



Mr Leyonhjelm has commented as follows:

The debt is denied and the authority of the IPEA to impose a penalty is disputed.

## Ruling 01/2019 - Section 37 of the *Parliamentary Business Resources Act 2017*

### Ruling

The Independent Parliamentary Expenses Authority (IPEA) determines that the travel expenses incurred by former Senator David Leyonhjelm (the former Senator) on 20 September 2018, were not incurred for the dominant purpose of conducting his parliamentary business and that his use of public resources contravened section 26 of the *Parliamentary Business Resources Act 2017* (PBR Act).

### Background

On 16 September 2018, the former Senator flew from his home base in Sydney to Canberra to attend parliamentary sittings. On 20 September 2018, instead of returning directly to Sydney from Canberra, he went to Adelaide via Melbourne, and then from Adelaide to Sydney. The former Senator claimed the cost of this travel on 20 September 2018 as a parliamentary work expense under section 30 of the PBR Act.

Subsequently, on 20 February 2019, the former Senator's Office advised IPEA that the trip on 20 September 2018 was partially private and did not provide any parliamentary business purpose for this travel.

On 15 March 2019, IPEA invoiced the former Senator's Office for the travel expense incurred on 20 September 2018, for the amount of \$551.45. On 25 March 2019, the former Senator repaid \$437.03, maintaining that he was not liable for the cost of a return flight from Canberra to Sydney, for the amount of \$114.42. On 8 April 2019, IPEA advised the former Senator that:

- i. he was required to repay the outstanding amount \$114.42 and
- ii. the PBR Act does not allow a Member of Parliament to offset the cost of travel for non-parliamentary business against the cost of travel which, had it been taken, the Member of Parliament would have been entitled to claim under the PBR Act.

### Assessment

The objects of the PBR Act include that Members of Parliament should be able to use public resources for reasonable costs incurred for the dominant purpose of conducting parliamentary business.

The Commonwealth's obligation to pay a member's travel expenses is subject to subsection 26(1) of the PBR Act which establishes a 'Dominant Purpose Test' for claiming expenses, allowances and public resources i.e.:

*... A member must not claim expenses, an allowance or any other public resources under this Part unless the expenses are incurred, or the allowance or resources are claimed, for the dominant purpose of conducting the member's parliamentary purpose.*

Further, paragraph 6(2)(a) of the PBR Act specifies that a member's parliamentary business does not include any activity if:

*the member carries it out for the dominant purpose of ...:providing a personal benefit to the member or another person;*

A member also cannot claim travel expenses that could have been validly claimed under the PBR Act but were not in fact incurred. Nor could a member offset any travel expenses which they could have validly claimed, had they been incurred, against travel expenses incurred for a personal benefit and which cannot be claimed under the PBR Act. The former Senator cannot therefore offset the costs of his travel from Canberra to Adelaide, via Melbourne, and back to Sydney against the cost of a direct return trip from Canberra to Sydney.

Based on the information provided by the former Senator's Office to IPEA, IPEA has formed the view that the former Senator flew to Adelaide for private purpose and the travel did not comply with the dominant purpose test set out in section 26 of the PBR Act.

Subsection 37(1) provides that IPEA may make a ruling that:

*... conduct engaged in by a particular member or any other person in relation to travel expenses of, or travel allowances for, the member was not in accordance with this Act and as a result of the conduct, the member contravenes section 26, 27 or 28.*

IPEA therefore determines that the travel expenses incurred by the former Senator, on 20 September 2018, were not incurred for the dominant purpose of conducting his parliamentary business and that his use of public resources contravened section 26 of the PBR Act.

### **Loading penalty**

Subsection 38(4) of the PBR Act provides that if the Commonwealth provides public resources to a member and the member contravenes section 26, 27 or 28 in relation to the resources, then:

*The member is liable to pay the Commonwealth, by way of penalty for the contravention of section 26, 27 or 28, an amount equal to 25% of the amount to which this section applies.*

IPEA has no discretion whether to apply this loading as it arises automatically as a result of the operation of section 38. The former Senator is therefore liable to pay the Commonwealth 25% of the claim amount which remained outstanding after 28 days, that is 25% of \$551.45 or \$137.87.

### **Amount due to the Commonwealth**

The total amount that the former Senator needs to repay to the Commonwealth is the outstanding amount of \$114.42 and the loading penalty of \$137.87 i.e. a total of \$252.29.