

REPORT OF THE INTEGRITY COMMISSION

No. 3 of 2019

An investigation into alleged
conflicts of interest within the
Board of Tourism Tasmania

INTEGRITY
COMMISSION



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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INTEGRITY  COMMISSION

President
Legislative Council
Parliament House
HOBART 7000

Speaker
House of Assembly
Parliament House
HOBART 7000

Dear Mr President
Dear Madam Speaker

Pursuant to section 11(3) of the *Integrity Commission Act 2009* (the Act), the Integrity Commission presents to Parliament *Report 3 of 2019*, a report of an investigation into alleged conflicts of interest within the Board of Tourism Tasmania.

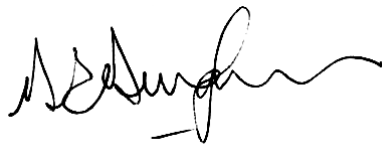
The complaint was ultimately dismissed by the Board of the Integrity Commission, in accordance section 58(2)(a) of the Act.

Yours sincerely



Aziz Gregory Melick AO RFD SC
Chief Commissioner

On behalf of the Board



Richard Bingham
Chief Executive Officer

8 August 2019



**REPORT OF THE
INTEGRITY COMMISSION BOARD**

An investigation into alleged conflicts of interest
within the Board of Tourism Tasmania

5 June 2019

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Foreword

This is the Board of the Integrity Commission's report of an investigation undertaken by the Commission arising from four complaints received in May, June and July 2018. The focus of the complaints were allegations of misconduct relating to the disclosure of pecuniary interests by the Chair of the Board of Tourism Tasmania, James Cretan. Allegations were also raised or identified regarding Ian Rankine and one other Tourism Tasmania Board director, and one employee of Tourism Tasmania.

The Commission investigated the complaint to determine the factual basis for any misconduct, as defined in the *Integrity Commission Act 2009* (the *IC Act*).

A report of the investigation was prepared by a Commission investigator and submitted to the Board in accordance with s 57(1) of the *IC Act*. The investigator made findings of fact on the basis of the evidence obtained during the investigation. The investigation addressed the main allegations of misconduct as identified in the complaint, and also considered additional issues that were identified during the investigation.

The Board considered the investigator's report and determined to dismiss the complaint. The Board then finalised a version of the report that it considered suitable for tabling in both Houses of Parliament. The Board has redacted or modified some sections where it considered that it was in the public interest to do so.

Acronyms

Name	
Mount Wellington Cable-way Company Pty Ltd	MWCC
Premier's Visitor Economy Advisory Council	PVEAC
Tasmanian Development Board	TDB
Tourism Industry Council Tasmania	TICT
Tourism Tasmania	TT
Wellington Park Management Trust	WPMT
Legislation	
<i>Cable Car (kunanyi/Mount Wellington) Facilitation Act 2017</i>	CCF Act
<i>Integrity Commission Act 2009</i>	IC Act
<i>State Service Act 2000</i>	SS Act
<i>Tourism Tasmania Act 1996</i>	TT Act
<i>Tasmanian Development Act 1983</i>	TD Act
<i>Wellington Park Act 1983</i>	WP Act

PART A - Background

1. Introduction

1.1. The complaints

- [1] In May and June 2018, the Commission received three similarly themed complaints from an anonymous complainant (MM18/0090), an identified complainant (MM18/0096) and Andrew Wilkie MP (MM18/0113). All complainants raised allegations of misconduct by the Chair of the Tourism Tasmania (TT) Board, James Cretan, in relation to his pecuniary interest (shareholdings) in Mount Wellington Cable-Way Company Pty Ltd (MWCC).
- [2] The focus of the complaints was that Mr Cretan had allegedly failed to properly disclose his pecuniary interests in MWCC to the TT Board and the Premier,¹ and that he may have acted improperly by using his position as Chair of TT to gain a financial advantage.
- [3] The anonymous complainant also alleged that a Tasmanian Development Board (TDB) director provided Mr Cretan with confidential information about the TDB assessment of the viability of a cable-way, and that a TT employee - when acting as a delegate for TT's CEO - had allegedly not disclosed Mr Cretan's pecuniary interests when they attended Wellington Park Management Trust (WPMT) meetings when issues relevant to MWCC were considered by the WPMT.
- [4] No evidence was found to substantiate either of these allegations, and they are not dealt with further in this report.
- [5] During the assessment process open source checks identified that TT director Ian Rankine - who was appointed to the TT Board on 5 September 2017² - had also acquired a pecuniary interest in MWCC, although of a much lesser value than the interest of Mr Cretan. The response by Mr Rankine and the TT Board to this interest appeared relevant to the allegations raised against Mr Cretan, and this information was treated as an allegation to be considered in the investigation.
- [6] The Chair and Directors of the TT Board are appointed by the Governor on the recommendation of the Minister pursuant to section 8(2) of the *Tourism Tasmania Act 1996*. This means that Mr Cretan, as Chair of TT, and Mr Rankine are designated public officers (DPOs) under s 6(1)(d) of the *IC Act*.
- [7] The anonymous complainant noted that part 7 of Schedule 2 of the *TT Act* prescribes when and how directors are to disclose their interests, and how

¹ The Premier is the Minister for Tourism.

² https://www.tourismtasmania.com.au/data/assets/pdf_file/0020/71444/annrep17-18.PDF

they are to respond when disclosures are made. Non-compliance with part 7 of Schedule 2 may amount to an offence.

- [8] The anonymous complainant noted that s 15 of the *TT Act* outlines possible offences for directors if they dishonestly perform their functions, dishonestly exercise their powers or improperly use information acquired as a TT director or their position as a director.
- [9] The identified complainant further alleged that Mr Cretan has a pecuniary interest, by virtue of his interest in the Cradle Mountain Wilderness Village, in any consideration by the TT Board about government investment in the Cradle Mountain area. The identified complainant noted that ‘T21’ is a government led tourism strategy that identifies priorities, and actions underneath each, to grow Tasmania’s visitor economy, and that the Premier’s Visitor Economy Advisory Council (‘PVEAC’) monitors overall progress on the key actions and agrees on new, strategic actions under T21. Mr Cretan is – as Chair of TT – a member of PVEAC.
- [10] The identified complainant said,

... James Cretan is directly responsible for advising the Premier on the strategy and the targets for expenditure through this T21 strategy through his position on the Premier’s Visitor Economy Advisory Council ... and that ... the Government’s T21 Mid Term update in May 2018 shows that a total investment of 35 million has been made through this program into ‘improving the visitor experience at Cradle Mountain.’³

1.2. Assessment process

- [11] Following initial review, complaints MM18/0090 and MM18/0096 were accepted for assessment by the Commission pursuant to s 35(1)(b) of the *IC Act*, and an assessor was appointed on 12 June 2018. MM18/0113 was received on 20 June 2018, and was assessed in conjunction with MM18/0090 and MM18/0096.
- [12] The assessment did not identify any material to warrant dismissal of the complaints, and the assessor noted that further inquiry was necessary in order to fully examine the allegations raised. On that basis the assessment report, dated 6 July 2018, recommended that the three complaints about the relevant TT Board interests in MWCC be investigated in accordance with s 37(2)(g) of the *IC Act*.
- [13] Following an assessment of the complaint about Mr Cretan’s interest in the Cradle Mountain Wilderness Village, the assessor recommended that the investigation should also examine the allegations regarding Mr Cretan’s disclosures and influence as TT Chair in relation to the \$35 million investment into the Cradle Mountain area.

³ MM18/0133.

1.3. Allegations

[14] The following allegations have been examined in the investigation:

1. Mr Cretan has failed to properly disclose a pecuniary interest in the MWCC to the Board of TT
2. Mr Cretan has failed to properly disclose a pecuniary interest in the MWCC to the Minister
3. Mr Cretan has failed to disclose a conflict of interest by way of the TT CEO's delegate's attendance in WPMT meetings
4. Mr Cretan improperly used his position as Chair of the Board of TT to gain a financial advantage via TT's involvement with the WPMT to advantage the MWCC and himself
5. Mr Cretan, by purchasing shares in the MWCC, improperly acted on improperly provided information about the TDB assessment of the viability of the MWCC
6. Mr Rankine failed to properly disclose a pecuniary interest in the MWCC to the Board of TT⁴
7. Mr Rankine improperly used his position as a director of TT to gain a financial advantage by using his Board role to advantage MWCC and himself⁵
8. Mr Cretan has failed to properly disclose a pecuniary interest in the Cradle Mountain Wilderness Village to the Board of TT, and
9. Mr Cretan has failed to properly disclose a pecuniary interest in the Cradle Mountain Wilderness Village to the Minister.

2. Administration

2.1. Jurisdiction

[15] The Commission's jurisdiction was invoked on receipt of the complaints about DPOs and public officers.

[16] Section 87(1) of the *IC Act* states that the 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. Investigation process

[17] An investigator was appointed to investigate the complaints, in accordance with Part 6 of the *IC Act* on 6 July 2018.

⁴ Identified during assessment.

⁵ Identified during assessment.

- [18] In accordance with s 38(2) of the *IC Act*, the Premier was advised by written notice of the determination to conduct an investigation on 10 July 2018. The Notice was made subject to the confidentiality requirements of s 98 of the *IC Act*.
- [19] The investigation involved the use of the Commission's coercive powers, by way of notices to produce records.⁶ Documentation and information was provided upon request to the investigator by the Premier's Office and, at the end of the investigation, Mr Cretan. One of the complainants continued to provide the investigator with updated information during the investigation.

2.3. Standard of proof

- [20] 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).
- [21] In considering whether the civil standard of proof has been met, an investigator will bear in mind what was said in *Briginshaw v Briginshaw*:

Reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.⁷

2.4. Procedural fairness

- [22] In accordance with s 46(1)(c) of the *IC Act*, the Commission 'must observe the rules of procedural fairness' in undertaking the investigation.
- [23] The investigator's report contains factual findings. Where factual findings might be considered to be adverse, they have been provided to the affected individuals for comment prior to finalisation of the report.
- [24] Mr Cretan, Mr Rankine, John Fitzgerald (CEO TT) and two other persons were provided with a draft of the investigation report and copies of the attachments referenced in the draft report. They were invited to make written comments or submissions.
- [25] Mr Cretan, Mr Rankine and Mr Fitzgerald provided written comments.

⁶ *IC Act* s 47(1)(a).

⁷ (1938) 60 CLR 336, 362 (Dixon J).

[26] As a result of the submissions received, several paragraphs were amended and two further findings added to the investigation report.

2.5. Relevant legislation

[27] Tourism Tasmania is required to comply with relevant legislative obligations and Tasmanian State Service-wide policies, including but not limited to:

- *State Service Act 2000* (Tas) (*SS Act*) and *State Service Regulations 2011* (Tas)
- Treasurer's Instructions
- Employment Directions, and
- Ministerial Directions.

State Service Act 2000

[28] The code of conduct for State Service employees is at s 9 of the *SS Act*. Of particular interest to this investigation is:

(8) An employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment.

[29] 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.

[30] The *SS Act* does not apply to TT Board members.⁸

Tourism Tasmania Act 1996

[31] Section 5 of the *TT Act* states:

The objective of the Authority is to maximise the economic and social benefits for Tasmania by fostering a sustainable tourism industry in the State through -

- (a) maximising the number of tourists in Tasmania; and*
- (b) maximising the expenditure of tourists in Tasmania; and*
- (c) facilitating the investment in, and development of, the tourism industry in Tasmania; and*
- (d) contributing to the creation of employment opportunities within the Tasmanian tourism industry.*

[32] Tourism Tasmania's functions are listed in s 6(1) of the *TT Act*:

- (a) to market Tasmania as a desirable tourist destination;*

⁸ *TT Act*, sch 1, pt 5.

- (b) *to facilitate the sustainable growth of the Tasmanian tourism industry;*
- (c) *to support the Tasmanian tourism industry to achieve the best practice delivery of products and services;*
- (d) *to undertake, support and interpret research relevant to tourism in Tasmania;*
- (e) *to undertake strategic planning for the development and growth of a sustainable tourism industry in Tasmania;*
- (f) *to provide advice and support to the Minister in relation to the Tasmanian tourism industry;*
- (g) *to establish and maintain a cooperative relationship between the Authority, Government departments, statutory authorities, local government and the tourism industry in Tasmania;*
- (h) *to perform other functions imposed on the Authority by this or any other Act.*

[33] Tourism Tasmania's powers are listed in s 7:

- (1) *The Authority has power to do –*
 - (a) *all things necessary or convenient to be done in connection with the performance of its functions; and*
 - (b) *all other things that it is authorised to do by this or any other Act.*
- (2) *Without limiting subsection (1), the Authority has power to –*
 - (a) *undertake destinational and product marketing; and*
 - (b) *carry out investigations and research into tourism in Tasmania and elsewhere; and*
 - (c) *act as a travel agent; and*
 - (d) *establish and maintain travel centres to assist travellers; and*
 - (e) *acquire, hold, dispose of and otherwise deal with property; and*
 - (f) *enter into contracts including a contract with another person for the performance of any of its functions or powers jointly with that other person; and*
 - (g) *set charges, terms and conditions relating to work done, or services, goods or information supplied, by it; and*
 - (h) *appoint agents, attorneys and consultants and act as an agent, attorney or consultant; and*
 - (i) *form, and participate in the formation of, companies and participate in partnerships, trusts, joint ventures and other arrangements for the sharing of profits; and*
 - (j) *carry on any business which may conveniently be carried on in conjunction with the performance of its functions; and*

(k) do all other things necessary or convenient to be done in connection with the exercise of its powers.

[34] Tourism Tasmania has a Board of Directors consisting of:

- (a) the chairperson who has high-level skills and extensive experience in commerce; and*
 - (b) the chief executive officer; and*
 - (c) one person appointed on the nomination of the Tourism Council Tasmania Limited; and*
 - (d) 2 persons who have skills and experience in marketing-related industries or transport-related industries; and*
 - (e) 3 other persons who have the skills and experience necessary to enable the Authority to achieve its objective.*
- (2) The chairperson and the directors referred to in subsection (1) (c), (d) and (e) are appointed by the Governor on the recommendation of the Minister.⁹*

[35] The role of the TT Board is listed in s 9:

The Board is responsible to the Minister –

- (a) for the performance by the Authority of its functions; and*
- (b) for the achievement by the Authority of its objectives as specified in this Act, any other Act and its corporate plan; and*
- (c) for ensuring that the business and affairs of the Authority are managed and conducted in a manner that is in accordance with sound commercial practice.*

[36] The Board has power to do all things necessary or convenient to be done in connection with the performance and exercise of its functions and powers under the *TT Act* or any other Act.¹⁰

[37] Directors have duties under s 15 of the *TT Act* to act honestly and properly, reflecting a recognition that Board members may be conflicted by virtue of their related skills and experience:

- (1) A director must act honestly in the performance and the exercise of the functions and powers of a director.*
- (2) In the performance and exercise of the functions and powers of a director, a director must exercise the same degree of care and diligence that a person in a like position in a corporation within the meaning of the Corporations Act is required to exercise.*
- (3) A director or former director must not use improperly, whether within Tasmania or elsewhere, information acquired as a director –*

⁹ *TT Act* ss 8(1)–(2).

¹⁰ *TT Act* s 11.

- (a) *to gain, directly or indirectly, a personal advantage or an advantage for another person; or*
 - (b) *to cause damage to the Authority.*
- (4) *A director or former director must not use improperly, whether within Tasmania or elsewhere, his or her position as a director or the fact that he or she is or was a director -*
- (a) *to gain, directly or indirectly, a personal advantage or an advantage for another person; or*
 - (b) *to cause damage to the Authority.*

[38] Penalties for non-compliance with these duties can apply.¹¹

[39] Schedule 2, Part 7 of the *TT Act* requires that Board directors disclose their interests in Board meetings:

- (1) *If -*
- (a) *a director has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board; and*
 - (b) *the interest could conflict with the proper performance of the director's duties in relation to consideration of the matter -*
- the director, as soon as practicable after the relevant facts come to the director's knowledge, must disclose the nature of the interest to the Board.*
- (2) *A disclosure under subclause (1) is to be recorded in the minutes of the meeting and, unless the Board otherwise determines, the director must not -*
- (a) *be present during any deliberation of the Board in relation to the matter; or*
 - (b) *take part in any decision of the Board in relation to the matter.*
- (3) *For the purpose of making a determination under subclause (2), the director to whom the determination relates must not -*
- (a) *be present during any deliberation of the Board for the purpose of making the determination; or*
 - (b) *take part in making the determination.*
- (4) *Subclause (1) does not apply -*
- (a) *in respect of a contract for a good or service supplied by the Authority if that good or service is ordinarily supplied by the Authority and is supplied on the same terms as it is ordinarily supplied to other persons in the same situation; or*

¹¹ *TT Act* s 15.

- (b) *in respect of an interest that arises only because the director also is a State Service officer or State Service employee; or*
- (c) *in respect of a director who has a direct or indirect pecuniary interest in any matter if the benefit or detriment likely to be received is one that will be received in common with all or a substantial proportion of the tourism industry in Tasmania.*

- [40] Penalties for non-compliance with these requirements can apply.¹²
- [41] The TT Board has maintained a practice of listing and updating pecuniary interests held by its directors. No legislated requirement in the *TT Act* for the Board to maintain such a list has been identified.
- [42] A Ministerial Charter is required under s 24 of the *TT Act*. The Charter specifies the policy expectations of the Minister for the Authority¹³ and may limit the functions and powers of the Authority and the performance and exercise of those functions and powers,¹⁴ but may not prevent the Authority from performing a function it is required to perform or otherwise complying with this or any other Act¹⁵ and may not extend the functions and powers of the Authority.¹⁶
- [43] The Ministerial Charter relevant in this investigation was issued by the Minister (the Premier, the Hon Will Hodgman MP) on 12 October 2014.¹⁷ In relation to compliance with Government policies, the Minister specified that,
- Tourism Tasmania is to perform all functions and exercise all powers in accordance with the requirements of the Tourism Tasmania Act 1996; State Service Act 2000; and all other State and Commonwealth laws, regulations and instructions that impact upon its operations.*¹⁸
- [44] Other than a requirement that Board members abide by the *TT Act*, there was no requirement for members of the TT Board to disclose any pecuniary interests to the Minister under the then Ministerial Charter.¹⁹
- [45] TT's Board Charter also applies to Board members. This document reinforces the requirement of compliance with the *TT Act* in relation to the disclosure of interests.²⁰ The Board Charter also documents that the directors must not

¹² *TT Act*, sch 2, pt 7.

¹³ *TT Act* s 25(1).

¹⁴ *TT Act* s 25(2).

¹⁵ *TT Act* s 25(2)(a).

¹⁶ *TT Act* s 25(2)(b).

¹⁷ Attachment 1.

¹⁸ *Ibid*, pg 5.

¹⁹ A new Ministerial Charter was finalised in December 2018. There is no change in relation to compliance with Government policy or the disclosure of pecuniary interests to the Minister.

²⁰ Attachment 47, pg 5.

allow personal interests, or the interests of any associated person, to conflict with the interests of TT.²¹

Tasmanian Development Act 1983

[46] Section 5 of the *TD Act* makes reference to the TDB's directors:

- (1) *The affairs and activities of TDR are to be conducted by a Board of Directors to be known as Tasmania Development and Resources Board.*²²
- (2) *The Board consists of not more than 9 directors including the chairperson.*
- (3) *Each of the directors shall be appointed by the Governor on the nomination of the Minister and, by an instrument of appointment under this section –*
 - (a) *one of the directors shall be appointed as chairperson of the Board; and*
 - (b) *another of the directors shall be appointed as chief executive.*
- (3A) *The Minister must not make a nomination under subsection (3) unless he or she is satisfied that the person nominated has the experience and skills necessary to enable TDR to achieve its objectives.*

[47] The TDB's duties are listed in s 7 of the *TD Act*:

- It is the duty of TDR, within the limits of its powers, to encourage and promote the balanced economic development of Tasmania, and to ensure that its policies are directed to the greatest advantage of the people of Tasmania and that its powers under this Act or any other Act are exercised in such a manner as, in its opinion, will best contribute to*
-
- (a) *the stability of business undertakings in Tasmania;*
 - (b) *the maintenance of maximum employment in Tasmania; and*
 - (c) *the prosperity and welfare of the people of Tasmania.*

[48] The TDB's functions are listed in s 8:

- (1) *TDR has, in addition to the functions conferred on it under any other Act, the following functions:*
 - (a) *to develop and carry out measures to encourage, monitor and promote employment in the private sector in Tasmania;*

²¹ *Ibid*, pg 4.

²² 'TDR' ('Tasmanian Development and Resources') is the corporate name of the body corporate of the Tasmanian Development Authority.

- (b) *to develop and carry out measures to promote investment in Tasmania;*
- (c) *to promote co-operation between the public and private sectors for the purpose of any such measures;*
- (d) *to support and expand existing business undertakings and business opportunities in Tasmania;*
- (e) *to conduct research for the purpose of the development or establishment in Tasmania of business undertakings;*
- (f) *if so requested by the Treasurer, to disburse on behalf of the Crown -*
 - (i) *any money payable as relief following a bushfire, drought, earthquake, flood, tempest, or other occurrence causing loss of life or property or injury to persons or property or distress to persons; or*
 - (ii) *any money payable to the Crown as mentioned in section 10 ;*
- (g) *to administer the TDR Acts.*

[49] Section 45 of the *TD Act* requires Directors (and staff) to keep secret any information they obtain as a Director:

- (1) *A director, administrator, or officer of TDR who, in the course of the administration of this Act, obtains any information as to a process, technique, practice, plan, invention, specification, prototype, or design shall maintain and aid in maintaining the secrecy of that information except for the purposes of the administration of this Act.*
- (2) *A director, administrator, or officer of TDR who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 3 months, or both.*

Wellington Park Act 1993

[50] The constitution of the WPMT is listed under s 10 of the *WP Act*:

- (1) *The Trust consists of -*
 - (a) *the chairperson; and*
 - (b) *the Director-General of Lands or a person nominated by the Director-General; and*
 - (c) *the Director of National Parks and Wildlife or a person nominated by the Director; and*
 - (d) *the chief executive officer of Tourism Tasmania or a person nominated by that chief executive officer; and*
 - (e) *two persons nominated by the Hobart City Council; and*
 - (f) *a person nominated by the Glenorchy City Council; and*

- (g) a person nominated by the Hobart Regional Water Board.*
- (2) The Minister must appoint as members of the Trust the persons nominated under subsection (1) (e), (f) and (g).*
- (3) The chairperson of the Trust is to be appointed by the Minister and, where the member referred to in subsection (1) (b), (c) or (d) is a person nominated by the Director-General of Lands, the Director of National Parks and Wildlife or the Director of Tourism, that member is to be appointed by the Minister.*

[51] The WPMT's functions and powers are listed in s 11:

- (1) The functions of the Trust are as follows:*
 - (a) to provide for the management and maintenance of Wellington Park in a manner that is consistent with the purposes for which it is set aside;*
 - (b) to give effect to any management plan in force for Wellington Park;*
 - (c) to prepare plans with a view to their submission to the Governor for approval as management plans for Wellington Park and to keep under review the provisions of management plans;*
 - (d) to ensure that any development undertaken in Wellington Park is consistent with the purposes for which it is set aside and with any management plan;*
 - (e) when required to do so by the Minister, to advise on any development proposed for Wellington Park;*
 - (f) to carry out, or arrange for the carrying out of, research and other activities that appear to it to be desirable in connection with the administration of this Act;*
 - (g) to be the managing authority of Wellington Park;*
 - (h) to perform such other functions as are imposed on it by or under this or any other Act.*
- (2) The Trust may do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions.*
- (3) Without limiting subsection (2) , the Trust may use, or arrange for the use of, Wellington Park as it considers appropriate to promote the purposes for which it is set aside and may –*
 - (a) provide and maintain facilities and conveniences for the use or benefit of persons resorting to Wellington Park, and charge for the use of those facilities or conveniences; and*
 - (b) sell or let on hire to, or otherwise provide for the use of, those persons, goods and other articles and things; and*
 - (c) obtain and use for the purpose of the exercise of its powers under this section any produce of, or materials in, Wellington Park; and*

- (d) *make arrangements with any other person for the doing of anything referred to in paragraph (a) , (b) or (c) ; and*
 - (e) *erect or construct any buildings or other works and purchase or acquire any articles or other things.*
- (4) *The arrangements referred to in subsection (3)(d) may be arrangements pursuant to which any person has the right or obligation to do any of the things referred to in that subsection, and those arrangements may provide for the furnishing of consideration in respect of the giving of that right or the imposition of that obligation.*
- (5) *The Minister may give directions to the Trust with respect to the performance of its functions and, in performing its functions, the Trust must comply with any directions so given.*
- (6) *The power conferred on the Minister by subsection (5) is not to be exercised so as -*
- (a) *to require the Trust to do anything that it is not empowered to do by this Act; or*
 - (b) *to prevent the Trust from performing any function that it is expressly required by this Act to perform, whether conditionally or unconditionally; or*
 - (c) *to interfere with the formation by the Trust of any opinion or belief in relation to any matter that has to be determined as a prerequisite to the performance or exercise by the Trust of any of its functions or powers under this Act.*

[52] The WPMT may appoint a person employed by a body which is represented on the WPMT as an authorised officer for the purposes of the management of Wellington Park.²³

[53] The WPMT may delegate any of its functions or powers other than this power of delegation.²⁴

[54] Clause 4 of Schedule 3 of the *WP Act* states:

- (1) *If a member of the Trust has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered or about to be considered by the Trust, the member must disclose the nature of that interest at a meeting of the Trust.*
- (2) *A disclosure under subclause (1) is to be recorded in the minutes of the meeting of the Trust and the member must not, unless the Trust otherwise determines -*
 - (a) *be present during any deliberation of the Trust with respect to that matter; or*

²³ *WP Act* s 13.

²⁴ *WP Act* s 14.

- (b) *take part in any decision of the Trust with respect to that matter.*
- (3) *For the purpose of making a determination by the Trust under subclause (2) in relation to a member who has made a disclosure under subclause (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not take part in the making by the Trust of the determination.*

Cable Car (kunanyi/Mount Wellington) Facilitation Act 2017

- [55] The *Cable Car (kunanyi/Mount Wellington) Facilitation Act 2017* (CCF Act) became law on 16 October 2017.
- [56] Section 7 of the *CCF Act* lists what processes are required to allow cable-car proponents to gain access to kunanyi/Mount Wellington for the purposes of entering public land and carrying out activities for the purposes of seeking a permit for a project:
- (1) *(1) The Minister may, in writing, grant to a proponent, under this subsection, an authority for the proponent, and persons acting on behalf of the proponent, to -*
 - (a) *enter public land; and*
 - (b) *carry out on the land activities, including testing, that are reasonably required to be carried out by or on behalf of the proponent for the purposes of enabling an application under the Land Use Planning and Approvals Act 1993 for a permit, in relation to a project, to be made by the proponent.*
 - (2) *The Minister must consult with the Wellington Park Management Trust before granting an authority under subsection (1) in relation to land that is within Wellington Park.*
 - (3) *If the land to which an authority under subsection (1) relates is not vested in the Crown, the Minister, before granting the authority, is to notify the person or body in whom or which the land is vested.*
 - (4) *An authority granted under subsection (1) is subject to the terms and conditions specified in the authority.*
 - (5) *Despite the Wellington Park Act 1993 and the Land Use Planning and Approvals Act 1993, the proponent to whom an authority is granted under subsection (1), and persons acting on behalf of the proponent, may, under and in accordance with the authority -*
 - (a) *enter and remain on the land to which the authority relates, together with any vehicles, machinery and equipment necessary for carrying out activities referred to in that subsection, for the purpose of carrying out such activities; and*
 - (b) *carry out on the land activities referred to in that subsection.*

(6) The Minister may revoke an authority under subsection (1) by notice in writing to the proponent to whom the authority was granted.

2.6. Relevant policies

WPMT Governance Policy

[57] The WPMT's Governance Policy was approved on 24 November 2017.²⁵ WPMT members have been required to follow particular policy in relation to possible misconduct issues.

[58] Amongst a number of expectations, members are expected to:

- act for proper purpose;
- avoid conflicts of interest;
- refrain from making improper use of information gained through their role as a Trust member or deputy;
- refrain from taking improper advantage of the position of Trust member or deputy;
- behave honestly and with integrity when attending to their duties as a Trust member; and
- maintain the confidentiality of matters dealt with in their role as Trust member or deputy.²⁶

[59] The WPMT is committed to acting with the highest ethical standards and complying with its obligations under adopted codes and standards, as well as legislation and regulations that apply to it. WPMT members are required to comply with WPMT policies that apply to them individually and collectively.²⁷

[60] Members (and deputies) have an ongoing duty to disclose in a WPMT meeting any direct or indirect interest, whether pecuniary or otherwise, they have in a matter being considered, or about to be considered, by the WPMT as soon as it arises. Such disclosures must be recorded in the meeting minutes. This includes related party transactions as defined in the WPMT's Related Parties Policy. Declared related party transactions will be recorded in the WPMT's related party register.

[61] Referencing clause 4 of Schedule 3, in general, the WPMT will only consider allowing a member with a conflict of interest in a particular matter to remain in a meeting if it feels that the member may be able to provide information that would assist the WPMT in its deliberations on that matter.²⁸

²⁵ Attachment 2.

²⁶ Ibid, pt 3.4.

²⁷ Ibid, pt 4.5.

²⁸ Ibid, pt 5.3.

3. The investigation

3.1. Investigative methodology

[62] Relevant evidence has been sourced via coercive notices and by requests to the Premier's Office and Mr Cretan.

[63] Other evidence has been obtained from open sources and has been provided by complainants.

3.2. Key persons named in this report or assisting with investigation

Name	Position
James Cretan	Chair, Board of Tourism Tasmania
John Fitzgerald	CEO, Tourism Tasmania
The Hon Will Hodgman MP	Premier; Minister for Parks; Minister for Tourism, Hospitality and Events
Ian Rankine	Director, Board of Tourism Tasmania
Philip Turner	Director of Tucre Pty Ltd

PART B – Evidence

4. Mr Cretan's roles and interests

4.1. Mr Cretan's role as TT chair

[64] Mr Cretan was appointed TT Chair on 21 July 2014.²⁹ His appointment required that he should have high-level skills and extensive experience in commerce.³⁰ The role of any chair of an organisation – including TT – is to ensure the organisation's direction and strategy is sound and in line with its governance arrangements.³¹

[65] As a TT Board member Mr Cretan has a shared responsibility with the other directors to the Minister for the performance of TT's functions and the achievement of its objectives.³²

[66] Tourism Tasmania's functions and objectives do not involve the consideration of particular tourism developments and projects. Neither TT nor its Board hold such responsibilities. Such consideration is the function of other agencies. Tourism Tasmania's role is somewhat less tangible: it is to promote travel to Tasmania through marketing and supporting improved visitor access to the state. The TT Board oversees TT in performing this role.

[67] The TT website describes Mr Cretan's role in broad terms:

*He oversees the agency's strategic direction and plays a significant role in communication with government and industry.*³³

[68] Mr Cretan has chaired TT Board meetings since his appointment. A review of the minutes of TT Board meetings reflect its broader strategic role, and shows that there has been no consideration of particular tourism projects and developments or of government funding. The minutes reflect the focus on marketing and access matters.

4.2. Mr Rankine's role as TT director

[69] Mr Rankine was appointed as a TT director on 5 September 2017.³⁴

²⁹ <https://www.examiner.com.au/story/2439370/new-tourism-tasmania-chairman-appointed/>

³⁰ *TT Act* s 8(1)(a).

³¹ In this case, the *TT Act*.

³² *TT Act* s 9.

³³ <https://www.tourismtasmania.com.au/about/board>

³⁴ https://www.tourismtasmania.com.au/__data/assets/pdf_file/0020/71444/annrep17-18.PDF

[70] As a Board member, Mr Rankine has a shared responsibility with the other directors to the Minister for the performance of TT's functions and the achievement of its objectives.³⁵

[71] As a director, Mr Rankine oversees TT's strategic focus. The directors do not make or influence decisions about particular tourism developments or projects.

4.3. Tourism Tasmania's role with the WPMT

[72] Mr Cretan, as Chair of the TT Board, has no role with the WPMT.

[73] Mr Fitzgerald, as CEO of TT has a statutory position on the WPMT.³⁶ This has been delegated to another TT employee. It is the delegate's role, as with the other WPMT members, to perform their functions in accordance with the *WP Act*.³⁷

[74] Of particular relevance for the delegate in relation to a cable-way are the functions:

- to ensure that any development undertaken in Wellington Park is consistent with the purposes for which it is set aside and with any management plan [s 11(1)(d)]
- when required to do so by the Minister, to advise on any development proposed for Wellington Park [s 11(1)(e)], and
- use, or arrange for the use of, Wellington Park as it considers appropriate to promote the purposes for which it is set aside and may – erect or construct any buildings or other works and purchase or acquire any articles or other things [s 11(3)(e)].

[75] The WPMT's Governance Policy (refer [57]–[59]) prescribes expectations as to how Trust members are to conduct themselves, including avoiding conflicts of interest.³⁸

4.4. Mr Cretan's role with the PVEAC

[76] T21 is a partnership agreement between the state Government and the Tasmanian tourism industry, represented by the Tourism Industry Council Tasmania (TICT). The strategy's target is to grow annual visitor numbers to Tasmania to 1.5 million by 2020, and so generate visitor expenditure of around \$2.5 billion a year, greater capital investment and more jobs. This strategy describes how the Government, in partnership with the tourism industry, is

³⁵ *TT Act* s 9.

³⁶ *WP Act* s 10(d).

³⁷ *WP Act* s 11.

³⁸ Attachment 2.

working to achieve its goal of achieving the set visitor numbers and expenditure goals.³⁹

[77] The T21 Steering Committee is responsible for overseeing and coordinating delivery and reporting on each of the actions in T21 by the relevant organisations. The committee meets quarterly and reports on progress to the PVEAC. The CEO of TT chairs the T21 Steering Committee. Membership of the committee includes:

- Secretary, Department of State Growth
- Secretary, Department of Primary Industries, Parks, Water and the Environment
- Deputy Secretary, Tasmanian Parks and Wildlife Service
- Deputy Secretary, Cultural and Tourism Development, Department of State Growth
- CEO, TICT
- General Manager, Tasmanian Hospitality Association
- Director, T21
- Coordinator-General.

[78] The members of the Steering Committee are heads of the public and non-public agencies that are likely to co-ordinate the delivery of tourism outcomes. Mr Cretan, as TT Chair, is not a member of the T21 Steering Committee.

[79] Mr Cretan is a member of the PVEAC. The PVEAC monitors overall progress on the key actions and agrees on new, strategic actions required to achieve the vision of 1.5 million annual visitors to Tasmania by 2020. The PVEAC engages with key stakeholders in the visitor economy to identify new opportunities for growth.

[80] The Premier chairs the PVEAC. Other members of the PVEAC include:

- Minister for State Growth (deputy chair)
- Chair, TICT
- Chair, TT
- President, Tasmanian Hospitality Association
- Secretary, Department of State Growth
- CEO, TT
- Secretary, Department of Primary Industries, Parks, Water and the Environment
- Coordinator-General
- Chair, Tasmanian Heritage Council.

[81] The PVEAC meets quarterly and issues public reports on progress against the T21 priorities every six months. A report is presented to the annual Tasmanian

³⁹ <https://www.t21.net.au/governance>

Tourism Conference each year and provides the previous calendar year's results, while the second report provides the previous financial year's results.

- [82] The governance arrangements described in the T21 website suggest that the Steering Committee, as its name might suggest, oversees and co-ordinates the delivery and reporting of actions by relevant organisations. The PVEAC has a monitoring role.
- [83] Although the T21 Steering Committee and the PVEAC are not statutory bodies like TT, the above described governance arrangements suggest that the PVEAC plays a role similar to that of a Board, and is not operational in nature.

4.5. Mr Cretan's interests

- [84] Prior to his appointment as TT chair, Mr Cretan was a director of the TICT between 2012 and 2014.⁴⁰ The TICT describes itself as the peak body for Tasmania's tourism industry, and a not-for-profit organisation providing leadership for the industry and a strong voice for Tasmanian tourism operators.⁴¹
- [85] Mr Cretan has been a long-term director of a number of Tasmanian companies,⁴² some of which operate in the tourism industry.⁴³ These interests are listed in TT's website.⁴⁴
- [86] Tucre Pty Ltd ('Tucre') was registered as a company on 5 October 2016. Its directors are Mr Cretan and Phillip Turner, who resides in Thailand. Its principal place of business is Mr Cretan's Hobart residence.⁴⁵
- [87] ASIC records dated 8 November 2016 show that Tucre purchased 250,000 preference shares in MWCC for \$312,500.⁴⁶
- [88] When asked by the Premier's Office,⁴⁷ Mr Cretan documented the value and structure of Tucre in the following terms:

Tucre Pty Ltd is a trustee for the Tucre Unit Trust, Tucre Pty Ltd has no assets of its own, and it is owned 50% by me and 50% by my co-investor. The Tucre Unit Trust owns 250,000 shares in MWCC, the beneficial owners of these shares is 200,000 shares by an entity of my co-investor and

⁴⁰ Attachment 3.

⁴¹ <https://tict.com.au/>

⁴² ASIC check: James Cretan.

⁴³ For example, Kriticos Nominees Pty Ltd (Swansea Beach Chalets); Joswall Australia Pty Ltd (Shoreline Hotel); Cramo Holdings Pty Ltd (Cradle Mountain Wilderness Village).

⁴⁴ <https://www.tourismtasmania.com.au/about/board>

⁴⁵ Attachment 4.

⁴⁶ Attachment 5

⁴⁷ This is discussed later in this report.

*50,000 shares by an entity of mine. I receive no remuneration of any kind from Tucre nor my co-investor in relation to MWCC.*⁴⁸

- [89] This outline of the value and structure of Tucre is corroborated by ASIC checks.⁴⁹
- [90] It is apparent from the timing of the incorporation of Tucre and the purchase of MWCC shares that Tucre was incorporated by Mr Cretan and Mr Turner with the specific intention of investing in MWCC through that company.
- [91] The value of these shares will fluctuate depending on the future of a cable-way. The value of MWCC shares is likely to rise if a cable-way is constructed.
- [92] Mr Cretan has explained the circumstances that led him to invest in MWCC in 2016. He was previously approached by MWCC prior to his appointment as TT chair in 2014, but had some concerns about some risks and did not invest at that time. The MWCC later made some changes and contacted him again after his appointment. He felt the risks he was earlier concerned about had been minimised. Mr Turner was keen to invest, and they did so. Mr Cretan, aware of the sensitivities attached to a cable-way made it clear to MWCC that his role would be a passive one. He declared his investment as soon as he was able to the TT Board.⁵⁰
- [93] Mr Cretan firmly rejected any suggestion that his investment was based in any way on information provided by any other TICT Board member. He did not discuss the cable-way or his plans to invest in MWCC with them.⁵¹
- [94] When he invested, Mr Cretan was unaware that TT had a role at the WPMT.⁵²
- [95] The TT website makes no reference to Mr Cretan's shares, but it does state that Mr Cretan,
- ... is an executive director of Kriticos Nominees, a family company that owns and operates Cradle Mountain Wilderness Village.*⁵³
- [96] ASIC checks show that the company Cramo Holdings Pty Ltd ('Cramo Holdings') trades as Cradle Mountain Wilderness Village.⁵⁴ Cramo Holdings was registered on 12 April 1999. Mr Cretan was a director of Cramo Holdings from 1 February 2000, and ceased being a director on 6 March 2018.⁵⁵ Mr Cretan has not been recorded as a shareholder in Cramo Holdings.

⁴⁸ Attachment 6.

⁴⁹ Attachment 4.

⁵⁰ Information provided by Mr Cretan to investigator, 2 April 2019.

⁵¹ Ibid.

⁵² Ibid.

⁵³ <https://www.tourismtasmania.com.au/about/board>

⁵⁴ Attachment 7.

⁵⁵ Attachment 8.

- [97] Mr Cretan's brother, Peter Cretan, has been a director of Cramo Holdings since 12 April 1999. Peter Cretan ceased being secretary of Cramo Holdings Pty Ltd on 6 March 2018, and no longer is listed in ASIC records as a shareholder.
- [98] Kins Pty Ltd is currently the only shareholder of Cramo Holdings. Kins Pty Ltd's directors include Mr Cretan (since 1999), plus other members of his family and other business associates.⁵⁶ Shareholders of Kins Pty Ltd include Mr Cretan's companies Jandle Pty Ltd (fully paid class E shares, beneficially owned) and Kriticos Nominees Pty Ltd (51 ordinary shares beneficially held and fully paid and 10151 ordinary shares beneficially held and not fully paid) as well as Mr Cretan's family members and their companies.
- [99] Although ASIC checks reflect a complex structure in relation to which companies sit behind Cradle Mountain Wilderness Village, it is clear Mr Cretan has retained a long term pecuniary interest in that family business.

4.6. What did Mr Cretan declare to the TT Board about his interest in MWCC?

- [100] The TT Board Minutes show that upon obtaining shares in MWCC in October 2016, Mr Cretan advised the Board on 12 October 2016 that he:

*... has made a modest investment in the Mount Wellington Cable Car Company but advised he does not intend to have an active role due to the sensitivities.*⁵⁷

- [101] After some adverse media coverage in April 2017 about Mr Cretan's interest in MWCC (refer [135]), Mr Cretan confirmed this investment in the 12 April 2017 Board meeting. The minutes recorded that:

*It was confirmed that the Chair's interest in the Cable Car company has been declared as an interest as part of the Board's standard declarations of interest process.*⁵⁸

- [102] After the re-emergence of adverse media coverage that followed comments made in the 'Mountain Mayday' rally on 6 May 2018 about this investment,⁵⁹ the Board noted in its 31 May 2018 meeting that:

the status of the public debate re Mount Wellington Cable Car (MWCC) shares held by Chair James Cretan. Chair James Cretan and Director Ian Rankine absented themselves from the discussion as shareholders in the MWCC. The Board determined the appropriate course of action to be discussed with the Premier's Office in relation to future disclosure of a Board Director's interests in proposed MWCC project or other perceived potential conflict matters. The Board agreed that they have been compliant and have abided by the best practice government

⁵⁶ Attachment 9.

⁵⁷ Attachment 10.

⁵⁸ Attachment 11.

⁵⁹ This is discussed in more detail later in this report.

processes that are in place as required under the Act. The Board discussed the level of reputational risk for the organisation and the Board. It was agreed that there has been no impropriety and the only risk is reputational, but not from a governance perspective. The Auditor General is also across the Board's approach and process. The Chair has engaged with the Premier to make sure no political embarrassment has been caused as a result of his MWCC share holdings. The Chair has also discussed why he has a shareholding, the confusion around the amount of shares held and his reasons for writing to the Mercury newspaper. Ian Rankine also has a shareholding with MWCC which the Premier is aware about. Ian's shareholding is not yet publicly known and it was agreed that it is not the Government's position to disclose this. Ian has complied with declaring his interests immediately after purchasing the shares. The TICT Board has no official register of interests and Ian has not declared his interests to the Board, however, if the topic was raised, Ian said he would raise his interests and he would remove himself from any decisions on the matter. Following further discussions with the Board, Ian is considering noting his interests with the TICT Board. The Board reviewed the positional statement.

ACTIONS: John and Mark will update text in the positional statement, as agreed by the Board. This will be sent back to the Board for approval within 7 days.⁶⁰

[103] Mr Cretan's directorship of Tucre has been recorded in the TT Board's lists of pecuniary interests since June 2017. These lists read:

*Position held: Director
Organisation: Tucre P/L⁶¹*

[104] There is no record in these lists detailing the contextual information that Tucre was formed to purchase MWCC shares with Mr Turner. His Tucre directorship - which commenced in October 2016 - was not recorded in the TT Board's list of pecuniary interests until June 2017.⁶²

[105] Although the Board minutes show that he declared the 'modest investment' to the TT Board in October 2016, there was no record of Mr Cretan's MWCC investment recorded in the TT Board's list of pecuniary interests until April 2017.⁶³ It was not listed in the February 2017 list of pecuniary interests.⁶⁴

[106] Since April 2017, Mr Cretan's MWCC investment have been recorded in the TT Board's lists of pecuniary interests as follows:

⁶⁰ Attachment 12.

⁶¹ Attachments 13–21.

⁶² Attachment 17,

⁶³ Attachments 22, 23.

⁶⁴ Attachment 22.

Mr Cretan advised he has made a modest investment in the Mount Wellington Cable Car Company (advised October 2016)⁶⁵

[107] The specific amount invested by Tucre and Mr Cretan has not been recorded in the list of pecuniary interests. It is important to note that the fingerprint of the TT Board's pecuniary declaration document specifically directs that this specific information should not be included in the declaration.⁶⁶

4.7. What did Mr Cretan declare to the TT Board about his interest in Cradle Mountain Wilderness Village?

[108] Mr Cretan's directorship of Cramo Holdings, trading as Cradle Mountain Wilderness Village, was recorded in the TT Board's list of pecuniary interests. This directorship was removed from this list in August 2018,⁶⁷ five months after he had ceased being a director.⁶⁸ He was listed as a director of Cramo Holdings in the pecuniary interest lists dated April and May 2018, after his directorship ceased.⁶⁹

[109] Mr Cretan's directorship of Kins Pty Ltd, which continues to own shares in Cramo Holdings, has been recorded in the TT Board's list of pecuniary interests. However, there are no references in this list linking his interest, via the shares held in Kins Pty Ltd by Kriticos Nominees Pty Ltd and Jandle Pty Ltd, to the Cradle Mountain Wilderness Village.

[110] The April and October 2018 lists of pecuniary interests record Mr Cretan as being a current and former Kriticos Nominees Pty Ltd director.⁷⁰

[111] The April and October 2018 lists of pecuniary interests record Mr Cretan's directorships of Kins Pty Ltd, Kriticos Nominees Pty Ltd, and Jandle Pty Ltd. They list Cramo Holdings Pty Ltd (trading as Cradle Mountain Wilderness Village) as a retired directorship.⁷¹

[112] There is no record in the more recent lists that clearly identifies Mr Cretan's current interest in Cradle Mountain Wilderness Village (via Kins Pty and his shares via Kriticos Nominees Pty Ltd and Jandle Pty Ltd).

[113] The May 2017 TT Board meeting minutes recorded that the Coordinator General presented an update on tourism investment activities, and that the Board was aware of this interest and responded accordingly:

The presentation highlighted the major projects and activities of the Office of the Coordinator General. This included reference to Cradle

⁶⁵ Attachments 13, 15-20, 23-25.

⁶⁶ Ibid.

⁶⁷ Attachments 16, 25.

⁶⁸ Attachments 13, 17-21, 23, 24.

⁶⁹ Attachments 14, 15.

⁷⁰ Attachments 16, 25.

⁷¹ Ibid.

Mountain Masterplan, however the discussion was not specific or included anything that is not already on the public record due to acknowledged conflict and existing declaration from the Chair who owns commercial property at Cradle Mountain.⁷²

4.8. What did Mr Cretan declare to the Minister about his interest in MWCC?

[114] There are no specific statutory requirements for TT Board members to declare any interests to the Minister, the Premier or the Government. The Ministerial Charter and the Board Charter require compliance with the relevant legislation, including the *TT Act*, and relevant policy.⁷³

[115] It is clear that the Minister was aware – at least in a broad sense – that Mr Cretan had pecuniary interests in Tasmanian tourism businesses. It is also apparent that these interests, and indeed Mr Cretan’s success in his tourism ventures, were the catalyst for his appointment.

[116] Although Mr Cretan was not obliged to make specific disclosures to the Minister about his interests, there may be instances that warrant disclosure of the details of a financial interest to the Minister. Such a situation seems to have emerged when Mr Cretan’s pecuniary interest in the MWCC attracted negative publicity. Media commentary about his interest in MWCC led to a situation where the Minister’s Office requested Mr Cretan to disclose, explain and document his interest in MWCC to the Minister in increasing amounts of detail.

[117] Conflict of interest concerns were raised publicly when John Lawrence wrote about MWCC shareholders in a blog dated 6 April 2017:

Since September 2016 there have been three new preference shareholders taking the total to eight, who together with existing shareholders contributed a further \$552,500 ----- 442,000 shares at \$1.25 each. The largest contribution came from Tucre Pty Ltd, now the largest preference shareholder on the register, who chipped in \$312,500 for 250,000 shares. One assumes it was a cash contribution but it could have been in kind.

Tourism Tasmania’s chair James Cretan is a director and 50 per cent shareholder of Tucre. Tucre’s MWCC shares are not beneficially owned meaning it holds them in trust. It’s hard to believe that Mr Cretan doesn’t have an interest in the underlying trust. For someone in his position simply to do a favour and front for a mate is scarcely credible given the sensitivity of the project. In any event he has a fiduciary duty to the beneficial owners even if he’s just a trustee. How can he give balanced advice on the strategic direction of tourism in Tasmania and communicate these matters with government?⁷⁴

⁷² Attachment 26.

⁷³ Attachments 1 & 47.

⁷⁴ http://tasfintalk.blogspot.com/2017/04/cable-car-conflicts_6.html

- [118] The article prompted a perception that Mr Cretan's pecuniary interest in MWCC may have been valued up to at least \$156 250 as he was listed as a fifty percent shareholder. Although the details of Tucre's interest in MWCC were available via the ASIC website,⁷⁵ the blog article marks the first time that Tucre's interest of over \$300 000 in MWCC was publicised.
- [119] In the environment of ongoing speculation and debate about the merits of a cable-way, this publicity fuelled further media interest.⁷⁶
- [120] Mr Cretan responded directly and publicly to Mr Lawrence's blog on 9 April 2017:

I have ventured into this troll-infested corner of the internet to refute the vitriolic inferences you have made about me with some simple facts. I undertook due diligence on Mt Wellington Cable Car project for some months before deciding to invest. In keeping with my personal values, this means that I am satisfied it is commercially, environmentally and socially sustainable.

My investment is not a secret. I declared it to the Government and the Tourism Tasmania Board, where it sits on the Declarations of Interest Register. Sorry I didn't drop you a note at the time. I have no involvement in the operations or governance of the Mt Wellington Cable Car company and as Tourism Tasmania is essentially a Destination Marketing Organisation it has absolutely no involvement in the State Government consideration of the project.

There are well established processes in place for dealing with potential conflicts of interest in a governance setting. Try googling it. These processes will come into play in the unlikely event this project is a subject of discussion at a Tourism Tasmania board meeting. In the first instance I would absent myself from the discussion.

I am an entrepreneur who is passionate about Tasmania and the bright future it offers to those who call it home. With regard to the Cable Car project, I like many have been frustrated to see it stalled by agenda-filled mudslinging dressed up as taking the high moral ground. People like me need to put their money where their mouth is.

Your offensive inferences about my integrity are baseless, and those I know and work with understand that integrity is one of my core personal values. It's about time to play the ball rather than the man. However if you need to continually vent your conspiracy theories maybe you should join an antivaxer group ...⁷⁷

- [121] There is no evidence that Mr Cretan consulted with TT, the TT Board or the Minister prior to his response to the April 2017 blog article.

⁷⁵ Attachments 4, 5, 27.

⁷⁶ <https://tasmaniantimes.com/2017/04/tourism-tasmania-boss-has-shares-in-government-backed-cable-car-project/>; <https://www.themercury.com.au/news/tasmania/highprofile-figures-take-a-stake-in-mountain-project/news-story/3e2e7642564596af60419064e9d23763>

⁷⁷ http://tasfintalk.blogspot.com/2017/04/cable-car-conflicts_6.html

- [122] It is not clear how Mr Cretan – as he outlined in this response - had declared his investment to the Government as at 9 April 2017. No documentary evidence of this declaration was provided by the Premier’s Office.
- [123] Question time briefs (‘QTB’) for the Minister were prepared by TT staff in April and May 2017 to address the issues raised in the media. There is no evidence that Mr Cretan contributed to this brief.
- [124] This QTB contained background information stating,

On Friday 7 April The Mercury newspaper reported that Tourism Tasmania Chairman James Cretan was part owner of Tucre investments, which had in October 2016 purchased 250,000 preference shares in the Mount Wellington Cableway Company.

The article questioned whether there was a conflict of interest with his role as Tourism Tasmania’s Chairman.

At the Tourism Tasmania Board meeting on 12 October 2016, James Cretan declared the purchase of shares in the Mount Wellington Cable Car project.

This was recorded in the internal register of business interests.⁷⁸

- [125] The QTB also spelt out that there was no conflict of interest:

There is no conflict of interest between James Cretan’s purchase of shares in the Mount Wellington Cable Car proposal and his Chairmanship of the Tourism Tasmania Board.

Tourism Tasmania’s role is to generate demand for leisure travel to Tasmania through its domestic and international marketing, and also by supporting improved access to the state for our visitors.

As a result, Tourism Tasmania has no involvement in the Mount Wellington Cable Car proposal or advising government on this project.

Tourism Tasmania’s Board is made up of highly successful business people with a range of business interests across a range of sectors.

It should come as no surprise to anyone that those selected to be on Tourism Tasmania’s board may be personally involved in the tourism industry.

In fact, it’s their experience, skill and knowledge that make their contributions to Tourism Tasmania so invaluable.

However, Tourism Tasmania has in place the appropriate governance procedures to avoid any conflicts of interest through the declarations process and its internal register.⁷⁹

- [126] Public discussion of the propriety of Mr Cretan’s pecuniary interest in the MWCC re-emerged a year later in April 2018. It is fair to observe that these discussions were driven by parties opposed to a cable-way. Emails were sent

⁷⁸ Attachment 28.

⁷⁹ Ibid.

by members of the public⁸⁰ directly to TT staff, including the CEO, between 14 April – 17 April 2018 outlining concerns about Mr Cretan’s interest that had been raised a year earlier.⁸¹

- [127] A QTB was again prepared by TT in April 2018. This question time brief addressed the role of TT, the Board and the Chair. Unlike the 2017 question time brief, it quantified Mr Cretan’s share and Mr Rankine’s interest was also referenced:

James Cretan declared the purchase of shares in the Mount Wellington Cable Car project by Tucre Investments, of which he is a part-owner, at the Tourism Tasmania Board meeting on 12 October 2016. Mr Cretan owns 50,000 of the 250,000 shares purchased by Tucre Investments.

Board member, Ian Rankine declared the purchase of shares in the Mount Wellington Cable Car project at the Tourism Tasmania Board meeting on 10 November 2017.

Both declarations have been recorded in the internal register of business interests.

Mr Rankine’s interest has not been noted publically either by the government or in the media.⁸²

- [128] As in April 2017, there is no evidence that Mr Cretan was involved in informing this QTB. The evidence obtained does not clarify how TT were aware that Mr Cretan owned 50 000 of the 250 000 shares. That level of detail was not recorded in the TT Board minutes or the list of pecuniary interests.

- [129] Public awareness and interest grew after the ‘Mountain Mayday’ rally on 6 May 2018 where Mr Cretan’s interests were raised by Richard Flanagan:

And how is it that the chair of the board of Tourism Tasmania, James Cretan, also can be the largest preference shareholder in the Mount Wellington Cable Car Company, having bought through his company, Tucre Pty Ltd, 250,000 shares for \$312,500?

Tourism Tasmania is a statutory board member of the Mt Wellington Trust, which manages Mt Wellington. How can it be that the Mt Wellington Trust board never saw a conflict of interest with the Tourism Tasmania representative, whose ultimate boss is James Cretan, taking part in its decisions to allow the very same Cable Car Company to conduct preliminary excavations on the mountain?

According to respected economist John Lawrence the Cable Car Company “is a typical start-up company struggling to organise the necessary permits and plans including the use of public land, which may then produce a windfall gain to the few shareholders who have taken a punt and made contributions.”

Did the Mt Wellington Trust ask questions of Tourism Tasmania’s representative? And if it did not, why not? Did the Tourism Tasmania

⁸⁰ Mostly South Hobart residents whose properties may be impacted by a cable-way.

⁸¹ Attachment 29.

⁸² Attachment 30.

representative table the fact of Mr Cretan's considerable stake and the possibility of him profiting substantially from the cable car to the Trust? And if they did not, why not?

I am not suggesting impropriety on the part of Mr Cretan. But it appears to be a conflict of interest for him, for Tourism Tasmania, for the Mt Wellington Trust, and for the government.

Mr Cretan should either sell his shares immediately or resign as chair. And if he does neither, I call on Premier Hodgman to sack him. Because no matter how much the government say it is not an issue, it is an issue. It is wrong.⁸³

[130] Initially there was no request from the Minister or the Premier's Office following the rally to clarify the extent of Mr Cretan's interest in MWCC.

[131] Mr Cretan was again clearly unimpressed with the issues raised in the rally and the subsequent reporting of these. Mr Cretan consulted with Mike Lester⁸⁴ in drafting a letter in response to Mr Flanagan's comments. Mr Lester is a registered lobbyist for MWCC.⁸⁵

[132] On 8 May 2018 Mr Cretan emailed Mr Fitzgerald with an attached copy of a letter. The email to Mr Fitzgerald read:

I have taken advice from Mike Lester on this issue and he has recommended that I write a short piece to set the record straight on a number of matters in the hope the Mercury will publish as an op ed. I have attached this as a Word doc FYI.

While it is largely about clarifying my arms length relationship with MWCC, I do make reference to TT as it pertains to my position - I have been careful not to put any views that are not in accord with those we have spoken about in public forums and the corporate plan.

It's a little difficult for me to communicate with Govt about this as I am overseas this week as you know, so could I ask for your assistance in getting this to the right people in the Minister's office as a matter of courtesy?⁸⁶

[133] The attached letter to Mr Fitzgerald read:

I was born in Hobart and have lived in Tasmania all my life. As a proud Tasmanian I have been an active participant and investor in Tasmanian businesses across a range of industries including tourism, hospitality, ICT, mercantile and advanced manufacturing for nearly 30 years.

Like many others, I am passionate about Tasmania and its special and unique attributes, and this was a key factor in my decision to accept the role of Chair of Tourism Tasmania in August 2014. There is strong justification for appointing active industry people like me to these roles

⁸³ <https://tasmaniantimes.com/2018/05/cable-car-richard-flanagans-speech-in-full/>

⁸⁴ Attachment 31.

⁸⁵ http://lobbyists.dpac.tas.gov.au/lobbyists/mike_lester

⁸⁶ Attachment 31.

and I have worked very hard to make a positive contribution based on my knowledge and experience.

My vision is for a tourism industry (and a visitor economy more broadly) that enriches Tasmania not only economically but also socially and culturally, and I am eager to find the 'sweet spot' where these outcomes are in balance. I believe that finding this balance will require broad community discussion, careful thought and sound strategy, and I look forward to continuing to be involved in these processes.

I have been following the cable car concept for many years- well before my appointment to the board of Tourism Tasmania. I believe that it would be a great asset for the use of not only visitors but also Tasmanians.

At the rally at Cascade Gardens on Sunday some questions were raised by Richard Flanagan about whether I have a conflict of interest in my shareholding in the Mount Wellington Cable Car company (MWCC) and as Chairman of Tourism Tasmania.

Mr Flanagan called on me to either sell those shares immediately or resign my position and if I did neither, he called on the Premier to sack me.

I do appreciate that Mr Flanagan made it clear he was not suggesting any impropriety on my part. That is good as far as it goes. However, it remains that the suggestion might leave some people with the impression that something is amiss.

Had Mr Flanagan or anyone else involved in the rally really been interested I would have been happy to answer their questions. Sadly no one bothered to do the decent thing and just ask me, so here are the facts.

I chose to make a small investment (equating to a 1.79% shareholding) in the MWCC company in October 2016. This was declared to the Government and to the Board of Tourism Tasmania at the time. I have not in any way or at any time sought to be covert about this investment as I strongly believe it is important for Tasmanian investors to demonstrate their commitment to the State.

Potential conflicts of interest are common in board environments. Fortunately, there are very clear ways in which these are managed and I can assure you that these are in place in this case.

Tourism Tasmania has a clear and focused charter to market the State to visitors. As such it has no role either explicitly or implicitly in being involved in Government decisions around projects such as the cable car. At no time have I been involved directly or indirectly with any Government processes surrounding the project.

Please be aware that during my tenure as Chair there have been no discussions about this project at either the Board of Tourism Tasmania (or with me at any operational level), nor the Premier's Visitor Economy Advisory Council of which I am an ex-officio member.

In the highly unlikely event that this project was to be discussed by either of these bodies I would, of course, immediately absent myself

from these discussions, in keeping with best practice governance processes.

I recognise many Tasmanians feel a special connection with our mountain. I am one of them.

I sincerely hope that the ongoing debate can be founded on open minded dialogue where respect for differing views is not trumped by aggression or personal attacks, where fair and transparent processes are paramount, and an equitable outcome for all Tasmanians is championed.

In this spirit I remain willing to engage in discussion, with the exception being I will not engage in debate through social media channels as appears to be the trend with some high-profile politicians overseas.⁸⁷

[134] Before this letter was forwarded to *The Mercury*, TT staff subsequently advised staff from the Premier's Office of the content of Mr Cretan's letter and his intention to send it *The Mercury*, as Mr Cretan had requested.⁸⁸

[135] *The Mercury* published the response on 9 May 2018. It read nearly the same as had been provided to Mr Fitzgerald, with some immaterial sentences removed.⁸⁹

[136] The Premier sent emails on 16 May 2018 to those members of the public who had expressed conflict of interest concerns about Mr Cretan's shares in MWCC and his role as TT chair. These emails said:

Thank you for your email regarding Mr Cretan's chairmanship of the Tourism Tasmania Board.

Tourism Tasmania's role is to generate demand for leisure travel to Tasmania through its domestic and international marketing, and also by supporting improved access to the state for our visitors.

Tourism Tasmania has no involvement in the Mount Wellington Cable Car (MWCC) proposal or advising government on this project.

As a matter of clarity, I am advised that Mr Cretan owns less than 2 per cent of the shares in the MWCC.

Mr Cretan is diligent in following the statutory requirements in reporting disclosures of any pecuniary interests in business or body corporates (Schedule 2, Tourism Tasmania Act 1996) and the Board regularly reviews any disclosure of interests through the declarations process and its internal register.

Thank you for sharing your views with me.

Hon Will Hodgman MP⁹⁰

⁸⁷ Attachment 31.

⁸⁸ Attachment 32.

⁸⁹ Attachment 33.

⁹⁰ Attachment 34.

[137] Question time briefs were prepared, reviewed and cleared for the Premier by TT staff regarding the interests of Mr Cretan and Mr Rankine. The drafting of these briefs commenced on 17 April 2018:

Tourism Tasmania has no involvement in the Mount Wellington Cable Car proposal or advising government on this project.

There is no conflict of interest between James Cretan's purchase of shares in the Mount Wellington Cable Car proposal and his Chairmanship of the Tourism Tasmania Board.

The Tourism Tasmania Board of Directors is skills based, with Directors appointed who have the necessary expertise and experience to enable the Authority to achieve its objectives.

Its membership is made up of qualified business people, who have a range of business interests that may have direct or indirect involvement in the tourism industry nationally or in Tasmania.

The Tourism Tasmania Act clearly outlines expectations for Director's responsibilities and code of conduct in relation to conflict and disclosure of interest.

I am satisfied as the Minister for Tourism that appropriate governance procedures are in place to manage conflicts of interest if they arise.

The processes outlined in the Tourism Tasmania Board Charter relating to Director's responsibilities to disclose and manage interests are being adhered to.

Section 5.1 and 5.3 of the Tourism Tasmania Board Charter outlines individual Director's responsibilities in relation to conflicts and disclosure of interest and include:

A Board Director who has direct or an indirect material personal interest in a matter that relates to the affairs of Tourism Tasmania must give other Board members notice of interest.

The Director must provide details as soon as practical after the relevant facts come to the Director's knowledge, and disclose the nature and extent of the interest to the affairs of Tourism Tasmania.

The details must be recorded in the minutes of the meeting and, unless the Board otherwise determines:

- The Director must not be present during any deliberation of the Board in relation to the matter; or*
- Take part or be present in any decision or determination of the Board in relation to the matter.*

The Board must retain all details of declarations of interest in the List of Pecuniary Interests. James Cretan declared the purchase of shares in the Mount Wellington Cable Car project by Tucre Investments, of which he is a part-owner, at the Tourism Tasmania Board meeting on 12 October 2016. Mr Cretan owns 50,000 of the 250,000 shares purchased by Tucre Investments.

Board member, Ian Rankine declared the purchase of shares in the Mount Wellington Cable Car project at the Tourism Tasmania Board meeting on 10 November 2017.

Both declarations have been recorded in the internal register of business interests.

Mr Rankine's interest has not been noted publically either by the government or in the media.⁹¹

[138] A later QTB dated 21 May 2018 provided further detail:

Tourism Tasmania has no involvement in the Mount Wellington Cable Car proposal or advising government on this project.

There is no conflict of interest between James Cretan's purchase of shares in the Mount Wellington Cable Car proposal and his Chairmanship of the Tourism Tasmania Board.

The Tourism Tasmania Board of Directors is skills based, with Directors appointed who have the necessary expertise and experience to enable the Authority to achieve its objectives.

Its membership is made up of qualified business people, who have a range of business interests that may have direct or indirect involvement in the tourism industry nationally or in Tasmania.

The Tourism Tasmania Act clearly outlines expectations for Director's responsibilities and code of conduct in relation to conflict and disclosure of interest.

I am satisfied as the Minister for Tourism that appropriate governance procedures are in place to manage conflicts of interest if they arise.

The processes outlined in the Tourism Tasmania Board Charter relating to Director's responsibilities to disclose and manage interests are being adhered to.

Section 5.1 and 5.3 of the Tourism Tasmania Board Charter outlines individual Director's responsibilities in relation to conflicts and disclosure of interest and include:

- A Board Director who has direct or an indirect material personal interest in a matter that relates to the affairs of Tourism Tasmania must give other Board members notice of interest.*
- The Director must provide details as soon as practical after the relevant facts come to the Director's knowledge, and disclose the nature and extent of the interest to the affairs of Tourism Tasmania.*
- The details must be recorded in the minutes of the meeting and, unless the Board otherwise determines;*
- The Director must not be present during any deliberation of the Board in relation to the matter; or*
- Take part or be present in any decision or determination of the Board in relation to the matter.*

The Board must retain all details of declarations of interest in the List of Pecuniary Interests.

⁹¹ Attachment 30.

James Cretan declared the purchase of shares in the Mount Wellington Cable Car project by Tucre Investments, of which he is a part-owner, at the Tourism Tasmania Board meeting on 12 October 2016. Mr Cretan owns 50,000 of the 250,000 shares purchased by Tucre Investments, equating to less than 2 per cent ownership in the Mount Wellington Cable Car project.

Board member, Ian Rankine declared the purchase of shares in the Mount Wellington Cable Car project at the Tourism Tasmania Board meeting on 10 November 2017.

Both declarations have been recorded in the internal register of business interests.

Mr Rankine's interest has not been noted publically either by the government or in the media.⁹²

- [139] A second version of that QTB was prepared on that same day. It was slightly amended to add:

Tourism Tasmania has no involvement in the Mount Wellington Cable Car proposal or advising government on the project.

The Tourism Tasmania Board of Directors is skills based as prescribed by the Tourism Tasmania Act, with Directors appointed who have the necessary expertise and experience to enable the Authority to achieve its objectives.

Its membership is made up of qualified business people, who have a range of business interests that may have direct or indirect involvement in the tourism industry nationally or in Tasmania.

Skills based boards are common place in Australia and internationally.

The Tourism Tasmania Act clearly outlines the expectations for Directors' responsibilities and code of conduct in relation to conflict and disclosure of interest.

I am satisfied as the Minister for Tourism that appropriate governance procedures are in place to manage conflicts of interest if they arise on the Tourism Tasmania Board.

In relation to the Mount Wellington Cable Car more specifically, as the Agency has no involvement in the proposal or advising Government on it, there is no conflict of interest between James Cretan's purchase of shares in the proposal and his role as Chair of the Tourism Tasmania Board.

Mr Cretan himself, through the media, has sought to correct a number of assertions made publicly about him and his investment.

Mr Cretan has a 50 per cent investment in Tucre Pty Ltd which he part owns with a co-investor. That entity has 250,000 shares in the Mount Wellington Cable Car.

Mr Cretan, however owns only 50,000 of those 250,000 shares which equates to less than 2 per cent ownership of the cable car company. He has been very open with the Tasmanian community about this.

⁹² Attachment 35.

I'm confident that the processes outlined in the Tourism Tasmania Board Charter relating to Director's responsibilities to disclose and manage interests are being adhered to.

Section 5.1 and 5.3 of the Tourism Tasmania Board Charter outlines individual Director's responsibilities in relation to conflicts and disclosure of interest and include:

- A Board Director who has direct or an indirect material personal interest in a matter that relates to the affairs of Tourism Tasmania must give other Board members notice of interest.*
- The Director must provide details as soon as practical after the relevant facts come to the Director's knowledge, and disclose the nature and extent of the interest to the affairs of Tourism Tasmania.*
- The details must be recorded in the minutes of the meeting and, unless the Board otherwise determines;*
- The Director must not be present during any deliberation of the Board in relation to the matter; or take part or be present in any decision or determination of the Board in relation to the matter.*
- The Board must retain all details of declarations of interest in the List of Pecuniary Interests.⁹³*

James Cretan declared the purchase of shares in the Mount Wellington Cable Car project by Tucre Investments, of which he is a part-owner, at the Tourism Tasmania Board meeting on 12 October 2016.

Tucre Pty Ltd is owned 50 per cent by Mr Cretan and 50 per cent by his coinvestor. The Tucre Unit Trust, of which Tucre Pty Ltd is a trust, owns 250,000 shares in the MWCC.

Of these shares, 200,000 shares are owned by an entity of Mr Cretan's co-investor and 50,000 are owned by Mr Cretan, equating to less than 2 per cent ownership in the Mount Wellington Cable Car project by Mr Cretan. Board member, Ian Rankine also declared the purchase of his shares in the Mount Wellington Cable Car project at the Tourism Tasmania Board meeting on 10 November 2017.

Both declarations have been recorded in the internal register of business interests.

At its Board meeting on 31 May 2018, the Tourism Tasmania Board reaffirmed its position statement from May 2017 where it acknowledged that Tourism Tasmania is a skills based Board with Directors who have the necessary skills and experiences required to achieve the Agency's objectives.

The Act outlines the expectations of Directors when and if a conflict of interest arises and the Board believes appropriate formal procedures are in place to manage such conflicts.⁹⁴

⁹³ Note that there is no reference to this particular requirement in the TT Board Charter – see Attachment 47.

⁹⁴ Attachment 36.

- [140] Hansard indicates that the Premier has not been required to reference these QTBs.
- [141] Concerns that Mr Cretan may have misrepresented his investment were raised in *Tasmanian Times* on 30 May 2018:

The response from Mr Cretan to Richard Flanagan's speech and the response from the Premier Will Hodgman to a community member appear to be entirely inconsistent with the MWCC records held by the Australian Securities and Investment Commission.

According to ASIC records, at the time Tucre, (the Company through which Mr Cretan invested in MWCC), purchased its 250,000 shares in MWCC on 8/11/2016, Tucre held 12.70% of the 2,460,000 shares issued by the company at that time, and the \$312,500 paid for these shares amounted to 51.87% of the total \$602,500 invested in the company at that time.

Either way you cut it that is a lot more than "less than 2%".

Even accounting for Mr Cretan's shareholding against the most up-to-date ASIC records, as of 1/05/2018 Tucre's shareholding represents 8.65% of the 2,888,824 shares issued and 24.63% of the total \$1,268,530 invested in the company.

Whichever way you look at it there appears to be a significant discrepancy between Mr Cretan's and Premier Will Hodgman's statement that he has a "small 1.79 per cent shareholding in MWCC" and the records held by ASIC.

Disclosure. Nil.⁹⁵

- [142] Subsequently, the Premier's Office requested clarification from Mr Cretan about the value of his interest. The Premier's adviser advised his Chief of Staff that:

Just a heads up that this could be a problem...

Tas Times is running an article to say that James Cretan has incorrectly declared his shares in the cable car company ... he's said he has 1.73 per cent and we've had the Premier quoting 'less than 2 per cent'. Based on the figures presented in this article it could be as high as 24% on current value (and 51% on earlier records). Essentially our argument remains the same about his involvement in the project, but if his interest hasn't been declared properly or he's misled the Premier etc ... that's a different issue. The documents they've published also list Rankine's involvement, so an eagle eye might pick that out as well.
<http://tasmaniantimes.com/index.php?/weblog/article/bombshell-revelations-about-cable-car-comoanv-andtourism-tasmania/>

⁹⁵ <https://tasmaniantimes.com/2018/06/bombshell-revelations-about-cable-car-company-and-tourism-tasmania/>

*Tourism Tas has a board meeting in Port Arthur right now. I've left a message on James's mobile and contacted the liaison in Tourism Tas to get onto it asap.*⁹⁶

[143] Upon request from the Premier's Office, Mr Cretan clarified the value of his investment:

To clarify: Tucre Pty Ltd is a trustee for the Tucre Unit Trust, Tucre Pty Ltd has no assets of its own, and it is owned 50% by me and 50% by my co-investor. The Tucre Unit Trust owns 250,000 shares in MWCC, the beneficial owners of these shares is 200,000 shares by an entity of my co-investor and 50,000 shares by an entity of mine. I receive no remuneration of any kind from Tucre nor my co-investor in relation to MWCC.

Simply put, the full extent of my shareholding in MWCC is 50,000 shares.

*Hope that helps.*⁹⁷

[144] Upon a further request from the Premier's Office to provide documentary evidence that the extent of his interest was 50,000 of the 250,000 shares,⁹⁸ Mr Cretan provided an excerpt from the Tucre Unit Trust establishing that, on 5 October 2016, Jandle Pty Ltd obtained 50,000 shares as an initial unit holder, with a face value of \$62,500, and that Mr Turner's company had 200,000 shares with a face value of \$250,000.⁹⁹

[145] Mr Cretan elected to promptly provide this more detailed information about the value of his shares to the Premier's Office, despite the TT declaration documents specifically not requiring the provision of such detail.

4.9. What did Mr Cretan declare to the Minister about his interest in the Cradle Mountain Wilderness Village?

[146] The evidence shows that no written declarations have been made to the Minister about Mr Cretan's interest in the Cradle Mountain Wilderness Village.¹⁰⁰ There was no requirement that this occur.

[147] Mr Cretan's interest in the Cradle Mountain Wilderness Village is no secret and presents as his best-known tourism business and the most significant factor behind his appointment as TT Board chair.¹⁰¹ It is clear that the Premier was aware of Mr Cretan's interest in the Cradle Mountain area without knowing the

⁹⁶ Attachment 37.

⁹⁷ Attachment 38.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Documents provided to investigator by Premier's Office.

¹⁰¹ <https://www.tourismtasmania.com.au/about/board>; <https://www.examiner.com.au/story/2439370/new-tourism-tasmania-chairman-appointed/>

exact nature or value of this interest. The Premier particularly referenced this interest when Mr Cretan's appointment was announced in July 2014.¹⁰²

- [148] Mr Cretan's pecuniary interest in the Cradle Mountain Wilderness Village has not been questioned publicly.¹⁰³ For this reason, the integrity issues raised publicly in relation to his MWCC investment that necessitated Government clarification about the nature of his interest has not been replicated regarding this interest.

4.10. Has Mr Cretan considered the cable-way as Chair of TT Board?

- [149] In line with the public statements made by Mr Cretan and the Government, the TT Board minutes since Mr Cretan acquired his interest in MWCC show that the Board has not considered a cable-way on kunanyi/Mount Wellington.
- [150] This accords with the legislated role of TT and its Board. Consideration of a cable-way does not align with the tourism marketing and access role of TT and its Board.
- [151] One of the complainants suggested that the attachment of media releases to the TT website that referred to a cable-way as a tourism 'game changer' could be perceived as TT messaging support of a cable-way, and to the MWCC proposal.¹⁰⁴ The complainant also provided and expressed concern about part copies of tweets released by TT on 14 September 2017 about the *Cable Car (kunanyi/Mount Wellington) Facilitation Bill* passing through the House of Assembly.
- [152] The 'game changer' reference to a cable-way appears to have originated in a Government media release dated 12 September 2017.¹⁰⁵ Checks have shown that it is regular practice for Government media releases that relate to tourism to be published on the TT website.¹⁰⁶ Mr Fitzgerald confirmed that this,

was a legacy practise – I think previously there was a feeling that it was important for there to be a fulsome library for industry of all government media releases related to tourism in Tasmania – ensuring a more coordinated record of industry news. ... I recall some conversations about this at management level last year, however this practise has been formally under review since January this year as we looked to other agencies to understand how they handled this issue. ... The inquiry from the Commission has ensured we have prioritised this issue and publishing of government media releases has now been stopped as we do not believe it's appropriate or relevant.¹⁰⁷

¹⁰² http://www.premier.tas.gov.au/releases/new_tourism_tasmania_chairman

¹⁰³ It was raised by a complainant.

¹⁰⁴ MM18/0096.

¹⁰⁵ http://www.premier.tas.gov.au/releases/kunanyimount_wellington_cable_car_legislation_tabled

¹⁰⁶ <https://www.tourismtasmania.com.au/news?category=53662>

¹⁰⁷ Procedural fairness response from Mr Fitzgerald.

4.11. Has Mr Cretan considered Cradle Mountain funding as Chair of TT Board?

[153] There are no TT Board minutes since Mr Cretan became a TT Board member that reflect consideration of any funding to be provided to the Cradle Mountain area.

[154] As noted earlier, the 26 May 2017 TT Board meeting minutes record that the Coordinator General presented an update on tourism investment activities:

*The presentation highlighted the major projects and activities of the Office of the Coordinator General. This included reference to Cradle Mountain Masterplan, however the discussion was not specific or included anything that is not already on the public record due to acknowledged conflict and existing declaration from the Chair who owns commercial property at Cradle Mountain.*¹⁰⁸

[155] These do not represent consideration of funding Cradle Mountain. It reflects information provided to the TT Board, and does not represent any decision-making, advice or influence by the TT Board.

[156] The acknowledgement of Mr Cretan's declaration, and the action that stemmed from it, indicate that the Board's disclosure processes work in practice.

5. Mr Rankine's roles and interests

5.1. Mr Rankine's interests

[157] Mr Rankine is a current director of the TICT.¹⁰⁹ This is not a pecuniary interest.

[158] He is the Chief Executive Officer of Innkeepers Tasmania,¹¹⁰ a significant Tasmanian tourism company. He is not an office or shareholder in Innkeepers Tasmania.¹¹¹

[159] Mice Investments Pty Ltd was registered as a propriety company on 7 July 1998. Its directors are Mr Rankine and his wife. Its principal place of business is Mr Rankine's Hobart residence.¹¹² Mice Investments Pty Ltd presents as an investment company for Mr Rankine.

[160] Mice Investments Pty Ltd is listed as having 14,000 ordinary shares in MWCC.¹¹³

¹⁰⁸ Attachment 26.

¹⁰⁹ Attachment 3.

¹¹⁰ <https://www.tourismtasmania.com.au/about/board>

¹¹¹ Attachment 39.

¹¹² Attachment 40

¹¹³ Attachment 41

[161] The value of these shares will fluctuate depending on the future of a cable-way.

5.2. What did Mr Rankine declare to the TT Board about his interest in MWCC?

[162] The TT Board minutes and the list of pecuniary Interests show that Mr Rankine disclosed his investment in MWCC to the Board in November 2017.¹¹⁴ He had been appointed in September 2017, so it seems that this was his first Board disclosure opportunity. Mr Rankine declared that he:

*Acquired a shareholding in the Mount Wellington Cable Car Company.*¹¹⁵

[163] References to Mr Rankine's MWCC investment have been recorded in the TT Board's list of pecuniary interests since December 2017 as:

*Shareholder Mount Wellington Cable Car Company (advised November 2017).*¹¹⁶

[164] In line with the TT pecuniary declaration documents, the specific amount invested by Mr Rankine has not been recorded in the list of pecuniary interests.

[165] It was minuted in the TT Board meeting of 17 August 2018 that:

*The minutes were approved as a true and accurate record of the meeting held on 31 May 2018. There was a discussion around Ian Rankine's cable car shareholding. Ian noted that he has now formally informed the TICT Chair and CEO about his shareholding. Ian also noted that his name has been mentioned in the media due to his shareholding but he has been named CEO of Innkeepers and Board member of TICT. The Board agreed that they remain satisfied with the messaging that was formed at its May meeting in relation to James and Ian's Cable Car shares.*¹¹⁷

5.3. What did Mr Rankine declare to the Minister about his interest in MWCC?

[166] Like Mr Cretan, Mr Rankine was not required to make any specific disclosures to the Government about his interests, and did not make any written declarations or disclosures to the Premier.

[167] The questions raised publicly in relation to Mr Cretan's MWCC investment that necessitated Government clarification have not been replicated in relation to

¹¹⁴ Attachments 13, 42.

¹¹⁵ Attachment 43.

¹¹⁶ Attachments 13, 21.

¹¹⁷ Attachment 43.

Mr Rankine's interest in MWCC. It seems he is more widely recognised for his non-public roles, rather than as a TT director.

- [168] After the publicity of Mr Cretan's MWCC investment, question time briefs were prepared by TT staff focussed on the interests Mr Cretan, but also on those of Mr Rankine. A TT question time brief prepared on 21 May 2018 advised the Premier that:

Board member Ian Rankine also declared the purchase of shares in the Mount Wellington Cable Car project at the Tourism Tasmania Board meeting on 10 November 2017 ... have been recorded in the internal register of business interests.

Mr Rankine's interest has not been noted publically (sic) either by the government or in the media.¹¹⁸

- [169] Following the May 2018 publicity about Mr Cretan's shares in MWCC, Mr Rankine contacted the Premier's Office on 23 May 2018 to ensure the Premier was aware of his investment. A member of the Premier's staff recorded that:

I've just had Ian Rankine from Innkeepers Tas on the phone RE: his shares in the cable car. He wanted to make sure Gov was aware he has shares in the cable car company. He is both a board member of Tourism Tasmania and the TICT. His shares were declared and registered correctly.

We have been advised of this before and some details are in the backgrounder info on the latest cable car/ Cretan QTB (attached).

The issue is, unlike Cretan's shares, detail about Rankine's shares aren't known publicly ... yet.

Ian said he spoke with John Fitzgerald, James Cretan and Luke Martin in the last couple of days, who have "varying degrees" of concern about this becoming public. He indicated Luke Martin had the greatest concern and I would assume this is because the TICT has been very vocal in its support of the cable car (unlike Tourism Tasmania, which doesn't have any role in advising Gov on or advocating for the cable car).

Do we have any concerns about this? Should we encourage Ian to make a pre-emptive statement publicly, or run the gauntlet and deal with it if it arises?¹¹⁹

- [170] No evidence obtained shows that Mr Rankine has declared the value of his MWCC investment to the TT Board or the Government.

¹¹⁸ Attachment 36.

¹¹⁹ Attachment 44.

5.4. Has Mr Rankine considered the cable-way as director of TT Board?

- [171] As discussed earlier, the TT Board minutes show that the Board has not considered a cable-way on kunanyi/Mount Wellington since Mr Rankine acquired his interest in MWCC.
- [172] This accords with the legislated role of TT and its Board. Consideration of a cable-way does not align with the tourism marketing and access role of TT and its Board.

PART C – Analysis and findings

6. Conflicts of interest

6.1. Does Mr Cretan have a conflict of interest from his interest in MWCC and the Cradle Mountain Wilderness Village?

[173] Mr Cretan's experience and success in operating Tasmanian tourism businesses was the major reason for his appointment as TT Board chair. It is self-evident that a private tourism operator's involvement in a tourism-focused government agency generates a need to consider that operator's business and pecuniary interests and what this might mean for their public role. The nature and extent of the involvement in the government agency needs to be considered in determining what, if any, type of conflict of interest exists and how it ought to be responded to.

[174] Mr Cretan's role in the TT Board and the PVEAC involves oversight and monitoring. He does not consider particular tourism projects or investments. It is not the role of TT or its Board to do so. Mr Cretan has no involvement with the WPMT.

[175] There is no evidence that Mr Cretan's pecuniary interest in MWCC has interfered with his duties and responsibilities as TT chair. The TT Board and the PVEAC have not considered a cable-way on kunanyi/Mt Wellington or state government Cradle Mountain investment. Mr Cretan does not have an actual conflict of interest.

[176] The oversight and monitoring nature of his role as TT chair means it is difficult to envisage a situation when his pecuniary investment could conflict with his duties as chair. Mr Cretan does not therefore have a potential conflict of interest.

[177] A perceived conflict of interest is generated when a reasonable person, knowing the facts, would consider that a conflict of interest might exist, whether or not this is the case. Multiple complaints have been made to the Commission about Mr Cretan's MWCC investment. There has been publicity and media reporting about concerns that there may be conflict of interest issues, and it appears – for a number of reasons – particularly open for conflict of interest and integrity concerns to exist in Mr Cretan's MWCC interest.

[178] There is some longstanding and strong community opposition to a cable-way on kunanyi/Mt Wellington and concern about the government processes associated with that proposed project. Such opposition to a cable-way appears to have influenced publicly expressed concern about Mr Cretan's investment. Mr Cretan observed that public criticism of his interest is a matter

of cable-way opponents '*playing the man and not the ball*',¹²⁰ and '*agenda-filled mudslinging dressed up as taking the high moral ground*'.¹²¹

- [179] Mr Cretan's pecuniary interest in MWCC has some complexity attached to its structuring, and the specifics of this interest were not initially made clear and transparent.¹²² This lack of clarity prompted some confusion about the value of his interest and a concern that there may have been something to hide.
- [180] There appears to be some misconception about the role and function of TT and its Board. It does not seem to be well understood that Mr Cretan has not considered or deliberated on the cable-way as TT Chair, and is highly unlikely to do so in the future.
- [181] Whilst it was open for concerns to exist, a reasonable person with an informed understanding of Mr Cretan's role as TT chair (that is, an oversight role for an agency tasked with tourism marketing and improving visitor access), as well as a clearer understanding of the specifics of his pecuniary interest and his disclosure obligations, would be unlikely to perceive a conflict of interest. Mr Cretan does not therefore have a perceived conflict of interest.
- [182] There is no reason to believe that the complainants and others voicing concern are not reasonable, but it does appear that they may not have been fully informed or understanding of the facts. Had there been more information available about the nature of Mr Cretan's role as chair of the TT Board and had there been greater transparency and timely detail about his MWCC interest in particular, then it seems unlikely that the integrity problems would have been so perceived.

6.2. Does Mr Rankine have a conflict of interest from his interest in MWCC?

- [183] Like Mr Cretan, Mr Rankine's role as a TT Board member involves oversight and monitoring functions. He does not consider or make determinations about particular tourism projects or investment. For the same reasons outlined above in relation to Mr Cretan, Mr Rankine does not have an actual, potential or perceived conflict of interest in relation to his MWCC shares.

Findings

On the basis of the evidence obtained by the Commission:

- Mr Cretan does not have an actual, potential or perceived conflict of interest stemming from his pecuniary interest in the MWCC.
- Mr Cretan does not have an actual, potential or perceived conflict of interest stemming from his pecuniary interest in the Cradle Mountain Wilderness Village.

¹²⁰ http://tasfintalk.blogspot.com/2017/04/cable-car-conflicts_6.html

¹²¹ http://tasfintalk.blogspot.com/2017/04/cable-car-conflicts_6.html

¹²² Discussed later in this report.

- Mr Rankine does not have an actual, potential or perceived conflict of interest stemming from his pecuniary interest in the MWCC.
- The TT Board has not considered a cable-way on kunanyi/Mt Wellington, or any issues relevant to the MWCC.
- The TT Board has not considered state government funding to the Cradle Mountain area, or any issues relevant to this.
- The PVEAC has not considered a cable-way on kunanyi/Mt Wellington, or any issues relevant to the MWCC.
- The PVEAC has not considered state government funding to the Cradle Mountain area, or any issues relevant to this.
- The WPMT has not made a decision impacting the MWCC.
- If the WPMT is required to make a decision impacting the MWCC, there is an identified and documented process for the consideration of any conflict of interest and, if there is a conflict, an adequate means to manage it.

7. Disclosures

7.1. Did Mr Cretan fail to properly disclose pecuniary interests in MWCC and the Cradle Mountain Wilderness Village to the Board of TT?

[184] Pecuniary interest disclosure obligations for TT Board members are legislated under Schedule 2, Part 7 of the *TT Act*.

[185] The evidence shows that Mr Cretan acquired an interest in MWCC in October 2016 and disclosed this ‘modest investment’ to the TT Board in its meeting of that same month.¹²³

[186] If directors do not adhere to Schedule 2 of Part 7, then there would be a failure to properly disclose and an offence may have been committed. If Schedule 2 of Part 7 is adhered to, then there is no failure to properly disclose.

[187] Under Schedule 2 of Part 7, disclosures are required if:

- (a) *a director has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board, and*
- (b) *the interest could conflict with the proper performance of the director’s duties in relation to consideration of the matter.*

[188] The Board minutes since Mr Cretan obtained a pecuniary interest in the MWCC in October 2016 show that the TT Board has not considered any matter relevant to the MWCC. It is not the function of TT, or of the TT Board, to

¹²³ Attachment 10.

consider such matters. The only MWCC matters minuted during and since the October 2016 TT Board meeting have involved the TT recording of Mr Cretan and Mr Rankine's investments and mentions of the associated media. When this was discussed by the TT Board after the adverse media publicity in May 2018, Mr Cretan and Mr Rankine absented themselves from discussions.¹²⁴

- [189] Similarly, the TT Board has not considered any funding being directed to the Cradle Mountain area.
- [190] The evidence shows that the PVEAC, of which Mr Cretan is a member as TT chair, has not considered any issue relevant to the MWCC or any funding being directed to the Cradle Mountain area.
- [191] Mr Cretan, in the circumstances of the TT Board not considering a cable-way on kunanyi/Mt Wellington or Cradle Mountain funding, was not required to disclose his interests to the Board under the *TT Act*. Mr Cretan has not therefore breached Schedule 2 of Part 7 of the *TT Act*.
- [192] Although not required by legislation to disclose these interests, the Board minutes and the list of pecuniary interests show that Mr Cretan did make some disclosure of his interests in MWCC and the Cradle Mountain Wilderness Village as part of the Board's standard declarations of interest process.
- [193] Although his initial disclosure to the TT Board about his investment in MWCC was timely, some later disclosures about MWCC and the Cradle Mountain Wilderness Village made as part of the Board's standard declarations of interest process have not always been updated in the relevant lists in a timely manner and at times have lacked context and specific details about the value of the interest. Not recording the value of the shares is in line with the requirements of the Board's declaration documents.

Findings

On the basis of the evidence obtained by the Commission:

- Mr Cretan's disclosures to the TT Board of his pecuniary interest in MWCC and the Cradle Mountain Wilderness Village were proper.
- Mr Cretan disclosed his pecuniary interests in the MWCC and the Cradle Mountain Wilderness Village to the TT Board at the time that he acquired these interests as part of the Board's standard declarations of interest process.
- Mr Cretan's disclosure of a 'modest investment' to the TT Board regarding his pecuniary interest in MWCC lacked specific detail about the value, structuring and context of his interest; however the Board's pecuniary interest declaration form states that the value of shares held are not to be listed. Mr Cretan's disclosure to the TT Board of his pecuniary interest in the Cradle Mountain Wilderness Village lacked

¹²⁴ Attachment 12.

specific detail about the value, structuring and context of his interest, and some updates were not made in a timely manner.

- The TT Board has not considered a cable-way on kunanyi/Mt Wellington, or any issues relevant to the MWCC.
- The TT Board has not considered any issues relevant to the provision of state government funding to the Cradle Mountain area.
- Without TT Board consideration of the MWCC and the provision of state government funding to the Cradle Mountain area, Mr Cretan was not required under the *TT Act* or the Board Charter to disclose his pecuniary interest in the MWCC or the Cradle Mountain Wilderness Village to the TT Board.

7.2. Did Mr Rankine fail to properly disclose a pecuniary interest in the MWCC to the Board of TT?

[194] As was the case with Mr Cretan, in the circumstances of the TT Board not considering a cable-way on kunanyi/Mt Wellington, Mr Rankine was not required to disclose his interests to the Board under the *TT Act*. Mr Rankine has not therefore breached Schedule 2 of Part 7 of the *TT Act*.

[195] Although not legislatively required to do so, the Board minutes and the list of pecuniary interests show that Mr Rankine did make some disclosure of his interests in MWCC. His decision to do so seems part of the Board's standard declarations of interest process.

[196] Mr Rankine's initial disclosure to the TT Board of his pecuniary interest in the MWCC was timely. He made the disclosure in the first Board meeting he attended. Like Mr Cretan, the specific details, particularly the amount invested by Mr Rankine, have not been recorded in the minutes or the list of pecuniary interests. It is recorded simply as an '*acquired shareholding*' in MWCC.¹²⁵

Findings

On the basis of the evidence obtained by the Commission:

- Mr Rankine's disclosure to the TT Board of his pecuniary interest in MWCC was proper.
- Mr Rankine disclosed his pecuniary interest in the MWCC to the TT Board at the time that he acquired that interest as part of the Board's standard declarations of interest process.
- Mr Rankine's disclosure to the TT Board of his pecuniary interest in MWCC lacked specific detail about the value of his interest; however the Board's pecuniary interest declaration form states that the value of shares held are not to be listed.

¹²⁵ Attachments 13, 21, 43.

- The TT Board has not considered a cable-way on kunanyi/Mt Wellington, or any issues relevant to the MWCC.
- Without such TT Board consideration of the MWCC, Mr Rankine was not required under the *TT Act* or the Board Charter to disclose his pecuniary interest in the MWCC.

7.3. Did Mr Cretan fail to properly disclose a pecuniary interest in the MWCC and the Cradle Mountain Wilderness Village to the Minister?

[197] Mr Cretan was not obliged under the *TT Act* or any other legislation to specifically disclose his pecuniary interests to the Government.¹²⁶

[198] The Ministerial Charter signed by the Minister in 2014 required Mr Cretan to adhere to the *TT Act* and other applicable legislation and policy.¹²⁷ As discussed, the evidence has established that the TT Board has not considered a cable-way, or other matters impacting the MWCC, or state Government investment in Cradle Mountain in its meetings after he acquired these interests. Consequently, Mr Cretan was not required to disclose his interests to the Board. He chose to disclose his interest in keeping with the Board's standard declarations of interest process. He is not in breach of the expectations of the Ministerial Charter.

[199] The evidence shows that the Premier's Office sought details about Mr Cretan's investment in MWCC after concerns were raised in the media in April 2017 and April-May 2018. It is pertinent to note that the media interest was in part fuelled by questions being raised by parties opposed to a cable-way.¹²⁸ The media interest appears to have prompted the Premier's Office to seek further detail about Mr Cretan's investment in MWCC.

[200] The timely disclosure that Mr Cretan elected to make to the TT Board in October 2016 did not provide the TT Board, TT or the Government with sufficiently detailed information to address the concerns aired in the media. References to Mr Cretan's 'modest investment' as disclosed in October 2016, have continued to be recorded in the Board meeting minutes and the list of pecuniary interests, and lack detail and context. Noting that the TT Board declaration forms state that the amount of the shares value is not to be listed, this lack of available detail, at least in part, led to questions in public forums as to what Mr Cretan and the TT Board might be hiding, when the reality was that there was nothing improper in his investment or his disclosure.

[201] The evidence also shows that as questions continued to be asked publicly about Mr Cretan's interest in MWCC, the lack of available detail further fuelled suspicions.

¹²⁶ Noting that the Premier is the Minister for Tourism.

¹²⁷ Attachment 1, pg 5.

¹²⁸ Such as speakers at the Mountain Mayday rally in May 2018.

- [202] The full details of Mr Cretan’s investment took some time to become publicly available. This was due in part to the TT Board, TT and the Government not having easy access to the specifics of his investment – including the value and structure behind the investment - with sufficient detail to repudiate the concerns raised. By 9 May 2018, Mr Cretan made the value of his MWCC shareholdings available publicly in his letter to *The Mercury* in percentage terms, but this occurred after concerns had already been raised publicly. The percentage value he provided did not make the value of his interest apparent without further research.
- [203] It is no great surprise that Mr Cretan’s shares in MWCC attracted some negative publicity. When he invested in MWCC Mr Cretan was aware that it might draw criticism. He identified the ‘sensitivities’ of his investment, and referenced these sensitivities in his decision not to play a more active role in MWCC, when he first disclosed his interest to the TT Board.¹²⁹ It is arguable that when there is strong opposition or community feeling about a particular issue, there is a greater benefit in providing more, not less, detail to the public. Mr Cretan’s awareness of the sensitivities should have led him to make a more detailed disclosure, even if it was not required under the *TT Act*.
- [204] The lack of detail and the adverse publicity surrounding the issue prompted ongoing communication and clarification involving TT staff, the Premier’s Office and eventually Mr Cretan about his interest in MWCC. By 31 May 2018, the lack of specific and readily obtainable information available and the questions being asked publicly sparked some concern from within the Premier’s Office that there might be a problem and that Mr Cretan’s interest was greater than he, TT and the Government had publicly disclosed.¹³⁰
- [205] Concern in the Premier’s Office was promptly alleviated by Mr Cretan providing comprehensive information, with supporting documentation, about the specifics of his investment.¹³¹
- [206] Although some might hold negative views about his investment, the reality is Mr Cretan does not have a conflict of interest, his investment was not improper, and it was properly disclosed in accordance with the *TT Act*. The provision of more timely, transparent and specific information to the Minister, via the TT Board, about his pecuniary interest had the potential to address and mitigate concerns. The information eventually made available to the Minister in the question time brief dated 21 May 2018 and in the information provided to the Premier’s Office on 31 May 2018 contained details that had the potential to negate integrity speculation about the investment. There is no identifiable reason why this information could not have been made publicly available at an earlier stage.
- [207] In many ways, it is not surprising that opponents to a cable-way raised integrity issues. The fact that Mr Cretan did not initially disclose full details of his interest and role encouraged avoidable misconceptions about such

¹²⁹ Attachment 10.

¹³⁰ Attachment 37.

¹³¹ Attachment 38.

matters, and served to fuel speculation that something was amiss and was being hidden when it was not the case.

Findings

On the basis of the evidence obtained by the Commission:

- The Government was broadly aware of Mr Cretan’s pecuniary interest in the Cradle Mountain Wilderness Village when he was appointed TT chair.
- Mr Cretan was not required to disclose his pecuniary interests to the Minister.
- Mr Cretan’s actions regarding his disclosures to the TT Board were not contrary to the *TT Act* and thus were in accordance with the Ministerial Charter.
- Mr Cretan was aware that his investment in MWCC was of a ‘sensitive’ nature.
- Mr Cretan’s disclosure of a ‘modest investment’ in MWCC to the TT Board was a point of reference and a starting point for subsequent TT and Government responses to public concern about this investment.
- The lack of detail in Mr Cretan’s disclosure about his interest in MWCC played a part in generating and fuelling misplaced suspicion that Mr Cretan had something to hide.
- An earlier provision of greater detail about Mr Cretan’s MWCC investment could have mitigated misplaced suspicion that Mr Cretan had something to hide.

7.4. Did Mr Rankine fail to properly disclose a pecuniary interest in the MWCC to the Minister?

[208] For the same reasons as those outlined for Mr Cretan, Mr Rankine was not obliged under the *TT Act* or any other legislation to specifically disclose his pecuniary interests to the TT Board or the Government. Mr Rankine chose to disclose his interest to the Board.

[209] Unlike Mr Cretan’s investment, there has not been any media scrutiny about Mr Rankine’s investment in MWCC. Although there is some public awareness of Mr Rankine’s smaller investment, his role as a TT director has seemingly not been noted and his pecuniary interest has not generated publicity.¹³²

[210] The evidence shows that Mr Rankine, aware of the adverse publicity generated by the issues involving Mr Cretan’s shares,¹³³ has taken specific steps to ensure the Government is aware of his investment. There has been no

¹³² <https://www.abc.net.au/news/2018-08-10/mount-wellington-cable-car-facing-council-hurdle/10102570>

¹³³ Attachment 44.

apparent inclination by the TT Board or the Government to publicise Mr Rankine's MWCC shares.

[211] As for Mr Cretan's interest, there does not seem to be any identifiable reason why specific information about Mr Rankine's MWCC shares, including the value of his interest, should not be public knowledge.

Findings

On the basis of the evidence obtained by the Commission:

- Mr Rankine was not required to disclose his pecuniary interest to the Minister.
- Mr Rankine's actions regarding his disclosures to the TT Board were not contrary to the *TT Act* and thus were in accordance with the Ministerial Charter.
- Mr Rankine was aware of the sensitive nature of his investment in MWCC.
- The decision by the TT Board and the Government not to make the details of Mr Rankine's interest in MWCC publicly available, could in part generate and fuel future misplaced suspicions that Mr Rankine has something to hide.

7.5. Did Mr Cretan fail to disclose a conflict of interest by way of the TT delegate's attendance in WPMT meetings?

[212] The Chair of the TT Board performs no role at the WPMT. The Chair does not and will not consider any matter facing the WPMT. Mr Cretan gave evidence that for a while he was not even aware that TT had a role at the WPMT.¹³⁴ Consequently, Mr Cretan's investment in MWCC does not conflict with the proper performance of his duties.

[213] As Mr Cretan has no role or duties in relation to the WPMT, he has had no actual or potential conflict of interest. A reasonable person, knowing the facts about his lack of a role at the WPMT, could not consider that a conflict of interest exists. No perceived conflict of interest thus exists.

[214] It is unnecessary, and not practically possible, for Mr Cretan to disclose his interest to the WPMT – either personally or through the TT delegate – as he has no role in that body.

Findings

On the basis of the evidence obtained by the Commission:

- Mr Cretan has no role at the WPMT.

¹³⁴ Information provided by Mr Cretan to the Commission, 2 April 2019.

- Mr Cretan has no conflict of interest to declare to the WMPT.
- Mr Cretan is not required to disclose his pecuniary interest in MWCC to the WPMT.

8. Other allegations

8.1. Did Mr Cretan or Mr Rankine improperly use their positions as chair and director of the Board of TT to gain a financial advantage to MWCC and themselves?

[215] The strategically and oversight focussed TT Board does not make decisions about, or influence decision making, about particular developments, investments or proposals. As such, it is difficult to identify a way that a TT Chair or director could gain an advantage by using his or her role to his or her personal advantage.

[216] There is no evidence in the documents obtained and reviewed that Mr Cretan or Mr Rankine have in any way used, or attempted to use, their roles to gain a financial advantage for either MWCC or themselves as shareholders.

[217] Operational matters – including the referencing of media articles focussing on tourism matters that may be supportive of a cable-way (such as the ‘game changer’ media release published on the TT website) – are the day to day duties of TT staff. Such matters are not the domain of the TT Board.

Findings

On the basis of the evidence obtained by the Commission, Mr Cretan and Mr Rankine have not used their positions as TT Chair and director to gain a financial advantage for MWCC or themselves.

8.2. Did Mr Cretan, by purchasing shares in MWCC, improperly act on advice that the TDB had assessed the viability of the MWCC?

[218] Mr Cretan has provided a credible account of the circumstances behind his decision to invest in MWCC. There is no evidence that Mr Cretan was provided with TDB information about the MWCC viability study, or that he acted on the improper provision of such information.

Findings

On the basis of the evidence obtained by the Commission, Mr Cretan did not act on any advice about the TDB’s assessment of the viability of the MWCC proposal.

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