

# REPORT OF THE INTEGRITY COMMISSION

**No. 2 of 2017**

An investigation into a complaint  
of an alleged conflict of interest  
against senior executive officers  
of TasTAFE

INTEGRITY  
COMMISSION



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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.

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

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President  
Legislative Council  
Parliament House  
HOBART TAS 7000

Speaker  
House of Assembly  
Parliament House  
HOBART TAS 7000

Dear Mr President

Dear Madam Speaker

In accordance with s 11(3) of the *Integrity Commission Act 2009*, the Integrity Commission presents a report to Parliament, *Report No. 2 of 2017: An investigation into a complaint of an alleged conflict of interest against senior executive officers of TasTAFE*.

Yours sincerely



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



**Michael Easton**  
(Acting) Chief Executive Officer

23 May 2017

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**OPERATION BLACK:  
REPORT OF THE INVESTIGATION AND DETERMINATION  
BY THE BOARD OF THE INTEGRITY COMMISSION**

**An investigation undertaken into a complaint of an alleged  
conflict of interest against senior executive officers of TasTAFE**

**Tabled in Parliament in accordance with section 11(3)  
of the *Integrity Commission Act 2009***

**23 May 2017**

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# Contents

<b>Foreword .....</b>	<b>i</b>
<b>Executive Summary .....</b>	<b>ii</b>
<b>1. Introduction.....</b>	<b>1</b>
1.1. Background: the complaint	1
1.2. Consideration of the <i>Public Interest Disclosures Act 2002</i>	1
1.3. Assessment	2
1.4. Organisations named in this report	3
<b>2. Administration.....</b>	<b>4</b>
2.1. Jurisdiction	4
2.2. Assessment process	4
2.3. Investigation process	4
2.4. Standard of proof	5
2.5. Procedural fairness	6
2.6. Relevant Policies and Procedures	6
2.7. Definition of a conflict of interest	10
<b>3. Evidence &amp; Analysis .....</b>	<b>12</b>
3.1. Allegation 1 – Favouritism by Stephen Conway	12
3.2. Allegation 2 – Incentive Payment Scheme	28
3.3. Allegation 3 – Favouritism by Lori Hocking	39
3.4. Allegation 4 – Lori Hocking Conflict of Interest – VETNetwork Australia	53
3.5. Allegation 5 – Lori Hocking – Credit Card Use & Travel	54
<b>4. Determination of the Board .....</b>	<b>63</b>
<b>Attachment 1 .....</b>	<b>65</b>

## Foreword

The Integrity Commission operates in accordance with the functions, powers and roles provided in the *Integrity Commission Act 2009* (the IC Act).

A principal objective of the Commission is to enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with. This is particularly important in relation to complaints against ‘designated public officers’ – senior officers whose conduct is more appropriately subject to the Commission’s independent scrutiny.

An important aspect of public confidence is awareness of the Commission’s activities and the misconduct risks that it addresses. The Commission takes great care in considering the appropriateness of making matters, and particularly the identity of those involved, public. The Commission has adopted detailed criteria to assist it to make such determinations, including: the nature and seriousness of the alleged misconduct; whether it is in the ‘public interest’ to report publicly and the potential increase in public confidence by demonstrating openness and accountability; and whether the privacy, personal welfare and/or reputation of the subject officer(s) or others involved in a matter outweigh the public interest in publishing the report.

Having considered the criteria, including the potential for publication to act as a deterrent to future misconduct, the Commission has determined to publicly release this report. Apart from the two public officers who are the subject of the complaint, all persons and positions have been anonymised to protect the privacy of those who may have been involved in the matter or who have provided assistance and information to the Commission.

The Commission stresses that the findings contained in this report are findings of fact, not misconduct. The findings do not prove that misconduct has occurred however are the result of an investigator setting out the evidence that he or she has gathered and making factual findings. The investigator may also make findings about what, on the balance of the evidence, might be open for a relevant decision maker to conclude.

On completion of an investigation, the Board of the Commission receives a report of the investigation and may make a determination as to whether the matter should be referred to an appropriate person for action. The determination may include recommendations as to what actions the Board considers appropriate to be taken by that person.

In this instance, following the investigation, the Board has determined to refer the matter to the Premier (as the ‘principal officer’ of the head of a State agency) for action. The Board included recommendations as to the appropriate actions for the Premier to consider however it is a decision for the Premier as to whether those actions are implemented.

The *IC Act* requires an investigator and the Commission more generally to observe the rules of procedural fairness. To that end, both officers who were the subject of this complaint were provided with a copy of the draft report and invited to make submissions on the content and proposed findings. The Board considered the officers’ submissions in their entirety and also the response of the investigator to each submission. The relevant sections of those submissions, and the associated response of the investigator, are included in Attachment 1 of this report.



## Executive Summary

This is a report of an investigation undertaken by the Integrity Commission arising from a complaint made to it in February 2016. The complaint alleged that the Chief Executive Officer of TasTAFE, Stephen Conway, provided favourable treatment to his friend Lori Hocking, a senior executive at TasTAFE.

The alleged favouritism is on the basis of Mr Conway's and Ms Hocking's shared background at VETNetwork Australia – Mr Conway is a Board member (at the time of the Commission's investigation) and Ms Hocking was Chief Executive Officer. VETNetwork Australia is a company based in South Australia, which is also where the families of both Mr Conway and Ms Hocking are based.

In particular, it was alleged that, as a result of Mr Conway's conduct, Ms Hocking was the beneficiary of a series of promotions and 'extremely generous working arrangements' that occurred without due process.

The investigation of the complaint has identified evidence to support the allegations, with possible favouritism being manifest in Ms Hocking's progression from a base salary of \$121,318 to \$176,167 in approximately 12 months. Additionally, the investigation has identified Mr Conway's provision to Ms Hocking of an 'incentive payment scheme' worth approximately \$30,000 in benefits beyond Ms Hocking's contractual entitlements.

The commitments made by Mr Conway included payment for regular flights between Hobart and Adelaide for Ms Hocking to visit her family, payment of Ms Hocking's rental accommodation in Hobart, and a \$6,000 'bonus' on each anniversary of Ms Hocking's appointment.

The investigation identified no other staff member of TasTAFE who has been the beneficiary of similar treatment.

Evidence obtained in the course of the investigation indicates that this kind of behaviour has extended to the procurement of consultancy services, in which a contract worth \$18,000 was awarded to the Chair of the VETNetwork Australia Board, Person J. A friend of Mr Conway and Ms Hocking, Person J was approached directly; this eliminated opportunities for a competitive process and consequently any opportunity for Tasmanian providers to deliver the same services.

The complainant suggests that Ms Hocking has adopted Mr Conway's practice of favouring certain individuals. This allegation is supported by evidence that Ms Hocking, while responsible for establishing the recruitment process for a senior management role in TasTAFE, reviewed and edited the application of another friend of hers from VETNetwork Australia for that position.

During the Commission's assessment of the complaint, additional allegations of potential misconduct were identified and investigated.

The Board has referred the report of the investigation to the Premier, as principal officer of the head of agency of TasTAFE. In making the referral, the Board has recommended actions that it considers appropriate for the Premier to take in relation to the matter.

## Summary of findings

Allegation One: Stephen Conway acted with favouritism in relation to the recruitment and subsequent promotion of Ms Lori Hocking, with whom he previously worked in South Australia.

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

- had a conflict of interest arising from his association, through VETNetwork Australia, and his close friendship with, Ms Hocking;
- failed to properly declare and manage this conflict of interest when recruiting Ms Hocking to the position of Division Manager – Technology, Trades & Engineering;
- did not exert any pressure or undue influence on the selection panel to select Ms Hocking for the position of Division Manager – Technology, Trades & Engineering;
- failed to declare and manage his conflict of interest in relation to his involvement in seeking approval from the Head of the State Service for Ms Hocking to be appointed above the base salary rate for the position of Division Manager – Technology, Trades & Engineering;
- transferred Ms Hocking’s substantive position at TasTAFE from Division Manager – Technology, Trades & Engineering to Executive Manager – Education Services without the necessary selection process or approval from the Head of the State Service; and
- offered, without proper authority, commitments to Ms Hocking beyond those that she was entitled to.

It is open to conclude that Mr Conway:

- provided incorrect or misleading information to the Head of the State Service, in order to secure a higher than base salary rate for Ms Hocking when she was recruited to TasTAFE;
- increased Ms Hocking’s salary on 22 February 2016 without approval from the Head of the State Service; and
- created the position of Deputy CEO/Chief Operating Officer for the purpose of benefitting Ms Hocking, rather than the genuine needs of TasTAFE.

On the basis of evidence obtained by the Commission, Ms Hocking:

- was legitimately required to act in the position of Executive Manager – Education Services, during the period at which Mr Conway was Acting Secretary of the Department of Education.

Allegation Two: Stephen Conway improperly facilitated the provision of ‘incentive payments’ to Lori Hocking in excess of the entitlements specified in her instrument of appointment.

On the basis of evidence obtained by the Commission, Mr Conway did not have the appropriate authority, as CEO of TasTAFE, to:

- facilitate approximately \$30,000 worth of incentive payments to Ms Hocking when she was recruited to the position of Division Manager – Technology, Trades & Engineering;
- commit to an additional set of payments to Ms Hocking, including her airfares for flights between Hobart and Adelaide, and \$6,000 paid on her anniversary of appointment each year.

It is open to conclude that Mr Conway:

- misrepresented the nature of the additional commitments made to Ms Hocking in communication with the Chair of the TasTAFE Board; and
- facilitated the payment of Ms Hocking’s rental accommodation beyond her entitlements under the *State Service Regulations 2011* or her instrument of appointment.

Allegation Three: Lori Hocking has improperly offered associates opportunities relating to procurement and recruitment based on favouritism instead of merit.

On the basis of evidence obtained by the Commission, Mr Conway and Ms Hocking:

- had conflicts of interest arising from their association, through VETNetwork Australia, with Person J;
- failed to appropriately manage their conflicts of interest in relation to the procurement of consultancy services from Business A; and
- directly procured the consultancy services of Business A, without testing the market to determine the availability of other service providers.

It is open to conclude that Mr Conway and Ms Hocking:

- attempted to misrepresent the circumstances in which the procurement of the consultancy services of Business A were procured.

On the basis of evidence obtained by the Commission, Ms Hocking:

- had a conflict of interest in relation to her association, through VETNetwork Australia, with Person K;
- unfairly advantaged Person K in the selection process for the position of Position A while responsible for establishing the recruitment process.
- as chair of the relevant selection panel, unfairly advantaged Person M in the EOI process for the position of Position B.
- as chair of the relevant selection panel, unfairly advantaged Person N in the EOI process for the position of Position B.

Allegation Four: Lori Hocking failed to declare her interest (as Chief Executive Officer and Secretary) in VETNetwork Australia.

On the basis of evidence obtained by the Commission, Ms Hocking:

- appropriately managed the possible conflict of interest associated with her concurrent positions at VETNetwork Australia and TasTAFE.

Allegation Five: Lori Hocking has misused her Tasmanian Government Card (TGC).

On the basis of evidence obtained by the Commission, Mr Conway authorised Ms Hocking's use of her Tasmanian Government Card for personal purposes, associated with:

- her travel to a job interview on 20 April 2016; and
- her travel between Hobart and Adelaide.

On the basis of evidence obtained by the Commission, Ms Hocking used her Tasmanian Government Card for personal purposes in order to:

- attend a job interview on 20 April 2016;
- travel between Hobart and Adelaide; and
- purchase fuel during two intrastate trips with her family.

On the basis of evidence obtained by the Commission, Ms Hocking:

- used her Tasmanian Government Card for entertainment expenses without prior approval from the Secretary of the Department of Treasury and Finance.

It is open to conclude that the practice of using Tasmanian Government Cards for entertainment expenses, without approval, is widespread among the senior executive level of TasTAFE.

### **Determination of the Board of the Integrity Commission**

In accordance with s 58(2)(b)(i) of the *IC Act*, the Board determined to refer the report of the investigation to the Premier, as the principal officer of the head of agency of TasTAFE (Mr Conway).

In making the referral, the Board recommended – pursuant to s 58(3) of the *IC Act* – that the Premier consider the following actions:

- i) That, as principal officer of the head of agency (TasTAFE), the Premier:
  - a. Initiate a review of the availability and currency of policies and procedures within TasTAFE for officers employed in the Senior Executive Service relating to:
    - induction at time of employment;
    - declaration and management of conflicts of interest;
    - procurement of contract and consultancy services, inclusive of relevant Treasurer's Instructions;
    - use of a Tasmanian Government credit card; and
    - recruitment of employees and other senior executive officers.

- b. Give consideration to any possible breaches of the State Service Code of Conduct (as provided in the *State Service Act 2000*) by Stephen Conway arising from the Commission's investigation.
  - c. Give consideration to any possible breaches of the State Service Code of Conduct (as provided in the *State Service Act 2000*) by Lori Hocking arising from the Commission's investigation.
- ii) That the Premier consider the availability and appropriateness of any induction information provided to members of public sector boards, particularly in relation to employment of senior executive officers.

# 1. Introduction

## 1.1. Background: the complaint

- [1] On 25 February 2016 the Commission received a complaint on behalf of an anonymous third party about TasTAFE. The complaint names Stephen Conway, Chief Executive Officer of TasTAFE<sup>1</sup> and Lori Hocking, Deputy Chief Executive Officer/Chief Operating Officer of TasTAFE<sup>2</sup> as the subject officers.
- [2] The complaint alleges that Ms Hocking was recruited to TasTAFE, and subsequently promoted, as a result of her association with Mr Conway.
- [3] The complaint states that the association between Ms Hocking and Mr Conway relates to their roles in VETNetwork Australia (VETNetwork), a 'membership [a]ssociation involved in professional development of secondary school teachers and administration staff'.<sup>3</sup>
- [4] At the time of her recruitment to TasTAFE, Ms Hocking was the Chief Executive Officer of VETNetwork and Mr Conway was (and was at the time of the complaint) a Board member of VETNetwork.
- [5] In addition to her recruitment, the complaint also alleges that Ms Hocking was promoted to the position of Acting Executive Manager of TasTAFE 'without any process at all and at the recommendation of Stephen Conway'.
- [6] The complaint states that there has been an '[e]rosion of confidence in Stephen Conway as CEO due to lack of objectivity in any decisions that relate to internal or external environment', and that 'Lori Hocking has extremely generous working arrangements that allow her to work between her home base in Adelaide and Tasmania'.
- [7] Finally, the complainant alleges that Ms Hocking 'is openly offering persons within TasTAFE future promotional opportunities based on favouritism, contrary to [the] Public Service Code of Conduct'.
- [8] The Commission's consideration of the complaint distilled the following allegations:
  - 1. Stephen Conway acted with favouritism in relation to the recruitment and subsequent promotion of Lori Hocking (currently Executive Manager Education Services), whom he previously worked with in South Australia.
  - 2. Lori Hocking has improperly offered associates opportunities relating to procurement and recruitment based on favouritism instead of merit.

## 1.2. Consideration of the *Public Interest Disclosures Act 2002*

- [9] As with all complaints received by the Commission, this complaint was assessed against the provisions of the *Public Interest Disclosures Act 2002* (the PID Act) in order to determine whether or not it amounted to a 'protected disclosure' within the meaning of s 14 and Part 2 of the *PID Act*.

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<sup>1</sup> A designated public officer in accordance with s 6(1)(c) of the *IC Act*.

<sup>2</sup> A designated public officer in accordance with s 6(1)(f) of the *IC Act*.

<sup>3</sup> Complaint MM16/0023.

- [10] For the purposes of the *PID Act*, the complainant is a 'public officer'<sup>4</sup> whose complaint relates to TasTAFE, which is itself a 'public body'.<sup>5</sup> It was considered that the allegations raised in the complaint potentially amounted to 'improper conduct'<sup>6</sup> and as a result the complaint was deemed to be a protected disclosure.
- [11] In accordance with s 29A(a) of the *PID Act*, it was determined that the complaint would be dealt with as a protected disclosure under the *IC Act*.

### 1.3. Assessment

- [12] The complaint was accepted for assessment on 3 March 2016 as it raised allegations against two designated public officers which, if proved, could amount to misconduct:

#### ***Allegation 1***

##### Possible breach of the State Service Code of Conduct

*s 9(1) An employee must behave honestly and with integrity in the course of State Service employment.*

*s 9(11) An employee must not make improper use of –*

*(b) the employee's duties, status, power or authority –*

*in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person.*

*s 9(13) An employee, when acting in the course of State Service employment, must behave in a way that upholds the State Service Principles.*

*s 7(1)(b) the State Service is a public service in which employment decisions are based on merit;*

#### ***Allegation 2***

##### Possible breach of the State Service Code of Conduct

*s 9(1) An employee must behave honestly and with integrity in the course of State Service employment.*

*s 9(11) An employee must not make improper use of –*

*(b) the employee's duties, status, power or authority –*

*in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person.*

*s 9(13) An employee, when acting in the course of State Service employment, must behave in a way that upholds the State Service Principles.*

*s 7(1)(b) the State Service is a public service in which employment decisions are based on merit;*

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<sup>4</sup> In accordance with s 4(2)(a) of the *PID Act*.

<sup>5</sup> In accordance with s 4(1)(b) of the *PID Act*. Note that TasTAFE is a State Service Agency by virtue of Column 1 of Part 2 of Schedule 1 of the *State Service Act 2000*.

<sup>6</sup> In accordance with the definition of 'improper conduct', in s 3(1) of the *PID Act*.

#### 1.4. Organisations named in this report

Name	Details
Andrew Jones Travel	Travel agency used by TasTAFE
Bendigo Kangan Institute	Education and training provider based in Victoria
Business A	Private consultancy company operated by Person J
Department of Education	State Service Agency
Department of Premier and Cabinet (DPaC)	State Service Agency
State Service Management Office (SSMO)	Division of DPAC responsible for the provision of policy and services relating to workforce management
TasTAFE	Subject public authority
VETNetwork Australia	Incorporated network of VET professionals in Australia, based in South Australia



## 2. Administration

### 2.1. Jurisdiction

[13] The Commission's jurisdiction was invoked on receipt of the complaint of misconduct about two designated public officers on 25 February 2016.

[14] Section 87(1) of the *IC Act* states that:

*The Integrity Commission is to assess, investigate, inquire into or otherwise deal with, in accordance with Parts 6 and 7, complaints relating to misconduct by a designated public officer.*

### 2.2. Assessment process

[15] Following initial review, the complaint was accepted for assessment by the Commission pursuant to s 35(1)(b) of the *IC Act*, and an assessor was appointed on 3 March 2016.

[16] The assessor exercised the powers of an investigator once during the assessment stage.<sup>7</sup>

[17] The assessment did not identify any material to warrant dismissal of the complaint, and the assessor noted that further inquiry was necessary in order to fully examine the allegations raised. On that basis the Assessment Report, dated 15 March 2016, recommended that the complaint be investigated in accordance with s 37(2)(g) of the *IC Act*.

### 2.3. Investigation process

[18] An investigator was appointed to investigate the complaint, in accordance with Part 6 of the Act on 17 March 2016.

[19] In accordance with s 38(2) of the *IC Act*, the Premier, the Hon Will Hodgman MP, was advised by written notice of the determination to conduct an investigation on 18 March 2016.

[20] The Notice provided to the Premier was made subject to the confidentiality requirements of s 98 of the *IC Act*.

[21] On 11 August 2016 Commission officers met with Tasmania Police, and the following day with the Director of Public Prosecutions, in relation to evidence obtained during the investigation that possibly related to criminal activity.

[22] On the basis of advice received in those meetings, the Commission determined to continue its investigation with a focus on the alleged misconduct, rather than any potential fraud that may have arisen from the evidence.

[23] The Commission received advice and assistance<sup>8</sup> from SSMO to ensure the accuracy of this report, particularly in relation to the interpretation and application of the *State Service Act 2000*, the *State Service Regulations 2011* and the associated Employment Directions and Ministerial Directions.

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<sup>7</sup> In accordance with s 35(4) of the *IC Act*.

<sup>8</sup> Pursuant to s 21 of the *IC Act*.

[24] The investigation involved the use of the Commission's coercive powers, including ten Notices to produce records,<sup>9</sup> three to attend and give evidence,<sup>10</sup> and three to produce information.<sup>11</sup> Additionally, one entry and search authorisation was executed<sup>12</sup> and three authorisations were made for public officers from other public authorities to undertake work on behalf of the Commission.<sup>13</sup>

[25] During the investigation, six additional allegations were identified. These allegations were sufficiently distinct to the initial allegations as to warrant separate consideration. Consequently the eight allegations considered by the Commission were:

1. Stephen Conway acted with favouritism in relation to the recruitment and subsequent promotion of Lori Hocking (currently Executive Manager Education Services), whom he previously worked with in South Australia.
2. Lori Hocking has improperly offered associates opportunities relating to procurement and recruitment based on favouritism instead of merit.
3. Stephen Conway failed to declare a conflict of interest in relation to the approval (as delegate) of Lori Hocking's appointment to TasTAFE as Division Manager – Technology, Trades and Engineering.
4. Stephen Conway failed to declare his interest (as Director and Board Member) in VETNetwork Australia.
5. Stephen Conway improperly facilitated the provision of 'incentive payments' to Lori Hocking, in excess of the entitlements specified in her instrument of appointment.
6. Lori Hocking failed to declare her interest (as Chief Executive Officer and Secretary) in VETNetwork Australia.
7. Lori Hocking improperly obtained frequent flyer points associated with work-related travel.
8. Lori Hocking has misused her TasTAFE Tasmanian Government Card.

[26] Some of the allegations above were subsequently addressed together for ease of reference, resulting in five distinct allegations.

## 2.4. Standard of proof

[27] The standard of proof applied in this report 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).

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

*[R]easonable 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*

<sup>9</sup> In accordance with s 47(1)(c) of the IC Act.

<sup>10</sup> In accordance with s 47(1)(b) of the IC Act.

<sup>11</sup> In accordance with s 47(1)(a) of the IC Act.

<sup>12</sup> In accordance with s 50 of the IC Act.

<sup>13</sup> In accordance with s 21 of the IC Act.

*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.*<sup>14</sup>

## **2.5. Procedural fairness**

- [29] In accordance with s 46(1)(c) of the *IC Act*, the investigator 'must observe the rules of procedural fairness' in undertaking the investigation.
- [30] This report contains factual findings. Where factual findings might be considered to be adverse, they have been provided to the affected individuals for comment.
- [31] As neither the investigator nor the Commission is the ultimate decision maker, procedural fairness is not an opportunity for the relevant individual to test all of the evidence obtained during an investigation. Rather, it is an opportunity for the person to make comment on excerpts of the draft investigator's report, including the draft findings.
- [32] Mr Conway and Ms Hocking were invited to offer submissions or comments on relevant parts of a draft copy of this report. Mr Conway and Ms Hocking were sent the report on 29 November 2016, and requested to submit their responses by 20 December 2016.
- [33] On 19 December 2016 Mr Conway requested, and was granted, an extension until 30 January 2017 to provide a response to the draft report. His response was received on 31 January 2017.<sup>15</sup> Shortly after receipt of Mr Conway's response it became apparent that three appendices to his submission had not been attached. The investigator requested the production of them on 31 January 2017. A further request for the appendices was made on 7 February 2017, however in response Mr Conway only provided two. On 8 February 2017, after a further request for the final appendix, Mr Conway responded that he was content for the final appendix to not be included with his response.
- [34] Ms Hocking provided a submission on 20 December 2016.
- [35] The report was finalised by the investigator following consideration of the submissions. For ease of reading, the comments by Mr Conway and Ms Hocking, along with a response to each comment by the investigator (where required), have been collated in Attachment 1 of this report.

## **2.6. Relevant Policies and Procedures**

### ***Legislative framework***

- [36] TasTAFE, 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:
- *State Service Act 2000* (Tas) and *State Service Regulations 2011* (Tas);
  - Treasurer's Instructions;
  - Employment Directions; and

<sup>14</sup> (1938) 60 CLR 336, 362 (Dixon J).

<sup>15</sup> Mr Conway stated that he had originally provided his response on 25 January 2017, but that he had sent it to an incorrect email address.

– Ministerial Directions.<sup>16</sup>

[37] In addition, recruitment of public officers into and within the state service is guided by the recruitment and selection framework developed by SSMO: *Right Job, Right Person*.

### **State Service Act and Regulations**

[38] The code of conduct for State Service employees is at s 9 of the *State Service Act*. Although the entire code of conduct is relevant, 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.*
- (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 –*  
*in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person.*
- (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.*
- (15) *An employee must comply with any other conduct requirement that is prescribed by the regulations.*

[39] The code of conduct applies to all employees and officers: s 9(16). 'Officer' means a person appointed as a Head of Agency, to a prescribed office or as a senior executive under s 31.

[40] Section 7 of the *State Service Act* sets out the State Service Principles, in particular:

- (1)(b) *the State Service is a public service in which employment decisions are based on merit;*
- (1)(j) *the State Service plans for and promotes effective performance management in which Heads of Agencies, officers and employees are accountable for the performance of their functions and exercise of their powers;*
- (1)(k) *the State Service promotes equity in employment;*

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<sup>16</sup> TasTAFE is an Agency under Column 1 of Part 2 of Schedule 1 of the *State Service Act*.

(1)(l) *the State Service provides a reasonable opportunity to members of the community to apply for State Service employment;*

(2) *For the purposes of subsection(1)(b), a decision relating to appointment or promotion is based on merit if –*

(a) *an assessment is made of the relative suitability of the candidates for the duties; and*

(b) *the assessment is based on the relationship between the candidates' work-relates qualities and the work-related qualities genuinely required for the duties; and*

(c) *the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and*

(d) *the assessment is the primary consideration in making the decision.*

[41] The State Service Principles apply to the appointment or promotion decisions of the Senior Executive Service as well as employees.

[42] Part 3 of the *State Service Regulations* sets out the allowances payable to State Service employees with respect to appointment, promotion or assignment of duties.

[43] Regulation 17 deals specifically with the circumstances entitling an employee to a special accommodation payment. Where a Head of Agency is satisfied that a special accommodation payment should be granted,<sup>17</sup> such payment is payable in the first instance for such period, not exceeding three months, as the head of Agency determines and may be extended for any additional periods not exceeding three months at any one time.

### ***Treasurer's Instructions***

[44] The Treasurer's Instructions (TIs) are issued under the authority of the *Financial Management and Audit Act 1990*, and require compliance by all Heads of Agency.<sup>18</sup>

[45] Procurement is dealt with in Part 11 of the TIs and has specific relevance to this investigation.

[46] Treasurer's Instruction 1101<sup>19</sup> outlines the principles which government agencies must follow when undertaking procurement activities. The most relevant principles include:

- agencies must pursue value for money purchasing outcomes. Value for money means achieving the desired outcome at the best possible price;
- agencies must ensure that the purchasing process is impartial, open and encourages competitive offers;
- all business must be conducted in the best interests of the State, avoiding any situation which may impinge, or might be deemed to impinge, on impartiality;
- public money must be spent efficiently and effectively and in accordance with Government policy; and

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<sup>17</sup> The Head of Agency must be satisfied that the employee is unable to obtain accommodation in the locality that they have transferred to, resulting in additional expense, or the accommodation available involves excessive expenditure: *State Service Regulations 2011*, regs 17(1)(a)–(b).

<sup>18</sup> Treasurer's Instruction 105(1).

<sup>19</sup> Effective date 8 May 2014, Version 10.

- Government buyers involved in procurement must decline gifts, gratuities, or any other benefits which may influence, or might be deemed to influence, equity, or impartiality.
- [47] Treasurer's Instruction 1105<sup>20</sup> provides specific instruction for purchases of goods and services valued at \$50,000 or less (excluding GST):
- agencies are required to weigh the value of the purchase and the cost of seeking quotations against the need to ensure value for money and that the other government procurement principles contained in Instruction 1101, including those relating to enhancing opportunities for local businesses, have been observed.
- [48] Treasurer's Instruction 113<sup>21</sup> details the protocols that agencies must apply for the use and engagement of contractors, including consultants:
- the Head of Agency or Deputy Secretary (or equivalent) must approve any decision to engage a consultant prior to the Agency undertaking the appropriate process.
  - if an agency decides to engage the services of a consultant...agencies must also comply with the mandatory requirements for the relevant procurement threshold (see Instruction 1105) as well as all other mandatory requirements relevant to procurement of services contain in the 1100 series of the TIs.

### ***Ministerial and Employment Directions***

- [49] Employment Direction No. 2 (ED2) sets out the responsibilities in relation to the State Service Principles and minimum requirements that a Head of Agency must meet to ensure adherence to the Principles. Officers and employees must work to ensure the Principles are embedded into the culture of their Agency and that the Principles are applied to all decision making and activities within the Agency.
- [50] The Direction provides that the Principles constitute a total framework within which the State Service works. In particular, ED2 refers to the merit principle and provides at cl 6.2 that 'the State Service is a public service in which employment decisions are based on merit'.
- [51] It requires a Head of Agency to put in place measures in the Agency directed at ensuring that where an employment decision is made relating to the appointment or promotion of a person in the Agency:
- the selection process is determined in advance and information about the process is readily available; and
  - the selection process is transparent and is to be applied equitably and fairly in relation to each eligible applicant.
- [52] Employment Direction No. 17 (ED17) prescribes administrative arrangements and requirements in relation to the Senior Executive Service, equivalent specialists and prescribed officeholders. It references ss 7(1)(b) and 7(2) of the *State Service Act* which provides for employment decisions to be based on merit. Under ED17, the

<sup>20</sup> Effective date 1 December 2014, Version 8.

<sup>21</sup> Effective date 1 May 2013, Version 7.

application of merit requires that: an opportunity to apply for the relevant office or a similar office has been advertised (minimally in the Tasmanian Government Gazette); the appointment be made within six months of advertising; and the selection committee be appropriately representative having regard to community, peer, specialist input and senior executive level as appropriate.

- [53] Ministerial Direction No. 21 deals with Relocation Assistance with Respect to Appointment, Promotion or Assignment of Duties for Officers and Employees. Reimbursement is to be assessed and approved by Heads of Agency based on reasonable and demonstrated expenses. The Special Accommodation Payment is available to cover reasonable actual costs of temporary accommodation of up to but not exceeding a period of 12 weeks or until a person takes up their principal place of residence. Payment in excess of 12 weeks may be approved by the relevant Head of Agency, where they are satisfied that genuine attempts have been made to take up the principal place of residence.

### ***Right Job, Right Person***

- [54] The Tasmanian Government has published a framework for the conduct of recruitment and selection within departments: *Right Job, Right Person*. The framework provides guidance for departments to ensure that selections are based on merit, however its processes are not mandatory.
- [55] The framework covers, in some detail, all facets of a recruitment process, from defining the role through to the selection process. For example, there is a document that specifically addresses selection panels and the responsibilities of members of panels, including the declaration of conflicts of interest (which should be done, in writing, as soon as possible following the conflict arising).

## **2.7. Definition of a conflict of interest**

- [56] A conflict of interest arises when a public officer's<sup>22</sup> private interests may interfere, or be seen to interfere, with the officer's public duties. Private interests include personal interests eg interests associated with a person's family, friends or associates.
- [57] A conflict of interest can be potential, actual or perceived:
- Potential conflict: where the private interests of a public officer could interfere with their public duties in the future. The interest may exist but have no impact upon the performance of the officer's duties at a given point in time. They can be avoided or managed to prevent the interest causing an actual conflict.
  - Actual conflict: where there is a current conflict between the private interests of a public officer and the officer's performance of their duties. Actual conflicts of interest do not necessarily amount to misconduct however they need to be carefully managed (including through avoidance of the conflict) to minimise the risk of the conflict developing into misconduct.
  - Perceived conflict: where a perception is formed that a public officer's private interests could improperly influence or may have improperly influenced their public duties.

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<sup>22</sup> A public officer is defined in s 4 of the *IC Act*.

[58] Conflicts of interest can be pecuniary or non-pecuniary. A pecuniary conflict of interest occurs if a public officer's interests relating to monetary transactions or financial losses/benefits cause a situation that could directly lead to financial advantage for a public officer, their family, friends or associates. A non-pecuniary conflict of interest occurs if a public officer's interests, that are not monetary or financial, could advantage the public officer themselves, their family, friends or associates.<sup>23</sup>

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<sup>23</sup> [http://www.integrity.tas.gov.au/\\_\\_data/assets/pdf\\_file/0004/280327/Conflict\\_of\\_Interest\\_fact\\_sheet.pdf](http://www.integrity.tas.gov.au/__data/assets/pdf_file/0004/280327/Conflict_of_Interest_fact_sheet.pdf).



### 3. Evidence & Analysis

[59] This section of the report analyses the evidence and information that the Investigator has collected concerning the allegations contained in the complaint, and those subsequently identified during the investigation.

#### 3.1. Allegation 1 – Favouritism by Stephen Conway

*Stephen Conway acted with favouritism in relation to the recruitment and subsequent promotion of Lori Hocking, with whom he previously worked in South Australia.*

##### *Summary*

*Mr Conway and Ms Hocking are close friends who previously worked together at VETNetwork Australia and are currently employed at TasTAFE. Since applying for the position of Division Manager at TasTAFE in May 2015, Ms Hocking has been the beneficiary of a number of promotions and salary increases.*

*The position Ms Hocking applied for in May 2015 had a starting salary of \$121,318. By late February 2016, approximately seven months into her appointment, Ms Hocking's salary was \$154,535 – a direct result of actions taken by Mr Conway. Shortly after, Ms Hocking was promised an SES 4 position by Mr Conway, which at the time had a base salary of \$207,973.*

*The investigation has identified no other officer of TasTAFE who has received the same or similar treatment.*

*This allegation is supported by evidence which shows that Mr Conway failed to declare and manage his conflict of interest and, on the basis of that conflict, improperly used his position to secure a range of pecuniary benefits for Ms Hocking, many of which Mr Conway had no authority to offer.*

##### 3.1.1. Evidence

###### **VETNetwork Australia**

[60] Ms Hocking became Chief Executive Officer of VETNetwork in January 2009. In 2014, when VETNetwork was undergoing structural changes, she nominated Mr Conway as a possible Director.<sup>24</sup>

[61] Mr Conway was subsequently appointed as a Director of VETNetwork on 26 June 2014. He is currently the Deputy Chair of the VETNetwork Board of Directors.<sup>25</sup>

[62] Evidence from both Mr Conway and Ms Hocking is that their acquaintance has developed into a close friendship, as a result of their employment at VETNetwork<sup>26</sup> and TasTAFE.<sup>27</sup>

[63] In 2015 Ms Hocking was seeking employment opportunities beyond VETNetwork. Ms Hocking made this known to Mr Conway, who agreed to be listed as a referee on her curriculum vitae and notified her of several prospective employment opportunities.<sup>28</sup>

<sup>24</sup> Transcript of interview – Lori Hocking, p. 13.

<sup>25</sup> ASIC check – 'Vocational Education and Training Network Australia Limited'.

<sup>26</sup> Mr Conway's evidence is that he is not remunerated for his role as a Director and Board Member of VETNetwork.

<sup>27</sup> Transcript of interview – Lori Hocking p.18; Transcript of interview – Stephen Conway p. 15.

- [64] In April 2015 Mr Conway advised Ms Hocking that the position of Division Manager – Technology, Trades & Engineering was due to be advertised by TasTAFE. Subsequent to that advice, Mr Conway and Ms Hocking had a conversation in which Mr Conway advised Ms Hocking of a number of general details about the restructure of TasTAFE and what the agency was looking for in terms of operational priorities.<sup>29</sup>

### ***Mr Conway's Conflict of Interest – VETNetwork Australia***

- [65] In June 2014 Mr Conway was appointed as a Director of VETNetwork Australia. He has since held that position concurrently to his position as Chief Executive Officer of TasTAFE.
- [66] No written declaration of Mr Conway's interest in VETNetwork Australia has been identified.
- [67] Material produced to the Commission includes a document which appears to be authored by Mr Conway for the TasTAFE Board, declaring his pecuniary and non-pecuniary interests. The document includes information relating to Mr Conway's external activities, his pecuniary interests and non-pecuniary interests however it contains no reference to Mr Conway's interest in VETNetwork Australia.
- [68] At interview Mr Conway stated that he declared his interest in VETNetwork Australia to the TasTAFE Board upon his appointment to the VETNetwork Australia Board.<sup>30</sup>

### ***Recruitment***

- [69] Ms Hocking was interviewed for her original position on 26 May 2015 by a selection panel comprising of Person C (Chair), Person B, and Person D.
- [70] Person B gave evidence to the Commission that Mr Conway did not apply any pressure to the members of the selection panel to select Ms Hocking.<sup>31</sup> Person C also confirmed that she was not pressured by Mr Conway at that time to recruit Ms Hocking.<sup>32</sup>
- [71] The selection panel report, completed on 6 June 2015, recommended Ms Hocking as the preferred candidate. The report noted:
- Each of [the other applicants, including Person E] would also be suitable to fill the role.*<sup>33</sup>
- [72] Person E had applied for two Division Manager positions and was offered the other position after this process.
- [73] When Ms Hocking was offered the position, she declined.<sup>34</sup>
- [74] As a result Mr Conway became involved in negotiating with Ms Hocking to attract her to Tasmania. Evidence from Person C (the chair of the selection panel) is that Mr Conway subsequently reached an agreement with Ms Hocking independent of Person C.

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<sup>28</sup> Transcript of interview – Stephen Conway p. 14.

<sup>29</sup> Transcript of interview – Lori Hocking p. 21.

<sup>30</sup> Transcript of interview – Stephen Conway p. 24.

<sup>31</sup> Transcript of interview – Person B p. 18.

<sup>32</sup> Information from Person C, in response to NPI 16-0023/16/39.

<sup>33</sup> Selection Panel Report p. 7.

<sup>34</sup> Transcript of interview – Lori Hocking p. 3.

- [75] What followed was a set of commitments made to Ms Hocking, as outlined in the following email to her from Mr Conway on 5 June 2015:

*If you choose to accept the position;*

*The salary component of your remuneration package will be \$131,000, plus 2% increment from July 1<sup>st</sup>.*

*You will receive the superannuation guarantee amount, in addition to your salary component.*

*You will receive an inclusive relocation allowance of \$30k, paid in 2 parts, 1<sup>st</sup> upon appointment and 2<sup>nd</sup> upon your 1<sup>st</sup> 12 month anniversary. The reason for this is to recognize that in the first instance you will be taking 12 months LWOP from your current employer.*

*You will receive a 12 monthly vehicle allowance of \$15,700 in lieu of our provision of a wet leased vehicle for private and personal use.*

*You will have an annual allocation of \$5,000 to be used to support activities directly related to your negotiated personal development plan.*

*We will support [any] pre-visits to Tasmania that you wish within reason to do as part of your pre-induction. This will be paid to you as [a] negotiated amount to cover each trip.<sup>35</sup>*

- [76] Mr Conway signed the selection panel report a week after the above email, on 12 June 2015.
- [77] Ms Hocking visited Tasmania with her husband and two children from 5 July to 9 July 2015. Mr Conway authorised the cost of Ms Hocking's and her children's flights to Hobart on 5 July, as well as hers, her husband's and her children's flights back to Adelaide on 9 July 2015 to be reimbursed to her. The visit cost TasTAFE \$2,093.69.<sup>36</sup>
- [78] Mr Conway stated at interview that the members of the selection panel responsible for filling the Division Manager position in 2015 were aware that he was associated with Ms Hocking.<sup>37</sup>
- [79] Person B confirmed that he became aware of the association some time before the position was advertised in early 2015, and that the panel was aware of it.<sup>38</sup>
- [80] When Mr Conway became directly involved in negotiating Ms Hocking's recruitment to TasTAFE, he involved Person A in that process.<sup>39</sup>
- [81] Person A gave evidence that he was aware that both Mr Conway and Ms Hocking, at that time, held positions at VETNetwork Australia.<sup>40</sup>
- [82] During the investigation the Commission sought all records relating to declarations of interest by Mr Conway held by TasTAFE, DPaC and DoE. The only material obtained from that process was a single undated declaration made by Mr Conway to the TasTAFE Board which does not make any references to VETNetwork Australia or Ms Hocking.

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<sup>35</sup> Email from Mr Conway to Ms Hocking, 5 June 2015.

<sup>36</sup> Claim for Payment Form, authorised by Mr Conway 3 June 2015.

<sup>37</sup> Transcript of interview – Stephen Conway p. 22.

<sup>38</sup> Transcript of interview – Person B p. 17.

<sup>39</sup> Transcript of interview – Stephen Conway p. 4.

<sup>40</sup> Information provided by Person A, in response to Notice.

### ***Above Base Salary Appointment***

[83] Clause 8.1 of ED17 states:

*All initial appointments must be at the Base Salary Point unless the Head of the State Service has approved otherwise having consideration to any submission a Head of Agency may provide detailing the necessity and benefit of appointing an individual above the Base Salary Point.*<sup>41</sup>

[84] The position being offered to Ms Hocking is classified as SES 1 position, with an associated Base Salary Point of \$121,318.

[85] On 10 June 2015 Mr Conway wrote to the Head of the State Service seeking approval to appoint Ms Hocking to SES 1, Salary Point 5 at \$133,450.<sup>42</sup> This amounted to an increase of \$12,132 to Ms Hocking's starting salary.

[86] In support of the necessity of his request Mr Conway stated:

*the selection panel considered that in the event the two preferred candidates did not accept the offer of appointment TasTAFE should go back to the market to try to identify more suitable candidates.*

[87] In relation to the benefit Mr Conway stated:

*[Ms Hocking] is currently employed under a Contract that has a total remuneration package value of \$180,000. She has chosen to apply for the TasTAFE position on the basis of choosing a different career path and wanting to work in a State-Based, publicly funded VET system.*

[88] The selection panel report contains a 'Contingency Recommendation' to be considered should Ms Hocking decline the offer of employment: 'If successful applicant declines, it is recommended that panel reconvene to reconsider course of action'.<sup>43</sup>

[89] The selection panel report contains no reference to the need to return to market should either Ms Hocking or Person E decline their offers of employment. Mr Conway was asked where he obtained that information:

Q. *Who told you that that was the preferred option, that it would have to go back to market if Lori or [Person E] didn't accept?*

A. *I don't know that anyone told me. I would assume that from the panel report, but if I didn't it would've come from [Person C].*

Q. *Just to clarify, you can't recall being told this or –*

A. *No, I don't recall...It would have either come from the panel report or from the chair.*<sup>44</sup>

[90] Person C was asked whether Mr Conway's statement about returning to the market was accurate. She provided the following response:

*I do not agree that the panel had intended to "go back to market" had the two preferred candidates not accepted the offer of appointment.*

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<sup>41</sup> Employment Direction No. 17 'Senior Executive Service and Equivalent Specialist Officers – Administrative Arrangements and Conditions of Service' cl 8.1.

<sup>42</sup> Letter from Mr Conway to Head of State Service, 10 June 2015.

<sup>43</sup> Selection Panel Report p. 2.

<sup>44</sup> Transcript of interview – Stephen Conway, p. 21.

*The panel would have reconvened to discuss the type of support and development opportunities that either [candidates] would need and then decide if that was appropriate in the circumstances applicable to TasTAFE in June 2015.*

*None of the discussions that the Panel had had, ruled either of them out completely at the time of the selection process.<sup>45</sup>*

[91] The request was approved by the then Acting Head of the State Service, on the basis that Ms Hocking was to maintain a high level of performance during her appointment.<sup>46</sup>

[92] When asked what steps were put in place to ensure that Ms Hocking complied with this requirement, Mr Conway stated:

*I was involved of [sic] management of TasTAFE for about four weeks when Lori was appointed, so it really wasn't until I started back in TasTAFE in January, which was seven months after her appointment when – instigated annual and regular meetings with Lori and ensured that I stayed in constant dialogue with people who were affected by her management in terms of her performance, both inside and outside the organisation.*

Q. *Were those discussions in terms of her general performance against her contract? Or was there a higher threshold, given this condition that you needed to assess her on?*

A. *No, look, it was certainly in terms of a higher threshold. I said we didn't start with the statement of duties as the benchmark. I was really clear about – we were driving a fairly significant change agenda. I was putting a lot of things on her responsibility, and constantly following up with her that she was getting those things done.<sup>47</sup>*

[93] Mr Conway stated at interview that he declared no conflict of interest to the Head of the State Service when he requested that Ms Hocking be appointed at SES 1 Level 5.

[94] The Acting Head of the State service and the Deputy Director, SSMO, were involved in approving and processing Mr Conway's request. There is no evidence that either person was made aware of Mr Conway's association to Ms Hocking.

### ***Executive Manager – Education Services***

[95] Mr Conway moved from TasTAFE to the position of Acting Secretary of DoE from 31 August 2015 to 18 January 2016.

[96] During this period, commencing approximately one month into Ms Hocking's appointment, a series of administrative arrangements were put in place, resulting in Ms Hocking acting as Executive Manager – Education Services, while the substantive holder of that position, Person C, acted as Chief Executive Officer of TasTAFE.<sup>48</sup>

[97] Mr Conway and Ms Hocking both stated that these arrangements came about after consultation with each of the three Division Managers at that time – Ms Hocking, Person E and Person F.<sup>49</sup>

[98] Mr Conway and Ms Hocking both gave evidence that Person E indicated a desire to remain in his current position, and Person F was about to take approximately five months leave.<sup>50</sup>

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<sup>45</sup> Information provided by Person C.

<sup>46</sup> Letter to Mr Conway, 24 June 2015.

<sup>47</sup> Transcript of interview – Stephen Conway pp. 23–24.

<sup>48</sup> Transcript of interview – Stephen Conway p. 5.

<sup>49</sup> Transcript of interview – Stephen Conway p. 6; Transcript of interview – Lori Hocking p. 6.

<sup>50</sup> Transcript of interview – Stephen Conway p. 6; Transcript of interview – Lori Hocking p. 5.

[99] Ms Hocking was therefore considered the most appropriate person to act in Person C's position.

[100] These arrangements were communicated to the TasTAFE Board.<sup>51</sup>

[101] On 31 August 2015, Person C, as Acting Chief Executive Officer, varied Ms Hocking's duties to that of Acting Executive Manager – Education Services in accordance with s 34(1)(e) of the *State Service Act*.<sup>52</sup>

[102] As a result of the variation to her duties, Ms Hocking's salary classification was that of SES Level 2 (\$143,088), an increase of \$9,638.

[103] After Mr Conway's return to TasTAFE in early 2016, Person C was seconded to another agency. As a result, Ms Hocking remained as Acting Executive Manager – Education Services.<sup>53</sup>

[104] On 16 February 2016 Mr Conway extended the higher duties allowance associated with Ms Hocking acting in the higher position.<sup>54</sup>

[105] Shortly after, on 22 February 2016, Mr Conway increased Ms Hocking's salary to SES 2, Salary Point 4 at \$154,535<sup>55</sup> – a further increase of \$11,447 from her base salary at the time. In his letter to Ms Hocking in relation to this increase, Mr Conway offers no explanation as to why this further increase of salary occurred.

[106] Documentary evidence tends to suggest that it was the result of negotiation between Ms Hocking and Mr Conway which resulted in a higher salary, and with Ms Hocking becoming the substantive Executive Manager – Education Services:

- An email of 26 February 2016 from Mr Conway to staff of TasTAFE stated:

*You would note that [Person C's] news has now been made public. After deliberations with the Chair of the Board I have asked Lori Hocking to continue on in her current role as the Executive Manager of Education Services (EMES). This in recognition of the impetus that she has created at the Division level and her ability to lead our Corporate Agenda.*

*From the 7<sup>th</sup> of March Lori will move from acting status to being the EMES. Early in 2017 I intend to review the EMES position with the intention of considering moving this position to a Chief Operating Officer role.*<sup>56</sup>

- On the same date Ms Hocking sent an email to [name deleted] discussing the changes underway at TasTAFE:

*They have given me the job permanently – they have decided not to advertise. The sticking point however is the salary – it is at a higher level – SES 2. [Person C] is paid at Level 5 and I am paid at Level 1 – I have said I won't take it unless they pay me at Level 5. They have agreed but it has to be signed off by the Premier so waiting to see if he will.....it's an unusual request.*<sup>57</sup>

<sup>51</sup> Email from Mr Conway to Person B and Person C, 21 August 2015.

<sup>52</sup> Letter from Person C to Ms Hocking, 31 August 2015.

<sup>53</sup> Transcript of interview – Stephen Conway pp. 7–8.

<sup>54</sup> Letter from Mr Conway to Ms Hocking, 16 February 2016.

<sup>55</sup> Letter from Mr Conway to Ms Hocking, 22 February 2016.

<sup>56</sup> Email from Mr Conway to TasTAFE staff, 26 February 2016.

<sup>57</sup> Email from Ms Hocking to [name deleted], 26 February 2016.

[107] Aside from the emails outlined above, no additional records were identified relating to that variation of Ms Hocking's duties, particularly in relation to what her substantive role was. It is noted that, aside from statements in emails from Mr Conway, no document formalising this arrangement was identified. This issue was canvassed with Mr Conway at interview:

Q. *So when you say she'll move from acting status to being in the EMES, does that mean that her substantive role would then be EMES?*

A. *Well, substantive is probably not the right term, but in the term of her contract I have the ability to move somebody below band 3, or at band 3 or below to another position. So given that [Person C] was going to be away from the organisation for a period of three years, I didn't want us to have to go out publicly with someone who was constantly referring to themselves as the Acting Executive Manager of Education Services.*

Q. *So would she have stopped being the Division Manager at that point?*

A. *That's right.*

Q. *Okay. So was there a selection process for that?*

A. *No, I was not required to enact a selection process.<sup>58</sup>*

[108] On 22 March 2016 Mr Conway sent an email to the Head of the State Service. In that email Mr Conway refers to Ms Hocking:

*[Person C's] replacement has now been in her role for over 10 months, taking into account backfill arrangements during [Person C's] recreation leave before taking on the Acting CEO's position, her anniversary of appointment comes up soon and I will be seeking to have her go up to the next salary step upon that date. This Officer, Lori Hocking, is really developing well and is already making great strides as my 2 IC.<sup>59</sup>*

[109] It was noted that, much like the information given to the Head of the State Service by Mr Conway in the letter of 10 June 2015, the email above contains inaccurate information – this time in relation to Ms Hocking's length of service which, rather than being over ten months, was just short of eight months. At interview Mr Conway was dismissive of this error:

Q. *I accept certainly that that could be a typo. If it is a typo, I certainly wouldn't argue with that, but do you think an email to the Head of the State Service may require a bit of accuracy about this sort of detail?*

A. *Absolutely. I'm embarrassed to read it. As soon as you showed me, I looked at the date, March, and thought, you know, that's not 10 months. But having said that, whether it's 10 months, eight months, nine months, or eleven, it's not advantaging anybody. It's obviously a typo.<sup>60</sup>*

### **Deputy Chief Executive Officer/Chief Operating Officer**

[110] In April 2016, Ms Hocking was approached by the Bendigo Kangan Institute (BKI) in relation to a prospective employment opportunity for her. On 20 April 2016 Ms Hocking travelled to Melbourne in order to meet with representatives from BKI about the employment offer.<sup>61</sup>

<sup>58</sup> Transcript of interview – Stephen Conway p. 27.

<sup>59</sup> Email from Mr Conway to Head of State Service, 22 March 2016.

<sup>60</sup> Transcript of interview – Stephen Conway p. 28.

<sup>61</sup> Email from Ms Hocking, 14 April 2016.

[111] Mr Conway, being aware of the approach from BKL, facilitated a counter-offer in order to retain Ms Hocking with TasTAFE. This comprised of a further set of commitments, similar to those offered on Ms Hocking's appointment. On 23 April 2016 Mr Conway wrote an email from his private email account to Ms Hocking's private email account:

*Dear Lori, many thanks for keeping me fully informed of your employment opportunity discussions with KBI [sic]. I want to acknowledge that you have been full and frank with me about your negotiations.*

*As you come closer to the decision I think it wise to reiterate my discussions with you about your ongoing tenure with TasTAFE. These following points are an additional Schedule, Confidential between the TasTAFE Board, the CEO and yourself, to your current contract details such as motor vehicle, superannuation etc.*

*I will follow this email up with a letter signed by myself and the Chair of the Board which formalises these points;*

*Your [sic] will be officially recognized as my nomination as the person most likely to succeed me as the next CEO of TasTAFE. As such, you will be remunerated as the acting CEO anytime I am [on] leave from my position.*

*Until you take up the CEO role, or the current 5 years contract expires you will;*

*be provided with the equivalent return airfare to Adelaide once per month to coincide with a day's work in your Adelaide Office on either a Monday or Friday depending upon what suits you and TasTAFE,*

*be given the opportunity to undertake the full ANZSOG Leadership Program,*

*upon each anniversary date of your starting in TasTAFE you will receive \$6k; in recognition of your additional accommodation costs,*

*given the circumstances of your family residing in another State a family friendly flexibility will be exercised at the CEO's discretion if you need to work from your Adelaide Office for a period of no longer than 10 working days,*

*When the TasTAFE structure is amended in the next month or so to include a Deputy CEO / Chief Operations Officer you will be placed in that role for a period up until the position has to be advertised and filled on merit. At which time you will be fully supported in your application.*

*This additional Schedule is on the basis of your high level performance reports thus far and you maintaining your high level KPI achievement record as determined by the CEO.<sup>62</sup>*

[112] The stated purpose of the reclassification was to provide for a succession plan in relation to Mr Conway's eventual departure as Chief Executive Officer.<sup>63</sup> According to information provided by Person A, the succession plan was part of Mr Conway's performance criteria as assessed by a Board Committee.<sup>64</sup>

[113] On 26 May, Person G emailed a copy of a Mercer evaluation of the draft statement of duties associated with the new Deputy Chief Executive Officer/Chief Operating Officer position to Mr Conway.

<sup>62</sup> Email from Mr Conway to Ms Hocking, 23 April 2016.

<sup>63</sup> Transcript of interview – Stephen Conway p. 11.

<sup>64</sup> Stephen Conway procedural fairness response, Appendix 1, p. 1.



[114] Person G's evaluation classified the new position at an SES 3 level, to which Mr Conway responded:

*Thanks can you tell me what would have made this a 4?*<sup>65</sup>

[115] Mr Conway emailed an update on this issue to Person A on 29 May 2016. In that email Mr Conway stated:

*... you will recall that Lori was headhunted by Bendigo Kangan TAFE recently and offered approx.. \$70k to join their Executive. I have indicated to her that I would review how we can assist her, particularly in the period where her family are in SA. On the basis of my discussions with her about opportunities in TasTAFE she eventually rejected the Victorian Offer but unless I can ease her family and financial services she will move on.*<sup>66</sup>

[116] On 3 June 2016 Mr Conway wrote to the Director SSMO, requesting approval for the creation of the Deputy CEO/COO position.<sup>67</sup>

[117] In the request, Mr Conway stated his intention to place Ms Hocking in that role if approval were granted. Mr Conway confirmed at interview that he declared no conflict of interest to the Director.<sup>68</sup>

[118] Shortly after on 8 June 2016 Mr Conway emailed Ms Hocking to advise that the new position had been classified as an SES 3.

[119] Ms Hocking forwarded that advice to her husband with the comment:

*So, what do I do now? Not at the level promised .....*<sup>69</sup>

[120] The promises made to Ms Hocking were canvassed with her at interview:

Q. *What was promised?*

A. *A level 4.*

...

*Originally I was told that I could just assume the position [of Deputy CEO/COO]. So the advice that I was originally provided by both [Person D] and Stephen was that the nature of the backfill arrangements was that I could just be moved into that Deputy CEO role and that there didn't need to be a recruitment process – and I was shitty.*<sup>70</sup>

[121] Documentary evidence further supports Ms Hocking's belief that she was to be given a further, significant, salary increase at this time. In an application to a financial institution, dated 2 June 2016, she notes that 'My salary is about to change – increase to \$220k per year'.<sup>71</sup>

[122] At interview Ms Hocking stated that she turned down the offer from BKI 'based on the fact that advice was that [she] could step into the role' of Deputy CEO/COO at an SES 4 level.<sup>72</sup>

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<sup>65</sup> Email from Mr Conway to Person G, 26 May 2016.

<sup>66</sup> Email from Mr Conway to Person A, 29 May 2016.

<sup>67</sup> Letter from Mr Conway to Director, SSMO, 3 June 2016.

<sup>68</sup> Transcript of interview – Stephen Conway, p. 41.

<sup>69</sup> Email from Ms Hocking, 8 June 2016.

<sup>70</sup> Transcript of interview – Lori Hocking pp. 53-54.

<sup>71</sup> Macquarie Leasing application, attached to email from Ms Hocking, 7 June 2016.

<sup>72</sup> Transcript of interview – Lori Hocking, p. 38.

[123] Person B expressed some reservation as to which of the two Executive Manager positions at TasTAFE<sup>73</sup> was most appropriately placed to take on the Chief Operating Officer role:

*It's got a Deputy CEO banner, none of our predecessor organisations have had Deputy CEO positions that I can recall, and we've always been able to deal with a CEO's absence by having someone act in that role. The Chief Operating Officer I'll admit I was surprised that the Chief Operating Officer just became a rebadge of an existing position. The Board had at that time spoken of the need to create a Chief Operating Officer and, speaking truthfully, my sense of that was they – I think they were worried about the magnitude of the task that I had and wanted to try to put a bit more oomph into that role, but it's translated into a role that formerly led the Education Division ... so Chief Operating Officers are an increasingly common element of an organisational structure these days, but...I suppose I've become a little bit less significant in the hierarchy.*

Q. So traditionally would a Chief Operating Officer have more of a financial, Corporate Services role than Education Services or –

A. Well again that's my experience.<sup>74</sup>

### 3.1.2. Analysis

#### **VETNetwork Australia**

[124] Mr Conway and Ms Hocking both acknowledge that they are close friends, and that this friendship has grown from a shared employment with VETNetwork Australia and TasTAFE.

[125] Mr Conway became a Director of VETNetwork by virtue of Ms Hocking's nomination. Ms Hocking then became employed by TasTAFE by virtue of Mr Conway's efforts to attract her to Tasmania. In this sense they have both prospered in their professional endeavours by virtue of their personal association.

[126] The nature of this personal association is such that, where one party has the opportunity to advantage the other, a formal conflict of interest declaration, as specifically required by s 9(8) of the *State Service Act*, should be made.

#### **Recruitment**

[127] There is no evidence to suggest that Mr Conway pressured, or applied any undue influence on, the selection panel to select Ms Hocking.

[128] Mr Conway advised that the selection panel members were aware of his association with Ms Hocking, however he did not make a formal declaration of interest.

[129] Mr Conway became directly involved in the process of recruiting Ms Hocking to TasTAFE after she declined the initial offer. Mr Conway was primarily responsible for negotiating the additional commitments made to Ms Hocking. By involving himself in the recruitment process in this way, the evidence is that Mr Conway failed to formally disclose, or take reasonable steps to avoid, a conflict of interest.

[130] There does not appear to have been any consideration as to the cost effectiveness of the commitments made to Ms Hocking against the 'support and development opportunities' that could have been offered to two of the other candidates. It is

<sup>73</sup> Education Services or Corporate Services.

<sup>74</sup> Transcript of interview – Person B p. 56.

suspected that the commitments made to Ms Hocking would likely involve a significantly higher cost to TasTAFE than training one of the other applicants nominated by the selection panel as being suitable for appointment.<sup>75</sup>

- [131] The conclusion that may be drawn from Mr Conway's efforts is that the basis for this departure from the selection panel's recommendation is Mr Conway's conflict of interest. That is, his purpose was to recruit Ms Hocking on the basis of her being his friend and associate, rather than to follow the contingency recommendation outlined in the selection report.
- [132] Regulation 18 of the *State Service Regulations*, which relates to relocation expenses, provides for an entitlement for employees to be reimbursed for the relocation cost involved in the conveyance of the employee and his or her dependents to the new locality,<sup>76</sup> and the removal of necessary household furniture and effects (not including livestock) to the new locality.
- [133] The commitment of \$30,000 to Ms Hocking, described as 'relocation expenses' does not come within the scope of reg 18, or satisfy the requirement that relocation expenses be 'reasonable and demonstrated' under Ministerial Direction No. 21. It is also beyond the scope of Ms Hocking's instrument of appointment.<sup>77</sup>
- [134] Similarly there is no identified prescribed authority to offer support for pre-visits, such as those Ms Hocking wished to make as part of her 'pre-induction' in early July 2015.
- [135] The evidence is that, while the selection panel for the Division Manager position in 2015 was aware of Mr Conway's association with Ms Hocking, Mr Conway did not formally declare a conflict of interest to the selection panel.
- [136] Despite the selection panel's awareness of the association, Mr Conway's actions to negotiate the terms of Ms Hocking's appointment after she declined the initial offer would have warranted a formal declaration given their close friendship and shared association with VETNetwork Australia.

#### ***Above Base Salary Appointment***

- [137] Mr Conway's statement that 'the selection panel considered that in the event the two preferred candidates did not accept the offer of appointment TasTAFE should go back to the market to try to identify more suitable candidates' is not corroborated by the selection panel report or the evidence of Person C.
- [138] As previously noted, contrary to Mr Conway's claim, the selection panel report relevantly states that three of the other candidates 'would also be suitable to fill the role'.
- [139] At interview Mr Conway stated:

*My memory is that Lori originally declined the position and that we were the buyer and we were keen to buy, so I don't think I could say it's based upon her personal circumstances and not based on ours. We were very keen to recruit her.*<sup>78</sup>

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<sup>75</sup> Person C suggested that consideration of the training and development for either of the other candidates was the agreed contingency.

<sup>76</sup> *State Service Regulations* reg 18(1)(a)(i).

<sup>77</sup> Lori Hocking Instrument of Appointment, Schedule 2.

<sup>78</sup> Transcript of interview – Stephen Conway p.19.

- [140] Mr Conway's evidence, whilst not being supported by documentary evidence, is also directly contradicted by the evidence of Person C (the chair of the selection panel) who specifically states that the option to return to market was not discussed.
- [141] Given the consistency between Person C's evidence and the documentary evidence, Mr Conway's suggestion that a return to market was considered should Ms Hocking decline the offer cannot be accepted. Whether Mr Conway deliberately or carelessly relied on incorrect information to assist his friend is unknown.
- [142] Mr Conway's reliance on incorrect information in correspondence to the Head of the State Service – much of it in the context of requesting an authorisation to pay Ms Hocking a higher salary – is also noted. Inaccuracies identified in Mr Conway's correspondence of 10 June 2015 and 22 March 2016 to the Head of the State Service include:
- Inaccurate suggestion that the selection panel considered that a return to market was the appropriate course of action should Ms Hocking decline the offer of employment; and
  - Overstatement of Ms Hocking's length of service.
- [143] These inaccuracies could be considered trivial in isolation. However in the context of the series of inaccuracies apparently being relied on by Mr Conway to benefit Ms Hocking, their cumulative effect is apparent. This pattern of behaviour is further exemplified in Mr Conway's overstatement of the salary offered to Ms Hocking by BKI in his correspondence to Person A of 29 May 2016.<sup>79</sup>
- [144] Of note is Mr Conway's lack of transparency when relying on the inaccuracies, demonstrated by failing to declare his conflict of interest to the Head of the State Service when requesting that the Head of the State Service approve an above base salary rate for Ms Hocking on her appointment.
- [145] In relation to the condition imposed by SSMO that Ms Hocking 'maintain a high level of performance' during her appointment, Mr Conway's evidence does not provide any precise explanation as to what measures were put in place to ensure that this occurred.

### ***Executive Manager – Education Services***

- [146] The complaint alleges that Ms Hocking was placed into the Acting Executive Manager – Education Services role 'without any process at all and at the recommendation of Stephen Conway'.
- [147] The evidence does not support a finding that no process was followed in relation to the acting arrangements for the period of Mr Conway's transfer to the Department of Education.
- [148] It is apparent that Mr Conway's transfer created a need for arrangements to fill his position as Chief Executive Officer as well as that of Person C once she commenced as Acting Chief Executive Officer.

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<sup>79</sup> That overstatement relates to the suggestion that Ms Hocking had been offered \$70,000 above her salary at that time, when in fact that offer was approximately \$30,000 more.

- [149] It is further apparent that Ms Hocking was one of at least three candidates considered to temporarily fill Person C's role.
- [150] On that basis, the evidence is that an adequate process was undertaken to vary Ms Hocking's duties to Acting Executive Manager – Education Services while Mr Conway was at the Department of Education.
- [151] Given Person C's later secondment to another agency in early 2016, the decision to extend Ms Hocking's acting arrangements also appears legitimate.
- [152] Mr Conway said in his letter of 22 February 2016 to Ms Hocking, in which he increases her salary by \$11,447 to \$154,535, is in accordance with ED17.<sup>80</sup> In fact, cl 9 of ED17 requires that if an officer's salary is to progress beyond one Salary Progression Point at a time, then approval must be granted by the Head of the State Service. Given that this approval was not sought, this salary increase did not comply with ED17.
- [153] As previously indicated, Mr Conway gave no reason for this salary increase. The evidence is that Ms Hocking negotiated the increase, as outlined in her email to [name deleted] on 26 May 2016, and Mr Conway subsequently accommodated this, potentially in breach of ED17.
- [154] There is a significant lack of clarity in relation to whether Ms Hocking continued to perform the duties of Executive Manager – Education Services in an acting capacity or not.
- [155] Ms Hocking was asked about this issue at interview:
- Q. *What's your current substantive position?*
- A. *Well, I don't really know.*<sup>81</sup>
- [156] Ms Hocking indicated at interview that she suspected her position to be Division Manager, however that suspicion was only on the basis that the Executive Manager – Education Services position no longer existed.
- [157] Mr Conway stated the following at interview:
- Q. *Did this change in Lori's position occur?*
- A. Yes.
- Q. *So when you say she'll move from acting status to being in the EMES, does that mean that her substantive role would then be EMES?*
- A. *Well, substantive is probably not the right term, but in the term of her contract I have the ability to move somebody below Band 3, or at Band 3 or below to another position. So given that [Person C] was going to be away from the organisation for a period of three years, I didn't want us to have to go out publicly with someone who was constantly referring to themselves as the acting executive manager of education services.*<sup>82</sup>
- [158] The lack of clarity regarding Ms Hocking's substantive position at TasTAFE, even for Ms Hocking, suggests that Mr Conway's primary focus in authorising her numerous

<sup>80</sup> Letter to Ms Hocking, 22 February 2016.

<sup>81</sup> Transcript of interview – Lori Hocking p. 27.

<sup>82</sup> Transcript of interview – Stephen Conway pp. 26-27.

salary increases and promotions has been her level of remuneration rather than genuine operational needs as defined in specific roles.

[159] Section 33(2) of the *State Service Act* provides the Premier with the power to transfer a senior executive from one office to another. This power is delegated to the Head of the State Service, and as such the transfer of Ms Hocking from the position of Division Manager to Executive Manager would have required authorisation from the Head of the State Service. No such request was made.

[160] Advice obtained by the Commission from SSMO is that the usual process to be followed in these circumstances would involve clearance from the Head of the State Service, on the basis that no other suitable senior executive officers could be transferred to the 'vacant' office. This would then require an advertised selection process.

[161] Of particular relevance to this matter is Mr Conway's email to staff of TasTAFE stating that '*From the 7<sup>th</sup> of March Lori will move from acting status to being the EMES*' as well as Ms Hocking's statement that '*They have given me the job permanently – they have decided not to advertise*'.

[162] The evidence suggests that Ms Hocking was transferred to the position of Executive Manager – Education Services on 7 March 2016 without authorisation from the Head of the State Service and without an open selection process.

[163] This transfer, therefore, amounts to a further breach of ED17.

***Deputy CEO/Chief Operating Officer***

[164] Documentary evidence (see below) suggests that Ms Hocking's meeting with prospective employers from BKI was a catalyst for the creation of the Deputy CEO/Chief Operating Officer position and Ms Hocking's placement in it.

[165] Mr Conway's email to Ms Hocking of 23 April 2016 is particularly convincing in this respect:

*Dear Lori, many thanks for keeping me fully informed of your employment opportunity with KBI [sic]. I want to acknowledge that you have been full and frank with me about your negotiations.*

*As you come close to the decision I think it wise to reiterate my discussions with you about your ongoing tenure with TasTAFE*

*...*

*When the TasTAFE structure is amended in the next month or so to include a Deputy CEO / Chief Operations Officer you will be placed in that role for a period up until the position has to be advertised and filled on merit. At which time you will be fully supported in your application.*

[166] The only indication that this process had already commenced is in Mr Conway's email to TasTAFE staff of 26 February 2016, when he announces that Ms Hocking is to become the 'substantive' Executive Manager – Education Services. In that email Mr Conway states that:

*Early in 2017 I intend to review the EMES position with the intention of considering moving this position to a Chief Operating Officer role.*

[167] A number of factors appear relevant in relation to this issue. First, Mr Conway's first identifiable intention to create the Chief Operating Officer role came immediately after placing Ms Hocking into the Executive Manager role on a substantive basis. Second, the stated timeframe for this process was brought forward by nearly a year once Ms Hocking met with BKI.

[168] This evidence supports a conclusion that the position was created by Mr Conway with the intention that, in 2017, Ms Hocking would fill it and that, as a result of her potentially leaving TasTAFE in April 2016, Mr Conway used the position as a means to keep her with TasTAFE.

[169] The prospect of the position having been created specifically for Ms Hocking was also put to Mr Conway, which he denied.<sup>83</sup>

[170] Mr Conway's only stated justification for the creation of the Deputy CEO/Chief Operating Officer role is for the purpose of succession planning upon his eventual departure from TasTAFE. This explanation does not satisfactorily cover why the Executive Manager position needed to be reclassified (and its associated salary increased) as opposed to simply nominating that existing position as a likely successor.

[171] It is also noted that the prospect of a succession plan focused on Mr Conway's friend does not appear to have involved consideration of the conflict of interest issue arising from it.

[172] Mr Conway's response at interview to that proposition was as follows:

Q. *So the primary purpose for that was succession planning, is that correct?*

A. *That's right.*

Q. *Could that have been done just as the position was at that time or was it necessary to reclassify it?*

A. *It was my view and certainly the view of the subcommittee of the Board that to prepare someone internally to be the next Chief Executive Officer meant that they had to have broader responsibilities than just looking after one portfolio or the other...*<sup>84</sup>

[173] Whilst Person A provided evidence to suggest that Mr Conway had an ongoing responsibility to establish a succession plan,<sup>85</sup> the investigation has not identified evidence to corroborate Mr Conway's assertion that the creation of the Deputy CEO/COO position was primarily for that purpose.

[174] Mr Conway's email to Person G on 26 May 2016, where he asks '*what would have made this a 4?*' supports a conclusion that, throughout the process of creating the Deputy CEO/COO position, Mr Conway's focus was on the level of remuneration attached to the role rather than the genuine needs of TasTAFE. This conclusion is strengthened by the fact that Mr Conway ultimately placed his close friend in the role, at a time that coincides with his attempts to retain Ms Hocking at TasTAFE in the aftermath of the BKI approach.

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<sup>83</sup> Transcript of interview – Stephen Conway p. 34.

<sup>84</sup> Transcript of interview – Stephen Conway pp. 32-33.

<sup>85</sup> Stephen Conway procedural fairness response, Appendix 1, p. 1.

- [175] Ms Hocking's evidence at interview, as well as the documentary material from that time, demonstrates that Mr Conway had promised her a level of remuneration significantly higher than what she was on at the time. The creation of the Deputy CEO/COO position appears to be the method with which Mr Conway intended to follow through on his promises to Ms Hocking.
- [176] Mr Conway's email to Person A of 29 May 2016 strongly evidences an intention on the part of Mr Conway, because of the BKI approach, to offer increasingly generous conditions of employment to Ms Hocking. This evidence is corroborated by Ms Hocking's statement at interview that she was promised an SES Level 4 position.
- [177] Further, Mr Conway's email to Person A contains information which is not corroborated by other material. In particular, Mr Conway states that Ms Hocking was '*offered approx.. \$70k to join their Executive*'. Mr Conway confirmed at interview that this statement meant that Ms Hocking had been offered a salary at BKI that was \$70,000 more than her TasTAFE salary at that time; an offer which would therefore have amounted to approximately \$220,000. In fact, the highest offer made to Ms Hocking by BKI was \$185,000.<sup>86</sup>
- [178] In relation to this issue the strongest evidence is that Mr Conway facilitated a process of creating the Deputy CEO/Chief Operating Officer position on the basis of retaining Ms Hocking at a higher salary, rather than the legitimate needs of TasTAFE.

### **3.1.3. Findings**

- [179] The allegation – that Mr Conway acted with favouritism in relation to the recruitment and subsequent promotion of Ms Hocking – is supported by the evidence identified during the investigation. There is evidence tending to substantiate the allegation in relation to several issues including Ms Hocking's recruitment, her salary upon appointment, subsequent salary increases and the creation of the Deputy CEO/COO role.
- [180] **On the basis of evidence obtained by the Commission, Mr Conway:**
- **had a conflict of interest arising from his association, through VETNetwork Australia, and his close friendship with, Ms Hocking;**
  - **failed to properly declare and manage this conflict of interest when recruiting Ms Hocking to the position of Division Manager – Technology, Trades & Engineering;**
  - **did not exert any pressure or undue influence on the selection panel to select Ms Hocking for the position of Division Manager – Technology, Trades & Engineering;**
  - **failed to declare and manage his conflict of interest in relation to his involvement in seeking approval from the Head of the State Service for Ms Hocking to be appointed above the base salary rate for the position of Division Manager – Technology, Trades & Engineering;**
  - **transferred Ms Hocking's substantive position at TasTAFE from Division Manager – Technology, Trades & Engineering to Executive Manager –**

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<sup>86</sup> Email to Ms Hocking, 23 April 2016.



**Education Services without the necessary selection process or approval from the Head of the State Service; and**

- **offered, without proper authority, commitments to Ms Hocking beyond those that she was entitled to.**

**[181] It is open to conclude that Mr Conway:**

- **provided incorrect or misleading information to the Head of the State Service, in order to secure a higher than base salary rate for Ms Hocking when she was recruited to TasTAFE;**
- **increased Ms Hocking's salary on 22 February 2016 without approval from the Head of the State Service; and**
- **created the position of Deputy CEO/Chief Operating Officer for the purpose of benefitting Ms Hocking, rather than the genuine needs of TasTAFE.**

**[182] On the basis of evidence obtained by the Commission, Ms Hocking:**

- **was legitimately required to act in the position of Executive Manager – Education Services, during the period at which Mr Conway was Acting Secretary of the Department of Education.**

### **3.2. Allegation 2 – Incentive Payment Scheme**

*Stephen Conway improperly facilitated the provision of 'incentive payments' to Lori Hocking in excess of the entitlements specified in her instrument of appointment.*

#### *Summary*

*In addition to the provision of regular salary increases, Mr Conway has made a raft of financial commitments to Ms Hocking in excess of the terms of her instrument of appointment, and in excess of what Mr Conway is authorised to offer.*

*Mr Conway described these as 'incentive payments', and included the payment for Ms Hocking and her family to visit Tasmania before she commenced with TasTAFE, the payment of return airfares between Hobart and Adelaide for Ms Hocking to visit her family, the payment of Ms Hocking's rent and \$6,000 paid to Ms Hocking on each anniversary of her appointment.*

*Approximately \$30,000 has been allocated for these payments to Ms Hocking.*

*No other officer of TasTAFE has received these benefits.*

*The investigation found this allegation to be supported by evidence demonstrating Mr Conway's improper use of his position to provide Ms Hocking with a significant range of financial benefits.*

*The benefits provided to Ms Hocking exceed those which Mr Conway could legitimately have offered, and evidence Mr Conway's focus on advantaging Ms Hocking without consideration of the needs of, or financial impact to, TasTAFE.*

### 3.2.1. Evidence

#### *Travel*

[183] As previously noted, Mr Conway's commitment to Ms Hocking prior to her appointment included 'an inclusive relocation allowance of \$30k'.

[184] Approximately one month after her appointment on 26 August 2015, Ms Hocking sent an email to Mr Conway attaching electronic receipts for 18 flights, predominantly between Hobart and Adelaide.<sup>87</sup>

[185] The total cost of these flights cannot be ascertained by reference solely to the invoices, as a number appear to be replacements for others. Ms Hocking was ultimately 'reimbursed' \$5,074.44 for these flights, with the payment being recorded as 'Staff relocation/Transfer expenses'.

[186] Mr Conway sent an email to Person I, attaching all but one of the invoices with the message:

*Hi [Person I], reimbursement of these expenses completes our commitment to Lori Hocking for reimbursements to support her transition to TasTAFE.*

*Our commitment is that upon completion of her first year of service we will reimburse a further \$15,000 but that's for discussion down the track.*<sup>88</sup>

[187] Initially Ms Hocking's claim was refused as correct invoices had not been supplied with it.<sup>89</sup> Mr Conway, in an email on 2 October 2015 stated:

*Thanks Lori, it was a commitment in writing to you as per your offer of employment with TasTAFE. I negotiated that outcome with [Person B] and [Person A] in respect of recognition of you dropping your actual remuneration package income and increasing your living costs so, you are entitled to expect the reimbursement.*

[188] The payment was ultimately processed on 6 October 2015.

[189] The recording of these payments as 'relocation/transfer expenses' was discussed with Mr Conway at interview:

Q. *So were these relocation expenses?*

A. *Well, yes, in the broader sense. I took them to be relocation because she was travelling back to see her family.*

...

Q. *How can 18 flights amount to relocation?*

A. *I guess, as I said earlier, in the broader sense they were costs incurred by Lori because she was living apart from her family. So in the broader sense I thought that was a reasonable fact that she had relocated to part of Australia where her family weren't.*

Q. *Okay. Does the payment of these flights reflect value for money?*

A. *I believe they do.*

Q. *Why?*

A. *Because it enabled us to retain a good and strong senior leader within the organisation.*<sup>90</sup>

<sup>87</sup> Email from Ms Hocking to Mr Conway, 26 August 2015.

<sup>88</sup> Email from Mr Conway to Person I, 27 August 2015.

<sup>89</sup> Email from Ms Hocking to Person B and Mr Conway, 1 October 2015.

[190] Documentary evidence indicates that the payment of Ms Hocking's flights continued beyond the 18 claimed in this instance.

[191] On 2 February 2016 Mr Conway discussed the incentive payment scheme with Person B:

*Hi [Person B], as you will be aware we have a commitment to a \$15,000 incentive payment to Lori Hocking if she commits to TasTAFE beyond 12 months. This was an incentive scheme that I put to you and [Person A] when we were negotiating to attract her to Tasmania at a reduced salary.*

*It has been difficult to have Performance discussions with her, because of the upheaval in the past 6 months. However my documents and feedback to Lori are all very positive and affirming. Despite that however she is wavering for two reasons 1. Being the uncertainty with [Person C] and 2. The strain on her family budget, predominantly in relation to the running of two house holds and the travel.*

*I am considering bringing forward her next incentive payment by offering to pay her next 3 x 3 month rent invoices, a total of some \$13,500. Whilst this would bring forward a component of her payment, I think she would sign an agreement to repay any money paid prior to her July anniversary should circumstances be such that she left before 12 months.*

*My view is this is a reasonable thing to do and very low risk.*

*What do you think?*<sup>91</sup>

[192] Person B responded with:

*Hi Stephen*

*It's very difficult. I don't think we are in a simple situation for which there is a simple solution. I think we are currently dealing with a highly problematic issue with [name deleted] which, if we are to be honest, not only reflects poorly on her, but also on her previous line manager. I think it means that those of us who are playing the policeman role have to make sure we operating in a manner that could withstand the sort of scrutiny that might be thrown back at us as we call the behaviours of others into question.*

*That's a roundabout way of saying I'm nervous of endorsing anything that might look too 'special'...to what extent does the range of the SES 2 salary, and your capability to approve her being paid, say, at the top, of that scale, offer you a better, more transparent way of helping her?*<sup>92</sup>

[193] This conversation was discussed with Person B at interview:

Q. *What do you mean by 'more transparent'?*

A. *Well I didn't think what he was proposing was particularly transparent. This was the point at which I started to get uncomfortable about what was unfolding.*

...

*I didn't want him to start to introduce more – the concept of random payments or payments outside any sort of formal framework.*<sup>93</sup>

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<sup>90</sup> Transcript of interview – Stephen Conway pp. 49–50.

<sup>91</sup> Email from Mr Conway to Person B, 2 February 2016.

<sup>92</sup> Email from Person B to Mr Conway, 2 February 2016.

<sup>93</sup> Transcript of interview – Person B, pp. 35–36.

### **BKI Counter-offer**

[194] As previously noted, on 23 April 2016 Mr Conway made a number of additional commitments to Ms Hocking in response to the approach of BKI.

[195] Mr Conway sent a draft letter outlining most of the new commitments to Person A on 28 May 2016.<sup>94</sup> It is noted that the version sent to Person A does not include any reference to:

- the approach from BKI;
- the payment of \$6,000 on each anniversary of Ms Hocking's appointment; or
- the payment of Ms Hocking's airfares between Hobart and Adelaide.

[196] Person A, who was aware of the Commission's investigation by this stage, responded to Mr Conway's email with:

*Hi Stephen – I would like to talk this through from a process and context perspective. I am unclear on who has done the mercer evaluations / completed the respective Job analysis questionnaires? The forms are silent on this and undated.*

*I would expect to see a clearance from [Person D] / SSMO?*

...

*In terms of Lori's "Attraction and Retention Letter" – is the format we have used what is expected in these cases? (I have not been exposed to these previously). Is this a variation to Lori's contract? – how does it interplay with it and be legally connected to it?*

...

*Where we state that "have all removal and relocation expenses that are deemed reasonable reimbursed" – surely this must be \$ capped and subject to reference to a number of quotes? What are the guidelines around this?*

...

*"Be placed in that role for a period up until the position has to be advertised and filled on merit. At which time you will be fully supported in your application" – I don't understand this and how it will unfold operationally.*

*The flexibility around working from Adelaide – I understand the rationale but it seems very fluid and discretionary and open to interpretation.*

*I would like to talk this through some more and like to see some confirmation from SSMO ... that it is "signed off" from their perspective and being fully HR and Government process compliant ...<sup>95</sup>*

[197] Mr Conway responded the following day:

*Hi [Person A], my email was not meant to be a full and detailed Briefing, merely to keep you updated. Nothing in terms of the Mercer Reviews, or the negotiations to retain Lori Hocking are finalised. I can assure you that I do follow process as I am required to do and do not make unilateral decisions.*

...

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<sup>94</sup> Email from Mr Conway to Person A, 28 May, 2016.

<sup>95</sup> Email from Person A to Mr Conway, 28 May 2016.

*In respect to the Draft attraction and retention letter, you will recall that Lori was headhunted by Bendigo Kangan TAFE recently and offered approx.. \$70k to join their Executive. I have indicated to her that I would review how we can assist her, particularly in the period where her family are in SA. On the basis of my discussions with her about opportunities in TasTAFE she eventually rejected the Victorian Offer but unless I can ease her family and financial services [sic] she will move on.*

*The information in the letter is not confirmed but is all permissible under the SSMO rules.<sup>96</sup>*

[198] On 27 June 2016 Mr Conway sent a letter to Ms Hocking formally committing to the terms included in the version sent to Person A – that is, the formal letter contains no reference to the payment of Ms Hocking’s flights between Hobart and Adelaide, or the yearly payment of \$6,000 to Ms Hocking.<sup>97</sup>

[199] On 1 July 2016, a further letter was sent to Ms Hocking which included the commitment to pay her flights and \$6,000 on each anniversary of her appointment.<sup>98</sup>

[200] Mr Conway stated at interview that the discrepancy among the four different versions of the counter-offer was the result of inadvertent errors whilst compiling the versions overseas.

*Look, the original document I did in China. I was literally travelling on a fast train when I did it. If we go to the first letter on letterhead –*

Q. *The 27<sup>th</sup> of June one?*

A. *That letter was sent to Lori, I think. Whatever the first letter on letterhead was. She came back to me and said, “Look, your original offer had those other two points in there. You know, have you changed your mind?” or whatever. I said, “Look, no, just as simple as I was working with too many drafts, and so the last copy is the copy that was signed off, and is the copy that stands.”*

Q. *Okay. So is [Person A] aware of those two terms?*

A. *I believe so.*

Q. *Did you tell him?*

A. *Yes, I did.*

Q. *I just note that it’s not in that email.*

A. *No. Look, my conversations with [Person A] have been really clear about what was on offer. I obviously corrected the original letter to Lori, but didn’t correct in writing the letter to [Person A].<sup>99</sup>*

[201] Person B discussed the different versions of the counter-offer at interview:

*I had previously spoken to [Person A] around – about that one at an earlier juncture and he confirmed that he’d seen an earlier draft of that and that was the document that he had asked Stephen to come back and confirm everything was okay before it was made as an offer.*

*But then I alerted him to the fact that there is now a different letter that offers more than the original letter, I believe.*

<sup>96</sup> Email from Mr Conway to Person A, 29 May 2016.

<sup>97</sup> Letter from Mr Conway to Ms Hocking, 27 June 2016.

<sup>98</sup> Letter from Mr Conway to Ms Hocking, 1 July 2016.

<sup>99</sup> Transcript of interview – Stephen Conway pp. 35–36.

*And he was – he was not aware of that second letter.*

...

Q. *So the only time [Person A] saw the later, more generous version if you want to call it that, - was when you showed it to him this week [beginning 5 September 2016]?*

A. *Yes, that's correct.*<sup>100</sup>

[202] Information provided by Person A is that he was provided a draft letter that referenced a commitment to allow Ms Hocking to undertake a day's work in her Adelaide Office once per month. This correlates to the letter noted above (see [195]).

[203] In relation to the additional commitment to pay for Ms Hocking's airfare between Hobart and Adelaide once a month, Person A's evidence is that he became aware of that commitment in September 2016.

[204] Given that he was shown a copy of the formal letters to Ms Hocking dated 27 June and 1 July 2016 by Person B in September 2016, Person A's evidence correlates to that given by Person B and contradicts that provided by Mr Conway.

### **Rent**

[205] In addition to the commitments made by Mr Conway on Ms Hocking's appointment and subsequently as a counter-offer to the BKI offer, TasTAFE also paid for Ms Hocking's rent for her accommodation in Hobart.

[206] As noted earlier in this report, reg 17 of the *State Service Regulations* provides an entitlement in certain circumstances for the payment of a special accommodation allowance.

[207] Mr Conway was asked about this issue at interview:

Q. *Is [reg 17] the basis for which Lori's rent has been paid?*

A. *In a sense, yes. But it's really about saying that it's a relocation expense, and we're not paying her whole rent. We're paying a proportion of her rent.*

Q. *What proportion?*

A. *I can't recall, but it's probably the equivalent of – I don't know, two months out of twelve.*

...

Q. *So was Lori unable to obtain accommodation around Hobart?*

A. *No she obtained accommodation.*

Q. *In relation to this regulation then, which of [subregulations] (a) or (b) applied to Lori?*

A. *Well, neither.*

Q. *Okay. How long has Lori's accommodation been paid for by TasTAFE?*

A. *Well, there was a proportion paid for upon appointment and her second proportion paid on her anniversary, but I repeat we're not paying her full accommodation. It's within the value of that fifteen thousand dollars, closer to ten thousand dollars.*

Q. *But if she's not – if (a) and (b) don't apply to her, then really I'm not quite understanding where this fits in.*

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<sup>100</sup> Transcript of interview – Person B pp. 40-41.

A. *Well, in my mind, where it fits in is that on the basis of Lori's appointment she's paying for full costs of a second set of accommodation away from her family. That was in the spirit of the original offer to assist her to relocate.*

...

Q. *How long will Lori continue to have her accommodation paid?*

A. *As I've indicated, the offer was for upon appointment and the completion of the first 12 months.*

Q. *So no more?*

A. *No more.*<sup>101</sup>

[208] At interview Mr Conway was also asked about the degree to which other staff of TasTAFE were aware of the arrangements to pay for Ms Hocking's flights and rent:

Q. *So the payment of the airfares ... who was aware of them?*

A. *Certainly I was aware of them. Certainly the Board was aware that we were reimbursing airfares, the finance department, [Person B]. It wasn't –*

Q. *[Person B]?*

A. *Yeah, and [Person I] who's his senior finance consultant, and I'm assuming people who do our transactions in finance. So it was –*

Q. *What about the contribution towards her rent?*

A. *Similarly, it would be the same people. I mean, these things go through a government bureaucratic process...*<sup>102</sup>

[209] Ms Hocking provided evidence contrary to that given by Mr Conway in relation to the payment of her rent:

*... they actually paid for my rent through Raine & Horne in the first instance, including my bond, in July – August 2015.*<sup>103</sup>

[210] On 17 May 2016 Ms Hocking received an email from a real estate agent from Raine & Horne following up on a rent payment. This was followed up by a further email on 3 June 2016:

*Hi Lori,*

*Just letting you know that I haven't received the rent payment from TAFE yet. Could you follow this up for me please.*<sup>104</sup>

[211] Ms Hocking responded with:

*Thanks...I will chase up with our CEO now and get him to check with Finance. If we need to sort something else out as an interim, that's fine, but I was guaranteed it had been paid on Thurs.*<sup>105</sup>

[212] On the same day, Person I sent an email to Mr Conway with the subject heading 'Raine and Horne - \$4,384.02 has been sent to the bank for payment'. Mr Conway forwarded this email to Ms Hocking on 5 June 2016.<sup>106</sup>

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<sup>101</sup> Transcript of interview – Stephen Conway pp. 51–53.

<sup>102</sup> Transcript of interview – Stephen Conway p.54.

<sup>103</sup> Transcript of interview – Lori Hocking p.8.

<sup>104</sup> Email to Ms Hocking, 3 June 2016.

<sup>105</sup> Email from Ms Hocking, 3 June 2016.

[213] Documentary evidence includes a number of invoices for rent:<sup>107</sup>

17 August 2015 (Invoice 1)

- Residential Bond	\$1,320.00
- Rent – 6 months in advance (02/09/15 – 01/03/16)	\$8,580.00
	<b>\$9,900.00</b>

17 May 2016 (Invoice 2)

- Rent – 3 months in advance (01/06/16 – 01/09/16)	<b>\$4,384.02</b>
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2 September 2016 (Invoice 3)

- Rent 31/8/16 – 27/9/16	\$1320.00
- Rent 28/9/16 – 29/11/16	\$3015.00
	<b>\$4185.10<sup>108</sup></b>

[214] The invoice of 17 August 2015 was addressed to Mr Conway, and Person B advised that he was asked to process the invoice dated 2 September 2016 by Mr Conway.<sup>109</sup>

[215] Person B stated at interview that the processing of Invoice 3 was delayed by his efforts to ensure that appropriate processes were being followed in relation to it. This delay, according to Person B, prompted Mr Conway to consider paying the invoice personally.<sup>110</sup>

[216] The invoices above cover rent for the periods 2 September 2015 – 1 March 2016 and 1 June 2016 – 29 November 2016 at a total cost of \$18,469.12.

[217] The investigation has not been able to account for the period 1 March – 1 June 2016.

### **3.2.2. Analysis**

#### ***Travel***

[218] As previously noted, SSMO advised that eligibility for the payment of relocation expenses is determined in accordance with reg 18 of the *State Service Regulations*, Ministerial Direction No. 21, and an officer's instrument of appointment.

[219] The scope of these provisions is limited to the reimbursement for actual expenses incurred during the process of relocating an officer from one location to another.

[220] It is also noted that, although the *State Service Regulations*, Ministerial Direction and instrument of appointment provide for the payment of relocation expenses, the entitlement to receive them is not automatic. That is, relocation expenses can only be

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<sup>106</sup> Email from Mr Conway to Ms Hocking, 5 June 2016.

<sup>107</sup> Raine & Horne invoices.

<sup>108</sup> \$140.90 credit was taken off the \$4,335.00 total of this invoice, presumably for the overlap in dates from this invoice and the one prior.

<sup>109</sup> Transcript of interview – Person B p. 10.

<sup>110</sup> Transcript of interview – Person B p. 46.



offered under the Regulations if the Employer's discretion under reg 18(3) is exercised.<sup>111</sup>

[221] Similarly, relocation expenses can only be offered under the Ministerial Direction provided that the costs are demonstrated, match the circumstances associated with the relocation and ensure value for money.

[222] It is clear from the operation of these provisions that payment of relocation expenses does not extend to payment for 18 flights between Hobart and Adelaide, on the basis that an officer elects to leave their family in another state.

[223] Given that the \$5074.44 payment is associated with flights between 17 August and 1 December, and the fact that Ms Hocking commenced her employment with TasTAFE on 27 July 2015, it can be concluded that none of those flights can be legitimately recorded as relocation expenses.

[224] Mr Conway has not been able to supply evidence showing a justifiable reason for providing reimbursement for these flights.

[225] The fact that, at the time of the reimbursement being processed, a significant portion of the payment related to flights which had not yet occurred means that the costs cannot be classified as being 'demonstrated' in accordance with Ministerial Direction No. 21.

[226] Further, given the period of time across which the flights are spread, there is no evidence to support a claim that they match the circumstances of relocation. That is, the purpose for these flights appears to be to allow Ms Hocking to regularly see her family, which is not related to her relocating from one state to another.

[227] Finally, Mr Conway suggested that the payment of these flights allowed him to 'retain a good and strong senior leader within the organisation.'<sup>112</sup>

[228] Ministerial Direction No. 21 is silent on defining what exactly constitutes 'value for money' in this context.

[229] In any case Mr Conway's evidence does not suggest that his commitment to make these payments to Ms Hocking was on the basis of any prescribed authority; rather, his focus was on recruiting his friend and associate, and justified by him on the basis that he received similar entitlements on his own appointment as CEO.

### ***BKI Counter-offer***

[230] Mr Conway stated that the approach to Ms Hocking by BKI necessitated a counter-offer being made by TasTAFE in order to retain Ms Hocking.<sup>113</sup>

[231] Mr Conway claimed that Person A was aware of this process, including the specific commitments offered to Ms Hocking in early July 2016.<sup>114</sup> This is not supported by the evidence of Person B, who claimed that Person A first became aware of the commitments detailed in Mr Conway's letter of 1 July 2016 to Ms Hocking – including a

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<sup>111</sup> That is, the Employer, whose functions are delegated to the Head of the State Service, determines that the circumstances are such that it is appropriate to pay the relocation expenses outlined in reg 18(1)(a). In such a case the entitlement relates only to 'the conveyance of the employee and his or her dependants to the new locality'.

<sup>112</sup> Transcript of interview – Stephen Conway p. 50.

<sup>113</sup> Transcript of interview – Stephen Conway p. 11.

<sup>114</sup> Transcript of interview – Stephen Conway p. 36.

\$6,000 payment to Ms Hocking on each anniversary of her appointment, when he – Person B – showed him the letter in September 2016.<sup>115</sup>

[232] Person B's evidence is supported by Person A, whose evidence is that he first saw the formal letters, and thus the more generous commitments made to Ms Hocking, in September.<sup>116</sup>

[233] In his email to Person A of 29 May 2016, Mr Conway states that, 'The information in the letter is not confirmed but is all permissible under the SSMO rules'. When asked in interview whether he had checked that it was in fact permissible under the 'SSMO rules', Mr Conway stated that he couldn't recall.<sup>117</sup>

[234] The purpose of Mr Conway's further commitments to Ms Hocking, additional to those made on her appointment, was to defeat the BKI offer. This includes the payment of Ms Hocking's flights between Hobart and Adelaide, as well as a \$6,000 payment made on her anniversary of appointment each year.

[235] Those commitments were made by Mr Conway without any legitimate authority.

### **Rent**

[236] Ms Hocking's instrument of appointment provides that, if she is entitled to relocation expenses in accordance with the *State Service Regulations*, then she will also be entitled to a special accommodation allowance (again, subject to the *State Service Regulations*).

[237] The allowance prescribed in the instrument of appointment is for 'reasonable actual costs up to but not exceeding the arrangements referred to in Part 3 of the *State Service Regulations* and any Employment Direction issued for that purpose'.<sup>118</sup>

[238] Eligibility for the allowance is 'available for a period of twelve weeks or until the Officer takes up the Officer's principal place of residence whichever occurs first'.<sup>119</sup>

[239] Regulation 17 of the *State Service Regulations* relates to the provision of a 'special accommodation payment'.

[240] Similar to the entitlement to relocation expenses, 'special accommodation payments' are not an automatic right and are dependent on certain circumstances.

[241] In this case, reg 17(1) contains two elements, one of which must be satisfied in order for a special accommodation allowance to be payable:

*If an employee is required in the performance of his or her duties, either on appointment or transfer, or otherwise not at the employee's request, to relocate from his or her place of residence to another locality, and the relevant Head of Agency is satisfied that –*

*(a) the employee is unable to obtain accommodation for the employee or for his or her dependants in that locality, and as a result incurs additional expense; or*

*(b) there is available in that district for the employee or for the employee and his or her dependants only such accommodation as will, in the opinion of the Head of Agency, involve the employee in excessive expenditure –*

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<sup>115</sup> Transcript of interview – Person B p. 40.

<sup>116</sup> Information provided by Person A, in response to Notice.

<sup>117</sup> Transcript of interview – Stephen Conway p. 42.

<sup>118</sup> Lori Hocking Instrument of Appointment Schedule 2 Cl 2.2.

<sup>119</sup> Ibid.

*the relevant Head of Agency may grant to such an employee a special accommodation payment at such rate as the Head of Agency may determine.*

[242] Regulation 17(2) also stipulates that such a payment ‘is to be payable in the first instance for such period, not exceeding 3 months’ and can be extended for any additional period that does not exceed three months at any one time.

[243] The evidence is that Ms Hocking’s circumstances did not come within the scope of the *State Service Regulations*, as she was able to find accommodation. There is no evidence to suggest that Ms Hocking was only able to find accommodation that involved her in excessive expenditure.

[244] It could be argued that Ms Hocking did incur additional expenses arising from the need to manage two households. If this is accepted, then Ms Hocking may be entitled to have her accommodation paid for the first three months only; however the payment of her rent over 12 months beyond her starting date is beyond what would be considered to be reasonable. It is noted, that neither Mr Conway nor Ms Hocking sought to raise such an argument at interview.

[245] Mr Conway acknowledged at interview that neither regs 17(1)(a) or 17(1)(b) applied to Ms Hocking’s circumstances. Given this, the evidence is that there was no legitimate basis on which to pay Ms Hocking’s rent.

[246] In relation to the proportion of Ms Hocking’s rent paid for by TasTAFE, Mr Conway provided evidence that is directly contradicted by documentary material and the evidence given at interview by Ms Hocking.

[247] Mr Conway’s suggestion that TasTAFE paid a portion of Ms Hocking’s rent, which he estimated to be the equivalent of two months out of 12, is contradicted by the invoices noted above, showing full payment of rent for 12 months between August 2015 and December 2016; noting that no evidence has been obtained in order to determine whether or not the period of March – June 2016 was also paid.

[248] In relation of Mr Conway’s evidence, it is noted that:

- invoice 1 (6 months’ rent plus \$1,320 in bond) was addressed to Mr Conway;
- Mr Conway was directly involved in facilitating the payment for Invoice 2 (three months’ rent); and
- Mr Conway asked Person B to process Invoice 3 (three months’ rent) and, according to Person B, considered paying the invoice himself.

[249] Additionally, Mr Conway stated at interview that the payment of Ms Hocking’s rent was a commitment only for the first 12 months of her appointment.<sup>120</sup> Aside from the fact that, in the absence of specific extensions every three months, such a payment is a breach of the *State Service Regulations*, Mr Conway had recently requested the payment of rent to Ms Hocking be made up until the end of November 2016 (thereby extending the commitment to approximately 14 months).<sup>121</sup>

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<sup>120</sup> Transcript of interview – Stephen Conway p. 52.

<sup>121</sup> Transcript of interview – Person B p. 10.

[250] The evidence is that, despite his assertion at interview, Mr Conway was aware of, and facilitated, the payment of Ms Hocking's rent in its entirety for a period well in advance of two months, and which continued beyond her one year anniversary in July 2016.

[251] In addition, Mr Conway's evidence indicates a tendency to downplay the scope of illegitimate payments being made to Ms Hocking.

### 3.2.3. Findings

[252] The Commission identified this allegation as an extension of the first allegation raised by the complainant. That is, the evidence supports the suggestion that the 'incentive payment scheme', involving numerous payments to Ms Hocking without any apparent authority, stems from Mr Conway's favouritism toward her.

[253] **On the basis of evidence obtained by the Commission, Mr Conway did not have the appropriate authority, as CEO of TasTAFE to:**

- **facilitate approximately \$30,000 worth of incentive payments to Ms Hocking when she was recruited to the position of Division Manager – Technology, Trades & Engineering;**
- **commit to an additional set of payments to Ms Hocking, including her airfares for flights between Hobart and Adelaide, and \$6,000 paid on her anniversary of appointment each year.**

[254] **It is open to conclude that Mr Conway:**

- **misrepresented the nature of the additional commitments made to Ms Hocking in communication with Person A; and**
- **facilitated the payment of Ms Hocking's rental accommodation beyond her entitlements under the *State Service Regulations* or her instrument of appointment.**

### 3.3. Allegation 3 – Favouritism by Lori Hocking

*Lori Hocking has improperly offered associates opportunities relating to procurement and recruitment based on favouritism instead of merit.*

#### *Summary*

*In 2016 TasTAFE commenced the Education Architecture project. The contract for the associated consultancy work, valued at approximately \$18,000, was awarded by Mr Conway and Ms Hocking to the Chair of the VETNetwork Australia Board, Person J. Person J is a sole trader who set up Business A in early 2016.*

*Person J is a friend of Mr Conway and Ms Hocking. Mr Conway and Ms Hocking approached their friend directly, without any testing of the market as required by the Treasurer's Instructions. Person J commenced work on 30 May 2016.*

*In order to make it appear as though Person J's skills had been tested before the procurement of his services, Mr Conway and Ms Hocking requested that he author a 'letter of proposal' outlining his capacity to undertake work for the project. The request for that letter came over a week after Person J had commenced work, and was ultimately written on 20 June 2016, but backdated to 6 June 2016.*

*The investigation found that both Mr Conway and Ms Hocking failed to declare and manage their conflict of interest, and on the basis of that conflict improperly used their positions to conduct a procurement process in breach of the Treasurer's Instructions.*

*Additionally, the evidence demonstrates that Mr Conway and Ms Hocking attempted to conceal the fact that they had contracted with their friend improperly, through the creation of false and misleading documentation.*

\* \* \*

*On 31 August 2016 the Position A at TasTAFE was advertised. Approximately five weeks beforehand, Ms Hocking provided the associated statement of duties to her (Adelaide-based) friend, Person K, who previously worked at VETNetwork Australia.*

*In the intervening period, Ms Hocking (who was involved in the associated recruitment process) reviewed and edited Person K's application, and provided him with TasTAFE documentation to assist his application.*

*The investigation found that Ms Hocking failed to declare and manage her conflict of interest and, on the basis of that conflict, made improper use of her position to advantage Person K in his application for employment with TasTAFE.*

### **3.3.1. Evidence**

#### ***Business A***

[255] Business A is a business, registered on 6 April 2016,<sup>122</sup> owned by Person J.

[256] Person J is also the Chair of the VETNetwork Australia Board, having been appointed as a Director on 7 October 2013.

[257] When Ms Hocking applied for the position of Division Manager, Mr Conway and Person J were listed as referees on her curriculum vitae.<sup>123</sup>

[258] Ms Hocking detailed her association with Person J as follows:

*I've known [Person J] probably, oh, seven years.*

*...*

*... he and I have worked very very closely together for a number of years, and again, you know, I would describe him as a friend ...*

*... he's acted as a referee for me in the past and I've acted for a referee for him for positions as well.<sup>124</sup>*

[259] TasTAFE is currently undertaking a project titled *Education Architecture*. The consultancy services of Person J were procured in order to conduct Phase 1 of the project.

[260] Person B provided information in relation to how Person J's services came to be procured by TasTAFE:

*My best recollection is that Stephen started to talk about the Educational Architecture agenda within the Executive, so with Stephen, with Lori and myself, and at some point in*

<sup>122</sup>ASIC check – 'Business A'.

<sup>123</sup>Lori Hocking – Curriculum Vitae – 2016, p. 5.

<sup>124</sup>Transcript of interview – Lori Hocking pp. 46-47.

*that conversation, and I can't recall whether it was him or they shared with me that they had a person in mind who they thought could do the ... exercise ... at some stage they shared with me that it was [Person J] ...*<sup>125</sup>

[261] Ms Hocking was asked about the process involved in procuring Person J's services, particularly with respect to how the market was tested for suitable candidates:

*So Stephen did – undertook some processes in relation to finding out whether – who might be available, what skills. We spoke to some of the Board around some potential preferred providers and sought some advice, and in the end we actually mooted with [Person B], Stephen and myself, around whether [Person J] would be someone who would potentially undertake the – the project.*

*I had an initial conversation, I think, with [Person J] in relation to whether or not he was interested. We – I'm very aware of procurement processes, in terms of what actually needed to happen. So we asked him to write me outlining, you know, for example, his daily rates, how much he charged, to put a proposal to me.*<sup>126</sup>

[262] Ms Hocking's assertion that a process was conducted in order to identify potential providers<sup>127</sup> is not supported by documentary evidence, and is instead directly contradicted by further evidence given by her at interview that Person J was approached directly:

Q. *Why was a direct approach made to [Person J]?*

A. *Because we thought that, you know, he was someone that we both knew, as in Stephen and I knew...*

*We needed someone who understood strategic asset management, we needed someone who, you know, had a broader understanding of what was happening nationally in relation to VET, so a whole – we needed somebody who would – you know, had a whole broad range of skills and we needed – most of all we needed someone outside of Tasmania and we needed someone outside of TasTAFE to actually undertake the work.*

...

Q. *Isn't that the – the purpose of going to market is to find those options?*

A. *But I would still question did we need to go to market. We did our market research in terms of determining whether somebody had the capability to do that because we knew the price of roughly what it was we were putting forward my understanding is we didn't need to go to market.*<sup>128</sup>

[263] An email from Mr Conway to Person J of 8 June 2016 demonstrates, contrary to Ms Hocking's evidence, a direct approach to Person J, as well as an attempt to conceal that fact:

*Hi [Person J] for audit purposes in relation to your contract I need a brief proposal from you in respect to the Phase 1 work you are doing and that will then continue for the further work. This can then evidence why we didn't go to market but instead engaged you directly. Lori can also provide you some advice as to how she may want the proposal to look.*<sup>129</sup>

<sup>125</sup> Transcript of interview – Person B p. 58.

<sup>126</sup> Transcript of interview – Lori Hocking pp. 47–48.

<sup>127</sup> Transcript of interview – Lori Hocking p. 54.

<sup>128</sup> Transcript of interview – Lori Hocking p. 57.

<sup>129</sup> Email from Mr Conway to Person J, 8 June 2016.

[264] This email further evidences Ms Hocking's knowledge of the fact that a direct approach was made.

[265] Mr Conway was asked about this at interview as well:

Q. *You just mentioned, Stephen, that you couldn't identify any possible contractors who had the skills and background, whatever, to deliver the result you were looking for.*

A. Yes

Q. *Could you tell us what steps you took to know that there wasn't anybody available?*

A. *Yeah, look, it's what I would describe...as very much a Tasmanian conversation that I've become used to in my four years here which is about, you know, "Who do you know, what do you know, who have you worked with before, what are the expertise"...So that's kind of the process, it was organic in a sense, we didn't ring around, it was a conversation.*

Q. *Who is 'we'? That's you and –*

A. *The 'we' was the TasTAFE executive which is [Person B], Lori Hocking and myself, and certainly in these roles [Person B] always plays the role of the arbiter of what is possible and what is not possible.*<sup>130</sup>

...

Q. *And exactly what steps did you take to test whether or not the same services could be provided by Tasmanian consultants?*

A. *We had a conversation amongst the executive about what sort of services were out there, and I certainly put in my strong view that if [business name deleted] was still available we would have gone straight to them because of the work that they had done around the educational blueprint but they were no longer in business, and at the time of developing the arrangement with that consultancy, [Person C] who did the contract with [business name deleted] put forward a similar case, that there was no-one else available to do it.*

Q. *So are you aware of every consultant in Tasmania?*

A. No.<sup>131</sup>

[266] Noting the specific requirement of the Procurement Code of Conduct for Government Buyers to complete a conflict of interest declaration,<sup>132</sup> Ms Hocking indicated that declarations were made by herself and Mr Conway in relation to their association with Person J:

*I explicitly remember both myself, and I need to be very clear about this because I don't think it is a conflict, that both Stephen and I declared we had an interest, that we knew him...So both of us declared that we knew him and that I didn't – mine is a declaration of interest rather than a conflict of interest, because I didn't think it was*<sup>133</sup>

...

Q. *You mentioned you and Stephen declared interests, how was that recorded?*

A. *Just verbally at an executive meeting. We meet as an executive every Tuesday afternoon...[Person B] was absolutely adamant he wanted it – you know, that it needed*

<sup>130</sup> Transcript of interview – Stephen Conway p. 58.

<sup>131</sup> Transcript of interview – Stephen Conway p. 64.

<sup>132</sup> Treasurer's Instruction 1101, Procurement Code of Conduct para xv.

<sup>133</sup> Transcript of interview – Lori Hocking pp. 47–48.

*to be open and transparent and – you know, so declaring my interest was around protecting ourselves...*

Q. *And so you made these declarations of interest verbally, was this in a meeting with certain people or –*

A. *Yeah, yeah, an executive meeting, [Person B] and Stephen, we all were there...*<sup>134</sup>

[267] An invoice for work conducted by Person J includes a timesheet indicating that his chargeable hours commenced on 30 May 2016, with 'pre-contract' meetings and preparations beginning on 6 May 2016.

[268] On 9 June 2016 Person J sought clarification from Ms Hocking as to what the 'proposal' requested by Mr Conway on 8 June 2016 needed to include. Ms Hocking provided the following advice:

*I would suggest that a letter direct to me outlining your skills and abilities in relation to project management, your strong understanding of the VET sector and more broadly, TAFE's, plus information (maybe from the attached) relating to TasTAFE's Corporate Plan and the EA agenda is all we need?*

*Two pages max.*<sup>135</sup>

[269] Ms Hocking attached two documents to her email to Person J, titled 'TasTAFE Corporate Plan 2016-2019 25 5 16 (Final Draft) v10 MASTER – (Finale for Minister).docx' and 'Education Architecture VISION 27 05.docx'.

[270] On 20 June 2016 Person J sent the following email to Ms Hocking:

*Lori,*

*As requested and as per our discussions last week, please find attached a letter outlining my skills and experience which I believe make me well placed to take on the role of Project Manager for the TasTAFE Education Architecture Project. I have dated this letter 6 June 2016 – please advise if this needs to change.*<sup>136</sup>

[271] Attached to Person J's email is a document titled 'Proposal Letter – 20 June 2016.pdf'. Analysis of the metadata of this document confirmed that it was created on 20 June 2016 despite being dated 6 June 2016.

[272] Further documentary evidence suggests that Mr Conway and Ms Hocking committed TasTAFE to a contract with Person J before confirming the cost of his services, including the backdating of his contract for service, as evidenced by this email from Ms Hocking to Person J:

*Hi [Person J],*

*As agreed last week and in relation to the email below, given the draft contract for services has been forward dated, you should charge TasTAFE your standard prescribed rate (daily or otherwise) for the work undertaken to date. I understand we have not agreed previously on such a rate hence the need for you to charge at your standard prescribed rate. I am also aware that you have kept a log of work (hours) to date and that documentation / information will accompany and support your tax invoice for work undertaken to date. It would be helpful for me if you detail your charges in a reply email –*

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<sup>134</sup> Transcript of interview – Lori Hocking p. 48.

<sup>135</sup> Email from Ms Hocking to Person J, 13 June 2016.

<sup>136</sup> Email from Person J to Ms Hocking, 20 June 2016.



*this is only so I am aware of the charges and can authorise payment once your invoice has been submitted for payment?*

*As also agreed, any other expenses incurred in relation to the work undertaken by you for TasTAFE in relation to the Education Architecture (EA) project should be included with your reimbursement invoice and proof (where appropriate) should accompany your reimbursement invoice.*<sup>137</sup>

[273] This too was explored at interview with Ms Hocking:

Q. *Just in relation to the preliminary work, Lori, I'm a bit confused about this: is this work undertaken by [Person J] prior to the contract being signed or –*

A. *Yeah, yeah, he did some preliminary work for us in terms of helping – even helping us sort of scrape it together and we just paid him a day rate.*<sup>138</sup>

[274] Mr Conway declined to comment on this issue, as it primarily relates (in his view) to Ms Hocking's state of mind, other than to suggest that a transparent process had been undertaken:

Q. *Do you think these documents we've just gone through would reflect a transparent process?*

A. *Look, I think they reflect a transparent process from an audit point of view. They probably wouldn't reflect a transparent process from a purely contractual point of view.*

Q. *What's the difference?*

A. *Well, I think the issue is about the date. You know, we're talking about backdating documents. I think there's a really sound reason to do that, but I'm very comfortable with the transparency of them in their totality.*<sup>139</sup>

[275] Person B was also asked about these issues:

Q. *You mentioned that it was a less than satisfactory procurement process?*

A. *Well yeah, well for a range of reasons, you know, we have, you know, the basic procurement process, buy local, you know, so for a tender – or for a service that is, you know, under fifty thousand dollars you should at least have three written quotes. You know, you should – that should include at least one Tasmanian business.*

Q. *And is it your understanding that that hasn't occurred?*

A. *Yes.*

Q. *Do you know that it hasn't occurred?*

A. *I'm confident it hasn't occurred.*

...

Q. *Do you know if there's been any declarations in regards to the pre-existing relationship between [Person J] and Stephen and Lori?*

A. *Well no, and I – and I know to the extent that I've sat in a meeting recently where there was a conversation about conflict and there was a very strong assertion that there was absolutely no conflict in place.*

Q. *No conflict? Who made that strong assertion?*

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<sup>137</sup> Email from Ms Hocking to Person J, 13 June 2016.

<sup>138</sup> Transcript of interview – Lori Hocking p. 48.

<sup>139</sup> Transcript of interview – Stephen Conway p. 65.

A. Lori.<sup>140</sup>

[276] Person J's consultancy services for the Phase 1 work amounted to approximately \$18,000.

**Manager, Strategic Marketing and Communications**

[277] In September 2016 TasTAFE undertook a selection process for Position A. Ms Hocking was responsible for establishing the associated recruitment process.

[278] Person K is a former employee of VETNetwork Australia and friend of Ms Hocking.

[279] Documentary evidence indicates that Ms Hocking and Person K have communicated about possible employment prospects for Person K at TasTAFE.

[280] On 7 March 2016 Ms Hocking sent an email to Person K:

*Hi there,*

*Lovely to chat yesterday- probably best to reply to my personal email but here you go.*

*BTW – a Band 8's starting salary is \$111 456 to \$119 047.<sup>141</sup>*

[281] Attached to Ms Hocking's email is a statement of duties for the position of Manager, IT Strategy Unit at TasTAFE. Ms Hocking stated at interview that a decision was ultimately made not to fill this position.<sup>142</sup>

[282] On 21 April 2016 Person K sent an email to Ms Hocking with the subject heading 'Re: Can you please send me your up to date CV?', and stated:

*Hi*

*Hope this suits – I have you in my CV as a referee so have included two, the second one excludes you.*

*Let me know when you have a bit of time this weekend.*

*Thanks<sup>143</sup>*

[283] Attached to Person K's email were three documents:

1. Letter of introduction – Person K – TasTAFE 2016
2. Person K – CV
3. Person K – CV-2016

[284] According to Person K's curriculum vitae he held the position of Communications Officer at VETNetwork from August 2012 – June 2015, and the position of Communications Manager from June 2015 – November 2015.

[285] On 27 April 2016 Ms Hocking sent two emails to Person K. Both emails contain the comment '*FYI – confidential*'. Attached to the first email is a document titled 'TasTAFE external MC Plan (8 Feb) – LH edits' and attached to the second email is a document titled 'Final – Revised Position A Brief – April 2016'.<sup>144</sup>

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<sup>140</sup> Transcript of interview – Person B pp. 58-59.

<sup>141</sup> Email from Ms Hocking to Person K, 7 March 2016.

<sup>142</sup> Transcript of interview – Lori Hocking p. 63.

<sup>143</sup> Email from Person K to Ms Hocking, 21 April 2016.

<sup>144</sup> Emails from Ms Hocking to Person K, 27 April 2016.

[286] Ms Hocking was asked why she sent these emails, purportedly containing confidential information, to Person K:

*Because potentially I wanted him to be an applicant who might consider – and you know for the Band 9 position [Position A], again someone with good skills and abilities and you know, I – I would – I was encouraging him to apply for the position, actively encouraging him to apply for the position.*<sup>145</sup>

[287] On 15 May 2016 Ms Hocking sent an email to Mr Conway titled 'Person K', with the accompanying message 'As promised'. Attached to that email are the same three documents sent to Ms Hocking by Person K on 21 April 2016.<sup>146</sup>

[288] On 27 May 2016 Person K met with Ms Hocking and Mr Conway in Adelaide. According to Ms Hocking:

*We met with [Person K] to talk to him about where we were going in relation to TasTAFE. We talked about the review of the business growth and marketing functions, we talked about, you know, where we were going, what we hoped to do, what we needed in terms of expertise in relation to marketing and communications, all of those types of things.*<sup>147</sup>

[289] On 6 July 2016 Person K sent an email to Ms Hocking's personal email address with the title 'Draft Selection Criteria Response' with the comment:

*Hi Lori,*

*Hope you are not freezing...*

*I have attached a draft of my selection criteria response. I am still working on the VETnetwork Australia part so you can skip that for structure.*

*Let me know what you think as a first pass, I have to continue it over the weekend.*

*Thanks*

*[Person K]*<sup>148</sup>

[290] Ms Hocking forwarded the email to her TasTAFE email account, then replied on 9 July 2016:

*Have you done on [sic] more on this before I start marking changes?*

*It's good. We will need to polish it up a bit but it's a start – I think we need to better link the examples and evidence you provide to the selection criteria but its good.*

*A few more bits to consider:*

- *Outline your leadership role/s managing staff, working with the Executive and working with the Board.*

*Highlight the interaction between all layers of staff.*

- *Don't be afraid to highlight staff challenges – this is crucial to demonstrating leadership. This team needs a strong leader so an intimate knowledge of behaviours and personalities and working with people to ensure they understand the values of the organisation.*

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<sup>145</sup> Transcript of interview – Lori Hocking p. 65.

<sup>146</sup> Email from Ms Hocking to Mr Conway, 15 May 2016.

<sup>147</sup> Transcript of interview – Lori Hocking p. 66.

<sup>148</sup> Email from Person K to Ms Hocking, 6 July 2016.

- *Your ability to be both high level, technical and organisation – this is really important and one of your key strengths.*
- *I think your personality and worth [sic] ethic hasn't shone through as much as I would like either?*
- *Can you incorporate your 'contemporary skills' into your answers – this relates to your technical understanding but this is crucial to us. Highlight this in relation to understanding VET too.*

*How does your CV look?*

[291] On 24 July 2016 Ms Hocking sent another email to Person K stating 'FYI – due to advertised this week! Keep you posted.' Attached to that email is the statement of duties for the position of Position A.<sup>149</sup>

[292] Person K replied to the above email with 'Thanks for this – I am hoping to have my response finalised through Tuesday'.<sup>150</sup>

[293] On 8 August 2016 Ms Hocking completed a Vacancy / Establishment Management form for the creation of the position. Ms Hocking recorded herself as the Convenor.<sup>151</sup>

[294] On 21 August 2016 Ms Hocking replied to an earlier email from Person K on 17 August 2016 in relation to further work on his application:

*Hello .....*

*Sorry for the delayed reply – looking good. I few final tweaks to go which I will do this week.*

*Could you meet Friday to discuss?*

*Job will be advertised (finally) this week.*<sup>152</sup>

[295] On 22 August 2016 Person G emailed Ms Hocking to advise her that the position would be advertised on 31 August 2016 and that Ms Hocking was the nominated contact person. Ms Hocking forwarded this email to Person J with the comment 'FYI'.

[296] On 26 August 2016 Ms Hocking sent an email to Person G and Mr Conway:

*Just wondered [Person G] if Stephen should be the contact as I will be in India Sunday Sept 4th to Sunday Sept 11th?*

*What do you think?*

*I can still email but calls might be hard given the time zone differences?*<sup>153</sup>

[297] Consequently Mr Conway was listed as the contact officer in the position advertisement.

[298] In relation to the editing of Person K's application, Ms Hocking said:

Q. *Is it the case that you've made edits to his selection criteria and responses, his job application?*

A. *Well potentially. Without going back and looking at what I wrote, I actually – I don't know what I would've done and it – you know, to be honest, we could get a copy of that in*

<sup>149</sup> Email from Ms Hocking to Person K, 24 July 2016.

<sup>150</sup> Email from Person K to Ms Hocking, 24 July 2016.

<sup>151</sup> Vacancy / Establishment Management form, p. 2.

<sup>152</sup> Email from Ms Hocking to Person K, 21 August 2016.

<sup>153</sup> Email from Ms Hocking to Person G, cc'd Mr Conway 26 August 2016.

*relation – I usually use track changes, but obviously I've written some points there in relation to that.*<sup>154</sup>

[299] Mr Hocking claimed that she would provide this type of assistance to anyone who asked her to.<sup>155</sup>

[300] At interview Ms Hocking noted that she had also provided information to Person L in relation to Position A. This assistance occurred over a similar timeframe to the assistance provided to Person J, including an email from Ms Hocking to Person L on 23 June 2016 attaching a draft version of the relevant statement of duties:

*Hi there,*

*May not be a final version so treat as a DRAFT – happy to keep you updated as to how things are progressing!*

*Will you let [name deleted] know re the 7<sup>th</sup> / 8<sup>th</sup> of July and maybe we could have a coffee?*

*Thanks again for listening today.*

*x*<sup>156</sup>

[301] No evidence has been identified to suggest that Ms Hocking edited Person L's application in the way that she did for Person J.

[302] At interview Ms Hocking also stated:

*Am I in control of the outcome, no, I'm not. There's a panel of four people in relation to this job and at this stage – we're shortlisting tomorrow – [ Person J] would not be even shortlisted.*<sup>157</sup>

[303] When asked if she had declared a conflict of interest in relation to her being a referee for Person J, Ms Hocking stated:

*The panel's only been formed and we are actually doing that, and I will declare it, absolutely.*<sup>158</sup>

[304] In her procedural fairness response Ms Hocking made the following statement in relation to her involvement in this selection process:

*I was not the contact for the position when advertised and I declared to Mr Conway in writing that I could not be a member of the panel as I knew [Person J] and could have a perceived conflict of interest.*<sup>159</sup>

[305] The selection panel report for the position lists the three panel members as Mr Conway, Person F and a TasTAFE Board member.

[306] No evidence of a conflict of interest declaration having been made in writing by Ms Hocking has been located or supplied.

[307] On 13 September 2016, Ms Hocking received the schedule of applicants for the position. This email does not appear to have been sent to any other person.

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<sup>154</sup> Transcript of interview – Lori Hocking p. 70.

<sup>155</sup> Transcript of interview – Lori Hocking p. 73.

<sup>156</sup> Email from Ms Hocking to Person L, 23 June 2016.

<sup>157</sup> Transcript of interview – Lori Hocking, p. 71.

<sup>158</sup> Transcript of interview – Lori Hocking, p. 71.

<sup>159</sup> Lori Hocking Procedural Fairness Response, p. 3.

### **Division Manager – Technology, Trades & Engineering**

[308] In March 2016 an internal expression of interest selection process was undertaken to fill Position B. Ms Hocking chaired the associated selection panel.

[309] On 7 March 2016 Person M sent Ms Hocking an email titled 'Application as requested' with his resume and an Expression of Interest for the position. Attached to the email was a document titled 'For review'.<sup>160</sup>

[310] Ms Hocking responded later that day with:

*Here you go – just tidied up with a few edits. Reread and just triple check things!*

[311] Person M responded with 'Thanks for this. All submitted'.

[312] During the same process another applicant, Person N, sought and received assistance with her EOI. Ms Hocking responded with:

*Hi [Person N],*

*Thanks for sharing the EOI – I have made some changes and used track changes to highlight the changes.*<sup>161</sup>

[313] A third applicant, Person O, does not appear to have been provided with the same assistance. Ultimately Person M won the position.

[314] Ms Hocking was asked about this at interview:

Q. *So have you – have you edited his selection – his application?*

A. *Potentially – well, no, I have looked at his application, yes.*

Q. *Yep. Have you edited it?*

A. *Oh, I might have made recommendations to him in terms of things that he might need to do.*

...

*There's no favouritism in relation to this and I believe that the other applicants I would have – if they had come to me and said "Could you read my application", I would absolutely do that as well.*

Q. *Did they do that?*

A. *...I can't remember in terms – I know who the other two applicants are, off the top of my head. I definitely had a conversation with both of them.*

...

Q. *And did you provide the same sort of assistance to [Person O]?*

A. *I don't remember.*<sup>162</sup>

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<sup>160</sup> Email from Person M to Ms Hocking, 7 March 2016.

<sup>161</sup> Email from Ms Hocking to Person N, 8 March 2016.

<sup>162</sup> Transcript of interview – Lori Hocking pp. 60–62.

### 3.3.2. Analysis

#### **Business A**

- [315] Person J is a friend and professional associate of Mr Conway and Ms Hocking.
- [316] Documentary evidence outlined in this report is largely contrary to the evidence given at interview by both Mr Conway and Ms Hocking. Further, the explanations given by Mr Conway and Ms Hocking as to how this procurement eventuated are themselves at times contradictory.
- [317] For example, Ms Hocking stated that Mr Conway conducted market research, although she was not able to articulate exactly what that research involved. Mr Conway, on the other hand, describes a process of conversation – largely among the TasTAFE Executive, of whether any known consultants could conduct the project work.
- [318] Ms Hocking stressed the need to obtain a consultant from outside of Tasmania.<sup>163</sup> This particular issue was canvassed with Mr Conway who provided the following response:
- Q. *Was there any reason why Tasmanian consultants wouldn't have been appropriate for this particular work?*
- A. *No reason whatsoever.*<sup>164</sup>
- [319] Person B's evidence tends to more strongly corroborate with the documentary evidence. On this basis that evidence is preferred in order to determine exactly what took place.
- [320] It is open to conclude that Person J was approached directly to provide consultancy services to TasTAFE, in a process that does not comply with the requirements of Treasurer's Instruction 1101 that:
- agencies must ensure that the purchasing process is impartial, open and encourages competitive offers; and
  - all business must be conducted in the best interests of the State, avoiding any situation which may impinge, or might be deemed to impinge, on impartiality.
- [321] Mr Conway's preferred approach toward the procurement of these consultancy services appears to be based primarily on an assessment of his known associates, rather than a genuine testing of the market. As a result, one of Mr Conway's associates has been given a significant advantage over other service providers.
- [322] Ms Hocking stated that she and Mr Conway made declarations of interest in relation to their association with Person J, by declaring those interests to one another and to Person B.
- [323] The evidence is that no conflict of interest was declared in writing by either Mr Conway or Ms Hocking.
- [324] Contemporaneous documentary evidence supports a finding that Person J's services were procured by Mr Conway and Ms Hocking before the cost of Person J's services were known. These circumstances preclude any assessment of value for money before Person J's work commenced.

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<sup>163</sup> Transcript of interview – Lori Hocking p. 57.

<sup>164</sup> Transcript of interview – Stephen Conway p. 64.

[325] Similarly, the evidence is that Person J's proposal letter, created on 20 June 2016 but dated 6 June 2016, was requested by Mr Conway and facilitated by Ms Hocking for the specific purpose of having the procurement of Person J's service appear to have been on the basis of that proposal.

[326] That is, the actions of Mr Conway and Ms Hocking suggest they knew that the process they had engaged in to select Person J was improper, necessitating the creation of the proposal letter in order to make the process appear legitimate.

[327] The only realistic purpose for such behaviour is to disguise conduct which they knew would not survive external scrutiny.

### ***Position A***

[328] Person K is a friend and associate of Ms Hocking's.

[329] Person K has been provided with an advantage over other applicants for Position A by having access to the associated statement of duties several weeks in advance of the position being advertised.

[330] Additionally Ms Hocking, while responsible for establishing the recruitment process reviewed, amended and provided specific advice in relation to Person K's application.

[331] At the time that she provided assistance to Person K, Ms Hocking was recorded as the 'Convenor' for the creation of the position, and was the nominated contact officer. Until the selection panel was convened in September, Ms Hocking appears to have been the only TasTAFE staff member involved in the filling of the position.

[332] Further, while Ms Hocking states in her procedural fairness response that she was not on the selection panel for the position, it is noted that her responses at interview strongly suggest that, on that date, she had intended to sit on the panel. Of particular relevance is her evidence that the then recently convened panel (which she describes as 'we') consisted of four members, when the selection report – authored on 3 October 2016 – lists only three members.

[333] It also appears that the only reason that Ms Hocking was not listed as the contact officer on the position advertisement was her travel to India, rather than any suggestion of a conflict of interest.

[334] On this basis, it is open to conclude that Ms Hocking facilitated the creation of the position, administered the selection process and, after becoming aware of the subject matter of the Commission's investigation during her interview, removed herself from the panel.

[335] Person K would not have received these benefits had he not been associated with Ms Hocking.

[336] Ms Hocking asserted that she would provide the same assistance to any person who approached her. However, it is difficult to accept a suggestion that a reasonable person, not being a friend or associate of Ms Hocking, would expect her to willingly provide assistance to applicants for positions while responsible for establishing the recruitment process.



### **Position B**

[337] Ms Hocking, while chair of the relevant selection panel, provided assistance, including reviewing applications and providing advice as to their content, to Person M and Person N.

[338] Person M and Person N consequently had an advantage over other applicants.

[339] There is no evidence to indicate whether or not Person M won the position as a result of Ms Hocking's assistance.

#### **3.3.3. Findings**

[340] The complainant's suggestion that Ms Hocking has favoured associates is supported by the evidence. Person J received a financial benefit directly as a result of the actions of his two friends – Mr Conway and Ms Hocking.

[341] Similarly, Person K was provided with a significant advantage in his application for a role in TasTAFE, directly due to the actions of his friend Ms Hocking.

[342] **On the basis of evidence obtained by the Commission, Mr Conway and Ms Hocking:**

- **had conflicts of interest arising from their association, through VETNetwork Australia, with Person J;**
- **failed to appropriately manage their conflicts of interest in relation to the procurement of consultancy services from Business A; and**
- **directly procured the consultancy services of Business A, without testing the market to determine the availability of other service providers.**

[343] **It is open to conclude that Mr Conway and Ms Hocking:**

- **attempted to misrepresent the circumstances in which the procurement of the consultancy services of Business A were procured.**

[344] **On the basis of evidence obtained by the Commission, Ms Hocking:**

- **had a conflict of interest in relation to her association, through VETNetwork Australia, with Person K;**
- **unfairly advantaged Person K in the selection process for Position A while responsible for establishing the recruitment process.**
- **as chair of the relevant selection panel, unfairly advantaged Person M in the EOI process for Position B.**
- **as chair of the relevant selection panel, unfairly advantaged Person N in the EOI process for Position B.**

### 3.4. Allegation 4 – Lori Hocking Conflict of Interest – VETNetwork Australia

**Lori Hocking failed to declare her interest (as Chief Executive Officer and Secretary) in VETNetwork Australia.**

#### *Summary*

*When she commenced with TasTAFE Ms Hocking took 12 months leave without pay from VETNetwork Australia. Effectively she was therefore employed by TasTAFE while concurrently holding an interest in VETNetwork Australia.*

*Ms Hocking resigned as Chief Executive Officer of VETNetwork Australia in February 2016.*

#### **3.4.1. Evidence**

[345] Before being recruited to TasTAFE as Division Manager, Ms Hocking was the Chief Executive Officer of VETNetwork Australia.

[346] Evidence provided by Ms Hocking is that she took a period of leave without pay from VETNetwork, and that Person P was appointed as CEO in her absence.<sup>165</sup>

[347] Person P's LinkedIn profile includes the position of 'Interim Chief Executive Officer' of VETNetwork Australia from August 2015 to December 2015.

[348] Company records associated with VETNetwork Australia indicate that Ms Hocking held the office of Secretary from 7 October 2013 to 17 August 2015. The same material records Person P as holding that office from 18 August 2015 to 2 December 2015. Finally, Person Q was appointed to the office on 2 December 2015.

[349] On the basis of these arrangements Ms Hocking stated at interview that she had no interest to declare in relation to her association with VETNetwork.<sup>166</sup>

[350] Further documentary material identified includes a series of emails between Person J and Mr Conway, including the following from Person J on 19 February 2016:

*At the Board meeting in December, it was agreed that [Person Q] would take on the role as CEO in an interim capacity until the status of Lori's intentions regarding VA where [sic] determined. It was agreed that if Lori indicated that she would not be returning and tendered her resignation, that [Person Q] would be offered the role as CEO... I contacted Lori and she has now tendered her resignation from VA.*<sup>167</sup>

[351] This email followed an earlier email on 12 February from Ms Hocking to Person J attaching a letter of resignation, effective from 11 February 2016.<sup>168</sup>

#### **3.4.2. Analysis**

[352] Ms Hocking took leave without pay from her position as CEO of VETNetwork from approximately 18 August 2015 to 11 February 2016. That period of leave ceased as a result of her resignation as CEO.

[353] There is no evidence to suggest that Ms Hocking performed any substantial role as CEO of VETNetwork during that time.

<sup>165</sup> Transcript of interview – Lori Hocking p. 20.

<sup>166</sup> Transcript of interview – Lori Hocking p. 25.

<sup>167</sup> Email from Person J to Mr Conway, 19 February 2016.

<sup>168</sup> Email from Ms Hocking to Person J, 12 February 2016.

[354] However, the timing of her resignation suggests that, although a series of interim CEO's were appointed, Ms Hocking still held that position until February 2016.

[355] This means that there was an overlap of approximately seven months where Ms Hocking had interests in VETNetwork and TasTAFE concurrently.

[356] Although this could potentially amount to a conflict of interest, Ms Hocking's efforts to remove herself from the operational functions of the CEO appear to have adequately managed the conflict in the circumstances.

### **3.4.3. Findings**

[357] Ms Hocking sufficiently removed herself from her position at CEO of VETNetwork, up until her resignation from that role in February 2016.

[358] **On the basis of evidence obtained by the Commission, Ms Hocking:**

- **appropriately managed the possible conflict of interest associated with her concurrent positions at VETNetwork Australia and TasTAFE.**

## **3.5. Allegation 5 – Lori Hocking – Credit Card Use & Travel**

*Lori Hocking has misused her Tasmanian Government Card (TGC).*

### *Summary*

*Use of a Tasmanian Government Card is governed by the Treasurer's Instructions, which outline the types of transactions which are to be made using a TGC and those which are not. Among the latter include purchases for entertainment, fuel and personal goods and services.*

*For approximately 10 months Ms Hocking made regular use of her TGC for entertainment purchases. Some of these purchases were examined in the investigation, and a number of additional instances of purchases for fuel were also noted.*

*Given that this allegation relates to misuse of a TGC for personal purposes, which was then incorrectly recorded in the relevant finance system, the Commission sought advice from Tasmania Police and the Director of Public Prosecutions as to whether a charge of fraud should be considered. Ultimately the Commission determined to retain this issue in the misconduct context.*

*Mr Conway's commitment to pay for Ms Hocking's flights between Hobart and Adelaide (once per month) has involved Ms Hocking using her TGC to pay for those personal flights as well.*

*The investigation found that Mr Conway's 'incentive payment scheme' involved the authorisation of Ms Hocking's private use of her TGC.*

### **3.5.1. Evidence**

[359] TasTAFE staff utilise Tasmanian Government Cards to undertake work-related transactions. These transactions are processed through a system called Fraedom.

[360] When a staff member completes a transaction using their TGC, they are required to submit a copy of the associated invoice into the Fraedom system, which then requires authorisation from that staff member's line manager.

[361] In relation to Ms Hocking's TGC use, Mr Conway has responsibility for authorising her transactions.<sup>169</sup>

**TGC use on 20 April 2016**

[362] Analysis of Fraedom statements for Ms Hocking's TGC use include four transactions on 20 April 2016:

- 'Travel cab charge Melbourne' (\$91.35 paid to Gm Cabs Pty Ltd)
- 'Travel cab charge Sydney 20 April' (\$56.07 paid to Silvertop Vic)
- 'Travel cab fees Melbourne 20 April' (\$41.70 paid to Delaware North Retail)
- 'Travel airport fees 20 April' (\$20.00 paid to Hobart International Airport)<sup>170</sup>

[363] Documentary evidence indicates that Ms Hocking travelled to Melbourne on 20 April 2016 in order to meet with BKI in relation to the prospective employment opportunity discussed previously.

[364] On 14 April 2016 Ms Hocking sent an email titled 'RE: Wednesday' to a recruiter in relation to the BKI offer:

*Thanks [name deleted] – most appreciated.*

*These are probably the best flights for me:*

*Hobart to Melbourne*

*QF 1502 – departing 10.10am, arriving 11.25am.*

*Qantas FF = 170 6586*

*Melbourne to Hobart*

*VA 1332 – departing Melbourne 7.45am, arriving 9.00pm.*

*Velocity = 2102585476*

*Thanks again and Stephen is openly aware of this whole conversation if he is required before he flies out on Monday to China for 2.5 weeks.*

*Cheers and thanks again for your support.*<sup>171</sup>

[365] Consideration of this material, including the content of the associated invoices, demonstrates that Ms Hocking's specific movements on that date were as follows:

- 9:01AM Arrived at Hobart Airport
- 10:10AM Departed Hobart Airport
- 11:30AM Arrived at Melbourne Airport
- 11:45AM Met Person J at the Qantas Club, Melbourne Airport
- 11:56AM Paid \$41.70 for refreshments (during meeting with Person J) to Delaware North Retail
- 1:37PM Arrived at Southbank, paid taxi fare (Melbourne Airport to Southbank) of \$56.70 to Silvertop Vic

<sup>169</sup> Transcript of interview – Lori Hocking p. 86.

<sup>170</sup> Fraedom statement 29 March 2016 – 27 April 2016, invoices and Outlook Calendar 20 April 2016.

<sup>171</sup> Email from Ms Hocking, 14 April 2016.

- 2:30PM Met Person S and Person T from BKI at ACE, Docklands
- 5:30PM Arrived at Melbourne Airport, paid taxi fare (City to Airport) of \$91.36 to GM Cabs
- 7:45PM Departed Melbourne Airport
- 8:47PM Departed Hobart Airport, paid \$20 for parking for a stay of 11hrs, 46 mins

[366] The descriptions entered into the Freedom system include 'Travel cab charge Sydney 20 April' for the \$56.07 payment to Silvertop Vic. This charge is associated with Ms Hocking's travel from Melbourne Airport to Southbank, to meet with BKI.

[367] Additionally the payment to Delaware North Retail for refreshments is described as 'Travel cab fees Melbourne 20 April'.

[368] When asked to explain the incorrect descriptions, Ms Hocking stated that it was an error by her former Executive Assistant, Person R.<sup>172</sup>

[369] Attached to the Freedom statement associated with the transactions of 20 April 2016 is a declaration, signed by Ms Hocking, stating:

*I, Lori Hocking, declare that the information contained on this form is correct and the expenses incurred were for business purposes complying with current Policy.*

[370] As the relevant line manager, Mr Conway has also signed the statement, declaring:

*I have checked that:*

- *The cost coding and GST Tax Code for each transaction is correct;*
- *I have approved all the transactions in Freedom; and*
- *All Tax Invoices/Tax Receipts are stapled to the statement.*

[371] Ms Hocking and Mr Conway were asked at interview about the use of Ms Hocking's TGC to pay for travel from Melbourne Airport and back to attend a job interview with BKI. Both Ms Hocking and Mr Conway stated that the meeting was work related:

(Interview with Mr Conway)

*[Ms Hocking] asked me about whether to take a day's leave, and my view was that she'd been upfront with me about going for a job interview. The information that she gained from the job interview I thought would be of some advantage to her particularly, but also to us as an organisation. A bit of, if you like, commercial intelligence about how BKI conduct their business. I was happy for her not to take a leave day.*

...

*I was keen to get hold of, you know, any business intelligence systems that they use because we've got a business intelligence project underway...*

Q. *What did Lori get out of it?*

A. *Well, we've had a couple of conversations. First of all she didn't get as much about the business intelligence as my recollection, as I wanted to identify. But certainly got a bit of a view about how the structure differed, the role of the person who would be her line manager, I can't remember the title, was a very similar role to the one I had in my mind about the Deputy CEO's position, so we had some conversations about how that worked.*

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<sup>172</sup> Transcript of interview – Lori Hocking pp. 77-78.

...

Q. So would you consider a job interview for an external organisation to be a work-related thing?

A. Not generally. These were extenuating circumstances, but this time I knew our hold on Lori Hocking was, at best, tenuous. I was of the view that if she were to leave, that it would be detrimental to TasTAFE, and I was doing everything I could from a – I guess from a line manager, and a counselling point of view to ensure that she understood that, you know, she was going with my best wishes, that, you know, it was up to her to ascertain whether this was what she wanted to do. But at the same token, leaving her in no misapprehension that were she to leave us, that would be a significant detriment to us.

...

Q. Have you paid for anyone else to have job interviews in that way?

A. Probably not to my knowledge, but I'm sure that there would be people in the organisation who would be undertaking job interviews in work time, but without telling anybody.<sup>173</sup>

\* \* \*

(Interview with Ms Hocking)

Q. Were your taxi trips from Melbourne Airport to Southbank then your return to Melbourne Airport work-related expenses?

A. Yes.

Q. How so?

A. Well I had a meeting there and I used the opportunity while I was at BKI to actually have a conversation with them...I actually confirmed with Stephen and he saw it as a professional development opportunity for me as well ...

...

I said to [Mr Conway] explicitly, "Do you want me to take an annual leave day for this", he said "No"... "You should be using these types of opportunities as professional development for you in terms of understanding what other TAFEs are doing", so he said "If you can factor in meeting with them as well it would be a good idea".

...

Q. So after you've had this meeting did you then generate a report or provide feedback as to what this other employer is doing?

A. Inadvertently, yes. So building it into conversations that we might have been having.<sup>174</sup>

### **TGC use on 8 May 2016**

[372] The Freedom statement associated with Ms Hocking's TGC transactions for 8 May 2016 includes the following transactions:

- 'Travel 8 May Sydney' (\$236 paid to Qantas)
- 'Travel AJT Interstate travel 8 May' (\$222.70 paid to Virgin Australia)<sup>175</sup>

<sup>173</sup> Transcript of interview – Stephen Conway pp. 68–70.

<sup>174</sup> Transcript of interview – Lori Hocking pp. 78–80.

<sup>175</sup> Freedom statement 28 April 2016 – 29 May 2016 and invoices.

[373] The invoice associated with the \$236 paid to Qantas for 'Travel 8 May Sydney' is for two flights on 27 May 2016, from Hobart to Melbourne and then from Melbourne to Adelaide. Written at the top of the invoice is 'Stephen to approve' with Ms Hocking's initials.

[374] This invoice does not relate to travel on 8 May to Sydney as described on the Fraedom statement.

[375] The invoice for the \$222.70 paid to Virgin Australia for 'Travel AJT Interstate travel 8 May' is for two flights on 30 May 2016, from Adelaide to Melbourne and then from Melbourne to Hobart. Written at the top of the invoice is 'Stephen to approve' with Ms Hocking's initials.

[376] This invoice does not relate to travel on 8 May 2016.

**TGC use on 25 March 2016 (Good Friday)**

[377] Ms Hocking took a trip with her family over the Easter long weekend. On the Good Friday public holiday Ms Hocking used her TGC to purchase \$42.67 in fuel at Sheffield. The transaction is described in the Fraedom statement as 'travel fuel costs'.<sup>176</sup>

[378] At interview Ms Hocking stated:

Q. *Was that when you were on work business?*

A. *No, but we were running out of petrol. We stopped in Sheffield. I've got a petrol card normally attached to my car. It was the only petrol station. I charged petrol, I've done it twice as far as I know, to my – and we've been explicitly told we are not to charge petrol to our – in fact what should happen is that it's – we pay for it ourselves and seek reimbursement.*<sup>177</sup>

[379] The second instance of Ms Hocking using her TGC to purchase fuel was also discussed:

Q. *Was that work-related travel that you were in St Helens for?*

A. *Not – no, but getting up there I – I had a meeting up there with a neighbourhood community house, etcetera, but I was actually going up there for a weekend with my family.*

Q. *Okay.*

A. *But again we ran out of petrol, I went to the service station and I actually thought they took Caltex cards, they wouldn't take it, I put it on my credit card and I went immediately and told Stephen that I'd done it and confirmed that we absolutely cannot put petrol. So yes, I have done it.*<sup>178</sup>

[380] The transaction occurred on 16 July 2016 and is described on the relevant Fraedom statement as 'No Caltex avail, fuel costs St Helens' and cost \$53.99.<sup>179</sup>

**TGC use for entertainment**

[381] The Fraedom statements obtained in the course of the investigation for Ms Hocking's TGC use include numerous transactions relating to entertainment purchases.

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<sup>176</sup> Fraedom statement 29 March 2016 – 27 April 2016 and invoice.

<sup>177</sup> Transcript of interview – Lori Hocking p. 81.

<sup>178</sup> Transcript of interview – Lori Hocking p. 90.

<sup>179</sup> Fraedom statement 28 June 2016 – 27 July 2016.

- [382] One such payment, on Saturday 27 February 2016, amounted to \$242 paid to Maldini Café & Restaurant. The transaction is described on the Freedom statement as 'Catering meeting'.<sup>180</sup>
- [383] Most of these transactions were for coffees during morning and lunch time meetings in Hobart, for both Ms Hocking and whomever she met with.
- [384] It is estimated that, from October 2015 to May 2016, Ms Hocking spent approximately \$800 on entertainment with her TGC.
- [385] At interview, Ms Hocking stated that this practice was the result of a misapprehension by TasTAFE staff that SES officers were exempt from the general rule that a TGC is not to be used for entertainment.
- [386] Ms Hocking stated that, as a result of advice being received in approximately May or June 2016, this practice has since ceased:

*Again I was always led to believe we could go with someone to buy a coffee or etcetera, we believed that we had exemption in relation to entertainment and in fact we wrote seeking clarification from – around Treasurer's Instructions in relation to entertainment. [Person B] did this on our behalf because there was some conjecture, so this is in January, and we were notified that we actually didn't have the ability to do that and so subsequently we could no longer put any entertainment on our credit cards.*

...

*I believed that if we had a meeting like that with someone that it was entirely appropriate to buy them a coffee or – etcetera. I did it indiscriminately and that could've – and again without knowing who actually I was meeting with on those days I would say that I've met with someone external from TasTAFE and that I've bought them a coffee, that's it.*<sup>181</sup>

### **3.5.2. Analysis**

#### **TGC use on 20 April 2016**

- [387] Mr Conway and Ms Hocking assert that the payment of \$147.42 in taxi fares was a legitimate work-related expense.
- [388] The basis of this assertion is that Ms Hocking's job interview with BKI presented as a professional development opportunity from which TasTAFE would benefit.
- [389] Mr Conway was not able to nominate any other staff member of TasTAFE who had received the same or similar treatment.
- [390] In relation to identifying the actual benefit received by TasTAFE as a result of the interview, Mr Conway and Ms Hocking's evidence is that Ms Hocking was able to incorporate her knowledge of BKI into 'conversations'. No additional detail as to the content of, or parties to, such conversations was provided by Mr Conway or Ms Hocking.
- [391] The suggestion that the job interview was a professional development opportunity, based on Ms Hocking's ability to converse with colleagues about her experience, is implausible. Given the conflict of interest issues and friendship between Mr Conway

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<sup>180</sup> Freedom statement 29 February 2016 – 28 March 2016 and invoice.

<sup>181</sup> Transcript of interview – Lori Hocking p. 85.



and Ms Hocking, it is more probable that Mr Conway found a means to tenuously link Ms Hocking's personal use of her TGC to a work-related purpose to assist his friend.

***TGC use on 8 May 2016***

- [392] The two invoices associated with Ms Hocking's 8 May 2016 transactions both relate to travel between Hobart and Adelaide, contrary to the descriptions entered for them into the Fraedom system.
- [393] As previously noted, one of the commitments made by Mr Conway to Ms Hocking in response to the approach from BKI was to pay for Ms Hocking's flights between Hobart and Adelaide.
- [394] Ms Hocking gave evidence that she had been instructed by Mr Conway to use her TGC for her flights between Hobart and Adelaide as part of the additional commitments.
- [395] It is evident that the two transactions undertaken on 8 May 2016 relate to this commitment.
- [396] Analysis of Ms Hocking's TGC use identified numerous transactions with descriptions that do not relate to the actual transactions undertaken. Many such transactions make reference to Sydney.
- [397] Consideration was given to the possibility that such descriptions were used to refer to the additional commitments made to Ms Hocking, in a way that would be identifiable for Mr Conway, but withstand external scrutiny. That is, given that no apparent authority exists on which to allow Ms Hocking to use her TGC for regular personal flights between Hobart and Adelaide, describing them as travel to Sydney makes the transaction appear work-related, whilst simultaneously providing Mr Conway with a means to monitor the extent to which his commitment has been utilised.
- [398] The investigation did not however identify any evidence to support this theory, and the evidence provided by Ms Hocking is that the references to Sydney were mistakes made by Person R.
- [399] The high number of transactions with incorrect references to Sydney, however, means that it is difficult to accept that they are all simply the result of a mistake, particularly given the fact that the descriptions are entered into the Fraedom system manually and that the associated invoices (clearly demonstrating transactions that did not occur in Sydney) were also at hand.

***TGC use on 25 March 2016***

- [400] Ms Hocking's use of her TGC on 25 March 2016 is, as she noted at interview, a breach of the relevant corporate credit card policy. It additionally amounts to a breach of Treasurer's Instruction 705, which explicitly prohibits the use of a TGC for fuel purchases.
- [401] In the circumstances described by Ms Hocking, the fuel card available for her car was not an option as no Caltex service station was available for use. In such a case, the appropriate course of action would be for Ms Hocking to pay for the fuel herself and then seek reimbursement.

[402] It is of some concern that Ms Hocking opted to use her TGC instead, when the option of paying for the fuel and subsequently seeking reimbursement would have been open to her.

[403] The fact that Ms Hocking later repeated this behaviour at St Helens suggests a lack of appreciation for proper process in these cases.

### ***TGC use for entertainment***

[404] Ms Hocking stated at interview that there was a regular practice within TasTAFE of using the TGC for entertainment purchases. Her evidence is that this practice ceased once advice was received that this was in breach of the relevant Treasurer's Instruction.<sup>182</sup>

[405] While the investigation has not focused on the conduct of other staff of TasTAFE with an allocated TGC, material identified in the course of the investigation tends to support Ms Hocking's evidence that the practice of making entertainment purchases was a regular occurrence.

[406] It is noted that Treasurer's Instruction 705 quite clearly stipulates that a TGC is not to be used for entertainment purposes, including paragraph 7 which states:

*The TGC shall be used for entertainment purposes only for official business, by the Head of Agency and officers at the Senior Executive Service level or equivalent, with the prior approval of the Secretary of the Department of Treasury and Finance.*

[407] The point is further emphasised at paragraph 8 of the Instruction:

*Each purchase for entertainment purposes using the TGC must be authorised at Deputy Secretary or the Head of Agency level.*

[408] Finally, the Instruction includes a number of attachments providing specific instructions and definitions associated with the use of the TGC for entertainment purposes.

[409] In addition, it is further noted that the relevant Corporate Credit Card Procedure,<sup>183</sup> includes 'hospitality and entertainment expenses' in the list of excluded transactions.

[410] The above policies were readily available to staff of TasTAFE, and so it is difficult to accept that the apparently widespread misuse of TGCs by senior executives of TasTAFE was merely the result of ignorance.

[411] It is considered more probable that this behaviour evidences a cultural issue, particularly with regard to a presumed entitlement on the part of senior executives that their personal expenses ought to be covered by TasTAFE.

### **3.5.3. Findings**

[412] Several instances of TGC misuse have been identified. Whether or not this is the result of deliberate or negligent misuse is unclear; however, the rules governing appropriate use of a TGC are not difficult to identify or understand – particularly for a senior executive whose responsibility would presumably involve ensuring compliance of these requirements by other staff members.

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<sup>182</sup> Transcript of interview – Lori Hocking p. 85.

<sup>183</sup> Department of Education Corporate Card Procedure, cl 4.3, p. 3.

**[413] On the basis of evidence obtained by the Commission, Mr Conway authorised Ms Hocking's use of her Tasmanian Government Card for personal purposes, associated with:**

- her travel to a job interview on 20 April 2016; and**
- her travel between Hobart and Adelaide.**

**[414] On the basis of evidence obtained by the Commission, Ms Hocking used her Tasmanian Government Card for personal purposes in order to:**

- attend a job interview on 20 April 2016;**
- travel between Hobart and Adelaide; and**
- purchase fuel during two intrastate trips with her family.**

**[415] On the basis of evidence obtained by the Commission, Ms Hocking:**

- used her Tasmanian Government Card for entertainment expenses without prior approval from the Secretary of the Department of Treasury and Finance.**

**[416] It is open to conclude that the practice of using Tasmanian Government Cards for entertainment expenses, without approval, is widespread among the senior executive level of TasTAFE.**

**[417]** A finding in relation to the accumulation of frequent flyer points, associated with work-related travel and ultimately used for personal purposes, was included in the draft copy of this report provided to Mr Conway and Ms Hocking for the purposes of procedural fairness. Although the issue was included as a general misconduct risk (that is, no adverse finding was made against any person), it has been removed following the procedural fairness stage.

## 4. Determination of the Board

[418] A report of the investigation, inclusive of the submissions made by Mr Conway and Ms Hocking as part of the procedural fairness process, was considered by the Board of the Commission in March 2017.

[419] As noted in the Foreword to this report, the Board is unable to make a finding that misconduct has occurred, unless the matter has been heard by an Integrity Tribunal established under the *IC Act*. Section 58(2) of the *IC Act* provides that the Board may, upon considering a report of an investigation:

- dismiss the complaint;
- refer the report of the investigation and any information obtained in the conduct of the investigation to an appropriate person for action;
- recommend to the Premier that a commission of inquiry be established under the *Commissions of Inquiry Act 1995* in relation to the matter;
- require that a further investigation be conducted by the investigator; or
- determine that an inquiry be undertaken by an Integrity Tribunal established under the *IC Act*.

[420] In this matter, the Board determined to refer the report of the investigation to the Premier, the Hon Will Hodgman MP, as the principal officer of the head of agency of TasTAFE (Mr Conway), in accordance with s 58(2)(b)(i) of the *IC Act*.

[421] In making the referral, the Board provided recommendations as to actions that it considered appropriate for the Premier to take in relation to the matter, pursuant to s 58(3) of the *IC Act*. The Board recommended that:

- i) As principal officer of the head of agency (TasTAFE), the Premier:
  - a. Initiate a review of the availability and currency of policies and procedures within TasTAFE for officers employed in the Senior Executive Service relating to:
    - Induction at time of employment;
    - Declaration and management of conflicts of interest;
    - Procurement of contract and consultancy services, inclusive of relevant Treasurer's Instructions;
    - Use of a Tasmanian Government credit card; and
    - Recruitment of employees and other senior executive officers.
  - b. Give consideration to any possible breaches of the State Service Code of Conduct (as provided in the *State Service Act 2000*) by Stephen Conway arising from the Commission's investigation.
  - c. Give consideration to any possible breaches of the State Service Code of Conduct (as provided in the *State Service Act 2000*) by Lori Hocking arising from the Commission's investigation.

- ii) As Premier, he consider the availability and appropriateness of any induction information provided to members of public sector boards, particularly in relation to employment of senior executive officers.

[422] The Board required that the Premier notify the Commission as to any actions he proposes to take, or has taken, in relation to the matter within 12 months of the date of the Board's determination.

## Attachment 1

### Procedural fairness comments of subject officers on draft investigation report

Note: the response of the investigator and the resultant action (to either amend the report or to make no change) has been included where relevant.

#### General comments

Mr Conway provided the following general comments:

*Nothing in the investigation report has highlighted deliberate fraud or misuse of Government equipment. My motivation has always been to turn TasTAFE into a high performing operation. An outcome that underpins every direction I get from my Minister and the TasTAFE Board.*

...

*It is unfortunate that people who were contacted by the Integrity Commission and then bound by a strict confidentiality were themselves not able to provide me with frank and fearless advice about my actions post the original complaint. It appears to me from their testimony that they were anxious about following up any issue that related to my actions relating to Ms Hocking.*

*I can't help but believe that several of the matters that occurred after late March would have been structured differently if [Person A] and [Person B] were not bound by their knowledge of the formal investigation; An investigation that I had no knowledge of – beyond a request from the Mercury in October that I denied because I was ignorant of the fact – until November 2016.*

*In this response I have not addressed every single matter in the report. Suffice to say I believe that my actions were appropriate and in line with my delegations. I believed that I declared any conflict of interest as appropriate to the necessary people, made decisions based upon what is in the best interests of TasTAFE and used the experience of what happened to me and what processes were put in place for other appointments.*

*I have found this a very stressful and debilitating process, notwithstanding that, I have learned several valuable lessons and practices for improvement from this process.*

*I should also note that concerns were never raised with me [by] either [Person A] or [Person B], both who were aware of my decisions and the financial considerations made to Ms Hocking. I have always acted in good faith in line with my position and level of responsibility.<sup>184</sup>*

In relation to the introductory statements in the report's Executive Summary, Ms Hocking made the following comments:

*This statement is made in respect to entitlements relevant to my employment and is considered to not amount to evidence of improper conduct unless that conduct is specifically identified as being contrary to a specific relevant rule or policy. It is not sufficient to simply state that no other employee has been the beneficiary of similar*

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<sup>184</sup> Stephen Conway procedural fairness response, p. 3.

*treatment. Further, the extent of the investigation only relates to both myself and Mr Conway and hence has not been undertaken to determine if other such arrangements have been made in the past for any other staff member. To my knowledge, there has been no investigation to establish whether or not similar treatment was offered, provided or agreed with other staff members within TasTAFE or the wider Tasmanian public service. The complaint and investigation are considered to be lacking in this regard and simply aimed at damaging the reputations of both Mr Conway and myself.*<sup>185</sup>

### **Investigator's response**

The complaint received by the Commission alleges favouritism on the part of Mr Conway toward Ms Hocking. One relevant line of inquiry in relation to such an allegation is to assess the conditions offered by Mr Conway to Ms Hocking, and to compare those to other staff of TasTAFE.

The question of whether or not other staff members of TasTAFE were offered similar employment conditions as Ms Hocking was canvassed at interview with both Mr Conway<sup>186</sup> and Person B.<sup>187</sup>

This section of the executive summary has not been amended.

Ms Hocking made the following comments in relation to the Executive Summary:

*Additionally, the suggestion of favouritism by myself on Page 1 of the Investigation Report is considered to be misguided and not based on fact or evidence. I was not on a selection panel for the position referred to and in fact openly declared a potential conflict of interest in relation to the process.*<sup>188</sup>

### **Investigator's response**

Ms Hocking's submission is accepted. The Executive Summary, and relevant paragraphs within the report, were subsequently amended.

Ms Hocking's concluding comments were as follows:

*It is important that the substance of the complaints and findings, some of which are disputed, are understood within the context of the Tasmanian Government rules and requirements. I commenced my employment with the Tasmanian Public Service approximately 18 months ago. During this time I have sought advice regarding requirements and practices on a regular basis. As it turns out, critical aspects of this advice were incorrect. I was not offered an induction to the Tasmanian Public Service, specifically in respect to rules and requirements. I note that there are a myriad of rules and requirements, encompassed by legislation, regulations, employment directions, Treasurer's instructions, etcetera.*

*As an SES Officer I take responsibility for making myself aware of these requirements, but, frankly, the system is complex, convoluted and interpreted in a variety of ways by different people. A more cohesive approach including a fair and consistent approach*

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<sup>185</sup> Lori Hocking procedural fairness response, p. 1.

<sup>186</sup> Transcript of interview – Stephen Conway p. 45.

<sup>187</sup> Transcript of interview – Person B p. 70.

<sup>188</sup> Lori Hocking procedural fairness response, p. 1.

*across all agencies, focused on assisting and supporting Officers to ensure compliance, would be most helpful.*<sup>189</sup>

### **Specific comments**

In relation to [62], Mr Conway submitted:

*A general theme in the report is that I have failed to declare a formal conflict of interest because of my acquaintance/friendship with Ms Hocking. Whilst it is true that I would agree that I have a personal friendship with Ms Hocking this is due to our professional relationship, not the reason we now have a professional relationship. Ms Hocking has only become a friend since she started in her role in TasTAFE. I consider this to be a usual relationship that develops in a collegiate environment between colleagues, and I have similar friendships with others within TasTAFE.*<sup>190</sup>

### **Investigator's response**

Mr Conway's submission is noted so far as it relates to the nature of his friendship with Ms Hocking.

The report does not purport to distinguish the notions of acquaintance and friendship in this context, as the associated conflict of interest issues remain the same in any case given the nature of the association in question. The statements in the report relating to Mr Conway's conflict of interest – arising from a shared background at VETNetwork, their pre-existing acquaintance and Mr Conway acting as Ms Hocking's referee – have not been amended.

In relation to [74], Mr Conway submitted:

*Ms Hocking was recruited from her position as the CEO of VET Network Australia. In this role she carried out all of the functions of a CEO and had worked in that role for several years, her CV is most impressive and lists very good referees. She was a very successful CEO and extremely well regarded. I know first-hand of her skills, ability, and experience from my time as a Director of the Board of VET Network Australia. Her recruitment was an excellent outcome for TasTAFE and was a significant part of my succession planning strategy.*

*During my time at TasTAFE Ms Hocking has impressed me with her drive, leadership and intellectual capability to operate with the dynamic vocational education and training sector. Ms Hocking is highly regarded by all in TasTAFE and has received commendations from Government Ministers, Senior Bureaucrats and TasTAFE stakeholders.*<sup>191</sup>

### **Investigator's response**

Mr Conway's submission is noted. The report has not been amended.

In relation to [87], Ms Hocking submitted:

*To confirm, my salary at VETnetwork Australia at the time of departure was \$155 000 plus a car, mobile and superannuation – the total package equated to approximately*

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<sup>189</sup> Lori Hocking procedural fairness response, p. 7.

<sup>190</sup> Stephen Conway procedural fairness response, p. 1.

<sup>191</sup> Stephen Conway procedural fairness response, p. 1.



*\$185 000. In this regard both my statement and that of Mr Conway are correct and therefore uncontroversial.*<sup>192</sup>

#### **Investigator's response**

Ms Hocking's submission is accepted. Relevant paragraphs within the report were subsequently amended.

In relation to [131], Mr Conway submitted:

*Notably, two of the witnesses referred to in the Report are [Person A] and [Person B]. I would list these people as friends, and indeed I spent two days with [Person A] at his holiday house last January with his wife present. Whilst we did talk work we also talked about a range of personal pursuits, drank alcohol and ate meals. I have just returned from a similar visit with [Person A] and his family. Also last New Year's Eve I attended a purely social function with [Person B] and his wife [name deleted], at their invitation. I would list these people as friends, but have never considered that anytime I make a decision that impacts upon them I would have to make a formal declaration of interest.*<sup>193</sup>

#### **Investigator's response**

Mr Conway's submission is noted. The report has not been amended.

In relation to [151], Mr Conway submitted:

*The circumstances of my appointment to the position of Secretary of Education and Ms Hocking's ability are the reasons that she now holds a more senior position in TasTAFE than the one she had on initial appointment, not any favouritism or patronage. In the market driven world that TasTAFE operates, it is actual performance not personal relationships that drive outcomes.*<sup>194</sup>

#### **Investigator's response**

Mr Conway's submission is accepted. This section of the report supports the conclusion that, contrary to the suggestion in the anonymous complaint, Mr Conway's appointment as Secretary of the Department of Education was the overriding factor in Ms Hocking's acting arrangements. The report has not been amended.

In relation to [159], Mr Conway submitted:

*[Person B] was transferred to TasTAFE from DoE, at the initiative of the then Secretary of the DoE and SSMO without 'due process' three years ago.*

*His substantive position is a Band 8 in the TSSA. I have always understood the process was allowed for under the Delegations of the State Service, in fact all appointments and transfers relating to SES members have to be authorised by SSMO.*<sup>195</sup>

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<sup>192</sup> Lori Hocking procedural fairness response, p. 1.

<sup>193</sup> Stephen Conway procedural fairness response, p. 1.

<sup>194</sup> Stephen Conway procedural fairness response, p. 2.

<sup>195</sup> Stephen Conway procedural fairness response, p. 3.

### **Investigator's response**

Mr Conway's submission is accepted. He is correct in stating that such appointments and transfers require approval, however that approval needs to be from the Head of the State Service rather than the SSMO. This section of the report details an instance where approval was not sought or provided from either the Head of the State Service or the SSMO. This section of the report has not been amended.

In relation to [168], Mr Conway submitted:

*As the CEO of TasTAFE it has always been in the interests of TasTAFE to retain Ms Hocking's skills –set and experience within this organisation. Her performance is of the highest order.*

...

*I have always considered my actions and decisions to be in line with my delegations and have considered them as reasonable considerations in carrying out my role to attract and retain the best talent possible within TasTAFE for the benefit of the organisation.*

...

*The appointment processes for Ms Hocking to take on more senior roles in TasTAFE were undertaken subject to the clear advice provided to me by the Senior HR Consultant for TasTAFE.<sup>196</sup>*

### **Investigator's response**

Mr Conway's submission is noted. In relation to the appointment processes for Ms Hocking's more senior roles, this issue is already covered at [151] in respect of the acting arrangements for the position of Executive Manager – Education Services. At interview Mr Conway stated that he received advice from [Person D] and [Person H] about the salary increase provided to Ms Hocking on 22 February 2016. Mr Conway was not able to provide a copy of that advice to corroborate that claim, and he speculated at interview that the advice may have been verbal.<sup>197</sup>

No other evidence was identified in the course of the investigation that Mr Conway received advice to the effect that the benefits provided by him to Ms Hocking were appropriate. It is noted that, in instances where Mr Conway appears to have sought advice (either internally or from SSMO), the advice tends to relate to general powers to authorise changes to employment conditions rather than on the specific basis of Ms Hocking's circumstances.

The report has not been amended.

In relation to [213], Ms Hocking submitted:

*The summary above notes invoices only and does not reflect actual payments made and by whom.*

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<sup>196</sup> Stephen Conway procedural fairness response, p. 2.

<sup>197</sup> Transcript of interview – Stephen Conway p. 25.

*The first amount of \$1320 was paid directly by myself therefore this invoice was not paid by TasTAFE. The payment was made in cash direct to Raine and Horne.*<sup>198</sup>

#### **Investigator's response**

Ms Hocking's submission is contradicted by the cited evidence, including the evidence provided by her at interview and notation on the relevant invoice showing approval for payment by Person I.

This section of the report has not been amended.

In relation to [214], Ms Hocking submitted:

*As TasTAFE had not made the payment against the invoices noted above, the remaining amount of \$2865.10 was paid directly by myself as follows:*

- *A direct debit payment to Raine and Horne in the amount of \$2,865.10. This was paid on 20/09/2016.*
- *TasTAFE subsequently reimbursed the above payment on 28/09/2016. Please see Appendix 1.*

*The discrepancy in relation to the invoice amount noted and the amount paid is due to a realignment of dates associated with the rental agreements with Raine and Horne.*

*No further rental payments have been made by TasTAFE. Furthermore, the above has been done within the boundaries established between myself and TasTAFE, and within the bounds of agreements made with Mr Conway and the TasTAFE Board.*<sup>199</sup>

#### **Investigator's response**

This section of the report details the evidence obtained in the course of the investigation. The evidence indicates that, either by direct payment to Raine and Horne by TasTAFE or by TasTAFE reimbursing Ms Hocking's payment to Raine and Horne, Ms Hocking's rental costs were covered by TasTAFE.

This section of the report has not been amended.

In relation to [227], Mr Conway submitted:

*Given that Ms Hocking is the breadwinner [text deleted for privacy reasons] it has been difficult to relocate her family to Tasmania. I am acutely aware of the stress this places on Ms Hocking and have acted to recognise these unique circumstances in my management of her.*

*Whilst it is true that I have allowed her workplace flexibility and provided financial incentives, they were always limited by the total remuneration amount allowed for in the SES salary range of her SES level.*<sup>200</sup>

#### **Investigator's response**

Mr Conway's submission is noted. The report has not been amended.

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<sup>198</sup> Lori Hocking procedural fairness response, p. 2.

<sup>199</sup> Lori Hocking procedural fairness response, p. 2.

<sup>200</sup> Stephen Conway procedural fairness response, p. 2.

In relation to [229], Ms Hocking submitted:

*Is this statement based on established fact or is it opinion? As I understand relevant arrangements, similar conditions were offered to Mr Conway upon his recruitment. This information has previously been relayed to me by both Mr Conway and other parties including TasTAFE Board Members. It therefore appears to be uncontroversial that similar arrangements would be offered to me by Mr Conway, supported by the TasTAFE Board.*

*Further points are relevant. Firstly, the Investigator's comment in respect to Mr Conway 'his focus was on recruiting his friend and associate' does not properly reflect that a process was undertaken involving a number of people and was approved by the TasTAFE Board. The point being that the decision regarding my appointment was properly made with Mr Conway being but one person involved in the process. Secondly, if the offered entitlements were contrary to a policy requirement (described in the Investigation Report as a 'prescribed authority') then the relevant question would appear to be 'was Mr Conway relevantly aware of that requirement', and if yes 'why wasn't the requirement followed'. If no, then the relevant question would appear to be 'why wasn't he aware'. At any rate, this is not a matter over which I had any control or influence – I was made an offer of employment that properly involved discussion, negotiation and ultimately agreement. I was entitled to accept that the offer was properly made, approved by the TasTAFE Board, and capable of acceptance by me. In this regard the investigation report should make this clear.<sup>201</sup>*

### **Investigator's response**

This section is based on analysis of the evidence obtained during the investigation.

Regardless of any perceived authorisation from the TasTAFE Board, Mr Conway's responsibility in relation to the payment of travel expenses is to comply with the requirements of the State Service Regulations and any applicable Employment Direction, policy, legislation or instrument.

These matters were discussed in detail with Mr Conway at interview.

Additionally, the report makes no adverse comment in relation to Ms Hocking's acceptance of the relevant employment conditions. Rather, the focus of this part of the report is the basis on which Mr Conway was able to offer those conditions.

This section of the report has not been amended.

In relation to [245], Mr Conway submitted:

*My reference point for any actions relating to Ms Hocking have always been how I was treated as an incoming Executive to the Tasmanian State Service from interstate. As outlined in my interview with the Integrity Commission I was provided a range of financial considerations upon my recruitment, these included; support for accommodation and travel for my wife and I prior to me taking up the role, fully subsidised rental in a services apartment at Salamanca for a period of approximately 14 weeks, stamp duty paid upon my purchased private apartment, full cost of moving my goods and chattels from Adelaide to Hobart.*

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<sup>201</sup> Lori Hocking procedural fairness response, p. 2.

*It has been my experience in executive roles in South Australian [sic] and in Tasmania that such incentives are common and entirely appropriate tools utilised in attracting and retaining talented people in a competitive environment.*

...

*The report makes note of the fact that Ms Hocking has received considerations that no other Executive in TasTAFE has been provided. Apart from myself, Ms Hocking is the only Executive recruited from Interstate. Had there been others, they will be accorded all due consideration in line with the appropriate Employment Directions and CEO delegations.*<sup>202</sup>

### **Investigator's response**

Mr Conway's submission is noted. As discussed in this section of the report, the availability of accommodation payments is governed by the provisions of the State Service Regulations.

The conditions offered to Mr Conway, in addition to being offered to a Head of Agency as opposed to an SES Level 1 position in the case of Ms Hocking, are separate matters to those offered to Ms Hocking. This section of the report has not been amended.

In relation to [248], Ms Hocking submitted:

*As noted above, Invoice 2 was not paid by TasTAFE. Additionally, it seems that [Person B] was aware that there was a problem with the payment being sought. It was incumbent upon [Person B] to say or do something if he believed the payment was contrary to a policy or requirement. It is entirely possible in an environment governed by a complex laying of rules and regulations that mistakes or misunderstandings could occur. [Person B's] role included providing guidance and advice to TasTAFE Officers in respect to relevant requirements of which none appears to have been provided. In fact, if a problem existed, payments authorised by [Person B] have been confirmed contrary to Tasmanian Government requirements, but do not appear to be captured by this investigation. It was [Person B's] role and duty to take action in this regard and it appears, based on the statements contained in the Investigation Report that he did not take action as required by his position. It is unclear why these apparent deficiencies are not addressed by the Investigation Report.*<sup>203</sup>

### **Investigator's response**

Evidence obtained during the investigation is that Person B sought advice from Person A in relation to the appropriateness of processing the payment of Ms Hocking's rent.

There are also practical difficulties arising from circumstances where a subordinate employee is directed by a senior officer to facilitate payments.

In any event, these issues are not considered to be relevant to the allegation that Mr Conway made improper use of his position to facilitate the payment of Ms Hocking's rent. The decision to have Ms Hocking's rent paid for by TasTAFE was made by Mr Conway, not Person B.

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<sup>202</sup> Stephen Conway procedural fairness response, pp. 2-3.

<sup>203</sup> Lori Hocking procedural fairness response, p. 3.

This section of the report has not been amended.

In relation to [315], Mr Conway submitted:

*The report also notes that a consultancy was provided to an acquaintance, [Person J]. The consultancy was of a very specific nature and required a level of expertise that [Person J] possessed. My acquaintance with [Person J] was declared at the time with [Person B], as was that of Ms Hocking's. I was advised by [Person B] at the time that on the basis of the special needs of the Project, the \$ value and the skills and attributes required that we could appoint [Person J]. He has excelled [sic] in his Project work to date.<sup>204</sup>*

#### **Investigator's response**

Mr Conway's submission is noted. The issues raised in Mr Conway's submission, particularly relating to the declaration of interests, have already been included in the report, and on that basis no further amendment has been made.

In relation to [334], Ms Hocking submitted:

*As noted earlier, I was not a member of the selection panel for this position. The statement contained in the investigation report is factually incorrect and therefore misleading. The panel consisted of other key TasTAFE staff and a TasTAFE Board member. I was not the contact for the position when advertised and I declared to Mr Conway in writing that I could not be a member of the panel as I knew [Person K] and could have a perceived conflict of interest.*

*I reiterate my position and it is further noted that [Person K] was not shortlisted for interview for the position and further, no appointment for the position was made. The position remains unfilled.<sup>205</sup>*

#### **Investigator's response**

Relevant sections of the report have been amended; however, as stated above, Ms Hocking's response is not considered to be an accurate summary of her involvement in the process of filling the position.

In relation to [335], Ms Hocking submitted:

*This statement is untrue – any applicant can request and source information or advice regarding their application from the contact for the advertised position and other people, which foreseeably may include any other member of the relevant organisation. This is not novel or unusual in my experience. To review and comment on an applicant's application may be unusual within the Tasmanian Government context, but as discussed, not unusual within my previous experience within other organisations, particularly organisations that provide educational and career development programs.<sup>206</sup>*

#### **Investigator's response**

The investigator remains satisfied that Person K would not have received the benefits discussed in this section of the report had he not been associated with Ms Hocking.

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<sup>204</sup> Stephen Conway procedural fairness response, p. 1.

<sup>205</sup> Lori Hocking procedural fairness response, p. 3.

<sup>206</sup> Ibid.

Whether or not certain behaviour is unusual in a given context is not considered to be relevant to the question of whether or not the advantages bestowed on [Person K] were the result of his association with Ms Hocking.

This section of the report has not therefore been amended.

In relation to [336], Ms Hocking submitted:

*This is categorically untrue – given my history of working in education, I would offer the same support to any applicant for a position. Applicants are provided a contact name who remains the central conduit for seeking information in relation to the position. In this particular case, while the applicant was an external applicant, I provided similar advice to other candidates as noted. My statement in this regard does not appear to be given weight or relevance within the Investigation Report.*

*The finding asserts that I was a selection panel member. As previously stated, this is incorrect.*

*Finally, the statement implies I have neither the knowledge nor intellect to conduct an [sic] recruitment process based on merit despite carrying out hundreds of recruitment processes in the past. It further implies I am not a reasonable person which is offensive and a highly subjective statement by the Investigating Officer. Furthermore, I find it incredulous that a ‘willing person’ could not reasonable [sic] accept advice and support when applying for a position and should not therefore reasonably expect honest, transparent advice and feedback in relation to their potential success in regards to the advertised position.<sup>207</sup>*

### **Investigator’s response**

The report has been amended to include specific reference to Ms Hocking’s assistance to Person L in relation to Position A. The tone of Ms Hocking’s email to Person L of 23 June 2016 suggests that Person L is, as in the case of Person K, an associate of Ms Hocking’s.

It is further noted that, although Person L was given a copy of the draft statement of duties for that position well in advance of it being advertised, Ms Hocking does not appear to have reviewed or amended Person L’s application in the way that she did for Person K.

The investigator is of the view that this example reinforces the suggestion that the only people in a position to benefit from Ms Hocking’s willingness to provide assistance in the recruitment context are her existing associates.

In relation to [342], first dot-point, Ms Hocking submitted:

*There is absolutely no evidence to support this finding – as verified by both Mr Conway and [Person B] at interview, this finding is ambiguous at best and further, open verbal declarations were made to the TasTAFE Board and others at relevant times. The assertion that my previous professional association with [Person J] required formal disclosure is patently incorrect. My previous association was professional and there was no commercial arrangement in existence. Taken to its logical conclusion, the Investigating Officer’s assertion amounts to a requirement that all senior Tasmanian*

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<sup>207</sup> Ibid.

*Government staff must declare all of their professional associations in order to avoid such claims of conflict. This is considered patently wrong, absurd and an unnecessarily narrow view of the relevant requirements. In the absence of any pre-existing commercial arrangement no such declaration was considered to be required or necessary.*<sup>208</sup>

### **Investigator's response**

As indicated by Ms Hocking at interview her association with [Person J], whom she described as a friend, has existed for approximately seven years. In that time both Ms Hocking and Person J held senior positions at VETNetwork and have acted as referees for one another. It is also noted that, during his work for TasTAFE, Person J used Ms Hocking's residence for a short period in September 2016.

The investigator's view is that the existence of a relationship gives rise to a conflict of interest between Ms Hocking and Person J.

This section of the report has not been amended.

In relation to [342], second dot-point, Ms Hocking submitted:

*The evidence as provided states that I did declare an existing professional relationship with [Person J] and this was supported by both [Person B] at interview and [Person A]. The pre-existing professional relationship has never been hidden and was openly declared – there is no supporting evidence that confirms my actions were contrary to this and further, the Code of Conduct has been adhered to. It is subjective to suggest otherwise.*<sup>209</sup>

### **Investigator's response**

This finding has been amended to clarify that the relevant issue is the failure to manage the conflict of interest associated with the procurement of consultancy services from Person J.

However, it is noted that the declarations were not formally recorded.

In relation to [342], third dot-point, Ms Hocking submitted:

*This finding is once again, factually incorrect – there is no evidence to support this claim and further there is evidence to support the contrary. As noted in the report, [Person J] was recruited for a very specific purpose and his appointment for services totaling \$18 000 was openly discussed, with the procurement guidelines and his appointment was only sought after direct consultation with [Person B], in his capacity as Executive Manager – Corporate Services.*

*It is worth noting that since my appointment in July 2015, Mr Conway for the large part was not my direct Line Manager and hence I relied heavily, being new to the Tasmanian State Service, on advice and support from [Person B]. This was my first procurement process and hence I sought advice from [Person B] as the organisational expert and trusted the advice provided.*<sup>210</sup>

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<sup>208</sup> Lori Hocking procedural fairness response, p. 4.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid.



### **Investigator's response**

The evidence supporting this finding is stated in the report. This section of the report has not been amended.

In relation to [344], fourth dot-point, Ms Hocking submitted:

*Please note paragraph [339] which states 'There is no evidence to indicate whether or not [Person M] won the position as a result of Ms Hocking's assistance'. The process was conducted entirely appropriately and hence [Person M] won the position based on merit. The selection report confirms this and it is entirely inappropriate to suggest otherwise.*

*I should note, I will never offer this kind of assistance and advice in the future for any applicant – I understand that others may perceive a conflict of interest but I struggle with the end result, that is one of 'favouritism' and misguided, deliberate behaviour to determine an outcome. I have conducted other recruitment processes at previous organisations and this has never been sighted [sic] as an issue nor has any appeal process supported this.<sup>211</sup>*

### **Investigator's response**

Paragraph [339] notes that, in relation to whether or not Person M won the position as a direct result of Ms Hocking's assistance, there is no evidence tending either way. Ms Hocking correctly notes that a conclusion either way cannot, and has not, been made.

This section of the report has not been amended.

In relation to [385], Ms Hocking submitted:

*This understanding remains an issue, not personally, but I am aware of other Tasmanian Government employees and in particularly [sic] SES Officers who openly use their TGCC for entertainment use. The practice is widespread and across agencies and further confuses the issue and practice in relation to my understanding of TGCC use. It is my view that, in circumstances where other SES Officers do not comply with the requirement, an adverse finding is unfair and unreasonable.<sup>212</sup>*

### **Investigator's response**

Ms Hocking's submission is noted.

This section of the report has not been amended.

In relation to [399], Ms Hocking submitted:

*After some investigation, a 'template' for coding had been set up in my Freedom account by [Person R]. [Person R] was [position deleted]. [Person R] had delegated authority to access and code transaction on my behalf. In this particular, the wording attached to the coding on the template stated 'Sydney Travel' and should have been amended to reflect the actual travel undertaken. The template has now been deleted.*

*I accept that I sign off on the transactions and their coding as 'true and accurate' and hence understand that in the future, I need to be more vigilant and will more thoroughly*

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<sup>211</sup> Lori Hocking procedural fairness response, p. 5.

<sup>212</sup> Lori Hocking procedural fairness response, p. 6.

*check transactions and their coding. There is no evidence to suggest that my TGCC use for travel was improper.*

*I am willing to rescind my TGCC.*<sup>213</sup>

#### **Investigator's response**

Given that the template referred to by Ms Hocking has apparently been deleted, the accuracy of Ms Hocking's explanation cannot be tested.

However, it is noted that, in relation to two of the references to Sydney cited earlier in this report, the notation does not state 'Sydney Travel' as allegedly contained in Person R's template, but rather 'Travel cab charge Sydney 20 April' and 'Travel 8 May Sydney'.

This does create some doubt as to the legitimacy of [Person R]'s template as being the explanation for these inaccuracies.

This section of the report has not been amended.

In relation to [403], Ms Hocking submitted:

*As noted prior, I now understand this practice to be contrary to established requirements. As described in the supporting transcript, I undertook to fill my car up at a Petrol Station which I believed to accept a Caltex Starcard. The only other card I had in my possession at the time was my Tasmanian Government Credit Card (TGCC) and further, I did not have enough cash to pay for the purchase. Further, I was in my car which meant my husband was unable to help me as he could not come to the Petrol Station with any other form of payment. To be clear, my only option to pay for the petrol that I had pumped was the TGCC. This wasn't clear until I sought to pay for the petrol.*

*As previously stated to the Commission, this particular transaction was notified to Mr Conway immediately, was corrected on my TGCC [sic] and the amount of \$53.99 was repaid to TasTAFE. Evidence supporting this repayment has been supplied to the Commission.*<sup>214</sup>

#### **Investigator's response**

Ms Hocking's submission is noted. This section of the report has not been amended.

In relation to [414], first dot-point, Ms Hocking submitted:

*Information outlining the full purpose of my travel which included a job interview has already been supplied to the Commission but is not noted in any great depth in this draft report. My travel involved other meetings with other parties and also involved other discussions with BKI which ultimately led to a return visit with other staff.*

*As also previously noted, my travel was discussed with Mr Conway prior to undertaking the travel and Mr Conway supported and affirmed my travel for work purposes. It is worth noting that my airfare for my travel was paid for by BKI.*<sup>215</sup>

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<sup>213</sup> Lori Hocking procedural fairness response, p. 6.

<sup>214</sup> Lori Hocking procedural fairness response, p. 5.

<sup>215</sup> Lori Hocking procedural fairness response, p. 6.

### **Investigator's response**

Evidence provided by both Mr Conway and Ms Hocking in relation to the purpose of Ms Hocking's travel in Melbourne on 20 April 2016 is discussed at [371] (including relevant extracts from the interviews with both Mr Conway and Ms Hocking) and then analysed from [387]–[391].

This section of the report has not been amended.

In relation to [416], Ms Hocking submitted:

*As noted at interview, I had previously been advised and therefore believed that SES Officers were exempt from this practice and hence only occasionally used my card (as evidenced) for entertainment purposes. Upon notification that I was not exempt, my usage stopped immediately as also evidenced.*

*As noted previously, I relied heavily on the advice provided to me by my then Line Manager, [Person C], and [Person B], who both openly used their cards for the same purposes. While I accept and understand that the advice provided to me was incorrect, I was not formally inducted at any stage by my Line Manager upon arriving at TasTAFE and hence I relied heavily on my colleagues to provide accurate information and advice.*

*Furthermore, I would argue that the practice is far more widespread than SES staff at TasTAFE.*<sup>216</sup>

### **Investigator's response**

Paragraph [386] notes, as contained in Ms Hocking's submission, that her practice of using her TGC for entertainment purchases ceased once she was advised that such use was prohibited.

This section of the report has not been amended.

In relation to [417], Ms Hocking submitted:

*As previously provided to the Commission, written advice from the TasTAFE Manager – Finance and Assets contradicts this statement and advice. I have sought three forms of other advice in relation to this matter and all rebuke the Commissions' [sic] stance that the practice is a 'breach'.*<sup>217</sup>

### **Investigator's response**

This finding was deleted from the final report.

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<sup>216</sup> Lori Hocking procedural fairness response, p. 7.

<sup>217</sup> Ibid.

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