

# **JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
FRIDAY, 5 APRIL 2019**

## **Members**

**Ms M.M. Quirk, MLA (Chair)  
Hon Jim Chown, MLC (Deputy Chair)  
Mr M. Hughes, MLA  
Hon Alison Xamon, MLC**

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**Hearing commenced at 10.16 am**

**Mr DARREN FOSTER**

**Director General, Department of the Premier and Cabinet, examined:**

**Mr GARY MEYERS**

**Director, Corporate Services, Department of the Premier and Cabinet, examined:**

**The DEPUTY CHAIR:** On behalf of the committee, I would like to thank you for agreeing to appear today. My name is Jim Chown and I am the deputy chair of the Joint Standing Committee on the Corruption and Crime Commission. I would like to introduce the other members of the committee present today. On my left is the Hon Alison Xamon and Matthew Hughes. It is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything you might say outside today's proceedings.

Do you have any questions about your attendance here today?

**The WITNESSES:** No questions.

**The DEPUTY CHAIR:** Thank you for that. Once again, thanks for attending in regard to the matter under scrutiny today.

Mr Foster, would you please explain what is the role of the Department of the Premier and Cabinet?

**Mr Foster:** The Department of the Premier and Cabinet supports the Premier and the cabinet on matters to do with cabinet, so policy advice on all and any matters going to cabinet. It also drives whole-of-government reform and policy decisions. It provides support to ministers' electorate officers on behalf of members. It supports ministerial officers. I think to address the matters before us in a previous incarnation, the department had responsibility for three overseas offices—no longer.

**The DEPUTY CHAIR:** What were those offices?

**Mr Foster:** The offices were the Agent General in London, the trade office in Dubai and the office in Tokyo.

**Hon ALISON XAMON:** Of course, there are more offices than that. Who previously had control of those other offices?

**Mr Foster:** The other offices were always run by the Department of State Development, as it was then. It is a sort of historical quirk that three offices were administered by the Department of the Premier and Cabinet over many years. I think the Agent General goes back over a century but it made absolutely no sense to me that the state had three outward facing offices to the world attached to the Department of the Premier and Cabinet and then another department had half a dozen more. It was a symptom of the fragmentation of the public sector so, from my point of view, it made perfect sense to shift all the overseas offices under one government department that had that outward facing role.

**Hon ALISON XAMON:** Okay; thank you.

**The DEPUTY CHAIR:** Could you, in a general sense, explain what the integrity framework is in place within the Department of the Premier and Cabinet?

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**Mr Foster:** I can. In fact, I can speak about it as it currently stands because I was not involved in it obviously prior to my arrival as director general in July 2017.

**The DEPUTY CHAIR:** I assume that framework has been ongoing, or have you changed it?

**Mr Foster:** No; I have introduced a whole lot of measures since I have been there. I think it is probably fair to say there was not a lot of infrastructure in place when I arrived, so I have been doing quite a few things to, I guess, tighten up controls, but, more importantly, from my point of view, building a better culture in the department. We have a governance framework in place, which I am happy to table for your interest.

**Hon ALISON XAMON:** Yes please.

**The DEPUTY CHAIR:** Thank you. At that point, if we could —

**Mr Foster:** I have a refreshed code of conduct as well, which I will give you.

**The DEPUTY CHAIR:** Thank you.

**Hon ALISON XAMON:** Did you say fresh code of conduct?

**Mr Foster:** Refreshed.

**The DEPUTY CHAIR:** Refreshed code of conduct. When was that refreshed?

**Mr Foster:** On 20 April 2018.

**The DEPUTY CHAIR:** Would you care to just expand on what the code of conduct is?

**Mr Foster:** The code of conduct is the basic tool officers have to guide their daily decision-making and conduct and behaviour. But it needs to be supplemented by a whole range of other things, including a values and behaviours document, which we have prepared. That was one thing I introduced when I arrived—a values and behaviours document—just to reinforce the expectations I had for officers in the department; how they would operate and behave, including some explicit messages about how they were not to operate and behave. It describes the good behaviour and also calls out the sort of practices that were not acceptable. That is part of building a different sort of culture in the department.

**Hon ALISON XAMON:** Can I just pick up on this. One of the things we want to unpick is the degree to which the actual processes themselves have been inadequate because clearly something has gone wrong in the sense that the report from the CCC on the WA commissioner in Japan has highlighted that there have been clear problems. We are interested in finding out the degree to which that is because the processes themselves have been lax. It is curious that you are picking up on this issue of culture, which is not an unfamiliar theme that we have been hearing in a number of public hearings. Can you please elaborate a little bit on the processes? You talk about a refreshed code of conduct—those sorts of things—first. What inadequacies within the integrity processes have you uncovered and have they now been updated additionally in light of this report?

**Mr Foster:** As a director general I do not look at those in isolation—broader issues—about the administration of the department because it is not about just integrity; it is about performance agreements, about culture and values, about giving people confidence to make complaints. It is about a whole range of things. If I can just run through it very briefly. Having an active audit risk management committee is one of the techniques to sort of manage these sorts of risks. I have introduced the practice of having an independent chair, so I have engaged Dr Gordon Robertson, PSM, who is a former deputy Auditor General, to be the chair of our audit and risk management committee, which means I am not in the chair—someone else is who is comfortable to ask me difficult questions.

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**Hon ALISON XAMON:** Is that a change from the practice?

**Mr Foster:** Yes. That is something I introduced this year.

**Hon ALISON XAMON:** This year, okay?

**Mr Foster:** This has just been part of the steady improvement that I have been putting in place.

**Mr M. HUGHES:** Is it essentially an independent internal audit?

**Mr Foster:** Well, we also have internal auditors.

**Mr M. HUGHES:** I am not talking about financial audit, but audit in relation to —

**Mr Foster:** Yes, I can come to that. We have actually engaged new internal auditors. I think that is an important practice that you do not get too complacent with the same auditors doing the work all the time, you turn them over from time to time so we have done that. We have a new set of internal auditors. I also have a view that departments do too many audits too superficially. It is just a personal preference of mine that we do fewer and deeper and not look at just finances but look at broader practices beyond just the finance audits because it is audit and risk management, so you have to look beyond finance.

**Hon ALISON XAMON:** Thanks.

**Mr Foster:** We have narrowed down our focus and, obviously, you have a rolling program of audits of different areas where you gauge the risk to be. Every year you do a number of audits, so we will be having fewer and deeper. I have also set up a governance and reporting branch so that there is a clear set of responsibilities in the department to manage the governance and reporting, so corporate executive is getting regular information on a whole range of parameters. The governance framework, which I have provided to you, we also have some fraud reduction measures around data matching, which we have introduced. We do that twice a year when we match procurement to bank accounts of people that the agency has on its books to see whether there is any sort of overlap. That was advice that came out of an Auditor General's report that we have put in place. I think the broader issue is the culture of acting on complaints that are made and I have certainly done that in a very visible way in the department. I think that is a critical thing.

**The DEPUTY CHAIR:** On that point, Mr Foster, in regard to the CCC report on the Western Australian commissioner in Japan, it has been an enormous wake-up call for certainly your department, and I would imagine other departments throughout the system. At this stage, have you been able to identify any other breaches of a similar manner or any other indiscretions by public officers?

**Mr Foster:** Yes. This happens from time to time and one acts upon them. I am not sure I share your view that the department has been asleep at the wheel.

**The DEPUTY CHAIR:** I think the CCC actually thought it had been asleep at the wheel. It said the most basic checks would have at least identified the COLA breaches.

**Hon ALISON XAMON:** Over payments.

**The DEPUTY CHAIR:** And over payments. And they only went back a couple of years. Lord knows what happened prior to that?

**Mr Foster:** Sure.

**The DEPUTY CHAIR:** You were mentioning culture and I congratulate you on trying to change the culture, but I go back to my previous question: at this stage have you identified other indiscretions?

**Mr Foster:** I have.

**The DEPUTY CHAIR:** Good. Would you like to expand on what they could possibly be?

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**Mr Foster:** Sure. I have received a complaint, again, which was no secret in the agency, prior to my arrival about somebody defrauding the department in relation to travel allowance.

I took action on that; referred it to the Corruption and Crime Commission. It looked at it for a number of months and referred it back to me to address.

**Hon ALISON XAMON:** What do you mean it was no secret?

**Mr Foster:** This is what I am saying about the culture.

**Hon ALISON XAMON:** Yes.

**Mr Foster:** Sometimes you scratch the surface. They are known about in the department but people either have not formalised a complaint or it is perceived to be too hard to prove.

**Hon ALISON XAMON:** What I am trying to get at is, was this someone quite senior that meant that people below them did not feel confident bringing this forward? I am trying to get an idea of how that dynamic was playing out in practice.

**Mr Foster:** I was not there, so, I really cannot say —

**Hon ALISON XAMON:** Of course; I understand that.

**Mr Foster:** — where the blockage or issue was or why it was not taken up or dealt with more aggressively. I have just learnt from my experience to deal with them because these things fester and become demoralising to staff and affect productivity. I have a history of tackling these issues when I become aware of them and in this particular instance—this probably gives you some insight about how challenging these things are—I had to engage a private investigator to follow the individual to prove that he was not living at the address where he claimed to be living and collecting allowances over possibly a long period. I put all that together and sent it to the fraud squad. They did a separate investigation and that individual has been charged with fraud and that is in the hands of the courts at the moment. When you then come to, “Well, what would the director general do?”, when you have a staff member in that situation, I took the view that I should suspend the person without pay at the very least. Those decisions are very hard to come to because one usually gets a lot of advice that you are overstepping the mark or you may be inviting an industrial response so sometimes you have to be fairly courageous to actually take that step. In that particular case, I did. I suspended the individual without pay before Christmas and I was taken to the Public Sector Appeals Board.

**Hon ALISON XAMON:** We are aware that that matter, from your own description, is sub judice, so we probably should not focus any further on that particular matter because this is a public hearing and is on the public record. Perhaps can we go back to the substantive systemic issues, if that is okay. Thank you for that example but you would appreciate that the courts need to be able to run their course unhindered. We note that you did initiate an inquiry with the Public Sector Commission to investigate how this had happened and how it went undetected for so long. Can you please give an update on the progress of that review?

[10.30 am]

**Mr Foster:** It is being dealt with at arm’s length from me. I consciously, deliberately asked the Public Sector Commission to undertake that review and that is happening and we have agreed terms of reference, which I believe you already have and it is underway but I am not personally or closely involved in that. They will be reporting to the commissioner.

**Hon ALISON XAMON:** Are you aware of whether it is on track to still report back by early May?

**Mr Foster:** It is not something I am aware of.

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**Hon ALISON XAMON:** I want to be very clear: you are not receiving any information in relation to what is happening with that particular review?

**Mr Foster:** I have not recently received any information apart from agreeing and signing off on the terms of reference and having written to the commissioner to ask it to occur but that is more because I have not met the commissioner in the last week or so than withholding the information.

**Hon ALISON XAMON:** In terms of the terms of reference, is there an intention that that will become public—not the terms of reference but the actual review itself once it is finalised?

**Mr Foster:** I have already indicated to the commissioner I have no problem with it being made public. If it has findings that there are things that we need to do to tighten up our controls, I am absolutely receptive to that. I have nothing to be concerned about in terms of it being made public.

**Hon ALISON XAMON:** Have you got any indication as to whether the problems that emerged from this report were localised to a particular part of the department or whether it was indicative of a broader problem across the department?

**Mr Foster:** I do not have any insight at this stage.

**Hon ALISON XAMON:** We are hoping that the report will actually shed a bit of light on that.

**Mr Foster:** Yes, although I have done my own review of the documentation to sort of form my own view and I think there is no silver bullet here. That is my judgement based on the information I have seen and the accounts. I have looked at the accounts to see if you are an ordinary person looking at the accounts, would anything have stood out to you in terms of something being unusual and different? I have read the Stantons report from 2008. If you read the Stantons report, you would be very hard pressed to form a view that something was seriously wrong.

**Hon ALISON XAMON:** Yet, that is the problem, because as soon as the machinery of government changes kicked in and this was picked up by another department, it was clearly able to be picked up pretty readily. That actually goes to a problem within the Department of the Premier and Cabinet, which is also what the CCC effectively reflected on as well. Clearly, there has been inadequate processes or something has gone wrong within the department.

**Mr Foster:** Possibly. That is not clear to me at this stage. I am very interested to see what the KPMG report finds. But I go to the issue of culture because you really need to tackle these issues in multiple ways. It is probably fortuitous or happenstance that the machinery of government caused people to go back to first principles getting these new entities into that agency, look at the terms, do comparisons across all the trade offices. They would have looked at contracts, looked at the expenses and then picked up a problem. If you had been managing these things in an ongoing way for long periods of time and the people who were doing the accounts do not necessarily see the contract—remembering there was quite deliberate fraud and evasion and obfuscation in this case—you would not necessarily join the dots and that is why I say you have to tackle these issues with a broad-based antibiotic, which are cultural measures, confidence to people to blow the whistle, making sure the people who are looking at these accounts are empowered and encouraged to draw any anomalies to the attention of people in the department, that those then are received and acted upon in a visible way to the extent that that is possible, because there are confidentiality provisions in a lot of these.

**Hon ALISON XAMON:** Mr Peacock had been in the role for a very long time.

**Mr Foster:** Yes.

**Hon ALISON XAMON:** That seems to have aggravated the capacity for him to be able to engage in fraudulent activity. Did he have any sort of long-standing professional friendships or relationships

with any of these people who were meant to oversight his activity? I am just wondering whether there was a complacency that arose within the department because of familiarity. Are you aware of anything like that?

**Mr Foster:** Not to my knowledge, but I can tell you that the officers that looked at the accounts are junior officers who look at accounts and they would have had no kind of relationship with him whatsoever. They do occasionally pick up anomalies that they do draw to attention and they are acted upon, not with a lot of fanfare or in the public domain, but things are acted upon. In this case, the contract was disconnected from the account so you would not necessarily —

**Hon ALISON XAMON:** So that was the problem?

**Mr Foster:** I think that is a significant part of the problem. I think you also hit on another issue, which is the longevity of the appointment. I would question the utility of having someone in a role like that for greater than 10 years.

**Hon ALISON XAMON:** That would have been the figure I would have used as well.

**Mr Foster:** Two terms is probably good and I would extend that to include directors general, including myself.

**Hon ALISON XAMON:** I would agree

**Mr Foster:** And I would include the Public Sector Commissioner.

**Hon ALISON XAMON:** Possibly politicians.

**Mr Foster:** If you are looking for risk factors, which I think is a good way of looking at this, the risk factors in this case were out of line of sight in terms of being a self-contained office in Japan without lots of interaction at multiple levels of the agency for people to sort of notice that something is awry. There were some unusual banking arrangements in Japan; it has quite antiquated banking practices, surprisingly. That is the advice I had from the CCC. There was the language barrier, because if you wanted to see the detail of the accounts, rather than just get them up in your statement, if you want to see the underlying detail of the accounts, there are barriers there, although I have to say Stantons had a Japanese-speaking auditor sent to Japan to look at these matters.

**The DEPUTY CHAIR:** But Stantons' scope of the audits at the time was quite limited, and they did not identify the breaches either.

**Mr Foster:** It was only limited in one respect. Stantons' audit left out one contract —

**The DEPUTY CHAIR:** Okay.

**Mr Foster:** — Mr Peacock's, and I do not know why that was the case.

**The DEPUTY CHAIR:** Really?

**Hon ALISON XAMON:** Do you know who might have arranged for that to have been the case? Do you know if Mr Peacock had any role in that?

**Mr Foster:** Not to my knowledge. That is way before my time, and the records do not give an indication

**Hon ALISON XAMON:** The records do not give an indication?

**Mr Foster:** No.

**Hon ALISON XAMON:** Okay. It is curious, though, that that would occur at that level.

**Mr Foster:** Odd, yes.

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**The DEPUTY CHAIR:** I assume that the other trade commissioners who are operating on behalf of the state elsewhere are now under significant scrutiny in regard to their expenses et cetera?

**Mr Foster:** I think they would have detected a change in the atmosphere, yes.

**The DEPUTY CHAIR:** How many are there, and who is the longest-serving, other than Mr Peacock?

**Mr Foster:** I could not say. They are not within my realm so I am not aware of that. I should just add, if you do not mind, that another risk factor I would identify is terms on boards. If you have a governance board and you have members who have been serving longer than 10 years, I think that is sort of a red flag in my mind. I am not suggesting there is any particular problem there but it is, I think, unhealthy for people to go beyond that length of time.

**Hon ALISON XAMON:** Certainly the NGO sector identified that as an issue a long time ago, so it is probably about time that the public sector catches up.

**Mr Foster:** I do now provide advice to cabinet when I become aware of any very long-term board appointments. It is just standard practice now to draw that to their attention.

**The DEPUTY CHAIR:** Peacock's staff in Japan in the commission office, what sort of support did they get from DPC in regard to integrity processes et cetera?

**Mr Foster:** I could not really say. I am not aware. They were locally engaged staff, Japanese speakers. I would hazard a guess that our code of conduct was never translated, so I have no idea what support was provided. We do have an obligation on all staff to do accountable and ethical decision-making training, which goes to what to look for in terms of corruption and so on, but I am not sure if those staff ever participated in that sort of training.

**Mr M. HUGHES:** You are saying that the office in Japan, the people on the ground there, were recruited locally from the Japanese population?

**Mr Foster:** Yes.

**The DEPUTY CHAIR:** By whom?

**Mr M. HUGHES:** Presumably by the office responsible for the station over there.

**Mr Foster:** Possibly. I could not be certain about that. I think that is probably the case for some—I am not sure if that was all—because we have had a Japan office since 1968, so there may have been people before his time.

[10.40 am]

**Hon ALISON XAMON:** Can I just go back to the investigation undertaken by the CCC. They indicated that they did not go back further than 2016, but they had identified that there were abuses of allowances, most notably the entertainment allowances, of up to \$10 000 during that time. Since then, has Premier and Cabinet actually picked that up and gone back through the records to indicate whether there was further corruption around the use of those allowances?

**Mr Foster:** DPC has not but the audit being undertaken by JTSI—the KPMG audit that they have undertaken—will go back further in time in relation to all the overseas offices.

**Hon ALISON XAMON:** I just want to be really clear in relation to Mr Peacock that it is going to be the case that there will be a complete forensic audit of all of his financial activities for the duration of his time in Japan?

**Mr Foster:** I would have to confirm that with the director general of JTSI, but I would point out that records are pretty patchy the further back you go. Under our records disposal guidelines, records can be destroyed after a period of time. I have had cause recently to go and try and track down

some records for another matter, from the '90s, and they were very patchy in relation to the accounts that were still available.

**Hon ALISON XAMON:** As an aside on that, I am going to note that recommendations have been coming from the State Records Office for a very, very long time that all of these records be made electronic and hence they can be retained pretty much indefinitely. I am just going to make the comment that there has still been no investment by any government to actually ensure we do that, and that was also one of the recommendations that came out of the royal commission into WA Inc, and how frustrating it is that here we are, we still have evidence of corruption that could have been dealt with and needs to be able to be followed up with records, and we still do not have proper record-keeping in this state.

**Mr Foster:** I should just, if you do not mind, point out that the records act also provides for and allows destruction of records after a period of time, so it is not entirely an accurate representation of the position.

**The DEPUTY CHAIR:** The SSO has commenced recovery proceedings against Mr Peacock for approximately half a million dollars. If the investigations and the inquiry underway find that it is actually more money, and I would assume that is a real possibility, would that amount be expanded in your belief, or not, in regard to trying to recover these funds?

**Mr Foster:** I really could not say. I would be speculating. I have no idea of the likelihood of there being more. As I said, I am not 100 per cent sure of the scope of the KPMG inquiry under JTSI. It is going back in time, but I think there are two different dates, relating to both employment and financial matters, so that is why I am a bit hazy on which date applies to which.

**The DEPUTY CHAIR:** As a follow-up question in regard to the honourable member's remarks here, are those records available, and how far back do they go within the department?

**Mr Foster:** The department has transferred all the records it has to JTSI. We obviously have copies of them, and I have put a hold notice on those records so that no records that we have will be destroyed, pending resolution of these matters.

**The DEPUTY CHAIR:** Yes, but do those matters go back to the commencement of the employment of Mr Peacock?

**Mr Foster:** As I said, it depends which records you are referring to, because some are available. I do not know what is not available. Some records may have been destroyed many years ago. As I said, I have recently had cause to look for some old records from the Agent General's Office in London, and they were very sparse, from the mid-90s.

**Mr M. HUGHES:** Just so I can be clear in my own mind, Mr Foster, the scrutiny processes that applied to Mr Peacock's claims for expenses, were they the same as the processes that would be in place for all departmental staff or were they different?

**Mr Foster:** Similar, but there is some significant difference in that locally you can drill down further into the underlying accounts. What DPC would get is a monthly statement by way of a reconciliation from the Japan office, and there are the amounts and a very general description of a classification of what it was spent on, but not the underlying accounts, because the accountable person was the commissioner for the expenditure in his office, and he lived within the monthly budget he was allocated. So this individual lived within the parameters that were set by the department, and the department topped up the account to ensure he had the funds to run his office within the budget settings. So in terms of red flags, there was no sense that he had blown his budget or exceeded or gone beyond what he was allocated. So it was quite crafty behaviour in the sense that he stayed under the radar.

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**Mr M. HUGHES:** So if the numbers looked okay, that was really the only —

**Mr Foster:** Not only. The officers also look at the accounts to see if there is something anomalous or different from the previous month's account, but the officers who do the finance checking would not have cause or necessarily have access to his employment contract. So, that is, I think, where one of the breakdowns occurred.

**Hon ALISON XAMON:** Yes, clearly. So, going back to the issue of how long Mr Peacock held the role for—17 years—clearly, the contract was being rolled over. I am also going to reflect that, in the report, clearly, Mr Peacock had formed some friendships with members of Parliament as well. Had any additional scrutiny been applied around the rollover of those contracts or was there a comfort to just continue on with business as usual without checking to see if there was perhaps someone more suitable for the role or better qualified? How did that happen, that it just kept rolling over, again, reflecting that he was clearly on very comfortable arrangements with certain members of Parliament who were in government at the time?

**Mr Foster:** I am not sure of what his relationships were and with whom. I think that question is probably best put to my predecessor, who would have been in the seat when those decisions were made.

**Hon ALISON XAMON:** Perhaps you can answer one thing though: reflecting on the previous continuation of the contract, in your observations does it look as though there has been any additional expressions of interest going out further, anything like that, needing to reapply for his own job or was it just that the contracts kept getting rolled over?

**Mr Foster:** Look, it is not unusual for contracts to be rolled over. If it ain't broken, don't fix it?

**Hon ALISON XAMON:** Except this was broken.

**Mr Foster:** In hindsight, absolutely.

**The DEPUTY CHAIR:** So you are saying as normal process, requirements are just ticked off? There is no application process, there is no —

**Mr Foster:** Again, I think probably a different set of decisions might have been made around overseas officers. It is not easy and convenient necessarily to turn over people all the time or do regular performance reviews of the intensity and scale that maybe occurs more regularly now. I guess one other thing I would mention, in terms of how I administer the department, is I am aiming for 100 per cent performance agreements with every staff member who works with the department. There were none when I arrived.

**Hon ALISON XAMON:** There were none?

**Mr Foster:** Not that I ever detected or came across, and people said they had been there for 16 years and never had one. That is why I raise this point about having a broad-based antibiotic. You need to do all of those things because you need to be having those conversations regularly with managers about performance, so the same would apply to a trade commissioner as a director general as a level 3 finance officer. Those sorts of things are the way that you build that sort of like trust and relationship and maybe bring out things that people are otherwise uncomfortable to draw to notice.

**Hon ALISON XAMON:** Has there been any resistance to the implementation of performance agreements?

**Mr Foster:** Not resistance. People worry about them because they see them as a negative instrument.

**Hon ALISON XAMON:** Well, they can actually be incredibly positive if they are well done.

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**Mr Foster:** They are. Yes. This is not performance management; this is a performance agreement, which also goes to people's training needs; it goes to their leave management —

**Hon ALISON XAMON:** Job satisfaction.

**Mr Foster:** All those things. So, I see them as a positive construct and I think the department has been pretty receptive, but it is a new thing. There is not a practice of doing that.

[10.50 am]

**The DEPUTY CHAIR:** So none of these arrangements have been implemented at this stage or they are under consideration?

**Mr Foster:** No, they are in place. Absolutely.

**Hon ALISON XAMON:** One is startled THAT they were not there before.

**Mr Foster:** I have not found any evidence that it was. There may have been for individuals, but it was not systematic. I think it is certainly reasonable to say a trade commissioner should have a performance review periodically, and I am sure that has occurred from time to time. I would be very surprised if it had not ever happened, but I have no line of sight on what the practice was prior to July 2017.

**Hon ALISON XAMON:** In terms of the local administrative staff in Japan, what support, if any, was given by DPC to them around matters of integrity and financial management?

**Mr Foster:** I have got no records that indicate any particular support or advice was given to them.

**Hon ALISON XAMON:** So, if they had had any concerns about the actions of their commissioner, who would they have been able to report to? What mechanisms would there have even been to have shed a light on his activities?

**Mr Foster:** They could, in the same way that people regularly do, blow the whistle to someone higher up in the department or an officer in Perth.

**Hon ALISON XAMON:** But if they do not have those connections or relationships with the department because they are effectively hands-off, how can anyone feel confident that they would even know that that option was available to them?

**Mr Foster:** They may well have had briefings. I cannot say for certain whether they did or did not, because that is not apparent to me.

**Mr M. HUGHES:** I understood this to be the position: the trade commissioner was the person appointed from here to that station in Japan.

**Mr Foster:** That is right.

**Mr M. HUGHES:** Everyone else within his office was appointed by him locally. That is the answer.

**Hon ALISON XAMON:** Except it is not, because not supported or subsequently trained independently by DPC—that is the problem. It is one thing to have the commissioner responsible for appointments but then to have those people in a position whereby it is almost as though they work for him, rather than for the department as a whole is quite problematic. Has that now been changed, to the best of your knowledge, in relation to how these overseas appointments are being managed?

**Mr Foster:** I could not comment on that. That is a matter for my colleague.

**Hon ALISON XAMON:** Because it would seem to me that would be a first step that needs to occur.

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**Mr Foster:** I have no knowledge of what was provided by way of support. There may well have been, but it is before my time. They may well have been offered inductions. I have got no paper trail that indicates what might have occurred.

**Hon ALISON XAMON:** Do you have any evidence, though, that any of those staff were ever brought back to Perth for independent training or anything like that?

**Mr Foster:** Not to my knowledge.

**Hon ALISON XAMON:** Not to your knowledge?

**Mr M. HUGHES:** I think the term “brought back to Perth” would suggest —

**Hon ALISON XAMON:** Brought to Perth.

**Mr M. HUGHES:** The point I was trying to make—and I think there is a sense that this is the case—is that all the staff within the office in Japan were recruited locally and by the commissioner, and that really is a problem. That is a gap —

**Mr Foster:** By a commissioner, yes. I think, also, there may also be a bit of a cultural dynamic here. This was a fluent Japanese speaker, a very dominant figure in that office. So, you can see the recipe there for problems, really, in hindsight. It is out of sight, out of mind, a long way from the home base, a very long serving commissioner.

**Mr M. HUGHES:** All the red flags you could possibly want.

**Mr Foster:** Yes.

**Hon ALISON XAMON:** That is the problem, though. This is where we have to feel confident this has not simultaneously been happening overseas in other areas, and also making sure that we are able to put in place the processes so it can never happen again. It is actually a huge amount of money that was taken, and as someone who is attached to particularly the NGO sector, I reflect on how much can be achieved with just the sheer amount of money taken by this one individual. I despair that this was able to occur. I will just leave it at that.

Can I just clarify, do you know whether the other trade commissioners—they are now being investigated as well is what you said before?

**Mr Foster:** The director general of JTSI has announced a KPMG review of the trade offices and they will be reviewing every aspect of those offices and have access to all the records and accounts and details.

**The DEPUTY CHAIR:** That review will be made public or not?

**Mr Foster:** You would have to ask the director general. I have no idea what their intentions are.

**The DEPUTY CHAIR:** Would your office be aware whether these trade commissioners under the time period we are talking about would actually get together on occasions?

**Mr Foster:** Yes, they do from time to time. I am aware of that.

**The DEPUTY CHAIR:** How often would this take place, and was it funded? Was it like a team gathering of commissioners to discuss issues of concern in a publicly funded —

**Mr Foster:** I have never attended such a meeting but I know they occur or have occurred. I think, in fact, they all came to Perth last year for a get-together.

**The DEPUTY CHAIR:** Obviously when you have these sorts of gatherings, people talk about pay scales et cetera and how things work and do not work. Would that be a fair comment?

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**Mr M. HUGHES:** I am wondering whether they meet at the Beefsteak and Burgundy Club in Shanghai.

**Mr Foster:** I am not sure that people do talk about pay scales and —

**The DEPUTY CHAIR:** They differ, do they?

**Mr Foster:** I am sure they differ and I cannot imagine that they would want to share that sort of information with their counterparts.

**The DEPUTY CHAIR:** Time will tell.

**Hon ALISON XAMON:** On a general note, one of the things that has emerged quite heavily during the course of a number of our hearings has been the role that whistleblowers are playing. I understand that this was not actually as a result of a whistleblower—this was as a result of diligent auditing by the new department that came out of the machinery-of-government changes—but this issue of whistleblowing goes to culture as well. In your investigations around wanting to change the culture within DPC, have you found that there is a reticence for people to potentially expose if they think that wrongdoing is occurring? I do not want to reflect on the sub judice matter that you referred to earlier. I am talking more generally. If there has been a problem—if there has been—what would you be doing to address that?

**Mr Foster:** I can really only talk about my own experience in multiple agencies over 33 years. You usually look for cues from the top on these matters. Officers will form a view about your disposition on things and that will, in large part, give them the confidence or otherwise to raise a complaint. That is why I keep mentioning the broad-based antibiotic, because one has to start with culture and values and articulate what those are and those expectations. You have to have an active risk and audit committee. You have to identify the right sort of risks and do deep dives. You have to act on complaints, and be seen to, when they come forward. If anything, my frustration is that often you are constrained from letting people know how you are dealing with a complaint because you have a whole lot of natural justice considerations. There is no shortage of rules and regulations and policies and procedures. In fact, if anything, there are too many. It goes more to how you are seen to administer your agency and the confidence people have in the people above them to handle a complaint appropriately. That also goes to coaching and training and so on, which, again, is something I have been doing actively. I think that is where the cultural tone is set in agencies—at the top.

**Hon ALISON XAMON:** I suppose one of the concerns I have is the level of political interference, also, around government departments because, as you know, DGs are appointed by government and that can create cultural tensions as well within the public service. Perhaps people might not feel—this is not a reflection on you; this is a reflection on the system—comfortable being able to raise concerns in that environment because they cannot necessarily feel confident that you are looking at a public sector purely driven by process. There is that intervention of politics.

[11.00 am]

**Mr Foster:** I will be frank: I think you are probably overstating the degree of political interest in these things. One has to be mindful of the department's reputation and standing and that you are not creating a whole chain of litigation. You have to be sensitive to all of those things, but DGs, in my experience, want to and do tackle these matters. They just do it without a lot of fanfare, and that is to protect the reputation of the department and the individuals concerned, who are entitled to natural justice. I think these very visible examples cause a lot of concern and embarrassment for all the public sector, but I think DGs, in my experience, actually want to tackle these things. It is probably worth saying, though, that in doing so, you have to have a lot of stamina. You have to be

prepared to put your day job on hold, because they are extremely complex, difficult, time-consuming matters to deal with. You have to wade through a very large amount of legislation, policy and other requirements. You have to spend quite a bit of time trying to figure out whether you are dealing with minor or major misconduct, or something else, to make sure you are approaching it in the right way. You also have to rely on the guidance, advice and support of the State Solicitor's Office—inherently conservative—and the Public Sector Commission, which, until recently, has perhaps been less than helpful on some of these matters.

**Hon ALISON XAMON:** Could you elaborate on that?

**Mr Foster:** I think, for any public sector to be functioning well, you need four strong, central agencies, and that sets the tone for the rest of the sector. When I talk about central agencies, I am talking about the Public Sector Commission, the Department of the Premier and Cabinet, the Department of Treasury and the Department of Finance. If those four are aligned and working well together, I think things fall into place across the sector and other agencies get the support they need. To be candid, I think when I arrived in Premier and Cabinet, Premier and Cabinet was moribund. The Public Sector Commission was not viewed as particularly helpful to the sector. The Department of Finance was off in the wilderness and the Department of Treasury was completely demoralised. That is just how they were; I am not making a political comment here. It is just how they were. We have done a lot of work, as agency heads, to work closely together, to be mutually supportive, to be aligned and to meet periodically. The government commissioned a review of the Public Sector Commission and I think that is a crucial body in terms of setting the standard and the tone for the sector. I am sure you have read the Public Sector Commission review; it was a pretty sorry report and it is appalling it got that bad. I think we are lucky to have had a very energetic commissioner who is casting a fresh eye over all matters. She is working in a very collaborative way with the rest of the sector. Treasury is working very effectively and closely with the central agencies. The Department of Finance is newly energised because it has been brought in, and DPC is reaching out and bringing these agencies together. We have also established a public sector leadership council, which I attend along with 18 other directors general and commissioners. There has not been one, in my memory, in the public sector that is not the sort of forum where the Premier comes and tells you what for, but where the actual leaders of the sector get together and talk about their collective stewardship of the sector. That happens every month now. It is very collegiate. We air uncomfortable issues. We discuss whether there are better ways of doing things and it is really healthy. I think the sector is on the mend, and it starts with the functionality of those four central agencies.

**Mr M. HUGHES:** It is reflective of a fresh approach.

**The DEPUTY CHAIR:** Thank you very much, gentlemen. Thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for the correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence. Thank you once again.

**Hearing concluded at 11.05 am**

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