

**For Official Use Only**

Department of Finance Report

*Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

## **1. Executive Summary**

- 1.1 On 9 January 2017, the Hon Sussan Ley MP wrote to the acting Secretary of Finance, Dr Stein Helgeby, asking that the Department review all her Ministerial travel to the Gold Coast to ensure it was “properly accounted for”. Ms Ley noted the Secretary of the Department of Prime Minister and Cabinet was undertaking a concurrent investigation of her travel claims at the Prime Minister’s request.
- 1.2 In her letter, Ms Ley asked that she be invoiced for the costs of certain specified travel in 2014 and 2015, with a 25% penalty applied to these costs. She also advised that, should it be deemed appropriate that she repay the department for further travel, she would do so with the 25% penalty applied.
- 1.3 In carrying out the review, the Department first compiled a table setting out each use of a travel or travel-related work expense by Ms Ley and her partner where the Gold Coast was identified as either a final destination or transit point. To the extent that it was possible, the Department sorted expenses into “trips”. Each trip was represented by a timeline marked with the commencement of travel, overnight stays, intermediary travel and return. Ms Ley was then to supplement the timeline with details of the purpose of the trip.
- 1.4 The Department held a series of meetings with Ms Ley and her staff on 12 and 31 January and 1 February 2017. During these meetings and in subsequent phone communications, Ms Ley’s input to the review was provided and discussed and the circumstances of all Gold Coast travel as now represented in the final table were agreed. The final table has been included at Attachment 10.
- 1.5 Following an assessment of all travel and travel-related work expenses accessed by Ms Ley within the scope of the review, the Department identified one instance where travel was not in accordance with applicable rules. On 9 May 2015, Ms Ley travelled by COMCAR from Brisbane to the Gold Coast where she was to be meeting with members of the public. After taking Ms Ley to the location of her overnight accommodation, the COMCAR was then directed to take her to the location of a property auction. This leg of the trip was not for official purposes. At her request, Ms Ley has been invoiced for the full cost of the COMCAR journey on 9 May 2015, together with the Travelling

**For Official Use Only**

Department of Finance Report

*Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

Allowance she had been paid for that night. In both instances, the invoice includes a 25% penalty.

- 1.6 For all other travel within the scope of this review, based on records held by the Department and on the further information and explanation provided by Ms Ley, no elements were found to be in breach of legislated rules or published guidance.
- 1.7 There were occasions where the itinerary of a trip was shaped in part by considerations that could be categorized as personal in nature. Ms Ley had given thought to such matters at the time of submitting her claims and did not seek to be paid Travelling Allowance for a number of overnight stays where the reason was less directly connected to the primary purpose of the trip and attributable to more significant elements of personal consideration.
- 1.8 In the course of the review, Ms Ley identified further costs associated with elements of travel that she felt might be considered more personal in nature, or where her recollection of events was imprecise. She has sought to be invoiced for these costs, with a 25% penalty added. Ms Ley has now voluntarily repaid \$5,232.20.

**For Official Use Only**

Department of Finance Report

*Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

## **2. Introduction: Background, Scope and Process for Review**

- 2.1 This report details the review of the use of travel and travel-related work expenses in the Gold Coast by the Hon Sussan Ley MP over the Review Period. Ms Ley requested the review in her letter dated 9 January 2017 to the acting Secretary of the Department of Finance, Dr Stein Helgeby (copy at Attachment 1).

### ***Matters Raised in Media Reports***

- 2.2 Ms Ley's request followed a series of media reports on 5-6 January 2017 that questioned her use of travel and travel-related work expenses on the Gold Coast in May 2015. The reports alleged she had visited the Gold Coast in her capacity as Health Minister and attended an auction for personal purposes during the trip. Subsequent media reports then commented on other aspects of Ms Ley's travel during her time as Minister, with particular reference to the Gold Coast.
- 2.3 In a media statement on 8 January 2017, Ms Ley indicated she would ask the Department of Finance to review her ministerial travel to the Gold Coast. On 9 January, the Prime Minister announced that he had asked the Secretary of the Department of Prime Minister and Cabinet for *advice in relation to the Statement of Ministerial Standards relating to travel claims made by the Minister for Health, Aged Care and Sport, the Hon Sussan Ley MP*. Ms Ley's letter to the Department of 9 January acknowledged this concurrent review.
- 2.4 Ms Ley announced during her media statement on 9 January 2017 that she was standing aside as Minister. During this statement she addressed multiple matters raised in media reports regarding her Gold Coast travel. This statement has been included at Attachment 2.

### ***Scope of the Review***

- 2.5 Ms Ley asked the Department to *review all my Ministerial travel to the Gold Coast, since I was sworn in as Minister in September 2013, to ensure it is properly accounted for*. Ms Ley noted that if it was deemed appropriate that she repay the cost of any travel, she would do so with the 25% penalty applied.
- 2.6 The Department examined each instance when it had met the cost of Ms Ley's access to air and ground transport to and through the Gold Coast and associated payments of Travelling Allowance. The Department also examined payments made for the travel of Ms Ley's spouse that were associated with travel to or through the Gold Coast.

### ***Overview of Process of the Review***

- 2.7 Details of the work expenses reviewed and the rules and administrative processes governing them, are set out in Part 4 *Ms Ley's Work Expenses*. Details of the data reviewed and the specific process for review of each expense by the Department are set out in Part 5 *Processes and Data Reviewed*. Outcomes of the review are set out at Part 6.

### 3. Work Expenses Framework

#### *The Work Expenses Framework*

3.1 The purpose of the work expenses framework is to support federal parliamentarians perform their duties. It also recognises that such duties often require them to be away from their homes. The support services and allowances provided to parliamentarians are generally referred to as 'work expenses', and are provided under a complex legal framework consisting of Acts, Regulations, determinations of the Remuneration Tribunal and the Minister, executive decisions, procedural rules, guidelines and conventions.

(1) A diagram of the sources of authority for parliamentary work expenses (produced in the *Report of the Review: An Independent Parliamentary Entitlements System February 2016* (Tune-Conde Review Report))<sup>1</sup> is at Attachment 3.

(2) Travel-related work expenses are chiefly provided under the *Parliamentary Entitlements Act 1990* (the PE Act) and determinations of the Remuneration Tribunal, currently in particular:

(a) *Remuneration Tribunal Determination 2012/04: Members of Parliament – Entitlements* (Determination 2012/04)

(b) *Remuneration Tribunal Determination 2016/08: Members of Parliament – Travelling Allowance* (Determination 2016/08).

3.2 The conditions to be satisfied vary from expense to expense and from time to time as the work expenses framework is amended (a list of the relevant principal Remuneration Tribunal Determinations during the Review Period is at Attachment 4). For example:

(1) Eligibility for different work expenses may apply according to the office held by the parliamentarian, or the geographical size of the electorate.

(2) Some work expenses are capped numerically or by dollar value.

(3) Many of the work expenses are 'purpose based': that is, the work expenses can only be accessed for an eligible purpose such as 'parliamentary', 'electorate', or 'official business', but not for 'party business' or personal purposes. This is because the support is provided for work-related purposes, and should not provide personal benefit.

#### *Complexity of the Work Expenses Framework*

3.3 The legal framework for provision of parliamentary work expenses is *complex, confusing, incomplete, contradictory and immensely difficult to follow and administer*<sup>2</sup>. The Tune-Conde Review Report lists conditions within the framework that foster duplication, overlapping of work expenses, and splitting of broader work expenses (such as travel) between different

---

<sup>1</sup> Tune-Conde Review Report, Appendix D, p146

<sup>2</sup> Tune-Conde Review Report, p2, paragraph 6

## For Official Use Only

### Department of Finance Report

#### *Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

sources of authority such as the PE Act and Remuneration Tribunal determinations and states that

*...the complexity of the system's rules and regulations imposes stress on parliamentarians and their staff, and on those who administer the system<sup>3</sup> with travel expenses the most complex and problematic aspect<sup>4</sup>.*

- 3.4 As part of its consideration, the Tune-Conde Review Committee referred to previous reviews of parliamentary travel and other work expenses by the former government, the Department and the Australian National Audit Office. It concluded that *(n)otwithstanding reforms undertaken by successive governments in recent years, the fundamental weaknesses in the framework remain.*<sup>5</sup> The Review Committee made 36 recommendations to fundamentally reform the parliamentary work expenses systems, all of which the government supported in principle for implementation.<sup>6</sup>
- 3.5 In his statement on 13 January 2017 the Prime Minister, the Hon Malcolm Turnbull MP, announced the government's intention to establish an *independent parliamentary expenses authority which will be a compliance, reporting and transparency body*<sup>7</sup>. Legislation to establish the new authority was introduced to the Parliament on 10 February 2017 in the form of the *Independent Parliamentary Expenses Authority Bill 2017*.
- 3.6 In his second reading speech the Prime Minister stated that, in addition to other functions, *(t)he new authority is intended to provide clear and consistent guidance, advice and rulings for parliamentarians. Clear advice and guidance is crucial.*<sup>8</sup> The Prime Minister also addressed the complexity of the current work expenses framework.

*Under the current system, as we know, parliamentarians and administrators navigate a complex work expenses framework that is comprised of legislation, regulations, determinations, procedural rules, guidelines, conventions and decisions of executive government.*

- 3.7 These remarks are in addition to his 13 January 2017 statement, where the Prime Minister identified that within the current system *(work expenses) decisions have got to be the judgement of the individual Member of Parliament or Minister and clearly there will be areas where people's judgement will differ, and, therefore, MPs and Senators and Ministers have to be responsible for their judgement.*
- 3.8 In introducing the bill to the House, the Prime Minister indicated the government's intention to develop further bills to address parliamentary work expenses and reiterated the government's continued commitment to implementing the Tune-Conde recommendations. At the time of writing, the bill was still before the Parliament.

<sup>3</sup> Tune-Conde Review Report, p2, paragraph 6

<sup>4</sup> Tune-Conde Review Report, p3, paragraph 15

<sup>5</sup> Tune-Conde Review Report, p40, paragraph 3.30

<sup>6</sup> Media Release MC 15/16: *An Independent Parliamentary Entitlements System*, Senator the Hon Mathias Cormann, 23 March 2016 [www.financeminister.gov.au/media-release/2016/03/23/independent-parliamentary-entitlements-system](http://www.financeminister.gov.au/media-release/2016/03/23/independent-parliamentary-entitlements-system) accessed on 4 July 2016

<sup>7</sup> Prime Minister the Hon Malcolm Turnbull MP, Press Conference – Sydney, 13 January 2017 <http://malcolmturnbull.com.au/media/press-conference-sydney3> accessed 6 February 2017

<sup>8</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 9 February 2017 (Prime Minister, the Hon Malcolm Turnbull MP)

**For Official Use Only**

Department of Finance Report

*Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

**Responsibility for Work Expenses and Self-Assessment by Parliamentarians**

3.9 While the Department provides information, advice and assistance to parliamentarians concerning their work expenses and how to access them, each parliamentarian is responsible for, and bears the risk of, his or her use of work expenses. This is because the work expense is provided to the parliamentarian, generally for a particular purpose or purposes (often 'parliamentary', 'electorate' or 'official business') and it is the parliamentarian who ultimately decides whether a particular activity meets the purpose test of the work expense.

(1) The information provided by the Department includes the *Senators and Members' Entitlements* handbook (the Handbook), which covers work expenses available to all Senators and Members.

(2) Supplementary elements to the handbook and letters of guidance are provided for different categories of office-holder, such as Ministers and Shadow Ministers.

3.10 The role of the Department is detailed in paragraph 1.4 of the Handbook but reiterated throughout. The introduction to the Handbook states *[w]here you are unsure of an entitlement, please contact your Entitlements Manager before taking any action or decision on the basis of any material contained in these publications alone.*

3.11 Paragraph 1.3.2 of the Handbook headed 'Accountability' (an extract from Part 1.3 of the Handbook is at Attachment 5) emphasises the risks inherent in the work expenses framework and the need for parliamentarians to manage such risk:

*The entitlements of Senators and Members attract close media attention and, from time to time, criticism that they are overly generous and open to abuse. ...In deciding whether or not to access entitlements, Senators and Members should adopt a risk assessment approach by asking themselves the following questions:*

Is It Within The Rules?	How Would It Look? Is It Defensible?	What Is Overall Risk Assessment?
<i>Clearly yes</i>	<i>Fully defensible</i>	<i>Low risk</i>
<i>Technically yes</i>	<i>Some difficulty in defending publicly</i>	<i>Medium risk</i>
<i>Arguably yes</i>	<i>May/would attract criticism</i>	<i>High risk</i>
<i>Clearly no</i>	<i>Would certainly attract criticism</i>	<i>Unsafe/unlawful</i>

**The Role and Importance of Certification by Parliamentarians**

3.12 Certification by parliamentarians that they have accessed their work expenses in accordance with the terms and conditions of the head of authority is a key accountability mechanism. The main concern of certification is that the use of work expenses complies with the work expenses framework. Anomalies or inaccuracies in transaction data can be corrected without affecting the character of the certification (for example, data errors could reveal that a capped work expense had been exceeded, but this would not change the character of a certification given in good faith that a work expense was appropriately accessed).

## For Official Use Only

### Department of Finance Report

#### *Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

- 3.13 Certification is particularly important because an eligibility criterion for many work expenses is that the activity is for 'parliamentary', 'electorate', or 'official business', which requires a subjective assessment by the parliamentarian. Rarely is there objective evidence of the individual's subjective intention when accessing work expenses. The importance of certification is also emphasised in paragraph 1.3.2 of the Handbook (see Attachment 5):

*The certification process is an integral part of the accountability framework that, among other things, serves to protect Senators and Members from unwarranted criticism regarding their use of entitlements. ... In administering the various entitlements, [the Department] frequently relies on the certification of the relevant Senator or Member that their use is within entitlement, as it is often not possible or desirable for Departmental officers to make the sort of independent inquiries that would be needed to make an objective assessment.*

- 3.16 The form, timing and content of certification varies from work expense to work expense.
- (1) Certification is made when claiming Travelling Allowance (TA) or charter travel expenses, as the parliamentarian must make the certifications, declarations and acknowledgements set out on the claim form (see paragraphs 3.17 and 3.18 below; copies of the claim forms referred to are included at Attachment 6). All claim forms include the words: *I understand that knowingly giving false or misleading information is a serious offence under the Criminal Code Act 1995.*
  - (2) Parliamentarians are asked to make a general certification on their expenditure reports published six monthly by the Department (that is, after the work expenses have been paid) that:

*By signing this section, I certify that my use of each entitlement during the period [1 January to 30 June [year] or 1 July to 31 December [year]], for entitlements administered by Finance, was in accordance with the provisions legislated for each respective entitlement.*

- (3) The general certification referred to in paragraph 3.16(2) is not compulsory. From November 2011 the Department has published details of whether each parliamentarian has provided the certification.
- 3.17 To claim TA, the form **Parliamentarian's Travel Declaration** (Form 4) must be completed, which includes the following:

- *I declare that this travel was undertaken in my capacity as an elected representative and I acknowledge that a financial loading will be applied if subsequent adjustment to this travel claim is required.*
- *I declare that the information I have given is true and accurate. I certify that I have fulfilled all the requirements of the particular Remuneration Tribunal Clauses I have identified on this form.*

**For Official Use Only**

Department of Finance Report

*Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

- 3.18 To claim charter travel expenses, certification is made on the relevant form when making a claim; for example (as at the date of this report):

***Charter Certification – Ministers of State*** (Form 38)

- (1) The form states that Ministers may use charter transport (including aircraft, helicopters and other vehicles) for their personal transport in connection with their Ministerial duties, and that a separate form should be completed for each vehicle hired.
- (2) The Minister must certify that they travelled on the charter and it was provided for official purposes.
- (3) In addition, Ministers must certify they considered the following:
  - (a) *Scheduled services were not available; or*
  - (b) *The use of schedule(d) services would have prevented me from keeping an official commitment; or*
  - (c) *The use of scheduled services would not have been the most cost effective manner of travel.*

***Determining Parameters of Entitlements: Legal Interpretation***

- 3.19 'Parliamentary', 'electorate', 'official', 'party' and 'commercial' business are phrases used but not defined in the entitlements legislation (except insofar as 'official business' is given a meaning in clause 3.2 of Determination 2012/04 for the purposes of a Senator or Member travelling on scheduled commercial services within Australia under clause 3.1, and 'party business' is defined in Regulation 3AA of the *Parliamentary Entitlements Regulations 1997* specifically for the use of the printing and communications entitlement).
- 3.20 There is no clear line as to what does or does not constitute 'parliamentary', 'electorate' or 'official business' as a basis for eligibility for an entitlement. Whilst acknowledging caution expressed by previous reviews, a key recommendation of the Tune-Conde Review Committee is the adoption of a single, inclusive definition of 'parliamentary business' that would incorporate activities covering parliamentarians' 'parliamentary', electorate' and some 'party political' duties.<sup>9</sup>
- 3.21 Current practice when interpreting the parameters of entitlements in the absence of legislative definitions, key terms are given their ordinary meaning having regard to the expectation that a court would interpret such terms broadly, which was the ACT Supreme Court's approach in *Slipper v Turner*<sup>10</sup> where it found [at 58-59] 'parliamentary business' could include *business relevant to a Member's duties as a Member of Parliament*.
- (1) The Court also found [at 39; 60] that an activity need not be solely for the entitled purpose in order to claim entitlement.

---

<sup>9</sup> Tune-Conde Review, pp 50-51, paragraphs 4.20-4.22

<sup>10</sup> [2015] ACTSC 27

## For Official Use Only

### Department of Finance Report

#### *Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

(2) The entitlements legislation differentiates 'parliamentary', 'electorate' and 'official' business. Applying the ACT Supreme Court's reasoning, 'official business' is impliedly business referable to the holding of a relevant office, rather than more general 'parliamentary' business.

- 3.22 The difficulty in clearly establishing the legal parameters of certain (especially purpose based) entitlements as they are currently expressed in the entitlements framework is acknowledged in the Handbook, particularly paragraph 1.3.2 (see Attachment 5):

*The fact that there is some room for interpretation of the entitlements framework applicable to Federal parliamentarians means that it is important to take extra care to avoid creating grounds for criticism which, even if ill-founded, can damage a Senator or Member's reputation...*

#### **25% Penalty on Adjustments and Repayments**

- 3.23 In November 2013 the then SMOS announced the imposition of a 25% penalty on adjustments to certain travel claims. Amendments to the PE Act to implement this measure, including in respect of 'prescribed travel benefits', were not enacted prior to the dissolution of the Parliament on 9 May 2016.

- 3.24 In accordance with the SMOS' announcement, both the *Parliamentarian's Travel Declaration* (Form 4) and *Private Vehicle Allowance* (Form 22) claim forms contain the following declaration:

*I declare that this travel was undertaken in my capacity as an elected representative and I acknowledge that a financial loading will be applied if subsequent adjustment to this travel claim is required*

which would have had legal authority had the amendments to the PE Act been passed. In February 2017 the government introduced the *Parliamentary Entitlements Legislation Amendments Bill 2017* which again attempts to introduce the 25% penalty into the work expenses framework. This bill is still before the Parliament. In the absence of the amendments, payment of any penalty by parliamentarians, including by Ms Ley, remain voluntary.

- 3.25 In her letter to the Department, dated 9 January 2017, Ms Ley requested that a 25% loading be applied to any repayments she makes to the Department. Ms Ley requested the department raise two invoices. The invoices were raised prior to the introduction of the *Parliamentary Entitlements Legislation Amendments Bill 2017* and therefore are not subject to the provisions of the new bill.

## 4. Ms Ley's Work Expenses

### *Details of Ms Ley's Parliamentary Service*

- 4.1 Ms Ley is the sitting Member for Farrer NSW. She has held the seat continuously since being first elected in 2001. An unabridged copy of Ms Ley's parliamentary biography is at Attachment 7.
- 4.2 Ms Ley's first Ministerial position, as Assistant Minister for Education, commenced 18 September 2013. On 9 January 2017 Ms Ley announced she was standing aside from her Ministerial duties and resigned from the Ministry 13 January 2017. During the Review Period, Ms Ley held the Ministerial positions set out in Attachment 8.

### *Ms Ley's Travel and Related Work Expenses*

- 4.3 Table 1 at Attachment 9 sets out the travel and travel-related work expenses available to Ms Ley during the Review Period.
- (1) Ms Ley was a Member of the House of Representatives throughout the Review Period and the travel and travel-related work expenses available to her in that capacity are set out in Column 2 of Table 1. The Handbook contains guidance concerning the full range of work expenses available to all Senators and Members.
  - (2) The additional travel and travel-related work expenses that were available to Ms Ley during the Review Period as a Minister are set out in Column 3 of Table 1.
  - (3) For convenience Table 1 contains references to current provisions of relevant heads of authority. However, the Department's review applied the provisions applicable at the time a work expense was used.
    - a) A list of relevant principle Remuneration Tribunal determinations and Procedural Rules during the Review Period is at Attachment 4.
    - b) Provisions of principal Remuneration Tribunal determinations may be varied or omitted by amending determinations during the life of the principal determination.

## For Official Use Only

### Department of Finance Report

*Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

## 5. Processes and Data Reviewed

- 5.1 Drawing data from its electronic and hard copy records, the Department compiled a table setting out each use of a travel or travel-related work expense by Ms Ley and her partner where the Gold Coast was identified as either a final destination or transit point. In compiling this table, the Department initially examined records that included Brisbane as a travel destination, to ensure that any leg of travel that ultimately led to the Gold Coast would be captured.
- 5.2 The Department then attempted to sort series of expenses into "trips". Each trip was represented by a timeline, typically marked with the commencement of travel, overnight stays, intermediary travel and return. Ms Ley was then asked to supplement the timeline with details of the purpose of the trip.
- 5.3 An initial draft of the table was provided to Ms Ley's staff at a meeting in her Albury electorate office on 12 January 2017. Ms Ley returned information, also in tabular form, on 13 January. The Department then commenced refining its table, using the information provided by Ms Ley together with targeted deeper interrogation of its own records and publicly available information, including Ms Ley's 9 January 2017 media statement (Attachment 2).
- 5.4 The table was finalised during the course of a series of meetings with Ms Ley and her staff in her electorate office on 31 January and 1 February and in subsequent phone communications with Ms Ley. The table, at Attachment 10, sets out all work expenses paid for Gold Coast travel undertaken by Ms Ley from the time she was sworn in as Minister in September 2013, sorted into the order in which they were accessed and annotated with information provided by Ms Ley including the purpose for which the travel was undertaken.
- 5.5 The travel set out in this table was then assessed for its compliance with applicable rules. In this regard, the basic tests that may be applied are:
  - For conveyance by aircraft or land transport – was it for the purpose of conducting official (Ministerial) business, including the return from such business?
  - For a claim for Travelling Allowance – was the overnight stay in a place other than the home base primarily occasioned by official business as a Minister?
  - For travel by a spouse – was the travel for the purposes of accompanying or joining the Minister whilst the minister was travelling on parliamentary, electorate or official business (and if accessing these Family Reunion provisions, was there availability within the annual cap)? Or, was the spouse travelling for official purposes as the spouse of a Minister?

## For Official Use Only

### Department of Finance Report

*Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

## 6. Outcomes

- 6.1 An assessment of Ms Ley's Gold Coast travel has identified one instance where travel was inconsistent with the rules, as represented in legislation and guideline.
- 6.2 The *Parliamentary Entitlements Act 1990* provides that Ministers may use car with driver services for travel in Australia on official business. On 9 May 2015, Ms Ley travelled by COMCAR from the place of her overnight accommodation on the Gold Coast to the site of a property auction. Her attendance at this auction was of a personal nature and not official business. Ms Ley had booked the COMCAR the previous evening, at which time she had nominated the auction site as the ultimate destination of a journey from Brisbane to the Gold Coast. Ms Ley had official business in Brisbane on the morning of 9 May and on the Gold Coast in the afternoon of that day. The COMCAR journey from Brisbane to Ms Ley's accommodation on the Gold Coast was in accordance with the rules—the final leg, from her accommodation to the auction, was not.
- 6.3 Ms Ley has voluntarily repaid the full cost of the COMCAR journey from Brisbane on 9 May. She has also voluntarily repaid the Travelling Allowance claimed for that night. In both cases the repayment included a 25% penalty.
- 6.4 For all other travel reviewed, the information provided by Ms Ley about what was, in her own terms, the dominant purpose of a trip is sufficient to assess it as being within the rules. Each journey to, through or from the Gold Coast was supported by a business purpose that accords with legislation.
- 6.5 It is a reasonably straightforward task to establish that the overarching purpose of each trip was within the rules. The assessment of associated work expenses is more difficult for two reasons. Firstly, because of the personal judgements that the framework allows and/or requires of parliamentarians. Secondly, because the precise detail of some incidental expenses such as short car trips was not recorded and cannot be recalled.
- 6.6 The claiming of Travelling Allowance is one significant area in which a parliamentarian must exercise personal judgement. A prescribed per diem is payable where a parliamentarian certifies that an overnight stay is *primarily occasioned* by one of a number of prescribed purposes. There are procedural rules that, for backbenchers, restrict the claiming of Travelling Allowance within timeframes surrounding certain of the prescribed purposes—sittings of the Parliament, parliamentary committee business and official government or vice regal functions. No such restrictions apply to a Minister claiming Travelling Allowance for official business as a Minister.
- 6.7 Decisions as to the nights for which Travelling Allowance might be claimed in association with any Ministerial business are therefore a matter for the Minister. Decisions about the location of the overnight stay, a matter on which legislation and guideline are completely silent, are also for the Minister. It is evident that Ms Ley has considered and reached decisions about such matters at the time her claims for Travelling Allowance were made. In the course of a number of trips, Ms Ley has not claimed Travelling Allowance for each

**For Official Use Only**

Department of Finance Report

*Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

overnight stay, indicating her view that reasons for that overnight stay had become less directly connected with the dominant purpose, or purposes, of the trip.

- 6.8 Ms Ley advised that she had always been mindful of a principle that the Commonwealth should not bear any cost attributable to these personal decisions, even where they were about sensible and efficient use of her time as a regional-based Member and Minister. However, the manner in which Ms Ley came to these decisions is not relevant to this review because it does not have a bearing on whether those business expenses that were claimed were within the rules.
- 6.9 At the time of asking that this review be undertaken, Ms Ley identified certain elements of her travel to the Gold Coast for which she sought to make voluntary repayment. During the course of the review, Ms Ley nominated further elements she wished to repay. Details of the repayments which in each case includes a 25% penalty and totalled \$5,232.20, are at Attachment 11.

**For Official Use Only**

Department of Finance Report

*Travel and Travel-Related Work Expenses of the Hon Sussan Ley MP (September 2013-January 2017)*

## 7. List of Short Forms and Abbreviations

Determination 2012/04	<i>Remuneration Tribunal Determination 2012/04: Members of Parliament – Entitlements</i>
Determination 2016/08	<i>Remuneration Tribunal Determination 2016/08: Members of Parliament – Travelling Allowance</i>
Department	Department of Finance
EMS	Entitlements Management System
Handbook	<i>Senators and Members' Entitlements handbook</i>
PE Act	<i>Parliamentary Entitlements Act 1990</i>
PPV	Private-plated vehicle
Review Period	18 September 2013-5 January 2017
SMOS	Special Minister of State
SPA	Special Purpose Aircraft
Minister	Minister of State
TA	Travelling Allowance
Tune-Conde Review Report	<i>Report of the Review: An Independent Parliamentary Entitlements System February 2016</i>