



CORRUPTION AND CRIME COMMISSION

REPORT ON THE INVESTIGATION OF ALLEGED PUBLIC SECTOR MISCONDUCT BY THE COMMISSIONER OF POLICE IN RELATION TO THE USE OF THE WESTERN AUSTRALIAN GOVERNMENT PURCHASING CARD OR ANY OTHER ENTITLEMENT

16 July 2012



CORRUPTION AND CRIME COMMISSION

Hon. Colin James Barnett, MLA
Premier
Floor 24, Governor Stirling Tower
197 St Georges Terrace
PERTH WA 6000

Dear Premier

The Corruption and Crime Commission (“the Commission”) wishes to make a report to you as a Minister pursuant to section 89 of the *Corruption and Crime Commission Act 2003* (“the CCC Act”).

That course is available as an alternative to the making of a report to the Parliament of Western Australia where the Commission considers that “for any reason ... it [is] appropriate to do so”.

The report is a *Report on the Investigation of Alleged Public Sector Misconduct by the Commissioner of Police in Relation to Use of the Western Australian Government Purchasing Card or Any Other Entitlement*.

The decision to make a report to you arose from a weighing, in particular, of the benefits of publication against the potential for prejudice to some individuals involved, including the Commissioner of Police, in circumstances where the matters investigated were not in the public domain and no finding of misconduct was made as a result of the investigation.

The CCC Act provides in section 87 that following the making of a report to a Minister, a matter in the report may be disclosed with the approval of the Minister, despite the restrictions on the disclosure of such material set out in section 151 of the CCC Act.

The Commission provides five numbered copies of the report to you, together with a disc containing both a Microsoft Word and PDF version of such.

Yours faithfully

A handwritten signature in black ink, appearing to read "Roger Macknay".

Roger Macknay, QC
COMMISSIONER

16 July 2012

ABBREVIATIONS AND ACRONYMS

(“the CCC Act”)	<i>Corruption and Crime Commission Act 2003</i>
(“the Commission”)	Corruption and Crime Commission
(“Corporate Credit Card”)	Western Australian Government Purchasing Card
(“the Corporate Credit Card Guidelines”)	<i>Western Australian Government Purchasing Card (Corporate Credit Card) Guidelines</i>
(“the FM Act”)	<i>Financial Management Act 2006</i>
(“the Guidelines”)	Premier’s Circular No. 2009/04 entitled <i>Guidelines for Official Air Travel by Government Officers</i>
MAU	Management Audit Unit (WAPOL)
NAB	National Australia Bank
PAW	Police Air Wing
RMIS	Resource Management Information System
(“Special Report”)	<i>Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003” (WA)</i>
(“Statement”)	“Statement of the Commissioner of Police Dr O’Callaghan” (unsigned), received by the Commission on 21 May 2012.
(“the Submission”)	Letter (dated 6 June 2012 [sic]), with submission and annexure, from Dr Karl Joseph O’Callaghan, APM, received by the Commission on 6 July 2012.
TI	Treasurer’s Instruction
WAPOL	Western Australia Police
(“the WAPOL Financial Manual”)	<i>Western Australia Police Financial and Asset Management Manual</i>
(“the WAPOL Travel Proposal Form”)	<i>WAPOL Travel Proposal Request for Approval Form</i>

FOREWORD

This is a report on that part of the overall investigation by the Corruption and Crime Commission (“the Commission”) which focussed on alleged public sector misconduct by Dr Karl Joseph O’Callaghan, APM, Commissioner of Police, or any other public officer employed by Western Australia Police (WAPOL) in relation to use of the Western Australian Government Purchasing Card (also known as the “Corporate Credit Card”) or any other entitlement.

The investigation commenced as a consequence of a report made to the Commission in October 2011 pursuant to section 25 of the *Corruption and Crime Commission Act 2003* (“the CCC Act”)

In addition to a review and analysis of documentation and materials the Commission investigation encompassed interviews of various persons, conducted by Commission investigators, and private examinations (hearings), which were conducted by the Commission pursuant to sections 137 and 139 of the CCC Act during April and May 2012.

The scope and purpose of the investigation, for the purpose of this report, was to:

determine whether any public officer employed by the Western Australia Police may have engaged in misconduct or serious misconduct with respect to matters including, but not limited to, ... the use of WA Government Purchasing Cards issued by the Western Australia Police and the use of annual leave credits or other forms of leave.

Two broad issues arose from the above scope and purpose, which were as follows:

- (1) the use of the WAPOL Corporate Credit Card for personal, non-work related, expenditure; and
- (2) the extent and appropriateness of certain overseas (and intrastate) travel identified and approved as official travel, during which official expenditure was incurred.

Whilst related these issues are broadly separate, and are considered as such in this report.

With respect to the first issue, in the course of the Commission investigation, a number of anomalous practices and transactions in relation to use of the WAPOL Corporate Credit Card were identified and are considered in detail in Chapter Two of this report.

With respect to the second issue, the distinction between private and official components of travel, and travel to locations not identified in the original travel proposal submitted to the responsible Minister for approval were identified during the Commission investigation as matters of concern and are considered in detail in Chapter Three of this report.

As a consequence of the investigation the Commission makes five recommendations. These recommendations are detailed in Chapter Four of this report, together with concluding remarks relating to the outcome of the Commission investigation.

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CHAPTER ONE

INTRODUCTION

1.1 Background

- [1] This is a report on that part of the overall investigation by the Corruption and Crime Commission (“the Commission”)¹ which focussed on alleged public sector misconduct by Dr Karl Joseph O’Callaghan, APM, Commissioner of Police, or any other public officer employed by Western Australia Police (WAPOL) in relation to the use of the Western Australian Government Purchasing Card (also known as the “Corporate Credit Card”) or any other entitlement.²
- [2] The term “misconduct” has a particular and specific meaning in the *Corruption and Crime Commission Act 2003* (“the CCC Act”) and it is that meaning which the Commission must apply. Misconduct is defined in section 4 of the CCC Act, and described for “kinds” of misconduct set out in sections 4(a), 4(b), 4(c) and 4(d) respectively. Misconduct of a kind described in sections 4(a), 4(b) and 4(c) is defined as “serious misconduct” by section 3 of the CCC Act. Misconduct of a kind described in section 4(d)(i)–(iv) must not only involve the type of conduct described there, but must also be serious enough to meet the criteria set out in section 4(d)(v) or (vi).
- [3] Misconduct as defined by sections 3 and 4 of the CCC Act applies only to the conduct of public officers. The term “public officer” is defined in section 3 of the CCC Act by reference to the definition in section 1 of *The Criminal Code*. The term “public officer” includes “a police officer”. By definition, therefore, WAPOL officers are “public officers”.
- [4] The Commission investigation encompassed a review and analysis of documentation and materials provided to the Commission voluntarily and in response to notices served on persons pursuant to sections 94 and 95 of the CCC Act, which included relevant policies, procedures, practices and guidelines, records, declarations, receipts and National Australia Bank (NAB) Flexi Purchase Account Statements. Section 94 of the CCC Act relates to the Commission’s power to obtain information from a public authority or officer and Section 95 of the CCC Act relates to the Commission’s power to obtain documents and other things.

¹ The overall scope of the Commission investigation encompassed alleged public sector misconduct by any public officer in relation to the Perth Hills Bushfires of 6 February 2011 (refer Footnote 7) and by any public officer employed by the Western Australia Police in relation to use of the Western Australian Government Purchasing Card or any other entitlement.

² The Western Australian Government Purchasing Card is a Corporate Credit Card and is a means of streamlining public sector purchasing and payment procedures, thereby achieving savings through improved administrative efficiency and more effective cash management, *Western Australian Government Purchasing Card (Corporate Credit Card) Guidelines* (updated 28 November 2011), p.4. In this report the Western Australian Government Purchasing Card is referred to as either a “Purchasing Card” or a “Corporate Credit Card”.

[5] In addition to a review and analysis of documentation and materials the Commission investigation encompassed interviews of various persons, conducted by Commission investigators, and private examinations (hearings),³ which were conducted by the Commission pursuant to sections 137 and 139 of the CCC Act during April and May 2012.

1.1.1 Genesis of Commission Investigation

[6] The Commission investigation commenced as a consequence of a report made to the Commission in October 2011 pursuant to section 25 of the CCC Act, whereby a public officer or any other person (such as a member of the public) may report to the Commission any matter which that person suspects on reasonable grounds concerns or may concern misconduct that:

- (a) *has or may have occurred*;
- (b) *is or may be occurring*;
- (c) *is or may be about to occur*; or
- (d) *is likely to occur*.

[7] Commission investigators, subsequent to receipt of the report, undertook preliminary inquiries to obtain further and better particulars about alleged misconduct by the Commissioner of Police, and were directed to Mr Gregory Joseph Italiano, Executive Director, WAPOL, as a person who had expressed concerns about the conduct of the Commissioner of Police. Those concerns were said to include:

- use of the WAPOL Corporate Credit Card by the Commissioner of Police; and
- international travel by the Commissioner of Police.⁴

[8] Subsequently, Commission investigators interviewed other public officers in order to obtain further relevant information, and sourced a variety of information from a range of sources. The public officers interviewed ranged from relatively junior to senior public officers, whose names have not necessarily been included in this report. In formulating this report the Commission has considered the benefit of public exposure and public awareness and weighed this against the potential for prejudice and privacy infringements. As a result of these considerations the Commission may decide not to name various individuals who assisted the Commission during the investigation.

³ Although the *Corruption and Crime Commission Act 2003* refers to examinations (of persons for the purpose of obtaining information to advance an investigation), there is a general tendency for those examinations to be described by the media as “hearings”. Examinations or “hearings” conducted by the Commission are compulsory examinations of persons before it.

⁴ Refer [50]–[51] of this report for further details.

[9] The Commission recognises that making a report about alleged misconduct by a public officer, particularly a senior public officer, is not often undertaken without some difficulty, be that because of professional and/or social connections and, in some circumstances, a genuinely held fear of harassment, victimisation or detriment. Since its establishment in January 2004 the Commission has been supported in the achievement of one of its main purposes, that is, to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector, by the willingness of persons to report incidents of alleged misconduct by public officers pursuant to section 25 of the CCC Act. Without those reports many incidences of misconduct would have gone undetected, as misconduct is generally insidious by nature and often difficult to detect.

[10] Relevantly, section 175 of the CCC Act provides protection for persons who give evidence to, or assist, the Commission in the performance of its functions. Any person who threatens to prejudice the safety or career, intimidates or harasses, or threatens to intimidate or harass, or does an act that is, or is likely to be, to the detriment of any person who gives evidence to, or assists, the Commission in the performance of its functions is liable to incur a penalty of imprisonment for three years and a fine of \$60,000.

1.1.2 Assessment of Allegations

[11] Pursuant to section 32(1) of the CCC Act the Commission deals with an allegation by assessing the allegation and forming an opinion pursuant to section 22 of the CCC Act, and making a decision pursuant to section 33 of the CCC Act that the Commission considers appropriate in the circumstances. Section 32(2) provides for the conduct of a preliminary investigation into the allegation by the Commission for the purposes of section 32(1).

[12] As it was considered that further information about alleged public sector misconduct by the Commissioner of Police was required before an assessment and formation of an opinion as to the occurrence of misconduct pursuant to section 22 of the CCC Act, and a decision to take further action pursuant to section 33 of the CCC Act, could be made, it was recommended to Acting Commissioner Mark Edward Herron⁵ by the then Acting Director Operations that a preliminary investigation be conducted pursuant to section 32(1). Acting Commissioner Herron approved the recommendation and on 7 November 2011 authorised a preliminary investigation. In approving

⁵ Commissioner Roger Macknay, QC, was appointed on 15 November 2011 by the Governor of the State of Western Australia (“the Governor”) to be the Commissioner of the Corruption and Crime Commission with effect from and including 21 November 2011. Prior to that time Acting Commissioner Mark Edward Herron (appointed by the Governor on 25 January 2011 to act in the office of Commissioner with effect from 27 January 2011) undertook the functions of the Commission under the *Corruption and Crime Commission Act 2003* and any other written law with all of the powers and responsibilities of the Commissioner.

the recommendation Acting Commissioner Herron had regard for sections 34(2)(a) and (c) of the CCC Act (as detailed below), which are matters to be considered by the Commission in deciding how action should proceed in relation to an allegation.

34. *Matters to be considered in deciding who should take action*

- (a) *the seniority of any public officer to whom the allegation relates;*
...
- (c) *the need for there to be an independent investigation rather than an investigation by a public authority with which any public officer to whom the allegation relates is connected by membership or employment or in any other respect.*

1.1.3 Preliminary Investigation

- [13] The Commission undertook a range of inquiries, including sourcing a range of documentary material relevant to the allegations, in order to determine whether the Commissioner of Police had engaged in misconduct in relation to use of the WAPOL Corporate Credit Card. Accordingly, Mr Italiano was served with a notice pursuant to section 94 of the CCC Act on 22 December 2011 (refer [4] above). As required, Mr Italiano supplied the Commission with a written response to the notice on 11 January 2012.⁶ Further to this Mr Italiano was served with a notice issued pursuant to section 95 of the CCC Act (refer [4] above) to provide the Commission with records relating to use of the WAPOL Corporate Credit Card. These records were subsequently received by the Commission.
- [14] As the responses provided by Mr Italiano to the section 94 and section 95 notices contained significant and relevant information, the Commission preliminary investigation continued.

1.1.4 Authorisation to Conduct Investigation

- [15] In early April 2012 the Commission was in a position to make an assessment of the allegations of misconduct by the Commissioner of Police in relation to use of the WAPOL Corporate Credit Card. Accordingly, on 5 April 2012, after an assessment of the allegations, Commissioner Roger Macknay, QC, authorised the conduct of an investigation pursuant to section 33(1)(a) of the CCC Act, and determined that a number of private examinations should be conducted for the purposes of an investigation.

⁶ Section 158 of the *Corruption and Crime Commission Act 2003* states that a “person who fails, without reasonable excuse, to comply, with a notice served on the person under section 94 or 95 ... or furnishes information knowing it to be false or misleading ... is in contempt of the Commission”.

1.1.5 Scope and Purpose of Commission Investigation

- [16] Before the Commission conducts an examination, either private or public, pursuant to section 138 of the CCC Act, it is to inform the witness of the general scope and purpose of the investigation, unless the Commission considers that in the circumstances it would be undesirable to so inform the witness. Accordingly, during the private examinations conducted in April and May 2012 Commissioner Macknay, QC, so informed each witness prior to examination.
- [17] As the general scope and purpose of the investigation was amended during the course of the investigation to include additional, but relevant, matters, the general scope and purpose applicable during particular examinations varied to some extent. For the purpose of this report it is sufficient to identify the scope and purpose of the investigation by reference to that which applied during the examination of 1 May 2012, namely:

To determine whether any public officer employed by the Western Australia Police may have engaged in misconduct or serious misconduct with respect to matters including, but not limited to, ... the use of WA Government Purchasing Cards issued by the Western Australia Police and the use of annual leave credits or other forms of leave.

1.1.6 Leak to the Media

- [18] Late in the afternoon on Monday 12 March 2012 the Commission received a telephone call from Mr Gary Adshead, State Political Editor, *The West Australian* newspaper, enquiring as to whether or not the Commission was investigating two matters that involved, Dr O'Callaghan, the Commissioner of Police. Mr Adshead indicated that the matters related to evidence given by Dr O'Callaghan to the Keelty Inquiry⁷ and to a Parliamentary Inquiry,⁸ and the use of a WAPOL Corporate Credit Card by Dr O'Callaghan in Broome. On that day the Commission made no comment to Mr Adshead.
- [19] On Tuesday 13 March 2012 an article by Mr Adshead entitled "Police Chief Faces CCC Investigation" appeared on the front page of *The West Australian* newspaper. The Commission released a Media Statement later that day confirming that it "is investigating allegations it has received against the Commissioner of Police ... one allegation relates to ... responses to various inquiries about his knowledge of the bushfire in the Perth Hills on 6 February 2011 ... [and the] other

⁷ On 6 February 2011 a number of bushfires destroyed 71 homes and damaged a further 39 homes in the Roleystone-Kelmscott area of the Perth Hills in Western Australia ("the Perth Hills Bushfires"). On 23 February 2011 the Premier of Western Australia, the Hon. Colin James Barnett, MLA, announced the Perth Hills Bushfire Review, referred to as the "Keelty Inquiry".

⁸ On 7 September 2011 the Community Development and Justice Standing Committee of the Legislative Assembly of the Parliament of Western Australia commenced an inquiry into "Western Australia's Readiness for the 2011-2012 Bushfire Season".

concerns use of his Corporate Credit Card ... [and] it is the Commission's role to investigate such allegations concerning senior public officers". It was emphasised in the Media Statement that until "the Commission's investigations are completed ... the allegations are unsubstantiated and unproven".

- [20] The Media Statement was released by the Commission pursuant to sections 152(4)(c) and 152(6) of the CCC Act as it was considered to be in the public interest to quell speculation and rumour.
- [21] The investigation by the Commission of alleged public sector misconduct by any public officer in relation to the Perth Hills Bushfires of 6 February 2011 is the subject of a separate report that was tabled in the Parliament of Western Australia on 15 June 2012. The decision to table that report in the Parliament was made in the public interest given that the matters investigated were in the public domain and the events which occurred on that day affected many people, either directly or indirectly, and who, therefore, had an interest in knowing the outcome of the Commission investigation.

1.2 Commission Private Examinations

- [22] As aforementioned, for the purposes of the investigation the Commission conducted private examinations pursuant to section 137 and 139 of the CCC Act. These private examinations were conducted on:
 - 23 April 2012;
 - 30 April 2012; and
 - 1 and 2 May 2012.
- [23] In this case the Commission weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements in respect of **each** person to be examined, and decided that those benefits did not outweigh the potential for prejudice or privacy infringements in the case of each witness and, hence, all examinations were conducted in private. However, each witness was advised by Commissioner Macknay, QC, prior to giving evidence that although the examination was to be conducted in private and would not be open to the media or the public it did:

*... not necessarily mean that your evidence will not be made public at a later stage. It may also later be necessary to disclose that evidence to anyone adversely affected by it so as to give any such person an opportunity to respond to any evidence you might have given. It may also be necessary for the Commission to refer to or quote from your evidence in any report on this investigation which may be tabled in Parliament.*⁹

⁹ Transcript of Proceedings, Private Examinations conducted during April and May 2012 by Commissioner Roger Macknay, QC.

[24] The following witnesses, public officers during the period relevant to the Commission investigation, were called to give evidence under oath or by affirmation during the above mentioned private examinations, pursuant to section 141 of the CCC Act.

- Mr Gregory Joseph Italiano, Executive Director, WAPOL (on 23 April 2012 and 2 May 2012).
- Ms Josephine Charlotte Harrison-Ward, Management Consultant, Public Sector Commission, and former Chief Executive Officer of the Fire and Emergency Services Authority of Western Australia (on 30 April 2012).
- Dr Karl Joseph O'Callaghan, APM, Commissioner of Police (on 1 May 2012).

[25] In relation to the conduct of examinations by the Commission, it should be noted that witnesses may be called for examination before the Commission for a variety of reasons. Witnesses may be called because they can assist the Commission by giving information about events, circumstances, systems, procedures or the activities of other persons, and not because their own conduct is in question.

[26] Prior to the commencement of the private examination conducted on 1 May 2012, at which the Commissioner of Police was a witness, the process for the preparation of, and response to, submissions to the Commission by Mr Peter Damien Quinlan, SC, Senior Counsel Assisting, was outlined. Senior Counsel Assisting explained:

... circumstances may arise where acceptance of a particular witness's evidence in whole or in part might lead to a finding adverse in relation to Dr O'Callaghan and where procedural fairness requires that he be afforded the opportunity to cross-examine.

...

For that reason, sir ... I propose ... following the conclusion of this private examination of Dr O'Callaghan I as [C]ounsel [A]ssisting will prepare written submissions to the Commission as to the opinions that are in my submission open on the evidence, including relevant passages from any evidence relied upon, and provide those submissions to Mr Davies.

In light of those submissions, Mr Davies on behalf of Dr O'Callaghan will then have the opportunity to make submissions to you, Commissioner, as to whether he should be given leave to cross-examine any particular witness or witnesses and the basis for that leave. Whether that leave is granted and upon what terms would of course then be a matter for determination by you.

If leave to cross-examination is not sought or allowed, the investigation can then proceed to a conclusion, including any further submissions and conducting the process under section 86 of the "Corruption and Crime Commission Act [2003]" ...¹⁰

¹⁰ Transcript of Proceedings, Private Examination, Opening Remarks by Senior Counsel Assisting, Mr Peter Damien Quinlan, SC, on 1 May 2012, pp.3-4.

[27] Accordingly on 14 May 2012 Senior Counsel Assisting provided written submissions to the Commission in relation to use of the WAPOL Corporate Credit Card. A copy of these submissions was provided to Mr Ronald John Davies, QC, as Legal Advisor to the Commissioner of Police, on 14 May 2012 (refer [29]–[32] below).

1.3 Reporting by the Commission

[28] The Commission refers to and incorporates into this report what is set out at [40]–[41] inclusive of the *Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003” (WA)* (“the Special Report”), tabled in the Parliament on 21 October 2010.¹¹

[29] As aforementioned, on 14 May 2012 Senior Counsel Assisting provided written submissions to the Commission which focused on the general scope and purpose of the Commission investigation, that is, “... whether any public officer employed by the Western Australia Police may have engaged in misconduct or serious misconduct with respect to matters including, but not limited to, ... the use of WA Government Purchasing Cards issued by the Western Australia Police and the use of annual leave credits or other forms of leave”.

[30] The submissions provided to the Commission by Senior Counsel Assisting did not submit that any finding of misconduct ought to be made.

[31] However, the submissions did include arguments about findings and opinions that the Commission should form in relation to the Commissioner of Police which he may have considered reflected adversely on him in his capacity as a public officer. Accordingly, a copy of the written submissions by Senior Counsel Assisting was provided to Mr Davies, QC, as Legal Advisor to the Commissioner of Police, on Monday 14 May 2012 with a covering letter from Commissioner Macknay, QC, inviting him to make written submissions (by 22 May 2012) in relation to:

- whether leave is sought to recall a witness for the purposes of cross-examination and the basis for that leave on the grounds that natural justice and procedural fairness require that there be an opportunity for cross-examination; and

¹¹ Sections 83–86 of the *Public Sector Management Act 1994* (“the PSM Act”) were deleted by Amendment No. 39 of 2010 s. 99. Any reference to these sections in the *Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003” (WA)* (“the Special Report”) should be disregarded. In addition, parts of paragraphs [31]–[38] of the Special Report are no longer applicable as a result of other amendments made to the PSM Act by Amendment No. 39 of 2010.

- the findings and opinions that Senior Counsel Assisting submits should be made.

[32] Mr Davies, QC, did not seek leave at that time to recall any witnesses for the purposes of cross-examination but did provide written submissions on 21 May 2012, together with an unsigned "Statement of the Commissioner of Police Dr O'Callaghan" ("Statement"), in relation to the findings and opinions that Senior Counsel Assisting submitted should be made in his submissions to the Commission dated 14 May 2012. The Statement, in particular, addressed a number of matters that Senior Counsel Assisting had identified (in his submissions to the Commission) as not having been the subject of previous comment by Dr O'Callaghan. The Commission has taken into consideration those submissions made by Mr Davies, QC, on behalf of the Commissioner of Police, and the Statement prepared by the Commissioner of Police.

[33] Section 86 of the CCC Act requires that before reporting any matters that could be adverse to a person or body in a report under section 84, the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.

[34] A number of persons were notified by letter dated Friday 22 June 2012 of matters which it was proposed to include in this report. They were invited to make representations about those and other matters about which they might wish to do so by Friday 29 June 2012. They were advised that they and/or their legal advisor could inspect the transcripts of examinations before the Commission and evidentiary material going to matters identified. A number of persons provided representations, either by the due date or by Friday 6 July 2012 (having been granted an extension, by the Commissioner, to the due date for submission of representations) and the Commission has given consideration to them.

[35] The Commission has taken all representations into account in finalising this report. The Commission has also considered other information received during the course of both the preliminary investigation and investigation in order to formulate this report.

1.4 Jurisdiction of the Commission

[36] The Commission refers to and incorporates into this report what is set out at [17]–[18] inclusive of its Special Report.

1.5 Definitions

[37] Further to [2]–[3] above, the Commission refers to and incorporates into this report what is set out at [24]–[30] of its Special Report.

1.6 Disclosure

- [38] The Commission refers to and incorporates into this report what is set out at [43]–[46] of its Special Report.
- [39] The decision to report to the Minister on the investigation by the Commission of alleged public sector misconduct by the Commissioner of Police or any other public officer employed by WAPOL in relation to use of the WAPOL Corporate Credit Card or any other entitlement goes to its statutory purpose of improving continuously the integrity of, and reducing the incidence of misconduct in, the public sector. The decision to report is also necessary in the public interest to enable informed action to address the misconduct risks identified by the circumstances revealed in this report.

1.7 Opinions of Misconduct

1.7.1 Publication of an Opinion

- [40] The Commission refers to and incorporates into this report what is set out at [49]–[51] inclusive of its Special Report.

1.7.2 Balance of Probabilities

- [41] The Commission refers to and incorporates into this report what is set out at [52]–[57] inclusive of its Special Report.

1.7.3 Meaning of Corruption

- [42] The Commission refers to and incorporates into this report what is set out at [58]–[69] inclusive of its Special Report.

1.7.4 Section 4(c), Section 23(1) and Section 23(2) of the *Corruption and Crime Commission Act 2003*

- [43] Section 23(1) of the CCC Act prohibits the Commission from publishing or reporting a finding or opinion that a particular person has committed, is committing or is about to commit a criminal offence or a disciplinary offence. However, section 23(1) of the CCC Act allows the Commission to publish or report that a person has been convicted of, or pleaded guilty to, a criminal offence or disciplinary offence. In such a case the Commission would be reporting a fact, not its opinion, as to that. Further, section 23(2) of the CCC Act provides that 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.

(emphasis added)

- [44] In the Commission's opinion section 23(2) allows the Commission to publish or report a finding or an opinion that the relevant conduct constitutes misconduct under section 4(c) of the CCC Act without the

person having been convicted of an offence punishable by “2 or more years’ imprisonment”. Acknowledging that whether a criminal offence has been committed can only be determined by a court and that the elements of the offence must be proved beyond reasonable doubt, and further acknowledging that 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 section 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.

1.7.5 Expression of Opinion

[45] The Commission has borne all of the foregoing considerations (as set out in 1.7.1 to 1.7.4 above) in mind in forming its opinions about matters the subject of the investigation. Any expression of opinion in this report is so founded.

1.8 Evidence Given by Witnesses During Private Examinations

[46] This report considers evidence given by various witnesses during private examinations conducted by the Commission and the conclusions that might be drawn from that evidence, as well as other materials and information obtained by it. The evidence includes that given by Dr O’Callaghan during a private examination on 1 May 2012. As mentioned in [32] of this report, Mr Davies, QC, Legal Advisor to the Commissioner of Police, did not seek leave at that time to recall any witnesses for the purposes of cross-examination, but did provide written submissions on 21 May 2012, together with the Statement prepared by Dr O’Callaghan. Following receipt of the letter from the Commissioner of 22 June 2012 (refer [34 above]) there was correspondence between the Commission and Mr Davies, QC, and he did not ultimately seek leave to recall witnesses for the purposes of cross-examination, but did provide representations pursuant to section 86 of the CCC Act on 6 July 2012, together with a letter dated 6 June 2012 [sic], with submission and annexure (“the Submission”), from Dr O’Callaghan. The Commission has taken into account both the written submissions and representations made by Mr Davies, QC, on behalf of the Commissioner of Police, and the Statement and the Submission prepared by the Commissioner of Police in finalising this report.

CHAPTER TWO

WESTERN AUSTRALIA POLICE (WAPOL) CORPORATE CREDIT CARD AND TRAVEL

2.1 Introduction

[47] Two broad issues arise from the scope and purpose of the Commission investigation (refer [17] above), which are as follows:

- (1) the use of the WAPOL Corporate Credit Card for personal, non-work related, expenditure; and
- (2) the extent and appropriateness of certain overseas (and intrastate) travel identified and approved as official travel, during which official expenditure is incurred.

[48] Whilst related these issues are broadly separate, and are considered as such in this report. Of course, those issues only fall within the misconduct function of the Commission insofar as they give rise to potential serious misconduct or misconduct within the meaning of sections 3 and 4 of the CCC Act (refer [2]–[3] above).

[49] The nature of the information received by the Commission, and which it investigated, relating to each of these two broad issues included concerns expressed at a senior level within WAPOL. Those concerns, while expressed at a senior level, were nevertheless in general terms.

[50] In relation to the first issue, for example, use of the WAPOL Corporate Credit Card for personal expenditure, a written response by Mr Italiano to a section 94 notice (refer [13] above) provided information as follows.

... the Commissioner's credit card records show that I last signed as an approver on the Commissioner's credit card statement in October 2010 which was for a July 2010 credit card statement. My decision to cease the practice of approving the Commissioner's credit card was taken because I no longer wished to be put in the position of having to approve his expenditure. My honest recollection is that I cannot recall any single transaction or collection of transactions which were clearly outside the Policy. What bothered me was a pattern of behaviour in which I felt there were transactions that were questionable. In other words, there were transactions that I would probably question if similar transactions were on [C]orporate [C]redit [C]ards issued to persons who reported to me.

....

I did not question the Commissioner in relation to use of his [C]orporate [C]redit [C]ard for a range of reasons. One reason is that I did not have the formal authority to do so, but that is not the primary reason as to why I chose not to question him. To

understand the primary reason requires an understanding of the broader pattern of behaviour that surrounded the Commissioner's [O]ffice and his general conduct. In general, I would describe this as a loss of an ethical compass, in that decisions or behaviour could always be justified by an explanation regardless of how reasonable the "average" person might find that explanation to be. This is just not my view, but the view, based on experience, of other senior and less senior officers working in the WA Police [E]xecutive.

[51] Similarly, in relation to the second issue, the extent and appropriateness of certain overseas (and intrastate) travel, Mr Italiano in his written response to the aforementioned section 94 notice, provided information as follows.

Clearly the question of the merit of a particular instance of business related travel is a subjective one. I do have concerns that a small sample of the business related travel undertaken by the Commissioner has lacked sufficient substance in respect to the original justification, the scope and nature of activities undertaken on the journey and the follow up actions that flow as a consequence of the travel. The most concerning examples in my mind would be some of the Commissioner's travel to the United Kingdom.

In my view it is not unreasonable to occasionally take a period of personal leave in conjunction with business travel. This is based on the presumption that the business travel itself is justified.

Whether travel is predominantly personal in nature in my mind is readily answered by examination of a given itinerary. If there is more personal leave than business related activities or the itinerary is for want of a better term "light on" then I think that provides the basis of an answer.

I have concerns that the Commissioner has undertaken journeys to the United Kingdom and Europe that were "light on" for substance. Because of that reason alone, I have a concern that on certain occasions the Commissioner may have formed in his mind the view that he wished to travel prior to offering a business justification to do so. But as this is a process that takes place purely in the mind of the Commissioner I cannot substantiate this view.

...

I still hold the view that Karl O'Callaghan has been a very good Commissioner for the WA Police when measured across the totality of his performance in the role. I have no reason to paint him in a better or worse light than his own actions deserve. Matters such as travel, personal leave and credit card expenditure are on the record for all to see and come to their own judgement.

I have concerns ... in relation to matters of personal leave recording, credit card expenditure and travel. But those concerns are limited to a small sample of those activities. I believe that the vast majority of the Commissioner's activities in these areas are reasonable and comply with Government policy.

My concerns are that the Commissioner has failed to exercise good judgement in relation to these matters in that a proper test of reasonableness has not been applied by himself to his own actions and that he may not have been challenged vigorously enough by others.

- [52] Ultimately the Commission concluded that the allegations made by Mr Italiano could not be substantiated. However, in view of the serious, but general, nature of these allegations the Commission investigation considered a broad range of transactions involving the use of WAPOL Corporate Credit Cards and overseas (and intrastate) travel within the Office of the Commissioner.
- [53] Before referring to any particular practices or transactions, it is necessary to note relevant legislation, and Government policies and guidelines in relation to use of the Western Australian Government Purchasing Card (or Corporate Credit Card), and the structure of the Office of the Commissioner of Police.

2.2 Relevant Legislation, and Government Policies and Guidelines

- [54] In Western Australia there is a framework of legislation that applies to the governance of expenditure of public monies. Relevant in respect of the use of the Corporate Credit Card in the Western Australian Public Sector is the *Financial Management Act 2006* ("the FM Act").
- [55] Section 53 of the FM Act provides that an accountable authority is responsible for ensuring that the agency operates in a manner that is efficient and economic, and achieves the agency's objectives. In relation to WAPOL the Chief Executive Officer (or Commissioner of Police) is the accountable authority (see section 54 of the FM Act).
- [56] Pursuant to section 78 of the FM Act the Treasurer of the State may issue Instructions with respect to matters of financial administration. Supporting these Instructions are Guidelines, prepared by the Department of Finance, which outline the means by which the requirements of any Treasurer's Instruction (TI) can be satisfied.
- [57] Treasurer's Instruction 321 relates to the Corporate Credit Card. Relevantly, this Instruction, and the Guidelines supporting it, provide as follows.

TREASURER'S INSTRUCTION 321

- (1) *The accountable authority may arrange for a WA Government credit card to be issued to officers and other authorised persons engaged by the agency in performing their functions.*
- (2) *The use of a WA Government credit card shall be for official purposes only, unless the accountable authority approves the charging of expenditure for personal purposes in extraordinary and unforeseen circumstances. The personal expenditure, including any applicable goods and services tax, shall become a debt due to the State or a statutory authority, and be recoverable from the officer or other authorised person concerned.*

GUIDELINES

- (1) *For the purposes of paragraph (2) the accountable authority may approve the charging of expenditure for personal purposes on an individual basis or through the issue of agency guidelines, explaining what constitutes extraordinary and unforeseen circumstances.*
- (2) *As a matter of practice, it is not always possible for agencies to acquit the individual amounts comprising the credit card statement prior to settlement. Therefore for the purposes of TI 304 "Authorisation of Payments" acquittal occurs when the credit card clearing account and the individual cost centres have been duly charged for the individual amounts, and these amounts have been duly approved by the agency.*
- (3) *Access to the cash advance feature of credit cards is limited to the approval of the accountable authority.*

[58] The Department of Finance publishes the *Western Australian Government Purchasing Card (Corporate Credit Card) Guidelines* ("the Corporate Credit Card Guidelines"). These were last updated on 28 November 2011. The purpose of the Corporate Credit Card Guidelines is to ensure that public authorities are aware of, and comply with, the obligations associated with the use of a Purchasing Card and to maximise the effectiveness of the Purchasing Card whilst minimising risks.

[59] Relevantly, the Corporate Credit Card Guidelines provide as follows.

- *There are certain restrictions governing the use of the Purchasing Card. The Purchasing Card **must not** be used: for personal, non-work related expenditure unless expressly approved by the accountable authority ...¹²*

¹² *Western Australian Government Purchasing Card (Corporate Credit Card) Guidelines*, as updated 28 November 2011, p.6.

- Care should be taken to record and retain all transaction details particularly unusual transactions such as restaurant bills. Cardholders must be able to clearly demonstrate how the expense benefits, or is authorised by, the Public Authority.¹³
- A Public Authority will nominate a Card Administrator to take responsibility for: ... [m]onitoring the Cardholder's use of the Purchasing Card ...¹⁴
- In order to minimise security risks associated with the Purchasing Card and to ensure probity and accountability, Public Authorities should: ... [d]evelop and implement effective training for new and existing Cardholders ...¹⁵
- Use of the Purchasing Card must be monitored to ensure that Public Authority and Whole of Government Guidelines and Policies are adhered to. It is recommended that: [m]onthly transaction reports (statements) are monitored ...¹⁶
- When using the Purchasing Card, Cardholders should comply with the following procedures: ... [t]he Purchasing Card must not be used for personal expenditure; ... [r]ecords of all transactions (eg sales dockets, tax invoices) must be kept and attached to the monthly statement ...¹⁷
- Where it is decided that reconciliation of statements is the Cardholder's responsibility, Cardholders must: [c]heck monthly statements against transaction records and insert charge codes where necessary; [s]ign statements as evidence of their verification and attach all relevant supporting documentation; [and] [f]orward reconciled statements to [the] manager.¹⁸

[60] Treasurer's Instruction 701 requires accountable authorities to cause to be prepared and issued financial management manuals for the use of officers of each agency. These are the vehicle by which procedures, practices and policies introduced to achieve compliance with the requirements of the Treasurer's Instructions are communicated and formalised throughout the agency.

[61] Where guidelines published by the Department of Finance provide suggested procedures, agencies are free to adopt them or to employ

¹³ Western Australian Government Purchasing Card (Corporate Credit Card) Guidelines, as updated 28 November 2011, p.8.

¹⁴ *Ibid*, p.11.

¹⁵ *Ibid*.

¹⁶ *Ibid*, p.12.

¹⁷ *Ibid*, p.14.

¹⁸ *Ibid*, p.15.

alternatives more in keeping with the nature of the organisation, but which will still provide the same level of control and accountability.

- [62] In accordance with this process WAPOL has published the *Western Australia Police Financial and Asset Management Manual* (“the WAPOL Financial Manual”).
- [63] Relevantly, the WAPOL Financial Manual provides as follows.
 - *Purchasing Cards can only be utilised by approved officers ... [f]or the purchase of the following items: ... [t]o meet reasonable expenses incurred whilst travelling on behalf of the Police ... (i.e. up to the daily limit allowed under the industrial agreement) ... [f]or personnel holding the position of Directors or Superintendents and above, hospitality expenses as authorised under section 8.11 Hospitality Expenditure ...¹⁹*
 - *The Purchasing Card may NOT be used for: ... [n]on-[d]epartmental expenditures; ... [p]urchases by Officers whom are not the Cardholder; ... [t]he payment of excessive travel expenses ...²⁰*
 - *When purchasing goods or services with a Purchasing Card, the Cardholder must ensure that: ... [a] tax invoice/receipt is obtained for GST purposes; and ... [t]he Cardholder is the only person permitted to use the Purchasing Card.²¹*
 - *Officers issued with a Purchasing Card must ensure that the following is adhered to when incurring expenditure for travel expenses on the Purchasing Card: ... [t]he Purchasing Card can be utilised to meet the cost of travel such as accommodation and meals, whenever it is possible to do so, ensuring only reasonable costs are incurred during the travel; ... [t]he total cost of the travel does not exceed the amount payable under the industrial agreement ... [t]he cost of the trip is to be calculated using the rates in the industrial agreement and this is to be matched against the actual costs paid on the Purchasing Card; ... [w]here the travel expenses are in excess of the travel allowance payable under the industrial agreement, the Cardholder must submit a brief report substantiating the level of expenditure ...²²*
 - *Cardholders must: ... [a]bide by the travel expenditure policy ...; [c]omplete the NAB Flexi Purchase Account Statement for uploading into RMIS [Resource Management Information*

¹⁹ *Western Australia Police Financial and Asset Management Manual*, p.98.

²⁰ *Ibid*, p.99.

²¹ *Ibid*, p.103.

²² *Ibid*, p.104.

System] via Electronic Management System (EMS) and forwarding the signed statement and tax invoices to your Approving Officer promptly (no later than 25 days) after the end of the statement period ...; [w]here a Cardholder is unable to obtain a tax invoice they must complete the "Declaration where no tax invoice Form" and forward this with the Purchasing Card Statement to the Approving Officer ...²³

- The Flexi Purchase Account Statement is required to be completed no later than 25 days after the end of the statement period.²⁴
- The Cardholder (or their delegate) and the approving officer have responsibilities in ensuring that these details are completed in a timely manner ...²⁵
- The Cardholder's supervisor/approver will no later than 25 days after the end of the statement period ... [g]o on-line on the Flexi Purchase Website (Electronic Management System) and review each coded expenditure to ensure that the expense has been: ... [i]ncurred for official business purposes; ... [c]orrectly coded; and ... [a]dequately supported (i.e., tax invoice/receipts, substantiating report) ...²⁶
- It is the policy of the Western Australia Police (Police) to ensure that expenses incurred for hospitality purposes are reasonable and appropriate, and consistent with government policy ...²⁷
- Hospitality is the provision of food and/or drink, which includes breakfast, lunch, dinner, alcohol, tea/coffee, cakes, biscuits, snacks, and similar, generally of an entertainment or social nature (but does not include Accommodation) for primarily the benefit of external (non-government) persons.²⁸
- The extension of hospitality by an authorised officer, or as approved by the authorised officer, shall be deemed acceptable hospitality expenditure when provided to, or for, the following: ... [a] partner of an employee, where their attendance will complement the objectives of the function ... [a]llowable expenses do not extend to other members of the employees family.²⁹

²³ Western Australia Police Financial and Asset Management Manual, p.105.

²⁴ Ibid, p.107.

²⁵ Ibid.

²⁶ Ibid, p.108.

²⁷ Ibid, p.125.

²⁸ Ibid, p.126.

²⁹ Ibid, p.127.

2.3 Structure of the Office of the Commissioner of Police

- [64] Dr O'Callaghan is supported administratively by the Office of the Commissioner of Police. Relevant to the Commission investigation that Office includes the Executive Director, Legal Counsel for the Commissioner, Staff Officer to the Commissioner (a WAPOL Inspector) and administrative staff (which includes a Manager of Executive Services and a Liaison Officer).
- [65] Mr Italiano, as aforementioned, is the Executive Director. Mr Italiano joined WAPOL in September 2004 as Reform Coordinator, Royal Commission Implementation Team. In April 2005 Mr Italiano was appointed to the position of Director, Organisational Performance. In February 2008 Mr Italiano became Acting Executive Director, and was appointed substantively to that position in November 2008, for a term of five years. The position of Executive Director is a very senior position in WAPOL, appearing on the penultimate line of the WAPOL Organisation Chart, alongside the Deputy Commissioner of Police.³⁰
- [66] The Legal Counsel to the Commissioner is Mr John Francis O'Sullivan, a Senior Assistant State Solicitor from the State Solicitor's Office on secondment to WAPOL. Mr O'Sullivan has occupied the Legal Counsel position since July 2005.
- [67] The role of Staff Officer to the Commissioner is broad and varied, and includes the provision of specialised personal and professional support, research, preparation of reports, monitoring high priority projects, and liaison within WAPOL and with other law enforcement and Government authorities. Since December 2007 the role of Staff Officer to the Commissioner has been undertaken, during different periods, by Inspector Mary Brown and Inspector Kim Jonathon Massam.
- [68] The role of Manager of Executive Services includes day-to-day management of the administration and finance functions within the Office of the Commissioner. Since 25 August 2008 that role has been undertaken by Ms Andrea Anna Hancock.
- [69] The role of Liaison Officer includes compiling and coding the requisite documentation for reconciliation and acquittal of the Flexi Purchase Account Statement for the Corporate Credit Card issued to Dr O'Callaghan. Since 1 February 2007 that role has been undertaken by Ms Yvette Dawn Quayle.

2.4 Anomalous Practices by WAPOL in Relation to Use of the Corporate Credit Card

- [70] In the course of the Commission investigation a number of anomalous practices in relation to use of the WAPOL Corporate Credit Card were

³⁰ Western Australia Police (WAPOL), Organisation Structure, WAPOL Website, viewed 19 June 2012 at <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=0PK%2bSO6N1Mo%3d&tabid=1029>.

identified. These practices did not appear to be confined to Dr O'Callaghan's Corporate Credit Card but existed more broadly within WAPOL. While those practices are not themselves misconduct, it is important to make reference to them in order to place any potential issues of misconduct into context.

2.4.1 Routine Incurring and Reimbursement of Personal Expenditure

- [71] Treasurer's Instruction 321 clearly provides that Corporate Credit Cards shall only be used for official purposes unless the accountable authority approves the charging of expenditure for personal purposes in "extraordinary and unforeseen circumstances". The first guideline contained within Treasurer's Instruction 321 enables the accountable authority to "approve the charging of expenditure for personal purposes on an individual basis or through the issue of agency guidelines, explaining what constitutes extraordinary and unforeseen circumstances".
- [72] The Corporate Credit Card Guidelines reflect Treasurer's Instruction 321 by stating that the Corporate Credit Card must not be used for, *inter alia*, "personal, non-work related expenditure unless expressly approved by the accountable authority".³¹
- [73] It is noteworthy that the WAPOL Financial Manual simply provides that a WAPOL Corporate Credit Card may not be used for non-departmental expenditures and provides no guideline which indicates approval by the accountable authority (in accordance with section 54 of the FM Act, the WAPOL accountable authority is the WAPOL Chief Executive Officer, that is, the Commissioner of Police) for personal use in extraordinary and unforeseen circumstances. In the absence of such a guideline any personal use is, in the opinion of the Commission, not permitted.
- [74] That is, based on the above, the position in policy is that holders of the WAPOL Corporate Credit Card are not permitted to have any personal expenditure on their Corporate Credit Card.
- [75] Notwithstanding this policy position, the evidence given to the Commission reveals that there is an apparently long-standing practice by the WAPOL Executive (pre-dating Dr O'Callaghan's appointment as Commissioner of Police), particularly with respect to travel, whereby personal use of a Corporate Credit Card routinely does occur (usually, but not always, in circumstances where there is also a business component to the expenditure), followed by a process for identification of those personal expenses by the cardholder, which are reimbursed following a reconciliation process. That is, a practice has been adopted whereby personal expenses are intentionally incurred on a WAPOL

³¹ *Western Australian Government Purchasing Card (Corporate Credit Card) Guidelines*, as updated 28 November 2011, p.6.

Corporate Credit Card with the intention of later reimbursing the "personal" component.

[76] Evidence given by Mr Italiano, for example, during a private examination on 2 May 2012, was as follows.

In respect to the [T]reasurer's guidelines have the - the guidelines contained in that document, have they or are they consistent in a general sense - I'm not going to go through each one but are they consistent or inconsistent in respect to how things were done within the WA Police?---On my reading now there is an inconsistency.

What about in respect to the WA [G]overnment [P]urchasing [C]ard [C]orporate [C]redit [C]ard [G]uidelines?---I think there may be an inconsistency with respect to those [G]uidelines as well.

...

Mr Italiano, when you were referring to an inconsistency with the [T]reasurer's [I]nstructions and the policies at the Police, what in particular are you referring to?---Well, after reading the [T]reasurer's [I]nstructions yesterday about - sorry, not yesterday, forgive me; the 23 ... [April 2012]. You drew my attention to emergency - - -

Extraordinary and unforeseen [sic] circumstances?---Extraordinary and unforeseen circumstances. It is the case that routinely with full knowledge has been reimbursement of expenses going on in the WA Police for some time, and it doesn't seem to me that those two provisions - sorry, that practice is necessarily consistent with those provisions.³²

[77] Similarly, Dr O'Callaghan gave the following evidence during a private examination on 1 May 2012.

... I appreciate that where matters such as that arise where for example a mistake is made there must be a mechanism for a refund. My question is really whether or not at the time - prior to your looking at these documents in recent times you operated on the understanding that it was an appropriate course - - - ?---Yes.

- - - in order for you to incur the expenditure on that card on the basis that part or all of it would be refunded?---Yes, because - and I'll - and I'll talk to you about my personal - - -

THE [CCC] COMMISSIONER: *I think that was the question which you've answered. Can I just ask, presumably that was the practice across the whole of WA Police and has been for years?---It has been, and it's the practice in other government agencies as well except it's not well defined and there's a couple of things I want to point to just by way of explanation. Back in 2002 when I was an [A]ssistant [C]ommissioner in the West Australian Police we did it the other way around, so we*

³² Transcript of Proceedings, Private Examination of Mr Gregory Joseph Italiano, Executive Director, Western Australia Police, on 2 May 2012, pp.68-69.

would go overseas and if you had a personal expense you'd pay for it on your personal card and then reclaim it from WA Police. Then we got - - -

SENIOR COUNSEL ASSISTING: Sorry, you mean if you had a business expense?---Sorry, yeah, all right, a business - so if you go overseas and if you had a personal expense linked with a business expense you would use your own card and then claim the business part back from the WA Police. Then the next thing is someone came along from [T]reasury and said, "You can't do that because what you're doing is you're incurring all these [F]requent [F]lyer [P]oints for yourself so we'd rather you use a corporate card so that you're not - we can't be accused of you gathering [F]requent [F]lyer [P]oints", so this is - this is the accountability gone mad process. You go back the other way, and then you have these questions, but I want to - I want to put this to you because notwithstanding the [T]reasurer's [I]nstructions if you get hold of the Department of Finance West Australian [sic] Police [G]overnment [P]urchasing [C]ard [G]uidelines what it says there is there are certain restrictions governing the use of [P]urchasing [C]ards. The [P]urchasing [C]ards must not be used for personal, non-work related expenditure unless expressly approved by the accountable authority, so the CFO is expressly approving it for certain purposes so all of us are - up until recently are under the impression that where you can't split bills and you have a private expense that you can do that and reimburse the amount later on.

THE [CCC] COMMISSIONER: The authority referred to there would be you, I assume?---The accountable authority in this case is the WA Police or the [C]ommissioner of [P]olice.

Or you?---Yes.

All right?---And in fact, sorry Commissioner - - -

This is really a matter of - I think these questions are directed to practice rather than to any assertion of misconduct, Mr O'Callaghan [sic], but untutored by any instruction from the WA [G]overnment the obligation would be clear, wouldn't it?---In what regard do you mean, Commissioner?

That one could not use a government issued credit card for a private purpose?---It does - it does - but it does allow exceptions.

But, as I say, untutored?---Untutored.

You and I both have some knowledge of the law. Untutored by any direction from above the position would be clear, wouldn't it?---Sure, and I think - - -

All right, so the practice seems to have come in in which for convenience sake that is not adhered to notwithstanding the WA [G]overnment [G]uidelines, I think. Is that fair?---That's true, and - - -

And it would seem to be contrary to those [G]uidelines, wouldn't it?---Yeah, it's contrary, but the CFOs, both previous CFOs and other CFOs

in government would say there's a practical aspect of the application of this as well.³³

[78] During a subsequent part of the examination Dr O'Callaghan gave further evidence in relation to this practice, which was as follows.

No, but my question was really getting at - the first two sentences of your email, that is, "My policy has always been to pay for Chris if I take her out with me to a dinner"?---Sure, and I usually pay on the corporate card.

They are linked?---Yes, they are.

Those two sentences are linked?---Yes.

The second sentence is describing how it is that you end up paying for your wife when you take her out to dinner or are travelling in an official capacity?---Yes, if that's - if that's necessary, yes, I would pay on the corporate credit card and then refund the card later.

And that, if you like, description there is indicative of the practice which you described earlier in your evidence of the incurring of a, if I can put it, reimbursable expenditure on the corporate card with the intention later of paying it back?---Yes.

And it's that practice which you in answer to questions from the Commissioner agreed was the one which was not consistent with the [T]reasurer's [I]nstruction about the incurring of - - - ?---That's true, but is consistent with some of the other policies that I've pointed out to you and some of the advice given by the CFO.³⁴

[79] The practice described, whereby personal expenses are incurred on a WAPOL Corporate Credit Card in the knowledge and with the intention of later reimbursing the "personal" component, does not accord with the Treasurer's Instructions or the relevant policies and guidelines considered above.

[80] The practical effect of that practice is, however, that:

- (1) a reconciliation process is required whereby personal expenses are identified;
- (2) there is a delay between the incurring of personal expenses, at the public expense, and reimbursement of those at a later time; and
- (3) there arises the potential for personal expenses to be missed or not reimbursed through oversight.

³³ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, pp.49-50.

³⁴ *Ibid*, pp.93-94.

2.4.2 Delays in the Reconciliation Process and Missing Receipts

- [81] Within the Office of the Commissioner the procedure in relation to reconciliation and acquittal of Flexi Purchase Account Statements was that the Liaison Officer, Ms Quayle, undertook the administrative aspects of the process, and then referred the Account Statement and requisite documentation (including duplicate receipts where applicable) to the Staff Officer. The Staff Officer then liaised with the Commissioner of Police in relation to any reimbursement for personal expenses and the finalisation of the acquittal process.
- [82] As noted above, the WAPOL Financial Manual requires that, using the NAB Flexi Purchase Website, the designated cardholder and approving officer are required to complete the reconciliation/approval (or acquittal) process within 25 days (at the latest) after the end of the statement period (refer [63] above).
- [83] Evidently, that requirement is intended to ensure that there is a reasonable degree of contemporaneity between the incurring of official expenses and their reconciliation/approval.
- [84] An analysis of Flexi Purchase Account Statements for the WAPOL Corporate Credit Card issued to Dr O'Callaghan, for the 37 months for which Flexi Purchase Account Statements were provided to the Commission, reveals that there have been consistent delays in completing the reconciliation/approval process. In that regard, out of the 37 Flexi Purchase Account Statements provided to the Commission only six were reconciled/approved within the 25 days as required.
- [85] Clearly that process is one which involves staff in the Office of the Commissioner, and is not one carried out individually by Dr O'Callaghan. Nevertheless, it represents an administrative deficiency which requires attention.
- [86] Dr O'Callaghan gave the following evidence in that regard.

SENIOR COUNSEL ASSISTING: *I think the only thing that arises from that is that as you have indicated, Dr O'Callaghan, the policies and instructions that exist in relation to these [F]lexi [P]urchase vouchers is that they are to be completed within 25 days?---Yes.*

And it would be fair to say and you would accept that that rule, at least to your knowledge in relation to your expenses is honoured more in the breach than the observance?---Well, I can't say that without looking at them all but what I can say is that I had over time spoken to the [O]ffice [M]anager about that, who had spoken to the inspectors about that. She would be able to give better information about the flow of - you know, discussions in regards to the timeliness of [F]lexi [P]urchase vouchers. The other problem here is the original - - -

But I take it - - -?---The original download is usually within the 25 days or shortly after. It's when it goes back for these additional - these additional pieces of information and coding that it stays longer in the system.

And that's the process of compiling receipts and matters of that kind?--- Well, it's - yeah, it's a process of a range of things.

But from what you have said in relation to the conversations that you had, the fact that the time frame for these matters being dealt with has been - - -?---Tardy.³⁵

[87] Similarly, that tardiness extended to the production of tax invoices (receipts) at the time of reconciliation. Commission investigators undertook an analysis of the Flexi Purchase Account Statements for the WAPOL Corporate Credit Card issued to Dr O'Callaghan, which was used 315 times during the 37 months for which Flexi Purchase Account Statements were provided to the Commission by WAPOL. In relation to 92 of those transactions (that is, 29%) receipts were unavailable. The fact that sufficient documentary evidence was missing in relation to almost one third of the expenses, as detailed above, could be both a cause and a function of the delays in completing the reconciliation process.

2.4.3 Approval of Dr O'Callaghan's Expenditure

[88] As is reflected in the Corporate Credit Card Guidelines and the WAPOL Financial Manual, provision is made in the relevant policies for the oversight of the use of a Corporate Credit Card by another officer (referred to in the WA Corporate Credit Card Guidelines as the "Card Administrator" and in the WAPOL Financial Manual as the "approving officer").

[89] As is to be expected the "approving officer" for a Corporate Credit Card will generally be a supervisor of the relevant cardholder. In the case of a Chief Executive Officer of an agency, however, who has no supervisor in that sense, such an arrangement would not be possible. In those circumstances, alternative arrangements would be necessary. Different arrangements, in fact, exist in different authorities to deal with that contingency. In that regard, it may be the case that the process of "self-approval" by the Chief Executive Officer, which previously existed in the case of WAPOL (refer [94] below), occurs elsewhere.

[90] The former Chief Executive Officer of FESA, Ms Josephine Charlotte Harrison-Ward, gave the following evidence to the Commission, during a private examination on 30 April 2012, as to the arrangements in place at the time that she held the position of Chief Executive Officer.

... What was the position when you were the CEO of FESA? Who approved - I take it you had a FESA corporate card?---Yes.

Who would be the approving person for that?---I had assigned ... the head of [C]orporate [S]ervices. He would look at mine and ask any questions, all the rest, because you need someone to approve it so that

³⁵ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, pp.59-60.

*you have second - I suppose make sure it's above board and accountable.*³⁶

- [91] It is apparent that a similar arrangement existed within WAPOL from at least February 2008 until October 2010. During this period the Flexi Purchase Account Statements for the WAPOL Corporate Credit Card issued to Dr O'Callaghan were approved by Mr Italiano, Executive Director, WAPOL.
- [92] Mr Italiano described the position of Executive Director in a written response to a section 94 notice (refer [13] above) as follows.

When I first acted in the ED [Executive Director] position in February 2008 I learnt that the ED position approved the Commissioner's credit card statement. I recall being surprised at the arrangement, however, I assumed then, as I do now, that this was a practice that had been in place for some time prior to February 2008. I have no knowledge of the Commissioner's [C]orporate [C]redit [C]ard expenditure prior to this time.

The approval process takes place following the administrative processing of the credit card statement (assembling receipts, cost coding etc.) and the signing of the statement by the cardholder. With the exception of the Commissioner, the approver is typically the cardholder's supervisor or in a position of authority in relation to the cardholder. The role of approver is to authorise the expenditure and, if necessary, take steps to ensure that the expenditure is within WA Government corporate card policy ...
- [93] Accordingly, Mr Italiano signed the Flexi Purchase Account Statements for the WAPOL Corporate Credit Card issued to Dr O'Callaghan as "approving officer" from February 2008.
- [94] The position changed from October 2010. After that period Mr Italiano no longer undertook the role of "approving officer" in relation to Dr O'Callaghan's WAPOL Corporate Credit Card and, indeed, there was no separate "approving officer". For a period of time the provision in the Flexi Purchase Account Statements for the signature of an "approving officer" went uncompleted. Later, and certainly in 2011, Dr O'Callaghan signed his Flexi Purchase Account Statements both as "cardholder" and "approving officer". That position changed sometime prior to 1 May 2012 with the appointment of "a specific finance officer ... to create another level of accountability", as explained by Dr O'Callaghan below.
- [95] Dr O'Callaghan outlined, during a private examination on 1 May 2012, what he considered to be the circumstances in which that change came about. Evidence given by Dr O'Callaghan in relation to that was as follows.

³⁶ Transcript of Proceedings, Private Examination of Ms Josephine Charlotte Harrison-Ward, Management Consultant, Public Sector Commission, and former Chief Executive Officer of the Fire and Emergency Services Authority of Western Australia, on 30 April 2012, p.46.

Has the [E]xecutive [D]irector within the [P]olice always been the approving authority or the person who approves the particular flexi purchase vouchers?---I think for some - for some years the [E]xecutive [D]irector approved the flexi purchase vouchers and Greg Italiano had a conversation with me at some stage in the last couple of years, I can't remember exactly when it was but he felt that the process was wrong and the process really didn't allow him to sign off on my vouchers because he's not a more senior person and so he just didn't want to do that. We had thought of another way of managing that. It's obviously not possible to have the [M]inister sign off, so the only way we could manage that over the past couple of years was for me to sign off in both places.

So from that time it has been a process where you have both signed the cardholder declaration and the approval? ---Yeah. I don't know exactly when that occurred but it might have been sometime during 2010.

Mr Italiano's concern was what exactly?---I think he felt that it wasn't possible, it wasn't following procedure for someone less senior to sign off an approval.

Was there any discussion between you about any concerns he had about any of the sign-offs he had had to do?---No.

In terms of the current process of your both being the cardholder and the approval person, do you consider that that's a satisfactory process to have for the purposes of accountability?---Well, we've changed that process now. We have a specific finance officer now employed at that level, to create another level of accountability.

When did that occur?---Only last couple of months or so.³⁷

[96] Mr Italiano's evidence as to the discussion with Dr O'Callaghan at the time that he (Mr Italiano) ceased approving Dr O'Callaghan's WAPOL Corporate Credit Card was to similar effect. That evidence given during a private examination on 23 April 2012 was as follows.

What did you say to the [C]ommissioner of [P]olice about this issue?---I told him that I thought that the practice of me approving his card was in principle wrong, that being put in a position to approve something that someone who is above you is doing was something that I'd come to the view that I didn't wish to continue, and he accepted that that was a valid - a valid point.

Was the extent of the discussion about this issue?---Yes.³⁸

[97] However, based on information provided in a written response by Mr Italiano to a section 94 notice (refer [13] above), Mr Italiano's reason for ceasing the practice of approving Dr O'Callaghan's WAPOL Corporate Credit Card in fact went further than that discussed between himself and Dr O'Callaghan. As set out in part in [50] above, Mr Italiano, in his written response to the section 94 notice, stated as follows.

³⁷ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, p.28.

³⁸ Transcript of Proceedings, Private Examination of Mr Gregory Joseph Italiano, Executive Director, Western Australia Police, on 23 April 2012, p.57.

... My decision to cease the practice of approving the Commissioner's credit card was taken because I no longer wished to be put in the position of having to approve his expenditure. My honest recollection is that I cannot recall any single transaction or collection of transactions which were clearly outside the [p]olicy. What bothered me was a pattern of behaviour in which I felt there were transactions that were questionable. In other words, there were transactions that I would probably question if similar transactions were on [C]orporate [C]redit [C]ards issued to persons who reported to me.

....

I did not question the Commissioner in relation to use of his [C]orporate [C]redit [C]ard for a range of reasons. One reason is that I did not have the formal authority to do so, but that is not the primary reason as to why I chose not to question him. To understand the primary reason requires an understanding of the broader pattern of behaviour that surrounded the Commissioner's [O]ffice and his general conduct. In general, I would describe this as a loss of an ethical compass, in that decisions or behaviour could always be justified by an explanation regardless of how reasonable the "average" person might find that explanation to be. This is just not my view, but the view, based on experience, of other senior and less senior officers working in the WA Police [E]xecutive.

In other words, I knew even without asking the Commissioner that he would have a justification for the expenditure on his [C]orporate [C]redit [C]ard. A justification that he would find adequate in his mind according to his own line of reasoning. The real issue for me was in the absence of that explanation being credible, what was my next step? How could I impose my judgement about what was reasonable upon him? That is why I chose not to continue signing his [C]orporate [C]redit [C]ard.

- [98] The manner in which Mr Italiano dealt with this issue is unsatisfactory for a number of reasons.
- [99] First, it is apparent from both Dr O'Callaghan and Mr Italiano's evidence that the fact there were transactions that Mr Italiano felt were questionable and his description of a "loss of an ethical compass" were never matters that were directly raised with Dr O'Callaghan (or any person) to be identified and, if necessary, addressed. There is, therefore, no contemporaneous discussion or addressing of concerns which may have existed at that time.
- [100] Secondly, and even more unsatisfactory, in the opinion of the Commission, is that in relation to such a serious statement, including the description of a "loss of an ethical compass", is that Mr Italiano did not ultimately identify any particular matter, transaction or series of

transactions in support of his concerns. Mr Italiano gave evidence to this effect during a private examination on 23 April 2012.

... you've said there are two aspects to the reason why you stopped signing. One aspect is because of the seniority issue, and one aspect was about this, as you call it, the interpretation of the policy. When did your concern about that aspect, the second one, first arise?---Look, I - there was no signature event or no particular time. I think as I said in my response I just - to me it just was a pattern that was emerging in the [C]ommissioner's behaviour.

What I'm asking you though, Mr Italiano - you signed the [C]ommissioner's credit cards for just over two years? ---Yes.

Did your concern in relation to this part of the issue, that is, the interpretation of the policy and your [sic] having a different interpretation to the [C]ommissioner's, to use your words - did that concern arise early on in the two-year period or was this something that sort of started bothering you later towards the end of the two-year period?---I simply cannot put a time frame on it in terms of when it started. You know, it's probably one of those things that grows on you over a period of time, to be honest. I didn't - I didn't think at a specific date or a specific time. I suppose - we spoke earlier about my growing confidence in the role. It's possible that that was growing, and - and a combination of factors, but I honestly can't tell you the specific time when it started.

If you think back to July 2010 when you made the decision - - - ?---Yeah.

- - - in relation to that time, how long prior to it had your concerns arisen? So I'm not asking you to point to a time - - - ?---No.

- - - at the beginning or the middle, I'm just asking you had you had those concerns for a substantial period of time, had you had those concerns for a month or two? Are you able to give some kind of indication looking at the other end backwards?---Honestly I can't. I can't say when they started. I just can't give you a time frame as to when they did.

Because, Mr Italiano, obviously this is a matter of importance and it was for you at the time. This was your boss?---Yes.

You'd accept that. This was expenditure of public moneys. You accept that?---Yeah.

It was your role to approve the expenditure of those public moneys. You accept that? Sorry, if you can just answer verbally?---I apologise, I'm nodding. Yes.

And in your role as approver for the expenditure of those public moneys part of your role as you've explained it earlier was to ensure that that expenditure was within policy. Isn't that right?---Yes.

As we have seen when we went through the policies and your earlier evidence in relation to the policies was that you applied a test of what was reasonable. Is that right? ---Yes.

So what your evidence here is, as I understand it, and please correct me if I'm wrong, but what was reasonable to you in relation to the [C]ommissioner of [P]olice's [C]orporate [C]redit [C]ard spending, you considered was something different to what was reasonable to him. Is that right? ---Yes.

So that's quite a significant matter, would you not agree, that you had an entirely different view of what was reasonable expenditure by the [C]ommissioner?---I had a different view, yes.

Yes. So you had a different view in circumstances where you were already experiencing a level of discomfort about having to take on the role of approver?---Yes.

At the time that you formed that different view was that not a significant event for you?---No.

Why do you say that?---Because there was no - there was no single event. There was no trigger of any particular specificity that occurred.

The first time though, Mr Italiano, that you looked at a credit card statement that the [C]ommissioner had submitted to you effectively to approve and you formed a different view about the application of the policy, the first time that that happened was that not a significant event for you?---No; no, it wasn't. I don't - I can't recall that there was a specific event or transaction and that's why I suppose I use the term in my response "pattern of behaviour" or just a general approach to matters.

All right. You have raised the term "pattern of behaviour"?---Mm.

Would you agree that pattern of behaviour means that something was repeated, that there was a repetition? That's what a pattern is, in essence, isn't it?---Yes.

Do you agree with that?---Yes, I do.

So your evidence in relation to pattern of behaviour then is that on more than one occasion you noticed an interpretation that the [C]ommissioner of [P]olice was placing, in effect, in relation to the WA Police policy for [C]orporate [C]redit [C]ard use that was different to yours on more than one occasion. Is that right? Is that what you mean?---No. What I mean - well, what I'm trying to say is he was engaging in a pattern of behaviour where he would regularly go to these events, regularly play with his band, regularly engage in those activities. That's what I mean by a pattern of behaviour.

Are you now saying that the pattern of behaviour had nothing to do with his use of the [C]orporate [C]redit [C]ard? Is that what your evidence is?---Yes. I don't necessarily say that his pattern of behaviour was in the [C]orporate [C]redit [C]ard. What I'm saying is the pattern of behaviour that worried me in terms of his view about what to him was work-related.

Pattern of behaviour which was - sorry, could you just repeat that?---In terms - to him, what he regarded as work-related.³⁹

[101] The reference to Dr O'Callaghan "regularly play[ing] with his band" is a reference to Dr O'Callaghan's membership of "The Filth", a musical group, which Mr Italiano stated that Dr O'Callaghan regarded as an extension of his role as Commissioner, in relation to which Mr Italiano had a "difference of opinion". In relation to this Mr Italiano gave the following evidence during the 23 April 2012 private examination.

... I know that he feels strongly justified that that is a work-related thing for him as [C]ommissioner of [P]olice. I don't necessarily share that view that it is a work-related thing, so I guess we had a difference of opinion about whether or not that was a work-related matter ...⁴⁰

[102] As mentioned previously (refer [32] and [46] above) Dr O'Callaghan provided a Statement to the Commission on 21 May 2012 in response to written submissions by Senior Counsel Assisting the Commission. In that Statement Dr O'Callaghan joined issue with Mr Italiano's general assertions about his (Dr O'Callaghan's) use of the WAPOL Corporate Credit Card issued to him (Dr O'Callaghan). Dr O'Callaghan said, in the Statement, that the assertions made by Mr Italiano were "reprehensible" and without substance. In relation to Mr Italiano's comments about the band in which Dr O'Callaghan has performed, Dr O'Callaghan stated the following (in the Statement).

... Mr Italiano has, from its genesis, has had a high degree of negativity and expressed his disagreement with the fact that I play in a band. I would go as far as to say he was enraged about my involvement. His original interpretation, for what it's worth, was that the profile of the band was only high because I was the Commissioner of Police and that I had used my position to elevate its profile beyond that to which it would otherwise reach. Notwithstanding his view, I would not consider anything done in that regard is improper.

Dr O'Callaghan further stated as follows.

The [b]and was formed to raise money for charity. Indeed, it has never performed except at a charity event.

... I see the [b]and as a conduit for building positive relationships, particularly because of its charity work, I do not regard playing in the band, "per se", as work related unless there is a close nexus with a police function.

... police events where the [b]and has played ... [include] the "Bloody Slow Cup" at Newman and the Albany PCYC fund raising

³⁹ Transcript of Proceedings, Private Examination of Mr Gregory Joseph Italiano, Executive Director, Western Australia Police, on 23 April 2012, pp.67-70.

⁴⁰ *Ibid*, p.66.

ball. As Commissioner of Police I would be invited to attend these events regardless of whether the [b]and played or not. I have a community duty which is separate to anything the [b]and does. Other events where my duties have crossed over [b]and performances include the Laverton Police and Emergency Services Ball and the Kalgoorlie Police and Emergency Services Ball.⁴¹

- [103] On those occasions, where police business was involved, Dr O'Callaghan travelled at public expense and utilised the WAPOL Corporate Credit Card issued to him to pay for other expenses. In the Commission's view, there is no question of misuse of the WAPOL Corporate Credit Card by Dr O'Callaghan in relation to activities associated with the band "The Filth" and there is no evidence to support an opinion of misconduct on the part of Dr O'Callaghan in relation to this matter. It should also be noted that Dr O'Callaghan's activities as a member of "The Filth" band include activities that are not connected with police business, and no public funds are expended on those occasions.
- [104] Other than Mr Italiano's reference to Dr O'Callaghan playing in "The Filth" band, however, Mr Italiano identified no substantive matter in support of his comments in relation to the "broader pattern of behaviour that surrounded the Commissioner's [O]ffice and his general conduct". There is no evidence to support those comments.

2.4.4 Observations in Relation to Anomalous Practices Within WAPOL

- [105] The three practices within WAPOL described above (that is, the routine incurring of personal expenses, the delays in completing the reconciliation/approval process (including lack of supporting documentation) and the lack of a formal approval procedure) are all matters, in the opinion of the Commission, which are cause for concern. They point to a lack of sufficient care and attention by cardholders, and a range of poor and unsatisfactory administrative practices.
- [106] It is, of course, in the Commission's view a different matter whether any of those practices could give rise to an opinion of misconduct within the meaning of sections 3 and 4 of the CCC Act. For that to be so, without discussing the elements of the various kinds of misconduct under section 4 in detail (refer [2]–[3] above), the practices would have to be engaged in "corruptly" or "dishonestly".
- [107] In that regard, the evidence of Dr O'Callaghan, during a private examination on 1 May 2012 as detailed below, was that he was not aware of the content of the relevant Treasurer's Instructions and policies prior to the Commission investigation, and had only become so

⁴¹ "Statement of the Commissioner of Police Dr O'Callaghan", received by the Commission on 21 May 2012, p.10 [CCC 85228].

aware as a result of research done after becoming aware of the Commission investigation.

SENIOR COUNSEL ASSISTING: *I take it ... that as the head of the agency you accept that part of the responsibility of determining what the [T]reasurer's [I]nstructions require falls to you as head of the agency? ---*

In an agency which has thousands of policies it's not possible to know all of them or be across all of them and I expect that the policy owner, the [C]hief [F]inancial [O]fficer through the [E]xecutive [D]irector, would advise me of any policy breaches or needs to adjust the policy.

In terms of, for example - the [T]reasurer's [I]nstructions are something which you, as we have seen on a number of occasions, would regularly provide a declaration certifying that the accounts were in accordance with the [T]reasurer's [I]nstructions?---There's a whole raft of policies that require certification.

Yes?---I'm not across all of those and I require policy advice. That's why I employ experts.

The final - - -

LEGAL ADVISOR: *I wonder, sir - - -*

THE [CCC] COMMISSIONER: *Yes?*

LEGAL ADVISOR: *- - - if ... [Senior Counsel Assisting] would be prepared to make it clear that what the [C]ommissioner [of Police] is now saying is what his recent research has taught him, not that it's anything that he had even directed his mind to at the time we're talking about, the accounting, otherwise it will take a lot of questions from me.*

THE [CCC] COMMISSIONER: *Yes.*

SENIOR COUNSEL ASSISTING: *I had thought that that was clear. The evidence you have been giving in relation to these policies and the [T]reasurer's [I]nstructions and the issues that you've been raising in relation to the disjunction between the [T]reasurer's [I]nstructions and the practice that you've described is something that you have become aware of in recent months whilst looking into these matters?---And will be doing something about.*

Yes, is not something on your evidence that you had actively found out about or knew about at the time of the transactions I've asked you about?---No.⁴²

[108] During a subsequent part of the examination Dr O'Callaghan gave further evidence in relation to this matter, which was as follows.

Was the 25-day, for example, something you were aware of before the recent months where you have looked into more detail into these matters?---The [T]reasurer's [I]nstructions allow you to delegate the

⁴² Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, pp.52-53.

*management of these things to another person. So I wasn't aware of the 25-day rule; nor was I - I'm not even aware of how to access a flexi purchase voucher on the system, so I've had nothing to do with that side of things.*⁴³

- [109] The Commission accepts the submission by Senior Counsel Assisting the Commission that Dr O'Callaghan's evidence that he was not aware of the content of the relevant Treasurer's Instructions and policies prior to the Commission investigation should be accepted. The evidence is consistent with the practice having been, apparently, widely understood and generally adopted by the WAPOL Executive. Further, while each of the practices identified was unsatisfactory they could not be regarded as misconduct unless they were, at the very least, engaged in knowingly and with an intention not to comply with the relevant requirements.
- [110] In the opinion of the Commission the evidence does not support such a finding and, accordingly, no issue of misconduct arises from those practices.
- [111] It is then necessary to deal with certain transactions identified in the course of the Commission investigation.

2.5 Anomalous Transactions Identified During the Course of Commission Investigation

- [112] From the broad range of transactions involving the use of WAPOL Corporate Credit Cards and overseas (and intrastate) travel within the Office of the Commissioner there were a number of transactions identified which bore greater scrutiny.

2.5.1 Official Travel to Broome on 4 and 5 January 2011

- [113] The transactions which the Commission accepted were in the category as requiring "greater scrutiny" included a number of transactions which, although identified and approved as complying with the Treasurer's Instructions, were inaccurate in relation to the identification of a valid business-related purpose. There are transactions on the WAPOL Corporate Credit Card issued to Dr O'Callaghan for dinners in Broome on 4 and 5 January 2011, for example, recorded as having been attended by WAPOL officers who were not in Broome on the days in question. In relation to this Dr O'Callaghan gave the following evidence during a private examination on 1 May 2012.

There are two entries on this one, for example. You see on 4 January 2011 and 5 January 2011 there are two meals referred to?---Mm'hm.

⁴³ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, p.60.

The first one refers to "Commissioner hosting Superintendent Ballantyne", and then the 5th, the meal purchased for [C]ommissioner and Inspector Massam?---Mm.

The Commission's understanding is that neither Superintendent Ballantyne nor Inspector Massam were in Broome at that time. Would you know how their names would have appeared in the statement?---Absolutely not, no.

There's the receipt for one of those, the first one, 0539. It's a little difficult to see, but we have the original if needs be. On the right-hand side of the screen is actually the receipt for the meal, and the writing on the side, "Commissioner and Mrs O'Callaghan, Superintendent John Ballantyne". That's on the back of the receipt?---Right.

That appears to be the receipt that relates to that entry that refers to Superintendent Ballantyne?---Absolutely.

Do you know whose writing that is?---It's Inspector Brown's writing.

Inspector Brown is the staff officer?---Yeah.

Do you know how - in the ordinary course how would Inspector Brown get the information for identifying who was - - - ?---I've got no idea where she would have got that from because Superintendent Ballantyne is not even stationed in Broome. He's stationed at Karratha.

...

Your answer is you don't know where Inspector Brown would have got that information?---No idea.

When the final voucher comes to you for signature as the cardholder what process do you go through to determine the accuracy of what's contained on the voucher?---Well we go through the vouchers, generally identify who's had meals at a particular place, and then it goes away for some sort of flexi purchase change and the flexi purchase voucher should come back to me for reconciliation.⁴⁴

[114] In relation to the unsatisfactory nature of this process Dr O'Callaghan gave the following evidence during a subsequent part of the examination.

... If we can just bring up ... the [F]lexi [P]urchase [S]tatement for the month of January last year. There was the two items. Page 2 I think it must be. 4 and 5 January is it, for the restaurants?

...

THE [CCC] COMMISSIONER: Yes. Yes, thank you. 4 and 5 January. I think it was put to you, Mr O'Callaghan [sic], that Superintendent Ballantyne had not attended Matso's Broome Brewer on the 4th and that on the 5th that Inspector Massam had not attended the Old Zoo Café on

⁴⁴ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, p.26.

the basis neither of them were in town, and you accepted that I think?---I accept that, yeah.

Yes, all right. When you were asked who made those notations you said, I think, you didn't know and you didn't know where they got the information from?---No, the notations were made by my staff officer Inspector Brown.

All right, but you didn't know where she got the information from?---I have no idea, because it's wrong. It's clearly wrong.

All right. Do you know in fact who - assuming that there was an additional person there, do you know who in fact did attend on those occasions?---Well, I would need to go back and check the records.

All right?---It most likely would be the [S]uperintendent from - - -

You don't know at the moment?---No.

All right?---It would most likely be the [S]uperintendent from Kimberley, not the [S]uperintendent from Karratha.

But as presently advised, it might or might not be the case that that expenditure ought to have been approved. You are not in a position to say that it's expenditure that ought to have been approved?---No, not now.

All right. If we can just go to the end of the statement, you have signed that. Have you signed that after those notations had been entered?---No, normally - well, I would have signed that - I would have had to have signed that after the notations have been entered, yes.

With respect, then, it would seem that you hadn't adequately examined the statement before you signed it?---Look, I couldn't tell you. I mean, I've read the statement - - -

You accept it's incorrect?---I do now, yes.

Yes. If you had looked at it carefully, presumably you would have been able to recall in particular that Inspector Massam was not in Broome in January, when you signed this in May?---See, that's one of the problems is if this thing comes up five months after the event and it's put in front of you. And I've always relied on my staff officers so they put the information there, I sign it. Usually. And, I mean, unless it comes to me that it was obviously wrong but it obviously didn't four, five months after the event. I think part of - part of the problem here and we've raised this before is the time it's taken for a flexi purchase online voucher like this to come through for final approval, because I think the internal policy says it's supposed to be done within 25 days.⁴⁵

[115] It should be noted, as is apparent from the above evidence given by Dr O'Callaghan during the 1 May 2012 private examination, the reconciliation process for the Flexi Purchase Account Statement ending

⁴⁵ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, pp.58-59.

in January 2011 was not completed until 12 May 2011, significantly after the 25-day period referred to in the WAPOL Financial Manual. That may provide an explanation as to why the error in relation to these entries was made, particularly if insufficient care was taken at the time of the reconciliation.

- [116] The Commission accepts the submission by Senior Counsel Assisting the Commission that for that reason the evidence in relation to these transactions does not support an opinion of misconduct on the part of any public officer employed by WAPOL, but that it remains the position that such errors are more likely to occur with the tardy processes in place at the time.

2.5.2 Reimbursement of Personal Expenses

- [117] Similarly there were transactions in relation to which the process for reimbursement of personal expenses (in accordance with the practice described at [71]–[80] above) produced errors or was incomplete.
- [118] As described at [75]–[78] above, this practice usually, but not always, occurred in circumstances where there was also a business component to the expenditure in question, for example, where a WAPOL Corporate Credit Card is used to pay for a dinner purchased whilst a WAPOL officer is on official travel but the payment included a meal for his/her partner.
- [119] Although it is clear from all of the evidence that a reconciliation process was conducted in relation to travel to the United Kingdom in January 2008, designed to identify personal expenses, a small number of transactions (namely two meals on two occasions) were identified by the Commission where expenses appear to have been incurred both for Dr O'Callaghan and Mr Italiano where their partners were clearly included within the relevant expense but for which there was no reimbursement.⁴⁶ Whether the portion of the travel was properly to be characterised as "business" or "official" travel is dealt with below, but for present purposes only the costs in relation to their partners are relevant.
- [120] In the same way, in April 2008, following travel to Finland and the United Kingdom in February and March 2008, a reconciliation process was conducted. That process was undertaken by Dr O'Callaghan and his Staff Officer, Inspector Brown, which concluded that Dr O'Callaghan

⁴⁶ Mr Gregory Joseph Italiano, Executive Director, Western Australia Police (WAPOL), gave evidence, during a private examination conducted by the Commission on 2 May 2012 (Transcript of Proceedings, pp.41-42) in relation to the "small number of transactions ... for which there was no reimbursement". That evidence was included in the written submissions of 14 May 2012 provided to the Commission by Senior Counsel Assisting in relation to use of the WAPOL Corporate Credit Card (pp.28-29), and provided to Mr Ronald John Davies, QC, as Legal Advisor to the Commissioner of Police on 14 May 2012 (refer [27] of this report).

was to repay the amount of “\$621.57 for expenses incurred for Mrs Christine O’Callaghan”, which included some accommodation.⁴⁷

[121] That amount was reimbursed in January 2012 after Dr O’Callaghan reviewed Flexi Purchase Account Statements in light of the Commission investigation and advised the Commission, by letter dated 24 January 2012, of the outcome of the review. In that letter Dr O’Callaghan stated: “[t]oday, I have been through every account for the past four years to make sure there were no anomalies. I have been able to confirm that every reimbursement has been reconciled at Finance except one. The account for 29/2/08 to 29/3/08 [sic] has clearly been worked on [annotated] by both myself and my Staff Officer to identify expenditure that should be reimbursed ...”.⁴⁸ In relation to this Dr O’Callaghan gave the following evidence during a private examination on 1 May 2012.

I think you identified in the letter that you sent that there was one occasion where it [Flexi Purchase vouchers] hadn’t come back to you?--- Yes.

*In relation to some travel overseas in February and March 2008?--- That’s correct, and I think, having looked through a lot of these things over the past couple of months it’s highly likely that [F]lexi [P]urchase vouchers may not have come back to me, other F]lexi [P]urchase vouchers. One of the things that would assist the Commission in this is to talk to ... who’s the [O]fficer [M]anager who says that there is a - seems to be a problem with the - the multiple printing of vouchers and the fact that they often don’t find their way back.*⁴⁹

[122] The context of each of the examples from January 2008 to March 2008, as set out at [119]–[121], includes evidence of an effort to reconcile personal and official expenses at the time that the Flexi Purchase Account Statements were approved, attempts which involved Mr Italiano and Inspector Brown respectively. The Commission accepts there is no evidence to suggest that those attempts at reconciliation were not genuine and, accordingly, there is no evidence to support an opinion of misconduct on the part of any public officer employed by WAPOL.

[123] These matters, however, do illustrate the real potential for personal expenses to be missed and not reimbursed under the practice adopted by Dr O’Callaghan, and perhaps more widely within WAPOL. This practice is inconsistent with Treasurer’s Instruction 321.

⁴⁷ Annotated Flexi Purchase Account Statement for the period 29 February to 28 March 2008 for the WAPOL Corporate Credit Card issued to Dr Karl Joseph O’Callaghan, APM [02738-2011-0619].

⁴⁸ Letter to Commissioner Roger Macknay, QC, of 24 January 2012 from Dr Karl Joseph O’Callaghan, APM, Commissioner of Police [02738-2011-0144].

⁴⁹ Transcript of Proceedings, Private Examination of Dr Karl Joseph O’Callaghan, APM, Commissioner of Police, on 1 May 2012, pp.26-27.

[124] Indeed, in the Commission's assessment, had it not been for the Commission investigation, the personal expenses incurred in relation to Mrs O'Callaghan in 2008 may not have been identified or reimbursed by Dr O'Callaghan (as they were only identified in 2012 after Dr O'Callaghan had become aware of the Commission investigation).

2.5.3 Official Travel to Broome in October 2011

[125] Dr O'Callaghan visited the Kimberley in early October 2011, and attended to a number of matters during the period 5 to 8 October 2011. The accommodation expense for the period 4 to 9 October 2011, at The Pearle of Cable Beach, was incurred on the WAPOL Corporate Credit Card issued to Ms Quayle. The total cost of the accommodation was \$3,995, which was unusually high (compared to accommodation expenses incurred by Dr O'Callaghan at other times) and, therefore, requires greater scrutiny.

[126] According to Tax Invoice No. 960 from The Pearle of Cable Beach, dated 22 August 2011 (issued at 8:40 a.m.), the accommodation was booked for four adults and two children in Area 68/69 with an arrival date of 4 October 2011 and a departure date of 9 October 2011.⁵⁰

[127] The accommodation consisted of three separate rooms within a self-contained "compound". In that regard there is a notation on the Flexi Purchase Account Statement for the period 29 July 2011 to 29 August 2011 (for Cardholder Ms Quayle), made by Dr O'Callaghan subsequent to the stay in Broome in October 2011, to the following effect:

This was initially booked for three people – i.e., 3 separate rooms. Both Inspector Massam and A/C Budge were unable to attend and a part refund was requested at reception. A/C Budge stayed for 1 night only – no refund as yet credited - \$800 per night - \$266 per night per room.⁵¹

[128] During a private examination on 1 May 2012 Senior Counsel Assisting asked Dr O'Callaghan about the notation. Dr O'Callaghan responded as follows.

You will see that there's a notation there in relation to the \$3995 expenditure for the Pearl of Cable, Broome?---That's right.

Do you know whose notation that is at the bottom?---It's my notation.

When did you put that notation on?---I don't know. It was sometime after the flexi purchase voucher came in. I think there was a discussion between Kim Massam, myself and Yvette Quayle and I made that notation on there at the time.

⁵⁰ Tax Invoice No. 960, The Pearle of Cable Beach, issued at 8:40 a.m. on 22 August 2011 [02738-2011-0543].

⁵¹ Flexi Purchase Account Statement for the period 29 July 2011 to 29 August 2011 for Cardholder Ms Yvette Dawn Quayle, with a notation by Dr Karl Joseph O'Callaghan, APM, Commissioner of Police [02738-2011-0542].

That notation appears to have been made - if you look at the notation - after the - - -?---Approval?

After the actual occasion that you went there as well. It says, "This was initially booked for three people"?---Yes; yes.

You see that?---Yes; yes.

So it would have been after October?---Yes; yes. It was put on there as an explanation.⁵²

- [129] The accommodation at The Pearle of Cable Beach was booked by Ms Quayle.
- [130] During the private examination on 1 May 2012 Dr O'Callaghan produced a signed statement from Ms Quayle dated 14 March 2012 explaining the circumstances of the booking. That statement was sought by Dr O'Callaghan in response to, and in anticipation of, the Commission investigation.
- [131] Ms Quayle's statement, relevantly, reads:

I am the Commissioner's Liaison Officer and have held this position for more than 4 years. Among other things, my duties include administration, file management, diary bookings, incoming calls and arrangement of travel.

One of my key responsibilities in the area of travel management is booking accommodation for the Commissioner of Police. Because I have been attending to this for some years I am well aware of his accommodation needs and preferences. In making bookings I generally opt for medium level accommodation. Generally, the Commissioner does not give me any specific directions about where he is to stay and he leaves it up to me to make the decision.

When choosing accommodation for the Commissioner of Police factors such as: proximity to meetings, access to airports and cost are taken into account. In addition, if the Commissioner has previously stayed at a particular venue and has no issues with it I will select that venue for future visits.

In August 2011 the Commissioner asked me to, book accommodation in Broome for a pending visit. The visit was to include James Price Point, Looma, Kalumburu and Fitzroy Crossing and he requested the Police Airwing [sic] to be available for some components of this visit.

The Commissioner also informed me that Inspector Massam would accompany him for the visit and Assistant Commissioner Budge would be there for part of the visit as well.

⁵² Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, pp.31-32.

On August 22 I booked a three room unit at The Pearle [of Cable Beach] in Broome for early October and prepaid the amount. I chose this location because the Commissioner had stayed there on previous occasions and so had other people working in the Executive, not because I was given any specific directive. The Commissioner was on annual leave for two weeks during September on the Wall to Wall Ride and I had no further discussions with him on this issue.

In late September, Inspector Massam advised that he was unable to travel and I attempted to modify the booking. I was advised by The Pearle [of Cable Beach] that their cancellation policy did not allow modification of the booking but that they would attempt to sublet the other rooms. I had a conversation with them about the fact that we were regular customers but they advised that they were unable to modify the bookings.

The Commissioner of Police only became aware of the cost of the bookings on reviewing the accounts sometime in November as part of his normal reconciliation process.⁵³

- [132] Ms Quayle was interviewed by Commission investigators on 16 April 2012 in relation to the information contained in the above statement, and provided information consistent with that statement. Ms Quayle was unable to explain why Tax Invoice No. 960 from The Pearle of Cable Beach made reference to accommodation for four adults and two children, as Ms Quayle stated that "I would have said five at the time ... I don't know why four was put there, because that would be the O'Callaghans, the Massams and Mr Budge ... and the two children would have been Kim Massam's children ... [and] three rooms for ... three parties".⁵⁴
- [133] Ms Quayle was further interviewed on 7 May 2012 in relation to the statement and explained that it had been prepared whilst discussing the circumstances of The Pearle of Cable Beach booking with Dr O'Callaghan, that is, "yeah, we just put together ... what I was saying was being typed down and, um, I read it and that's as I saw it".⁵⁵ During that interview, in response to a question by a Commission investigator about the notations (refer [127] above) on Tax Invoice No. 960 Ms Quayle advised that she had not seen them prior to being shown the Tax Invoice with notations during the 16 April 2012 interview.⁵⁶

⁵³ Statement of Ms Yvette Dawn Quayle, Liaison Officer to the Commissioner of Police, provided to Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, 14 March 2012 [02738-2011-0759].

⁵⁴ Record of Interview of Ms Yvette Dawn Quayle, Liaison Officer to the Commissioner of Police, on 16 April 2012, pp.33-34 [02738-2011-0702].

⁵⁵ Record of Interview of Ms Yvette Dawn Quayle, Liaison Officer to the Commissioner of Police, on 7 May 2012, p.3.

⁵⁶ *Ibid*, p.22.

[134] During the 7 May 2012 interview Ms Quayle was not as clear about the reference to two children on Tax Invoice No. 960 as she was during the 16 April 2012 interview, and in relation to that stated as follows.

*... and there would be five adults ... and, um, possibly children ...
[t]here must have been an indication, and I'm not thinking that the
Massams must have been going to take the kids there ... I must
have been ... I just can't remember that part of it, I have to say ...⁵⁷*

[135] Inspector Massam, Staff Officer to the Commissioner of Police at various times during the period May 2010 to December 2011, was served with a notice pursuant to section 94 of the CCC Act on 2 March 2012 (refer [4] and Footnote 6 above). As required, Inspector Massam supplied the Commission with a written response to the notice on 15 March 2012. In the response Inspector Massam stated the following in relation to the proposal to travel to Broome during October 2011 (from which it is apparent that there was some prospect of children being included in the visit to Broome).

I can recall that the Commissioner told me that it was his intention to travel to Broome in the October of 2011 and that these dates would coincide with school holidays. He asked me to travel with him. However I told him that due to a number of personal factors I wouldn't be in a position to travel with him. I needed to work flexibly so that my wife, who also worked full-time, and I could care for our children whilst they were not at school.

I think I suggested that I could fly my wife and kids to Broome with my [F]requent [F]lyer [P]oints and asked if the Commissioner would be happy for my family to stay within the 3 Bedroom Apartment at the Pearl Hotel [sic] with him.

He was happy with this suggestion and because the cost of the flights was being borne by me I saw no issue with this decision.

It became apparent that this idea would not come to anything as I was unable to use my F]requent [F]lyer [P]oints for any Broome flight during the periods of travel required. I communicated this with the Commissioner and advised that I would not be going to Broome.

The Commissioner suggested I check if I could get frequent flyer flights to Karratha. The Police Air Wing [PAW] plane is based in Karratha. As the plane was flying from Karratha to Broome then the thought was that my family could board this empty PAW flight and arrive in Broome. I was comfortable with this decision as again there would be no cost to the agency.

⁵⁷ Record of Interview of Ms Yvette Dawn Quayle, Liaison Officer to the Commissioner of Police, on 7 May 2012, p.11.

I made some inquiries on the Qantas [W]ebsite and found that my family could in fact redeem Frequent Flyer [P]oints to travel to Karratha.

I contacted the PAW pilots and discussed this course of action with them. It soon became apparent that the Commissioner's travel plans would not match travel requirements of the plane. In fact the plane would be required to wait in Broome for longer than operationally necessary in order to return to Karratha.

*As soon as I became aware that this plan would entail a poor use of the agency resource I advised the Commissioner that neither I nor my family would be travelling to Broome.*⁵⁸

[136] During a private examination on 1 May 2012 Senior Counsel Assisting asked Dr O'Callaghan to explain the circumstances in which The Pearle of Cable Beach booking was made on 22 August 2011 by Ms Quayle. In response, Dr O'Callaghan gave evidence similar to the explanation provided by Ms Quayle (in her statement of 15 March 2012 and during subsequent interviews by Commission investigators as outlined above). Indeed Dr O'Callaghan commenced his evidence by making reference to the statement of 15 March 2012 that he had obtained from Ms Quayle. Dr O'Callaghan's explanation of the circumstances surrounding The Pearle of Cable Beach booking was as follows.

... In August 2011 I asked Ms Quayle to book accommodation in Broome. Initially I think the accommodation was to be booked for myself and Inspector Massam to travel to Broome for a number of things which ... includes a visit to Looma which was in the process of being built at the time, a visit to Fitzroy Crossing at which the same thing was occurring, plus a meeting with the Fitzroy Crossing women's group, a visit to Kalumburu, and also the James Price Point issue was going along at that time as well and that was causing us some problems. I made it clear to her that I wanted to go to Broome to do that sort of work. I asked her to book some accommodation in Broome, and also I think at the time or some time later Inspector Budge - sorry, Assistant Commissioner Budge - wanted to also go up and have a look at the James Price Point issue because he was responsible for the regional operations group which was providing resources for it. I didn't give her any ---

SENIOR COUNSEL ASSISTING: Just pause there. Do I understand from that that the booking had already been arranged before you became aware that Assistant Commissioner Budge was also planning to go up?---No, no, my understanding is that - what I recall is that I asked Ms Quayle to book accommodation for three people for Broome. I didn't give her any directions as to where to book it. She advised me that she would book it and I had not much more to do with it until basically I arrived in Broome sometime in early October, I think it was.

⁵⁸ Statement of Inspector Kim Jonathon Massam to the Corruption and Crime Commission, 15 March 2012, p.15 [02738-2011-0461].

Do you recall as part of the arrangements for going discussion about the possibility of Inspector Massam taking his children?---Yes, he asked me if he could do that. He said, "Look, I'm happy to come but it would be school holidays and I'll have problems getting someone to look after the kids, so could I bring the kids?" and I said, "Yes, that's fine."

Was the prospect of Inspector Massam and his family attending the original reason for the three separate rooms being booked?---No, no, there's only one - one room for me, one room for Mr Massam, one room for Budge. They're quite large rooms as I understand.

What happened in relation to - what happened when you got to the accommodation?---Inspector Massam at some stage before we left advised that he was unable to go, there were some issues, so that was fine. I didn't have anything to do with the booking of the accommodation or the arrangements, so when I got to the Pearl [sic] at Broome and booked in the person there advised me that we had three rooms booked and I said, "We don't need three rooms because Inspector Massam's cancelled." She said, "Well there's a cancellation policy and you have to pay for the three rooms, but what we'll do is try and sublet them," and I did query this with Yvette Quayle at the time or just after that time and she maintains that when she was advised by Inspector Massam that he couldn't go that she had breached the policy, the cancellation policy, and so had to pay for the rooms anyway.

When did Assistant Commissioner Budge's attendance or his accommodation at that three separate room area become arranged?---Well, according to the conversation that I had with Yvette Quayle we did all this simultaneously in August. So we organised for the three rooms for the three people in August.⁵⁹

[137] The other person who attended Broome in October 2011 was Assistant Commissioner Gary John Budge, whose recollection differs from that of Dr O'Callaghan and Ms Quayle in that, according to his written response to a section 94 notice served by the Commission on 2 March 2012 (refer [4] and Footnote 6 above), the prospect of his using accommodation on the night of 6 October 2011 was not raised until after the booking for three rooms at The Pearle of Cable Beach had been made. In particular, Assistant Commissioner Budge stated:

I travelled to Broome on the 6th of October I travelled alone.

Prior to my travel to Broome I became aware that the Commissioner of Police was going to be in Broome at the same time I was to be there. I don't recall who advised me of that specifically but I recall speaking with Acting Deputy Commissioner Brown about it. I understood the Commissioner was travelling to the Kimberley on work related matters but I had no specific knowledge of what that entailed.

⁵⁹ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, pp.33-35.

The Commissioner mentioned to me that rather than arrange separate accommodation I could stay at the premises he had booked as there was a spare room. There were obvious cost savings in that proposal and I subsequently stayed overnight the 6th of October 2011 at the accommodation the Commissioner had previously organised for this travel.

I cannot recall the name of the premises as I did not book the accommodation. It may have been the Pearl of Cable Resort [sic].

There was no cost to me personally or through my police [WAPOL] [C]orporate [C]redit [C]ard for the room.⁶⁰

- [138] Assistant Commissioner Budge's account is, to an extent, corroborated by his flight booking which makes clear that it was only ever proposed that he would spend one night in Broome, arriving at 9:35 a.m. on Thursday 6 October 2011 and departing at 10:20 a.m. on Friday 7 October 2011. In addition, whilst it is not clear to what the date refers, Assistant Commissioner Budge's ticket also bears the date Tuesday 28 August 2011, which may be the booking date for the aforementioned flights to Broome (which was after the booking of the accommodation on 22 August 2011).
- [139] During the 1 May 2012 private examination conducted by the Commission Dr O'Callaghan was asked about Assistant Commissioner Budge's response, as outlined above, to the section 94 notice.

Do you remember Assistant Commissioner Budge indicating that he was going to be there prior to the booking?---I don't remember those details. I think what this points out is I went to Yvette Quayle and I said, "Can you book some accommodation for Broome," she has booked it, I've gone there.

Leaving aside what Yvette Quayle said to you since that time, is it possible that the booking as it was originally made was for you, Mr Massam, and the other room for his children, but that events changed as a result of him not being able to come?---No, definitely not. We would not have booked accommodation for his children.⁶¹

- [140] Ms Quayle, when interviewed by Commission investigators as outlined above, generally agreed with this account.
- [141] Senior Counsel Assisting the Commission submitted that the evidence in relation to this expense is unsatisfactory, something disputed by Mr Davies, QC, in his written submissions to the Commission in response to submissions made by Senior Counsel Assisting (refer [32] above).

⁶⁰ Statement of Assistant Commissioner Gary John Budge to the Corruption and Crime Commission, 2 March 2012, p.2 [02738-2011-0441].

⁶¹ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, p.43.

Mr Davies, QC, suggested “that there are some minor conflicts”, and that any attempt at resolution could only be speculative.

- [142] The Tax Invoice (No. 960) from The Pearle of Cable Beach indicated that the booking for accommodation included two children, which would be consistent with Inspector Massam’s statement as to his advice to Dr O’Callaghan and Ms Quayle’s recollection that she was told Inspector Massam was to accompany the Commissioner of Police.
- [143] Considered against that backdrop the notation subsequently made by Dr O’Callaghan on Ms Quayle’s Flexi Purchase Account Statement (refer [127] above) does not wholly accord with the contemporaneous documentary evidence and those recollections consistent with it. On the other hand, Ms Quayle’s recollection is that she was informed prior to booking accommodation at The Pearle of Cable Beach that both Inspector Massam and Assistant Commissioner Budge were to accompany the Commissioner of Police.
- [144] The Commission agrees with Senior Counsel Assisting the Commission, that is, his characterisation that the evidence is “unsatisfactory” and accepts that the circumstances surrounding the booking of accommodation at The Pearle of Cable Beach are incapable of a satisfactory resolution. Ultimately, however, the Commission does not consider that the evidence supports an opinion of misconduct on the part of any public officer employed by WAPOL in relation to this issue.

CHAPTER THREE OVERSEAS TRAVEL

3.1 Introduction

[145] As noted above (refer [47]), one of the broad issues raised by the scope and purpose of the Commission investigation was the extent and appropriateness of certain overseas travel identified and approved as official travel, during which official expenditure is incurred. The concern, as expressed by Mr Italiano in relation to this, included that which is evidenced by the extract below (also at [51] above) from a written response by Mr Italiano to a section 94 notice (refer [13] above).

... I do have concerns that a small sample of the business related travel undertaken by the Commissioner has lacked sufficient substance in respect of the original justification, the scope and nature of the activities taken on the journey and the follow up actions that flow as a consequence of the travel. The most concerning examples in my mind would be some of the Commissioner's travel to the United Kingdom.

In my view it is not unreasonable to occasionally take a period of personal leave in conjunction with business travel. This is based on the presumption that the business travel itself is justified.

Whether travel is predominantly personal in nature in my mind is readily answered by examination of a given itinerary. If there is more personal leave than business related activities or the itinerary is for want of a better word "light on" then I think that provides the basis of an answer.

I have concerns that the Commissioner has undertaken journeys to the United Kingdom and Europe that were "light on" for substance. Because of that reason alone, I have a concern that on certain occasions the Commissioner may have formed in his mind the view that he wished to travel prior to offering a business justification to do so ...

[146] In relation to the travel to the United Kingdom investigated by the Commission, and which was combined with personal travel, on the first such trip Dr O'Callaghan was accompanied by Mr Italiano.

[147] Before turning to the particular issues arising from the overseas travel, it is necessary to summarise the relevant Government policies and guidelines that are applicable.

3.2 Approval for Overseas Travel

[148] Premier's Circular No. 2009/04 entitled *Guidelines for Official Air Travel by Government Officers* ("the Guidelines"), as indicated by the title, sets

out the requirements for official air travel by Government officers.⁶² An earlier Circular, Circular No. 2004/13, had integrated most travel policies, guidelines and advice required by departments and other public authorities in existence prior to that Circular. While there were different versions of the Guidelines in effect during the period considered by the Commission, there is no difference in substance in their terms.

- [149] Government officers undertaking domestic or overseas travel are required to comply with the Guidelines.
- [150] The general provisions of the Guidelines include, *inter alia*, that:
 - 2.1 *All Departments and Agencies are required to make every effort to reduce the cost of travel and the number of officers travelling ... overseas on official business ...*
 - ...
 - 2.4 *No overseas air travel is to be undertaken by Government officers unless it is demonstrated that such a function could not be undertaken by existing Western Australian Government overseas offices.*
- [151] Specifically Point 4.2 of the Guidelines provides that “[a]ll overseas air travel by Government officers will be approved by the responsible Minister”.
- [152] That approval application is required to be in the format of the document which is “Attachment 1” to the Guidelines (refer Point 6.5 of the Guidelines).
- [153] Point 13.1 of the Guidelines provides that “[t]o ensure proper coordination of the State’s interests and activities overseas it is important that the relevant overseas offices be kept informed of activities being undertaken in their regions by State government agencies or Ministers ...”.
- [154] The requirement that Government officers undertaking international travel obtain approval from the responsible Minister has been in force since prior to 2008, the period of time relevant to the Commission investigation.
- [155] Consequently, the Guidelines (and those that pre-dated them) required the Commissioner of Police to obtain approval from the responsible Minister prior to undertaking overseas travel.
- [156] The WAPOL *Travel Proposal Request for Approval Form* (“the WAPOL Travel Proposal Form”), while having a number of differences, is

⁶² Point 1.1 of Premier’s Circular No. 2009/04, entitled *Guidelines for Official Air Travel by Government Officers*, defines “official air travel” as “any air travel by ... Government officers pursuant to their duties as ... officers, or where public monies are used to fund all or part of the travel.

generally in accordance with the format of the document which is “Attachment 1” to the Guidelines (refer [152] above).

- [157] Dr O’Callaghan either provided a letter to the responsible Minister outlining the proposal, and seeking approval, to travel or completed the WAPOL Travel Proposal Form, or both. Information obtained from Ministers who were “responsible Ministers” during the period relevant to the Commission investigation indicates that, in addition to formal paperwork submitted by Dr O’Callaghan, regular informal meetings with Dr O’Callaghan also informed them about the purpose of proposed travel by Dr O’Callaghan.
- [158] In accordance with the Guidelines, “Attachment 1” to the Guidelines (refer [152] above) requires the applicant to address “Statement of Purpose and Benefits to Western Australia of Proposed Visit”. In contrast what could be considered to be the corresponding portion of the WAPOL Travel Proposal Form requires the applicant to address “Title/Date and Reason(s) Why Meeting/Conference is Being Held and Representation by Western Australia Police is Required”.
- [159] In relation to travel undertaken by Dr O’Callaghan, while there were, on occasion, differences between the content of the original travel proposal and the official business actually conducted by Dr O’Callaghan, each of the overseas trips was approved by the responsible Minister for Police in accord with the Guidelines. In relation to the 2008 travel, considered in detail below, the relevant Minister accepted there was a degree of flexibility permitted with travel plans, provided any variation was work related, whilst travel was then a standard rather than a priority issue for the Government.
- [160] Significantly, neither the Guidelines nor “Attachment 1” to the Guidelines (refer [152] above), nor the WAPOL Travel Proposal Form, require the inclusion of an itinerary. Further, the Guidelines do not require the submission of an overseas travel report outlining the outcomes achieved as a consequence of the travel, other than that required by Point 10.1 of the Guidelines whereby “Government officers accompanying Ministers overseas should note that Ministers are required to submit an overseas travel report to the Director General of the Department of the Premier and Cabinet … within two months of the completion of each trip”. In the opinion of the Commission, as a matter of systems and policies, the absence of the requirement for either an itinerary or a travel report by Government officers greatly reduces the capacity for adequate oversight of the need for, or appropriateness of, overseas travel, and subsequent review of benefits to Western Australia.

3.3 Issues Arising

- [161] In the context of the Guidelines two broad issues arise in relation to the overseas travel undertaken by Dr O’Callaghan:

- (1) the distinction between private and official components of the travel; and
- (2) travel to locations not identified in the original travel proposal.

3.3.1 Private and Official Travel

[162] Particular issues arise in circumstances in which official overseas travel is combined with personal travel (in the sense that one follows the other). While questions can arise in such a context as to the justification for the official travel, the Commission accepts the submission by Senior Counsel Assisting the Commission that it is not in a position to assess, in retrospect, the apparent justification for the official travel. Not only is there a high degree of subjectivity attached to such an assessment, in the present case, the original travel proposals were, on their face, sufficient to meet the approval of the responsible Minister.

[163] The issue which arises, however, where official travel is combined with a period of leave (in the sense described above, namely that one follows the other) is where the “official” and “personal” components, respectively, begin and end. That determination will, of course, impact upon the extent to which the expenses incurred on the travel are incurred at public expense, for example, by use of a WAPOL Corporate Credit Card.

[164] This may be illustrated by reference to travel on two occasions:

- (1) official travel conducted from 4 January 2008 to 13 January 2008, which was preceded by personal travel (on leave) from 26 December 2007 to 3 January 2008; and
- (2) official travel conducted from 19 January 2009 to 25 January 2009, which was preceded by personal travel (on leave) from 5 January 2009 to 18 January 2009.

[165] On both occasions:

- (1) Dr O’Callaghan and Mrs O’Callaghan arrived in and departed from Frankfurt, Germany;
- (2) Dr O’Callaghan hired a car for the entirety of the travel (that is, both the private and official component) and in each case the charge appears on the WAPOL Corporate Credit Card issued to Dr O’Callaghan, although no receipt is available;
- (3) all of the official business attended to by Dr O’Callaghan took place in the United Kingdom (including, on the first occasion, Edinburgh, Scotland);
- (4) all of the travel in the United Kingdom was treated, and expenses claimed, as official travel;

- (5) the travel from the United Kingdom to Frankfurt following the official business (approximately three days on each occasion) was treated, and expenses claimed, as official travel; and
- (6) following the travel there was a reconciliation process of private expenses incurred on the WAPOL Corporate Credit Card issued to Dr O'Callaghan, including an allocation for a portion of the cost of the hired car, to be reimbursed.

3.3.1.1 Travel to the United Kingdom in January 2008

- [166] Dr O'Callaghan and Mrs O'Callaghan departed Australia on 25 December 2007, flying to Frankfurt, via Singapore. They were accompanied by Mr Italiano and his partner (Ms C). The group hired a car in Frankfurt and engaged in private travel in Europe, until they arrived in the United Kingdom during the morning of Friday 4 January 2008. Dr O'Callaghan and Mr Italiano considered they were engaged in official travel from that point, until their return to Perth on 15 January 2008.⁶³
- [167] Dr O'Callaghan gave evidence during a private examination on 1 May 2012 that he had already planned a holiday in Europe when it was suggested that as a result of “a number of high-profile cases in Western Australia ... where the police ... were being criticised for ... problems with investigative interviewing and analysis of forensic material” he was asked by members of the Government to explore changes to police methods, which would necessitate travel to the United Kingdom, and it was agreed that this should occur at the end of the planned holiday.⁶⁴
- [168] In essence, therefore, the official business related to a review being undertaken of investigative practices within WAPOL following a high profile prosecution in which investigative practices were criticised. That review ultimately became known as Project Anticus.
- [169] As a result of the travel in January 2008, very substantial changes were made to police procedures. In relation to this, the then Minister for Police, the Hon John Charles Kobelke, MLA, who approved the official travel undertaken by Dr O'Callaghan in January 2008 (accompanied by Mr Italiano), during an interview by Commission investigators on 9 May 2012 agreed that following the high-profile cases “forensic science was a major issue”, and there was a perceived need for greater support and training in the investigative area. He also said that he was “very much aware that the Commissioner was looking to learn how they did it in the United Kingdom”, although he was unclear as to whether or not he

⁶³ Unless otherwise stated, it is assumed that Dr O'Callaghan, Mrs O'Callaghan and Mr Italiano and his partner were travelling together.

⁶⁴ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, pp.36-37 and 70.

could recall a private trip being combined with travel in the United Kingdom.⁶⁵

- [170] Dr O'Callaghan and Mr Italiano incurred meal and incidental expenses in London on Friday 4 January 2008 and Saturday 5 January 2008. They stayed at the Sheraton, Heathrow, for the two nights, before checking out in the morning of Sunday 6 January 2008 and driving to Edinburgh.
- [171] On Monday 7 January 2008 Dr O'Callaghan and Mr Italiano attended a meeting at the Tulliallan Police College, and on Tuesday 8 January 2008 they drove from Edinburgh to Oxford, England, where they stayed overnight. A meeting had been arranged with an officer of the Procurator Fiscal during the morning of Tuesday 8 January 2008, but that officer was, at short notice, not available as planned.⁶⁶ On Wednesday 9 January 2008 Dr O'Callaghan and Mr Italiano drove from Oxford to Bramshill Police College, England, where they stayed overnight, before departing during the morning of Thursday 10 January 2008 and driving to Salisbury, England. After staying overnight in Salisbury, Dr O'Callaghan and Mr Italiano drove from Salisbury to Aachen, Germany, near the border of the Netherlands and Belgium, on Friday 11 January 2008. Dr O'Callaghan and Mr Italiano spent two nights in Aachen, before departing on Sunday 13 January 2008, and driving to Frankfurt for their flights back to Perth.
- [172] Dr O'Callaghan and Mr Italiano used WAPOL Corporate Credit Cards for expenses during the period they considered they were engaged in official travel. Those expenses consisted of accommodation, meals, costs associated with the hire car, and other incidental expenses. WAPOL Corporate Credit Cards were frequently used by Dr O'Callaghan and Mr Italiano to pay for meals, which included a component for Mrs O'Callaghan and Mr Italiano's partner respectively, and the pair undertook a reconciliation process after returning to Perth to identify expenditure that ought to be reimbursed. As a result, they each reimbursed WAPOL \$717.00, on 26 February 2008, for the personal expenditure incurred on their combined WAPOL Corporate Credit Cards.
- [173] During the official travel conducted from 4 January 2008 to 15 January 2008, it is also apparent that, as a consequence of the arrival being in and departure being from Frankfurt and internal travel by car, that the "travelling" component of the official travel was greater than what may be described as the "business" component (that is, of the 10 days treated as official travel the majority of the time consisted of travel).
- [174] During a private examination conducted by the Commission on 1 May 2012 Dr O'Callaghan was asked about the reason for departure from

⁶⁵ Record of Interview of the Hon. John Charles Kobelke, MLA, on 9 May 2012, pp.9 and 19.

⁶⁶ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, p.38.

Frankfurt, in relation to the 2008 travel. Dr O'Callaghan's evidence in relation to this was as follows.

In the result though, is it the case that of the period of time there it was only on the Monday at Tulliallan and on the Wednesday at Bramshill that you were engaged in - - -?---And the Thursday morning, and we were supposed to have a meeting on the Friday.

Then the balance of the time was concerned with what?---Well, Friday, Saturday, Sunday was concerned with travel. Monday was a meeting. Tuesday was travel back to the south of England. Wednesday was a day with Bramshill. Thursday was a part-day as well. Friday was supposed to be a meeting with Neyroud, which Neyroud never attended to.

Then the Saturday and the Sunday was travel back to Frankfurt?---Well, yeah. Originally we were supposed to be in the UK until Saturday because we were going to have this meeting on the Friday.

And going back to Frankfurt - what was the reason for that?---Cost. There's quite a significant difference in cost. Because of the availability of flights out of the UK at that time of the year the actual cost can vary, and I can tell you how much it can vary by, about \$1500 per person, so it could have cost about \$3000 more to fly out of Heathrow.⁶⁷

[175] As to the period between Friday 4 January 2008 and Sunday 6 January 2008, when the group set out from London by car to travel to Edinburgh, in the Statement (refer [32] and [46] above) Dr O'Callaghan justified the treatment of it as relating to official business, in part, as follows.

... Due to the time of year, two days were originally set aside to travel from London to Scotland (a not insubstantial journey) being Saturday January 5 and Sunday January 6, 2008. Any analysis of the daylight hours on this day will reveal that the sun did not rise until after 8am and set just after 4pm.

Given that I was travelling in unfamiliar territory, I made the decision to set aside two days for this journey. It should be noted that I was the sole driver as Mr Italiano claimed not to have the confidence to drive in the UK. The original plan for the journey, however, was complicated by weather warnings for the north of England and Scotland on the Saturday and I ultimately decided that it was safer to travel longer on the Sunday and in the hours of darkness rather than run into bad weather on the Saturday. While I may be experienced at driving in the dark, I am not experienced at driving in snow and ice. Given the circumstances I submit that this was an entirely reasonable decision and the right thing to do ...

⁶⁷ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, pp.38-39.

All subsequent travel in the United Kingdom was also by car, and in the Statement, in relation to this, Dr O'Callaghan explained as follows.

On Tuesday January 8, we travelled from Edinburgh to Oxford, a distance of nearly 600 kilometres. Again, this journey needs to be set against the context of winter weather and traffic conditions on UK roads. This was another long travel day of about 11 hours.

On Wednesday January 9 we travelled to Bramshill from Oxford and attended meetings all day followed by an official dinner which finished around about 11pm. All things considered this is about a 15 hour day. By the end of Wednesday, I had completed more than 53 hours on official business even without taking into account reading and analysing material supplied. I attended meetings again on Thursday morning, January 10, before departing for Salisbury thus taking the total hours worked to 56, which, as I indicated included two long exhausting days of travel.⁶⁸

The return journey from the United Kingdom to Frankfurt was again by car, and Dr O'Callaghan explained the use of time during that period in the Statement as follows.

The fact is that any visit of this nature inevitably generates the provision of significant amounts of paperwork and detail relating to the purpose of the visit. Both the Scottish Police College at Tullialan [sic] and the Police College at Bramshill handed over substantial amounts of training material and background detail of the business aspects of the colleges. This had to be read and any suggestion by Counsel or anyone else that when there are no meetings there cannot be any business going on, is simply wrong.

I, at least, spent a significant number of hours on the weekend of 12/13 January reviewing this material, given that the opportunity to do so once I returned to work would be limited. I was not "wandering around Germany" sightseeing ...⁶⁹

- [176] In the Commission's assessment, notwithstanding Dr O'Callaghan's evidence as to cost, there were alternative modes of travel available that would have avoided the need to allocate, in particular, two days to travel from London to Edinburgh and two days to travel from the United Kingdom back to Frankfurt.
- [177] As aforementioned, the Hon. John Kobelke, MLA, the then Minister for Police, was interviewed by Commission investigators on 9 May 2012. During the interview he was asked about the return trip to Frankfurt, which was treated as "official travel" by Dr O'Callaghan. In relation to this the following extract from that interview is pertinent.

⁶⁸ The Commission understands that those hours (that is, "53 hours" and "56") include travel.

⁶⁹ "Statement of the Commissioner of Police Dr O'Callaghan", received by the Commission on 21 May 2012, pp.1-4 [CCC 85228].

MINISTER: ... *there needs to be as clear a distinction as possible when engaged in overseas travel, and I have been and had my spouse on some trips. As to when you're actually doing work and -- you know, that is sometimes not a clear-cut line and when you are engaged in private holiday and I think it has generally been accepted that if the taxpayer pays for you to go for work then, in some circumstances, adding on your private stay afterwards is acceptable, but you need to -- the principles I think that I would apply -- the principles that I would apply is that you need to be very careful to draw a line between when you are on private travel, and at those times you cannot use taxpayers' money for the daily allowance or for the accommodation or meals, "et cetera".*

INVESTIGATOR No. 2: *When, when assessing um -- when trying to -- and I appreciate the line is a grey one.*

MINISTER: *Umm. Well see, it becomes grey, like weekends.*

INVESTIGATOR No. 2: Yes.

MINISTER: *All right. So, if you're using weekends for travel, then, um, if that's fitting in with your program, then it should be paid by the government department.*

INVESTIGATOR No. 2: Yes.

MINISTER: *But if you're going off on a tangent to take a tour, then that should not be paid by the taxpayer.⁷⁰*

3.3.1.2 Conclusion

[178] It must immediately be recognised that the Guidelines provide no direction in relation to this issue as to where the line is drawn between private and official travel where the two are combined, for example, by prescribing a maximum number of "rest" days either side of official business. Nor does there appear to be any clear practice to draw from to provide guidance in this area.

⁷⁰ Record of Interview of the Hon. John Charles Kobelke, MLA, on 9 May 2012, pp.21-22.

[179] Much is, therefore, left to individual judgement and discretion as to what is fair and reasonable. Similarly, the absence of any requirement in the Guidelines for either an itinerary or a travel report does not enable there to be a proper consideration and assessment of any judgements made at the time of travel.

[180] The Commission accepts that it is open to it to be satisfied that the judgement made by Dr O'Callaghan as to the extent of the "business" portion of travel in January 2008 was not reasonable, and is so satisfied. In particular, the relatively small amount of official business conducted during that travel (even taking into account the business that was cancelled at short notice) when compared with the overall duration is such that part of the travel (and in particular the return journey to Frankfurt) ought properly have been characterised as personal travel.

[181] Nevertheless, it is, again, quite a separate and different matter whether that conduct could give rise to an opinion of either serious misconduct or misconduct as defined by sections 3 and 4 of the CCC Act.

[182] In that regard, it is apparent from the records provided to the Commission that, in each case, where there has been a process of reconciliation followed an effort has been made to allocate an amount to personal expenditure. Nor, as has been noted, is there any particular guidance provided as to reconciliation process in the Guidelines.

[183] The Commission accepts the submission by Senior Counsel Assisting the Commission that there is no evidence to support an opinion that the efforts at reconciliation were not genuine or, as Dr O'Callaghan stated in evidence, during a private examination conducted by the Commission on 1 May 2012, "a *bona fide* attempt to reconcile what we believed was private expenditure".⁷¹

[184] The Commission also accepts the submission by Senior Counsel Assisting the Commission that in circumstances in which much is left to individual judgement and where there has been a genuine attempt to apply that judgement such an attempt could not give rise to misconduct on the part of the public officer without clear evidence that the officer acted dishonestly or without sufficient objectivity. No such evidence is available in the present case.

[185] Therefore the evidence does not support an opinion of misconduct on the part of any public officer employed by WAPOL in relation to this issue.

3.3.2 Travel to Locations Not Identified in the Original Travel Proposal

[186] The final issue (namely, travel to locations not identified in the original travel proposal) arises by reason of the fact that, when the Commission

⁷¹ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, p.98.

investigated certain travel, there were locations apparently visited by Dr O'Callaghan that were not referred to in the travel proposal, and without any clear indication as to the business nature of the travel.

[187] One particular occasion to be noted in this context is:

- travel to Estonia, Latvia and Finland, and the United Kingdom in February and March 2008.

3.3.2.1 Travel to Estonia, Latvia, Finland and the United Kingdom in February and March 2008

[188] Dr O'Callaghan and Mrs O'Callaghan departed Australia for Helsinki, Finland, on 27 February 2008. Dr O'Callaghan arrived in Helsinki by midday on 28 February 2008 and Mrs O'Callaghan shortly thereafter. Dr O'Callaghan departed Helsinki for London on Sunday 9 March 2008, where he met up with Mr O'Sullivan (Legal Counsel to the Commissioner of Police).⁷² On the same day Dr O'Callaghan and Mr O'Sullivan travelled from London to Edinburgh to commence their official business in the United Kingdom. Dr O'Callaghan and Mr O'Sullivan arrived back in Perth on 15 March 2008. Mrs O'Callaghan had returned to Perth earlier, on 11 March 2008. Dr O'Callaghan did not take any annual leave in respect of this trip, and it is apparent from his WAPOL Corporate Credit Card acquittal documents, and his evidence to the Commission, that he considered he was engaged in official travel for the entire duration of this trip.

[189] Dr O'Callaghan used his WAPOL Corporate Credit Card for expenses during the above period. Those expenses consisted of accommodation (with the apparent exception of one night), meals, hire of a motor vehicle, and other incidental expenses, with meal expenses often including a component for Mrs O'Callaghan. As mentioned previously (refer [120]–[121] above) Dr O'Callaghan undertook a reconciliation process after his return to Perth, and identified “\$621.57 for expenses incurred for Mrs O'Callaghan”, which included some accommodation.⁷³ Although that amount was not reimbursed to WAPOL by Dr O'Callaghan until January 2012, the Commission accepts that that occurred due to an administrative oversight.

[190] In relation to the travel to Finland in February and March 2008, Dr O'Callaghan sought and received approval to travel from 27 February 2008 to 14 March 2008 for official business in Helsinki and Edinburgh.

[191] The travel proposal principally detailed the business in Edinburgh and also included the following sentence:

⁷² Mr John Francis O'Sullivan, Legal Counsel to the Commissioner of Police, departed Perth on 27 February 2008 with Dr O'Callaghan, APM, Commissioner of Police, but Mr O'Sullivan took annual leave until he met up with Dr O'Callaghan in London, United Kingdom.

⁷³ Annotated Flexi Purchase Account Statement for the period 29 February to 28 March 2008 for the WAPOL Corporate Credit Card issued to Dr Karl Joseph O'Callaghan, APM [02738-2011-0619].

I have also been invited to attend the Victims of Crime and Victimology Conference in Helsinki, Finland, which is focussing on child sexual abuse investigative policy and I would be able to attend this as part of the same visit.

- [192] Dr O'Callaghan and Mrs O'Callaghan arrived in Helsinki on 28 February 2008. On the following day they travelled to Estonia, and then to Latvia.
- [193] Dr O'Callaghan arrived back in Helsinki on 2 March 2008. The (third) Nordic "Conference on Victimology and Victim Support (Victims and Violence): Our Responsibility", was held in Helsinki during the period 3 March to 5 March 2008.
- [194] Following the Conference, Dr O'Callaghan and Mrs O'Callaghan travelled and stayed overnight in other locations in Finland, that is, Savonlinna (approximately 330 kilometres from Helsinki) and Kuopio (approximately 159 kilometres from Savonlinna and 391 kilometres from Helsinki). As previously noted (refer [188] above), Dr O'Callaghan flew from Helsinki to London on 9 March 2008 and then travelled later that day from London to Edinburgh by air.
- [195] In summary, approximately 10 days were spent in and around Finland for the three-day Conference. The travel to Estonia, Latvia, Savonlinna, and Kuopio was not referred to in the original travel proposal. Dr O'Callaghan was questioned in relation to this travel during the 1 May 2012 private examination conducted by the Commission, and his evidence is detailed below.

Outside of the days of the [C]onference, from 3 March 2008 to 5 March 2008, you spent some time over the first weekend before the [C]onference in ... Estonia and Latvia?---That's true.

Was there any business related to that portion - - -?---Yes, there was.

Can you just tell us about that?---Okay. Part of the discussion I had with some people in Latvia was about the expansion of the [I]nternational [P]olice [A]cademy. The Latvian [P]olice were particularly interested in doing business with us and we were trying to expand our international footprint as well, and the [P]olice [A]cademy was developing its - what it's called is Isles [P]rogram. One of the people that we were dealing with in Latvia was also sort of dealing with Curtin University in terms of being able to promote training business in that part of the world. I have as a result of that meeting a letter from the [M]inistry of the [I]nterior in Latvia, signed by I suppose the equivalent of their [C]ommissioner of [P]olice or [D]irector of the [M]inistry of the [I]nterior.

And likewise in Estonia?---In Estonia, yep. We met - in Estonia I met with some people from - who were actually attending this [C]onference. Just to go back in history a bit, I've been involved since 2002 with a group of people called Eurocrim, both in my role as a [P]olice [O]fficer and as an [A]djunct [P]rofessor of Edith Cowan University; so I had previously been to Helsinki for the 2003 Eurocrim, if I remember rightly, and we had developed a series of, I suppose, people there that we were doing business with and just, I suppose, getting advice from.

When were those aspects of the travel arranged in terms of arranging those meetings?---I have no idea now. We're talking about something that occurred four years ago.

Following the [C]onference you went to Savonilla [sic] in Helsinki - in Finland? Savonlinna. Is that correct? And also to a place Kuopio (sic)?---Who?

Kuopio, K-u-o-p-l-o, in Northern Finland. Further north than Helsinki?---I don't have those details now. As I said, it's four years ago. But we met with a range of people over that particular week and I can actually give you a list of the sorts of things that we were - we were discussing if you like.

Do you have that list of who you met with - - -?---No, I don't.

Okay?---Part of this - just to give you a bit of background, part of this visit came out of the Prudence Ford [R]eview of [C]hild [P]rotection in Western Australia. That was a 2007 [R]eview and there were a range of things that needed to be done in terms of, I guess, improving our response to child protection and this also was on the back of Anticus as well. So I met with quite a few people that week.

...

Just to clarify one matter in some more detail, to take you back to the trip in late February, early March 2008 and the period of time in Finland, I asked you about the travel to Estonia and Latvia prior to the [C]onference and the travel to the other parts of Finland after the [C]onference. Do you have any records as to who you met on those occasions and what the outcome of those meetings were?---Well, the outcome - I don't have records of who I met on those occasions now four years after the event; you know, a lot of time has passed since then, but I can tell you that one of the things that we did - and if you care to have a look at the 2009 [P]olice [A]nnual [R]eport there are some things there on how we changed some of the parts of the child abuse squad, so that was - quite a bit was done in regard to that. Also how we looked at Anticus in regards to how it applies to child sex offence interviewing and also in terms of responding to parts of the Ford Review ... [of] [C]hild [P]rotection in Western Australia which was published in 07. I think these questions about "can you specifically identify something that you do" is quite difficult because I do a lot of things. For argument sake I advocate on things like youth crime and alcohol abuse in the community and child sex abuse and a whole range of issues. All of these things in conglomeration make a difference.

I was simply asking whether you have - because you mentioned earlier that you had some correspondence arising out of - - -?---Yes, I have. I've got correspondence.

- - - one of those meetings and my question was whether you have that and other documentation, such as diaries as to those meetings?---No, I

*don't have - I have the correspondence but I don't have any diaries as to the meetings that were held in 2008.*⁷⁴

[196] The correspondence (letter) referred to by Dr O'Callaghan in evidence as detailed above, during a private examination on 1 May 2012, is an untranslated letter of 22 October 2008, in Latvian, from the Latvian State Police. Dr O'Callaghan later advised the Commission (in his Submission provided to the Commission by Mr Davies, QC, on 6 July 2012) that a translated version of the letter had "always been available", but the "Commission did not ask for it".

[197] Dr O'Callaghan in his Statement (refer [32] and [46] above) stated the following in relation to travel to Finland.

... [m]ore than four years has elapsed since the visit and longer since the approvals ... and it is somewhat unfair for me to be asked to recall the names of people I spoke to in Finland given there was no requirement to record these details at the time.

Post the Finland visit I certainly had a discussion with the Minister about the possibility of doing business with Latvia and aspects of the child protection regime in place in Europe but, looking back now, who knows in what context this was put ... a significant proportion of the costs of site visits outside Helsinki were met by myself. For example, the greater part of the cost (accommodation) of visiting Latvia, Savonlinna and Kuopio were met personally. The reason I did this (again as previously offered in evidence) was the fact that a hotel had already been booked in Helsinki for at least some of these date [sic] when the opportunity to conduct a visit outside the capital arose.

*It should be noted that on research based visits one does not always leave with evidence of meetings. Conversations, discussions and debates are a key part of any conference bilateral and have significant value for advancing the purpose of the visit. At that time, there was no "pro forma" for retrospective recording of variations to a visit.*⁷⁵

In relation to accommodation, the hotel room in Helsinki was paid for the entire period (using the WAPOL Corporate Credit Card issued to Dr O'Callaghan) from Dr O'Callaghan's arrival on 28 February 2008 until his departure on 9 March 2008, even when unoccupied, whilst the cost of accommodation in Savonlinna and Kuopio, a total of two nights, was, as stated, eventually reimbursed by Dr O'Callaghan (refer [189] above).

[198] Dr O'Callaghan, in his Submission (provided to the Commission by Mr Davies, QC, on 6 July 2012, as aforementioned), stated that the

⁷⁴ Transcript of Proceedings, Private Examination of Dr Karl Joseph O'Callaghan, APM, Commissioner of Police, on 1 May 2012, pp.44-46 and 56.

⁷⁵ Statement of the Commissioner of Police Dr O'Callaghan", received by the Commission on 21 May 2012, pp.7-8 [CCC 85228].

Minister was consulted and knew about the fact that the visit would extend beyond the Conference, although no reference had been made to that in his evidence to the Commission during the private examination on 1 May 2012.

[199] The Commission accepts the submission by Senior Counsel Assisting the Commission that it is not possible to reach any conclusions as to the necessity or business purpose of the travel to Estonia, Latvia, Savonlinna and Kuopio during the travel in February and March 2008. Other than the letter from the Latvian State Police there is no record available as to the nature and purpose of any meetings conducted during that period. This provides an illustration as to why a requirement in the Guidelines for either an itinerary or a travel report by Government officers would significantly improve the capacity for adequate oversight of the need for, or appropriateness of, overseas travel, and subsequent review of benefits to Western Australia.

[200] In that regard, there can be no objection *per se* to a public officer making variations to travel to accommodate legitimate business activities, as long as proper and adequate documentation is kept. This was certainly the view of the Hon. John Charles Kobelke, MLA, who approved Dr O'Callaghan's travel to Finland in 2008 (as the responsible Minister), which was expressed during an interview with Commission investigators on 9 May 2012.

INVESTIGATOR No. 1: *Can I just ask a question that's related to that, Mr Kobelke? If, um, a person, such as the Commissioner of Police, was going to be visiting other countries on official business, pursuant to the travel proposal that he'd given to you for approval, would you expect those other countries to be listed in the travel proposal; for example, given, um, his evidence that there was official business conducted in Estonia and Latvia, would you expect Estonia and Latvia to appear on that travel proposal?*

MINISTER: *Umm, yes, but, as I said, I would certainly accept that there might be occasions where there's a variation --*

INVESTIGATOR No. 1: *Okay.*

MINISTER: *-- and Europe being so close, if you met people at a conference and you could in one or two days, meet with other people based on that contact. Then I, personally, wouldn't have a problem with that, but I'd want it to be documented and justified.*

INVESTIGATOR No. 1: *Prior to the travel or following?*

MINISTER: *No, it could be after, yep.*

INVESTIGATOR No. 1: *After travel.*

MINISTER: *Well, the more that's documented before, the better, but I'm saying I'm open to the fact that a -- in an area of work which is so wide ranging and so many contacts can be valuable that if there was a variation which took place after I'd approved it, that would not, for me, be, of itself, a stopper; but the issue would be that the variation needs to be justified and there needs to be some documentation as to why it's justified.⁷⁶*

[201] In the present case, there was no documentation as to why the travel before and after the “Conference on Victimology and Victim Support (Victims and Violence): Our Responsibility” in Finland was justified. Whilst that is unsatisfactory from the perspective of good administration, and does not enable a transparent examination of the reasons for and purposes of the travel, it does not, in the opinion of the Commission, provide evidence of misconduct.

⁷⁶ Record of Interview of the Hon. John Charles Kobelke, MLA, on 9 May 2012, p.37.

CHAPTER FOUR

RECOMMENDATIONS AND CONCLUSION

4.1 Recommendations

4.1.1 Treasurer's Instruction 321 and Corporate Credit Card Guidelines⁷⁷

- [202] As stated in [57] above, Treasurer's Instruction 321 states that the use of a Corporate Credit Card "shall be for official purposes only, unless the accountable authority approves the charging of expenditure for personal purposes in extraordinary and unforeseen circumstances" (emphasis added). Guideline No. 1, to Treasurer's Instruction 321, permits "the accountable authority ... [to] approve the charging of expenditure for personal purposes on an individual basis or through the issue of agency guidelines, explaining what constitutes extraordinary and unforeseen circumstances".
- [203] The Corporate Credit Card Guidelines (refer [58] above), as updated on 28 November 2011, are internally inconsistent in relation to the use of a Corporate Credit Card for personal expenditure. On page 6 ("Restrictions on the Use of the Purchasing Card") of the Corporate Credit Card Guidelines it is stated that a Corporate Credit Card "**must not** be used for personal, non-work related expenditure unless expressly approved by the accountable authority ..." and on page 14 ("Cardholders Responsibilities") it is stated that a Corporate Credit Card "... must not be used for personal expenditure ...", without reference to the exception whereby the accountable authority is able to approve personal expenditure. That exception, while included in the updated Corporate Credit Card Guidelines of 28 November 2011, was not included in the 1 October 2008 version of the Corporate Credit Card Guidelines.
- [204] However, the Corporate Credit Card Guidelines of 28 November 2011 make no reference to the requirement stipulated in Treasurer's Instruction 321 (refer [202] above) that use of a Corporate Credit Card for personal expenditure should be in extraordinary and unforeseen circumstances.

4.1.1.1 Recommendation

- [205] The Commission makes the following recommendation in relation to a review of the *Western Australian Government Purchasing Card (Corporate Credit Card) Guidelines*.

⁷⁷ *Western Australian Government Purchasing Card (Corporate Credit Card) Guidelines*, 28 November 2008.

[206]

Recommendation 1

It is recommended that the Director General, Department of Finance, review the *Western Australian Government Purchasing Card (Corporate Credit Card) Guidelines* to ensure internal consistency, and compliance with Treasurer's Instruction 321 (including any amendments to Treasurer's Instruction 321 that may result from Recommendation 2 below).

- [207] Further, in relation to the requirement stipulated in Treasurer's Instruction 321 that use of a Corporate Credit Card for personal expenditure should be in extraordinary and unforeseen circumstances, the practice whereby meal expenses incurred on a WAPOL Corporate Credit Card include meal expenses incurred by the partner of a public officer on official business requires some comment. The cost incurred by the public officer is, of course, official expenditure, whilst the cost attributable to his/her partner is personal expenditure.
- [208] Although it may not be practical to split an account for meals consumed in a restaurant or other venue, in the opinion of the Commission, the practice does not qualify as a circumstance that is "extraordinary and unforeseen", and on that basis is not permitted by Treasurer's Instruction 321 (even though subsequent reimbursement to the authority occurs). Further, it is the opinion of the Commission, that it is highly likely that this practice is not confined to WAPOL.

4.1.1.2 Recommendation

- [209] The Commission makes the following recommendation in relation to a review of Treasurer's Instruction 321.
- [210]

Recommendation 2

It is recommended that the Under Treasurer, Department of Treasury, review Treasurer's Instruction 321 to determine whether the intention of it is to permit or prohibit the incurring of personal expenditure in the circumstances, or circumstances similar to those, outlined above at [207]–[208], and, if it is the former, make recommendations for necessary amendments to the Treasurer.

4.1.2 WAPOL Financial Manual and Commissioner of Police

- [211] In accordance with Treasurer's Instruction 701 (refer [60]–[63] above), WAPOL has published the WAPOL Financial Manual.
- [212] The Commission considers section 8.3 ("Purchasing Card (Corporate Credit Card)") of the WAPOL Financial Manual to be compliant with Treasurer's Instruction 321 and the Corporate Credit Card Guidelines.

The Commission notes that provision is not made in the WAPOL Financial Manual for the incurring of personal expenditure on a Corporate Credit Card in extraordinary and unforeseen circumstances. On the contrary, the WAPOL Financial Manual prohibits the incurring of “non-departmental expenditure” on Corporate Credit Cards.

- [213] The Commission considers the policies and procedures detailed in section 8.3 of the WAPOL Financial Manual to be adequate, thereby providing for an appropriate level of accountability and control in respect of expenditure incurred through the use of a WAPOL Corporate Credit Card. However, in the opinion of the Commission, compliance by WAPOL with those policies and procedures is inadequate, at least insofar as the Office of the Commissioner is concerned.
- [214] The Commission notes that the WAPOL Financial Manual provides that it is the cardholder’s responsibility to ensure that the acquittal process is completed within 25 days after the end of the statement period. It is apparent from the Commission investigation that the acquittal process for the WAPOL Corporate Credit Card issued to Dr O’Callaghan (a process that involves staff in the Office of the Commissioner, and not carried out individually by Dr O’Callaghan) was rarely completed within that time, and it was often not completed for a number of months after the end of the statement period. This has resulted in significant delays in the reimbursement to WAPOL of personal expenses incurred on that Corporate Credit Card. The Commission accepts Dr O’Callaghan’s evidence that he was not “aware of the 25-day rule” prior to the Commission investigation (refer [107]–[108] above).
- [215] The Commission notes that the WAPOL Financial Manual requires the cardholder to ensure that a tax invoice is obtained. As noted above (refer [87]), Commission investigators undertook an analysis of Flexi Purchase Account Statements for the WAPOL Corporate Credit Card issued to Dr O’Callaghan (over a 37-month period). The analysis showed that for approximately 29% of transactions receipts were unavailable. This has resulted in the Commission being unable, in some instances, to identify personal expenditure and to accurately apportion official and personal expenditure.

4.1.2.1 Recommendation

- [216] The Commission makes the following recommendation in relation to the requirements of section 8.3 of the *Western Australia Police Financial and Asset Management Manual*.
- [217]

Recommendation 3

It is recommended that WAPOL implement procedures to ensure that cardholders comply with the requirements of section 8.3 of the *Western Australia Police Financial and Asset Management Manual*, and give consideration to including in those procedures sanctions for non-compliance.

[218] As noted above (refer [207]–[208]), WAPOL Corporate Credit Cards are used to incur mixed official and personal expenditure in relation to meal expenses, and that the personal portion of the expenditure is subsequently reimbursed to WAPOL (the authority). Nevertheless, the WAPOL Financial Manual is silent on the timing and form of the reimbursement, seemingly because such reimbursement was not contemplated given the prohibition on non-departmental expenditure expressed therein (which is in accord with the requirements of Treasurer’s Instruction 321).

[219] It is noted that Dr O’Callaghan commissioned an independent review of the “WAPOL Corporate Credit Card Process Focussing on Non-Agency Expenditure” (WAPOL Corporate Credit Card Review) in May 2012. It is further noted that the WAPOL Corporate Credit Card Review acknowledged that, under the current methods used for reimbursement, a reimbursement cannot be linked to the Corporate Credit Card to which the reimbursement relates, and recommended that reimbursements be made direct to the Corporate Credit Card Account (within seven days of the charge being debited to the Corporate Credit Card) so that those reimbursements appear on the applicable Flexi Purchase Account Statement. However, as the practice of incurring mixed official and personal expenditure in relation to meal expenses on a WAPOL Corporate Credit Card, in the opinion of the Commission, does not qualify as a circumstance that is “extraordinary and unforeseen” (refer [208] above), and on that basis is not permitted by Treasurer’s Instruction 321, the implementation of the aforementioned WAPOL Corporate Credit Card Review recommendation should await the outcome of the reviews outlined in Recommendations 1 and 2 of this report.

[220] It became apparent during the Commission investigation that Flexi Purchase Account Statements for the Corporate Credit Card issued to Dr O’Callaghan had not been “approved” by any other person (other than Dr O’Callaghan) since August 2010 up until some months prior to 1 May 2012 (refer [94]–[95] above).

[221] The WAPOL Corporate Credit Card Review recommended that Dr O’Callaghan “request either the Executive Director or Director of Finance to act as the approving officer”. The Commission supports that recommendation, although, in the opinion of the Commission, the function of approving the acquittal of a Flexi Purchase Account Statement for a Corporate Credit Card issued to a Chief Executive Officer ought to be specified as a function of a particular position within the authority, rather than a particular person being requested to perform the function.

[222] More importantly, however, is the manner in which the approval function is performed. As suggested by the recent WAPOL Corporate Credit Card Review, “[t]he chosen officer should exercise independence and act in the role of auditor, ensuring the charges are in accordance with the *Financial Management Act* [2006] and the Police Financial

Management Handbook [sic]". In the opinion of the Commission, the approver should be empowered to undertake the approval function as would be expected if the approver were in a position of actual authority. The approver should ensure that expenditure was incurred for official business and it is supported by appropriate documentation, and query the nature of personal expenditure and required reimbursements where necessary.

4.1.2.2 Recommendation

- [223] The Commission makes the following recommendation in relation to the approval of Flexi Purchase Account Statements for the WAPOL Corporate Credit Card issued to the Commissioner of Police.
- [224]

Recommendation 4

It is recommended that a position be specified within WAPOL that is responsible for approving Flexi Purchase Account Statements for the Corporate Credit Card issued to the Commissioner of Police, and empower that position with the authority required to ensure a robust acquittal process.

4.1.3 Approval for Overseas Travel

- [225] As mentioned previously (refer [148]–[160]) Premier's Circular No. 2009/04 entitled *Guidelines for Official Air Travel by Government Officers* ("the Guidelines"), as indicated by the title, sets out the requirements for official air travel by Government officers. In accord with the Circular, all overseas air travel by Government officers is to be approved by the responsible Minister. That approval application is required to be in the format of the document which is "Attachment 1" to the Guidelines (refer [152] above), which includes provisions for the dates of travel, the destinations and cost, but the format does not facilitate a matching of dates of travel with destinations.
- [226] The WAPOL Travel Proposal Form, while having a number of differences, is generally in accordance with the format of the document which is "Attachment 1" to the Guidelines (refer [152] above).
- [227] In accordance with the Guidelines, "Attachment 1" to the Guidelines requires the applicant to address "Statement of Purpose and Benefits to Western Australia of Proposed Visit". In contrast what could be considered to be the corresponding portion of the WAPOL Travel Proposal Form requires the applicant to address "Title/Date and Reason(s) Why Meeting/Conference is Being Held and Representation by Western Australia Police is Required".
- [228] Significantly, neither the Guidelines nor "Attachment 1" to the Guidelines, nor the WAPOL Travel Proposal Form, require the inclusion of an itinerary. Further, the Guidelines do not require the submission of

an overseas travel report outlining the outcomes achieved as a consequence of the travel, other than that required by Point 10.1 of the Guidelines whereby “Government officers accompanying Ministers overseas should note that Ministers are required to submit an overseas travel report to the Director General of the Department of the Premier and Cabinet ... within two months of the completion of each trip”. In the opinion of the Commission, as a matter of systems and policies, the absence of the requirement for either an itinerary or a travel report by Government officers greatly reduces the capacity for adequate oversight of the need for, or appropriateness of, overseas travel, and subsequent review of benefits to Western Australia.

[229] Further, it is the opinion of the Commission that the format of the document which is “Attachment 1” to the Guidelines may result in insufficient information being provided to the responsible Minister to allow an assessment to be made, not of the underlying importance and necessity for the travel itself, but of the appropriateness and necessity of the actual travel arrangements. This is particularly so in cases where private travel is mixed with official travel. The Commission has seen that, in the case of Dr O’Callaghan, the travel dates were provided, with no breakdown of the private and official travel components.

4.1.3.1 Recommendation

[230] The Commission makes the following recommendation in relation to a review of Premier’s Circular 2009/04 entitled *Guidelines for Official Air Travel by Government Officers*.

[231]

Recommendation 5

It is recommended that the Director General, Department of the Premier and Cabinet, review Premier’s Circular 2009/04 entitled *Guidelines for Official Air Travel by Government Officers* (“the Guidelines”) to ascertain whether the format of the document which is “Attachment 1” to the Guidelines enables the provision of sufficient, and sufficiently clear, information to Ministers, and to consider a requirement for the provision of a detailed itinerary for proposed overseas travel by Government officers and the submission of an overseas travel report outlining the outcomes achieved as a consequence of the travel.

4.2 Conclusion

[232] The investigation by the Commission was concerned with alleged public sector misconduct by Dr O’Callaghan or any other public officer employed by WAPOL in relation to the use of Corporate Credit Cards or any other entitlement. The general scope and purpose of the Commission investigation is detailed at [17] above. Two broad issues arise from that scope and purpose, which are as follows:

- (1) the use of the WAPOL Corporate Credit Card for personal, non-work related, expenditure; and
- (2) the extent and appropriateness of certain overseas (and intrastate) travel identified and approved as official travel, during which official expenditure is incurred.

[233] Although in the course of the Commission investigation a number of anomalous practices in relation to the use of WAPOL Corporate Credit Cards were identified, these practices are not in themselves misconduct. The practices (that is, the routine incurring and reimbursement of personal expenses, delays in completing the reconciliation/approval process (including lack of supporting documentation) and the lack of a formal approval procedure in relation to the acquittal of Flexi Purchase Account Statements for the Corporate Credit Card issued to Dr O'Callaghan) are all matters, in the opinion of the Commission, which are cause for concern. They point to a lack of sufficient care and attention by cardholders, and a range of poor and unsatisfactory administrative practices. However, in relation to those practices, evidence available to the Commission does not support a finding, for reasons set out in this report, of misconduct as defined by sections 3 and 4 of the CCC Act by Dr O'Callaghan or any other public officer employed by WAPOL.

[234] In addition to anomalous practices, a number of anomalous transactions, which involved the use of the WAPOL Corporate Credit Card, were identified during the course of the Commission investigation. These were in relation to official travel to Broome on 4 and 5 January 2011, transactions where the process for reimbursement of personal expenses produced errors or was incomplete, and official travel to Broome in October 2011. Although, in the opinion of the Commission, the evidence in relation to the expense incurred (that is, \$3,995) as a consequence of official travel to Broome in October 2011 is unsatisfactory, available evidence does not support a finding, for reasons set out in this report, of misconduct as defined by sections 3 and 4 of the CCC Act in relation to the aforementioned anomalous transactions by Dr O'Callaghan or any other public officer employed by WAPOL.

[235] In relation to the extent and appropriateness of certain overseas official travel undertaken by Dr O'Callaghan, during which official expenditure was incurred, there are two broad issues, that is, the distinction between private and official components of the travel, and travel to locations not identified in the original travel proposal. In relation to those issues, similarly, the available evidence does not support a finding, for reasons set out in this report, of misconduct as defined by sections 3 and 4 of the CCC Act in relation to Dr O'Callaghan or any other officer employed by WAPOL.

[236] Notwithstanding that in the opinion of the Commission the evidence does not support findings of misconduct, as defined by sections 3 and 4

of the CCC Act, in relation to the anomalous practices and transactions involving the use of WAPOL Corporate Credit Cards as set out above, from documentation provided to the Commission by Dr O'Callaghan on 1 June 2012 it appears that significant compliance issues have been identified, over the years, by various WAPOL Management Audit Unit (MAU) Corporate Credit Card/Flexi Purchase Audits since 2000. By way of example, extracts from the various internal audits undertaken by MAU are provided below.

Audit Date: May 2001

Sample testing revealed that a large proportion of Incurring Officers and [c]ardholders are not complying with aspects of the Service's [WAPOL's] Corporate Credit Card policies and procedures ... controls over the following areas need to be improved to provide a satisfactory level of control: [p]olicies and procedures regarding travelling allowance expenditure; [c]ardholder and Incurring Officer responsibilities; [p]rovision of adequate support documentation; and [p]urchasing of alcohol.

Audit Date: July 2003

... [s]ome ... outstanding Statements date back to August 2001 ... risks associated with outstanding ... [S]tatements include: [i]nappropriate classification of expenditure; [e]xpenditure not being appropriately substantiated; [u]ndetected inappropriate use of the [WAPOL Corporate Credit] [C]ard; and [p]otential for ... [it] to be used for unintended purposes ... the audit noted that some of the outstanding [S]tatements belong to officers who have ... resigned ...

Audit Date: July 2004

The audit found that some key system controls are not adequate and that the administration over the use of [WAPOL] Corporate Credit Cards has not significantly improved since the previous audit ... [c]ontrols ... were found to be unsatisfactory [in areas such as]: [i]ncurring and certifying of expenditure; [a]ppropriateness of items purchased ...; [t]imeliness of postings to the correct cost centre and clearing accounts, [r]econciliation of the clearing accounts; and [a]dequacy of support documentation.

Audit Date: April 2005

Sample testing of hospitality and catering accounts revealed numerous instances where payment vouchers were processed without the ... [proper] requirements and substantiation. Examples [include]: Corporate Credit Card ... payment for restaurant accounts, no supporting documentation or list of attendees provided ... (\$1,016.73 ...); Payment to ... Hotel, Laverton, no explanation of expenditure provided (... \$511.82 ...)

...

Audit Date: July 2008

... [i]nsufficient checking of transactions prior to processing; unauthorised interstate air travel arrangement for non-WAPOL personnel; and [l]ack of enforcement action for [c]ardholder non-compliance.

Audit Date: September 2010

... [i]nadequate policy to safeguard against self-approval of expenditure where a personal benefit was derived ... insufficient details being recorded ... to substantiate expenditure ... there are opportunities to improve ... particularly in relation to hospitality and catering, standardised record keeping, coding of expenditure ...

- [237] In the opinion of the Commission, the Commissioner of Police, who as Chief Executive Officer is the accountable authority (see section 54 of the FM Act), has given inadequate attention to the deficiencies identified by various MAU Corporate Credit Card/Flexi Purchase Audits, many of which were also identified by the Commission during the course of its investigation.
- [238] Recommendations 1-5 of this report, as outlined above, are intended to address the shortcomings in practices and procedures identified by the Commission investigation in relation to the use of WAPOL Corporate Credit Cards and overseas (and intrastate) official travel. The Commission makes no findings in relation to any other entitlements.