



WESTERN AUSTRALIA

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Report on the WA Commissioner in Japan

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CHAPTER ONE

Overview: The behaviour of the Commissioner for WA in Tokyo, Japan

- [1] WA is a trading State. To promote WA as a place to invest, work, live and study, the Government of WA maintains an overseas office headed by a Commissioner in key trading regions.¹

Trade with Japan is very important for WA

- [2] WA accounts for nearly 40 per cent of Australia's total trade with Japan. The relationship is vital to the State's interests. Its permanent representative is the embodiment of the State.
- [3] The following extracts from the DJTSI² website give an indication of the importance of the WA - Japanese relationship.

Merchandise exports to Japan

- *Japan was Western Australia's largest export market from 1962-63 to 2005-06, and the 2nd largest market since 2006-07.*
- *In 2017-18, Japan accounted for 15 per cent of the State's merchandise exports.*
- *Western Australia accounted for 39 per cent of Australia's merchandise exports to Japan in 2017-18.*
- *Western Australia's merchandise exports to Japan were valued at \$18.9 billion in 2017-18, above the annual average of \$18.5 billion over the past ten years.*
- *Petroleum accounted for 65 per cent of Western Australia's merchandise exports to Japan in 2017-18, followed by iron ore (28 per cent).*

Major minerals and petroleum exports to Japan: 2017-18

- *Mineral and petroleum commodities accounted for 97 per cent of Western Australia's merchandise exports to Japan in 2017-18.*
- *Japan was Western Australia's largest export market for petroleum and 2nd largest export market for iron ore and nickel in 2017-18.*
- *In 2017-18, Western Australia's exports to Japan of:*
 - *petroleum rose 49 per cent to \$12.4 billion.*
 - *iron ore fell 1 per cent to \$5.3 billion.*

¹ Formerly known as the Trade Commissioner, now the Commissioner WA Department of Jobs, Tourism, Science and Innovation.

² Department of Jobs, Tourism, Science and Innovation.

Major agricultural and food exports to Japan: 2016-17

- *Japan was Western Australia's 5th largest market for agricultural and food exports in 2016-17, accounting for 8 per cent (\$678 million) of the State's agricultural and food exports.*
- *In 2016-17, Japan was Western Australia's largest export market for cereal straw, hay or chaff, and fresh or chilled beef.*
- *In 2016-17, Japan was Western Australia's 2nd largest export market for barley and 4th largest export for wheat.³*

[4] These figures show a mature trade relationship with many long term contracts, especially for minerals and oil and gas.

Western Australia and Japan have a longstanding economic relationship, based on Japan's demand for raw materials and Western Australia's capacity to supply those raw materials.

Western Australia has been supplying iron ore to Japan's steel industry for more than 50 years and LNG to Japan's energy companies for more than 25 years.

Trade with Japan supported the development of Western Australia's iron ore and oil and gas industries. This trade relationship with Japan turned the focus of Western Australia's exports from Europe and America to Asia.

Japan was Western Australia's largest export market from the 1960s, until China took over in 2006-07. Japan remains the State's second-largest export destination. In 2017-18, Japan accounted for 15 per cent of the State's exports. Petroleum and iron ore accounted for 93 per cent of Western Australia's exports to Japan.

Japan accounted for 10 per cent of Western Australia's imports in 2017-18. Western Australia buys semi-processed and finished goods from Japan, more notably passenger and commercial vehicles. Western Australia's largest import from Japan in 2017-18 was gold, with most of this gold likely to be refined in Western Australia before being re-exported.⁴

[5] The head of the Japan office was Mr Craig Steven Peacock, Commissioner since 2002, until his employment was terminated for misconduct on 1 February 2019⁵ after private examinations held by the Commission and action by the Director General of DJTSI.

[6] Mr Peacock was a public servant who, among other things, arranged visits for Premiers, Ministers, parliamentary delegations and others. He

³ Department of Jobs, Tourism, Science and Innovation, *Western Australia Japan Trade Profile October 2018* <https://www.jtsi.wa.gov.au/docs/default-source/default-document-library/japan-trade-profile-1018.pdf?sfvrsn=577c681c_47>.

⁴ Department of Jobs, Tourism, Science and Innovation, *Japan* <<https://www.jtsi.wa.gov.au/about-the-state/asian-engagement/japan>>.

⁵ Mr Peacock submitted a letter of resignation on 14 January 2019. The Director General did not accept it and proceeded with disciplinary action.

sought out trade opportunities for the benefit of WA. Mr Peacock was trusted and afforded great discretion. He was the State's representative.

- [7] His employment was through DPC⁶ until 2017 when, under machinery of government changes, responsibility was transferred to DJTSI.

Cost of living expenses

- [8] Mr Peacock was paid as a high level public servant and also received benefits including a cost of living allowance (COLA), payment of private school fees and a contribution towards rent and utilities. His membership of the Tokyo American Club was also paid for by the State.

- [9] But for many years, Mr Peacock had been enriching himself at the State's expense and betraying the trust placed in him. From December 2008 to January 2018, under renewed employment contracts, he was paid COLA direct from his employing departments into his bank account along with his salary. He also arranged for monthly payments equivalent to COLA to be paid to him through the Tokyo office bank account by directing the office manager to do so. Those payments totalled nearly \$500,000.⁷

Utilities and storage

- [10] Mr Peacock received a monthly allowance to help defray the cost of rent and utilities. His rent equalled the ¥500,000 allowance, so Mr Peacock was responsible for payment of the utilities. He instructed the office manager to reimburse him more than \$46,000⁸ for the cost of utilities and more than \$19,000 in storage fees. This expenditure to Mr Peacock's knowledge exceeded his contractual entitlements.

The Beefsteak and Burgundy Club

- [11] Mr Peacock has been a long term member of the Tokyo branch of the Beefsteak and Burgundy Club, serving for nearly 13 years as its chief wine master. He never sought approval for membership and dining expenses to be paid for by the State as required under his employment contract. Nevertheless, he instructed the office manager to reimburse him for these costs. As an example, between December 2015 and May 2018, Mr Peacock claimed approximately \$6,400 in Beefsteak and Burgundy Club expenses.

⁶ Department of the Premier and Cabinet.

⁷ Actual figure \$496,877.19.

⁸ Between February 2009 and March 2018, Mr Peacock was paid \$46,386.51 in utility related payments plus \$19,603.99 in storage related payments to which he was not entitled.

- [12] Apart from his testimony that the dinners related to networking or trade opportunities, there is no documentary evidence or diary notes to support any link to his position as Commissioner. He and his friends wined and dined well at the State's expense.

Misleading Chinese authorities

- [13] Mr Peacock misused his official passport by arranging for a letter of invitation from the Department of State's Development Regional Director in China. The purpose of the invitation was noted as for official business but in fact it was actually to attend a convention of the Beefsteak and Burgundy Club in Shanghai.

Taxation arrangements

- [14] Mr Peacock has not paid taxes in Australia or Japan since 1993. He says this is because he is the holder of an official passport. He told DPC that he paid tax in Japan. He has not. This is a breach of fidelity owed to his former employer. Following a private ruling obtained from the Australian Tax Office (ATO) by DPC on his behalf and with his input, Mr Peacock was not required to pay tax in Australia so no PAYG⁹ deductions have been made.

A car accident while drunk

- [15] In May 2011, when driving a State leased car while severely intoxicated, Mr Peacock drove into the back of a truck. He did not tell DPC that he spent 48 hours in prison, was fined and disqualified from driving. Nor did he report the damage to the vehicle. Instead, he persuaded the office manager to report the repairs on the monthly financial report falsely as 'end of else (sic) payment'. This was a typographical error as Mr Peacock meant to direct the office manager to report the repairs as an 'end of lease payment'. It was a mistake by Mr Peacock which the office manager faithfully followed.

Assisting politicians to visit a 'soapland'

- [16] In June 2015, Mr Peacock instructed Mr Takehiko Hashimoto, Senior Advisor and part-time employee, to organise a trip for two WA parliamentarians to attend a Japanese bathhouse in the Yoshiwara district. Mr Hashimoto accompanied them to translate and conclude the financial arrangements. Mr Hashimoto kept Mr Peacock fully informed of the visit as it was occurring. Mr Peacock was also sent photographs of

⁹ An employer has a role in ensuring that employees meet their tax liabilities. An employer ordinarily does this by collecting income tax on a pay as you go (PAYG) basis by withholding amounts from employee payments such as salary.

the visit. Mr Hashimoto's taxi expenses incurred in scouting out the best location were reimbursed by the State. He was also given time off to compensate his working on a Sunday escorting the parliamentarians and communicating on their behalf. It is doubtful that DPC would have approved such a use of resources, had it been told the purpose. It was an improper use of State funds.

Favours to other friends

- [17] Mr Peacock not only used his position to benefit parliamentarians who were also friends, one a close friend, he used his position to benefit friends in Japan by wining and dining them extensively and to help one of them wash money through Mr Peacock's bank account.

A missing hard drive

- [18] In June 2018, Mr Peacock was asked to bring his State owned laptop computer to Perth for replacement. He then engaged a contractor in Japan to remove and erase the hard drive before delivering the laptop to DJTSI.

Supervision by the Department of the Premier and Cabinet

- [19] Until June 2017, the Japan office came under DPC which was responsible for all aspects of Mr Peacock's employment. It was a function of DPC to check the Japan office's monthly financial returns to ensure State monies were expended properly. The returns were regularly submitted by the office manager after approval by Mr Peacock.
- [20] Some of Mr Peacock's actions, such as concealing the motor vehicle damage, were deliberately deceptive. But others were hiding in plain sight. The monthly financial returns detailed the COLA amounts. However, no one ever challenged these expenses or reviewed them against his employment contract. For nearly 10 years, the payments continued to flow.
- [21] No one in DPC ever queried the amount reimbursed for meals and entertainment. On occasions, Mr Peacock either obscured or falsified the guests' names. On other occasions, regular dining might have raised suspicions had any scrutiny been applied.
- [22] It appears that Mr Peacock kept few, if any, file notes, memos, diary entries or other confirmatory documentation to verify the purpose of these meetings and their connection to promoting business and investment in the State.

- [23] The only evidence that these were business meetings is Mr Peacock's testimony. For reasons which will become apparent, the Commission regards Mr Peacock as an unsatisfactory witness for whom corroborative evidence is required before acceptance.

The Commission's investigation

- [24] In July 2017, responsibility for overseas trade offices not already under DJTSI, including the Japan office, were transferred to DJTSI. Almost immediately, proper scrutiny of the monthly accounts took place and the Commission was notified of possible serious misconduct after some months.¹⁰
- [25] DJTSI cooperated fully with the Commission during the whole investigation and the Commission records its gratitude for the assistance received.
- [26] On 22 June 2018, the Commission commenced its investigation. Mr Peacock was first privately examined on 29 June 2018 while he was in Perth to attend a meeting of Commissioners.
- [27] In mid-September 2018 and in March 2019, officers of the Commission travelled to Japan, identified numerous relevant documents and made other enquiries.
- [28] On 11 September 2018, Mr Peacock was suspended by the Director General, DJTSI with pay. Mr Peacock attended the Commission for a further private examination in December 2018, after which the Director General, DJTSI instituted further disciplinary proceedings. Mr Peacock attempted to resign but his resignation was not accepted and he was dismissed for misconduct on 1 February 2019.
- [29] Although the Commission has obtained data and information stretching back many years, its investigation of financial records has been largely confined to events since January 2016, although other historical matters emerged during the investigation. The decision to limit the investigation was taken for pragmatic reasons. A full audit of Mr Peacock's claims has not been undertaken by the Commission. Such a decision is a matter for DJTSI if it sees any benefit in so doing.

¹⁰ *Corruption, Crime and Misconduct Act 2003* s 28.

Lack of Department of the Premier and Cabinet scrutiny not within the Commission's jurisdiction

- [30] An important issue is how Mr Peacock's activities went undetected for such a period. Although in the Commission's opinion, Mr Peacock egregiously betrayed the trust placed in him by successive Governments, questions are raised as to how his conduct managed to go undetected for so many years and why no apparent scrutiny was applied to his expense claims before the role was transferred to DJTSI.
- [31] There is no evidence that any officer in DPC engaged in serious misconduct in relation to Mr Peacock's activities, so the Commission's jurisdiction is not enlivened.
- [32] A copy of this report has been made available to the Public Sector Commission for such action as it sees fit.
- [33] In any event, given that DJTSI is now the employer of the State's overseas representatives and has acted appropriately, the Commission sees no value in committing its limited resources to pursuing matters which better fall under the Public Sector Commission.

Opinion of serious misconduct

- [34] In the Commission's opinion, Mr Peacock has corruptly used his position to obtain benefits for himself and others over many years. He has done so to the detriment of the State.¹¹
- [35] An opinion that serious misconduct has occurred is not, and is not to be taken as a finding or opinion that a particular person is guilty of or has committed a criminal offence or a disciplinary offence.¹²

¹¹ CCM Act s 4(b).

¹² CCM Act s 217A(3).

CHAPTER TWO

Mr Craig Peacock's employment contracts

- [36] This chapter explains Mr Peacock's obligations and entitlements.
- [37] DJTSI outlines the role of Commissioner on its website:
- The department and its overseas offices provide the following free and confidential services for export ready companies:*
- *Information, including economic trends, trade statistics and market analysis, market demand, market competitions, import compliance, rules and regulations.*
 - *Contacts and introductions, including advice on overseas programs, associations, government, regulators and supply chain.*
 - *Marketing advice, including business culture, as specific to different countries and regions.¹³*
- [38] The role is critical to the WA Government's relationship with the Japanese Government.
- [39] The Tokyo office is relatively small, with seven or eight employees who reported directly to Mr Peacock. As locally retained employees, they were not entitled to any cost of living, hardship or expatriate allowances beyond their usual salary and contractual entitlements.
- [40] Mr Peacock's employment was treated differently. As an Australian citizen contracted to work for the WA Government in Japan, his contracts of employment were negotiated directly with DPC (and then DJTSI). In addition to salary, the contract provided for various living allowances to compensate for living as an expatriate in Japan.
- [41] Mr Peacock commenced employment in 2002. At that time, he had been living in Japan for over 10 years. He was employed by contract for a period of three years. The usual practice was that employment contracts were periodically rolled over and this practice was followed with him.
- [42] Mr Peacock was hired as a local engagement because he had been living and working in Japan prior to his commencement in 2002 with DPC. Employees appointed from the posting location were generally paid in accordance with other locally engaged staff as per guidelines from the Department of Foreign Affairs and Trade. That would mean no extra

¹³ Department of Jobs, Tourism, Science and Innovation, *What we offer* (22 February 2019) <<https://www.jtsi.wa.gov.au/trade-with-wa/our-services/what-we-offer>>.

allowances be paid in lieu of cost of living, cost of posting or hardship and isolation allowances. Ordinarily, there would be no reimbursement to the officer for rent or schooling of their children and the officer would be paid by drawing a salary each month from the office budget in accordance with their contract. That is, salary payment would not be paid via the human resources area at DPC in Perth. This was indeed the situation with all of the employees at the Tokyo office except for Mr Peacock.

- [43] Despite having been appointed while living and working in Japan, Mr Peacock was originally paid in Australian Dollars to an Australian bank account. Ordinarily, PAYG tax would be deducted accordingly. Mr Peacock was given entitlements of an officer appointed from Australia and given similar allowances.
- [44] Mr Peacock's salary as a Level 8 WA public servant and the amount received in lieu of superannuation, was paid in a fixed sum from DPC in Perth. This arrangement was clearly specified in clause 3.b) of his 2005 contract:

The Financial and Administrative Services Branch will pay your salary plus 9%, in lieu of superannuation, (\$AUD) into a nominated Australian bank account each month and the Department will pay any transfer costs. The remaining allowances to be deposited into the Tokyo office each month.

- [45] Under the 2005 contract and under a subsequent November 2008 contract between Mr Peacock and DPC, clause 8 of his employment contract specified entitlement to rent and utility costs:

While privately accommodated during your appointment, the Government agrees to meet the rent and utility costs for an unfurnished dwelling to the value of ¥500,000 per month as agreed. The purchase of any furniture is at your own expense.

These arrangements are to be agreed to between parties prior to approval. You are to provide to this office a signed copy of any lease you accept. The Department must not be nominated as Guarantor in any lease arrangements.

- [46] The Tokyo office bank account was generally topped up every two to three months by a single transfer from DPC. The office did not receive regular income or funds from any other source.¹⁴ During 2005 and 2008, Mr Peacock's allowances and rent were expected to be paid from the Tokyo office bank account. The office manager, under the direction and guidance of Mr Peacock, sent back to DPC (and then DJTSI) a high level financial overview in the form of a monthly cash expense spreadsheet.

¹⁴ The Japan office would receive other minimal amount of funds in support of overseas students as well as reimbursements from persons for expenses that the Japan office had incurred in providing its services (such as assisting visiting Members of Parliament).

Mr Peacock's COLA and rental payments appeared as a line item in each monthly cash expense spreadsheet.

- [47] At the time he entered into the 2005 contract, Mr Peacock sought clarification from DPC that the rental allowance of ¥500,000 per month was inclusive of utilities. The reply from DPC by email on 20 July 2005 was clear 'Utilities etc are your responsibility'.¹⁵
- [48] At the time of renegotiating Mr Peacock's contract in November 2008, DPC changed the mechanism for payment of his COLA. By 26 November 2008 at 11.36 am, Mr Peacock was aware of the component parts of his salary and allowances, how they were to be calculated, how often they were to be paid, and the new mechanism by which they would be paid. The calculation of his allowances were matters of concern to him during the six months previously and were the subject of considerable discussion between himself and various officers at DPC.
- [49] It was agreed in the contract that Mr Peacock was to abide by the taxation laws of Japan.
- [50] Other conditions included clause 7, which allowed Mr Peacock to have access to the Government's corporate membership to the Tokyo American Club at no charge to himself. Mr Peacock was to be issued with a departmental corporate credit card for official business expenses with expenditure on that account to be consistent with the business operations of DPC and the endorsed method of payment by the Auditor General. His contract stated 'Where the credit card is not accepted, on production of a receipt, reimbursement of monies expended for official purposes will be provided'.
- [51] The 2008 contract stated in clause 11 that Mr Peacock was to be privately accommodated during his appointment, continuing the arrangement under the 2005 contract.
- [52] In clause 12, DPC agreed to continue paying education assistance for Mr Peacock's son until the expiry of his contract. This was to consist of enrolment and tuition fees at an international school. Non obligatory expenses such as school excursions etc were specifically excluded from the arrangement.
- [53] In clause 14, DPC agreed to provide the costs of connection of one telephone and one data line rental and agreed that all work related calls

¹⁵ Email from DPC officer to C S Peacock, 20 July 2005.

from his private phone would be reimbursed in accordance with Government policy on presentation of accounts.

- [54] Clause 15 stated he was entitled to hold an official passport which was only to be used for official travel, with his ordinary passport to be used for private travel.
- [55] As will become apparent, Mr Peacock failed to abide by each and every one of these conditions.

An example: The Tokyo American Club

- [56] During examination, Mr Peacock was shown a bundle of Tokyo American Club statements, some of which had line items acquitted against particular companies. Mr Peacock stated that this was his writing. On some occasions, the entity 'Covance' appeared. Covance is an entity that employed one of Mr Peacock's close friends, Mr Gary Lynch. Mr Lynch has no business ties to WA. On other occasions, the acquittal was against an entity called World Foods or New Zee Meat, both of which are collectively operated by Mr John Turner, another close friend and a New Zealand national. Mr Peacock maintained that these were business meetings during which he had discussed business relevant to WA and they were not merely social meetings.
- [57] Over the course of the last two years, Mr Peacock has paid \$739.60 acquitted against Mr Lynch and Mr Turner's entities to the Tokyo American Club alone. In relation to other expense reimbursements sought by Mr Peacock that were acquitted by reference to Mr Lynch or Mr Turner's entities, the total over the period of the last two years was approximately \$3,075.53.
- [58] Just as concerning, Mr Peacock was also shown examples whereby he did not detail any particular business purpose for expenses incurred at the Tokyo American Club. For the period during July 2016 and April 2018, the Commission identified a total amount of ¥642,024 (approximately \$7,600) in expenses that were not acquitted against any business purpose.

CHAPTER THREE

The cost of living allowance double payment

- [59] This chapter will explain how Mr Peacock came to be paid two lots of COLA and that he was, at all times, aware he was double dipping.
- [60] Put simply, until November 2008, Mr Peacock received his salary from Perth and his COLA from Tokyo.
- [61] In November 2008, the scheme was changed so that Mr Peacock received both his salary and COLA from Perth.
- [62] He withheld this contractual change from the office manager who therefore continued with the monthly COLA payments from the Tokyo office bank account. Mr Peacock knew he was getting two amounts of COLA despite being entitled to only one.
- [63] On 27 June 2005, Mr Peacock met with the acting principal policy officer at DPC and it was agreed that Mr Peacock's annual salary of \$105,000 and the money in lieu of superannuation each year (a sum of \$9,500), would be paid directly into Mr Peacock's Australian bank account by DPC. The remainder of Mr Peacock's contract entitlements which included COLA plus his rent and utilities to the value of ¥500,000, would be drawn by Mr Peacock through the Tokyo office bank account. It was agreed that Mr Peacock was to abide by the taxation laws in existence in Japan.
- [64] Mr Peacock acted on this contract renegotiation by firstly confirming with DPC by email that his salary and superannuation (in lieu) were to be paid monthly into his nominated Westpac Australian bank account, and that the remainder of his allowances, being COLA and rental allowance, were to be paid by the Tokyo office and tracked by DPC via the monthly expense sheets sent by the office and Mr Peacock back to DPC.¹⁶
- [65] Mr Peacock was contacted on 14 July 2005 to confirm that arrangements were made for his monthly salary to be deposited into his Australian bank account on the last working day of each month. Further, DPC sent Mr Peacock by email a monthly salary breakdown, a practice that occurred through subsequent new contract negotiations.
- [66] In Tokyo, Mr Peacock actioned the contents of his 2005 contract quickly. On 27 July 2005, Mr Peacock instructed the office manager to pay him a

¹⁶ Email from C S Peacock to Human Resources, DPC, 11 July 2005, p 2.

fixed sum of \$11,086.08 as COLA and rent allowance.¹⁷ This was to be paid from the Tokyo office bank account, converted at the current exchange rate. ¥500,000 was to be subtracted from the amount to be paid to the lessor of Mr Peacock's apartment and the balance was to be paid to Mr Peacock as COLA into his Japanese bank account.

- [67] This occurred with clockwork regularity every month for the following 13 years. The fixed sum of \$11,086.08 was the amount that had been communicated to Mr Peacock by email exchange in July 2005 as the payment necessary to honour his contract of employment.
- [68] By 2008, Mr Peacock's COLA had not been reviewed for three years. In order to address the currency fluctuation issue, in June 2007, DPC began to reimburse Mr Peacock his bank fees. The method of salary and superannuation payment changed so that his salary and superannuation amount were converted to Yen each month and then paid into a Japanese bank account nominated by Mr Peacock.
- [69] By April 2008, Mr Peacock's contract was due to expire. DPC advised that all entitlements were to be continued until Mr Peacock received his new contract after negotiations between himself and DPC. Again, Mr Peacock gave the office manager a direction to continue to pay his allowances until a change was determined.¹⁸
- [70] By the last quarter of 2008, Mr Peacock was experiencing the effects of the global financial crisis because the Australian Dollar had dropped in value against the Japanese Yen. Mr Peacock was still receiving his fixed sum of \$11,086.08 for COLA, however this converted to less Yen. Mr Peacock knew that his 2005 contract was about to expire and he was to enter into a period of negotiation in relation to his 2008 contract of employment, so he raised the issue of the Australian Dollar depreciation with DPC.
- [71] At this stage, Mr Peacock was receiving a salary commensurate with the rate of a Public Service General Agreement Level 9, third year plus COLA analogous to Department of Foreign Affairs and Trade guidelines for an officer appointed to an overseas post.
- [72] Mr Peacock's 2005 contract expired in April 2008, and between April and November 2008, his contract was under review.
- [73] By 16 October 2008, an internal memorandum to the Director General, DPC addressed the issue of Mr Peacock's pending contract negotiations and the Australian Dollar currency fluctuation concerns he was

¹⁷ Email from C S Peacock to office manager, 27 July 2005.

¹⁸ Email from C S Peacock to office manager, 22 April 2008.

expressing. The conclusion of the memorandum was that Mr Peacock's salary was:

[c]omparable with employees who DOIR [Department of Industry and Resources] employ from post. Mr Peacock is in receipt of a Cost of Living Allowance each month of approx AUD \$5000 which employees appointed from post are not eligible for at DOIR. The Cost of Living Allowance that he receives is designed to compensate employees for the increased cost of purchasing goods and services at the posted location including exchange rate variations.

Furthermore, Mr Peacock is paid a Level 9 salary where the equivalent at the DOIR is a Level 8 and the Department is also reimbursing Mr Peacock for rent and school fees which DOIR do not do for locally engaged employees.

Mr Peacock has been receiving the benefit of a strong Australian Dollar since June 2007 when the Department converted his salary to Yen each month.¹⁹

- [74] The memorandum agreed that the Australian Dollar had dropped by approximately 29 per cent since July 2008 to a four year low which had a direct impact on the COLA Mr Peacock had been receiving over the previous few months. The overall recommendation of the memorandum was that DPC register with an agency known as ECA International, and the COLA component be adjusted accordingly in his new contract. This would allow a mechanism for the allowance to be reviewed periodically.
- [75] About the same time, Mr Peacock's substantive Level 9 third year salary was being adjusted upwards for new salary rates. This was separate to the issue of the currency fluctuations and the payment of COLA.
- [76] On 5 November 2008, Mr Peacock received a letter of the previous day's date under cover of an email from DPC. Mr Peacock received the letter as an attachment to the email at approximately 4.00 pm. The covering email advised that DPC was still organising a subscription to ECA International in order to address his concerns over the currency fluctuations with his COLA. The following day, 6 November 2008 at 1.17 pm, Mr Peacock responded:

Thanks [officer] for being very helpful and thorough as always.

It does make sense and is a little more encouraging. I understood the letter yesterday but I also understood that things won't get a lot better with the rate as it is and the base salary being at the mercy of that.²⁰
- [77] The letter Mr Peacock stated he 'understood' was dated 4 November 2008 and was the attachment to the email received. The letter of 4 November 2008 was addressed to Mr Peacock personally, to his residential address in Tokyo and was authored by the Assistant

¹⁹ Internal memo from Human Resources to C S Peacock, DPC, 16 October 2008.

²⁰ Email from C S Peacock to DPC, 6 November 2008.

Director General, DPC. The letter stated that DPC was aware he was receiving a fixed COLA amount paid from the Tokyo office on a monthly basis. The letter acknowledged there was currently no mechanism in this arrangement to allow for currency fluctuations.

- [78] In the letter, the Assistant Director General advised Mr Peacock that having reviewed a number of options, the Human Resource Services Branch (HRSB) had decided to peg his COLA to current currency at conditions set by ECA International allowing for adjustments as necessary. One of the final paragraphs of the letter advised:

Details of your Cost of Living Allowance will be specified in your new contract, which is currently under review. From 1 November 2008, it is proposed to review the Cost of Living Allowance monthly and advise you accordingly. This will result in the salary you receive from HRSB, which comprises of base salary and monies in lieu of superannuation not altering each month but the COLA component of your allowance may alter from month to month due to currency fluctuations.

It is also proposed that this allowance be paid from the HRSB and not from the Tokyo Office as specified in your current contract as the HRSB will have access to ECA International. Details of this change will also be reflected in your new contract and the HRSB will notify you each month via e-mail of the breakdown of your salary.²¹

- [79] On 21 November 2008, DPC wrote again by email to Mr Peacock to acknowledge that he would soon receive confirmation as to the amount of his COLA component and his new annual salary. The email stated 'As mentioned in the letter we will be **paying this cost of living component rather than you drawing from the Tokyo office**'.²² (**emphasis added**)
- [80] Under examination on 29 June 2018, Mr Peacock testified that he had never seen the letter of 4 November 2008, possibly because the residential address specified was incorrect at the time. However, from the email correspondence, it is clear Mr Peacock received the letter by email and in fact, the timely comments he made back to DPC indicated that he had read and considered the contents of the letter.
- [81] On 24 November 2008, Mr Peacock requested DPC send a breakdown each month of the payments they would be making.
- [82] Mr Peacock was given a copy of his 2008 contract in draft under cover of an email from DPC received on 26 November 2008 at 11.35 am which stated 'Please find attached a draft version of your contract which incorporates the new method of calculation for your allowances and the new Location/hardship allowance. Your comments are sought urgently'.

²¹ Letter from Assistant Director General to C S Peacock, 4 November 2018.

²² Email from DPC to C S Peacock, 21 November 2008.

- [83] The draft contract attached was in exactly the terms of the final contract signed on 8 December 2008. In clause 5, it clearly stated that Mr Peacock's salary was to be at the Level 9 third year, at \$120,645 per annum, and he was to receive allowances broken down into rent and utilities at the cost of ¥500,000 per month, a cash amount in lieu of superannuation at the cost of \$10,858, back pay of a cost of living/cost of posting allowance fixed at \$59,891 per annum,²³ ongoing COLA fluctuating as per advice from ECA International,²⁴ a location/hardship allowance fluctuating as per advice from ECA International and a cost of posting/remuneration expat allowance as per advice from ECA International. The contract continued:

The Department will pay your salary, 9% in lieu of superannuation, and allowances on a monthly basis. Monies will be converted from AUD to Japanese Yen and deposited into a nominated Japanese bank account. Currency rate to be determined at time of deposit.

The cost of living allowance will be reviewed on a monthly basis and may alter due to currency fluctuations and other factors. The location/hardship and costing of posting/remuneration expat allowances are reviewed annually.

- [84] On the same day he received the draft contract at 11.35 am, he acknowledged receipt of the draft contract²⁵ and stated to DPC '**I have noted all the changes and am fine with all**' (**emphasis added**). The following day, Mr Peacock sent another email back to DPC asking whether the Director General had managed to sign off on his contract and made a decision as to whether he was to be addressed by the title 'Commissioner'. An officer from DPC immediately responded that the contract had been signed and he was now to use the new title of Commissioner. Mr Peacock's signed contract was backdated to May 2008.²⁶

- [85] Having received the new contract in draft on 26 November 2008, Mr Peacock sent an email to the office manager. Mr Peacock told her that under the conditions of his new contract:

[t]he Government has agreed to pay utility costs and the costs of a telephone line and data line.

As I already have a telephone line this will not be a cost. I will, however, submit utility bills to you for payment. As the contract is backdated to May 2008, I will also give you the receipts from that time to be reimbursed. The clause related to this is as quoted ...²⁷

²³ For the period 1 May to 31 October 2008.

²⁴ For the period 1 November 2008 to 30 April 2011.

²⁵ Email from C S Peacock to DPC, 26 November 2008, p 2.

²⁶ Employment contract, C S Peacock, 8 December 2008.

²⁷ Email from C S Peacock to office manager, 26 November 2008.

- [86] Mr Peacock enclosed only clause 11 of his contract. Notably, he did not include the clauses dealing with the new arrangement for paying COLA.
- [87] The payment of utility costs and the costs for the telephone and data line were entitlements already in place under his 2005 contract. Nothing had changed in that respect with the new 2008 contract except for the payment of COLA. What Mr Peacock failed to tell the office manager was that COLA was to now be paid from Perth to Mr Peacock directly, rather than through the Tokyo office bank account. During examination, Mr Peacock gave no rational explanation for this omission, which the Commission infers was intentional.
- [88] The office manager was under the control and direction of Mr Peacock. The failure to tell her was a deliberate attempt to maintain a status quo whereby, unaware of any change, she continued to facilitate the payments of a monthly COLA and rent allowance of \$11,086.08 for Mr Peacock through the Tokyo office bank account. Mr Peacock should have directed the office manager to continue paying only his rent from the Tokyo office bank account.
- [89] The practice regarding payments from the office bank account was that any withdrawals from the Tokyo office bank account required two signatories, one of whom was Mr Peacock, and the other generally the office manager. She presented the documents for Mr Peacock to authorise prior to the withdrawal being made. At that same time, he signed the withdrawal slips which the office manager subsequently used when she physically went to the bank to withdraw the money and transfer it into Mr Peacock's personal account.
- [90] Mr Peacock not only failed to tell the office manager on 26 November 2008 of the change in practice regarding the payment of his COLA, but he continued to co-sign the withdrawal slips she presented to him on a monthly basis for the following decade.
- [91] In examination on 29 June 2018, Mr Peacock advanced several explanations for his continuation of the COLA being paid by the Tokyo office:

[i]t's my recollection that I didn't believe that there was a conflict in the allowances. The locally paid allowances was referred to as a locally paid allowance, and I believe that was something that the head of the office received as part of being, on an expat package there. All of this, I thought, was additional to that.

Right, so you're saying that you believed that you were entitled to an allowance on top of what appears in this contract?---What I believe is that that allowance

was paid to the head of the office, the official representative of commissioner as it later became, and that was part of being on an expatriate agreement.

...

Are you telling the Commissioner that you believed you were entitled to all the allowances that appear in the contract in front of you, of November 2008, plus an additional allowance from the Tokyo office?---I believe that was the accepted practice.²⁸

[92] He was unable to explain satisfactorily the basis of this belief:

I believed that there was a living allowance paid to the head of the office, from the Tokyo ---

Where did that belief come from? That came to me from the office manager and I believe it was the practice.

...

I believe it was the accepted practice that the remainder of that amount was a so-called "local allowance." I think the payment, the way the payments were made would reflect that.²⁹

I have trouble explaining that. It was what I believed to be the accepted practice, that that was an amount that was paid to the head of the office and that the rent was subtracted from that.

...

I really can't explain on what basis, it was the practice, that's all I can offer.

...

Did you tell anyone at the Department of Premier and Cabinet that you were also receiving an extra allowance?---No I did not. I don't believe that that would have been necessary, because they were receiving clear indication of that every month.

And how were they receiving clear indication of that?---Via a monthly summary that was sent to the office.

...

--- did you draw it to the Department's attention in any other way, that you were getting a cost of living allowance from the Tokyo bank account?---I do recollect that during the time of the global financial crisis, that because of the reduction in salary and the amount of money I was receiving, I do remember speaking to the Chief Financial Officer at the time and I said, "I'm thankful for getting extra from the Tokyo office, to ---

...

²⁸ C S Peacock transcript, private examination, 29 June 2018, p 29.

²⁹ C S Peacock transcript, private examination, 29 June 2018, p 31.

Where did you have that conversation?---That would've been in Perth, when I was visiting.

And can you just tell the Commissioner what was said in that conversation, again?---This is of course 10 years ago and I believe it was ... We were talking about the global financial crisis and the fall of the exchange rate against the Australian dollar, and how that was causing me some hardship and I said to him that I am thankful for the extra that I get from Tokyo office because that helps to alleviate the hardship of the fall in the exchange rate.³⁰

- [93] In an examination held in December 2018, Mr Peacock stated he had misunderstood the situation and thought the allowances that were to be paid to him under his 2008 contract from Perth, were in addition to the COLA that was being paid to him from the Tokyo office bank account. However, the Commission has found no evidence that Mr Peacock ever raised this understanding of his new contract. This misunderstanding is contrary to the letter dated 4 November 2008 from DPC that clearly stated the allowance was to be paid from DPC and not from the Tokyo office. This message was further reinforced by an email Mr Peacock received on 21 November 2008 from DPC which stated 'we will be paying this [COLA] rather than you drawing from the Tokyo office'.
- [94] One of Mr Peacock's first payments under his new 2008 contract came in the last couple of days of November. On 28 November 2008, Mr Peacock emailed DPC stating 'I received a transfer of 1,146,662 yen today, thank you. Someone there will let [me] know what the breakdown of that is?'. The reply that came back the same day was that the payment included his pay made up of salary and superannuation, and 'cost of living allowance which will fluctuate monthly based on the currency rate as per ECA'.
- [95] Three days later on 3 December 2008, Mr Peacock was sent specific details of the payment for November 2008 from DPC in Perth. The salary component was \$10,958.58, the location allowance (hardship) was \$1,005.38 per month, the expatriate allowance (known as COPRA) was \$1,508.06 per month and the variable COLA amount was \$5,326.58 for that month. At the base of the email, the principal HR consultant stated 'Craig the subtotal amount will remain static at \$13,472.02 per month and the COLA may be the variable amount'.
- [96] The 22 December 2008 monthly reimbursement to Mr Peacock's account from the Tokyo office bank account, showed that the office manager had continued to pay COLA and rent allowance in the fixed

³⁰ C S Peacock transcript, private examination, 29 June 2018, pp 35-40.

sum of \$11,086.08. Mr Peacock signed the bank withdrawal slip authorising this payment to himself from the Tokyo office bank account.

- [97] Even if Mr Peacock may have had some difficulty in November 2008 coming to terms with the new arrangement, he had many opportunities over the subsequent decade to rectify the situation after becoming aware of the overpayment. Mr Peacock was well aware by, at the very latest, January 2009 that he was receiving two COLA payments. On 27 January 2009 at 3.37 pm, Mr Peacock sent an email to a DPC officer stating:

Last November before [an officer] went on leave she advised me that payroll would be sending me a statement each month via-email of a breakdown of my salary, COLA and COPRA. Today I've not seen any statements and if you could chase that up for me I'd appreciate it.³¹

- [98] The email explains how in the last six months he had been substantially worse off because of the current exchange rate between the Yen and the Australian Dollar and he would like to see 'what is happening in terms of the breakdown and what exchange rates etc. are being applied'. Mr Peacock was aware that the new process of being paid COLA from Perth was in order to address the currency fluctuation concerns he had raised with DPC. His 2008 contract changed the process in order to benefit him. Yet he continued to maintain, under examination before the Commission, that he had an entitlement to receive in effect two COLAs, one from the Tokyo office bank account and one from the Perth DPC office account.
- [99] Mr Peacock relied on the COLA he received from the Tokyo office as a way of supplementing the cost of his lifestyle. In a text message between his good friend, Mr Turner and himself on 27 July 2016, Mr Peacock stated 'I get my local living allowance on the 8th or 9th but that just covers card usage (like last night and Marcello etc.) and the balance to [my wife]. After that, nothing until the 31st...'. The reference to Marcello was a reference to a restaurant Mr Peacock frequented.³²
- [100] Mr Peacock received salary and allowances from Perth in the last few days of each month. He received documents with the monthly salary breakdowns from Perth in regards to payment of his salary and allowances as well as the monthly reports prepared by the office manager.
- [101] If Mr Peacock was ever in any doubt about whether he was entitled to get the benefit of two COLA payments per month, his contract in 2011

³¹ Email from C S Peacock to Human Resources, DPC, 27 January 2009.

³² Text message between C S Peacock and J Turner, 27 July 2016.

should have corrected any misconception. Clause 5 of his contract dated 9 May 2011 stated that his salary and allowances on a monthly basis be paid:

[b]y electronic transfer to reach your nominated bank account by the last Wednesday of each month. The Department will pay for any transfer cost. Monies will be converted from AUD to Japanese Yen (JPY) and deposited into a nominated Japanese bank account. Currency rate will be determined at time of deposit.

- [102] The wording of clause 5(iii) of the 2014 contract was in exactly the same terms as the 2011 contract. On neither of these occasions or indeed during the negotiations for his 2017 contract did Mr Peacock inform DPC or DJTSI that he was being paid an additional COLA, contrary to the terms of his various contracts.
- [103] When first confronted in 2018 with the discrepancy between his contract and the practice of the Tokyo office also paying the COLA, Mr Peacock told DJTSI that the double payments were unintentionally made and never raised in the audits of the office. By the time of his initial examination before the Commission in June 2018, Mr Peacock stated that rather than being unintentionally made, he had the expectation that he was entitled to receive a living allowance from the Tokyo office regardless of the express terms of his contractual employment. In examination in December 2018, Mr Peacock abandoned his earlier explanations:

[i]n retrospect my understanding of the letter was wrong.

...

So that's now the second time that you've been told, Mr Peacock, isn't it? Once in the November 4 letter and then again on 21 November?---Yes.

And you reply on 24 November thanking her and thanking her for the fact that you will receive a breakdown ---

?---Yes.

...

On 26 November you receive a draft version of your new contract?---Yes.

Which incorporates the new method of calculation for your allowances under the ECA and the new location hardship allowance?---Yes.

...

And it has the subject heading, "New Contract" from yourself to [the office manager]. This was in the afternoon of November 26, which is the day you received the draft, and you tell her that you will be submitting utility bills for payment by the office?---Yes.

You don't tell her anything else that's new under the contract, do you, Mr Peacock?---No.

...

I misunderstood that that payment was to stop. I thought I was getting additional payments from Perth.³³

- [104] Counsel assisting, Ms Kirsten Nelson, took him through the correspondence again and asked:

What is not clear about that, Mr Peacock?---What is not clear or what my misunderstanding is that I thought that the COLA payment was a new payment, a totally new thing coming into the contract.

You have to do better than that, Mr Peacock. You have been receiving COLA, and you continue to receive COLA. The only thing that changed was where it came from?---Yes, I understand, but I didn't – in my mind, and this is my oversight and misjudgement, in my mind the allowance received as part of the rent and allowance in Tokyo was not COLA.³⁴

- [105] The Commission has little confidence in any of the explanations in view of the clarity of the correspondence and the affirmative response to it by Mr Peacock at the time. It is most probable that Mr Peacock concealed the new contract arrangements from the office manager to receive an extra financial benefit.

The internal audit

- [106] A further explanation Mr Peacock offered was that the Tokyo office had been the subject of an internal audit by a Perth based firm, Stantons International, contracted by DPC. In the final audit report, Stantons had stated that 'Mr Peacock was getting a local living allowance through the Tokyo office' and that nothing came of this disclosure to DPC.
- [107] Mr Peacock is correct that the audit report prepared by Stantons dated June 2009 stated:

It was noted that only the Commissioner is paid from Australia and that he has rent and a cost of living allowance paid locally. It was found that all salary amounts were in accordance with the individual contracts. All expenses that were reimbursed as part of this pay process were reviewed and receipts attached were reviewed and reconciled with the reimbursement sheets and no issues were noted.³⁵

³³ C S Peacock transcript, private examination, 29 June 2018, pp 74-78.

³⁴ C S Peacock transcript, private examination, 29 June 2018, pp 78-79.

³⁵ Stantons International, *Department of the Premier and Cabinet Overseas Offices North Asia (Tokyo)* (June 2009) p 8.

- [108] However, the auditor stated during examination that Mr Peacock's contractual entitlements were outside the scope of his audit and that at no time was he given a copy of Mr Peacock's contract either by DPC or by Mr Peacock himself. The scope of the audit was communicated to Mr Peacock before the auditor arrived in Tokyo and consisted of the following: 'The scope of this review includes the general operations, processes and controls in respect to the North Asia Office. This will include payments, purchasing, personnel, payroll, asset management and general office procedures'.³⁶
- [109] The scope of the audit was set by DPC and Mr Peacock received a draft audit plan by email from the auditor on 24 April 2009. A further email chain refers to the auditor asking Mr Peacock for copies of staff contracts. There was no mention of Mr Peacock's contract. Once he had attended the office, the auditor wrote his observations in the relevant portion of the audit test plan document. While he was there, the auditor had seen the monthly disbursements statement prepared by the office manager to Mr Peacock for his salary and COLAs. The monthly salary payment clearly stated that he was receiving COLA from the Tokyo office bank account. However, the auditor did not check this entitlement against Mr Peacock's original contract because this was outside the scope of the audit of the office.
- [110] In 2012, a similar audit was carried out at the Tokyo office with the same result. This was a further occasion for Mr Peacock to obtain some clarity as to what allowances he was allowed. He did not ask the relevant question. It would have been apparent from the draft test plan Mr Peacock received prior to the auditor arriving in Japan, that the terms of his contract were outside the scope of the audit and were not matters to be addressed by the auditor. These were the inherent limitations of this auditing activity. Mr Peacock's contract does not appear to have been subject to any internal or external audit process.
- [111] Payment of COLA to Mr Peacock from the Tokyo office bank account from November 2008, was an extra payment that occurred through Mr Peacock opportunistically taking advantage of the geographical distance between the local office and Tokyo, and the trust of those who were overseeing his management of that office back in Perth.
- [112] The Commission has considered all the circumstances of the payments of COLA including Mr Peacock's various explanations. In particular, the Commission has considered whether the claim for COLA from the Tokyo office was deliberate or a mistake.

³⁶ North Asia Office Audit Scope, 2008-2009.

- [113] It is unusual for a person who is setting out to obtain a benefit dishonestly to inform the person giving the benefit openly and in writing. Yet this is what happened. Each month the office manager sent a spreadsheet to DPC openly listing the COLA being paid by the Tokyo office.
- [114] Other payments that will be considered further in this report were also openly listed. Had DPC performed the most basic checks, COLA and other payments would have been exposed.
- [115] A number of matters militate against a conclusion that Mr Peacock simply misunderstood his entitlements or made a mistake.
- [116] Firstly, Mr Peacock advanced in examination a number of implausible explanations before settling on "misunderstanding".
- [117] Secondly, there was no misunderstanding. The correspondence and emails make it clear that Mr Peacock was well aware that as from the date of his November 2008 contract, he would be receiving COLA from Perth direct, adjusted monthly to take into account currency fluctuations.
- [118] Thirdly, in giving the office manager instructions about what he was entitled to be paid from the Tokyo office by way of allowances, he deliberately withheld from her the parts of the contract that reflected the change to COLA.
- [119] The Commission infers that Mr Peacock took a risk in 2008 that the monthly returns would not be subject to scrutiny. The risk paid off and Mr Peacock financially benefited in the amount of approximately \$500,000. His conduct falls within the definition of serious misconduct:
- [a] *public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person.*³⁷
- [120] A finding or opinion that misconduct has occurred, is occurring or is about to occur is not, and is not to be taken as, a finding or opinion that a particular person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.³⁸

³⁷ CCM Act s 4(b).

³⁸ CCM Act s 217A(3).

CHAPTER FOUR

Additional payments for utilities and storage

- [121] This chapter explains how Mr Peacock also received a double payment for utility expenses.
- [122] From 2005, DPC agreed to meet the 'rent and utility costs for an unfurnished dwelling to the value of ¥500,000 per month as agreed'. From 2014, this amount per month was increased to ¥600,000. The plain reading of that contractual clause is that both rent and utility costs together should not exceed the monthly stated amount, either ¥500,000 or later ¥600,000.
- [123] On 26 November 2008,³⁹ Mr Peacock directed the office manager to pay his submitted utility bills from the Tokyo office bank account. In addition, Mr Peacock's rent of ¥500,000 per month was being paid directly from the Tokyo office bank account as part of the arrangements under the 2005 contract.
- [124] The Commission examined the payments by the Tokyo office for the two years, from December 2015, which identified Mr Peacock had presented electricity, gas, water and other utility bills relating to his residential address to the office manager to arrange payment. The office manager generally paid the utility bills in person using the funds from the Tokyo office petty cash account under the direction of Mr Peacock.
- [125] When asked to explain why he continued to submit his personal utility expenses for reimbursement, Mr Peacock was unable to provide a satisfactory response.
- [126] He agreed that in his contracts, payments for rent and utility costs were not to exceed ¥500,000 per month but said it was not his understanding at the time. When pressed as to what mistake he made, he said that there is no rental contract in Japan that includes utility costs. The utility costs are not the same every month so that is probably what caused the misunderstanding.
- [127] However, when Ms Nelson instantly challenged this statement, he agreed that utility costs are never the same every month for anyone in the whole world. He said that "we could never establish a perfect figure of 500,000 per month with rent and utilities".⁴⁰ He agreed that his rent alone was ¥500,000, the perfect figure.

³⁹ Email from C S Peacock to office manager, 26 November 2008.

⁴⁰ C S Peacock transcript, private examination, 18 December 2018, p 81.

- [128] The Commission does not accept that Mr Peacock continued to claim utility costs in excess of ¥500,000 or ¥600,000 as a result of any misunderstanding. At the time Mr Peacock's contract was renewed in 2005, he was directly informed that payment of utilities were his responsibility. In an email from DPC to Mr Peacock on 20 July 2005, he was informed 'Utilities etc are your responsibility'. This was in response to Mr Peacock's question 'Could I also confirm that the rental allowance is 500,000 yen inclusive of utilities?'.
- [129] For the period December 2015 to June 2018, the Commission identified an amount of ¥1,374,238 (approximately \$16,428) had been paid by the Tokyo office towards Mr Peacock's private utility expenses which were in excess of the agreed contractual entitlements.

Role of the Department of the Premier and Cabinet

- [130] The utility reimbursements were notified monthly to DPC. No action was ever taken to query or disallow the payments as an overrun of the monthly petty cash float. They were not hidden.

Storage payments

- [131] Mr Peacock received an extra storage payment which, under examination, he agreed was outside the terms of his contract and should therefore have never been paid from the Tokyo office bank account. Although he claimed to have received verbal approval from the Director General, DPC during a visit to Japan following the 2011 tsunami. If such approval was given, it was of a temporary nature to cope with the aftermath.
- [132] The storage payments from December 2012 to March 2018 total \$19,603.99.⁴¹ Mr Peacock was not entitled to this payment.

⁴¹ Ernst & Young, Department of Jobs, Science, Tourism and Innovation, *Japan Office Allowance Internal Audit* (May 2018) p 21.

CHAPTER FIVE

False reimbursement entries

- [133] This chapter explains how Mr Peacock, from time to time, falsified expense reimbursement claims that were not related to his work functions.
- [134] The process of reimbursement of expenses in the Tokyo office was straightforward.
- [135] Mr Peacock had been issued a departmental corporate credit card to assist with official business expenses related to his role.
- [136] Despite being issued with a departmental credit card, Mr Peacock typically paid for business and entertainment expenses using his personal credit cards or with cash. He gave an explanation why he used his personal credit card rather than the corporate card. The explanation did not make sense. The process was that he would give the office manager an invoice or receipt that he had paid. She would then collate these and make up a monthly reimbursement request sheet which itemised the acquittals for reimbursement. Mr Peacock would sign this and then the money would be withdrawn from the Tokyo office bank account in order to be paid into Mr Peacock's personal account.
- [137] The process of acquitting expenses by production of an invoice or receipt to a particular business relationship or company was done manually by Mr Peacock writing the name of the company with whom he was meeting against the line item on the invoice/receipt presented. For example, on the monthly invoice from the Tokyo American Club, Mr Peacock wrote the name of the company who employed the person(s) he was entertaining.
- [138] Accordingly, the process of acquittal required Mr Peacock to recall who the meeting was with, or to produce some kind of documentation to establish that the meeting, during which he had consumed meals and drinks, was to be acquitted against a particular business relationship with a known corporate entity.
- [139] The reimbursement request sheet prepared on a monthly basis by the office manager to record reimbursements to Mr Peacock, had a column detailing the corporate entity involved. On occasion, the expenditure purpose entered under Mr Peacock's direction was inconsistent with other more reliable evidence, as to who had been entertained by Mr Peacock on that evening. The evidence suggests that Mr Peacock

was deliberately falsifying the acquittal of his expenses and endorsement of the reimbursement request sheet.

- [140] On 17 May 2016, Mr Peacock spent ¥57,521 on a meal at a steakhouse at the Tokyo American Club. On the statement, he acquitted that against ANZCO, a company that Mr Turner was attempting to establish a relationship with at the time. Text messages between Mr Peacock and Mr Turner on 26 April 2016 and text messages from Mr Peacock on 17 May 2016 indicate that he met with Mr Turner and representatives from ANZCO. The text message included a number of photos taken at the dinner that showed Mr Peacock with Mr Turner and two other males.
- [141] The arrangements for this dinner were made on 26 April 2016 during an earlier text message when Mr Peacock chatted to Mr Turner about a future dinner with 'Kojiro' which Mr Peacock indicated would be a 'good way to cement the relationship brother'.⁴² ANZCO is a company that focuses on exporting New Zealand produce, which of course would be of potential benefit to Mr Turner, a New Zealand national. There was no apparent link between ANZCO and WA. This Tokyo American Club statement shows the bill was paid on Mr Peacock's Diners credit card and subsequently acquitted by the Tokyo office from funds provided by DPC.
- [142] On 8 June 2016, Mr Peacock paid an amount of ¥13,682 for a dinner meeting he acquitted as being with the representatives from the Hilton Group. He entered this amount on a reimbursement request sheet in order to recoup this money. The receipt that accompanied the expense was for an establishment named 360 Italian Restaurant in the amount of ¥13,682 and dated 8 June 2016.
- [143] Text messages examined from Mr Peacock's phone indicate that he met with Mr Turner and not representatives from the Hilton Group. In particular, in a conversation on 8 June 2016 in Tokyo, Mr Turner responds to Mr Peacock's invitation of a glass of wine by saying 'love to brother. I now arrive to meet Marcello. At 360 now brother'.⁴³ Similarly, the next day in a text message, Mr Turner says 'thank you brother for the pizza and wine last night much appreciated. Great evening brother F and J also thank uncle Craig for happy time at Marcelo's'.⁴⁴ The reference to 'F' and 'J' are the names of Mr Turner's wife and son respectively, who were also believed to have been at the dinner. Mr Peacock denied this was a dinner with friends and stated it was a

⁴² Text message between C S Peacock and J Turner, 26 April 2016.

⁴³ Text message between C S Peacock and J Turner, 8 June 2016.

⁴⁴ Text message between C S Peacock and J Turner, 9 June 2016.

business meeting. He was unable to produce any records to confirm this evidence. The Commission has not located any evidence to confirm his account.

- [144] On 28 June 2016, Mr Peacock submitted a dinner expense for reimbursement in the amount of ¥16,956. Text messages examined from Mr Peacock's mobile phone indicate that he had dinner with Mr Turner who is associated with World Foods. Mr Turner states the day after the receipt date 'Thank you Craig brother for picking up the bill last night. You are extremely kind and a gentleman'.⁴⁵ It was perhaps the WA taxpayers who were extremely kind!
- [145] On 2 August 2016, Mr Peacock attended a dinner for which he claimed the expense of ¥22,400 for a 'dnr mtg TCU'. The receipt that accompanied the above expense was for an establishment with a phone number which correlates with a restaurant named Le Coeur. Text messages and images examined from Mr Peacock's mobile phone indicate he went with Mr Turner and not representatives from TCU. An image displays the two of them dining together at the restaurant. Mr Peacock agreed there was no one else at the restaurant that evening.
- [146] For the month of January 2017, Mr Peacock submitted a dinner expense for ¥15,912 acquitted against the entry 'dnr mtg Mitsui E&P'. The receipt that accompanied the above expense was for a restaurant Sushizanmai Yurakucho. Text messages from Mr Peacock's mobile phone indicate that he met with Mr Turner and not representatives from Mitsui E&P. The restaurant invoice indicates that it was a sushi restaurant. The time of the invoice ties in with text messages sent from Mr Turner to Mr Peacock. It appears that Mr Turner was picked up by Mr Peacock, after which they got takeaway sushi and went home to Mr Peacock's apartment to have dinner with Mr Peacock's wife.
- [147] For the month of June 2017, Mr Peacock submitted a dinner expense for 22 June 2017 acquitted against 'dinner mtg Rio Tinto' in the amount of ¥13,200. The receipt that accompanied the above expense was for an establishment named Ruby Jacks Steakhouse. Text messages examined from Mr Peacock's mobile phone indicate that he met with Mr Lynch and not representatives from Rio Tinto. In particular, a text message on 22 June 2017 where Mr Peacock asked Mr Lynch 'Up for quick one? How about RJ on me?'⁴⁶ It was agreed by Mr Peacock under examination that RJ was a reference to Ruby Jacks.

⁴⁵ Text message between C S Peacock and J Turner, 29 June 2016.

⁴⁶ Text message between C S Peacock and G Lynch, 22 June 2017.

- [148] For the month of July 2017, Mr Peacock submitted a dinner expense acquitted against an entry 'dinner meeting Woodside' on 13 July 2017. Mr Peacock met with Mr Lynch and not representatives from Woodside.
- [149] Again, for the month of July 2017, Mr Peacock submitted a dinner expense with the following details 'July dinner meeting with World Foods', being a company operated by Mr Turner. The receipt that accompanied the above expense was for an establishment named Imperial Hotel. Text messages and chats from Mr Peacock's mobile phone indicate he was attending a formal dinner at another location with other guests on that evening.
- [150] For the month of April 2018, Mr Peacock submitted a dinner expense for 30 March 2018 for Woodside/Tokyo Gas dinner meeting in the amount of ¥31,600. Text messages from Mr Peacock's mobile phone indicate that he met with Mr Lynch and not representatives from Woodside or Tokyo Gas. In particular, text messages and chats indicate that Mr Lynch's wife was away on that particular day and that Mr Peacock made a reservation at an Italian restaurant for himself and Mr Lynch. Mr Peacock maintained that representatives from Woodside and Tokyo Gas were present at this dinner meeting. This does not explain why Mr Lynch was also present.
- [151] Mr Peacock repeatedly sought to characterise these dinners as business related. However, he was unable to point to any diary entry or file note to confirm the nature of the dinners.
- [152] Throughout this time, Mr Peacock's friend, Mr Turner, was in financial difficulty and the text messages strongly suggest that the main beneficiary and sole attendee was Mr Turner.

CHAPTER SIX

Unauthorised cash drawdowns from petty cash

- [153] This chapter explains how Mr Peacock used petty cash when he was short of money.
- [154] A person may be deemed to have taken money fraudulently if it is intended to be used at the will of the person who takes it, although he may intend afterwards to repay the amount to the owner.⁴⁷
- [155] Mr Peacock used the Tokyo office petty cash account as a personal overdraft and banking facility to loan his friends and family money as necessary.
- [156] The usual management of the petty cash account in the Tokyo office was to keep a float of approximately ¥200,000 (approximately \$2,500). This was in the first instance controlled by the office manager. Disbursements were paid either directly from the petty cash account or by reimbursement from petty cash.
- [157] During the period Mr Peacock was Commissioner, there were two office managers. Each was a long time employee of the office and followed instructions of Mr Peacock as required and without question. By example, in November 2008 without saying why, Mr Peacock instructed the office manager to leave ample cash in the petty cash account. Similarly on 18 June 2009, he instructed the office manager that he needed ¥38,000 (approximately \$480) for 'lunch tomorrow'⁴⁸ and asked her to get cash without adequate explanation as to any business reason.
- [158] Whilst other office employees were required to submit a reimbursement form for payments made to them from petty cash, payment to Mr Peacock followed no process other than a direction. In July 2011, he asked the office manager to get \$200 in Australian Dollars without any explanation.
- [159] On occasion, email chains indicate that Mr Peacock instructed the office manager to give him Yen from petty cash for personal reasons because he had no cash left or he had left his wallet in the house. For example, on 1 February 2007, in a text message with his friend Mr Turner, he stated that he will 'borrow some from petty' as 'left wallet at home'.⁴⁹ Further, on 23 October 2012, he asked the office manager for ¥100,000

⁴⁷ *Criminal Code* s 371(2)(f).

⁴⁸ Email from C S Peacock to office manager, 18 June 2009.

⁴⁹ Text message between C S Peacock and J Turner, 1 February 2017.

(approximately \$1,200) as a seven day cash advance in his pay from petty cash just for personal reasons. On another occasion, he asked for ¥3,000 (approximately \$36) for his son.

CHAPTER SEVEN

The Beefsteak and Burgundy Club

- [1] This chapter explains that the State has paid for Mr Peacock's membership and meals over many years, even though it was never approved by his employer.
- [160] Mr Peacock's contract of employment provided that the State would pay for corporate membership to an appropriate club. This club has historically been the Tokyo American Club. The State has reimbursed Mr Peacock for numerous meals and drinks associated with the Tokyo American Club as it is contractually obliged to do.
- [161] Under the contract, membership of any other organisation was subject to discussion and agreement. Mr Peacock never sought approval for the State to pay his membership of the Beefsteak and Burgundy Club.
- [162] The Beefsteak and Burgundy Club in Tokyo is part of a worldwide movement which started in Adelaide over 50 years ago. There has been a Tokyo Beefsteak and Burgundy Club for 45 years.
- [163] Mr Peacock has been a long time member and was the chief wine master for 13 years.
- [164] The website describes the primary objective of the Beefsteak and Burgundy Club is to create an environment where members share knowledge and experience, great wine, food and fellowship on a regular basis.
- [165] When first asked about his membership, Mr Peacock was evasive.
- [166] Ms Nelson asked about a message to the office manager for some Yen for B & B fees:

What's B and B?---This is the Australian Business Association.

What does B and B stand for, Mr Peacock?---Beefsteak and Burgundy. That's the ---

Beefsteak and Burgundy?---Yeah, that's the casual name given to it.

Is that association a social association?---It's a social networking association.⁵⁰
- [167] Beefsteak and Burgundy Club is its actual name, not its casual name as Mr Peacock well knew.

⁵⁰ C S Peacock transcript, private examination, 18 December 2018, p 58.

- [168] Authorising the State to pay for his membership of the Beefsteak and Burgundy Club was unjustified. Payment of these fees was outside the terms of his contract of employment.
- [169] Apart from his testimony, there is no evidence that Mr Peacock advanced the State's interests in business discussions. The overall impression was the membership of the Beefsteak and Burgundy Club was for Mr Peacock's social and personal purposes.
- [170] To illustrate, Mr Peacock attended a Beefsteak and Burgundy Club convention in Shanghai, the subject of Chapter Eleven.
- [171] Mr Peacock said he used the meals for networking and promoting WA wine. He said he has taken members of the Government to the lunches and they have agreed that it's a good thing to do.
- [172] If there were such occasions, no doubt Mr Peacock would be justified in seeking reimbursement for those particular meals, verified by evidence.
- [173] For the period December 2015 to May 2018, the Commission identified an amount of ¥536,000 (approximately \$6,400) in payments made by the Tokyo office that related to the Beefsteak and Burgundy Club.

CHAPTER EIGHT

Organising a trip for a massage for Members of Parliament

- [174] This chapter explains how in 2015, Mr Peacock used State resources to facilitate a requested visit to a particular type of establishment by two Members of Parliament. It is not suggested in this report that the Members engaged in illegal activity. The focus is on Mr Peacock, what he believed was requested of him and what arrangements he made to assist them.
- [175] The Commission has received responses to its draft report from solicitors for Mr Phillip Edman and Mr Brian Ellis as to why each should not be named. It has given close consideration to the arguments presented.
- [176] The Commission has concluded that suppression of their names cannot be justified despite the careful arguments in favour of that course. The Commission recognises that each of them is no longer in public office. They were public officers in 2015.
- [177] The evidence of each of them is that they did not engage in any illegal or improper activity. What may have been in Mr Peacock's mind, was not in their minds.
- [178] They were each public officers and Members of the Legislative Council. The draft itinerary indicates they were travelling in their capacity as Members, however, they paid for their own travel.
- [179] There is a public interest in the behaviour of Members of Parliament or Government officials when travelling abroad representing WA in official meetings.
- [180] Mr Peacock has hosted many parliamentary delegations from WA and frequent ministerial visits. If the persons are unnamed, speculation would inevitably ensue as to who was being referred to, which would be unfair to others.
- [181] Mr Edman is a close friend of Mr Peacock. Mr Edman was first elected to the Legislative Council as Member for the South Metropolitan region on 6 September 2008. He was defeated on 11 March 2017 and his term concluded on 21 May 2017.
- [182] As a Member of Parliament, Mr Edman was entitled to an electorate allowance 'In consideration of the obligations of a Member effectively to represent the needs of an electorate, and to undertake parliamentary

duties an electorate allowance is provided to be utilized as the member sees fit'.⁵¹

- [183] On 9 April 2015, at 4.34 pm, Mr Peacock received an email from Mr Edman. Mr Edman stated that he was '[t]hinking of coming up for a trip to Tokyo ... Can you put a small itinerary together'. Mr Peacock maintains there was no further discussion as to the purpose of the trip and given that it was sent from Mr Edman's official email to Mr Peacock's official email, he presumed it was a WA Government official trip.
- [184] Some two days later, Mr Peacock and Mr Edman were chatting by text message and Mr Edman asked Mr Peacock whether he had received the message about the Tokyo trip, in which he stated that he needed to use his electoral allowance before the end of June. In addition, he stated 'Which means DSD [Department of State Development] can fuck themselves!!!! No need for them to control. Need to spend some \$\$\$ Asap'.⁵²
- [185] Mr Peacock replied that he could put an itinerary together and stated 'Got the message mate and replied yes we can do it!' and 'And yes, fuck DSD'.⁵³
- [186] A draft itinerary was eventually prepared for the visit and sent to Mr Edman on 24 April 2015. No final itinerary appears to have been produced.
- [187] The trip both to Indonesia and Japan was largely organised by Mr Edman on behalf of two other Members, one of whom was Mr Ellis.
- [188] Mr Ellis was first elected to the Legislative Council as Member for the Agricultural Region on 16 July 2007. He was defeated on 11 March 2017 and his term concluded on 21 May 2017. Mr Ellis is friendly with Mr Peacock but describes the relationship as professional only.
- [189] Mr Ellis gave evidence that he did not see the itinerary nor any text messages in relation to the organisation of the trip between Mr Edman and Mr Peacock. He was provided with a draft itinerary by Mr Edman prior to leaving for Tokyo. Beyond that, he did not know what was being planned.
- [190] A third Member of Parliament was also invited to join the trip.

⁵¹ Annual Salaries and Allowances Tribunal determinations for Members of Parliament.

⁵² Text message between P Edman and C S Peacock, 11 April 2015.

⁵³ Text message between P Edman and C S Peacock, 11 April 2015.

- [191] On 2 June 2015, Mr Peacock received a text message saying 'We just got here ... It's phil Edman'. Later that evening, Mr Edman and Mr Peacock entered into a text message exchange during which it was established that the party was in Indonesia en-route to Tokyo. In the course of their conversation, Mr Edman's expectations whilst he was in Tokyo became clear to Mr Peacock. Mr Edman stated to Mr Peacock that he wanted to go to a geisha bar and that 'the boys are sexually frustrates (sic)'. Further on he stated 'Never had a Japanese honey before' and 'Your (sic) our best trade commissioner'. Mr Peacock immediately replied 'Leave it with me.' The answer was 'Yep'. Mr Peacock further replied 'Ok mate, I will need to consult with Hashimoto on this but he is ultra-discreet, nothing to worry about'.⁵⁴
- [192] Mr Edman explained in examination that much of those and other texts were not serious, it was "just boys being boys".⁵⁵
- [193] Mr Ellis denied knowledge of these or any other text messages between Mr Peacock and Mr Edman.
- [194] Mr Hashimoto is a Senior Advisor and part-time employee in the Tokyo office. Mr Hashimoto has been employed for 13 years working 15 hours per week. His duties include liaison with Japanese Government and business entities, escorting visiting Ministers, parliamentary groups and accompanying groups on visits.
- [195] Mr Hashimoto, in a voluntary interview with the Commission, when questioned by Counsel assisting, repeatedly claimed to have no recollection of the events whatsoever. He is nearly 74 years old and said he has become very forgetful.⁵⁶
- [196] Fortunately, the Commission has recovered contemporaneous text messages, emails and photographs. Mr Peacock's use of Mr Hashimoto in organising the visit to a 'soapland'⁵⁷ is clear and is not in issue. Both Mr Edman and Mr Ellis gave evidence that they visited a bathhouse in company with Mr Hashimoto and their sole purpose was to bathe and have a traditional Japanese massage from a Japanese 'Geisha'. They claimed that their visit to the 'bathhouse' was not for a sexual purpose and neither asked for or received any sexual service.
- [197] The focus of this report is on Mr Peacock and in particular, his understanding of the text message conversations with Mr Edman, as it

⁵⁴ Text message between C S Peacock and P Edman, 4 June 2015.

⁵⁵ P Edman transcript, private examination, 12 February 2019, pp 48, 60, 61, 68.

⁵⁶ T Hashimoto interview before Commissioner, 5 March 2019.

⁵⁷ 'Soaplands' is a colloquial term used in Japan to describe a business where men are massaged by naked women for a fee and for a further fee, they can obtain sexual services.

appears he regarded the text messages as a serious enquiry because of his actions in response.

- [198] A Japanese guide to find the best bathhouse and to accompany the parliamentarians and help them with communication and the facilitation of payment was, if not completely necessary, highly desirable.
- [199] On 4 June 2015, Mr Peacock contacted Mr Hashimoto by text message and asked if he could have a chat with him in the morning as 'I have a special request from 3 guys visiting tomorrow and I have no experience in that...Maybe you do?'.⁵⁸
- [200] The third Member of the touring group denied any knowledge of the text messages and did not go to the establishment.
- [201] In the early hours of the next morning, Mr Peacock had obviously heard back from Mr Hashimoto and stated 'Sorry Hashimoto-san, will call you back later. Basically I believe they would like to go Yoshiwara'.⁵⁹ Mr Peacock gave evidence during examination that it was his understanding that Yoshiwara is an expensive red light district in Tokyo.
- [202] Mr Peacock asked Mr Hashimoto to investigate 'shops' and 'places'. Mr Hashimoto undertook research and sent Mr Peacock an email on 5 June 2015 in which he stated 'I recommend Yoshiwara Soaplandamong (sic) many shops in Tokyo', Mr Hashimoto attached screenshots of recommended establishments. He made sure that the recommended three 'soaplands' bathhouses would allow non-Japanese persons. He reported on the average price, around ¥15,000 to ¥20,000 (approximately \$200).
- [203] Mr Hashimoto did not usually work on a Sunday. However, on 7 June 2015, Mr Peacock arranged for Mr Hashimoto to meet with Mr Edman and Mr Ellis at their hotel at 2.00 pm. They travelled by taxi to the bathhouse. A text message exchange between Mr Peacock and Mr Hashimoto indicated that Mr Hashimoto negotiated a fixed price of ¥70,000 (approximately \$700) per person at the 'bathhouse'.
- [204] Mr Hashimoto reported back to Mr Peacock at regular intervals during the afternoon while he sat in the waiting room of the establishment.
- [205] Mr Peacock expressed his gratitude to Mr Hashimoto and arranged for him to have a day off in lieu for working on a Sunday. Mr Peacock approved the reimbursement to Mr Hashimoto of his taxi fares.

⁵⁸ Text message between C S Peacock and T Hashimoto, 4 June 2015.

⁵⁹ Text message between C S Peacock and T Hashimoto, 5 June 2015.

- [206] During examination, Mr Ellis and Mr Edman vehemently denied that they were seeking sexual services. In their response to a draft of this report, they made the point again that each wished to experience a 'traditional' Japanese bathhouse massage, which they received. Mr Ellis said that he suffers from a bad back and often has massages while travelling. No sexual services were requested or provided.
- [207] Mr Peacock however thought he was being asked by his close friend, Mr Edman, to arrange sexual services in Japan.
- [208] While from Mr Edman's point of view his text messages were flippant and 'just boys being boys', Mr Peacock saw them as a genuine request.
- [209] Mr Peacock engaged a State employee to make arrangements for a visit to a brothel (as he thought was the purpose). The State paid for Mr Hashimoto's time and reimbursed his expenses.
- [210] On Mr Peacock's understanding of the excursion, he acted improperly to benefit Mr Edman and Mr Ellis.
- [211] This is another example of Mr Peacock misusing his office to benefit others.

CHAPTER NINE

Benefitting friends

- [212] This chapter explains the relationship between Mr Peacock and Mr Turner, and Mr Peacock and Mr Lynch.

Mr John Turner: Favouring a mate

- [213] The relationship that Mr Peacock had with Mr Turner was close and complex. Mr Turner is a New Zealand national who had, by 2018, been a resident in Japan for nearly two decades, operating three different types of import companies in an attempt to make a living. He sold supplements through an entity known as Moxxor; he imported meat from New Zealand under a company named NEWZEE; and imported other food stuffs from New Zealand under an importing company known as World Foods. Mr Peacock described his relationship as both business and personal.
- [214] A text message exchange is revealing. On 18 March 2016 in a text message chat, Mr Turner asked 'can we raid petty cash brother':

Turner - Any suggestions Craig brother on where I can find 200k today and repay on Tuesday 22/03 would be greatly welcomed.

Peacock - I will think John but have pretty much run out of ideas.

Turner - Brother I'm up against it ... need your help Craig. Can we raid the petty case brother and slip it back on Tuesday morning?

Peacock - John there is nothing there mate. As I said before I took 190k for [J's] tutor and [K] already found that. She knows I will put it back at the end of the month. John I have 30,000 in my wallet which you are welcome to... If it helps. I don't need it until next week.

Turner - Thank you brother...don't like to ask but don't have any other options...terrible situation.

Peacock - Does the 30k help brother?

Turner - Embarrassed to say yes brother.⁶⁰

- [215] On 10 January 2017, there was a text message to Mr Turner in which Mr Peacock says 'got 20k out of petty brother' and acknowledging that Mr Peacock used to take him out for dinner all the time.⁶¹

⁶⁰ Text message between C S Peacock and J Turner, 18 March 2016.

⁶¹ Text message between C S Peacock and J Turner, 10 January 2017.

- [216] In examination, Mr Peacock said the statement is not true. "I wanted to divert Mr Turner from asking about being able to do that ... the statement about taking money for [J's] tutor is not true, this was my deflection against him asking for more money."⁶²
- [217] Mr Peacock said in a text message chat with Mr Turner 'Got 20k out of petty brother'. He explained:
- That's the reason I told him, but it was actually my money, and I wanted him to give it back to me very quickly, and so I put that reason on it ... It was a lie to Mr Turner ... I didn't want him to think that I had any more than that, that's all I had.*⁶³
- [218] It seems that by 2017, Mr Turner was in significant financial difficulties despite Mr Peacock having loaned him probably in excess of ¥1.5 million (approximately \$18,000) over a period of approximately three years. This sum was difficult for Mr Turner to repay. In order to increase his chances of being repaid, Mr Peacock gave the assistance of his official stature and his office in Japan to attempt to obtain a loan for Mr Turner. Mr Peacock made arrangements for Mr Turner's introductions to Australian and Japanese banks; he offered to be a Guarantor on behalf of Mr Turner for him to acquire a truck to service distribution needs; and gave him cash. In addition, Mr Peacock extended the invitation to Mr Turner to join him for drinks and/or dinner, coffee and lunch on various and frequent occasions over the years. On these occasions, Mr Peacock was frequently reimbursed from the Tokyo office bank account for his personal cash expenditure on meals and entertainment.
- [219] During examination, Mr Peacock agreed there was no direct benefit to the WA Government or the people of WA from his ongoing involvement with Mr Turner. This was not for want of trying. In fact, Mr Peacock tried to help Mr Turner obtain some business importing Australian chilled beef to be sold in Hong Kong. However, this fell through.
- [220] In February 2016, Mr Peacock made contact with a Member of Parliament in an attempt to interest him in investing some time and energy into Mr Turner's business known as World Foods. Nothing came of this.
- [221] In June 2016, Mr Turner asked Mr Peacock to seek out people who would be interested in an "income opportunity" with him in the company Moxxor. Mr Turner attempted to obtain loans of money on a continual basis from Mr Peacock. During the course of 2016 in particular, Mr Peacock loaned Mr Turner various amounts of money.

⁶² C S Peacock transcript, private examination, 18 December 2018, pp 54-55.

⁶³ C S Peacock transcript, private examination, 18 December 2018, p 56.

- [222] There is no evidence to show that Mr Peacock advanced State monies to Mr Turner for the purposes of the cash loan. However, it is clear that on many occasions, Mr Peacock used the WA Government disbursement account process as a way of paying for food and beverages he purchased on behalf of Mr Turner. In essence, the improper behaviour by Mr Peacock is in using his position as Commissioner to attempt to influence business relationships for a New Zealand national in order for him to obtain a financial backer. Mr Peacock used WA Government monies to purchase food and drink for Mr Turner in circumstances where neither he nor his company have any direct ties to WA.
- [223] Mr Peacock persisted in examination that the State was billed for meals if business was discussed. Leaving aside the questionable rationale for billing the State for what was essentially a meal between friends, there is no evidence except Mr Peacock's testimony that business was discussed. When asked if there were any diary entries or file notes, he asserted that his electronic diary was corrupted some time ago and was not in proper sync.
- [224] During the examination, Mr Peacock asked for leave to make a statement about his relationship with Mr Turner:

In looking at all of the communication that's been shown to me this morning about my relationship with Mr Turner, something has been brought home to me very strongly in that I have been naïve and mistaken in many of my dealings with this man and I think that that's been a strong error of judgment on my part, because I've seen this put together in this way this morning and it's been very evident to me.⁶⁴

Mr Gary Lynch: Money laundering

- [225] Mr Peacock had a similarly close relationship with another businessman located in Japan but not a Japanese national, Mr Lynch. Mr Lynch was employed by a company named Covance and was the subject of many meals paid for by the State under the guise of business.
- [226] Mr Peacock provided Mr Lynch with his bank account details by email. During the course of the examination, Mr Peacock agreed he had transferred funds from his account to Mr Lynch in circumstances where the funds had recently been deposited in Mr Peacock's account from overseas by Mr Lynch. In effect, Mr Peacock, whilst Commissioner, had been laundering Mr Lynch's money, to the extent that he had put through his account in excess of \$80,000 of Mr Lynch's money over a period of five years. Mr Peacock stated that he did not know the reason why Mr Lynch was using his account as a stepping stone for his funds.

⁶⁴ C S Peacock transcript, private examination, 19 December 2019, p 38.

The only explanation he could give was that Mr Lynch did not want his wife to know he was bringing this money into the country.

- [227] A Commissioner is the representative and embodiment of the State. A Commissioner should act with integrity in all affairs lest the State's reputation is besmirched. The arrangement with Mr Lynch lacked integrity.

CHAPTER TEN

Deceiving the Department of the Premier and Cabinet about income tax obligations

- [228] This chapter explains how Mr Peacock has not paid income tax in Australia or Japan, deceiving his employer.
- [229] Ordinarily, a person is obliged to pay income tax somewhere. Failure to pay in circumstances where there is an obligation may provide recourse from the employer or by the respective taxation authorities.
- [230] Each of Mr Peacock's contracts of employment with DPC specified that Mr Peacock was to be subject to a tax liability or obligation in Japan. Mr Peacock agreed with DPC that he was to abide by the local taxation laws as determined by the Japanese Tax Office. In fact, as part of drafting his 2005 contract renewal, it appears Mr Peacock was the one who suggested he abide by the Japanese taxation laws. In an email on 24 June 2005 from DPC to Mr Peacock, he was informed:

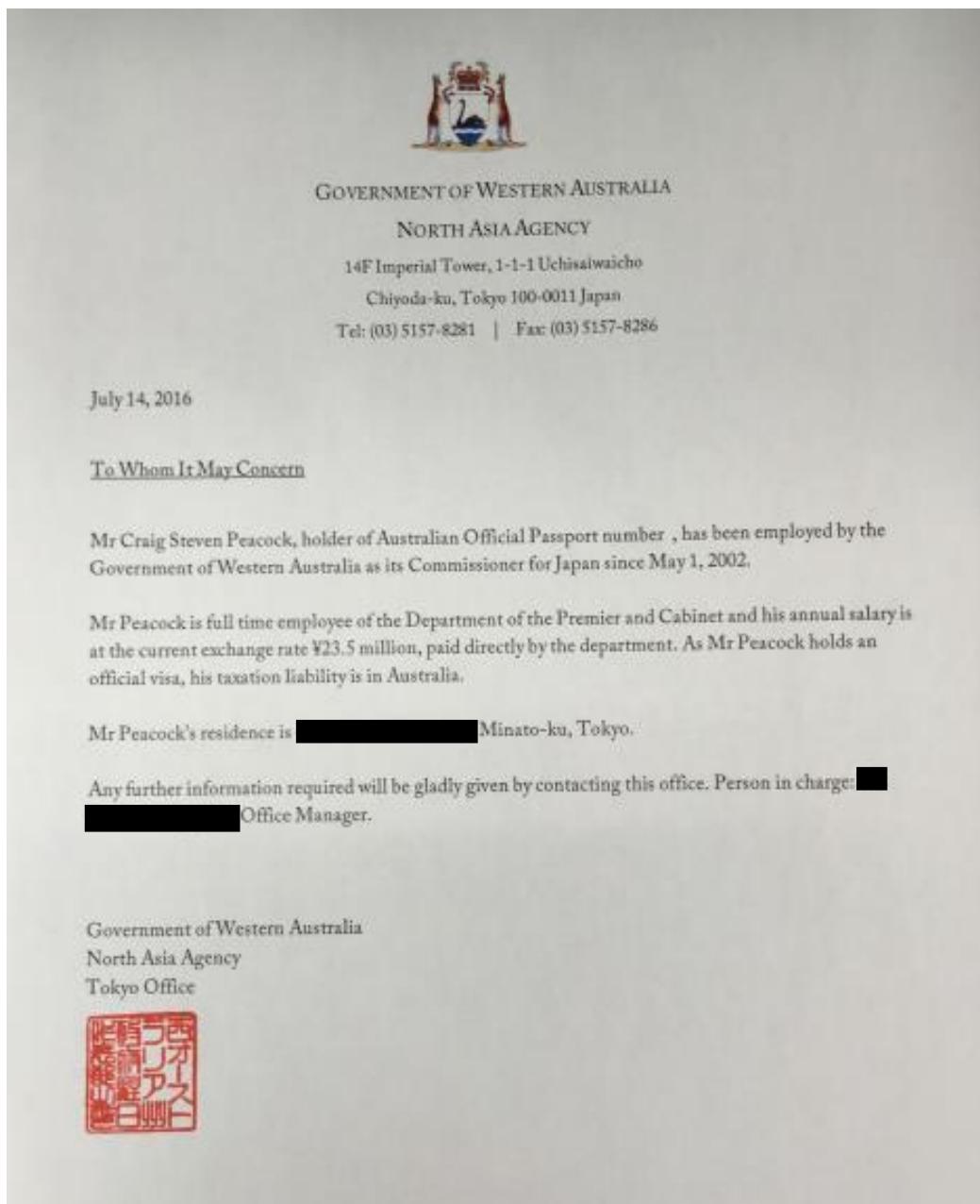
We are not deducting tax as you are classed as locally engaged and you have responded that you are paying 5% tax locally. I have suggested we include the para you mentioned in your email along the lines you agree to abide by local taxation laws etc.⁶⁵

- [231] As a result, DPC assisted Mr Peacock by obtaining an ATO private ruling in July 2011, which stated that Mr Peacock was not an Australian resident for tax purposes. This was emailed to Mr Peacock on 13 July 2011 and had two purposes. Firstly, it was a ruling on which DPC could rely on in deciding not to withdraw PAYG salary taxation on a monthly or fortnightly basis from the amounts being paid to Mr Peacock directly from Perth. Secondly, Mr Peacock could proceed knowing he was not evading his tax obligations in Australia.
- [232] However, Mr Peacock has not paid any tax in Japan either and on occasions when it suited, falsely indicated to others in Japan that he had tax obligations in Australia. He inferred he was paying tax in Australia and therefore did not need to pay any whilst in Japan.
- [233] By example, on 14 June 2012, in an email, he told the recipient that because his visa status was "official" he did not need to carry an alien registration card or pay income tax in Japan, only Australia. In July 2012, Mr Peacock told a prospective employee in the Tokyo office 'I am paying

⁶⁵ Email from DPC to C S Peacock, 24 June 2005.

tax in Australia'. This statement was contrary to the ATO ruling received in 2011 and false.

- [234] Further, in an email chain on 19 April 2013, Mr Peacock told Mr Lynch that he was 'a tax payer in Australia'. In April 2015, Mr Peacock referred to his ATO private ruling when he wrote to the Chief Financial Officer (CFO) at DPC and stated 'I am not a resident of Australia for tax purposes'.⁶⁶
- [235] On 14 July 2016, Mr Peacock created a document which stated that his tax liability was in Australia.



⁶⁶ Email from C S Peacock to CFO, DPC, 2 April 2015.

- [236] The purpose of creating this document was to assist Mr Turner to obtain a loan against which Mr Peacock was applying to be Guarantor.
- [237] Mr Peacock has not lodged any income tax returns with the ATO for the financial years 2010 onwards. It is possible Mr Peacock should have been paying tax in Japan on his income as Commissioner. A guide to taxation in Japan prepared specifically for expatriates, states that the tax liability of individuals is determined by their residence status with permanent residents subject to income tax on their worldwide income and non-permanent residents subject to tax on the income earned in Japan plus any non-Japanese source income remitted to Japan.
- [238] Mr Peacock would likely be characterised as a permanent resident as he is an individual who has been domiciled in Japan for at least five years within the last 10 years. Foreign nationals arriving in Japan are considered to have established residence in Japan, unless their employment contracts or other documents clearly indicate they are staying in Japan for less than one year.
- [239] During examination, Mr Peacock kept reiterating that he had an official passport which allowed him to avoid paying tax in either Australia or Japan. That is not the purpose or effect of an official passport. An official passport (green cover) is not a diplomatic passport. An officer of a state government department may be granted an official passport for travelling on official business (only). Official passports in themselves do not confer the holder any special privileges or rights.
- [240] In May 2011, Mr Peacock provided responses to a questionnaire to DPC. These were to be used in the private ruling subsequently obtained, to the effect that Mr Peacock was not a resident of Australia for taxation purposes.
- [241] Yet, in an email exchange with a new employee on 12 July 2012, Mr Peacock wrote, in respect of health insurance 'I personally don't have to deal with it with my type of visa. I am paying tax in Australia'.

Why did you say that, Mr Peacock?---I think what I meant by that was I am abiding by tax rules in Australia.

You don't say that?---I know, I don't say that. That's -- my wording is wrong and I regret that. That's wrong, yes. That was a mistake on my part.

Well, what's the mistake?---The mistake is in the wording.

Mr Peacock, seriously?---Yes, I what I meant was I'm abiding by tax laws in Australia. Unfortunately, that's ---

So I am to read "I am paying tax in Australia" as I am abiding by the tax laws in Australia and am not paying any tax? Is that the way I should be reading it?---That's what I should have written.⁶⁷

- [242] In relation to a letter written to gain support for Mr Turner:

In the letter in the second paragraph, last sentence:

As Mr Peacock holds an official visa, his taxation liability is in Australia

?---Yes.

That's not a correct statement, is it?---Why would that not be correct?

Well, you'd already had a ruling that you'd had no tax liability in Australia?---I see what you mean. By "liability" I meant obligation.

But you had no tax obligation in Australia because they deemed you not to be a resident here so you were given a ruling that you had no obligation, weren't you, in 2011?---That's true. That's a misunderstanding on my part, I'm sorry. I thought that that was a correct statement to make in terms of my status.⁵⁸

- [243] Mr Peacock was examined about an email exchange with Mr Lynch on 19 April 2013:

Why were you representing to Mr Lynch that you were paying tax in Australia?---I – it wasn't my intention to represent to Mr Lynch that I was a taxpayer in Australia. Mr Lynch is fully aware of my tax status. As having been a taxpayer in Australia was probably what I intended to say in that case but again it's a bad choice of words on my part.

Well, we're talking about 2013?---Yes.

When was the last time you had paid tax in Australia at that point?---Many years ago.

Over 10 years ago?---Oh, yes.⁶⁹

- [244] The issue of Mr Peacock possibly evading tax in both Japan and Australia is outside the Commission's jurisdiction and the Commission expresses no opinion, and makes no finding.
- [245] The creation of documents containing false statements as to his tax liability is of concern and indeed his various false answers to the questions about his tax liability are matters that can go directly to assessing his credibility.
- [246] The Commission has used the tax issue and many other matters to form a view that absent corroboration, Mr Peacock is a generally unreliable

⁶⁷ C S Peacock transcript, private examination, 19 December 2018, p 6.

⁶⁸ C S Peacock transcript, private examination, 19 December 2018, p 7.

⁶⁹ C S Peacock transcript, private examination, 19 December 2018, p 8.

witness. In consequence, except where Mr Peacock has made admissions, the Commission's opinions have been shaped by documentary and other evidence.

- [247] His inconsistent responses as to where his tax liability lies places DPC in a difficult position as they supported and obtained the private ruling. Mr Peacock has deceived DPC for his own benefit.

CHAPTER ELEVEN

A false document to gain a visa to China

- [248] This chapter explains how Mr Peacock persuaded the Department of State Development Regional Director in China to provide a misleading letter to the Chinese authorities.
- [249] In 2016, Mr Peacock attended a Beefsteak and Burgundy Club convention in Shanghai, People's Republic of China.
- [250] He was unable to travel on his official passport because of the private nature of his travel. In an email exchange on 7 October 2015 with the Department of State Development Regional Director in China, Mr Nathan Backhouse, Mr Peacock:

Mate the Chinese Embassy here are asking me for a letter from the inviting party in order to issue a visa for me as I only have an official passport. I wonder if you could kindly put something together on letterhead, sign it and send me the PDF?

Even though I'm there on holidays I won't get away with that with an official passport it seems. If you could just say that I'm (sic) there from October 15 to 18 to attend internal meeting at your office I'd appreciate it. As I will be visiting it is also true!⁷⁰

- [251] The letter was duly written and signed.

⁷⁰ Email from C S Peacock to N Backhouse, 6 October 2015.



WESTERN AUSTRALIAN TRADE OFFICE
西澳大利亚州政府驻华商务代表处

Room 2204 CITIC Square 1168 Nanjing Road West
Shanghai 200041 China
上海南京西路1168号2204室

Room 1705 Office Plaza Zhejiang World Trade Centre
122 Shuguang Road Hangzhou 310007 China
杭州曙光路122号1705室

Chinese Embassy
4-33 Moto-Azabu 3-Chome
Minato-ku
Tokyo, 106-0046

Dear Sir/Madam,

RE: INVITATION LETTER FOR MR CRAIG PEACOCK

The Western Australian Government's Trade and Investment Office in Shanghai invites Mr Craig Peacock to visit China. The Office registration certificate number is 310000500452112 (a copy of the registration is attached).

Mr Peacock is the Commissioner for the Western Australian Government based in Japan. Mr Peacock's details are below:

Surname: Peacock
First name: Craig
Passport Number: PF0161471
Date of birth: 11 February 1961
Passport Expiry: 20 January 2020

Purpose for visiting China: Mr Peacock is visiting China from October 15 – 18 to attend an internal Western Australian Government meeting in Shanghai and also engage in local sightseeing.

The Western Australian Government will be responsible for Mr Peacock during his visit.

Contact details:

Western Australia Trade Office
Nathan Backhouse – Chief Representative
Room 2201, CITIC Square, 1168 Nanjing Road West Shanghai, China 200041
Telephone: +86 21 5292 5899
Email: nathan.backhouse@westernaustralia.cn

Yours Sincerely,



Nathan Backhouse



www.westernaustralia.cn



注册名： 澳大利亚西澳大利亚州贸易投资促进上海代表处

- [252] Mr Peacock said in testimony on 18 December 2018 that he took personal leave to attend this conference. The trip was not strictly business related "but I did drop in on the Shanghai office".⁷¹
- [253] Mr Peacock agreed that he asked the Department of State Development Regional Director in China to construct a reason so he could get a visa. It was a fabrication and there was no legitimate business reason to visit the Department of State Development Regional Director in China.⁷²
- [254] Mr Backhouse was examined by the Commission on 11 February 2019. He knew that the main purpose of Mr Peacock's attendance was to attend the Beefsteak and Burgundy Club convention.
- [255] He justified the letter on the basis that he did meet with Mr Peacock and discussed business relating to China, Japan and WA. The meeting occurred at a Spanish restaurant which served tapas. Mr Backhouse explained that business is often conducted over dinner.
- [256] There are no diary entries or file notes of the meeting.
- [257] The Commission concludes that the meeting was a pretext to justify an invitation which would assist Mr Peacock's visa application, at the least, by speeding it up.
- [258] The actual reason for the travel was entirely personal for Mr Peacock.
- [259] The facts only need to be stated to illustrate the seriousness of Mr Peacock's actions in producing a document to mislead the Chinese authorities into granting him a visa for his official passport.
- [260] Mr Backhouse said such an invitation was common and he had consulted Chinese members of staff who told him so.
- [261] Common does not make it right.

⁷¹ C S Peacock transcript, private examination, 18 December 2018, p 63.

⁷² C S Peacock transcript, private examination, 18 December 2018, p 63.

CHAPTER TWELVE

False documents

- [262] This chapter explains how Mr Peacock used State resources to create false documents for private purposes.
- [263] Mr Peacock agreed that he had manufactured at least three official documents for improper purposes. Firstly, in February 2012, he drafted letters on Government of WA letterhead stating that a named woman was to have his support in applying for a visa in order to take out work at his house as a domestic aid. Mr Peacock said that she was in fact a friend of his and he was doing this to assist her get residency in the country. Mr Peacock continued to create these letters up until 2018.

The Minato letter

- [264] In December 2016, Mr Peacock drafted a letter supposedly from Mr Peter Pride, CFO of DPC on letterhead of the Government of WA.



GOVERNMENT OF WESTERN AUSTRALIA
DEPARTMENT OF THE PREMIER AND CABINET
Dumas House, 10 Havelock Street
West Perth, WA 6005
Australia
Tel: (08) 6552-0001 | Fax: (08) 6552-0101

To: Mayor of Minato City
Director of Minato City Welfare Office

15 December 2016

Dear Sir or Madam,

I write to confirm the annual gross salary for Mr Craig Peacock, Commissioner, North Asia Agency of the Department of the Premier and Cabinet, Government of Western Australia, as being gross A\$162,015.00. Mr Peacock is paid in 12 monthly instalments via bank transfer from Australia. His taxation obligation is in Australia.

Mr Peacock is in possession of an Australian Official Passport and official visa for the term of his mission in Japan. His current registered address is [REDACTED] Minato-ku, Tokyo.

Yours sincerely,

Peter Pride
Chief Financial Officer
Department of the Premier and Cabinet

- [265] In testimony, Mr Peacock first said the letter was drafted by him for Mr Pride because Mr Pride didn't know what to do and stated Mr Pride had signed the letter.
- [266] Shortly thereafter, Mr Peacock changed his testimony to say Mr Pride did not sign the letter because it was unnecessary.

- [267] The reason Mr Peacock created the false letter was so that his wife could receive some form of Japanese government payment following the birth of their child.

The Westpac letter

- [268] Mr Peacock drafted a letter purporting to be from Westpac to establish that he had significant funds in the Shanghai main branch of the Hong Kong Shanghai Banking Group in December 2016. Mr Peacock said he had drafted this letter to show his wife an example of what a letter might look like should she receive one from an Australian bank.



Westpac Banking Group
Private Investor Relations Group
275 Kent Street
Sydney NSW 2000
Australia

14 December 2016

Mr Craig Peacock
(via e-mail to craig.peacock@wajapan.net)

Dear Mr Peacock

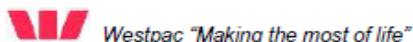
I write to acknowledge the receipt into your account number 501007 201342586 7066 a deposit of \$115,823.03 from the Shanghai Main Branch of the Hong Kong Shanghai Banking Group. The verification for the deposit was certified via telephone and your PIN number on December 2, 2016. Should there be any error in this information please contact our Group immediately at the contact details previously conveyed to you.

We understand from the transferring bank that there is a balance to be transferred no later than December 28, 2016. Once this is received we will contact you via telephone for PIN verification. At that time please have your account number and PIN details in hand to allow us to verify the transfer of funds. Typically in the case of the People's Republic of China the funds will be deposited 5 working days after the date of notification.

After confirmation, our investment officer will be in contact with you via telephone to verify your desired allocation of the deposit.

Kindest regards

Alison Ewings
Chief Investment Officer



[269] Mr Peacock was examined about the letter:

It's an example that I gave to my wife as to what something like that would look like.

An example of what?---If I were to sell my house and deposit the money into Westpac, that's what it would look like.

Where did you get the letterhead from?---That's just a jpg.

And you've used your West Australian government email address in the address title?---Yes.

And who is Ms Alison Ewings?---That's something that I just put there.

Where did you get that name from?---I – no idea, I invented it.

Sorry?---It's a name I thought up.

Sorry, I'm still stuck right back at the beginning. You prepared this as an example of a letter that you'd show to your wife?---Yes.

For what purpose?---She's not very well informed of these kinds of things, and how the Australian system works, or what kind of communication I would receive from a bank.

How old is your wife, Mr Peacock?---40.

And what type of education does she have?---Junior college.

Does she read English?---She does, with difficulty.

So she would be struggling with this then?---Yes.⁷³

[270] The explanation is completely implausible. The Commission is not able to guess the letter's true purpose.

[271] The fact that State resources were used to create a false document is a matter of concern.

[272] The false Westpac letter is not serious misconduct but is used by the Commission, along with many other documents, to assess the credibility of some of Mr Peacock's explanations. It reflects adversely on his honesty.

⁷³ C S Peacock transcript, private examination, 18 December 2018, p 91.

CHAPTER THIRTEEN

Destruction of the hard drive from a work laptop computer

- [273] This chapter explains how Mr Peacock arranged for the hard drive to be erased on his laptop computer after he had been asked to take the laptop to Perth.
- [274] Mr Peacock had use of both a desktop and a laptop computer owned by the State.
- [275] The Tokyo office operated on an IT platform that was not controlled or visible to DPC or DJTSI. All office emails were stored onsite, meaning neither DPC nor DJTSI could readily recover any lost or deleted files. This would need to have been conducted in Tokyo if required.
- [276] On 7 June 2018, Mr Peacock was asked by DJTSI to retain his old laptop so he could be advised of the correct procedures of disposal.
- [277] On 11 June 2018, Mr Peacock was requested by DJTSI to bring the old laptop with him as he was due in Perth in a couple of weeks and disposal would be arranged then. Mr Peacock replied that that would be no problem. However, on 14 June 2018, Mr Peacock's IT support in Japan emailed Mr Peacock 'got your message and picked up the hard disk for erasing'. By 21 June 2018, Mr Peacock was advised that the hard disk had been erased and left on his desk. Mr Peacock never returned the hard drive to DJTSI.
- [278] Mr Peacock was asked why he brought the laptop without the hard drive:

And you were asked to bring the old laptop in for disposal in Perth on 11 June 2018?---That's correct.

Why was it that you brought that laptop without the hard disc?---It was our practice to remove hard discs from any disused computer and destroy them.

What do you mean "our practice"?---The office's practice.

Why?---So that information could not be – if we disposed of the computer to – through the garbage system or through the recycling system that they have in Japan, somebody may be able to take out that hard disc and access information.

But on this occasion you'd been asked to bring the laptop for disposal in Perth, hadn't you, Mr Peacock?---Yes, and the hard disc had already been removed before I was asked that and destroyed.⁷⁴

⁷⁴ C S Peacock transcript, private examination, 18 December 2018, p 94.

- [279] This evidence is contrary to his response to DJTSI on 7 June 2018:

I have the old laptop here with the hard disk removed so I can transfer the data onto any new machine. (The Apple people were afraid the expired battery may leak and damage it).⁷⁵

- [280] In testimony, Mr Peacock tried to explain:

But you didn't have the new machine at this point?---Onto my -- yes, I understand, but you can actually plug the hard disc into ---

Yes, you can. I've done it myself?

But your problem is you didn't have the new machine to plug it into?---No, but I had my desktop.

So if we were to examine your desktop, we would find all the information from that hard drive on the desktop?---It wasn't recoverable. It'd been damaged by the battery.

Is there any document that says that, apart from your assertion?

... No, there's no ---

Because that email certainly is to the contrary?---I know.⁷⁶

- [281] Mr Peacock's evidence is implausible to the point of non-belief.

- [282] He gave instructions to erase the hard drive on 14 June 2018 after he had been told to take the laptop to Perth.

- [283] On 21 June 2018, when the IT technician emailed Mr Peacock 'I left the wiped hard disk on your desk. I erased and formatted it the same way for a Mac boot or data disk',⁷⁷ no mention of a corrupt drive was made.

- [284] The laptop and associated hard drive are State property. The Commission infers the obvious. Mr Peacock had the hard drive wiped because there were matters on it that he did not wish to be exposed.

⁷⁵ Email from Mr Peacock to DJTSI, 7 June 2018.

⁷⁶ C S Peacock transcript, private examination, 18 December 2018, p 96.

⁷⁷ Email from IT technician to C S Peacock, 21 June 2018.

CHAPTER FOURTEEN

Keeping secret, damage to a State vehicle

- [285] This chapter explains how Mr Peacock kept details of a car accident secret for seven years until Commission forensic officers located the details.
- [286] On 9 May 2011, Mr Peacock was involved in an accident whilst driving the office car. His blood alcohol reading was 0.35%, a very high reading indeed. He drove into a stationary truck and caused damage that needed repairs to the office car in the amount of ¥1.4 million (approximately \$17,500). Mr Peacock spent 48 hours in a police cell and was subject to a court summons appearance. Subsequently, he was fined and his licence suspended for two years.
- [287] He failed to report to DPC the accident or his arrest and detention. Mr Peacock tried to hide the fact of the accident from business associates and Department of State Development employees who had attempted to contact him while he was detained in a police cell.
- [288] In October 2011, when preparing the monthly reconciliation accounts to send to DPC, the office manager asked Mr Peacock for instructions as to the wording on the monthly statement to go to DPC for the line item regarding the vehicle repair. She gave some suggestions such as 'description, repair charge for office car'. Mr Peacock replied by email 'as I will take over the lease payment from next month, can we put "end of else (sic) payment?". The reference to 'else' was in fact a typographical error and should have read 'end of lease payment'.
- [289] However, the office manager took Mr Peacock literally and in the monthly line item sent back to the CFO, DPC on 3 October 2011, there was a line item explaining it as an 'end of else payment'.
- [290] By deceiving DPC about the true nature of the payment and failing to report the incident, Mr Peacock deprived DPC of the opportunity to consider whether his conduct may have rendered him unsuitable for the position of Commissioner. It also deprived DPC from considering whether the cost of repairs should be borne by Mr Peacock personally. It deprived DPC of the opportunity to consider whether to make a claim on insurance.

CHAPTER FIFTEEN

Conclusion: The Commission's investigation

- [291] The Commission again records its appreciation to DJTSI for the comprehensive assistance it has provided during the course of the investigation.
- [292] The investigation was challenging due to the geographical limits on the Commission's jurisdiction. These challenges were managed by careful communication with DJTSI who had made an early decision to commence a disciplinary process against Mr Peacock.
- [293] The Commission issued many notices on DJTSI and other agencies to compel the production of both electronic and hard copy documents relating to the business functions of Mr Peacock.
- [294] Mr Peacock was examined by Counsel assisting the Commission, Ms Nelson, on 29 June 2018. He was represented by Counsel.
- [295] In September 2018, Commission officers travelled to Japan and made arrangements for relevant documents to be sent to Perth by DJTSI so the Commission could gain access to them. Officers travelled again in March 2019.
- [296] Once material was produced, the Commission commenced a forensic analysis and it became apparent there were further questions for Mr Peacock to answer in relation to the use of funds across a broad spectrum of office activities.
- [297] Mr Peacock was examined again before the Commission by Ms Nelson on 18 and 19 December 2018. Again, he was legally represented.
- [298] Other witnesses provided statements or information, or were privately examined by the Commission.
- [299] The investigation was also challenging because many documents were written in Japanese.
- [300] In managing its limited resources, the Commission decided in the first instance to examine the financial records such as the monthly statements and extensive other material downloaded or collected from the Tokyo office for the two years prior to the investigation.
- [301] Matters beyond that period, such as the traffic incident, emerged during the investigation, but it should be understood that the Commission has

not purported to perform an audit or undertake an examination beyond two years.

- [302] The chosen time period has proved sufficient for the Commission to form an opinion of serious misconduct.
- [303] There are no doubt many questions raised by Mr Peacock's dereliction over many years, including the way in which Commissioners are supervised and their financial accounts validated.
- [304] Those are questions for others. That is why the Public Sector Commission has been provided with a copy of the report. The Commission's limited jurisdiction is serious misconduct as defined under the *Corruption, Crime and Misconduct Act 2003*.
- [305] The Commission is empowered to form an opinion of serious misconduct.⁷⁸
- [306] An opinion of serious misconduct is not, and is not to be taken as an opinion that a particular person is guilty of or has committed a criminal offence or a disciplinary offence.⁷⁹
- [307] Having considered all the evidence including Mr Peacock's testimony, the Commission has formed an opinion of serious misconduct.
- [308] Some people have spoken highly of Mr Peacock's helpfulness and competence in advancing the interests of the State. That is the public face for which he deserves credit.
- [309] In many ways and for many years, Mr Peacock corruptly took advantage of his position to enrich himself and obtain benefits for his friends. He is now paying the price. Taxation authorities in Japan and Australia may take an interest in his finances. He is jobless, without a Japanese visa and without any realistic prospects. He faces the prospect of legal action for recovery of the debt owed to the State.
- [310] Before setting out on the road of corruption, a public officer would be wise to consider where that journey may end.

⁷⁸ CCM Act s 22.

⁷⁹ CCM Act s 217A.