

REPORT OF THE INTEGRITY COMMISSION

No. 1 of 2020

A summary report of an own-motion investigation into misconduct by public officers in the Tasmanian Health Service, North West Region arising from intelligence received by the Commission and risk factors evident in past investigations



The objectives of the Integrity Commission are to –

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania;
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

© Integrity Commission 2020

This report and further information about the Commission can be found on the website

www.integrity.tas.gov.au

GPO Box 822,
Hobart
Tasmania 7001

Phone: 1300 720 289
Email: contact@integrity.tas.gov.au

ISSN: 2204-5910 (Online)



President
Legislative Council
Parliament House
Hobart TAS 7000

Speaker
House of Assembly
Parliament House
Hobart TAS 7000

Dear Mr President
Dear Madam Speaker

Pursuant to section 11(3) of the *Integrity Commission Act 2009* (the Act), the Integrity Commission presents *Report 1 of 2020* to Parliament, a summary report of an own-motion investigation into misconduct by public officers in the Tasmanian Health Service, North West Region.

The Board of the Integrity Commission has determined to refer the matter to the Secretary of the Department of Health, for action, in accordance with section 58(2)(b)(i) of the Act.

Yours sincerely

A handwritten signature in black ink, appearing to read "Aziz Melick".

Aziz Gregory Melick, AO RFD SC
Chief Commissioner
On behalf of the Board

A handwritten signature in black ink, appearing to read "Michael Easton".

Michael Easton
Chief Executive Officer

25 August 2020



SUMMARY REPORT OF THE INTEGRITY COMMISSION

An own motion investigation into misconduct by public officers in the Tasmanian Health Service, North West Region, arising from intelligence received by the Commission and risk factors evident in past investigations

1 April 2020

Table of contents

Foreword	iii
Part A – Background	1
1. Introduction	1
2. Administration	4
Part B – Conflicts of interest	7
3. Introduction	7
4. Mr Foster’s influence in the July 2017 appointment	7
5. Mr Foster’s failure to complete and register a Conflict of Interest Declaration and Management Plan for an employee	9
6. An employee’s purchase of a heat pump from a THS provider	9
7. Mr Foster’s relationship with a security firm contracted to THS	10
8. Mr Foster’s relationship with another THS service provider	11
Part C – Acting with honesty and integrity	12
9. Introduction	12
10. Mr Foster sought to have an employee contact a contractor to alter a request date for water testing	12
11. Mr Foster misrepresented that he prepared a Conflict of Interest Declaration and Management Plan for the working relationship arising from the July 2017 appointment	13
Part D – Treatment of employees	15
12. Introduction	15
13. Mr Foster failed to treat employees with respect by behaving in a manner that amounted to victimisation, intimidation and improper punitive action	15
Part E – Improper use of resources	17
14. Introduction	17
15. Mr Foster’s use of a government plated work vehicle	17
16. Mr Foster’s removal of THS equipment and property for personal use	19
17. Mr Foster’s retention of multiple offices	20

Part F – Managing with due care and diligence	21
18. Introduction	21
19. Mr Foster’s attendance at the work place, and failure to submit leave forms	21
20. Mr Foster’s attempt to claim an on-call allowance	23
21. Mr Foster’s failure to properly manage a complaint by a previous employee	24
22. Mr Foster’s improper involvement in a work place investigation involving some employees	25
23. Mr Foster knowingly signed outside his financial delegation	25
Part G – Underperformance as Director, Corporate Services	27
24. Introduction	27
25. Mr Foster’s failure to complete PDAs for his direct reports or to implement aspects of his draft PDA	27
26. Mr Foster’s failure to review and update Safety Reporting Learning Systems and policies	28
27. Mr Foster’s failure to complete the NWRH helipad manual	29
28. Mr Foster’s failure to complete the MCH helipad manual	30
29. MCH and NWRH car parking tender	30
Part H – Management of Mr Foster	32
30. Historical management of Mr Foster	32

Foreword

This report is a summary of an own-motion investigation commenced by the Integrity Commission (the Commission) on 24 April 2019. Based on similar past complaints and other information obtained by the Commission, the Board of the Integrity Commission (the Board) determined there were ongoing misconduct risk issues relating to middle and supervisory management within a particular area, namely Facilities and Engineering, THS-NW, including the Director, Corporate Services. The Board thus resolved that the Commission investigate:

- possible misconduct by public officers in the Facilities and Engineering section of the North West region of the THS;
- the policies, practices and procedures of THS in relation to the possible misconduct; and
- any related matters.

The Commission subsequently investigated the complaint to determine the factual basis for any misconduct, as defined in the *Integrity Commission Act 2009* (the IC Act). The investigation involved the use of coercive powers, including four notices to produce records, 21 notices to attend and give evidence, and four notices to produce information. Information was also provided without notice by 33 additional witnesses.

A report of the investigation was prepared by a Commission investigator and submitted to the Commission's then Chief Executive Officer in accordance with section 55(1) of the *IC Act* on 10 December 2019. The investigator made findings of fact on the basis of the evidence obtained during the investigation.

On 3 February 2020, the Board considered the investigator's report and the accompanying report of the then Chief Executive Officer submitted in accordance with section 57(1) of the *IC Act*, and determined to refer the complaint and the investigation report to the Secretary of the Department of Health, for action. Subsequently, the Board approved this summary report, as being suitable for tabling in both Houses of Parliament. Procedural fairness was provided to all relevant parties as part of the Board's decision-making process. The report was unable to be tabled sooner than present given the impacts of COVID-19.

This summary report does not reproduce all the detailed evidence outlined in the investigator's report, upon which the Board relied in making its determinations. Apart from the main subject officer of the investigation, the report has been anonymised where the Board considered that it was in the public interest to do so. The principal factors which the Board had regard to in determining the format of this report are:

- meeting the objectives of the *IC Act*, in particular to enhance public confidence that misconduct by public officers is being appropriately investigated, and to support the educative, preventative and advisory roles of the Commission;
- the issues represent a continuation of the problems identified by the Commission in previous investigations, some of which are already in the public domain;
- it is not possible to anonymise fully the report, given the location on the north west coast, and the nature of the issues involved; and
- the matter involves a relatively senior public officer, and historically has impacted on a considerable number of past and present employees.

Part A – Background

1. Introduction

1.1. This summary report

- [1] This summary report is tabled in Parliament by the Commission, and provides information about an investigation conducted by the Commission. The summary is based on a 262-page investigator's report, which outlines the detailed evidence and witness statements upon which the Board's factual findings are based.
- [2] The investigator's report was considered by the Board on 5 February 2020, with a final determination made by the Board on 1 April 2020. In accordance with section 58(2)(b)(i) of the *IC Act*, the Board determined to refer the report to the Secretary of the Department of Health for action. The Board made no specific recommendations as to any appropriate action it considered should be taken in relation to the matter.
- [3] The Board determined that this summary report be prepared by the Commission to ensure that the Tasmanian community can have confidence that misconduct is being appropriately investigated and dealt with, whilst protecting the identities of the witnesses in the investigation.
- [4] The matter is an own-motion investigation undertaken pursuant to section 45 of the *IC Act*. It was authorised by the Board in March 2019 and an investigator was appointed on 24 April 2019. The investigation followed receipt of several similar complaints and intelligence gained by the Commission about the Tasmanian Health Service North-West Region (THS-NW) from investigations undertaken by the THS under Employment Direction No 5 (ED5) or by the Commission itself.

1.2. Previous investigations

- [5] The Commission was aware of several previous matters originating in or linked to the THS-NW. These included the following investigations.

2014 THS ED5 investigation

- [6] This matter involved one of the subject officers in the current investigation (referenced as 'Another employee' in [17], below) and one other public officer, and related to a conflict of interest in using public resources (a government work vehicle and equipment) to undertake maintenance work on private premises. The THS undertook an ED5 investigation but it appears that the investigation was not completed properly and an audit of THS matters completed by the Commission failed to locate the relevant file.

2014 Integrity Commission investigation (Investigation Delta)

- [7] This matter related to allegations of misconduct of improper procurement and recruitment by senior public officers, Jane Holden and Gavin Austin (then CEO Tasmanian Health Organisation – South and CEO Tasmanian Health Organisation – North-West, respectively) from 2009 to 2013.¹ The investigation found it was open to conclude there had been misconduct by both officers in relation to the procurement of services from, and the employment of, direct family members, friends and previous work colleagues with whom they had shared a professional (and, in the case of Mr Austin, financial) association in New Zealand.
- [8] The investigation found the culture of the organisation was significantly influenced by its senior managers and leaders and that employees followed their behavioural standard. There was significant financial cost associated with the non-compliance with applicable policies, guidelines and legislative requirements.
- [9] Investigation Delta recommended several measures, including that:
- a mandated process be established to ensure individuals involved in the recruitment of staff declare any association with applicants and where there is an actual, possible or perceived conflict of interest an appropriate management strategy be documented and implemented;
 - an audit be undertaken of all recruitment at THO-NW since its inception and consideration to a sample audit over a longer period;
 - agencies be required to ensure that staff participation in recruitment actions have sufficient knowledge of relevant legislation, policies and guidelines and this is documented; and
 - consideration be given to reviewing the governance arrangements for THOs in order to ensure they are sufficiently robust and capable of ensuring that the CEOs are managing the THO in accordance with all requirements.
- [10] Whilst some of these matters were addressed to some degree in the period following the Delta investigation, the current own-motion investigation has demonstrated that the recommendations did not have the desired effect at middle management level. The lessons that should have been learned from the previous investigation have not been heeded.

2017 THS ED5 investigation

- [11] This investigation considered allegations that Mr Simon Foster, Director, Corporate Services, received improper financial benefits relating to allowances, overseas travel, telephone expenses and a failure to submit leave forms over an extended period. The THS has not provided the Commission with the outcome of that investigation.
- [12] The investigation found that the allowances, overseas travel, telephone expenses (total in excess of \$130,000) and lack of leave forms (relating to 62 days absence) were excessive and not in accordance with policy. All of the above had however been approved or permitted by the then CEOs Holden and Austin, and no finding of misconduct was made. Mr Foster was required to repay a small amount of incorrectly claimed expenses, which he did immediately, and was formally counselled in relation to exercising due care and diligence with submitting future claims.
- [13] It is of note that the investigation considered a medical report relating to Mr Foster's stress-related behaviour and ongoing counselling.

¹ The Tasmanian Health Organisations were superseded by the THS.

2018 THS ED5 investigation

- [14] This matter was referred by the Commission to the THS for investigation. The allegations related to a conflict of interest in two appointments (one of which – the July 2017 appointment – was also considered in the current investigation), and to a suggestion that Mr Foster had not abided by a ruling by the Tasmania Industrial Commission (TIC) relating to relieving opportunities for another employee.
- [15] The investigation found no evidence relating to any conflict of interest and those allegations were unsubstantiated. The non-adherence to the TIC ruling was substantiated, but the investigation determined that Mr Foster lacked diligence and had been presumptive in his decision making, and that it was not an intentional act. Mr Foster was required to undergo a developmental session regarding the conflict of interest policy (delivered to him on 8 May 2018). He was also required to complete a conflict of interest management plan for the other issues.

1.3. Our investigation

- [16] As a result of information received by the Commission, the Board determined that an investigation be undertaken into the following issues:
- possible misconduct by public officers in the Facilities and Engineering section of the THS – North West Region;
 - the policies, practices and procedures of THS in relation to the possible misconduct; and
 - any related matters.
- [17] The previous complaints and the review of investigations flagged risk issues or concerns similar to the Investigation Delta. While that investigation focused on improper conduct at executive level, there remained risk issues relating to middle and supervisory management within a particular area, namely Facilities and Engineering, THS-NW, including Mr Foster in his capacity as Director, Corporate Services. The issues identified as possible misconduct include:
- Failure to properly manage Facilities and Engineering, by using informal practices;
 - Making dishonest or improper financial claims;
 - Using THS resources in an improper manner;
 - Applying improper tendering or contract management, or relationships with service providers;
 - Failure to properly declare and avoid or manage a conflict of interest in the recruitment and management of employees;
 - Improper and unreasonable management of employees, including victimisation, intimidation or taking improper punitive action;
 - Failing to act with honesty and integrity;
 - Being absent from work without due cause or explanation;
 - Failing to act with due care and diligence; and
 - Failing to properly respond to grievances, misconduct or performance management of staff.

THS Management

- Failing to adequately and appropriately address concerns raised by employees about the performance and behaviour of Simon Foster.

Simon Foster

- Making dishonest or improper financial claims;
- Using THS resources in an improper manner;
- Applying improper tendering or contract management, or relationships with service providers;
- Failing to properly declare and avoid or manage a conflict of interest in the recruitment and management of employees;
- Improper and unreasonable management of employees, including victimisation, intimidation or taking improper punitive action;
- Failing to act with honesty and integrity;
- Being absent from work without due cause or explanation;
- Failing to act with due care and diligence; and
- Failing to properly respond to grievances, misconduct or performance management of staff.

Another employee

- Being absent from work without due cause;
- Improper association with a service provider; and
- Failing to properly manage a conflict of interest within the workplace.

A senior manager²

- Failing to adequately and appropriately address concerns raised by employees about the performance and behaviour of Simon Foster.

[18] In doing so, the Commission considered that it was possible that:

- Simon Foster had breached the State Service Code of Conduct, and specifically sections 9(1)–(3), (6), (8)–(14) of the *State Service Act 2000* (State Service Act);
- The other employee had breached the State Service Code of Conduct, and specifically sections 9(1), (2), (6), (11)–(14) of the *State Service Act*; and
- The senior manager had breached the State Service Code of Conduct as provided in section 9(2) of the *State Service Act*.

[19] The Commission would normally refer matters that do not relate to a ‘designated public officer’ (as that term is defined in section 6 of the *IC Act*) to the relevant public authority for investigation. However, this matter provided an opportunity to analyse the overall cultural issues that apparently continue to plague this work area, notwithstanding the Commission’s previous investigation.

2. Administration

2.1. Relevant policies and procedures

[20] Mr Foster was, at the time of the issues under investigation, a public officer appointed under the *State Service Act*, and consequently the Commission has jurisdiction over any alleged misconduct arising from this period.³ He commenced sick leave when served with the Notice of investigation on 11 June 2019 and subsequently retired from the State Service on 16 July 2019; he is now no longer subject to the State Service Code of Conduct contained in section 9 of the *State Service Act*.

² The ‘senior manager’ is later referred to as ‘SM3’ (refer Part H of the report).

³ *IC Act*, s 33(2).

- [21] All other subject officers remain public officers appointed under the *State Service Act*. Consequently they are subject to the State Service Code of Conduct contained in section 9 of that Act.
- [22] Treasurer’s Instruction No 1101: Procurement Principles: goods and services (as it then applied) is relevant to this investigation.
- [23] The Tasmanian State Service, Department of Health and Human Services (as it then was) and the THS have the following policies and protocols that are relevant to this matter and include:
- DHHS Government Vehicle and Policy Guidelines - 1 November 2017 (PI5/000786)
 - THS Grievance Resolution - October 2016-2019 (PI6/000624)
 - THS Conflict of Interest 2015, 2016 - P2012/0392-005, P16/000040
 - THS Gifts, Benefits and Hospitality - 8 August 2018 - 1 December 2019 (PI6/000052)
 - Tasmanian State Service Gifts, Benefits and Hospitality Policy - November 2016
 - DHHS Respectful Workplace Behaviour Policy - May 2012 (P2012/0108-10)
 - THS Workplace Behaviour - January 2016-2018, 1 November 2018 (P16/000064, P16/000063)
 - THO Workplace and Behaviour - July 2014 (P2012/0392-003)
 - THS Workplace Behaviour and Performance - 1 July 2018-2020 (P16/000063)
 - THS Workplace Behaviour and Performance - 1 July 2016-2018 (P16/000063)
 - DHHS Financial Management Manual - November 2016
 - THS Leave Protocol - 1 July 2018 (P16/000056)
 - THS Managing Person Leave - June 2017
 - THS Performance and development Agreement - 19 September 2011 (P2011/0008-001)

2.2. Legislative framework

- [24] The THS, as with all of the employing state service agencies (and their officers), is required to comply with relevant legislative obligations and Tasmanian State Service-wide policies, including but not limited to:
- the *State Service Act*;
 - State Service Regulations 2011;
 - Treasurer’s Instructions; and
 - Employment Directions.
- [25] The State Service Code of Conduct is at section 9 of the *State Service Act*. Those parts which are of particular interest to this investigation are:
- (1) *An employee must behave honestly and with integrity in the course of State Service employment.*
 - (2) *An employee must act with care and diligence in the course of State Service employment.*
 - (3) *An employee, when acting in the course of State Service employment, must treat everyone with respect and without harassment, victimisation or discrimination.*
 - (6) *An employee must comply with any standing orders made under section 34(2) and with any lawful and reasonable direction given by a person having authority to give the direction.*
 - (7) *An employee must maintain appropriate confidentiality about dealings of, and information acquired by, the employee in the course of that employee’s State Service employment.*

- (8) *An employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment.*
- (9) *An employee must use Tasmanian Government resources in a proper manner.*
- (10) *An employee must not knowingly provide false or misleading information in connection with the employee's State Service employment.*
- (11) *An employee must not make improper use of –*
 - (a) *information gained in the course of his or her employment; or*
 - (b) *the employee's duties, status, power or authority –*
 - (c) *in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person.*
- (12) *An employee who receives a gift in the course of his or her employment or in relation to his or her employment must declare that gift as prescribed by the regulations.*
- (13) *An employee, when acting in the course of State Service employment, must behave in a way that upholds the State Service Principles.*
- (14) *An employee must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service.*

2.3. Standard of proof

[26] The standard of proof applied in this investigation to factual findings is the civil standard, i.e. 'on the balance of probabilities'. This requires only 'reasonable satisfaction', as opposed to 'satisfaction beyond reasonable doubt' (as is required in criminal matters).

[27] In considering whether the civil standard of proof has been met, an investigator will bear in mind what was said in *Briginshaw v Briginshaw*:

Reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.⁴

2.4. Abbreviations

BEIMS / PULSE	Maintenance data program used to log maintenance tasks
CIPEM	Capital Investment Program – Essential Maintenance
Col	Conflict of Interest
ED5	Employment Direction No 5
MCH	Mersey Community Hospital
NWRH	North West Regional Hospital
SRLS	Safety Reporting Learning System
THS	Tasmania Health Service THS will be used to refer to all other names this agency has been known as
THS-NW	Tasmania Health Service – North West region

⁴ (1938) 60 CLR 336, 362 (Dixon J).

Part B – Conflicts of interest

3. Introduction

- [28] In 2014 (Investigation Delta), the Commission found significant conflict of interest issues in the recruitment of employees within Facilities and Engineering, THS-NW. The recruitment was orchestrated at executive levels and related to family members, friends and previous work associates. There was no disclosure of the conflicts of interest by employees at the executive level and no real understanding of the issues.
- [29] The pre-existing relationships between employees at executive level and newly recruited employees resulted in other staff perceiving conflicts of interest. On occasions, there were warnings by other staff as to those perceptions.
- [30] As a result, the Commission recommended the establishment of a mandated process for recruitment, requiring employees involved in the selection process to declare, in writing, their knowledge of, or association with, every applicant.
- [31] Where an actual, possible or perceived conflict of interest was identified, an appropriate strategy to manage that conflict should have been implemented and documented.
- [32] In 2018, the THS conducted an ED5 investigation into an appointment, based upon allegations of nepotism. It appeared there remained an issue with conflicts of interest and recruitment.
- [33] During the course of the current Commission investigation, concerns were raised by many employees of the THS in relation to:
- the appropriateness of a July 2017 appointment, particularly alleging nepotism and cronyism; and
 - the lack of a CoI Declaration and Management Plan for the subsequent working relationship. The CoI Declaration and Management Plan took 18 months to formalise and adhere to THS policy.
- [34] Another concern raised related to improper relationships between service providers and some employees, resulting in potential and perceived conflicts of interest.

4. Mr Foster's influence in the July 2017 appointment

- [35] This aspect of the investigation focused on whether Mr Foster had a conflict of interest, perceived or otherwise, by being the Chairperson of the Selection Panel for an appointment made in July 2017. It explored the relationship between Mr Foster and the successful applicant and also sought to determine whether:
- Mr Foster properly disclosed the conflict of interest on the Selection Report;
 - there were any issues with the selection and qualifications of the successful candidate; and
 - advice from a Human Resources consultant was heeded.
- [36] The THS Conflict of Interest Policy states:

Recruitment

Conflicts of interest should be avoided through the replacement of the Selection Panel member where the conflict cannot be managed. In the event of

a conflict of interest existing and the Selection Panel member being irreplaceable, the conflict of interest must be declared and appropriate management strategies developed and implemented to effectively manage the conflict.

The Selection Panel Chairperson must ensure that the relevant Delegate is notified of conflicts of interest that they become aware of.

Selection Panel members may be a referee for an applicant for a THS vacancy but this request and the nature of the relationship between the applicant and the Selection Panel member must be declared to the remainder of the Selection Panel and documented on the Selection Report. The referee report should be documented prior to the interview process.

Selection Panel members must declare, via the Selection Report, that their selection recommendation is free of any undeclared conflict of interest or attach a Col Form with relevant management strategies.

- [37] The THS Conflict of Interest Policy came into effect on 1 January 2016 and as such was a relatively new policy at the time of the appointment.
- [38] Mr Foster undertook online training for conflict of interest management in February 2017. The appointment process in question commenced in July 2017.
- [39] Mr Foster had known the successful applicant since 1979 when both were employed with the THS and later in Corporate Services. There is also evidence of a personal relationship that developed after the appointment was made, including visits to each other's home, meeting family members, use of the successful applicant's rural property for training Mr Foster's dog, telephone calls outside of hours for non-work related activity, discussions of similar interests at work, social coffees and the gifting of old building material between them.
- [40] On 13 July 2017, Mr Foster advised in an email to a THS officer that 'I don't intend to be on the panel or have anything to do with the process'. This suggests that Mr Foster considered his relationship with the applicant at the time to be such that he should not be involved. Mr Foster should have immediately submitted a Col Declaration; this would not necessarily have prevented him from continuing with the selection process, but would have provided the opportunity for any risk to be properly assessed and managed.
- [41] Although Mr Foster had advised that he would recuse himself from the selection process, he did not. He later defended his involvement saying that his supervisor had approved his involvement. Mr Foster stated that he had disclosed his previous working relationship with the applicant to his supervisor but there is no record of this conversation, and Mr Foster did not complete a Col Declaration and the supervisor did not complete a Management Plan. There is no evidence that the supervisor – as the ultimate decision-maker in the recruitment – was aware of Mr Foster's prior comment that he would withdraw from the process.
- [42] Mr Foster stated that he was given some confusing advice about how to manage conflicts of interest, and there is no doubt that the ramifications of a perception of a conflict of interest was in its infancy within the THS. However, it appears that everyone involved had their reservations about the selection and appointment of the successful applicant, except for Mr Foster (who had the pivotal role in the recruitment process).

Finding

On the basis of the evidence available to the Commission, Mr Foster did not adhere to the THS Conflict of Interest Policy by failing to complete a Conflict of Interest Declaration and Management Plan following his recognition of a conflict in the selection process for the position.

5. Mr Foster's failure to complete and register a Conflict of Interest Declaration and Management Plan for an employee

- [43] This aspect of the investigation focused on whether, after the July 2017 appointment:
- Mr Foster fulfilled the requirements of the relevant THS Policy by ensuring that the applicant's supervisor disclosed and completed a working relationship Conflict of Interest Declaration Form for the employment of the successful applicant, and
 - Mr Foster completed the Management Plan for that declaration and whether the plan was registered in a timely manner.
- [44] The THS Conflict of Interest Policy states that a conflict of interest should be disclosed as soon as it is identified, and a working relationship Col Declaration must be submitted by the worker to whom it relates. It also requires that a Col Management Plan should be completed by the manager. In this case, the latter responsibility fell to Mr Foster.
- [45] The successful applicant was appointed to the position in September 2017.
- [46] On 26 February 2018, a THS employee brought to Mr Foster's attention that there was not a registered Col Declaration and Management Plan for the working relationship arising from the relationship. In March, she tried again.
- [47] In March 2018, another THS employee sought documentation from Mr Foster about a Col Declaration and Management Plan for the working relationship. He told her and recorded that 'a discussion' had taken place about it.
- [48] On 8 May 2018, Mr Foster's then senior manager counselled him in regards to the 2017 ED5 matter and required him to complete the required Col Declaration and Management Plan for the working relationship arising from the July 2017 appointment. She went through the policy, process of lodgment and provided him with the forms.
- [49] On 9 May 2018, another THS employee sent Mr Foster a copy of the selection Col Declaration and Management Plan. That employee tried to resolve this issue again on 10 December 2018 and 2 January 2019. Mr Foster finally responded to her on 20 March 2019 and the document was properly registered.

Findings

On the basis of the evidence available to the Commission, Mr Foster did not,

- **ensure that there was a signed Conflict of Interest Declaration completed by the supervisor for the working relationship arising from the July 2017 appointment, or**
- **formalise and register the Conflict of Interest Management Plan for the working relationship.**

Mr Foster did not act with due care and diligence by ensuring a Conflict of Interest Declaration and Management Plan was registered for the working relationship.

Mr Foster did not adhere to the provisions of the THS Conflict of Interest Policy.

6. An employee's purchase of a heat pump from a THS provider

- [50] The Commission was advised that a THS employee may have received a benefit from a contractor to THS in the form of a heat pump at a reduced price, due to the ongoing working relationship between the employee and the contractor.

- [51] A perceived conflict of interest arose in relation to this matter. During the course of the investigation, several witnesses referred to it.
- [52] The employee purchased a heat pump for his private home from the contractor, with which he does significant business through his employment at the THS. The contractor is a large multi-trading contract company. The north-west region of Tasmania has limited companies offering this service, and the Commission accepts that there is potential for an employee to complete personal business with a company with which they also have a working relationship.
- [53] In this instance, our investigation revealed that the purchase was not completed through the employee's usual contact at the company, and he paid a commercially viable price for the item. There is no evidence of any undue influence, advantage or improper conduct in this matter, and a reasonable fully informed observer would be unlikely to maintain such a perception.

Finding

On the basis of the evidence available to the Commission, the employee did not receive an advantage or benefit in the purchase of a heat pump from the contractor.

7. Mr Foster's relationship with a security firm contracted to THS

- [54] As the Director, Corporate Services, THS-NW, Mr Foster was responsible for security issues within THS-NW. During the course of the investigation there was speculation that he had an improper association with the security provider and its principal. This company is a contractor for THS-NW and has contracts with Primary Health facilities in the north-west region of Tasmania, including the Central Coast Community Health Centre; the Ulverstone Rosebery Community Health Centre; the West Coast District Hospital; and the James Muir Community Health Centre.
- [55] Mr Foster stated he knew the principal personally through his father and had purchased personal security services from him for 25 years. However, he said that he was not aware that the principal provided services to the THS until his return to Corporate Services in 2016. Mr Foster discovered that Primary Health had also employed the security provider and, apart from one particular instance, all matters related to the company had been paid for by Primary Health.
- [56] Mr Foster was asked whether he had considered submitting a conflict of interest form relating to the security provider and he stated, 'I don't need to ... because I wasn't actually purchasing a service. I never paid. They paid him through Primary Health'.
- [57] The Commission considers that when service contracts were due for renewal, Mr Foster should have realised he had a conflict of interest. During his interview, Mr Foster appears to have minimised his interaction with the principal, and said that he did not authorise any payments to him. However, an email, dated 30 September 2019, shows that Mr Foster did have dealings with the principal notwithstanding that he maintained that all contracts were paid through Primary Health.
- [58] Further, Mr Foster had influence in this area, whether he paid for the service or not. Mr Foster should have declared the conflict of interest and allowed his manager to assess the risk and whether any protective conditions should have been included in any management plan.

Findings

On the basis of the evidence available to the Commission, Mr Foster:

- **had a long standing personal relationship with the owner of the security provider, and**
- **was in a position of influence when reviewing or making new contracts.**

Mr Foster failed to declare and avoid a conflict of interest through his association with the security provider.

8. Mr Foster's relationship with another THS service provider

- [59] Mr Foster was responsible for managing contracts related to the provision of television services throughout the NWRH and MCH.
- [60] Witnesses speculated that there was an improper relationship between Mr Foster and the liaison person with the service provider, as Mr Foster seemed to be 'protecting' the liaison person from adverse comments regarding the company's contractual obligations.
- [61] There was also some concern raised as to whether any commission from the service provider may have been provided to THS-NW.
- [62] The investigation found no evidence of an inappropriate relationship between Mr Foster and the service provider.

Findings

On the basis of the evidence available to the Commission,

- **Mr Foster had a business relationship but not a personal relationship, with the liaison person from a THS service provider, and**
- **Mr Foster was not required to declare any conflict of interest arising from any association with the service provider.**

Part C – Acting with honesty and integrity

9. Introduction

[63] During the course of the investigation, some witnesses referenced that that Mr Foster had:

- sought to have an employee contact a contractor to alter a request date for water testing, and
- misrepresented that he prepared a Col Declaration and Management Plan for the working relationship arising from the July 2017 appointment.

10. Mr Foster sought to have an employee contact a contractor to alter a request date for water testing

[64] On 19 March 2018, a THS Work Health and Safety Officer received a complaint regarding the water ‘tasting funny’ at the Old Nurses Home, MCH. She contacted Mr Foster that day and asked for the water to be tested.

[65] The necessary testing did not occur until 4 April 2018, and the results were received on 18 April 2018.

[66] Mr Foster’s then manager asked why there was a delay in ordering the testing; she attended a THS office to view an email trail and stated she could see where the hold-up was, and would be asking Mr Foster to account for the delay.

[67] She challenged Mr Foster about the delay. Mr Foster called one of his subordinates to his office, and asked him to contact the testing contractor to request an alteration of the date the testing was sought. He also alleged that the employee had been underperforming, and that he would pursue this issue.

[68] The employee reported the conversation to a number of people very soon after it took place and the evidence from those parties supports his statements. Further, the employee’s reaction at the time provides support to the substance of the instruction given by Mr Foster and the dilemma it placed him in. He left the work place and went home sick on the advice of a THS Work Health and Safety Officer. He subsequently received a number of attempted contacts by Mr Foster. He reported the matter verbally to Mr Foster’s manager (as did a number of employees) and sought support from Human Resources at the time to provide some level of protection against Mr Foster. He stated that Mr Foster had placed unreasonable work demands on him in regards completing outstanding Safety Reporting Learning Systems actions, within a short time frame after this incident.

[69] In an email to his manager, Mr Foster stated that he told the employee to order the testing, then provided an explanation as to why it didn’t occur. This included the fact that the Easter period intervened. Unfortunately, other emails as to the communication around the water testing are no longer available.

[70] The employee concluded that he did not want to formally complain, as he was not satisfied that the matter would result in any change and feared repercussions that would affect his personal and work life; according to all witnesses he was justified in that belief.

- [71] Mr Foster became aware that the employee had consulted with Human Resources. It could not be established how Mr Foster became aware of this information, but he subsequently reported a range of performance issues, by the employee, to Human Resources. The language of the report revealed anger and frustration, and the timing implies a strategy to counter or mitigate any consequences arising from the employee's report to Human Resources.
- [72] This incident demonstrates the lengths that Mr Foster would go to protect himself from negative comments or conduct review. The perception for other employees was that this was an example of Mr Foster not being held to account for improper conduct, and that there could be personal consequences for other employees for reporting or holding him to account.
- [73] While file notes were kept by Mr Foster's manager at the time, the lack of other records relating to this matter meant that future managers would deal with similar matters of Mr Foster as independent issues, rather than as a pattern of behaviour.

Findings

On the basis of the evidence obtained by the Commission, Mr Foster:

- asked an employee to contact the water testing contractor to change the date of the testing
- attempted to discredit the employee by raising underperformance issues at this time, and
- placed unreasonable work demands on the employee in regards completing outstanding Safety Reporting Learning Systems actions, within a short time frame after this incident.

Mr Foster did not act with honesty and integrity in asking the employee to contact the water testing contractor, as his motivation was to avoid accountability for the delay in that testing.

11. Mr Foster misrepresented that he prepared a Conflict of Interest Declaration and Management Plan for the working relationship arising from the July 2017 appointment

2018 THS ED5 investigation

- [74] In 2018, the Commission referred to the THS for investigation some allegations related to a conflict of interest in two appointments, one of which was the July 2017 appointment referred to above, and another matter concerning a ruling by the TIC relating to relieving opportunities for an employee. The THS conducted an ED5 process, which concluded that there was no conflict arising from the appointments, but that Mr Foster had not abided by the TIC ruling.
- [75] On 8 May 2018, Mr Foster met with his manager, to be provided with the outcome of the ED5 investigation. During that meeting, Mr Foster received written advice outlining his requirements under the State Service Code of Conduct to act with care and diligence, particularly in regards to fulfilling any reasonable request or agreed action. The manager also provided him with a copy of the Conflict of Interest Policy and Declaration Form. She stated that Mr Foster was required to complete a Col Management Plan for the working relationship arising from the July 2017 appointment.

- [76] Mr Foster informed his manager that there was already a plan in existence and handed her a Col Declaration and Management Plan dated 26 September 2017. This document had not been disclosed to the ED5 investigator. The manager told Mr Foster that he had had the opportunity to provide it during the investigation and that it would be inappropriate for her to accept it. She commented to him that for all she knew it had been printed signed and dated that day. He responded, 'I wouldn't do that'.
- [77] The current investigation established that the relevant employee did not complete or sign the working relationship Col Declaration and Management Plan, dated 26 September 2017, as required by THS policy. Nor was the plan registered, also as required by THS Policy.
- [78] The evidence obtained by the Commission is sufficient to conclude that Mr Foster completed the working relationship Col Declaration and Management Plan, dated 26 September 2017, early in May 2018. He presented the backdated and misleadingly completed plan to his manager in an attempt to exculpate himself from adverse comments or action as a result of the ED5 investigation.

Findings

On the basis of the evidence obtained by the Commission,

- **Mr Foster submitted a Col Declaration and Management Plan that was not signed or viewed by the relevant employee, and**
- **The Conflict of Interest Declaration was not made on 26 September 2017, the date on which Mr Foster purported to make it.**

Part D – Treatment of employees

12. Introduction

- [79] During the course of the investigation, nearly all witnesses that were interviewed voiced concerns over Mr Foster's conduct as a manager. Whilst there was evidence of poor working relationships with peers, it was allegations that related to the treatment of subordinate staff and their reluctance to report it that reflected a poor culture and significant risk to the THS-NW.
- [80] The instances cited reach back to 2006 when Mr Foster was appointed as Director, Corporate and Support Services, through his appointment as Director, Business Intelligence Unit in 2008, and Director, Corporate Services in 2016. Specific information related to eight individuals, including staff who were responsible to him in each of these appointments.
- [81] Whilst this matter focused on Mr Foster, it reflected similar qualities to those within the 2014 Integrity Commission investigation. In that investigation, the Commission found that the negative culture was so strong that even when employees had concerns about the integrity of management actions, they did not report those concerns.
- [82] The Commission would not normally investigate general conduct matters that do not involve a designated public officer, but Mr Foster's alleged conduct had serious ramifications for employees.
- [83] Findings have not been made on the individual events and cases raised in this part. However, a general finding has been made regarding Mr Foster's pattern of behaviour.

13. Mr Foster failed to treat employees with respect by behaving in a manner that amounted to victimisation, intimidation and improper punitive action

- [84] Nearly all witnesses, including former colleagues, stated that Mr Foster was a 'difficult' person to work with or for, and that 'no one had a good word to say about him'. Some witnesses stated that Mr Foster had caused them to leave, or to consider leaving the THS due to his conduct towards them. Conduct which was commonly referred to included:
- encroaching on interpersonal space with women;
 - saying inappropriate things to and in front of women;
 - making inappropriate comments about employees when they are not present;
 - perceiving himself as 'entitled' and above accountability by saying phrases such as, 'it's my building' and 'I don't answer to them'; and
 - his responses to employees appeared motivated by whether he liked the employee or not.
- [85] The policy and protocols of the THS provide very clear directions as to what amounts to reasonable and unreasonable conduct by employees. They provide for employees to be responsible for their own conduct, and that managers are accountable and need to model expected standards as well as foster and cultivate a professional working environment. Employees are encouraged to report inconsistencies between conduct in the workplace and the policy and have the right to feel safe within their workplaces.

- [86] This aspect of the investigation was challenging and witness recall has formed a large part of the evidence. However, witnesses provided evidence of reports completed at the time the matter occurred, informing other employees at the time who corroborated that version, file notes, diary entries and emails. Witnesses were spoken to independently of one another in the confidential phase of the investigation – there were patterns of behaviour evident in that evidence. The corroborating material is compelling.
- [87] Mr Foster provided his evidence during interview and through a subsequent notice to produce information. He strongly denied any allegations that he encroached the personal space of, or that he made inappropriate comments to or about, women. He referred to performance issues of some employees, yet there are no PDAs or performance management plans to support his statements. There are no corroborating emails, work diary entries, file notes or witnesses to negate the concerns and conduct raised by witnesses. Mr Foster was known to do business face to face, didn't use emails, had no work diary and no notes of meetings. No witnesses supported his version of events and he referred to none in his response to the investigation.
- [88] Some employees reported Mr Foster's conduct more formally. These normally resulted in Mr Foster being spoken to by an executive officer or mediation with Human Resources. These interventions were mainly viewed in isolation. At no point was there an accumulation of allegations of improper conduct that warranted intervention at a higher level. The focus on resolving an incident at the lowest level appears to have taken precedence over the undisputable need to intervene and manage the repeated improper conduct towards employees.
- [89] At no stage has Mr Foster's treatment of employees resulted in a formal investigation or sanction. Whether correct or not, Mr Foster was perceived as being untouchable and unaccountable for his improper conduct. Witnesses perceived that Mr Foster was 'protected', and that he had a network of alliances with employees of influence within the THS.
- [90] Mr Foster was not subject to any performance management plan and while he has a long list of qualifications from training courses, he has not undertaken any contemporary leadership or management training.
- [91] There appears to be no direct evidence that Mr Foster's conduct towards his staff contributed to his movement within the THS. The timings of those movements coincide with significant conduct issues within his management areas. In 2006, a significant event occurred with an employee at the same time Mr Foster was moved to the BIU. A number of conduct matters occur at the BIU and he was moved to Corporate Services in 2016 (which SM3 noted was on the basis of resourcing issues). Mr Foster stated he didn't know why he was moved.

Findings

On the basis of the evidence obtained by the Commission, Mr Foster,

- **had poor working relationships with many subordinate employees and engaged in unreasonable management action, and**
- **did not behave in a professional manner that respected the rights of others, valued diversity and contributed to an environment that is free from discrimination and harassment.**

On the basis of the evidence obtained by the Commission, it is probable that some senior members of THS were aware of issues relating to Mr Foster's management style and should have intervened.

Part E – Improper use of resources

14. Introduction

- [92] During the 2014 Integrity Commission investigation (Investigation Delta), there were findings that reflected a ‘right of entitlement’ by employees within the THS-NW.
- [93] During the current investigation, there was a perception that there were remnants of this entitlement remaining in this work area and that attractive property items were being removed or being used improperly within THS-NW. Several past investigations and complaints identified a risk relating to the Facilities and Engineering, THS-NW.
- [94] The investigation found that Mr Foster used a government-plated work vehicle contrary to policy and protocol, removed items from the workplace contrary to disposal directions and maintained three office spaces at different facilities. These components establish that this ‘right of entitlement’ was still present within this work place.
- [95] The reluctance to properly and fully investigate a previous complaint about irregularities with call back and overtime claims, highlights the failure to change the culture within that work place.

15. Mr Foster’s use of a government plated work vehicle

- [96] The applicable Government Vehicle Policy and Guidelines may be summarised as follows:
- Government vehicles are only be used for official purposes;
 - Business Unit Managers and drivers are responsible for the vehicle’s safe condition and must ensure it is appropriately maintained, cleaned and serviced;
 - The driver must ensure logbook entries are completed in an accurate and timely manner;
 - Operational vehicles are not to be taken home regularly except when there is home garaging approval. Occasional home garaging requires prior approval and is conditional relating to the need to start or finish early or to be on call;
 - All vehicles must be made available for use by others, when not required by the nominated driver; and
 - The private use of DHHS vehicles creates a Fringe Benefit Tax liability for both the DHHS and the driver.
- [97] Many witnesses alluded to Mr Foster using a THS work vehicle improperly, including that they:
- were unaware if there was a home garaging approval in place;
 - alluded to Mr Foster using the work vehicle to go to and from work, and that he had been observed by staff members using it afterhours and for private purposes; and
 - alluded to the work vehicle not being made available to staff for use.
- [98] Mr Foster’s immediate managers since 2016 all stated that they did not provide Mr Foster with approval to home garage or use the work vehicle outside of the Government Vehicle Policy and Guidelines.

- [99] Evidence obtained by the Commission indicates that Mr Foster has used this vehicle exclusively since 27 November 2017. Many witnesses, and the Commission's own observations, referred to Mr Foster's exclusive use of the vehicle, including: following him driving to and from work; driving in Ulverstone after work hours; seeing it parked in Mr Foster's private driveway; and observing Mr Foster's mother and personal items in the work vehicle.
- [100] A fuel analysis reveals little use over the period of the lease providing some evidence that Mr Foster was primarily using the vehicle to get to and from work, with the occasional trip to Launceston and the MCH. Witnesses stated the work vehicle was not made available for other employees to use, yet Mr Foster stated that it was available. The ignition key stayed with Mr Foster and his response to queries about the vehicle's location were not conducive to staff asking again. There is no evidence that Mr Foster actually made the work vehicle available to other employees.
- [101] The limited use of the work vehicle did not reach the threshold for the vehicle to be assigned to an area, and, on 3 July 2017, Hotel Services was assigned a second government vehicle. This fact is difficult to reconcile unless Mr Foster was not making his vehicle available for other staff to use. Many witnesses referred to Mr Foster's use of the work vehicle as being to elevate his status within THS.
- [102] Mr Foster's explanation for his use of the work vehicle was that he started early and finished late, however this does not align with other evidence gathered during the investigation. Mr Foster's use of the vehicle appears more likely to be aligned with convenience, one to which he was not entitled and that was not extended to other employees.
- [103] Mr Foster received a direct financial benefit by his use of this government vehicle by the lack of use and maintenance of his own private vehicle, fuel, car parking fees and an individual fringe benefit tax.

Findings

On the basis of the evidence available to the Commission, Mr Foster:

- **used a government-plated work vehicle – a black Subaru Forester registration number G61CD – contrary to policy and protocol by:**
 - **taking the vehicle home regularly without home garaging approval, and failing to make it available for use by other employees**
 - **failing to report damage or to ensure it was in a clean condition and serviced as required, and**
 - **failing to ensure that the logbook entries were completed in an accurate and timely manner.**
- **acted without proper authorisation and outside the policy requirements by proffering another employee the opportunity to home garage a work vehicle.**

16. Mr Foster's removal of THS equipment and property for personal use

[104] Some witnesses alluded to Mr Foster taking THS equipment for personal use. Items were varied, but usually referred to those with a relatively low or no commercial value. They referred to Mr Foster as a 'hoarder' and suggested that some of the items were either in or part of his house, and also other buildings on a parcel of land he owned were built from items that he took from the THS.

[105] The DHHS Financial Management Manual (which applied to THS) states that:

Assets other than motor vehicles, personal computers and real property with a value of less than \$10,000 may be disposed of at the discretion of the Secretary (TI 302). Groups/business units are responsible for preparing a Minute to the Secretary seeking approval to dispose of the items. Items that cannot be reused or recycled and with no commercial use or appreciable market value may be disposed of by dumping at approved refuse sites or by destruction.

[106] The Portable and Attractive Items Register (contained in the Financial Management Manual) states that:

TI 304 Recording of Non-current Assets states that 'portable and attractive items must be registered for physical control purposes. These items are recorded in the Department's Portable and Attractive Items Fixed Asset Register, which contains details of certain items that have values below the asset recognition threshold and are susceptible to theft or loss (e.g. personal computers, digital cameras and ipads).

Relevant group/business unit managers are responsible for:

- *Maintenance of their items on the Portable and Attractive Items Register.*

[107] Clause 4 of Treasurer's Instruction 304, which was in force at the relevant time, states:

PORTABLE AND ATTRACTIVE ITEMS

Portable and attractive items must be registered for physical control purposes.

Certain items that have values below the asset recognition threshold are, by their nature, susceptible to theft or loss. Such items, termed portable and attractive, may include personal computers, power tools and like items.

It may be appropriate to specify a control threshold to exclude very low value items. If a separate Register of Portable and Attractive Items is not maintained, such assets may instead be listed and recorded at "nil" value in the Asset Register of the Agency.

[108] Mr Foster's position as Director, Corporate Services has an assigned FFP delegation at Group 3. The FFP delegation to dispose of goods (general) valued less than \$10,000 is FFP Group 2 and as such, Mr Foster was unable to dispose of goods.

[109] The Commission investigation confirmed that Mr Foster had removed a variety of low value items. During his interview, Mr Foster did not initially volunteer he had removed any of the items, other than some old doors and lighting, and had to be prompted with the identity of the items.

- [110] The process of disposing of items within Corporate Services appears informal, particularly within Facilities and Engineering. Neither Mr Foster nor any of the other Facilities and Engineering staff hold the requisite delegation to dispose of goods. There is no evidence of a reporting system associated with disposals of items with little or no commercial value, and little evidence of offering these items to other THS work units, other than on one occasion. The informal process appears to be that Mr Foster identified an item with a non-commercial value and, if he had a use for it, he removed it for his personal use.
- [111] The fundamental issue with these items being removed from the THS, even those that could be argued had no commercial value, was that the decision maker was the person who was receiving the benefit; this provides a significant risk of misconduct. No reports or paperwork were submitted to account for the removal of items.

Finding

On the basis of the evidence available to the Commission, Mr Foster removed THS equipment and property for personal use, without authority or in accordance with disposal processes.

17. Mr Foster's retention of multiple offices

- [112] Many witnesses referred to Mr Foster having three offices: at the Parkside Building, MCH and NWRH. There is no relevant THS policy governing this situation, but many witnesses referred to office space within the THS as being a 'premium commodity'.
- [113] The Commission viewed the three offices that Mr Foster had been allocated:
- The office at the NWRH was viewed on 11 June 2019. Mr Foster's name was on the door but the office appeared disused. There was an empty filing cabinet in a corner and some shelving that contained empty folders. There were some papers on a desk but these were scattered about and all dated several months previously. There was no In or Out tray, and there was no computer screen, although there was a laptop sitting upside down and not plugged in.
 - The office at the MCH was viewed on 13 June 2019. There was no name on the door, an empty desk and empty shelves, and it was reflective of an empty and disused office.
 - The office at the Parkside Building was viewed on 12 June 2019. There was no name on the door. The office contained: a desk with a box with stationery items; four computer screens and a computer tower (not plugged in); an empty shelf and empty filing cabinet; a printer (not plugged in) and an additional new printer in a box; a large television (on the ground and facing the wall); and a small meeting table and chairs. The office was reflective of a disused office that was being moved into.
- [114] Based on evidence available from access records from March 2019, Mr Foster accessed the Parkside Building on 27 March, 8 May and 21 May 2019, and the MCH on 9 May and 3 June 2019. This is consistent with the evidence given by witnesses that Mr Foster was rarely at either location.
- [115] The Commission concluded that Mr Foster had three offices across THS-NW, at the Parkside Building, MCH and NWRH for at least a 12-month period. The office at the NWRH was the one used most regularly; the other offices could only be described as empty or unused.

Finding

On the basis of the evidence available to the Commission, Mr Foster improperly used THS resources through the retention of separate offices at NWRH, MCH and Parkside.

Part F – Managing with due care and diligence

18. Introduction

- [116] The management of an area dictates the culture within. This aspect of the investigation was included to demonstrate the consequences of a negative culture and the impact of an under-performing manager.
- [117] During the course of the investigation witnesses provided evidence of Mr Foster being absent from his workplace, difficult to locate, not attending scheduled meetings, not providing explanations as to his location and duties, using excuses for his absences that he was at other THS-NW locations, regularly being asleep at work and spending work time at home or other locations. It was speculated that Mr Foster's reputation for underperformance was causally linked to his absences.
- [118] Many witnesses referred to the amount of sick leave that Mr Foster took, and to his ill health. They also speculated that Mr Foster would not have any sick leave entitlements due to the amount he took, and as a result may not be submitting personal leave forms. There was also speculation that Mr Foster was signing outside of his financial delegation.
- [119] Employees did not often report this underperformance out of fear of retribution and Mr Foster appeared to possess considerable influence within the reporting areas. The failure to formally report such significant underperformance reflects the influence of the work culture in this area.
- [120] The failure by some direct managers to recognise this underperformance, without direct reporting, and even the dismissal of those concerns when they are reported, demonstrates the difficulties in remote management and the need for strategies or monitoring to provide that recognition and to enable an appropriate response.

19. Mr Foster's attendance at the work place, and failure to submit leave forms

- [121] In 2014, an ED5 investigation occurred into whether two THS-NW employees had conducted private business in work time and used work equipment to do so. The matter was outsourced to a private investigation firm, and the allegations were ultimately unsubstantiated. The investigator raised issues with the THS about the accurate keeping of timesheets, the possible existence of an informal, honesty-based, flexi-time system, and problems associated with the deferral of rostered days off. He stated that 'until such issues are addressed, systematically, in THO North-West, they will continue to present obstacles to the pursuing of ED5 processes'.
- [122] In 2017, Mr Foster himself was subject to a lengthy ED5 investigation (File No. CON01238) relating primarily to financial issues. One allegation related to Mr Foster not submitting personal leave forms. The investigation determined that Mr Foster made no leave claims in 2013 and was absent from his employment for 62 days. Mr Foster had no case to answer as all leave was known and approved by Gavin Austin, then CEO of THS-NW. Mr Austin confirmed that it was general practice for departmental staff to take TOIL without the requirements for records to be kept and there was no requirement on any staff to submit leave applications.

- [123] Despite these previous investigations, the Commission's investigation revealed that Mr Foster continued to fail to meet his obligations. Witnesses in general stated that Mr Foster:
- regularly arrives at work late, leaves early or does not attend work at all;
 - is difficult to locate, contact or communicate with;
 - occupies three offices and uses the excuse that he is at another one when not at the NWRH;
 - works from home without authority for such an arrangement;
 - fails to submit sick or other leave forms; and
 - regularly does not attend meetings.
- [124] These allegations were confirmed by the Commission's investigation, and were supported by the Commission's review of building access records and personal observation by the investigator.
- [125] While the swipe card access records are not entirely reliable, it is of interest that there is not one access or exit record showing early entry or late exit times. No staff reported seeing Mr Foster at work or being aware of him being at work early or late.
- [126] Mr Foster had an agreed workplace commitment to work from 8am to 4:30pm daily, with a 19-day month allowing him one Friday off a month. Mr Foster stated he had worked to this commitment since 2003 and used that one day off per month for private appointments for himself and his mother. No written agreement supporting these arrangements could be located among THS records.
- [127] There was no TOIL or Flex system in place for Mr Foster. Timesheets do not record actual hours worked but provide only nominal hours. He had no work diary, didn't use his Outlook calendar and had no work notebook. The Commission's review suggested that he failed to complete leave applications on numerous occasions when he was not at work.
- [128] There was speculation that Mr Foster was working at the Yaraandoo aged care facility, or was either at home or at his property at Frankford Highway during THS work hours. Despite Mr Foster acknowledging only two episodes, there is substantial evidence of Mr Foster sleeping at work.
- [129] In considering how this situation developed, it is significant that Mr Foster did not report to any local manager. He said he was working his required number of hours per month and conceded that there were occasions where he started late and finished early, stating that he would 'race' across to MCH before attending the NWRH. When he was given details of some of the evidence, he conceded that he had issues with his health and was surprised by the evidence. He stated his health issues prevented him from leaving home on occasions and required him to leave work early.
- [130] The Commission acknowledges that Mr Foster's work schedule and medical condition contributed to these events. The impact of Mr Foster's medical issues is discussed later in this report.

Findings

On the basis of the evidence available to the Commission Mr Foster:

- **failed to reach the required standards of conduct relevant to his presence in the workplace. He was unnecessarily absent from the work place, failed to inform or explain absences to employees, did not attend meetings and was difficult to contact or communicate with, and**
- **failed to submit personal leave forms.**

Mr Foster failed to act with due care and diligence in relation to the management of his personal leave.

20. Mr Foster's attempt to claim an on-call allowance

- [131] The 2017 ED5 investigation into Mr Foster related to a range of allegations of More Responsible Duties Allowance (MRDA) overpayments to which Mr Foster was not entitled, and other payments relating to travelling and training, over a period of five years. These included: international travel and claims; international telephone calls; flex time when travelling; and the use of a government-plated car.
- [132] The outcome of that investigation was that Mr Foster was not entitled to the payments, and he failed to act with due care and diligence with regard to claiming and receiving reimbursement. However, as the payments and the other entitlements were approved by the then THS senior management (Jane Holden and Gavin Austin), Mr Foster had not committed misconduct.
- [133] Mr Foster received written notification of this determination on 4 August 2017. He was required to repay the incorrectly reimbursed amount, and THS records indicate that he did so. He was also required to undergo formal counselling regarding exercising care and diligence in submitting future financial claims.
- [134] Despite this history, the Commission's investigation considered a further allegation that Mr Foster had submitted a claim for an unwarranted on-call allowance. This occurred at his first introduction meeting with his new manager when she commenced on 27 March 2018. Mr Foster handed her an on-call allowance claim for which he had never been paid previously, and was not authorised to receive. He did not disclose the history of the ED5 investigation to her. When later she challenged him on the claim's legitimacy, he told her to 'bin it'.
- [135] Thus, within eight months of the previous ED5 finding, Mr Foster had submitted a new claim for an on-call allowance, without proper entitlement. His explanation was that his replacement whilst he was on leave had received an allowance during his relieving period. In the Commission's view, at the minimum, Mr Foster failed to act with due care and diligence. He made no enquiry as to whether he was entitled to the payment, but presented it without full explanation on his first meeting with a new manager.
- [136] Mr Foster should have exercised better care to ensure he was entitled to the claim and to ensure it was discussed openly with his new manager, particularly having regard to his previous warning.

Findings

On the basis of the evidence obtained by the Commission, Mr Foster submitted an on-call claim to his manager, and:

- **was not entitled to make that claim, and**
- **should reasonably have been aware that he was not entitled to make the claim as he had been previously warned in 2017 to act with care and attention when submitting such claims.**

On the basis of the evidence obtained by the Commission, Mr Foster did not act with due care and diligence in submitting the on call claim.

21. Mr Foster's failure to properly manage a complaint by a previous employee

- [137] From 10 July to 22 September 2017, an employee had completed an MRDA period as the Team Leader at Facilities and Engineering, THS-NW. A dispute arose with his immediate supervisor over the level of payment he attracted during that time.
- [138] The employee was not satisfied with the delay in resolving the issue and ultimately resigned. His letter of resignation dated 15 October 2017 included a list of matters, including allegations of potentially serious misconduct that he had observed whilst employed at Facilities and Engineering.
- [139] The letter made allegations about the payment of the relevant allowances for his period as Team Leader, and also referred to other issues including the following:
- Staff regularly accessing 'free' food from the NWRH kitchen;
 - Accepted use of government vehicles by at least one staff member to use on lunch breaks to walk a dog at home;
 - Administration staff taking multiple extended breaks at Hudsons Coffee of 1 – 2 hrs duration multiple times per week while still accessing regular break times and seen as accepted practice;
 - Staff taking annual or sick leave but not updating their timesheets and managers signing off time as 'worked' allowing incorrect leave balances;
 - Retiring staff being 'gifted' with a tool trolley inclusive of tools;
 - Manager working reduced hours on site (approximately 9-2.45 plus working from home on other days) and regularly not responding to emails and phone calls;
 - Senior staff actively encouraging staff not to work too hard as 'we can always get a contractor';
 - The continued acceptance of poor performance and low outputs with no consequence;
 - Lack of tool and asset register; and
 - Poor follow up to serious issues including lead levels in water at MCH escalated to manager on two occasions.
- [140] The employee's immediate supervisor conducted an initial investigation, but this was inconsequential. Mr Foster did not refer to the matter as a complaint, and the issues raised were not addressed, other than resolving the pay dispute with an agreement to pay the employee the higher rate.
- [141] The immediate supervisor should not have been involved in any part of this matter, including pre-investigation, grievance, ED5, exit interview or for any other reason. He had a significant conflict of interest arising from potentially being the subject of some issues raised by the employee, and being the manager of the area.
- [142] Mr Foster also should not have been involved. He also had a significant conflict of interest being potentially the subject of some issues raised by the employee, and having ultimate responsibility for the area which was the focus of the concerns.
- [143] Mr Foster's response to this matter was simply to portray the employee as disgruntled. However, the allegations were serious; they amounted to misconduct and were worthy of an independent investigation, and re-enforced the poor cultural reputation that has clearly and strongly attached to Facilities and Engineering. Mr Foster was clearly biased: he was protecting his own area, and didn't treat the matter as a legitimate complaint.
- [144] The employee has never been provided with any response relating to his allegations.

Finding

On the basis of the evidence available to the Commission, Mr Foster had a conflict of interest, and should have avoided any involvement in this matter.

22. Mr Foster's improper involvement in a work place investigation involving some employees

- [145] This matter relates to a current investigation by THS-NW into irregularities with call back and overtime claims and coding within the THS ProAct System for two Facilities and Engineering employees, and their manager. The matter involved potential changes to pay coding, false claims by non-attendance at nominated premises, inappropriate claims for scheduled overtime and irregularities when claiming overtime versus call back.
- [146] The investigation was commenced by Human Resources on 7 February 2019. At the time it was not designated an ED5 but a preliminary assessment. That assessment was suspended when the Commission became involved on 11 June 2019.
- [147] The HR investigator informed Mr Foster of the matter on 16 April 2019, and Mr Foster was unhappy about it. It appears to the Commission that he took steps to minimise the matter, did not provide a support officer to one officer when that was sought, and inappropriately involved one of the subject officers in dealing with the matter.
- [148] The HR investigator has now completed a preliminary assessment report recommending the matter progress to an ED5 investigation.
- [149] The decision to involve Mr Foster was flawed. Mr Foster was forewarned and email evidence suggests he subsequently took steps to 'keep it quiet'. He was always a potential subject officer, as he approved the relevant pay claims.
- [150] The rate of increase in the pays of the employees warrants further attention, and this matter is referred to THS for further investigation.

Findings

On the basis of the evidence available to the Commission, Mr Foster:

- **had the potential to be a subject officer in this matter and should not have been involved in any investigation, and**
- **inappropriately involved a subject officer in the investigation.**

23. Mr Foster knowingly signed outside his financial delegation

- [151] Several witnesses speculated that Mr Foster was authorising financial payments outside his financial delegation.
- [152] On 20 March 2018, Mr Foster's then manager submitted a Minute to the CEO THS relating to financial delegations in Corporate Services, THS-NW, noting that their duties were more difficult given the lack of appropriate delegation. She noted that Mr Foster was designated as an 'FFP Group 3', with a basic expenditure limit of \$10,000, and an ability to authorise transactions up to \$100,000 where a higher delegate has approved the purchase. This was consistent with his counterparts in other areas of the State. The Minute to the CEO was approved.

- [153] No examples of Mr Foster exceeding his delegation were supplied to the Commission and due to the time frame of the investigation, no further information was obtained or further investigation undertaken.
- [154] However, there appears to be a practical risk within the system, given there are two methods for purchasing equipment or items within THS. The first is via a purchase order, where the appropriate delegate must approve the purchase. The second method is via a non-stock requisition: in such cases, the invoice is sent to the central processing area and there is no auditing to ensure the approval was by an authorised delegate. This potentially allows for purchase payments to be made which may not have been authorised at the appropriate level.

Finding

On the basis of the evidence available to the Commission, there is no evidence Mr Foster signed outside of his delegation.

Part G – Underperformance as Director, Corporate Services

24. Introduction

- [155] The investigation reviewed the performance of Mr Foster, within Corporate Services. While the previous chapter details his absences from the workplace and failure to perform some duties, this chapter examines several other types of underperformance.
- [156] Underperformance across the board was evident, in at least the last few years, and included self-management, but the investigation focused on the following issues:
- Mr Foster not implementing or finalising aspects of his draft PDA;
 - Mr Foster not completing PDAs for his direct reports;
 - Mr Foster not ensuring Safety Reporting Learning Systems (SRLS) and policies were reviewed and updated; and
 - Mr Foster not completing required work generally and specifically on the helipad manuals for NWRH and MCH, and the NWRH and MCH car parking tender.
- [157] There was no definitive causal link that established underperformance was linked to his absences, but it would appear to be a primary contributing factor to these matters.

25. Mr Foster's failure to complete PDAs for his direct reports or to implement aspects of his draft PDA

- [158] Performance Management is critical to support the development and performance outcomes of employees.
- [159] THS has a Statement of Duties (SOD) for each position. The SODs provide broad and specific duties required to perform in that position, and are an objective test to measure performance. Unsatisfactory performance against these SODs should result in either a performance development agreement (PDA), learning agreement (LA) or a performance improvement plan (PIP).
- A PDA is a consultative exercise and document that is completed to further the development of an employee. It involves formal or informal discussions with staff on the expectations of their role, their achievements and any developmental activities which may assist to obtain required outcomes. A PDA is required to be updated every 12 months. PDAs are kept with the Manager and updated during this time as required.
 - An LA occurs when an employee is having difficulty meeting the requirements of a position. HR can be involved and the expectations are recorded, signed by each party and stored with the Manager, where it is to be regularly reviewed and file notes made.
 - A PIP occurs when an LA will not or has not adequately addressed concerns identified with the performance of a staff member, and can only be initiated with a Director's approval. HR must be involved and the expectations are recorded, signed by each party and stored in an employee's HR file in their local area. It is regularly reviewed and file notes made. The standard of proof to commence a PIP is the balance of probabilities.

- [160] The THS Policy states that a PDA is to be completed every 12 months. Mr Foster and his direct reports should have had PDAs completed in 2017 and 2018 – none of them have had a PDA completed since Mr Foster commenced as Director, Corporate Services in 2016. This is despite specific requests from his former manager that they be completed.
- [161] Mr Foster appears never to have had a PDA. He had operated autonomously for years, was set in his ways and had no contemporary leadership training. In his mind, Mr Foster considered his former manager's attempts to deal with these issues as bullying tactics and was greatly affected by the process; however the investigation did not reveal any evidence that the former manager used such tactics or behaved improperly. Mr Foster became more aware of what was required of him and it became evident quickly that his manager would hold him to account for this conduct and performance.
- [162] At interview, Mr Foster was asked if he had any recommendations to ensure the problems revealed by the Commission's investigation did not occur again. He stated that there needed to be: a full induction or orientation program specific for his position; appropriate resources for the work; clear expectations with agreed principles that he should be audited against during a quarterly meeting; and a plan to move forward and to be held accountable for his performance. Essentially, Mr Foster described a PDA and being held to account against those expectations.

Findings

On the basis of the evidence obtained by the Commission, Mr Foster:

- did not have a completed PDA or revised statement of duties throughout his tenure as Director, Corporate Services, and
- failed to complete PDAs for his direct reports as directed by his supervisor.

26. Mr Foster's failure to review and update Safety Reporting Learning Systems and policies

- [163] A Safety Reporting Learning System (SRLS) is a workers' health and safety hazard management system, and each SRLS task is assigned to a file owner. Each task has a risk rating attached to it and a restricted time frame to be actioned.
- [164] Mr Foster was the assigned file owner for SRLSs relating to Corporate Services. If an SRLS was assigned to him, he would receive a flag to notify him of it; he could allocate the task but would remain the file owner and it would remain in the active list which he could view, and it would be his responsibility to close it off. There are six steps to complete the task and close it off. Managers can write notes to show progress on a matter. An employee monitors the system and sends reminders to ensure SRLSs are actioned.
- [165] Some witnesses referred to Mr Foster not completing SRLSs, or policy reviews, on time. However, the Commission found sufficient evidence to determine on balance that Mr Foster was completing the SRLSs to the required standards.
- [166] There is sufficient evidence to determine that Mr Foster failed to manage policy reviews. However, in fairness, this is evident across other areas of the THS-NW.
- [167] Mr Foster was provided with administrative assistance to progress these reviews, but there were still a large number outstanding in June 2019 when Mr Foster went on sick leave and subsequently retired. Some of the policy reviews required little actual work, for example changing to a new templates or completing a rescind order.

- [168] Mr Foster stated to several employees that he did not complete matters in a timely manner as he didn't have any administrative support in his position as Director, Corporate Services. However, in January 2019, an employee's role as the Administrative Assistant for Hotel Services was expanded to prioritise Mr Foster's work.

Finding

On the basis of the evidence obtained by the Commission, Mr Foster's work on the SRLS reports, while demonstrating a lack of urgency, did not amount to a failure to apply due care and diligence.

27. Mr Foster's failure to complete the NWRH helipad manual

- [169] During the course of the investigation evidence was obtained that Mr Foster, as the Director, Corporate Services, was responsible for aspects of several large projects and that he did not complete the required tasks efficiently or effectively, and his conduct amounted to underperformance.
- [170] A large number of witnesses referred to failings on three projects and that someone else had to come in and complete the required work. The first such project was the NWRH helipad.
- [171] THS-NW developed and commissioned two helipad landing sites, being at NWRH and MCH. There was a development and construction phase for each. The contractor retained responsibility for the construction component and on site management for 12 months post-construction; once construction was complete, the operational responsibility was borne by Mr Foster. An operational manual provides the hands-on manner of how all stakeholders will work together and how the helipad will operate, and the helipad could not be deemed operational until the manual was completed and approved.
- [172] The helipad at the NWRH was the first in Tasmania. Development and construction was overseen by a project manager, and operational responsibility devolved to Mr Foster. In November to December 2016, he was alerted to his responsibility to complete an operations manual before helicopters could land on it. He was provided a template, referred to an aviation consultant for support and also had the support of the project manager.
- [173] The site was opened by the Premier on 1 April 2017, but was immediately closed. Helicopters were unable to use the pad until the manual was completed. Ultimately this work was done by the project manager.
- [174] The reason for the delay was attributed to Mr Foster being on sick leave, but there is no recorded sick leave for Mr Foster during this period. He submitted sick leave claims only for 23-24 January 2017 and 2-12 January 2018. Mr Foster also had long service leave from 27 March to 7 April 2017.
- [175] If Mr Foster was ill, he did not submit a sick leave form. In any event, there was a total of five months to have adapted the operational manual template for the NWRH, which should have been ample time as a priority task.

Finding

On the basis of the evidence obtained by the Commission, Mr Foster failed to complete the NWRH helipad operations manual in a timely or professional manner.

28. Mr Foster's failure to complete the MCH helipad manual

- [176] As with the NWRH helipad development, Mr Foster was responsible for the operational component of the MCH helipad manual. The helipad could not be deemed operational until the manual was completed and approved.
- [177] The helipad at the MCH was developed within two years of the completion of the NWRH pad. Any issues evident in the first development should have been able to be planned and resolved quickly.
- [178] Mr Foster stated that he completed the manual in January 2019, but that a re-build of his computer deleted the document. Saving such a document to his desktop rather than a folder is a simple error, but from the date of the realisation of this error, Mr Foster still had ample time to finish the manual when he returned from leave on 18 March 2019.
- [179] On 26 June 2019, other stakeholders retrieved and completed the manual, and the site opened on 29 July 2019.
- [180] Mr Foster had been on sick leave from 11 June 2019, and could hardly be blamed for not providing a completed manual by the helipad opening date of 29 July 2019. However, he contributed to the delay and the concerns raised by individuals and the Project Reference Group as to his progress appear justified.

Finding

On the basis of the evidence obtained by the Commission, Mr Foster contributed substantially to the delay in the completion of the MCH helipad operations manual in a timely and professional manner.

29. MCH and NWRH car parking tender

- [181] In 2014, the NWRH commenced development of paid car parking facilities in its grounds. Mr Foster held the operational responsibility for this car park.
- [182] The project contract ran for nine years, set at three-year intervals. The day-to-day management functions were contracted to Care Park. Income was approximately \$24,000 per month and Care Park was paid \$10,000 for their management function. After the first three years, the THS would assume ownership of the infrastructure, including the ticket machines. This occurred in 2017. The life span of the ticket machine was ten years.
- [183] The Launceston General Hospital (LGH) required a new contract for their car parking. In late September 2018, the Senior Contract Manager for the LGH contract approached Mr Foster about the possibility of including the MCH and NWRH in the tender process. The MCH did not have paid car parking at this time.
- [184] Emails show Mr Foster had to be continually contacted to obtain information, and that he was provided with sufficient time to source the mapping requirements for the car parks for which he was responsible. However, this did not occur. By the long weekend of 26 January 2019, Mr Foster requested the security supervisor at the site to complete the mapping. This employee was contracted to the THS through Wilson Security and has no qualifications in this area. The request was outside of his normal work hours, impacted on his family and it was reported that he felt some duress to adhere to the request.

- [185] Mr Foster went on leave on 28 January 2019. The matter had not been finalised and was provided to the employee who was acting in Mr Foster's role. The state of the matter when handed to the employee was rudimentary, at best.
- [186] Ultimately, a consultant was employed to review the tenders and it was established that paid car parking for NWRH should not be included in the tender as it was not economically viable.

Findings

On the basis of the evidence obtained by the Commission, Mr Foster:

- failed to complete the mapping requirements of the NWRH car park, in a timely or professional manner, and
- improperly used a Wilson Security employee for mapping purposes.

Part H – Management of Mr Foster

30. Historical management of Mr Foster

[187] In light of the extent of the issues canvassed in this investigation, the Commission considered it appropriate to investigate the actions of senior managers over the period since Mr Foster returned to the position of Director, Corporate Services on 4 July 2016 until his retirement from the Tasmanian State Service in June 2019.

[188] Over this period, three senior managers had oversight responsibility for Mr Foster. All were based elsewhere in the State, and had a wide range of other responsibilities. The Commission has determined not to identify these managers by name, and this summary refers to them as Senior Managers 1, 2 and 3 respectively (SM1, SM2, SM3).

[189] SM1 managed Mr Foster on Mr Foster's return to Corporate Services in 2016. He remained until SM2 started her relieving in March 2018. SM2 left in June 2018 and the particular management position was abolished, with the functions and duties being absorbed into SM3's position.

[190] Witnesses interviewed as part of the investigation said:

- SM1 visited the NW about once a month, but it appeared that he did not actively manage Mr Foster.
- SM2 came to the position with a determination to make Mr Foster a better leader and manager; she was the only manager to hold Mr Foster to account for his work performance and to try to improve conditions. She tried to actively manage and improve his performance, challenged him and held him to account. She established lines of communication with Mr Foster's direct reports to ensure she knew what was occurring in the NW. Mr Foster clearly disliked being managed by SM2, resisted changes, and was very stressed during this time. Witnesses who worked closely with Mr Foster observed Mr Foster started to work differently and there was an improvement in his work performance. It was unfortunate that SM2 left as any momentum she had achieved was not followed through with the next Executive.
- SM3 did not visit the NW nor did he appear to have ever actively managed Mr Foster, and remote management in this situation did not work; he was perceived as an absent manager. It was felt that any momentum lapsed when SM3 did not manage Mr Foster in the same way as SM2, and that SM3's hands-off management style made Mr Foster's work performance and conduct worse. It was felt that SM3 did not put himself in a position where he would know or could be told what was occurring in the Corporate Services area. Some of Mr Foster's peers stated, in hindsight, they should have picked up the telephone and called SM3, but he wasn't known to them and Mr Foster demanded that the chain of command was to be adhered to and required his direct reports to bring all matters to him.

[191] While the focus of this investigation has been in the later years, there is a defined pattern of behaviour and conduct going back many years. It was the responsibility of every manager that Mr Foster had to ensure he was performing and behaving to the required and appropriate standards. It was also the responsibility of his peers, within the THS, to ensure that his managers knew of any issues.

[192] The employees who would know the most about Mr Foster's performance and conduct were his direct reports: SM1 stated that Mr Foster enjoyed good relationships with his direct report employees; SM2 had a meeting with these direct reports and reported those same relationships were very poor; and SM3 had a meeting with both direct reports which led to no change.

- [193] Mr Foster stated that SM1 provided no induction or orientation program and listed a large number of policies, protocols and IT systems he was unfamiliar with, when he commenced as the Director Corporate Services. He said that he received no support and was placed in extremely trying conditions. SM1 visited him once a month and had telephone contact, but Mr Foster operated with nearly complete autonomy within the THS-NW. SM1 did not complete a PDA for Mr Foster or update his SOD.
- [194] SM2 provided close oversight of the performance of Mr Foster and Corporate Services. She investigated the current state of the area, had weekly meetings with Mr Foster and provided a level of accountability that Mr Foster had not previously been exposed to. SM2 attempted to manage Mr Foster and to modernise his management practises.
- [195] Mr Foster stated that SM3 met with him once a month; SM3 had a high functioning personal assistant who supported him, gave clear directions and was supportive. He stated SM3 had only visited the NW once since he commenced supervising Mr Foster and provided him 'free air' to manage. SM3 did not finalise the draft PDA prepared by SM2.
- [196] Mr Foster had a reputation within the THS of being a difficult manager from both staff, peers and management. There were regular risk factors occurring in and around Mr Foster that were either not identified or were perceived as too difficult to confront. After years of having basically complete autonomy in his position, SM2's management was so foreign to Mr Foster that he wasn't able to readily adapt; he overtly resisted the change and clearly took it personally. He was made accountable for his own conduct and performance but also that of his overall area, and it placed significant and unprecedented stress on him. SM2 offered empowerment to his direct reports but any gains she made left with her. Mr Foster's reaction was to revert back to the management style and the conduct he was used to and had always practised.
- [197] A review of the draft PDA prepared by SM2 shows a clear formalisation of expectations for the performance of Mr Foster and for Corporate Services: the contents are not onerous, and contain contemporary leadership development and an action plan for the area. Some witnesses stated that whilst Mr Foster's resistance to SM2's management was extreme, his performance also improved. He became more aware of what was required of him and it became evident quickly that SM2 would hold him to account for this conduct and performance.
- [198] Mr Foster was asked during his interview to list what could have been done to prevent this situation. Most of the measures he cited, were those that SM2 attempted to put into place in his draft PDA and included clear expectations of performance and work plans, personal development including '360 degree' feedback, changes to contemporary management practises and for expected behaviours to be clearly defined with direct reports.
- [199] Mr Foster stated he was not well when SM2 was his manager; he now recognised that he was suffering from hypersensitivity and was in a flight/fight mentality, and took matters as criticism whether that was the intention or not.
- [200] When he commenced in his role, SM3 assumed responsibility for Mr Foster, as well as numerous other more strategic matters. SM3 stated that he met with SM2 and Mr Foster's direct reports, with none of them raising specific concerns other than Mr Foster's management approach. SM3 travelled to the NW twice during his management of Mr Foster for financial and budgetary matters and in relation to THS executive matters but neither was for the purpose of dealing with Mr Foster.

- [201] Consequently, SM3 assessed a low level of risk in relation to Mr Foster, based on Mr Foster's 'less than optimal relationship with his direct reports'. SM3 said that in comparison to other risks he was managing, either directly as part of his portfolio responsibilities or collectively with his colleagues on the THS Executive, this assessed risk was appropriately not an urgent priority for resolution. Some witnesses stated that their impression was that SM3 knew of the issues with Mr Foster and did not address them; however, SM3 said that had anyone raised the severity of Mr Foster's behaviour he would have dealt with it.
- [202] There is no doubt that Mr Foster has suffered from a litany of medical issues during his service within the THS and that these contributed to issues within the work place. Mr Foster's resistance to fully informing his managers of his health issues was understandable, yet this resistance did not assist him or the workplace. He conceded in interview that he wished he had asked for help earlier.
- [203] Mr Foster was and should have been expected to be somewhat autonomous in his various Director's roles with THS. His position as the Director of Corporate and Support Services, BUI and Corporate Services had remote oversight and as a result further autonomy was expected. However, Mr Foster had no contemporary leadership and management training, a SOD from 2005, no formal performance appraisal or PDA and no induction program into a position he had been away from for eight years.
- [204] Any attempt to change, interfere, challenge or assertively manage Mr Foster led to his resistance, which at times was aggressive, and manifested in difficult and challenging behaviour. Appropriate intervention was required years ago to address the issues Mr Foster had, to enable him to develop as a manager and leader. Appropriate intervention was not to move Mr Foster between positions, but to strive to develop contemporary management and leadership skills. The lack of intervention lies with Mr Foster's managers and peers. It is clear that only the courageous would have attempted intervention, however employees of BUI and Corporate Services bore the brunt of Mr Foster's, at times, inappropriate conduct and underperformance. These employees had the right to a safe working environment and were not provided with it.
- [205] The remote management of Mr Foster by SM1 and SM3 resulted in a poor outcome for all involved. SM2 was similarly required to remotely manage Mr Foster, and she identified the risk and regularly worked on site with him.
- [206] Ensuring a Director is effectively managing is central to ensuring there is clear direction, employee development, proper recruitment, effective and efficient use of resources, productivity, good decision-making and good conduct. Mr Foster influenced all these areas, some negatively. With the exception of SM2, the lack of management intervention resulted in poor outcomes for Mr Foster and all other Corporate Services employees who were subjected to his behaviour over the course of their employment.

Finding

On the basis of the evidence available to the Commission, with the exception of SM2, THS senior management failed to provide adequate supervision or management strategies to ensure that Mr Foster performed at a high level in his role as Director, Corporate Services or to prevent Mr Foster from improperly treating employees.

INTEGRITY
COMMISSION

