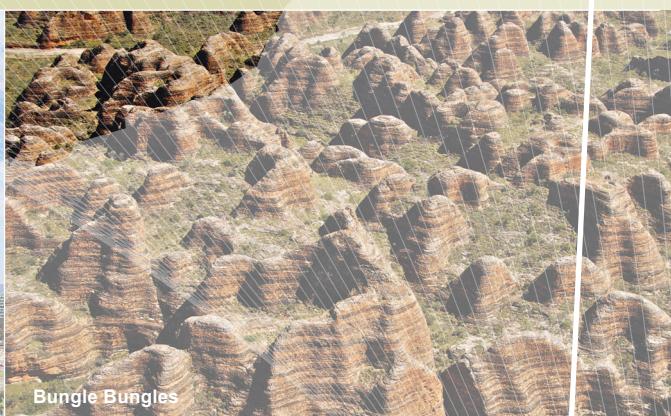




CORRUPTION AND CRIME COMMISSION



Perth City



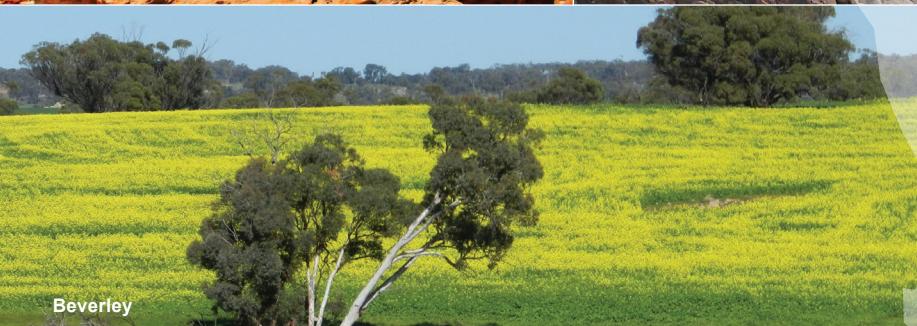
Bungle Bungles



Kalbarri



Bunker Bay



Beverley



Hamersley Gorge

**REPORT ON AN INVESTIGATION INTO ACCEPTANCE AND
DISCLOSURE OF GIFTS AND TRAVEL CONTRIBUTIONS
BY THE LORD MAYOR OF THE CITY OF PERTH**

5 OCTOBER 2015

ISBN: 978 0 9943034 2 4

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CORRUPTION AND CRIME COMMISSION

Mr Nigel Pratt
Clerk of the Legislative Council
Parliament House
Harvest Terrace
PERTH WA 6000

Mr Peter McHugh
Clerk of the Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Dear Mr Pratt
Dear Mr McHugh

As neither House of Parliament is presently sitting, in accordance with section 93 of the *Corruption, Crime and Misconduct Act 2003* ("the CCM Act"), the Commission hereby transmits to you a copy of its *Report on an Investigation into Acceptance and Disclosure of Gifts and Travel Contributions by the Lord Mayor of the City of Perth*.

The Commission notes that under section 93(3) of the CCM Act a copy of a report transmitted to the Clerk of a House is to be regarded as having been laid before that House.

Yours faithfully

Hon. John McKechnie, QC
COMMISSIONER

5 October 2015

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CHAPTER ONE

1.1 The Purpose of the Investigation and this Report

- [1] On 22 April 2008, the newly elected Lord Mayor of the City of Perth ("the City"), Mrs Lisa Scaffidi, having declared an impartiality interest, voted with Council in favour of an application by BHP Billiton Ltd (BHPB) to waive a hire fee of \$22,100 to use Forrest Place for the Olympic Live Site. At the time Mrs Scaffidi had been offered, and two days later formally accepted from BHPB, an Olympic Hospitality Package comprising an all-expenses paid trip to the 2008 Summer Olympic Games held in Beijing, China. The value of this package as estimated by BHPB was at least US\$36,826. Every elected official is required, annually, to disclose gifts and contributions to travel received in the year. Mrs Scaffidi did not disclose any part of the Olympic Package.
- [2] On 23 March 2015 the Australian Federal Police told the Commission about the Olympic Hospitality Package given to Mrs Scaffidi.
- [3] The Commission commenced an investigation on 17 April 2015. The scope and purpose was to determine whether the City and/or Lord Mayor Mrs Lisa Scaffidi or any other public officer had engaged in serious misconduct with respect to Mrs Scaffidi's acceptance and disclosure of gifts and travel contributions.
- [4] On 20 May 2015 the US Securities and Exchange Commission announced a settlement with BHPB over breaches of the internal controls and books and records provisions of the *U.S. Foreign Corrupt Practices Act*.

The Securities and Exchange Commission today charged global resources company BHP Billiton with violating the Foreign Corrupt Practices Act (FCPA) when it sponsored the attendance of foreign government officials at the Summer Olympics.

BHP Billiton agreed to pay a \$25 million penalty to settle the SEC's charges.

An SEC investigation found that BHP Billiton failed to devise and maintain sufficient internal controls over its global hospitality program connected to the company's sponsorship of the 2008 Summer Olympic Games in Beijing. BHP Billiton invited 176 government officials and employees of state-owned enterprises to attend the Games at the company's expense, and ultimately paid for 60 such guests as well as some spouses and others who attended along with them. Sponsored guests were primarily from countries in Africa and Asia, and they enjoyed three- and four-day hospitality packages that included event tickets, luxury hotel accommodations, and sightseeing excursions valued at \$12,000 to \$16,000 per package.¹

¹ SEC Press Release 20 May 2015.

- [5] In the course of its investigation the Commission served notices to produce records on the City of Perth and various other entities. It examined a wide range of material including media reports in 2009 and 2015.
- [6] The Commission held private examinations and for that purpose appointed Ms Linda Black and Ms Nadia Pantano as counsel assisting.
- [7] The Commission examined on oath:
 - Mrs Lisa Michelle Scaffidi, Lord Mayor, City of Perth;
 - Mr Francis (Frank) Richard Edwards, former Chief Executive Officer, City of Perth;
 - Mr James (Jamie) Parry, former Manager Corporate Support, City of Perth;
 - Mr Peter Kenneth Jackson, former Media Liaison Coordinator, City of Perth; and
 - Mr Ian Ross Fletcher, former Vice President External Affairs (WA), BHP Billiton.
- [8] Although the Beijing Olympics Hospitality Package remained the primary focus, during the investigation the Commission became aware that property development company Hawaiian Investments Pty Ltd ("Hawaiian") offered Mrs Scaffidi three nights' accommodation with her husband at the Cable Beach Club Resort and Spa Broome coinciding with the Broome Cup in August 2008. After the offer was accepted Mrs Scaffidi voted with Council to approve a grant of \$180,000 to a stakeholder consortium that included Hawaiian for a feasibility study to develop a Business Improvement District (BID) in the City's CBD. She subsequently went to the Broome Cup, staying in the accommodation provided by Hawaiian. At no stage did Mrs Scaffidi make an impartiality declaration or disclose the nature of the gift in an annual declaration.
- [9] Through her solicitors, Mrs Scaffidi advised the Commission of other occasions of travel which had been paid for by third parties and which had not been disclosed in her annual return.²
- [10] Elected officials, both parliamentarians and Local Government councillors, together with many public officers are governed by rules about receipt of gifts and third party contributions to travel. Local Government councillors are required to make annual returns disclosing these things. To avoid the appearance of bias, gifts worth more than \$300 are prohibited if it is reasonable to believe that the donor is undertaking or intending to undertake an activity that requires council authorisation.
- [11] The need to make an annual return is an aspect of open democracy. Anyone can inspect the register. The requirement is a significant accountability measure.
- [12] Although this report relates to the actions of the Lord Mayor, there are lessons for all officials in what follows.

² Local Government Act 1995, ss. 5.76, 5.78, 5.82 and 5.83.

CHAPTER TWO

2.1 The Olympic Hospitality Package: Progress to Acceptance

- [13] Mrs Scaffidi successfully contested a by-election in 2000 to become a councillor of the City of Perth. In October 2007 she was elected Lord Mayor. Her election was not greeted with universal acclaim and she had some opponents on Council. This is relevant when considering her later claims that Council sanctioned her travel to the Beijing Olympics.
- [14] The Chief Executive Officer of the City from April 2002 until his retirement on 21 September 2012 was Mr Frank Edwards. Before taking up appointment, Mr Edwards was CEO of the Town of Kwinana from 1998 to 2002. He was a most experienced CEO and person on whom Mrs Scaffidi relied for advice and assistance especially in her early days as Lord Mayor. She said she trusted him implicitly.
- [15] Prior to her election, Mrs Scaffidi was the State Director for the Committee of Economic Development of Australia in which capacity she had met Mr Ian Fletcher, Vice President, External Affairs for BHPB in Western Australia. Mrs Scaffidi thought she had known him since about 1997. BHPB was a very strong member of the Committee. Following her election Mrs Scaffidi resigned to attend to her Lord Mayoral duties on a full-time basis.
- [16] BHPB was a sponsor of the 2008 Summer Olympics at Beijing, China. BHPB decided that it would offer expenses paid trips to Beijing to view part of the Olympics. As part of his role Mr Fletcher nominated possible invitees in Western Australia.
- [17] Invitations to the Governor and the Premier were politely declined by them.
- [18] The BHPB Hospitality Package provided invitees with a 3-4 day Olympic experience inclusive of event tickets, luxury hotel accommodation, and in many instances, including Mrs Scaffidi, business class airfares for government officials and their guests.

2.2 An Offer is Made

- [19] On 19 February 2008 the City Council approved a replacement Code of Conduct. The Lord Mayor presided over the meeting. The Code set out rules as to the acceptance of gifts, defined 'prohibited gifts' and set out requirements to declare gifts and third party contributions to travel. Although a replacement, the new Code was in many respects similar to that which had applied as long as Mrs Scaffidi had been a member of Council.
- [20] Next day, Mr Fletcher phoned the Lord Mayor's office for an appointment. Either that day, or more probably the day after, Mr Fletcher came to Mrs Scaffidi's office for a coffee meeting and during discussion said he

would like to invite Mrs Scaffidi, together with her husband, as representative of the City and the State to the Beijing Olympics.

- [21] In her examination Mrs Scaffidi was adamant that the offer was very much ambassadorial because of the extensive interests that BHPB have in Western Australia. Submissions made to the Commission through her solicitors emphasise that the purpose was ambassadorial. Mr Fletcher expressed similar views to the Commission.
- [22] Mrs Scaffidi remembers very clearly Mr Fletcher saying "We want you there as the Lord Mayor of Perth representing the City and the State of Western Australia",³ which BHP have significant interests in, "as an ambassador for the State".⁴ She quizzed him extensively "Because I needed to be sure that it wasn't any kind of gift and that it was for the right reasons, that I was personally satisfied with accepting it".⁵ The possibility that the offer might be a gift therefore clearly occurred to her, although in examination she said that she did not see it as a gift.⁶
- [23] Mrs Scaffidi contacted Mr Edwards for advice. Mr Edwards said he would check. Either at the time of Mr Fletcher's visit or shortly after, Mrs Scaffidi's recollection was that Mr Edwards told her it would be okay to go.⁷
- [24] Mr Edwards' clear recollection was Mrs Scaffidi calling him up to her office and saying that she had received an invitation from BHPB and she wanted to know if she could accept it or not. Mr Edwards went to her office with either the Code of Conduct Regulations or the City of Perth Regulations or an element of the Act and talked her through what it said. They discussed what was in it in relation to gifts and prohibited gifts:

Well, I can accept then, 'and I said 'Yes, I would concur with you that you are not precluded from accepting this gift on the basis that we have not been as a Council required to make a decision in regard to BHP. Nor does it appear likely that there is anything coming up in which the City has to make a decision in regard to BHP'. Therefore you are not precluded.⁸

- [25] The propriety of acceptance of the Olympic Hospitality Package was never discussed again with Mr Edwards.⁹
- [26] Mr Fletcher wanted to know if Mrs Scaffidi would accept the invitation before a formal invitation was offered.

³ Transcript of Proceedings, Private Examination of Mrs L Scaffidi on 22 July 2015, p.15.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*, p.32.

⁷ *Ibid.*, p.24.

⁸ Transcript of Proceedings, Private Examination of Mr F Edwards on 23 July 2015, p.9.

⁹ Transcript of Proceedings, Private Examination of Mr F Edwards on 23 July 2015, p.12.

[27] It appears that Mrs Scaffidi told Mr Fletcher she would accept an invitation if offered. Subsequently Mrs Scaffidi contacted Mr Fletcher and his wife about arranging a stopover in Shanghai in the course of their return journey. Mr and Mrs Fletcher and another couple joined Mr and Mrs Scaffidi for a private holiday in Shanghai after leaving Beijing. Mrs Scaffidi was involved in arranging accommodation in Shanghai. BHPB arranged for her return from Beijing to Perth via Shanghai. Though the seats booked for the flight from Beijing to Shanghai were nominally first class, they were business class standard. Mr and Mrs Scaffidi paid their own expenses and accommodation in Shanghai.

2.3 BHPB's Involvement with the City

[28] A councillor cannot accept a gift worth more than \$300 from a person who is undertaking, seeking to undertake, or when it is reasonable to believe is intending to undertake any activity that cannot be undertaken without an authorisation from the City or by way of a commercial dealing with the City. This is described in the Code of Conduct as "an activity involving a local government discretion".¹⁰ It is a prohibited gift.

[29] BHPB was likely to be a tenant of a proposed mixed-use development at 125-137 St Georges Terrace, Perth. Although it was anticipated that BHPB would be a major tenant of the building, and indeed Mrs Scaffidi publicly said so, the Commission does not conclude that the approval of the development application by the landowners was an activity involving a local government discretion in relation to BHPB. It would have been wise if Mrs Scaffidi had considered this issue at the time but it appears that she did not. Whether she did consider it or not, BHPB were to be a tenant only. They were not the applicant or the developer seeking the City's approval.

[30] Following a Council meeting on 11 March 2008 when the development, was approved, Mr Jackson issued a media release dated 12 March 2008 in the course of which Mrs Scaffidi was quoted as saying:

The fact that BHP Billiton has chosen to house its Perth staff in the 46-level tower is indicative of the confidence this major company has in Perth and the strength of the Western Australian mining sector.¹¹

2.4 The Olympic Live Site at Forrest Place

[31] As part of its commitment to the Beijing Olympics, BHPB wished to use Forrest Place as a venue for people to gather and watch Olympic events on a large screen.

¹⁰ City of Perth Policy Manual - POLICY NO: 10.1, Code of Conduct, p.9.

¹¹ City of Perth Media Release 12 March 2008 "City Square development approved".

- [32] On 12 December 2007 a contractor for BHPB, Elite Sports Property Holdings Pty Ltd, applied to the City to undertake an activity described as "2008 Olympic Games Live Site. Free public event surrounding the live coverage of the Olympics on a super screen".¹² The preferred location was Forrest Place. This information would have been available to Mrs Scaffidi or Mr Edwards on reasonable enquiry by them in February 2008. No such enquiry appears to have been made.
- [33] Subsequently, BHPB made a request for event sponsorship for the Live Site program in Perth between 8 and 24 August 2008. Event sponsorship was requested to cover the venue hire of Forrest Place for the 17 days valued at \$1,300 per day; total value \$22,100. On 8 April 2008 the City's Marketing Sponsorship and International Relations Committee approved in principle, sponsorship of \$22,100 including GST for the venue hire of Forrest Place. In approving the application the Committee took into account the positive impact of the Live Site in contributing to the City's marketing objectives. Mrs Scaffidi is recorded in the minutes as attending the meeting but only after the Live Site was discussed.

2.5 "Camouflage"

- [34] Even though the Lord Mayor was not at the meeting when the Live Site was discussed, she had earlier that day received advice from Mr Edwards by email as to a statement she might make to declare an impartiality interest. An impartiality interest must be declared if it could or could reasonably be perceived to adversely affect the impartiality of the person having the interest.
- [35] The nature of the interest must be disclosed at the meeting immediately before the matter is discussed.¹³
- [36] The reason for this email is unknown.

Lord Mayor,

You may choose to say;

"I have no conflict of interest under the Local Government Guidelines on Conflict of Interest, however I wish to make the Committee (or Council) aware that I have been invited to participate in a major BHP business, cultural and goodwill mission to Beijing later this year, at BHP's expense".¹⁴

¹² Application for Event or Display, BHP Billiton 2008 Olympic Games Live Site, Elite Sports Properties 12 December 2007.

¹³ City of Perth Policy Manual - POLICY NO: 10.1, Part 3, Code of Conduct; *Local Government Act 1995*, Part 5, Division 6; *Local Government (Rules of Conduct) Regulations 2007*, Part 2, r 11.

¹⁴ Email from Mr F Edwards to Mrs L Scaffidi 8 April 2008, 3:06:04 PM WST.

- [37] The email also said "Jamie agrees".¹⁵ From his shocked reaction in the course of his private examination to a suggestion that he had agreed the Commission has considerable doubt as to whether Mr Parry was consulted as to the precise terms of the statement.
- [38] The importance of this email is that it demonstrates that Mr Edwards, and Mrs Scaffidi had seen a connection between acceptance of the Olympics Hospitality Package and the Live Site application. At that time there was no other council activity involving BHPB.
- [39] Mrs Scaffidi's impartiality declaration, in whatever form it was made, confirms her knowledge.
- [40] In examination Mr Edwards explained the words were chosen to provide "camouflage".¹⁶
- [41] The purpose of the camouflage seems to have been to prevent councillors opposed to the Lord Mayor having prior knowledge of her travel. In examination Mr Edwards explained the email this way:

'You may choose to use the following words. I've discussed it with Jamie,' which was not denying that she was going to China but was in fact camouflaging the fact that BHP were paying for the trip.

... so the explanation for the camouflaging of that particular trip is what?---Well, it's an attempt to try and accommodate a Lord Mayor's desire to keep certain information to herself about her intention, so as not to give her political opponents opportunity for attack.¹⁷

- [42] The reason he explained:

The environment that existed in Lord Mayor Scaffidi's first two to three years as the Lord Mayor, there were considerable hostilities between some of the elected members over – well, it's really based on resentment about what profiles different politicians get in the community and what might be seen as the joys of things like trips or representational roles and, therefore, they would seek to leak things to the media. They would seek to create political strife for the person. Therefore, it is not unusual for that - for some elements not to want to be discussed and other councillors would have the same sorts of issues at times. Over a period of time, those political differences tend to disappear but they always exist from time to time.¹⁸

¹⁵ *Ibid.*

¹⁶ Transcript of Proceedings, Private Examination of Mr F Edwards on 23 July 2015, p.31.

¹⁷ Transcript of Proceedings, Private Examination of Mr F Edwards on 23 July 2015, pp.59-60

¹⁸ Transcript of Proceedings, Private Examination of Mr F Edwards on 23 July 2015, p.59.

- [43] In examination Mr Edwards said that Mrs Scaffidi didn't want her fellow councillors to know. She asked Mr Edwards to keep it confidential when she asked for the initial advice.¹⁹
- [44] In examination Mrs Scaffidi said she did not ask Mr Edwards to camouflage or hide anything although she conceded that she could have asked Mr Edwards to keep the trip confidential.²⁰ There is no evidence that Mrs Scaffidi objected to the words chosen. The suggested form of words is misleading in that it does not speak of the Olympics. Mrs Scaffidi on examination conceded that the Olympics visit was not business, cultural or a goodwill mission. It did involve networking she said.²¹
- [45] On 19 April 2008 Mrs Scaffidi received the official invitation from BHPB to "Celebrate the Beijing 2008 Olympic Games with us".²²
- [46] On 22 April 2008 Mrs Scaffidi presided over a meeting of Council. The recommendation, effectively to waive the hire fee of Forrest Place for the Live Site was part of the Council agenda. The minutes record that the Lord Mayor declared an impartiality interest. By this time she had received Mr Edwards' suggested choice of words. What was actually said is now unknown. The time of making the impartiality declaration was the perfect time to let Council know that she was going to the Beijing Olympics with her husband as the guest of BHPB. If the purpose of the trip was ambassadorial, this was an ideal opportunity to say so.
- [47] On 24 April 2008 Mrs Scaffidi accepted the invitation by email:

Thank you very much for the (very elegant) invitation to attend the Olympic Games in Beijing from 22 - 25 August 2008.

We have great pleasure in accepting this invitation.²³

- [48] Even if Mrs Scaffidi had no knowledge of the Live Site application in February 2008, by 8 April 2008 she clearly did have relevant knowledge that aspects of the Olympic Hospitality Package had become a prohibited gift.

2.6 Provision of Council House or Town Hall for BHPB to Launch Sponsorship and Indigenous Art Display on 12 June 2008

- [49] Mr Fletcher asked Council to make Council House foyer or the Town Hall available for the launch of the BHPB sponsorship and an Indigenous art

¹⁹ Transcript of Proceedings, Private Examination of Mr F Edwards on 23 July 2015, p.31.

²⁰ Transcript of Proceedings, Private Examination of Mrs L Scaffidi, 29 July 2015, p.7.

²¹ Transcript of Proceedings, Private Examination of Mrs L Scaffidi, 29 July 2015, p.8.

²² BHP Billiton invitation to Mrs L Scaffidi and partner to Celebrate the Olympic Spirit in Beijing 22-25 August 2008.

²³ Email from Mrs L Scaffidi to Olympic Hospitality 24 April 2008 10:40 AM.

display on 12 June 2008. An email chain between Mrs Scaffidi and Mr Edwards and Mr Fletcher on 10 April 2008 included a query from Mrs Scaffidi as to whether "... can we simply approve this use then without it going to the Committee or Council?"²⁴ Response from Mr Edwards "I am not sure from the email if they want the fee waived for hiring the Town Hall. I don't think anything should have to go to Committee or Council as they are paying for the reception".²⁵ Mrs Scaffidi responded "OK - would agree. I think we may need to explain that a little further though so they are in no doubt...does someone from here now start liaising with them on the details?"²⁶ Mr Edwards advised Mrs Scaffidi that somebody from the City was liaising with BHPB.

2.7 The Beijing Olympics

[50] Mr and Mrs Scaffidi departed Perth on Friday, 22 August 2008 arriving in Beijing that evening. They made use of the accommodation and Mrs Scaffidi said she used the social functions for networking. Mr and Mrs Scaffidi attended Olympic events including the closing ceremony. She undertook no formal role as Lord Mayor. They left Beijing on 25 August 2008 flying to Shanghai where they holidayed with the Fletchers and another couple. On Saturday, 30 August 2008 they flew from Shanghai via Hong Kong to Perth arriving at 10:40 pm.

[51] Despite the various dealings with BHPB in the first half of 2008, Mrs Scaffidi did not reconsider or seek further advice regarding her decision to accept the Olympic Hospitality Package. Nor did she ever make a disclosure about the gift or the travel contribution.

2.8 Assessment

[52] A Council member must not accept a prohibited gift, that is a gift worth more than \$300.00 or more from a person:

- who is undertaking or seeking to undertake; or*
- who it is reasonable to believe is intending to undertake, an activity involving a local government discretion.*²⁷

[53] A reasonable person in the position of Mrs Scaffidi or in the position of Mr Edwards, who at least on this matter had assumed an advisory role, would have undertaken enquiries to see whether BHPB was intending to undertake an activity involving a local government discretion.

²⁴ Email from Mrs L Scaffidi to Mr F Edwards 10 April 2008 09:13 AM.

²⁵ Email from Mr F Edwards to Mrs L Scaffidi 10 April 2008 9:20 AM.

²⁶ Email from Mrs L Scaffidi to Mr F Edwards 10 April 2008 09:24 AM.

²⁷ *Local Government (Rules of Conduct) Regulations 2007*, r 12(2).

- [54] No evidence has been given to the Commission that any enquiry was made, either of City officers, or of BHPB through Mr Fletcher, as to any interaction between BHPB and the Council. It would have been reasonable to have asked Mr Fletcher. An enquiry to the appropriate City officers would have discovered the application for the use of Forrest Place. Mr Edwards gave evidence that he took to his meeting with Mrs Scaffidi a copy of the relevant rules. He did not mention that he had made any enquiries with staff.
- [55] There is no evidence that either Mrs Scaffidi or Mr Edwards properly considered possible future interaction between the City and BHPB on a potential range of matters. Although the Commission accepts that Mrs Scaffidi took some steps to satisfy herself by seeking Mr Edwards' advice, those steps were inadequate. She may have honestly believed that seeking advice was sufficient but the principal responsibility rested on her. A person who made proper enquiries would have formed the view that it was reasonable to believe that BHPB was intending to undertake an activity that would require the exercise of a local government discretion. At best Mrs Scaffidi was recklessly indifferent to the possibility that BHPB might be intending to seek Council authorisation for something.
- [56] Moreover, at the time of the initial conversation with Mr Fletcher, Mrs Scaffidi had considerable involvement with BHPB and knew that they were likely to be a major tenant in the City. The prospect of further dealings over a range of matters including BHPB's sponsorship of the Beijing Olympics should have set alarm bells ringing and at least provoked enquiry from Mr Fletcher and Council staff.
- [57] There is no satisfactory explanation as to why it never occurred to either Mrs Scaffidi or Mr Edwards on 22 April 2008 that aspects of the Olympic Hospitality Package may be a prohibited gift. Either Mrs Scaffidi did not turn her mind to the nature of the gift or she decided to proceed in any event.

CHAPTER THREE

3.1 Why was the Olympic Hospitality Package Accepted?

[58] Mrs Scaffidi was invited to attend because she was the Lord Mayor of Perth. The motives of a donor may be different from the motives of the acceptor of a gift.

[59] BHPB's reasons for inviting the Lord Mayor do not form part of the Commission's scope and purpose which is focussed on Mrs Scaffidi's acceptance of the Olympic Hospitality Package. But the fact that BHPB selected Mrs Scaffidi because she was Lord Mayor does not of itself make the trip ambassadorial in nature. If the package was accepted by her solely for ambassadorial purposes even though funded by a third party, it might not be properly classified as a gift. It would, however, have to be disclosed.

[60] Mrs Scaffidi has undertaken a number of ambassadorial type travels in her period as Lord Mayor for Perth Education City. She has also travelled at third party expense to represent the City in Sister City celebrations.

[61] Mrs Scaffidi steadfastly maintained in her examination and subsequent submissions that the Olympic trip was in her ambassadorial role as Lord Mayor of Perth. It was not in substance a personal trip:

... at the time I was believing, and I still hand on heart believe that I was undertaking my role as the Lord Mayor of Perth representing my city and state at an event where one would presume it is good to have attendance by Australians championing the Australian athletes.²⁸

[62] She described what she did in Beijing:

... there were no formal speeches, but there were definitely attendances at a variety of, I would describe them as corporate events, for want of a description, dinners and, you know, networking events with people from all over the world.²⁹

[63] To test the proposition that the basis of the travel was ambassadorial, the Commission examined the extent to which the trip was known by other people. The Commission also examined various statements made by Mrs Scaffidi over the years about the Beijing trip, some of which are inconsistent while others are wrong.

[64] Mrs Scaffidi has asserted in interviews with media representatives that the Olympic trip was:

- sanctioned by Council;
- approved by the CEO; and
- legal advice was obtained.

²⁸ Transcript of Proceedings, Private Examination of Mrs L Scaffidi on 22 July 2015, p.16.

²⁹ *Ibid.*

3.2 Sanctioned by Council

[65] Far from Council knowing about the trip, the suggested impartiality notice prepared by Mr Edwards did not mention the Beijing Olympics and was misleading, whatever the motive may have been in providing "camouflage". Mr Edwards said that he was asked to keep the trip confidential when Mrs Scaffidi asked for advice.³⁰

[66] The City media coordinator Mr Jackson did not know of the trip until after it had happened.

[67] Although some Council members including Councillors Butler and Davidson, friends of Mrs Scaffidi, may have known about the proposed travel the Commission has not discovered any evidence that the Olympic Hospitality Package was ever raised formally or informally at a Council meeting.

[68] When questioned in examination as to what she meant by "sanctioned", Mrs Scaffidi said:

... I am meaning the declaration at the council meeting on the 2nd [sic: 22nd] where either via the form or via the statement that Frank has referred to, you know, there was acknowledgement of my going on a BHP mission.

...

... The Council weren't unaware that I was going; there was an awareness.

...

... you're not asserting, however, that you said at that meeting that you were [going to] the Olympics and BHP was paying, are you?--- No, and I think the system has let me down there.³¹

[69] The ordinary meaning of sanction is "official permission, authoritative acknowledgment or approval or encouragement given to an action". (Oxford English Dictionary).

[70] The Commission is not satisfied that Council ever knew sufficient facts to sanction the acceptance of the Olympic Hospitality Package. There is no evidence that the Council ever did so.

3.3 Approval by the CEO

[71] Although the CEO, Mr Edwards, had no power to approve or not approve. The Commission accepts that following her discussion with him in February 2008, Mrs Scaffidi would have understood that in Mr Edwards'

³⁰ Transcript of Proceedings, Private Examination of Mr F Edwards on 23 July 2015, p.31.

³¹ Transcript of Proceedings, Private Examination of Mrs L Scaffidi on 29 July 2015, pp.18-19.

opinion, it was in order to accept the Olympic Hospitality Package. Having regard to Mr Edwards' experience that was a reasonable position to take. Mrs Scaffidi did not knowingly mislead when she said the CEO approved the travel.

[72] Neither Mrs Scaffidi nor Mr Edwards could explain why they did not reconsider the position when the Live Site application was made. Mr Edwards certainly did not tell Mrs Scaffidi at any stage that the gift might be a prohibited gift. Mr Edwards at all times knew Mrs Scaffidi was travelling to Beijing on an all-expenses paid trip provided by BHPB.

3.4 Legal Advice

[73] On 15 January 2009 Mr Edwards advised all councillors he saw no value in getting legal advice on the meaning of gifts in the Code of Conduct. He thought the wording was clear.

[74] Mrs Scaffidi conceded in her examination that, contrary to any statement she may have made which was reported in the media, no legal advice was ever obtained indicating that her acceptance of the Olympic hospitality program was legitimate.

[75] There is no satisfactory explanation as to why Mrs Scaffidi said to the media that legal advice had been obtained when it had not.

3.5 Media Responses 2009

[76] On 16 October 2009 a journalist, Mr Chris Thomson was researching an article he proposed to write on the Lord Mayor's travels. Mrs Scaffidi was overseas at the time. Mr Thomson sent an email to Mr Jackson on 16 October 2009 at 5:09 pm:

Further to the following, I now understand Ms Scaffidi travelled to the Beijing Olympics courtesy of BHP in August 2008.

Can you please confirm for me this afternoon if that travel had been entered in the Council register of benefits.³²

[77] That email was forwarded to Mrs Scaffidi who responded to Mr Jackson:

Yes, feel free to advise I'm travelling at no cost to the city for PEC to encourage students to choose Perth over other capitals.

After a long trip to the states she is in no hurry to jump on more planes but she is fulfilling her commitment to the citizens of Perth to do all she is asked while serving as LM of Perth.³³

[78] Obviously this response avoided the specific question.

³² Email from Mr C Thomson to Mr P Jackson 16 October 2009 05:09 PM.

³³ Email from Mrs L Scaffidi to Mr P Jackson 16 October 2009 8:15:49 PM WST.

[79] In examination, Mrs Scaffidi conceded:

It looks like I was avoiding it and I probably was just not wanting to give him any further fuel because of the way he had treated me in the past.³⁴

[80] Four minutes after responding to Mr Jackson, Mrs Scaffidi sent an email to Mr Fletcher:

Quick hello Ian. Just wanted to give you the heads up on this. Someone is 'doing me over' back home.

Its been nasty media request after nasty media request.

Purely fyi in case you get a call. Of course its been registered.³⁵

[81] As Mrs Scaffidi had completed her annual return a few weeks earlier, without referring to the Olympic Hospitality Package it is difficult to understand what she meant by "Of course it's been registered".³⁶ Mrs Scaffidi was given many opportunities in examination to explain this statement. She was unable to do so.³⁷

[82] Mr Thomson published an article in WA Today on 25 November 2009. In the course of which he wrote:

On top of these six international trips, the council spokesman confirmed Mrs Scaffidi travelled to China in 2008, again at the expense of Perth Education City.

When this article first appeared, it was included as an eighth publicly funded trip. However Mrs Scaffidi has now confirmed that visit to the Beijing Olympics was a personal invitation funded by BHP.³⁸

[83] The article prompted a series of emails between the editor of WA Today and Mrs Scaffidi. In the course of an email she said "You cannot incorporate trips I have done as a private individual in your tally".³⁹

[84] Mr Thomson sent an email to Mrs Scaffidi on 26 November 2009 advising that Mr Jackson had confirmed the Beijing trip was funded by Perth Education City.

If Mr Jackson's advice was incorrect and you did not travel to Beijing in 2008 on a publicly funded trip, I am happy to add the real purpose and funding of that visit to the report, if you can tell me what those were.⁴⁰

³⁴ Transcript of Proceedings, Private Examination of Mrs L Scaffidi on 29 July 2015, p.47.

³⁵ Email from Mrs L Scaffidi to Mr I Fletcher 16 October 2009 8:19:43 PM WST.

³⁶ Transcript of Proceedings, Private Examination of Mrs L Scaffidi on 29 July 2015, pp.45-46.

³⁷ Transcript of Proceedings, Private Examination of Mrs L Scaffidi 29 July 2015, pp.45-46.

³⁸ WA Today, "Scaffidi's fly-in, fly-out odyssey", Mr C Thomson 17 October 2009.

³⁹ Email from Mrs L Scaffidi to Mr R Fleming 26 November 2009 11:58 AM.

⁴⁰ Email from Mr C Thomson to Mrs L Scaffidi 26 November 2009 9:40 AM.

[85] In a separate email to Mr Thomson, Ms Scaffidi wrote on 26 November 2009 at 10:11 am:

The 8th trip referred to I can only think was a personal invitation to attend the Olympics, as the guest of BHP in that the Governor was not able to attend. This trip was not paid for by any government funding and was a personal invitation to me. I attended and yes I am the LM of Perth - so what is the connection? I would also add I have made several other personal overseas and interstate trips in the past two years - its just you don't know about those! Usually short ones!⁴¹

[86] The personal nature of the Beijing Olympics trip was emphasised in an email to the editor of WA Today:

Not 8 trips since I have been Lord Mayor - but 7.⁴²

3.6 Media Responses 2015

[87] In May 2015 news broke of BHPB's settlement with the US Security and Exchange Commission. The Australian Financial Review published a story "BHP Billiton charged, fined \$US25m for China Olympics anti-bribery violation". In the course of the article the journalist said:

On Thursday, Ms Scaffidi said she was "not ever privy of the cost as it was an invitation" and there was no requirement for her to publicly disclose the largesse on any gift register. She said this was because "a decision was made at the time that it did not meet the terms of a gift as there was no relationship at that time, nor a likelihood that there would be, with BHP".

...

While Ms Scaffidi conceded her BHP Billiton hospitality package could prompt perceptions of a conflict of interest, she said that there had been "no dirty deals done dirt cheap" and that she had taken the trip and tickets to further her networking.⁴³

[88] When quizzed by the journalist about the potential for a conflict of interest to arise and whether a public official should accept such largesse Mrs Scaffidi said "Fine ... I'm going to cop a hit on that" but she stressed she was "not involved in any decision-making regarding BHP and their operations in Perth".⁴⁴

⁴¹ Email from Mrs L Scaffidi to Mr C Thomson 26 November 2009 10:11 AM.

⁴² Email from Mrs L Scaffidi to editor@watoday.com.au 25 November 2009 8:53 PM.

⁴³ Australian Financial Review, "BHP Billiton charged, fined \$US25m for China Olympics anti-bribery violation", Mr D Mariuz 21 May 2015.

⁴⁴ *Ibid.*

[89] On 21 May 2015 Mrs Scaffidi responded to Mr Nick McKenzie, a journalist at Fairfax Media:

I have quickly looked into the matter and at the time of my accepting their hospitality it was not precluded under the gift provisions that existed then.

Therefore it is not in my gift register nor did it need to be. I understand fully it is prohibited to accept a gift over \$300 and any gift has to meet the definition of a gift under the Act or Regulations that exist at that time.

A decision was made at the time that it did not meet the terms of a gift as there was no relationship at that time nor a likelihood that there would be with BHP. The CEO and the council of the day were fully informed and also fully sanctioned my participation.

...

I was invited as the Mayor of Perth in recognition of the importance of Perth as the Capital City of WA which has extensive mining, oil and gas reserves.⁴⁵

[90] Mrs Scaffidi appeared on a radio talk back program on 22 May 2015 and was questioned by Mr Gary Adshead.

[91] Mrs Scaffidi explained that she spoke to the CEO of the day and he considered and advised that it was "appropriate for me to accept the invitation".

... I'm advised that it was okay for me to accept it because it was not likely, and it actually hasn't been likely, that I would need to be involved in operational decisions to do with BHP's operations in Western Australia, and certainly that has been the case during my tenure as the Lord Mayor.⁴⁶

[92] When asked whether it was placed on the register Mrs Scaffidi responded:

It didn't need to be placed on a register is my understanding, Gary, because it's very clear from the guidelines that I've been told to adopt, and I'm very aware of those as I live my life every day in the public eye, that because I was not going to be in a position to make an operational decision regarding BHP that it did not need to be declared. That's actually been a legal opinion that the City of Perth had sought, and I have been aware of that for some time.

GA *Wouldn't it fit into that category under the City of Perth's policy manual of "notifiable gifts"?*

⁴⁵ Email from Mrs L Scaffidi to Mr N McKenzie 21 May 2015 12:59 PM.

⁴⁶ Radio Interview, 6PR, Mr G Adshead 22 May 2015.

LS *Oh, look, I'm very aware of the clear guidelines that all councillors, just like politicians, have, and my behaviour is guided by that. I keep a very robust gift register for all of the smaller items that I get because you're technically, you know, looking at a value there, that it's relating to companies that, you know, might be development companies or things that you would be making decisions over.*⁴⁷

[93] In relation to the gift register Mrs Scaffidi said:

*That was discussed, that was discussed at length and it did not need to go on the gift register, according to my understanding and the legal opinions that have subsequently been checked on that. That was verified again in 2012 in relation to a story that was done by another journalist at the time in regards to the Perth Fashion Festival and that reconfirmed what is now my understanding in regard to, you know, those declarations.*⁴⁸

[94] In relation to what Mr Adshead described as a \$16,000 trip by a corporate player like BHPB Mrs Scaffidi said:

*As I said, a decision was made at the time it did not meet the terms of a gift and, therefore, given that there was no relationship at that time, nor the likelihood that there would be, with BHP, the CEO informed me, and also the council sanctioned it at the time - I've been as I say very transparent about it - my participation.*⁴⁹

[95] Mrs Scaffidi said that she had re-looked at the invitation and

*... it was very clear that I was invited as the Lord Mayor of a capital city of Western Australia in recognition of the mining operations that they have throughout the State; and, you know, as I say, I was one of a number of significant people on that particular, you know, visit.*⁵⁰

[96] On 7 June 2015 in the course of an email to Mr Fletcher responding to an email from him, after reference to other councillors Mrs Scaffidi said:

We have all been of this view and never at any time in our local government careers has it been pointed out to use [sic] otherwise. Nor, have we received guidelines or advice to this effect.

*Nor, never at any time was this brought to our attention by other Council staff or Officers who would have possibly known if it required declaring.*⁵¹

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Email from Mrs L Scaffidi to Mr I Fletcher 7 June 2015 10:12 AM.

[97] It is to be noted that this email is at odds with her earlier email to Mr Fletcher of 16 October 2009, "Of course its been registered".

3.7 Information Request from the WA Olympic Council

[98] Only a week after being approached by Mr Fletcher Mrs Scaffidi received a request from the WA Olympic Council and Commonwealth Games WA entitled "Attendance at Beijing 2008 Olympic Games".

The Western Australian Olympic Council is currently compiling an internal list of key WA stakeholders that will be attending the 2008 Olympic Games in Beijing.

Your assistance in advising if our Vice Patron, The Right Honourable The Lord Mayor, Ms Lisa Scaffidi and Mr Scaffidi have any plans to do so would be greatly appreciated.⁵²

[99] This letter was forwarded to the Lord Mayor from her assistant. Mrs Scaffidi copied it to Mr Edwards with a note "Interesting that this just came through...have not answered it yet".⁵³ Mrs Scaffidi advised her assistant to respond to the Olympic Council "Advise them should I plan to I will let them know!"⁵⁴ Mrs Scaffidi could not satisfactorily explain why she was not open with the Olympic Council at that time, having indicated to Mr Fletcher she would accept an invitation.

[100] It appears the Olympic Council made a further query. In an email chain of 12 June 2008 Mrs Scaffidi responded to a question from her assistant to let the Olympic Council know she would be visiting the Olympics in Beijing.

[101] In submissions through her solicitors, Mrs Scaffidi advised that she made a speech to the WA Olympics Council during July 2008 noting that she was attending as a guest of BHPB. No copy of that speech has been provided. Email exchanges after that event do not mention BHPB.

3.8 Public Disclosure of the Trip to Beijing

[102] It is submitted by Mrs Scaffidi that the level of disclosure is more significant than the evidence that was referred to in her private examination and more than the Commission's draft report might suggest.

[103] The emails and other supporting documents attached to the submission have been examined by the Commission.

⁵² Email from Ms T Sullivan, Executive Director, WA Olympic Council & Commonwealth Games WA to Ms S Higgins 28 February 2008 02:15 PM.

⁵³ Email from Mrs L Scaffidi to Mr F Edwards 28 February 2008 3:50:49 PM WST.

⁵⁴ Email from Mrs L Scaffidi to Ms S Higgins 28 February 2008 4:14:10 PM WST.

[104] In addition to the WA Olympic Council speech referred to under the previous heading the submissions refer to:⁵⁵

- Email exchange with Mr Clay Golledge. It is clear Mr Golledge knew that the Beijing trip was being paid for by BHPB.
- Email exchange 15-18 August 2008 with Ms Sue Higgins (a City of Perth employee) regarding small gifts which "the Lord Mayor planned to provide to the various officials that she met to advance the interest of the City".

The emails disclose, as Mrs Scaffidi's evidence confirms that the token gifts were for Mr Clinton Danes, President BHPB China who was to meet the group for dinner during the private visit to Shanghai following the Olympics.⁵⁶

- Application to the Chinese Government for a visa. This application confirms that BHPB is meeting all costs. The submission suggests that "so far as Mrs Scaffidi is aware the documentation was distributed to administrative staff and relevant travel agencies".

The emails disclosed in support of this application are to and from Mrs Scaffidi and BHPB Olympic Hospitality. They do not indicate any wider circulation.

- Mrs Scaffidi's diary entry clearly highlighting that she is attending the Beijing Olympics – "the diary was available to all Council staff".

The diary entries show an entry "Beijing Olympics". There is no mention that BHPB is paying.

Mr Jackson, the media officer, did not have access to Mrs Scaffidi's diary. Mr Edwards had access to the diary "and all the people on my floor. I think even Chris Hughes might have had diary access".⁵⁷

The Commission takes the reference to the people on the floor as a reference to Mrs Scaffidi's personal staff including Ms Sue Higgins. There is no evidence of access to the diary beyond that described by Mrs Scaffidi in her evidence.

- A copy of a speech to the Olympic and Paralympic teams on 22 September 2008. At this event, after the Olympics, the speech notes:

I was fortunate to be in Beijing for some of the events and the Olympic Closing Ceremony and was so impressed by the scale and spectacle of that event.

There is no mention of BHPB funding the visit.

⁵⁵ Submissions provided to the Commission on Friday 25 September 2015 by solicitors representing Mrs L. Scaffidi.

⁵⁶ Transcript of Proceedings, Private Examination of Mrs L Scaffidi, 22 July 2015, pp.54-55.

⁵⁷ Transcript of Proceedings, Private Examination of Mrs L Scaffidi, 29 July 2015, p.82.

- [105] There is no doubt a number of people knew in advance that Mrs Scaffidi was attending part of the Beijing Olympics.
- [106] The Commission has seen little evidence that it was widely known Mrs Scaffidi and her husband were attending with all expenses paid for by BHPB.
- [107] The material referred to in the submissions does not cause the Commission to alter that assessment.

3.9 The Gifts Register

- [108] Councillors are required to keep a gift register. Mrs Scaffidi regularly updated her register by asking her staff to make entries. She was assiduous in recording the receipt of even small items (such as a small cheese platter \$30, porcelain goblet \$20, ornamental fan \$25 and a Space Shuttle clock \$25) and tickets to events. Yet the most significant gift she received in terms of value, the Olympic Hospitality Package, was never recorded.
- [109] At times Mrs Scaffidi turned her attention to the need to record the Olympic Hospitality Package. On 12 August 2008, a date following her return from Broome prior to departure to Beijing she emailed her PA "Not sure how you record these things...but did Broome 3 days stay accom only and BHP trip to China go on my goft [sic] register please?"⁵⁸
- [110] She received a response about two hours later "sure - do we know approx value of each trip?"⁵⁹
- [111] The Commission has been unable to find any response by Mrs Scaffidi to that request for value.
- [112] Neither the Broome accommodation nor the Beijing Olympic package needed to have been included in the 2008 return as each occurred after 30 June 2008. They did have to be included in the 2009 return. They were not.

3.10 Advice on 15 January 2009 to Include Olympics Trip on Register

- [113] Around 15 January 2009 it appears that Mr Edwards may have raised a query with Mr Parry about the Lord Mayor's travel. At 12:24 pm on 15 January 2009 Mr Parry sent an email to Mr Edwards, subject: LM Gifts.

⁵⁸ Email from Mrs L Scaffidi to Ms S Higgins 12 August 2008 11:50 AM.

⁵⁹ Email from Ms S Higgins to Mrs L Scaffidi 12 August 2008 1:39:01 PM WST.

Frank, with regard the trip to Beijing these will need to be recorded in the Annual Return for 2009.

In relation to the Broome accommodation it is correct to register this as a gift also - the interest provisions provide that accommodation incidental to any journey is to be recorded.

The LM will need to record both of these items in her 2009 return as they both occurred during this financial period.⁶⁰

- [114] That email was forwarded to Mrs Scaffidi at 12:53 pm with a comment "Please see below and note for your 2009 annual return. Both go in annual return".⁶¹
- [115] At 1:01 pm the Lord Mayor responded to Mr Edwards with a copy to Mr Parry:

Jamie

Can you put a flag or follow up to remind me about this when I lodge the annual return for 2009.

Also FYI - my gift register is now fully updated.⁶²

- [116] Mr Parry replied at 1:23 pm "Shall do Lord Mayor".⁶³
- [117] Mr Parry left the City within a few weeks to take up a position at the City of Joondalup. Consequently, he was unable to remind Mrs Scaffidi to declare these items of travel. In any event it was not his duty to do so.
- [118] In the course of her examination while accepting responsibility for the non-declaration, Mrs Scaffidi complained about the staff and the assistance that she should have received but did not in relation to these matters. She suggested that had she been reminded, both the Broome and the Beijing trips would have been included in the return.
- [119] On 15 January 2009 at 2:33 pm an officer in the Lord Mayor's office emailed Mrs Scaffidi with the subject line Gratuity Register "LM This has now been updated with all requested gifts/events".⁶⁴ To which Mrs Scaffidi responded "Thanks very much".⁶⁵ So on the very day when both the Broome accommodation and Beijing Olympics hospitality package was being raised with her, Mrs Scaffidi had the opportunity to place on her register those items which were unequivocally gifts, such as the tickets to events and the closing ceremony, but did not do so.

⁶⁰ Email from Mr J Parry to Mr F Edwards 15 January 2009 12:24 PM.

⁶¹ Email from Mr F Edwards to Mrs L Scaffidi 15 January 2009 12:53 PM.

⁶² Email from Mrs L Scaffidi to Mr F Edwards cc Jamie Parry 15 January 2009 01:01 PM.

⁶³ Email from Mr J Parry to Mrs L Scaffidi 15 January 2009 1:23:37 PM WST.

⁶⁴ Email from Ms L Gately to Mrs L Scaffidi 15 January 2009 2:33 PM.

⁶⁵ Email from Mrs L Scaffidi to Ms L Gately 15 January 2009 3:03:15 PM WST.

[120] This is significant because also on the 15 January 2009 at 12:06 pm Mr Edwards sent a circular email to the Lord Mayor and all Councillors under the subject "Questions about Tickets and Gift Register".⁶⁶

[121] This circular was in response to a media query concerning another matter. Mr Edwards pointed out that the descriptions of gifts and what is notifiable and prohibited is detailed in the Act and the Regulations and the City Code of Conduct which had been last formally considered on 5 February 2008 by the Committee and at the Ordinary Council of 19 February 2008. He noted that a Council member may not accept a gift valued at more than \$300 and a gift of a value between \$50 and \$300 is a notifiable gift. He also noted that it was recommended to Council that all gifts would be declared, although that was more than required by the regulations. Mr Edwards concluded:

*I see no value for Council in getting legal advice on this. The Code of Conduct Regulation is very clear on the requirement. As always, each Elected Member has to make their own decision on what is a notifiable or prohibited gift based on what they receive, the circumstances, the value, from whom, and in what role they have received it.*⁶⁷

[122] No doubt with that in mind on 21 January 2009 Mrs Scaffidi asked that a gift from a councillor from Parramatta of a small cheese platter with an estimated value of \$30 be added to the gift register, and on 29 January 2009 that PIAF tickets which Mrs Scaffidi was going to pass on to ratepayers should also be entered in the gift register.

[123] On 10 August 2009 Mrs Scaffidi was reminded of the need to prepare her annual report by 31 August. On 27 August 2009 Mrs Scaffidi received another reminder to which she responded indicating she was aware of the due date. On 1 September she received another reminder and advised she was waiting on word from her accountant on one small issue. The return dated 26 August 2009 was completed by Mrs Scaffidi. Nothing was shown to indicate that she and her husband had travelled to the Olympic Games, been accommodated and accepted tickets to events including the closing ceremony all at BHPB's expense. Camouflage could not have concealed the trip. Only non-disclosure might.

[124] In her submissions Mrs Scaffidi blames systemic failures in the City of Perth at this time for the failure to record the Olympic Hospitality Package and the Broome Accommodation. She asserts that the Commission should conduct private examinations of Mrs Scaffidi's many personal assistants to determine the extent of the systemic failures of the City and whether it was common practice for elected officials to record their own gifts/travel or whether it was the responsibility of their assistants.

⁶⁶ Email from Mr F Edwards, cc Mrs L Scaffidi and others 15 January 2009 12:06:39 PM WST.

⁶⁷ *Ibid.*

- [125] The Commission has concluded such examinations are unnecessary. As Mr Edwards and Mr Parry emphasised, and Mrs Scaffidi repeatedly acknowledged in her examination, the responsibility for maintaining the register and making an accurate annual declaration is on the elected official.
- [126] Assistants can only record what they are told to record. If they fail to record a gift, the person who received it should nevertheless know. The Olympic Hospitality Package and Broome accommodation were significant gifts. It is unlikely they were forgotten even if an assistant failed to record them.
- [127] Moreover, on two occasions, 15 January 2009 and 16 October 2009 Mrs Scaffidi positively asserted her register was up to date.
- [128] Mrs Scaffidi's assertions of systemic failings as the cause of the omission from her register or declarations are at odds with her assertions to media representatives to the effect that the Olympic Hospitality Package did not have to be declared. In her evidence she said she did not see it as a gift.⁶⁸

3.11 Assessment

- [129] The assertion made in the media and to the Commission that Mrs Scaffidi's travel was ambassadorial in nature is inconsistent with her assertion in 2009 that the travel was personal. There is no record that the matter was ever raised at Perth City Council much less "sanctioned" by Council. There was no legal advice ever obtained on the subject. On the contrary, Mr Edwards saw no need for legal advice because the matter was quite clear.
- [130] While Mr Edwards was of the view as at February 2008 that the Olympic Hospitality Package might be accepted because it was not a prohibited gift, he was consistently of the view (and advised Mrs Scaffidi) that it did have to be disclosed. Mrs Scaffidi was questioned in examination whether the Olympic Hospitality Package was not placed on the register or in her declaration because she forgot or because she believed she had no requirement to do so. She made various responses. For example:

... was it forgetting or was it a conscious decision not to because you didn't think you needed to?---Forgetting.

So you forgot?---Absolutely.⁶⁹

- [131] In examination as well as her submissions Mrs Scaffidi accepted responsibility but claimed ignorance and blamed the staff of the City for not giving her more guidance.

⁶⁸ Transcript of Proceedings, Private Examination of Mrs L Scaffidi, 22 July 2015, pp.33,35.

⁶⁹ Transcript of Proceedings, Private Examination of Mrs L Scaffidi on 22 July 2015, p.75.

- [132] This response is inconsistent with earlier statements to media representatives that the Olympic Hospitality Package was not declared on her register because it did not need to be.
- [133] Because of the number of inconsistent explanations that Mrs Scaffidi has proffered, the Commission is unable to be satisfied that her motive and purpose for accepting the Olympic package was to advance the interests of the City.
- [134] It is more probable than not Mrs Scaffidi became aware she should not accept, or alternatively should withdraw from, the trip but chose instead to avail herself of the opportunity of an all-expenses paid trip to the Olympics followed by a side trip to Shanghai, where she paid for her own accommodation. It is unlikely that she would forget travelling to Broome or Beijing when she was completing her annual return in 2009.

CHAPTER FOUR

4.1 The Broome Cup 2008: Three Nights at Cable Beach Club Resort and Spa

- [135] Hawaiian is a property company investing in shopping centres, office buildings, hotels and resorts including the Cable Beach Club Resort and Spa in Broome. In 2008 while requesting the City to exercise a local government discretion Hawaiian offered, and Mrs Scaffidi accepted, three nights' accommodation at the Cable Beach Club Resort and Spa while Mr and Mrs Scaffidi attended the Broome Cup. The value of the accommodation was \$1093.50. Mr and Mrs Scaffidi paid their airfares to Broome.
- [136] In 2008 Hawaiian was a member of a consortium with other commercial landlords that wanted to develop a Business Improvement District (BID) in Perth to counter the competition from regional shopping centres. On 12 February 2008 Mr Evan Briers of Hawaiian sent an email to Mrs Scaffidi:

We are really encouraged by the progress to date on the BID and the general support of your staff. As you are no doubt aware the stakeholders will be putting a submission to Council to include in the budget.⁷⁰

- [137] Other emails dated 21 January 2008 to the Lord Mayor concern a luncheon with the Lord Mayor to further collective discussion among key stakeholders of the ongoing development and improvement of the City. Mrs Scaffidi replied that she could attend the boardroom luncheon meeting on 31 January 2008 "Also remember I need you to talk up BID in view of who will be there now".⁷¹ Mrs Scaffidi knew Hawaiian was part of the consortium.
- [138] While aware of the likelihood that BID would be seeking a contribution from Council, Mrs Scaffidi received and accepted an invitation by Hawaiian to attend the Broome Cup. On 1 May 2008 she advised her PA:

In my diary there is a TBC for Reiwa breakfast which I will now be unable to accept due to a invite from Hawaiian to attend Broome Cup.

...

Pls block off 7 - 10 Aug for Hawaiian.⁷²

⁷⁰ Email from Mr E Briers to Mrs L Scaffidi 12 February 2008 9:13:53 AM WST.

⁷¹ Email Mrs L Scaffidi to Ms K O'Hara 21 January 2008 12:53 PM.

⁷² Email from Mrs L Scaffidi to Ms S Higgins 1 May 2008 9:54:46 AM WST.

- [139] On 17 June 2008 the City Finance and Budget Committee noted that the City had received a proposal seeking a financial contribution of \$180,000 to a stakeholder consortium of building owners, managers and traders in the area to assist them scoping and planning a Business Improvement District Strategy for the CBD. The consortium of stakeholders included Hawaiian and three other companies.
- [140] The Committee recommended that Council approve by an absolute majority an unbudgeted contribution of \$180,000 excluding GST to BID.
- [141] On 24 June 2008 at a Council meeting, the Lord Mayor presiding, the proposal put forward by the Committee was carried. Unlike her actions in relation to BHPB, Mrs Scaffidi did not declare an impartiality interest as she was required to do in accordance with the City Code of Conduct. Mrs Scaffidi voted in favour. Mrs Scaffidi subsequently received an email from Mr Briers of Hawaiian:

I just wanted to send you a note to say on behalf of Hawaiian we thank you for your support to get the BID up and running.⁷³

- [142] At this point Mrs Scaffidi had already accepted the invitation to the Broome Cup. On 28 July 2008 Mrs Scaffidi emailed Hawaiian:

Thanks for the lovely gold information sheet!

Joe and I are arriving on Thurs 7 August ex QF 1930 which is scheduled to land into Broome at 1750 hours on the Thursday evening.

We will be departing on Sunday 10th at 1305 on QF1927.

Please book Joe and I in for the "Hawaiian Treat" each - together if possible.⁷⁴

- [143] As already noted, Mrs Scaffidi made specific mention of the Broome trip to her PA asking if it should go on the gift register.
- [144] Although Mrs Scaffidi in her examination recollected that she had discussed the propriety of the Broome trip with Mr Edwards, her recollection may be faulty. Mr Edwards does not recall any discussion that Hawaiian was paying for the accommodation. In his examination Mr Edwards said had he known that, he would have regarded the accommodation as a prohibited gift and advised Mrs Scaffidi accordingly.
- [145] The accommodation was a prohibited gift. It should not have been accepted. It should have been disclosed but was not.

⁷³ Email from Mr E Briers to Mrs L Scaffidi 25 June 2008 11:09:06 AM WST.

⁷⁴ Email from Mrs L Scaffidi to Ms E Palmiotti, Executive Assistant, Hawaiian 28 July 2008 9:57 AM.

CHAPTER FIVE

5.1 The Leeuwin Concert 2009

- [146] In 2009 the Leeuwin Concert featured Mr Chris Isaak. BHPB invited a number of guests to enjoy the concert and hospitality from the corporate marquee. The hospitality included an entrée with pre-concert drinks, the concert, followed by a gourmet dinner and dancing.
- [147] Mrs Scaffidi attended the Leeuwin concert as a guest of BHPB who paid the accommodation, tickets and transfers to and from the hotel to the concert, together with a meal. Accommodation was provided at the Grand Mercure Apartments in Busselton for 6 and 7 March 2009 inclusive of breakfast. The cost of accommodation for two people for two nights was \$490.00. The meal cost \$135.00 a head.
- [148] Mrs Scaffidi did not make any declaration on her gift register.
- [149] The accommodation was not incidental to travel and both the tickets and the hospitality associated with the Leeuwin Concert ought to have been disclosed in her gift register and in her annual return in 2009. They were not.

CHAPTER SIX

6.1 Other Travel and Comparison with the Olympic Hospitality Package

[150] On 16 June 2015 solicitors for Mrs Scaffidi provided a list of travel undertaken by Mrs Scaffidi for which a third party made a contribution to travel.

[151] Mrs Scaffidi did not declare the contribution in the relevant year for the following.

No.	Date	Destination Description of Travel and Third Party
1.	19-24 May 2008	Taipei Inauguration of the President of Taiwan (Taiwanese Government)
2.	21-26 August 2008	Beijing Olympics (BHPB)
3.	28-30 September 2010	Singapore (Perth Convention Centre)
4.	4-9 October 2010	Shanghai (Foreign Affairs Department, Bureau of Shanghai World Expo Co-ordination)
5.	18-24 October 2010	Nanjing (Nanjing Municipal People's Government Foreign Affairs Office)
6.	19-24 November 2011	Kagoshima (31 st Joint Conference on Medical Informatics)
7.	1-4 October 2012	Dubai (Informa Conferences Saudi Arabia)
8.	4-11 October 2013	New York (Bloomberg)

[152] Mrs Scaffidi also nominated travel for which a third party made a contribution that was declared on the relevant annual return.

No.	Date	Destination Description of Travel and Third Party
1.	October 2009 December 2009 February 2010 May 2010	Seoul and Shanghai (Press Council of Australia) Hanoi - Ho Chi Minh City (Perth Education City)
2.	3-4 July 2010	China (Perth Education City)

- [153] In respect of some of the travel where the third party disclosure was not declared, Mrs Scaffidi nominated what she described as "Other public disclosure". This included Facebook posts and tweets.
- [154] In relation to the New York trip Mrs Scaffidi also nominated Council Minutes dated 19 November 2013 and City Newsroom media article.
- [155] For the Beijing Olympics trip the solicitors' letter said "TBC" in respect of other public disclosure. In examination Mrs Scaffidi was given the opportunity to indicate other public disclosure. She said at the time she was not using social media. She did not nominate any media article and agreed that the media didn't know until the story broke in 2009.⁷⁵
- [156] Except for the Olympic Hospitality Package the Commission did not examine the nature of the travel which Mrs Scaffidi described as in an ambassadorial role and which was not disclosed.
- [157] The disclosed travel came as a result of a suggestion from Mr Edwards that travel contributions by the Press Council and Perth Education City should be recorded in the 2010 annual return.
- [158] That suggestion should have put Mrs Scaffidi on notice both to examine earlier travel contributions and to ensure future travel contributions were disclosed annually as the *Local Government Act* s. 5.76 requires.
- [159] The Commission has considered whether the extensive non-disclosure of third party contributions to travel illustrates a misunderstanding by Mrs Scaffidi as to her disclosure obligations relative to the Olympic Hospitality Package. The Commission's assessment is that it is more probable than not that, having regard to all the material including her many contradictory statements, the failure to disclose was deliberate.

⁷⁵ Transcript of Proceedings, Private Examination of Mrs L Scaffidi on 29 July 2015, p.75.

CHAPTER SEVEN

7.1 Gifts, Prohibited Gifts, Travel and Disclosure

[160] The definition of gifts in the *Local Government Act 1995* mirrors the definition in the *Members of Parliament (Financial Interests) Act 1992*. The City of Perth Code of Conduct defines gifts in the same way.

7.2 The *Local Government Act 1995*

[161] In 2008 the *Local Government Act 1995* s. 5.82 read:

5.82. **Gifts**

(1) *A relevant person is to disclose in an annual return —*

- (a) *the description of each gift received by the person at any time during the return period; and*
- (b) *the name and address of the person who made each gift to which paragraph (a) applies.*

(2) *Nothing in this Subdivision requires a relevant person to disclose in a return a gift received by the person if —*

- (a) *the amount of the gift did not exceed the prescribed amount unless —*
- (i) *the gift was one of 2 or more gifts made by one person at any time during the return period; and*
- (ii) *the sum of those 2 or more gifts exceeded the prescribed amount;*

or

- (b) *the donor was a relative of the person.*

(3) *For the purposes of this section, the amount of a gift comprising property, other than money, or the conferral of a financial benefit is to be treated as being an amount equal to the value of the property or the financial benefit at the time the gift was made.*

(4) *In this section —*

"gift" means any disposition of property, or the conferral of any other financial benefit, made by one person in favour of another otherwise than by will (whether with or without an instrument in writing), without consideration in money or money's worth passing from the person in whose favour it is made to the other, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contribution to travel.

[162] Contributions to travel were and continue to be dealt with separately. During the relevant period s. 5.83 read:

5.83. Contributions to travel

- (1) *A relevant person is to disclose in an annual return the name and address of each person who made any financial or other contribution to any travel undertaken by the person at any time during the return period.*
- (2) *Nothing in this Subdivision requires a relevant person to disclose in a return a financial or other contribution to any such travel undertaken by a person if —*
 - (a) *the contribution was made from Commonwealth, State or local government funds;*
 - (b) *the contribution was made by a relative of the person;*
 - (c) *the contribution was made in the ordinary course of an occupation of the person which is not related to his or her duties as a council member or employee;*
 - (d) *the amount of the contribution did not exceed the prescribed amount unless —*
 - (i) *the contribution was one of 2 or more contributions made by one person at any time during the return period; and*
 - (ii) *the sum of those 2 or more contributions exceeded the prescribed amount;*

or
 - (e) *the contribution was made by a political party of which the person was a member and the travel was undertaken for the purpose of political activity of the party, or to enable the person to represent the party.*
- (3) *For the purposes of subsection (2)(d) the amount of a contribution (other than a financial contribution) is to be treated as being an amount equal to the value of the contribution at the time the contribution was made.*
- (4) *In this section —*

political party means a body or organization, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the Parliament of the Commonwealth or of the State of a candidate or candidates endorsed by it or by a body or organization of which it forms part; and

travel includes accommodation incidental to a journey.

[163] Part 5 Division 6 of the *Local Government Act 1995* is entitled "Disclosure of Financial Interests". At s. 5.76 an elected councillor must lodge with the CEO an annual return in the prescribed form by 31 August of that year covering the period ending on 30 June.

[164] Failure to comply with the requirements for disclosing gifts and contributions to travel is an offence with a penalty of \$10,000 or imprisonment for two years: s. 5.78.

[165] Both s. 5.82 and 5.83 were amended by act No. 17 of 2009 on 21 November 2009 to require the amount of gift and the amount of financial or other contribution for travel to be disclosed. These amendments did not affect Mrs Scaffidi's disclosure obligations for her return to be completed by 31 August 2009. She was not required to disclose the value of gifts or travel.

[166] In 2007 *Local Government (Rules of Conduct) Regulations* came into force. These provided rules to cover notifiable gifts and prohibited gifts.

12. Gifts

(1) *In this regulation —*

activity involving a local government discretion means an activity —

(a) *that cannot be undertaken without an authorisation from the local government; or*

(b) *by way of a commercial dealing with the local government;*

gift has the meaning given to that term in section 5.82(4) of the Act except that it does not include —

(a) *a gift from a relative as defined in section 5.74(1) of the Act; or*

(b) *a gift that must be disclosed under regulation 30B of the Local Government (Elections) Regulations 1997; or*

(c) *a gift from a statutory authority, government instrumentality or non-profit association for professional training;*

notifiable gift, in relation to a person who is a council member, means —

(a) *a gift worth between \$50 and \$300; or*

(b) *a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth between \$50 and \$300;*

prohibited gift, in relation to a person who is a council member, means —

(a) *a gift worth \$300 or more; or*

(b) *a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth \$300 or more.*

(2) *A person who is a council member must not accept a prohibited gift from a person —*

(a) *who is undertaking or seeking to undertake; or*

- (b) *who it is reasonable to believe is intending to undertake, an activity involving a local government discretion.*
- (3) *A person who is a council member and who accepts a notifiable gift from a person —*
 - (a) *who is undertaking or seeking to undertake; or*
 - (b) *who it is reasonable to believe is intending to undertake, an activity involving a local government discretion must, within 10 days of accepting the gift, notify the CEO of the acceptance in accordance with subregulation (4).*
- (4) *Notification of the acceptance of a notifiable gift is to be in writing and is to include —*
 - (a) *the name of the person who gave the gift; and*
 - (b) *the date on which the gift was accepted; and*
 - (c) *a description, and the estimated value, of the gift; and*
 - (d) *the nature of the relationship between the person who is a council member and the person who gave the gift; and*
 - (e) *if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift” (whether or not it is also a notifiable gift under paragraph (a) of that definition) —*
 - (i) *a description; and*
 - (ii) *the estimated value; and*
 - (iii) *the date of acceptance,*
of each other gift accepted within the 6 month period.
- (5) *The CEO must maintain a register of gifts in which details of notices received under subregulation (4) are recorded.*

- [167] These were discussed and adopted by the City as its Code of Conduct at a Council meeting on 19 February 2008, the Lord Mayor presiding.
- [168] Neither the Olympics Hospitality Package, the Broome Cup and accommodation nor the Leeuwin Concert fell under any exemption permitting non-disclosure. Nor did any of the contributions to other undisclosed travel.

7.3 Part of the Olympics Hospitality Package was a Gift

- [169] Mrs Scaffidi does not appear to have considered the BHPB Live Site application when she made decisions about acceptance of the Olympics package.
- [170] Although Mrs Scaffidi relied on Mr Edwards, and was entitled to do so, the ultimate responsibility, as she acknowledged in examination, was hers alone.

- [171] There had been considerable activity involving BHPB by April 2008. BHPB had not been an applicant for building approval in March 2008 but Mrs Scaffidi was aware that BHPB was likely to be a major tenant.
- [172] At a time when she had verbally indicated to Mr Fletcher she would accept the Olympic Hospitality Package if it was offered, a reasonable person in her position would have been on their guard for the potential of a conflict of interest if any matter involving BHPB came before Council.
- [173] The Commission has not seen any evidence to suggest that Mrs Scaffidi knew of the application made in December 2007 at the time she met with Mr Fletcher in February 2008.
- [174] But by the time the committee meeting minutes of 8 April 2008 were circulated, Mrs Scaffidi knew that BHPB was undertaking an activity involving a local government discretion.
- [175] At the time the formal invitation was accepted by Mrs Scaffidi, aspects of the Olympics hospitality package were a prohibited gift. Some of the items given were under \$50 in value - the invitation packs. Others including the pre-departure pack, welcome pack and departure gift may not be prohibited gifts but were certainly notifiable gifts and should have been recorded in Mrs Scaffidi's gift register.

7.4 Olympic Event Tickets

- [176] This was a conferral of a financial benefit by BHPB on Mrs Scaffidi without consideration and the value was more than \$300. They were prohibited gifts.

7.5 The Flights to and from Beijing

- [177] The value of two business class return airfares though significant is excluded from the definition of "gifts".
- [178] The rationale for excluding contributions to travel from the definition of gift is understandable. However, a wide exclusion may be open to abuse when the travel is donated without consideration by a person who is undertaking or seeking to undertake an activity involving a local government discretion. The Commission recommends that Parliament give attention to whether the Local Government Act should be amended to prohibit an offer to contribute to travel expenses in such circumstances.
- [179] The Commission accepts that Mrs Scaffidi was not required to refuse the offer of return airfares on the basis that it was a prohibited gift because the airfares do not fall within the definition of "gift".

7.6 Accommodation in Beijing

- [180] Accommodation incidental to a journey is not a gift. If paid by third parties it is a contribution to travel.

- [181] Mrs Scaffidi in submissions argues that the accommodation in Beijing was incidental to travel and therefore not a gift. The Commission disagrees.
- [182] In the Commission's opinion the position is different when the accommodation is provided at the terminus of a journey or is the reason for the journey. Accommodation incidental to a journey may be the cost of a layover at a city on the way to a destination. Once the destination is reached, the accommodation is no longer incidental to the travel.
- [183] The offer of accommodation in Beijing valued at US\$16,000 was a prohibited gift.

7.7 The Broome Cup Accommodation

- [184] The offer and acceptance of three nights' accommodation at Cable Beach Club Resort and Spa was a prohibited gift. At the time, Mrs Scaffidi well knew that Hawaiian was part of a consortium undertaking an activity involving a local government discretion, seeking \$180,000 for the BID.
- [185] The accommodation at Cable Beach Club Resort and Spa was not incidental to the journey. The purpose of the journey (which Mrs Scaffidi paid for) was to reach the accommodation so as to attend the Broome Cup.

7.8 The Leeuwin Concert 2009

- [186] At the time of the Leeuwin Concert, there is no evidence that BHPB was undertaking an activity involving a local government discretion nor was it reasonable to believe that it would be intending to do so. It was not a prohibited gift. However, the gift of accommodation should have been disclosed on Mrs Scaffidi's gift register as well as the tickets to the concert and listed in her annual return.

7.9 Summary

- [187] The cost of airfares for the Olympic Hospitality Package was not a prohibited gift and did not need to be declined by Mrs Scaffidi on the basis of it being a gift. She was required to disclose the third party contribution to travel in her annual return of 31 August 2009 and did not.
- [188] Accommodation at Beijing and tickets to Olympic events including the closing ceremony are prohibited gifts which could not be accepted. They were also required to be disclosed in the annual return of 31 August 2009 and were not.
- [189] Other gifts connected with the Olympics Hospitality package were less than \$300 value and were notifiable gifts. They were not recorded in the gifts register nor disclosed. They should have been.
- [190] Accommodation in Broome in August 2008 and the other aspects of the Broome Cup paid for by Hawaiian were prohibited gifts which could not be accepted. They were required to be disclosed in the annual return of 31 August 2009 and were not.

- [191] Accommodation in Busselton in March 2009 and other aspects of hospitality associated with the Leeuwin Concert were required to be placed on the gift register and be disclosed in the annual return of 31 August 2009. They were not.
- [192] The eight trips about which Mrs Scaffidi voluntarily advised the Commission involving third party contribution to travel were required to be disclosed in the relevant annual return and were not.

CHAPTER EIGHT

8.1 The Corruption, Crime and Misconduct Act 2003

[193] The *Corruption and Crime Commission Act 2003* ("the CCC Act") was retitled and amended to become the *Corruption, Crime and Misconduct Act 2003* ("the CCM Act") with effect from 1 July 2015. An allegation of misconduct received or initiated by the Commission before 1 July 2015 continues to be dealt with under the provisions of the earlier Act (s. 228).

[194] Under the CCM Act misconduct is separated into serious and minor misconduct. The Commission retains responsibility for serious misconduct and the Public Sector Commissioner has responsibility for minor misconduct. However, minor misconduct does not include conduct of elected officials, such as parliamentarians and local government councillors.

[195] Therefore, elected officials are no longer subject to any opinion of misconduct unless the misconduct is categorised as "serious". Parliament may wish to give attention to this matter.

[196] Serious misconduct was defined at relevant times by s. 4:

- (a) *a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment; or*
- (b) *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; or*
- (c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment.*

[197] Misconduct was relevantly defined by s. 4:

- (d) *a public officer engages in conduct that —*
 - (i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*

8.2 Assessment and Opinions of Misconduct

[198] The Commission has power to make assessments and form opinions as to whether serious misconduct or misconduct has occurred: s. 22. The role of the Commission is described by Martin CJ in *Cox v Corruption and Crime Commission* [2008] WASCA 199:

The Commission does not perform the function of making binding adjudications or determinations of right. It is neither a court nor an administrative body or tribunal in the usual sense of those

expressions. In the performance of the misconduct function it is an investigative agency. After conducting investigations, its role is limited to making assessments, expressing opinions and putting forward recommendations as to the steps which should be taken by others. In characterising the findings made by the Commission as 'assessments' and 'opinions' it is clear that the legislature intended that the conclusions of the Commission should not be regarded as determinative or binding in any subsequent proceedings. So, if the Commission expresses an opinion that a member of the public service has been guilty of misconduct and that disciplinary proceedings are warranted, the question of whether or not a breach of discipline has been committed can only be authoritatively determined in the course of subsequent disciplinary proceedings instituted by the relevant employing authority, and not by the Commission.

- [199] Although the Chief Justice was speaking of disciplinary proceedings, the reasoning holds true for alleged offences. s. 23 at the time of these events provided:
 - (1) *The Commission must not publish or report a finding or opinion that a particular person has committed, is committing or is about to commit a criminal offence or a disciplinary offence.*
 - (2) *An 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 has committed, or is committing or is about to commit a criminal offence or disciplinary offence.*
- [200] This reflects the common law: *Parker and Ors v Miller QC and Ors* [1998] WASCA 124. The Commission is a standing commission with an obligation to investigate and report on matters of alleged serious misconduct. This will necessarily involve from time to time forming opinions that a person has engaged in serious misconduct.
- [201] The formation of an opinion of misconduct is a two stage process. The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it thinks fit: s. 135. Information gathered by the Commission, including testimony obtained in examinations is often conveniently referred to as evidence. Strictly however, it is material available for the Commission to assess in formulating an opinion.
- [202] After evidence or information is gathered, the next step is to assess the material and, if appropriate, form an opinion as to whether misconduct has occurred. In the formation of that opinion, regard must be had to the nature of the material, its probity or strength, its reliability and any other factor which may affect it. In *Briginshaw v Briginshaw* [1938] 60 CLR 336, the High Court considered the standard of proof to be applied to factual determinations where serious allegations of misconduct are made. *Briginshaw v Briginshaw* was followed in *Rejzek v McElroy* [1965] 112 CLR 517 and *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449.

No matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge ...⁷⁶

- [203] Distilling the authorities, before forming an opinion of misconduct, the Commission must be satisfied on the balance of probabilities in light of the seriousness of the issues involved and the potential consequences to a person or body.
- [204] Although an opinion of misconduct has no legal consequence, such an opinion may cause significant reputational or other harm to the person concerned. For that reason, the Commission will always adopt a cautious approach to an opinion of misconduct and will not do so unless clearly persuaded on an analysis of all the material that such an opinion is appropriate.
- [205] Section 23(2) allows the Commission to publish or report a finding or an opinion that the relevant conduct constitutes misconduct under s. 4(c) of the CCC Act without the person having been convicted of an offence punishable by two or more years' imprisonment. Whether a criminal offence has been committed can only be determined by a court and the elements of the offence must be proved beyond reasonable doubt. The Commission is not a court, does not make legally binding determinations, and may form an opinion as to misconduct on the balance of probabilities. The Commission, in expressing and reporting an opinion that the misconduct constitutes serious misconduct under s. 4(c) of the CCC Act, is expressing and reporting an opinion that facts, if proved beyond a reasonable doubt in a court, could satisfy the elements of an offence, not that a particular person has committed an offence.
- [206] The Commission has borne all these considerations in mind in forming its opinion about matters the subject of this investigation. Any expression of opinion in this report is so founded.

8.3 Meaning of "Corruptly" in Section 4(a) and (b)

- [207] An opinion of serious misconduct is either an opinion that a person has acted "corruptly": s. 4(a) and (b) or that a person's conduct falls within s. 4(c). So it necessary to understand what the word "corruptly" means.
- [208] "Corruptly" is a simple English adverb meaning purposefully doing an act which the law forbids as tending to corrupt. Dishonesty is not required.⁷⁷
- [209] In *Independent Commission Against Corruption v Cuneen* [2015] HCA 14, 318 ALR 391 Gageler J, although in dissent on the principal issue, said:

⁷⁶ *Rejzek v McElroy* [1965] 112 CLR 517, [11].

⁷⁷ *R v Wellburn, R v Nurdin, R v Randel* (1979) 69 Cr App Rep 254 at 265.

The word 'corruption' appears in the ICAC Act in its title and in its objects clause. The word connotes moral impropiety in, or in relation to, public administration. It has never acquired a more precise meaning in the language of the law or in ordinary speech. Standard dictionary definitions of "corrupt", used as an adjective, provide a range of meanings, from 'dishonest' or 'without integrity' to 'infected' or 'tainted'.

[210] The meaning of the word has been the subject of Western Australian judicial consideration.⁷⁸

*The word 'corruptly' is not defined in the Code. It is to be given its ordinary meaning which, in my opinion, when one is concerned with the quality of the act or omission which is said to be corrupt, will involve the notion that there has been a dereliction of duty, an element of fault, some perversion of the proper performance of the duties of office: *Williams v R* (1979) 23 ALR 369, 373, per Blackburn J.⁷⁹*

[211] The attribution of corruption to a set of facts or circumstances is the attribution of a value judgment to those facts, in the same way that the law requires a value judgment as to "reasonableness", "indecency" or other standards of conduct.

8.4 Acceptance of the Olympic Hospitality Package

[212] The receipt of a prohibited gift is a breach of the City's Code of Conduct. Minor and recurrent breaches of the Code are dealt with under the *Local Government Act* by a complaint to a Standards Panel.

[213] A serious breach occurs when a Council member commits any offence under a written law when an element of the offence is that the offender is a Council member. A serious breach may be referred to the State Administrative Tribunal.

[214] The existence of an alternative disposition is a relevant factor to which the Commission had regard in considering whether it should make a report.

[215] There are features in the acceptance of the Olympic Hospitality Package and the Broome accommodation that make a report appropriate.

- The amount of the prohibited gift aspect of the Olympic Hospitality Package was very substantial and was accepted in circumstances where there was an intention to keep the gift confidential.
- The amount of the Broome accommodation was more than three times above the \$300 limit.

⁷⁸ *Willers v R* (1995) 81 A Crim R 219, *State of Western Australia v Brian Thomas Burke (No 3)* [2010] WASC 110.

⁷⁹ *State of Western Australia v Brian Thomas Burke (No 3)* [2010] WASC 110 [74].

- The prohibited gifts were never disclosed.
- The time for any breach action has expired.

[216] Acceptance of a prohibited gift in each of the circumstances by Mrs Scaffidi or indeed any public officer could well adversely affect the honest or impartial performance of their functions. So much appears obvious.

[217] In the Commission's assessment based on all the material, the acceptance of the Olympic Hospitality Package by Mrs Scaffidi was wrong. Except for the airfares, the other significant aspects of the package were collectively a prohibited gift. There were dealings involving BHPB and the City during 2008 including the Olympic Live Site application.

[218] The Commission concludes that, in essence, the invitation was a personal invitation to Mrs Scaffidi and her husband, albeit one that would not have been made except for her position. She did not travel as Lord Mayor or engage in any form of ambassadorial function.

[219] Mrs Scaffidi did seek advice from Mr Edwards, the CEO, before indicating to Mr Fletcher that she would accept an invitation if one was forthcoming.

[220] Applying the cautious approach indicated earlier, the Commission is not clearly persuaded that an opinion of serious misconduct in accepting the hospitality package is warranted. In other words, the Commission does not assess Mrs Scaffidi's actions as corrupt.

[221] The Commission does form an opinion of misconduct in the acceptance of the Olympic Hospitality Package on the grounds that it could adversely have affected her honest and impartial performance of her functions as Lord Mayor and Councillor. The fact that the approval of the Live Site application may have been of benefit to the City of Perth is of no moment. The acceptance of a gift in these circumstances taints the appearance of impartiality.

[222] Mrs Scaffidi had an obligation under the Code of Conduct to place the "gift" aspects on her register and also to disclose the gift and the travel on her 2009 return.

[223] Notwithstanding her explanations that she forgot or overlooked her obligation or that there were systemic failings, the Commission is more than satisfied that the decision not to disclose the Olympic Hospitality Package was deliberate.

[224] When queried about the value in August 2008 she may have realised the problem. At all events her actions subsequent to 31 August 2009, including telling a journalist the trip was personal, and falsely informing Mr Fletcher "Of course its been registered", were evasive.

[225] The Commission has formed an opinion of serious misconduct under the CCM Act s. 4(c) in failing to disclose the gifts or travel in her annual return.

- [226] The acceptance of accommodation and incidentals at a time when Hawaiian was part of a consortium seeking \$180,000 from the City was receipt of a prohibited gift which was never disclosed. Mrs Scaffidi did not even make an impartiality declaration. It should have been obvious to Mrs Scaffidi that Hawaiian as part of the BID consortium would benefit from the City's approval of \$180,000.
- [227] The Commission has formed an opinion of serious misconduct under the CCM Act s. 4(c) in failing to disclose the gift and of misconduct under the CCM Act s. 4(d)(i) in accepting the gift

8.5 The Leeuwin Concert 2009

- [228] The accommodation and tickets to the concert and the other incidentals were not disclosed in Mrs Scaffidi's annual return.
- [229] The Commission has formed an opinion of serious misconduct under the CCM Act s. 4 (c) in failing to disclose the gifts.

8.6 Contributions to Travel by Third Parties

- [230] It is to Mrs Scaffidi's credit that when she became aware of the Commission's investigation she instructed her lawyers to write to the Commission with details of other third party paid travel.
- [231] The Commission accepts that the events she attended, though paid for by third parties, were arguably in her role as Lord Mayor to advance the interests of the City.
- [232] Unlike the Beijing Olympics the travel was not camouflaged. There are some posts on social media sites informing about the various events Mrs Scaffidi attended.

8.7 Conclusion

- [233] The purpose of the annual return is to allow transparency. The information is available for inspection: *Local Government Act 5.88, 5.94.*
- [234] Failure to disclose gifts and contributions to travel causes opacity not transparency.
- [235] Attempts to blame others and systemic weaknesses within the City of Perth ignore the fact that Mrs Scaffidi at all times knew where she had travelled. In failing to disclose, she signally failed in her duties as Lord Mayor.



Perth Foreshore



Esperance



Rottnest Island



Kalgoorlie



Margaret River



Near Meekatharra