

HON RICK MAZZA

“Report on Electorate Allowances and Management of Electorate Offices” — Personal Explanation

HON RICK MAZZA (Agricultural) [5.05 pm] — by leave: I wish to make some comments on the report of the Corruption and Crime Commission tabled today titled “Report on Electorate Allowances and Management of Electorate Offices”. The report does not suggest any adverse finding against me; however, I wish to make some comments on it.

Paragraph 195 of the report notes that I argued that the Corruption and Crime Commission has mischaracterised the electorate allowance as “public money”, because once the allowance was paid to me, the money became my property and consequently I was lawfully entitled under the terms of the determination to spend the money as I saw fit, in the same way as I deal with my salary. Under the current determination, this view can easily be formed, for the following reasons.

The “Determination of the Salaries and Allowances Tribunal: Remuneration of Members of Parliament”, made on 30 November 2017 under section 6 of the Salaries and Allowances Tribunal Act 1975 makes it clear that the electoral allowance, which is dealt with in part 3 of the determination, upon payment becomes the property of the member, under section 2.1(5). At this time, the funds clearly cease to be public money. In this respect, the determination draws no distinction between the base remuneration and additional remuneration—that is, salary—provided for in part 2 of the determination, and the electoral allowance. The absence of a distinction is deliberate, as both matters are dealt with in section 2.1(5). Consistent with this, the bank references for all electoral allowance payments I have received states “Salary”. Further, section 3.1(2) of the determination notes that the electoral allowance may be used at the member’s discretion but shall not be used for campaigning, electioneering or political party promotion. This may be interesting for those members who pay a levy to their party and claim a tax deduction. The words “shall not” are mandatory and clearly prohibit the use of the electoral allowance for the purposes specified in section 3.1(2).

Section 3.2 of the determination deals with the electorate allowance. Section 3.2(2) states that it is “intended” that the electorate allowance will be used for expenses incurred to assist with serving the electorate and includes seven examples of expenses of that type. The words “it is intended” in section 3.2(2) clearly differ in effect and intent from the words “shall not be used” in section 3.1(2). The relevant provisions of the determination, as set out, are the same in all respects as the provisions of the “Determination of the Salaries and Allowances Tribunal: Remuneration of Members of Parliament”, which was made and which came into operation on 15 April 2016. This interpretation of section 3.2(2) is consistent with sections 2.1(5) and 3.1(2) of the determination, which make it clear that immediately upon payment of the allowance, it becomes the property of the member and is able to be used at the member’s discretion. It is also important to note that the determination does not require members to account for the manner in which the electoral allowance is spent, and in particular it does not require the keeping of records to justify the expenditure of the electoral allowance. The Corruption and Crime Commission itself acknowledged in its earlier report “Misconduct Risks in Electoral Allowances for Members of Parliament”, dated 17 December 2019, at paragraph 37, that Parliament has no oversight over the use, acquittal or accounting of the electoral allowance paid fortnightly to each member.

Consistent with the fact that the electoral allowance becomes the property of the member immediately upon payment, there is no provision for any part of the electoral allowance to be repaid if it is not expended in accordance with the statement of intention in section 3.2(2). The Corruption and Crime Commission itself acknowledged at paragraph 80 of its earlier report that a member is not required to return any unspent electoral allowance. There is no provision for a member to claim any amount in excess of the electoral allowance should its expenditure on matters set out in section 3.2(2) exceed the electoral allowance payment. Consistent with the money becoming the property of the member, at which time it clearly ceases to be public funds, the Australian Taxation Office treats the electoral allowance as income for taxation purposes. ATO taxation ruling TR1999/10 states at paragraph 8 —

A payment is an **allowance** when a Member is paid a definite predetermined amount to cover an estimated expense. It is an amount contributed towards an expected expense, and is made regardless of whether the Member incurs the expected expense. The spending of the allowance is at the complete discretion of the Member.

Paragraph 9 states —

The receipt of an allowance does not, in itself, entitle a Member to a deduction ...

That means that the electoral allowance could be acquitted on matters that may not satisfy the test for deductibility.

All the above factors support a conclusion that the electoral allowance, like a member’s salary, is able to be spent by the member as and when they see fit, subject only to the prohibitions of section 3.1(2) against its use for campaigning, electioneering or political party promotion. In fact, the determination, in stating that both the salary and the electoral allowance become the immediate property of the member, treats these payments in the same manner.

At the time of my induction into Parliament, I, like others here, was informed that the electoral allowance was mine to spend as I saw fit but if it was not acquitted on parliamentary business, I would need to pay income tax on that money. Despite the above, the CCC has suggested at paragraph 228 of the 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.

Further, in paragraph 247 of its report, the CCC states —

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.

Further, at paragraph 496, the CCC has concluded that my conduct is —

... an example of expenditure which does not reflect the use of the allowance intended by the Determination.

For the reasons set out above, no such duty or obligation is imposed by the determination, and I have not, at any time, used my allowance in a way prohibited by the determination.

Also, at paragraph 486 of the report, the CCC has suggested —

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.

Again, the determination simply does not prohibit the use of the electoral allowance for private purposes. I also pay significant additional tax each year on my income. I strenuously deny that I incorrectly used my electoral allowance. I may have some errors in my tax return, which, at my earliest opportunity, I will have reviewed and submit an amended return as required, but otherwise I reject any suggestion I have not properly acquitted my electoral allowance.

I would also like to point out that I have no connection to Craig Peacock with whom I was only acquainted on three occasions. As a trade commissioner to Japan for nearly 20 years who had hosted many members of Parliament from various political parties, including ministers and Premiers, I had no reason to suspect anything untoward when invited to dinner. There were no discussions at that dinner in relation to the reasons for his presence in Perth.

The report at paragraphs 463 and 464 also notes that I was the recipient of certain information from Mr Edman. This was clearly outside of my control as I cannot stop people from sending me messages. Furthermore, once I started receiving messages from Mr Edman, I blocked Mr Edman on my phone. At no time did I engage in any discussions with Mr Edman or others in relation to the subject matter of the investigation, and at no time did I disclose the subject matter of the investigation to other parties. I, at all times, respected and maintained a strict regime of confidentiality, particularly as a former member of the Standing Committee on Procedure and Privileges, and as I have on any parliamentary committee I have served on.

In conclusion, I am pleased that this report has been tabled as it highlights the need for greater clarity around the application of the electoral allowance.