japan in the first half of June 2015 was conceived by Mr Edman in April 2015 whilst he was in Canberra.¹¹¹ The First Report details how that trip was improperly funded from Mr Edman's electorate allowance and parliamentary travel allowance.

[309] Mr Edman told Mr Peacock in private text messages that his motivation for the Japan trip was to spend the electorate allowance prior to the end of the financial year, and visit a war shrine.

¹¹⁰ The Hon Colin Barnett MEc MLA, WA Govt to boost representation in Indonesia, 2 January 2015.

¹¹¹ Corruption and Crime Commission, Report *Misconduct risks in electorate allowances for Members of Parliament*, 17 December 2019, p 44.

- [310] A draft itinerary was then prepared by Mr Peacock, the former WA Trade Commissioner to Japan. Mr Peacock stated "I've tried to make it as meaningful as possible."¹¹²
- [311] By 22 April 2015, Mr Hallett had told Mr Edman that he wanted to travel to Japan with a private businessman with whom he had an established business relationship, and perhaps two farmers. Mr Hallett has not established that this reason had any purpose connected to his electorate, other than he was a regional Member of Parliament.
- [312] Mr Ellis' stated reason for travelling to Japan was for a mostly private purpose with the exception of two days. Mr Ellis indicated the business part of the trip occurred in Jakarta, Indonesia. The Commission accepts Mr Ellis' evidence that Japan was a mostly private trip but does not accept that the trip to Jakarta was legitimate business.

Mr Edman arranged the itinerary

- [313] Mr Edman decided to take on the role for all as the trip organiser. The Commission has no evidence that Mr Ellis or Mr Hallett had input into the draft itinerary for Japan which is at odds with their evidence of the electorate purpose behind the travel.
- [314] The itinerary was sent by Mr Peacock on 24 April 2015 with a text message: 'just sent the draft by email mate. Of course it's a draft that would hopefully pass any scrutiny.'¹¹³
- [315] Once Mr Edman and Mr Peacock had communicated sufficiently to put a draft itinerary in place for the Tokyo trip, Mr Edman turned his attention to organising a stopover in Jakarta on the way, and a stopover in Bali on the way back.
- [316] As at the end of March 2015, Mr Ellis was informed by his electorate officer that he had a credit balance of \$6,185.53 in the Parliamentary Travel Allowance scheme still available to him.¹¹⁴ Unlike Mr Hallett, Mr Ellis did not apply to use these funds for the travel.
- [317] Mr Ellis committed to the trip by 23 April 2015. Mr Ellis attempted to arrange meetings in Jakarta for the group, but was unsuccessful.
- [318] This is consistent with Mr Ellis' evidence that the Japan trip was 'mostly private' in purpose.¹¹⁵

¹¹² Text message between P J Edman and C S Peacock, 23 April 2020.

¹¹³ Text message between P J Edman and C S Peacock, 24 April 2015.

¹¹⁴ Email from B C Ellis to Electorate Officer, 30 March 2015. B C Ellis referred to the Parliamentary Travel Allowance by its former name, 'Imprest'.

¹¹⁵ B C Ellis transcript, private examination, 22 June 2020, p 4.

Mr Hallett's inaccurate report on activities undertaken in Japan

[319] Mr Hallett used \$9,553 from the Parliamentary Travel Allowance account for the trip to Indonesia and Japan. He was required to submit a report to the Director General of the DPC on his return. Mr Hallett gave the Commission a copy of this report in February 2019 in response to a Notice to Produce Records.

[320] The report¹¹⁶ contained an account of activities undertaken by Mr Hallett and others in the delegation, including activities on 7 June 2015. This account contains a material untruth. The falsehood directly relates to the timing of the visit by Mr Ellis and Mr Edman to a Soapland.

[321] The 'Report of Jakarta/Japan Visit 2 June to 12 June 2015' stated:

*We attended briefings and updates at the WA Government Office in Tokyo on current WA-Japan relationship as it pertains to Resources, Education, Tourism Ag & Food and Science & Research followed by an inspection tour of the supermarket and retail industry in Kamakura.*¹¹⁷ (emphasis added)

[322] The reference to the trip to Kamakura was detailed in the draft itinerary prepared by Mr Peacock as due to occur on 7 June 2015 for most of the day. In fact, at that time, Mr Ellis and Mr Edman were at the Soapland massage.

[323] On the itinerary for 7 June 2015, a trip to Kamakura was scheduled from 10.30 am until 5.30 pm that afternoon. Kamakura is 70 minutes (one way) by train from the hotel where the three members were staying. It is a significant excursion.

[324] On 7 June 2015, Mr Hallett sent Ms Bonnie Cornwall a WhatsApp message: 'Having easy day. A bit of tourism.'¹¹⁸

[325] Under examination, Mr Hallett accepted that he had not attended Kamakura on 7 June 2015. However, he could not recall whether he attended Kamakura on another day.¹¹⁹ Photographs of the Kamakura site were shown to Mr Hallett without any recognition. A reconstruction of activities known to have been undertaken on the remaining days does not allow sufficient time for a trip to Kamakura.

[326] In submitting the report, Mr Hallett either wished to mislead the Director General of the DPC or was indifferent to that possibility.

¹¹⁶ Report of Jakarta/Japan Visit, 2 June to 12 June 2015 from N C Hallett to Director General of the DPC, 30 June 2015.

¹¹⁷ Ibid.

¹¹⁸ Message from N C Hallett to B L Cornwall, 7 June 2015.

¹¹⁹ N C Hallett transcript, private examination, 22 September 2020, p 56.

Mr Ellis pretends he went to Kamakura when at a Soapland

[327] The Commission is satisfied the tour to Kamakura never occurred. However, Mr Ellis gave evidence to the Commission that it had occurred. He produced the draft itinerary prepared by Mr Peacock to the Commission in an attempt to bolster his claim.

[328] In January 2019, the Commission compelled Mr Ellis to produce documents relating to aspects of this trip. One document produced was the draft itinerary prepared by Mr Peacock in preparation for the Japan 2015 trip.¹²⁰

[329] The draft produced to the Commission by Mr Ellis had some handwritten annotations that indicated a couple of the planned activities had changed. They had either been replaced or had not occurred. On the entry for 7 June 2015 for Kamakura Mr Ellis had written on the document in the margin 'Japanese cooking (lunch) - Political centre of medieval Japan now prominent resort town'.

[330] Mr Ellis maintained during two separate Commission examinations before the Commission that he had visited Kamakura on 7 June 2015. He relied on the annotated itinerary as support for his evidence:

14 February 2019 evidence:

Counsel assisting: So from your recollection, when it says "1000 hours, depart hotel for tour of Kamakura", does that accord with your memory as when you would have left the hotel?

Ellis: Yes, around that time.

Counsel assisting: And who went with you?

Ellis: The two other members.¹²¹

20 June 2020 evidence

Counsel assisting: Just speaking about the day off, on the last occasion you told the Commission that you went to Kamakura prior to going for the massage?

Ellis: Yes.

Counsel assisting: Do you still maintain you did that?

Ellis: If we're talking about the same place I believed - that there was the ancient capital on the coast. They had photos there.¹²²

¹²⁰ Itinerary for Japan, 26 May 2015.

¹²¹ B C Ellis transcript, private examination, 14 February 2019,

¹²² B C Ellis transcript, private examination, 22 June 2020, p 37.

- [331] He initially maintained that the itinerary produced to the Commission, containing the handwritten annotations on Kamakura, was a copy kept by him since 2015 in "an Indonesian file."¹²³ This was not true.
- [332] Mr Edman emailed a copy of the itinerary to Mr Ellis¹²⁴ on 30 December 2018, three and a half years after the Japan trip, and after meeting with Mr Ellis and Mr Peacock a few days earlier. This meeting was after Mr Peacock's examination before the Commission, during which Mr Peacock was examined extensively about the draft itinerary he prepared for this particular trip.
- [333] Mr Ellis added the handwritten notes about Kamakura in January 2019 before producing the document to the Commission. Mr Ellis did this only a few weeks before being examined by the Commission about the provenance of that document and his activities in Japan.
- [334] Mr Ellis wanted the Commission to believe the notes were made by him in 2015. This was a deliberate attempt to mislead the investigation and deflect questioning about his and Mr Edman's attendance at Soapland. It was an attempt to present an alternative for his whereabouts on the Sunday afternoon. He had never visited Kamakura:

Counsel assisting: So why as a result of meeting Mr Peacock did Mr Edman send you the itinerary? What was the connection?

Ellis: Probably to remind us exactly what happened but it...

...

Counsel assisting: Why did you need to remember the itinerary Mr Ellis?

Ellis: Well, I - because Peacock obviously was being investigated by you I wanted to remind myself of exactly what happened.

Counsel assisting: Why was Peacock being investigated by the Commission of concern to you?

Ellis: Because I didn't know much about what Peacock had been up to and I just - wondering what the hell it meant to us anyway.

Counsel assisting: Isn't it because you knew Mr Peacock had arranged for you to go to a brothel on the Sunday afternoon and you thought that might come under scrutiny when he went to the Commission to give evidence?

Ellis: No. Well, I - that wasn't the main reason. I imagine I was just trying to inform myself of exactly what happened.¹²⁵

¹²³ B C Ellis transcript, private examination, 22 June 2020, p 40.

¹²⁴ Email from P J Edman to B C Ellis, 30 June 2018.

¹²⁵ B C Ellis transcript, private examination, 22 June 2020, pp 42-43.

[335] After being shown photos from his own camera and compared those with those of Kamakura obtained by the Commission during its investigation, Mr Ellis accepted in evidence that he did not visit Kamakura.

The travel in June 2015 was recreational, not parliamentary in purpose

[336] The June 2015 travel had a recreational, private purpose but the former members sought to justify or legitimise the travel as related to their roles as members. They did this by seeking to arrange some business meetings as 'window dressing'.

[337] Mr Ellis agreed with the proposition that the trip to Japan was largely for private purposes but claimed that the initial three days in Indonesia were business related. To the extent that the Commission accepts that some meetings were held in Jakarta, the Commission considers their purpose was to legitimise or justify the trip for the purpose of using electorate allowance as the funding mechanism.

[338] In examination, Mr Ellis referred to the Jakarta stop as the motivation for the entire trip:

There was certainly private involved but it started in Jakarta as a - a business trip and then I can't remember but two or three days in Japan, two days I think it was, was more business than private but the rest (Japan) was private.¹²⁶

[339] Mr Ellis told the Commission that the purpose for travel to Jakarta was because he was leading "a campaign to keep the WA Trade Office open in Jakarta."¹²⁷ The Commission does not accept this reason to justify the Indonesian stopover. The decision to keep the trade office open and expanded had been made at least five months earlier at the highest level, and was publicly communicated by the Premier at that time.

[340] In a press release from January 2015, the then Premier announced an increase of representation of WA trade interests in Jakarta by the adoption of a new, expanded office model. A regional director was recruited over the following months. The announcement of the appointment was made as Mr Ellis, Mr Edman and Mr Hallett were flying to Jakarta in June 2015.

[341] In examination, Mr Ellis suggested that he, Mr Edman and Mr Hallett prompted the decision by making the trip to Jakarta and that this meant the trip had a parliamentary purpose. This is not credible. The recruitment of a regional director is an involved process. It is a process that takes weeks, if not months.

¹²⁶ B C Ellis transcript, private examination, 22 June 2020, p 4.

¹²⁷ B C Ellis transcript, private examination, 22 June 2020, p 5.

[342] Further, in an email to his research officer five days before he flew to Jakarta, Mr Ellis stated the opposite, that: "The main part of the trip was in Japan."¹²⁸ Not Jakarta.

[343] Additionally, four days before leaving for Jakarta, Mr Ellis forwarded an email to Mr Edman from a contact in Indonesia.¹²⁹ The contact stated that it would be difficult to get any high level meetings organised for their imminent visit and it would be beneficial to visit when the 'revamped Trade Office' is launched.

[344] Mr Edman also found meetings difficult to arrange, with the Acting Trade Commissioner in Jakarta suggesting, by email, that the visit be postponed: 'Very happy to help with a rescheduled visit ...'¹³⁰

[345] The difficulty in arranging appropriate activities relevant to parliamentary business suggests an attempt to legitimise a private, recreational trip intended to expend electorate allowance funds before the end of the financial year.

Tokyo visit mostly private purpose

[346] Most of the time away was spent in Tokyo. In a seven day visit to Tokyo, Mr Ellis admitted five days were recreational. Yet, the member claimed *all* the accommodation, airfares and meals as electorate allowance expenses.

[347] The expenses relating to this trip claimed by Mr Ellis included Garuda flights for \$3,887; Shangri-La Hotel in Jakarta; Imperial Hotel accommodation in Tokyo, dinners for \$600 and \$404 in Tokyo; and two cash withdrawals of \$215.91 each from the Japan Post Bank Tokyo.

[348] These amounts appeared on the electorate allowance spreadsheet which had been approved by Mr Ellis at the time.

[349] Despite this, Mr Ellis tried to maintain during the Commission investigation that he used 'private monies'. He asserted this to a journalist in 2019¹³¹ as well as during examination. For the reasons outlined in Chapter Five, the Commission does not accept that Mr Ellis' electorate allowance spending had exceeded the allowance paid.

[350] Mr Ellis conceded under examination that the two cash withdrawals of \$215.91 were not legitimate work-related expenses for which he should

¹²⁸ B C Ellis transcript, private examination, 22 June 2020, p 8.

¹²⁹ Email from B C Ellis to P J Edman, 29 May 2015.

¹³⁰ Email from C S Peacock to P J Edman, 28 May 2015.

¹³¹ See [201] of this Report.

receive a tax deduction, and the items should not have appeared on the electorate allowance expense spreadsheet.¹³²

- [351] Mr Ellis' explanation was that the withdrawal was a mistake in that he used the wrong credit card. He meant to withdraw the money, but did not mean to use the electorate allowance credit card to do so.
- [352] He stated he used the withdrawn cash to buy gifts and other personal items. Despite the personal nature of the expenses, he did not instruct his electorate officer to remove the cash advances from the electorate allowance spreadsheet later sent to his accountant for tax purposes.
- [353] Nor did the conversation with his electorate officer about the accrual of interest from using a credit card to withdraw cash, cause Mr Ellis to consider that personal expenses, the cash used to purchase gifts and other personal items, should not be claimed as an electorate expense. Mr Ellis was questioned by his electorate officer about the interest, yet he kept the substantive amount of \$431.82 on the spreadsheet as an electorate expense.
- [354] If the use of the electorate credit card for the withdrawal was a mistake, then the subsequent conversation with his electorate officer should have prompted Mr Ellis to recognise his mistake. The usual oversight of the electorate allowance spreadsheet by Mr Ellis was a further opportunity to correct the record before sending it to his accountant.
- [355] During examination, Mr Ellis gave evidence about his claim for the cash withdrawn by him in Japan:

Counsel assisting: When you instructed (Electorate Officer) to send this (the spreadsheet) to the accountant or you sent this to your accountant, was your intention that the accountant claimed these (spreadsheet entries) as tax deductions?

Ellis: Well, my intention, yes, is if they were valid and that's where - that's why you employ an accountant to tell you if they're not.¹³³

...

Counsel assisting: No, you're the one that pulled out the credit card?

Ellis: Yes

Counsel Assisting: ... and paid for what you were paying for?

Ellis: Exactly

¹³² B C Ellis transcript, private examination, 22 June 2020, p 19.

¹³³ B C Ellis transcript, private examination, 22 June 2020, p 24.

Counsel assisting: So at the time you know whether it was related to your parliamentary business or private?

Ellis: And if I needed advice from an accountant to double-check, then I thought that would be the check that they do before they put in the claim.

Counsel assisting: But it's the practice of the accountants for you to sign an electronic lodgement form that says that you have read through and you agree that all those expenses were validly incurred, don't you?

Ellis: Yes.

Counsel assisting: Every year when you put in a tax return?

Ellis: Yes.

Counsel assisting: And in fact, isn't it the practice of your current accountant, Mr A, to actually specifically ask you if he can rely on the spreadsheet that you put in for the electorate expenses as being valid deductions?

Ellis: Yes.

Counsel Assisting: And you've told him, yes, you can rely on it?

Ellis: Yes, except I did obviously make a mistake with the cash.¹³⁴

Issues of credibility

- [356] The Commission believes that Mr Ellis made a deliberate decision to claim the two cash withdrawals totalling \$431.82 as electorate expenses. It was not simply a matter of pulling out the wrong credit card by mistake.
- [357] In assessing Mr Ellis' credibility on this point, the Commission has taken into account:
 - a) Mr Ellis' initial attempts to persuade the Commission that he undertook the events on the itinerary for Sunday 7 June 2015 (visit to Kamakura);
 - b) his initial denials that he used electorate allowance to pay for trip expenses; and
 - c) the fact that he claimed the cash withdrawals as electorate expenses despite conceding the money was used for personal expenses.

The Commission has also been influenced by the implausible evidence given by Mr Ellis on other points, such as expenses incurred at the

¹³⁴ B C Ellis transcript, private examination, 22 June 2020, p 25.

Penthouse Club for constituents discussed above and his evidence, discussed below about destroying his mobile telephone.

Was the cash claimed as electorate spending used for Soapland?

- [358] Mr Ellis attended the Soapland premises with Mr Edman on the afternoon of 7 June 2015, whilst being escorted by a staff member from the WA Trade Commission Tokyo office, Mr Hashimoto. The staff member's presence was necessary to act as a guide and a Japanese/English translator.
- [359] Mr Ellis was required to have cash to pay for the service.
- [360] Mr Ellis agreed this was so. Yet he gave varying evidence about the cost of the service he received. The staff member from the WA Trade Commission Tokyo office, Mr Hashimoto indicated that it would be at least ¥70,000 (approximately \$730).
- [361] Mr Ellis stated that he usually travelled with about \$500 in cash and had done so on this occasion.¹³⁵ It was put to Mr Ellis that the \$430 he withdrew the day before and the day of the Soapland visit, would allow him to have the necessary cash of at least \$700 for the service. Mr Ellis disagreed with this proposition.
- [362] In the First Report, it was reported that Mr Edman also withdrew cash from an ATM machine on the day before and the day of the Soapland visit. Mr Edman withdrew \$1,057.84 (¥100,000). In Mr Edman's electorate allowance spreadsheet, he subsequently claimed an amount of \$1,057.80 under the entry 'Parliamentary Refreshments'.
- [363] Initially Mr Ellis gave evidence that he 'must have' paid 'that much' (\$730) but he did not recall.¹³⁶ Giving evidence several months later, Mr Ellis' memory had improved. He said "Well I was wrong, wasn't I? Because it wasn't that much. It was about 200."¹³⁷ Mr Ellis said that it could not have cost \$700 as it was 'a perfectly conventional back massage'.
- [364] He agreed the cash was withdrawn using his electorate allowance credit card over that weekend because he required cash.¹³⁸ However, he said he paid for the 'back massage' visit himself.
- [365] Mr Ellis admitted that he was offered sex at Soapland, but maintained that he refused the offer. He conceded that he told Mr Edman in a taxi

¹³⁵ B C Ellis transcript, private examination, 22 June 2020, p 36.

¹³⁶ B C Ellis transcript, private examination, 14 February 2019, p 39.

¹³⁷ B C Ellis transcript, private examination, 22 June 2020, p 34.

¹³⁸ B C Ellis transcript, private examination, 22 June 2020, p 32.

returning back to the hotel that he had had sex, but said he meant the comment as a joke.

Counsel assisting: Well, did you say that to Mr Edman in a taxi?

Ellis: Pardon?

Counsel assisting: Did you say that to Mr Edman in a taxi that you...?

*Ellis: Yeah, as a joke, yeah, but no, it never happened.*¹³⁹

- [366] The Commission has two photographs taken by Mr Edman of women who worked at Soapland on 7 June 2015. One is posing with her hands behind her head. She is dressed in lingerie. The other woman is dressed in a short cocktail dress. It is unlikely that Mr Ellis was offered a 'perfectly conventional back massage' or Mr Edman was offered a 'traditional Japanese massage'.
- [367] Ultimately, the resolution of the question whether Mr Ellis accepted the offer of sex or had a back massage is not important. The relevant question is whether the payment for the 'services' was from the electorate allowance.
- [368] Mr Ellis has denied the cash was electorate allowance monies because he claimed to have used all electorate allowance for the 2014/15 financial year by 4 June 2015. From an analysis of Mr Ellis' electorate spreadsheet prepared by his electorate officer, the Commission does not accept that position. Mr Ellis instructed his electorate officer to include monthly vehicle lease payments in his electorate allowance spreadsheet.
- [369] Mr Ellis received a motor vehicle allowance in addition to electorate allowance. To obtain an accurate picture from his own electorate spreadsheet of Mr Ellis' electorate allowance spending by 8 June 2015, either the vehicle lease payments should be subtracted or the motor vehicle allowance should be included in the overall total balance at 30 June 2015. By 30 June 2015 Mr Ellis had underspent on his electorate and motor vehicle allowance.
- [370] The Commission is satisfied that:
 - a) The cash withdrawn was used for a personal, private purpose.
 - b) The cash was withdrawn from the electorate allowance credit card at approximately the same time as Mr Edman, and after Mr Edman had received communication from Mr Peacock, that they would need \$700 each to pay for their 'massage' at Soapland.

¹³⁹ B C Ellis transcript, private examination, 22 June 2020, p 35.

- c) The cash was deliberately claimed as a tax deduction by Mr Ellis on the basis it was an expense related to parliamentary business. Mr Ellis' accountant told the Commission that it was likely the cash was included in the deduction figure on the tax return for FY 2014/15.

[371] An expense for a private and personal purpose should not be financed with monies from the electorate allowance.

CHAPTER SIX

Interference with the Commission's investigation

[372] Investigations are an inquiry. The evidence gathered may tend to indicate serious misconduct occurred or is occurring, or it may disprove a suspicion of misconduct. It is important, therefore, that relevant evidence is preserved and not kept out of the Commission's reach.

[373] One aspect of a covert investigation are the orders made by the Commission to prevent persons who are required to produce documents or evidence from disclosing or discussing that fact. Non-disclosure orders prevent discussion about the investigation and the evidence given. At the time such orders are served, the person concerned is informed that a breach of the order may be a criminal offence. Confidentiality is not just to assist Commission investigations. If a person is identified as a subject of a Commission investigation, it can adversely affect their reputation before any consideration has been given to the allegation.

[374] However, in this investigation, communication between some persons under investigation has been a constant. The result has been to misdirect and hinder the investigation.

[375] The conduct of Mr Edman, Mr Hallett and Mr Ellis has had a damaging effect on the Commission's investigation:

- a) the investigation has been prolonged due to the Commission having to obtain evidence from multiple sources to verify its reliability;
- b) the identity of individuals under investigation became known to each other early in the investigation. This provided an opportunity for individuals to align their evidence; and
- c) evidence has been withheld from the Commission, with the result that the Commission has had to utilise intrusive powers such as search warrants to obtain relevant material.

[376] The investigation in this matter has been significantly impeded by particular witnesses influencing evidence, destroying or withholding relevant records, intentionally, and materially flouting non-disclosure orders and giving false testimony during private examinations.

[377] The events detailed below demonstrate breaches of non-disclosure orders in place during the investigation and the facilitation of the disclosure of information known to be subject to non-disclosure orders. The events also show a tendency to provide incomplete documentation,

incomplete or untruthful evidence and to hide or destroy evidence to keep it from the Commission. This conduct impacts adversely on the credit of those involved.

[378] The Commission considers that records were deliberately omitted by some of the former members in response to initial requests for relevant material in February 2019. When the Commission attempted to obtain the information from personal accountants, concerted efforts were made by some of the members to communicate with their accountants and with each other.

Disclosure of the investigation's focus

[379] This investigation arose out of the Commission's investigation into the activities of Mr Craig Peacock, the Trade Commissioner at the West Australian Government Trade Office in Tokyo.

[380] That investigation did not focus on the activities of members of Parliament or the misuse of the electorate allowance.

[381] However, one topic covered during Mr Peacock's examination was the trip to Tokyo in June 2015 by Mr Hallett, Mr Ellis and Mr Edman. An aspect of the June 2015 trip was the use of a WA public officer under the direction of Mr Peacock to assist Mr Ellis and Mr Edman to find and attend a Soapland in Yoshiwara, Tokyo.

[382] In mid-December Mr Peacock returned to Perth from Japan. He was required to attend for examination on 18 December 2018. Mr Peacock was subject to an order forbidding him from disclosing his examination evidence or his attendances at the Commission.

[383] Mr Edman and Mr Ellis met with Mr Peacock on two occasions prior to his December examination.

[384] The first meeting was for breakfast two days before his Commission examination.

[385] Mr Edman and Mr Ellis met with Mr Peacock a second time on 17 December 2019, one day before Mr Peacock's examination. This was a dinner meeting. The Hon Ricky Mazza MLC and Mr Hallett were there as well.



Photograph of Mr Edman, the Hon Ricky Mazza MLC, Mr Ellis, Mr Peacock and Mr Hallett enroute to Caffe Italia Ristorante on 17 December 2018.

- [386] During his later examination, Mr Ellis recalled that Mr Peacock spoke about his impending examination. This was contrary to a non-disclosure order imposed on Mr Peacock.
- [387] On 18 and 19 December 2018, the Commission privately examined Mr Peacock.
- [388] It appears that Mr Edman became aware of the Commission's interest in the 2015 Japan trip and shared that intelligence with his fellow travellers. On 30 December 2018, Mr Edman sent a text message to Mr Hallett, Mr Ellis and the Hon Ricky Mazza MLC:

Our first trip to Japan with (sitting member) Was on 22-4-2014. Our second trip to Japan But without Mazza and (sitting member) Was 5-6-2015.¹⁴⁰ (names redacted)

- [389] Mr Edman also gathered evidence relating to the 2015 trip to Japan. That same day, 30 December 2018, Mr Edman sent an email to Mr Ellis and Mr Hallett enclosing a copy of the draft itinerary that Mr Peacock had prepared in 2015 for the Japan trip. It will be recalled that this itinerary did not reflect what actually occurred during the course of the 2015 Japan trip.

¹⁴⁰ Text message from P J Edman to N C Hallet, B C Ellis and R J Mazza, 30 December 2018.

Production of documents

- [390] Mr Edman correctly anticipated that he, Mr Ellis and Mr Hallett might become persons of interest to the Commission.
- [391] On 16 January 2019, the Commission served a s 95 Notice to Produce Records and a s 96 Summons to Attend and Give Evidence on Mr Edman.
- [392] On 18 January 2019, Mr Hallett and Mr Edman were each served with a s 95 Notice to Produce Records.
- [393] The s 95 Notices required production of expenses, itineraries and bank statements in connection with electorate allowance spending for the six month period March to August 2015.
- [394] Each Notice and Summons served on Mr Edman, Mr Hallett and Mr Ellis had a non-disclosure order attached prohibiting discussion about the Notice with any person (apart from a lawyer).
- [395] Mr Edman provided some documents to the Commission in response to his s 95 Notice to Produce Records prior to his examination in February 2019.
- [396] Mr Edman failed to provide full disclosure of financial records relating to his electorate allowance spending for the first half of 2015. This appears to have been a deliberate omission. Electronic records for that period were found in Mr Edman's house during the execution of a search warrant on 14 August 2019.
- [397] In response to the s 95 Notice to Produce Records served on him, Mr Hallett produced to the Commission a report compiled for DPC on the Japan trip. The report was dated 30 June 2015 and mentioned the excursion to Kamakura. The Commission is satisfied this excursion never took place. Instead, Mr Ellis and Mr Edman visited Soapland in the Yoshiwara district, whilst Mr Hallett remained in the general Tokyo area. The report provided to DPC was untrue in this respect.
- [398] In response to the s 95 Notice to Produce Records served on him, Mr Ellis produced to the Commission the draft itinerary obtained from Mr Edman on 30 December 2018. Mr Ellis had made notes on the itinerary beside the entry for Kamakura.

Breach of section 99 of the *Corruption, Crime and Misconduct Act 2003*

- [399] In February 2019, Mr Edman, Mr Hallett and Mr Ellis were each privately examined by the Commission, including about their June 2015 trip to Japan and the excursion to Soapland.

[400] When Mr Hallett attended at the Commission to give evidence on 14 February 2019, he came with his accountant. He did not come with his lawyer. Mr Hallett contravened the non-disclosure order by informing his accountant that he (Mr Hallett) had to attend at the Commission and by arranging for his accountant to attend with him. No doubt Mr Hallett discussed the financial records and his expenses claims with his accountant. However, the Commission accepted, at the time, that the involvement of Mr Hallett's accountant was the result of an innocent misunderstanding on the part of Mr Hallett. The Commission made an order varying the terms of the non-disclosure order to permit disclosure to his accountant.

Misleading testimony at the Commission

[401] Over 14 and 15 February 2019, Mr Edman, Mr Hallett and Mr Ellis were each privately examined by the Commission.

[402] The examination dealt with their visit to the Japanese Soapland during their June 2015 trip to Japan.

[403] During his examination, Mr Ellis gave sworn evidence to the Commission that he had visited Kamakura for business reasons, predominately information gathering. He told the Commission he had had lunch there with Mr Edman and Mr Hashimoto and the historical political nature of Kamakura was of interest to him.¹⁴¹ This was not true. He used that time to visit a Soapland.

[404] Mr Ellis also gave evidence about the itinerary for the 2015 Japan trip, which he had provided to the Commission in response to the s 95 Notice to Produce Records. In a covering letter to the Commission, Mr Ellis stated that he did not have a complete record of receipts, invoices and communications. He said he only had "a copy of the itinerary for the Japanese section of travel" ... "because they have been either lost or destroyed when my offices were cleaned out after the 2017 election."¹⁴² He did not disclose that he had the itinerary because it had been sent to him by Mr Edman on 30 December 2018.

[405] Mr Ellis also told the Commission in evidence that he had made jottings on the itinerary 'back in, you know, 2015 to remind myself of what these places were about' This was not true. The jottings were made after he received the copy itinerary from Mr Edman on 30 December 2018 and before he was privately examined by the Commission. The jottings were

¹⁴¹ B C Ellis transcript, private examination, 14 February 2019, pp 17-18.

¹⁴² Letter from B C Ellis to Corruption and Crime Commission, undated.

consistent with the story of a visit to Kamakura. They did not reflect the reality of the Soapland excursion.

[406] This evidence of Mr Ellis was misleading.

Disclosure of proceedings at the Commission

[407] At the close of Mr Edman's examination on 14 February 2019 the non-disclosure restriction on him was lifted so he could enquire after Mr Peacock. Mr Edman told the Commission he would exercise discretion and "wouldn't put anything on Twitter or ring the media or anything like that."¹⁴³

[408] At the close of Mr Ellis' examination on 14 February 2019, he was clearly told he could not speak to any person about his examination:

Ellis: *Excuse me, are you saying that I still can't speak to anyone?*

Commissioner: *Correct, except a lawyer.*

Ellis: *Can I speak to my wife?*

Commissioner: *No.*¹⁴⁴

[409] On 14 February 2019, the day Mr Ellis was privately examined by the Commission, there was a WhatsApp message exchange between Mr Hallett and Ms Cornwall:

Cornwall: *How'd Brian go today?*

Hallett: *Hi. Pretty shattered but ok. Have been through with Brad.*

Face what we have to . Phil is now cleared Luv u (kiss mark x 2).

Cornwall: *That's good news that Phil is clear - it's a certainty that you will be*

Hallett: *Don't know. Wait and see*

Cornwall: *I hope you keep me informed (thumbs up emoji) say hi to Brad*

Hallett: *Darling. Will do*

Bon. Think it's going to be confronting. That's to Phil.

But. Hey. At time was fun Lucky.

Didn't cross line. Who cares.

¹⁴³ P J Edman transcript, private examination, 14 February 2019, p 104.

¹⁴⁴ B C Ellis transcript, private examination, 14 February 2019, p 54.

Seen at bar with strippers. 5 years ago. Anyway. Luv u (kiss mark x 2)

Cornwall: You'll be fine, just be honest! Big deal - bar with Strippers, what the fuck - are we 5yr olds? Don't be Intimidated

Hallett: Agree. Really great Brad came over. Had very frank discussion with him.¹⁴⁵

- [410] Clearly, Mr Ellis had spoken to Mr Hallett about his examination after it occurred on 14 February 2019 but before Mr Ellis' non-disclosure order was lifted on 15 February 2019.
- [411] Mr Hallett was privately examined the next day, 15 February 2019. That day Ms Cornwall and Mr Hallett participated in the following WhatsApp exchange:

Cornwall: Good luck today - hold your head high

Hallett: Hi. In city Call u later (kiss mark x 2)

Thank you (kiss mark x 2).¹⁴⁶

- [412] Ms Cornwall was aware of Mr Hallett's impending appearance at the Commission.

Mr Edman tries to obstruct and hinder the Commission's investigation

- [413] On 1 April 2019, Mr Edman's accountant was served with a s 95 Notice to Produce Records requesting a range of financial documents relating to Mr Edman's taxation affairs between 2013 and 2017. Mr Edman's accountant was served because Mr Edman had failed to produce the required financial records.
- [414] The s 95 Notice to Produce Records contained a non-disclosure notation prohibiting the accountant from discussing any aspect of the Notice with any other person (other than a lawyer), including Mr Edman.
- [415] Within the space of two hours, Mr Edman's accountant made Mr Edman aware of the service on him of the s 95 Notice to Produce Records and the documents the accountant was required to produce. The Commission detailed the conduct of Mr Edman and his accountant in Chapter Eight of the First Report.
- [416] Mr Edman sent a text message during the afternoon on 1 April 2019 to Mr Ellis, Mr Hallett and the Hon Ricky Mazza MLC warning them of trips they had undertaken that were relevant to the Commission's

¹⁴⁵ WhatsApp messages between N C Hallett and B L Cornwall, 14 February 2019.

¹⁴⁶ WhatsApp messages between N C Hallett and B L Cornwall, 15 February 2019

investigation. The text referred to trips taken involving electorate allowance. Mr Edman's warning text included: 'June 2015, Jakarta and Tokyo (EDMAN, ELLIS and HALLETT)' as well as 'August 2016, Adelaide (EDMAN, HALLETT and MAZZA).'¹⁴⁷ (Mr Edman's text also dealt with a number of other trips where he had not been accompanied by Mr Ellis, Mr Hallett and the Hon Ricky Mazza MLC).¹⁴⁸

[417] These trips are the instances where the Commission has determined, after investigation that the electorate allowance was misspent. They were an area of active investigation by the Commission at the time.

The Department of the Premier and Cabinet Notice to Produce Records

[418] On 12 April 2019, the Commission served a s 95 Notice to Produce Records on the Director General of the DPC. The notice was served on the DPC because Mr Edman failed to produce documents included in the scope of the s 95 Notice to Produce Records served on him. The Commission believed the relevant financial information might exist in an attachment to Mr Edman's emails. Further Notices to Produce Records were served on the Director General on 11 June 2019 and 6 August 2019.

Continued disclosure of the Commission proceedings

[419] On 25 June 2019, in a telephone call, Mr Edman told Mr Ellis that the Commission had written to his accountant seeking documents. Mr Edman and Mr Ellis acknowledged during the call that they should not know this fact. This was due to the non-disclosure order in place.¹⁴⁹

[420] On 25 June 2019, in a telephone conversation, Mr Edman and Mr Hallett discussed the 'approach' by the Commission to Mr Edman's accountant. Mr Hallett agreed to let Mr Edman know if his accountant had any further contact from the Commission.¹⁵⁰

[421] That day, Mr Edman also telephoned the Hon Ricky Mazza MLC. During that phone call he informed the Hon Ricky Mazza MLC that the Commission had asked Mr Edman's accountants for information.¹⁵¹

[422] On 30 July 2019, Mr Edman called the Hon Ricky Mazza MLC and discussed information arising from the Notice served on his accountant which was subject to the non-disclosure order. Mr Edman said to the Hon Ricky Mazza MLC:

¹⁴⁷ Text messages between P J Edman, B C Ellis, N C Hallett and R J Mazza, 1 April 2019.

¹⁴⁸ See First Report at [381].

¹⁴⁹ Telephone call between P J Edman and B C Ellis, 25 June 2019.

¹⁵⁰ Telephone call between P J Edman and N C Hallett, 25 June 2019.

¹⁵¹ R J Mazza transcript, private examination, 26 June 2020, pp 6-7.

I haven't heard, don't say anything, but they went after my accountant and fucking wanted shit out of there but they couldn't get anything. That was, I dunno, four months ago.

...

It's all gone now. I don't think there's much more, there's more you can talk about, fuck. But I think [member of the Upper House], was sort of stirring the pot from there a bit as well up that way, and that's fair enough. I guess that's him fucking having a shot, so yeah.¹⁵²

- [423] The information provided by Mr Edman about the Commission's investigation was subject to a non-disclosure order. (The Commission does not suggest that the Hon Ricky Mazza MLC was personally subject to this non-disclosure order.)
- [424] Mr Edman asked the Hon Ricky Mazza MLC: "So no one's been giving you the shits. You haven't heard any more about the triple C shit?" The HonRicky Mazza MLC replied: "Nah, nah."¹⁵³

The search warrant, the laptop and the hard drive

- [425] The return of the Notice to Produce Records by Mr Edman's accountant omitted documents for the three crucial months that covered the visit to Japan in 2015 and the remainder of that financial year. Mr Edman's accountant had told the Commission that the information had been 'lost in the ether'. Mr Edman had been in contact with his accountant by telephone, email and had visited his office in the period that his accountant was subject to the Notice to Produce Records. Details of this conduct may be found in the First Report at Chapter Eight.
- [426] On 14 August 2019, during a search warrant executed by the Commission at Mr Edman's private residence, a Toshiba laptop with a DPC barcode and a portable hard drive were found hidden in a piano stool.
- [427] On the same day, Mr Edman rang Mr Hallett to discuss the Commission's investigation. Mr Hallett then rang to seek Ms Cornwall's advice whether he should destroy his mobile telephone: 'I'm just wondering whether I shouldn't just ditch my phone quickly'.¹⁵⁴
- [428] Also on 14 August 2019, Mr Edman phoned Mr Hallett and expressed disappointment that the Hon Ricky Mazza MLC did not warn him:¹⁵⁵ 'Thanks Rick for fucken let, letting us know.' Mr Hallett responds: 'Oh he couldn't do that though Phil'.

¹⁵² Telephone call between R J Mazza and P J Edman, 30 July 2019.

¹⁵³ Telephone call between P J Edman and R J Mazza, 30 July 2019.

¹⁵⁴ Telephone call between N C Hallett and B L Cornwall, 14 August 2019.

¹⁵⁵ Telephone call between P J Edman and N C Hallett, 14 August 2019.

[429] The following day, 15 August 2019, Mr Hallett told Ms Cornwall he had warned Mr Edman that he should not still have the MP laptop, but that 'Phil had kept it as insurance'.¹⁵⁶

Mr Edman, Mr Ellis and Mr Hallett man the phones

[430] In the days following the discovery of the laptop and the hard drive, Mr Edman became increasingly agitated. Mr Edman's concern was that the laptop contained a 'dirt file' on other former and current sitting members. Mr Edman increased his efforts to communicate with current members of the Legislative Council. He recruited Mr Ellis and Mr Hallett in this task. Their efforts are described below.

[431] Mr Edman contacted Mr Hallett on 15 August 2019 to ask him to warn a current member of the Legislative Council.

[432] In a call with Mr Ellis the following day, Mr Edman recounted the conversation with Mr Nigel Hallett:

... I said to Nigel just say look, I've moved on, it's fine ... uhm but I just wanted to send a warning to (current member) that they have got the MP, my MP computer ... which is, stores everything, it's got everything, all the emails between all of us, Black Hand Gang dinners ... it's got the video with you, me, Nigel, and (current member) dancing with those bloody Balinese chicks...¹⁵⁷

[433] Mr Ellis also kept other Liberal Party members informed.

[434] On 15 August 2019, Mr Ellis contacted a former Minister of the Crown, who told Mr Ellis: 'I just had a call from [a member of the Procedure and Privileges Committee] cos I tried to find out from him what was going on'.¹⁵⁸

[435] Mr Ellis immediately called Mr Edman and passed on the information provided.¹⁵⁹

[436] On 15 August 2019, Mr Edman called a sitting member of the Legislative Assembly and told him:

They've got my old email, uhm, MP, er, computer ... So there'll be a lot of stuff there between me and you ... Uhm, phones, everything. They've got the whole lot. I don't think there's much for you to worry about but there is be, there will be for [sitting member]. I tried to ring [sitting member] today but maybe you can just have a quiet word with him ...

[Legislative Assembly sitting member] replied: 'Oh, streuth'.¹⁶⁰

¹⁵⁶ Telephone call between N C Hallett and B L Cornwall, 15 August 2019.

¹⁵⁷ Telephone call between P J Edman and N C Hallett, 16 August 2019.

¹⁵⁸ Telephone call between B C Ellis and a former Minister of the Crown, 15 August 2019.

¹⁵⁹ Telephone call between B C Ellis and P J Edman, 15 August 2019.

¹⁶⁰ Telephone call between P J Edman and a sitting Member of the Legislative Assembly, 15 August 2019.

[437] On 16 August 2019, Mr Edman received a text message from a member of the Procedure and Privileges Committee (not the Hon Ricky Mazza MLC) offering support.¹⁶¹

[438] On 21 August 2019, Mr Edman and Mr Hallett discussed the importance of the Commission not having access to the laptop and how they communicated this message:

Edman: *And that fucking (current member) and his fucking cronies better fucking get off their asses and figure out what they're going to do ...*

Hallett: *Oh that's right you know, and also there's a couple of other members in there that the triple C will just grab on.*

Edman: *That's right, they will if they use the film on my computer hundred percent.*

Hallett: *As I said to (current member) this morning, you guys better get off your asses and start going to work, because there'll be some carnage. As I said every email that Phil's done regarding the Whip's job is on that.*

Edman: *And and all the, and all the parliamentary's fucking bullshit booze-ups.*¹⁶²

[439] On 30 August 2019,¹⁶³ Mr Edman talked to another member of the Liberal Party stating: 'There's a lot of shit on my MP computer ... and unfortunately, they've got all of that ... and that's all going to be exposed, including [current member].'

[440] In a series of text messages to the Hon Ricky Mazza MLC between 4 and 6 September 2019, Mr Edman communicated the relevance of the laptop:

Few fun videos on that laptop

CCC also has the backup drive for the MP computer

Wine trip

*My point is that the ccc commissioner is eluding to a criminal prosecution regarding tax evasion. That's what it seems they want to prove.*¹⁶⁴

[441] In a telephone call Mr Edman told Mr Ellis that he had also communicated by text to the Hon Ricky Mazza MLC, to warn the Hon Ricky Mazza MLC

¹⁶¹ Telephone call between P J Edman and a member of the Procedure and Privileges Committee, 16 August 2020.

¹⁶² Telephone call between P J Edman and N C Hallett, 21 August 2019.

¹⁶³ Telephone call between P J Edman and member of the Liberal Party, 30 August 2019.

¹⁶⁴ Text message from P J Edman to R J Mazza, 4 September 2019, 5 September 2019 and 6 September 2019.

to get the back-up drive for the laptop back from the Commission. Mr Edman said to Mr Ellis:

*they wanted my computer back 'cause obviously Nigel did a good enough job making sure [current Legislative Council member] knows there's stuff on there that will fucking kill 'em all off ... you don't want that getting in the fucking wrong hands. You know?*¹⁶⁵

- [442] Mr Edman's communications with sitting members centred on the political impact of the contents of the laptop seized from his residence during the search warrant. In one call, Mr Edman referred to the laptop as containing 'a little shit file in case you need it on people that fucken piss you off.'¹⁶⁶
- [443] The Commission has not yet been able to analyse the contents of the laptop as it was produced, to the Clerk of the Legislative Council in September 2019 and has been retained since then.
- [444] Mr Ellis became aware that his accountant had received a s 95 Notice to Produce Records of taxation information to the Commission. This s 95 Notice to Produce Records was subject to a non-disclosure order.

More breaches of section 99 of the *Corruption, Crime and Misconduct Act 2003*

- [445] On 23 October 2019 Mr Ellis told a senior member of the Liberal Party that his 'accountant he got a suppression to deliver the last three years of uh, my electoral claims and my electorate allowance.'¹⁶⁷
- [446] Mr Edman informed Mr Hallett that he was being examined by the Commission in October 2019.¹⁶⁸ In turn, Mr Hallett passed this fact on to Ms Bonnie Cornwall.¹⁶⁹
- [447] Ms Cornwall had been summonsed to give evidence on 19 June 2020. Her examination was subject to a non-disclosure order. However, Mr Hallett and Mr Edman were aware that Ms Cornwall was being examined by the Commission on that date. In a WhatsApp messaging group between the three of them (plus another female) a message of support was sent to Ms Cornwall.¹⁷⁰

¹⁶⁵ Telephone call between P J Edman and B C Ellis, 5 September 2019.

¹⁶⁶ Telephone call between P J Edman and a former Member, 4 September 2019.

¹⁶⁷ Telephone call between B C Ellis and a female, dated 23 October 2019.

¹⁶⁸ Telephone call between N C Hallett and P J Edman, 23 October 2019.

¹⁶⁹ Telephone call between N C Hallett and P J Edman, 23 October 2019.

¹⁷⁰ WhatsApp messages between N C Hallett, P J Edman, B L Cornwall, and other female, 19 June 2020.

Destruction of evidence

- [448] Further examinations in connection with this investigation took place in June 2020. Mr Ellis was one of the witnesses who was re-examined. He was required to give evidence on 22 June 2020.
- [449] On 20 June 2020, Mr Ellis received a WhatsApp message from Mr Edman asking Mr Ellis to give him a call. Mr Ellis gave evidence that, in a further message from Mr Edman that day, Mr Edman told Mr Ellis 'that he knew that I was going to see the CCC, and that you - it would be advisable to get rid of my phone, because they want to keep it'.¹⁷¹
- [450] Mr Ellis took Mr Edman's advice and bought a new phone the same day.
- [451] Mr Edman could only have known of Mr Ellis' imminent examination as a result of a breach of Mr Ellis's non-disclosure obligation.
- [452] On the same day, 20 June 2020, Mr Edman also warned Mr Hallett to get rid of his phone before attending at the Commission: 'Get rid of your phones!' 'Ring .me', 'Urgent'.¹⁷²
- [453] When Mr Ellis gave evidence to the Commission on 22 June 2020, he admitted that he had bought a new mobile telephone two days earlier, on the advice of Mr Edman.
- [454] Mr Ellis also gave evidence under oath that he had disposed of the old phone in a rubbish bin at the Westfield Whitford City Shopping Centre. It appears Mr Ellis lied about throwing the phone in the bin. Video footage of Mr Ellis' visit to the shopping centre did not show him stopping at a rubbish bin.
- [455] On 17 August 2020, the Commission executed a search warrant to obtain Mr Ellis' old phone. While the search warrant was being executed, Mr Ellis told Commission officers that he had not discarded the phone in a shopping centre bin at all. He told them 'I threw the phone away into the ocean' and it was 'off the J Jetty at Hillary's Boat Harbour, Sorrento Quay'.
- [456] Mr Ellis informed the Commission that the disposal of his mobile telephone did not mean that evidence was destroyed or that the disposal of the telephone was done in order to destroy evidence and put it out of the Commission's reach. Mr Ellis said that the data from his old phone had been transferred to the new telephone he purchased on 20 June 2020. The new telephone and its contents were made available to the Commission on 22 June 2020.

¹⁷¹ B C Ellis transcript, private examination, 22 June 2020, p 52.

¹⁷² WhatsApp messages between P J Edman and N C Hallett, 20 June 2020.

[457] The Commission does not accept Mr Ellis' position. It does not explain why Mr Ellis would want to throw his old phone into a public bin or into the ocean. While the Commission accepts that Mr Ellis conducted a partial transfer of data to his new phone, the Commission's enquiries identified that only a subset of data was actually transferred.

The Procedure and Privileges Committee of the Legislative Council

[458] As indicated above, on 12 April 2019, the Commission served a s 95 Notice to Produce Records on the Director General of the DPC.

[459] Further notices to produce were served on the Director General on 11 June 2019 and 6 August 2019.

[460] In mid-May 2019, the Legislative Council's Procedure and Privileges Committee became aware that the Commission was seeking copies of the email cache of the three former members of the Legislative Council held by DPC.

[461] The question whether particular documents and communications of the former members were subject to parliamentary privilege (and not to be disclosed to the Commission) was a question that fell to be resolved by the Procedure and Privileges Committee of the Legislative Council.

[462] At all material times, the Hon Ricky Mazza MLC was a member of the Committee.

[463] The Hon Ricky Mazza MLC has indicated he was concerned about communicating with Mr Edman during 2019. The Hon Ricky Mazza MLC said to the Commission that:

- once he started receiving text messages from Mr Edman, he put a block on those text messages for a period before temporarily removing the block and then reinstating it;
- at no time did he engage in any discussions with Mr Edman or others in relation to the subject matter of the investigation; and
- at no time did he disclose the subject matter of the investigation to other parties.

[464] The Hon Ricky Mazza MLC did however receive information from Mr Edman. Mr Edman persistently tried to contact the Hon Ricky Mazza MLC, as detailed above.

[465] The Committee opposed the Commission obtaining access to the email caches on the basis that some material may be subject to parliamentary

privilege, and not able to be produced to the Commission under a s 95 Notice to Produce Records. This is canvassed in '*Report 55 Standing Committee on Procedure and Privileges A Refusal to Comply with a Summons to Produce Documents*' tabled in Parliament on 14 August 2019.

[466] On 14 August 2019, the Hon Kate Doust MLC, as the President of the Legislative Council and Chair of the Privileges Committee, instituted proceedings in the Supreme Court against the Commission. The proceedings sought relief that would have the effect of impeding Commission access to the email cache using the s 95 Notices to Produce Records served on the Director General on 12 April 2019, 11 June 2019 and 6 August 2019. The Supreme Court proceedings against the Commission have not yet been resolved.

[467] During his private examination, the Hon Ricky Mazza MLC gave evidence that he received 'a warning text message' from Mr Edman shortly after the Commission had executed search warrants on 14 August 2019 at Mr Edman's residence and business premises, stating words to the effect of: 'They have a laptop computer and its got photos of you and (sitting member) on it'. The Hon Ricky Mazza MLC claims he did not respond to Mr Edman and that he deleted the message.¹⁷³

[468] The Hon Ricky Mazza MLC said in evidence that he did not respond and gave evidence that his contact with Mr Edman 'was appropriate', 'and on my wife's suggestion, I put a block on my phone from that point forward.'

Counsel assisting: And since that date has Mr Edman attempted to contact you in any way?

Mazza: For a reason that I - looking back I don't understand, I unblocked him. I was going through my phone, a couple of things, and I thought I haven't heard from him so I'll just unblock it. And I was on my way to Perth to attend Parliament for that parliamentary week, and a text came through that said "Wine trip? So I reapplied the block.

[469] The Hon Ricky Mazza MLC said in evidence to the Commission that he did not respond to Mr Edman and that he deleted the message.¹⁷⁴ He told the Commission that he felt uncomfortable because "I'm on the Procedure and Privileges Committee and so I certainly wanted to keep arm's length as far as that was concerned."¹⁷⁵

¹⁷³ R J Mazza transcript, private examination, 26 June 2020, p 8.

¹⁷⁴ R J Mazza transcript, private examination, 26 June 2020, p 8.

¹⁷⁵ R J Mazza transcript, private examination, 26 June 2020, p 10.

Credibility

- [470] The Commission takes all conduct into account when assessing the credibility of a witness, and assessing the cogency of their evidence about how they spent their parliamentary allowances. The conduct of each of Messrs Edman, Mr Hallett and Mr Ellis described above has adversely affected their credibility.
- [471] It has not been necessary to form an opinion as to the Hon Ricky Mazza MLC's credibility as a witness because he conceded in his evidence that the wine trip to Adelaide was predominantly for private purposes.

CHAPTER SEVEN

Conclusion

- [472] As stated in the First Report, Parliament has no oversight over the use, acquittal or accounting of the parliamentary electorate allowance paid fortnightly to each member.
- [473] DPC has limited oversight over reimbursement allowances such as the electoral travel allowance which applies to regional members and their families travelling between their electorate and Perth.
- [474] The responsibility for setting allowances available to members of Parliament was removed from Parliament with the establishment of SAT under the *Salaries and Allowances Act 1975*.
- [475] The acquittal of electorate allowances and other salary payment allowances is an administrative matter for each member.
- [476] Decisions on claims for parliamentary allowance deductions were made entirely by the members.
- [477] Decisions as to the expenditure of parliamentary allowances were made entirely by the member receiving the allowance.
- [478] Decisions made about the processes undertaken in each electorate office to account for and acquit the expenditure of the parliamentary allowances monies, were the responsibility of each member.
- [479] The Commission's First Report concluded that because neither SAT, DPC nor Parliament conducted audits of electorate allowance expenditure, it was impossible to say whether or not the behaviour illustrated by Mr Edman, was representative of a widespread use of the electorate allowance for private benefit. This report enables it to be concluded that Mr Edman was not an isolated offender.
- [480] There is also a lack of oversight in respect of the engagement and management of electorate staff.
- [481] Officers employed to work in the electorate office of each member of Parliament are not subject to usual public sector standards of recruitment.
- [482] There appears to be minimal oversight of their performance. Members are given wide discretion in managing their electorate office. This is a potential misconduct risk.

[483] The Commission has formed opinions of serious misconduct in respect of the former members, Mr Brian Ellis and Mr Nigel Hallett as identified in this Report.

[484] 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.¹⁷⁶

[485] The Commission's misconduct jurisdiction is in relation to possible corrupt behaviour. Carelessness, lack of attention to detail, even incompetence, are not states of mind sufficient to form an opinion of corruption. Corruption involves a guilty state of mind. The Commission has carefully considered the evidence of each of the former members of Parliament and the current member of Parliament examined.

[486] The members had a pecuniary interest in maximising the taxation benefit that would be received from the ATO, so their assessable income from the electorate allowance could be matched by a claimed expenditure. Some expenditure was plainly for private purposes and the electorate allowance should not have been used.

[487] The Commission heard evidence that particular claims in respect of some private expenses was unintentional. However, deliberate decisions were made about the acquittal of the allowances.

[488] The repeated nature of such decisions by Mr Hallett and Mr Ellis, the period of time over which such decisions were made and their conduct as witnesses, lead to an inference on the balance of probabilities, that each of them knew that his electorate allowance was being used for personal matters beyond what was permissible. Mr Hallett and Mr Ellis were not unsophisticated; they were senior public officers.

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

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

[491] In respect of Mr Hallett's conduct as a public officer relating to the employment of Ms Cornwall, the Commission has formed an opinion of serious misconduct.

[492] The Commission has not formed an opinion of serious misconduct against Ms Cornwall. The question whether Ms Cornwall falls within the

¹⁷⁶ CCM Act s 217A.

Commission's jurisdiction as a public officer is intimately connected with the unresolved issue as to whether she was in fact a legitimate employee. While it is highly likely that Ms Cornwall falls within the jurisdiction because she was 'a person employed by the State of Western Australia'¹⁷⁷ the misconduct responsibility rests on the member who employed her and managed her continued employment.

- [493] In respect of the Hon Ricky Mazza MLC's conduct as a public officer relating to his use of his electorate allowance during his 2016 wine tour with Mr Hallett and Mr Edman, the Commission does not form an opinion of serious misconduct.
- [494] Early in its investigation, the Commission found multiple examples of misuse of electorate allowances by Mr Hallett and Mr Ellis over a significant period of time. The material available to the Commission in respect of the use by the Hon Ricky Mazza MLC of his electorate allowance is more limited. Of course, the Commission has not conducted an audit of all electorate allowance by Members of Parliament or even by the Hon Ricky Mazza MLC, Mr Hallett, Mr Ellis and Mr Edman. Nor is it able to do so. The Commission has responded to allegations made and materials identified during its investigations.
- [495] Although the Hon Ricky Mazza MLC accepted that his participation in the 2016 wine tour was expenditure of the electorate allowance for private purposes, the Commission does not have information to suggest that the Hon Ricky Mazza MLC's conduct was systematic or egregious. In this respect, his situation differs from that of Mr Hallett and Mr Ellis. Accordingly, the Commission does not conclude that his conduct was 'corrupt'.
- [496] The Commission considered whether it was appropriate to identify the Hon Ricky Mazza MLC. The Commission concluded that it was appropriate to name him in the report as his conduct is an example of expenditure which does not reflect the use of the allowance intended by the Determination. It shows the extent of the misconduct risk inherent in the lack of oversight of the electorate allowance. The Hon Ricky Mazza MLC occupies a senior position. There is, therefore, a public interest in identifying him.
- [497] At the time of the expenditures considered in this Report, the allowances payable to members were governed by the SAT Determinations issued on 24 June 2014, 23 June 2015 and 30 November 2017.

¹⁷⁷ *Criminal Code* s 1.

[498] In August 2020, SAT reviewed all allowances provided to members of Parliament, focussing on the effectiveness of the allowances as well as enhancing transparency and accountability.

[499] At the time of handing down the August 2020 SAT report, the Tribunal Chair, Professor Margaret Seares, stated:

The review showed that Western Australia has fewer accountability mechanisms compared to other Australian jurisdictions, and the Tribunal has concluded that arrangements in this State are now out of step with contemporary standards.

In recent years, abuse of allowances by a very small number of people has somewhat eroded public confidence in elected members from all levels of government, the vast majority of whom do the right thing in terms of use of public money.

Adjusting the mechanisms for provision of members allowances, including enhancing transparency and accountability, will improve the effectiveness of those allowances and public confidence in Members of Parliament.¹⁷⁸

[500] SAT indicated there would be changes to the allowances system effective from March 2021. In particular, the changes include the establishment of principles by which members must abide when using allowances, establishing a system of reporting for use of allowances, restoring the Parliamentary Travel Allowance to a draw down system which includes reporting requirements.

[501] Detailed analysis of these changes are provided in the *SAT Report on Allowances provided to Members of Parliament* tabled 10 August 2020.

[502] SAT's changes to the allowances payable to members are to be welcomed.

[503] The Director General of the DPC has indicated to the Commission a commitment to strengthening the environment for managing electorate staff, and implementing measures to facilitate greater oversight of electorate office staff. DPC has started the process of introducing a Code of Conduct for electorate office staff. The Commission recommends that this initiative should be implemented.

[504] It might also be the occasion for the implementation of a Code of Conduct for members of the Legislative Council. This is of course a matter for the Upper House.

[505] The Commission also recommends that the legislative and quasi-legislative procedures required for the engagement of public

¹⁷⁸ Salaries and Allowances Tribunal media alert, 10 August 2020.

servants should apply to the recruitment of electorate staff, with such modifications as are mandated by the nature of their employment.

- [506] The Commission's investigation has been longer than anticipated. In part this is due to the COVID-19 pandemic. It was also due to attempts to deflect the Commission from the investigation of the alleged serious misconduct.
- [507] Mr Edman, Mr Ellis and Mr Hallett colluded amongst themselves and took opportunities to warn other interested parties of the progress of the investigation, such that the Commission believes evidence was lost and destroyed.
- [508] The Commission intends to compile briefs of evidence in relation to suspected criminal offences, including offences against the *Corruption, Crime and Misconduct Act 2003* that will be referred to an appropriate prosecuting authority.
- [509] The lack of accountability around the use of parliamentary allowances and the management of electorate offices is out of step with the oversight and accountability framework imposed on the rest of the public sector.
- [510] Whilst there is a balance to be struck between requiring accountability and allowing members to look after the needs of their electorate without excessive oversight, it must be noted that members do so by spending public money. This public money is to be dispersed for a particular purpose. The SAT Determination has clearly articulated that purpose since 1975: 'For the benefit of the electorate'.