

# REPORT OF THE INTEGRITY COMMISSION

**No. 1 of 2014**

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An investigation into allegations  
of nepotism and conflict of  
interest by senior health  
managers

INTEGRITY  
COMMISSION



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The objectives of the Integrity Commission are to –

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

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

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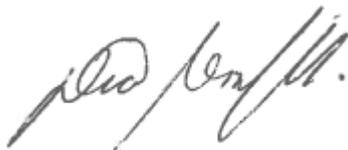
Dear Mr President  
Dear Ms Speaker

In accordance with s 11(3) of the *Integrity Commission Act 2009* (the Act), the Integrity Commission presents a report to Parliament, Report No 1 of 2014 *An investigation into allegations of nepotism and conflict of interest by senior health managers*, conducted pursuant to the Act during 2013/14.

Yours sincerely



**The Hon Murray Kellam AO**  
Chief Commissioner, on behalf of the Board



**Diane Merryfull**  
Chief Executive Officer

27 May 2014

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# Report No. 1 of 2014

## An investigation into allegations of nepotism and conflict of interest by senior health managers

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## Executive summary

This is a summary of a report of an investigation undertaken by the Integrity Commission arising from a complaint made to it in March 2013. The full investigator's report, which is over 150 pages and contains details of the extensive evidence gathered by the Commission in nearly one year of investigation, has been referred to appropriate authorities for action (see 'Outcomes of the Investigation').

The complaint alleged that two senior officers of North West Area Health Service (NWAHS) – Mr Gavin Austin and, before him, Ms Jane Holden – had used their positions to unfairly provide employment for family members (Ms Holden's husband and Mr Austin's son) in building work on 'health department' properties on King Island.

As the allegations were investigated, evidence was gathered that gave rise to more allegations of similar conduct by the two officers. Those allegations related to conduct from 2009 to late in 2013, and involved not only the NWAHS (as it was), but Tasmanian Health Organisation North West (THO-NW) (as it became), as well as Tasmanian Health Organisation South (THO-S) and the Department of Health and Human Services (DHHS).

During the period in question, Ms Holden was the CEO of the NWAHS while Mr Austin was firstly the Finance Director then acting CEO. Ms Holden became the CEO of Southern Tasmania Area Health Service and later (and remains) the acting CEO of THO-S; Mr Austin is now the CEO of THO-NW.

Ms Holden and Mr Austin had both been recruited to DHHS from New Zealand and had previously worked together at the Northland District Health Board (NDHB) in Whangerei.

The Commission's investigation has identified conduct by both officers in relation to the procurement of services from, and the employment of, direct family members and others with whom they had shared a professional (and additionally, in the case of Mr Austin, a financial) association in New Zealand.

Those procurements and recruitments have brought financial benefits to the persons associated with Ms Holden and Mr Austin.

It is the view of the Integrity Commission that the conduct of both officers involved conflicts of interest which were not dealt with in accordance with applicable policy or legislative requirements.

The investigation revealed that the two officers failed to comply with procurement and employment policies and procedures, including relevant Treasurer's Instructions, Employment Directions, Ministerial Directions and the requirements of legislation (including the *State Service Act 2000*). In every instance identified in the report, a family member or associate of the officers was a beneficiary of the non-compliant conduct.

The investigation also revealed conduct by other staff of NWAHS, THO-NW and THO-S in breach of relevant policies and procedures (some of which benefited Ms Holden and Mr Austin's family members or associates). While it cannot be proven that such breaches were influenced by perceived or actual pressure from Ms Holden or Mr Austin, it must be the case that the culture of an organisation is significantly influenced by its senior managers and

leaders. If they do not 'follow the rules' then others will, inevitably, consider that it is appropriate to behave in the same way. As the report notes, it is telling that it took a member of the public to complain to the Commission, rather than any staff members who, if the ethical culture had been healthy, could have been expected to have 'raised the alarm'.

The financial cost of the non-compliance with applicable policies, guidelines and legislative requirements, identified during the investigation, is estimated to exceed \$500,000<sup>1</sup> – not including the salaries paid to the officers' family members as employees. There are other, unquantifiable costs, including the effect of the conduct on the ethical culture of the agencies which the officers led, poor quality work (including lack of value for money), and lost opportunities for Tasmanians.

The investigation revealed manifestly inadequate record keeping, particularly in relation to recruitment at DHHS, NWAHS and THO-NW. In relation to the latter, there was also poor record keeping in relation to procurement, and significantly poor practices and non-compliance with Treasurer's Instructions and a consequent failure (or non-existence) of mechanisms to detect the non-compliance.

There is evidence that, in the North West, a practice has developed of entering into unofficial or 'local' arrangements to boost the remuneration of employees. Such arrangements are contrary to applicable State Service policies.

A consistent theme in the responses of Ms Holden and Mr Austin to the investigation and its findings was that they relied on their staff to ensure compliance with relevant policies and, in Mr Austin's case, that he did not know about applicable policies. However, it is self-evident that 'the buck stops' with the person occupying the position of Head of Agency (or CEO in the case of the then Area Health Services) and it is simply not an acceptable excuse to assert that more junior officers should have ensured that the senior officers exercised their responsibilities properly.

On two occasions, when the media made legitimate and accurate inquiries about some of the matters detailed in this report, the responses by the agencies concerned can be characterised as 'spin'. The inquiries were deflected with information that had the effect of being misleading. Both officers gave direct input to these media responses.

It is clear that whatever governance arrangements should have been operational in respect of the actions of the CEOs, they have not worked effectively. Failure in governance is evident 'across the board' in all the matters examined in this report.

It is not the normal practice of the Commission to name public officers in its reports to Parliament. However, in this instance it has been decided to name Ms Holden and Mr Austin because it is necessary to give meaning and context to the report and because of their seniority and status – particularly as they came to occupy the positions of Heads of Agency. Other officers have not been named in this report but are identified in the Commission's investigation report.

Finally, this investigation has shown that the Integrity Commission is uniquely able to uncover misconduct that is missed or overlooked by other available accountability mechanisms (such as internal audit processes).

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<sup>1</sup> See attachment to report.

## The investigation

On 1 March 2013 a resident of Currie, King Island, made a written complaint to the Integrity Commission (the Commission). In summary, the complainant alleged that the (then) CEO of Tasmanian Health Organisation North West (THO-NW), Mr Gavin Austin, and the previous CEO (of then North West Area Health Service (NWAHS)), Ms Jane Holden, had used their positions to provide employment for Ms Holden's husband, Mr B, and Mr Austin's son, Mr A, as builders on 'health department' properties on King Island. The complaint was accepted for assessment and an assessor was appointed in March 2013. The assessment became an investigation in August 2013.

As the allegations were against subject officers who potentially included designated public officers (DPOs), the Commission was unable to refer the complaint back to the relevant public authority for investigation. Accordingly, the investigation was conducted by the Commission itself.

Although the complaint as received focused on work performed on King Island by persons employed by the Department of Health and Human Services (DHHS), in the course of assessing the complaint, it became apparent that work performed in other parts of the North West coast by persons employed by either DHHS and/or THO-NW (and associated with Ms Holden and/or Mr Austin) was also of interest, as were a number of recruitment and procurement decisions involving Ms Holden and Mr Austin. In addition, and consequent to the movement of Ms Holden from the North West to the south of Tasmania, the investigation broadened to encompass recruitment decisions involving Ms Holden's husband at the Tasmanian Health Organisation South (THO-S). The Commission confined its investigation to activities post 1 July 2009.

In conducting its assessment and subsequent investigation the Commission:

- served 38 Notices pursuant to s 47(1) of the *Integrity Commission Act 2009* (the Act), to produce information or attend to give evidence:
  - 20 of the Notices required people to attend and give evidence to the investigator;
  - 18 required production of records or information.

The investigation remained in a covert phase until 2 December 2013 when the CEO of the Integrity Commission issued a Notice under s 50 of the Act, authorising the entry and search of various premises occupied by THO-NW. Three premises were entered pursuant to the Notice.

A number of persons were invited to offer submissions or comments on relevant parts of a draft of this report, including Ms Holden and Mr Austin. Submissions received were considered in finalising the investigation.

## Issues arising in the investigation

This was a complex investigation that required a significant proportion of the investigative resources of the Commission. There were additional logistical difficulties presented by the fact that the subject officers under investigation were occupying the positions of Heads of Agency.

The Commission can usually expect support from a Head of Agency for its interviews by their release of an officer from duty to attend and, if necessary, payment of appropriate travel allowances if the officer is coming from a location outside of Hobart. In the case of officers from THO-NW, the Commission did not wish the Head of Agency – the CEO – to know who it was interviewing, in order to protect the integrity of the investigation and to protect the witnesses. Fortunately, the Commission was able to arrange for a member of the Governing Council to identify an officer in THO-NW to approve the necessary leave and travel allowances and ensure that the CEO was kept at arms-length from the process. This necessitated the Commission informing the CEO that he was under investigation, although this is not usual practice for the Commission. Such an arrangement would have been much more difficult to arrange in a normal Departmental situation where there was only a Head of Agency to whom the Commission could have recourse.

This investigation also highlighted some restrictions in the legislation under which the Commission operates. For example, it cannot ‘split off’ matters so that if one part of the investigation is complete, it can be referred for action while the remainder is investigated. Similarly, the Board cannot split off parts of the investigation report in referring relevant matters for action.

The need for confidentiality can be difficult for the personnel affected by an investigation. Those who are interviewed as witnesses can find it stressful that they cannot discuss what has happened, particularly when others in the workplace suspect that they have been interviewed and ask questions about it. Inevitably, in a large investigation involving a number of witnesses, rumours and speculation circulate. Again, this situation is compounded when the Head of Agency is the subject officer. However, the Commission must consider both operational imperatives and its over-riding obligation under legislation to conduct its investigations in private. The Commission is aware of the potential stress this can cause and will give further consideration to how it can work with agencies to assist employees who are drawn into Commission investigations.

The Commission engaged counsel to conduct its interviews of Ms Holden and Mr Austin. It did this in the (correct) anticipation that they would themselves be legally represented. All State Service agencies are restricted to using the services of Crown Law and the Solicitor-General (S-G) in their legal affairs, unless given an exemption. In this case, the Commission was able to obtain an exemption to brief an experienced counsel whose assistance was invaluable. Additionally, this was necessary due to the potential role of the S-G in advising the Government on the outcomes of the investigation. The desirability of the Commission being free to engage legal assistance outside of the current S-G/Crown Law framework was noted in the Commission’s submission, in October 2013, to the Parliamentary Joint Standing Committee on Integrity.

## Policies, practices and procedures

All of the employing State Service agencies (and their officers) involved in this investigation, DHHS and Tasmanian Health Organisations (THOs), are required to comply with relevant legislative obligations and Tasmanian State Service-wide policies, including but not limited to:

- [State Service Act 2000](#) (SS Act) and [State Service Regulations 2011](#) (SS Regulations);
- [Financial Management and Audit Act 1990](#) (FMA Act);
- [Treasurer's Instructions \(TIs\)](#);
- Commissioner's Directions (CDs), now [Employment Directions \(EDs\)](#);
- [Ministerial Directions \(MDs\)](#); and
- [Tasmanian State Service Award](#) and [Health and Human Services Award](#).

In addition, recruitment of public officers into and within the State Service is guided by the recruitment and selection framework developed by the State Service Management Office (SSMO): [Right Job, Right Person](#).

The THOs have further specific obligations set out in:

- [Tasmanian Health Organisations Act 2011](#) (THO Act);
- separate [Ministerial Charters](#) for Tasmanian Health Organisation North (THO-N), Tasmanian Health Organisation South (THO-S) and THO-NW; and
- [Service Level Agreements](#) for THO-N, THO-S and THO-NW.

Details of the legislation and policies were provided in the detailed investigation report but, in summary, the most relevant are as follows.

### A. Code of conduct for State Service employees – in particular that an employee:

- must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment;
- must use Tasmanian Government resources in a proper manner;
- must not make improper use of the employee's duties, status, power or authority in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person;
- when acting in the course of State Service employment, must behave in a way that upholds the State Service Principles;
- must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service; and
- must comply with any other conduct requirement that is prescribed by the regulations.

The code of conduct applies to all employees and officers, including a Head of Agency (HoA).

*B. The merit principle (one of the State Service Principles) covering employment – in that the State Service:*

- is a public service in which employment decisions are based on merit; and
- provides a reasonable opportunity to members of the community to apply for State Service employment.

The principles apply to the appointment or promotion decisions of the Senior Executive Service (SES) as well as employees.

There are regulations governing the payment of allowances to State Service employees required to move residence – in particular there are time limits and conditions attached to the payment of such allowances.

*C. Financial Management and Audit Act 1990*

The FMA Act requires that agencies are to be managed in an efficient, effective and economical manner. The Treasurer issues Treasurer's Instructions which, in part, set out requirements for procurement using public money.

Of particular relevance to this investigation are those Treasurer's Instructions which require:

- value for money purchasing outcomes;
- the purchasing process is impartial, open and encourages competitive offers;
- public money must be spent efficiently and effectively and in accordance with Government policy;
- at least three written quotations for the purchase of goods and services valued at more than \$10 000 but less than \$100 000 (excluding GST);<sup>2</sup>
- maintenance of records of all suppliers approached and their responses, including documented advice from suppliers who have declined to submit a quote;
- that tenders must be called for all purchases of goods and services, leases or rentals of equipment valued at \$100 000<sup>3</sup> or over (excluding GST), unless approval for direct/limited submission sourcing is granted;
- purchased services or items over an extended period should be aggregated so that the value is equal to the total of all procurement activities undertaken; and
- a contract for a procurement of consultancy services, professional services, or medical services for a term exceeding 12 months or for in excess of \$50 000 by a THO requires written approval from the Minister for Health.

*D. Ministerial and Employment Directions*

These are issued to regulate certain employment matters in the State Service. Of relevance to this investigation is that they regulate the application of the merit principle, requirements in relation to the employment of SES officers, the application of a market allowance, and relocation assistance.

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<sup>2</sup> On 8 May 2014, the threshold was changed from \$10 000 to \$50 000.

<sup>3</sup> On 8 May 2014, the threshold was changed from \$100 000 to \$250 000.

### *E. Tasmanian Health Organisations*

Prior to 1 July 2012, the DHHS was responsible for the delivery of healthcare in Tasmania through three area health services: the South (STAHS), the North (NAHS), and the North West (NWAHS). DHHS had a standard State Service managerial framework; the Secretary of DHHS was the Head of Agency and responsible to the Minister for Health, with various Deputy Secretaries or other managers reporting to the Secretary. Each area health service had a CEO ultimately responsible to the Secretary, DHHS.

On 1 July 2012, three THOs were established to provide hospital, primary and community health services to Tasmanians. The THO boundaries are the same as the three previous area health services they superseded and are THO-S, THO-N and THO-NW.

Each THO is established as a separate body corporate with its own legal entity and each has its own CEO (a Head of Agency) and a Governing Council.

### *F. Conflict of interest*

A conflict of interest arises from a conflict between the performance of a public duty and a private or personal interest.

A personal interest includes the private, professional or business interests of a person, or of the individuals or groups with whom they have a close association, such as relatives, friends or even enemies. Personal interests may be pecuniary or non-pecuniary.

A conflict of interest may be actual, perceived or potential.

- Actual: an actual conflict of interest occurs when there is a conflict between a person's official duties and responsibilities in serving the public interest, and their personal interest.
- Perceived: a perceived conflict of interest occurs when a reasonable person, knowing the facts, would consider that a conflict of interest may exist, whether or not this is the case.
- Potential: a potential conflict of interest occurs where a person has a personal interest that could conflict with their official duties in the future.

Undeniably, conflicts of interest can occur more frequently in smaller communities. Sometimes they are unavoidable, but that does not make the conflict wrong. However, when they do rise, it is important that they are disclosed and managed correctly and transparently.

Information obtained by the Commission since its establishment indicates that conflicts of interest, particularly perceptions of conflict of interest, are a significant issue for Tasmania across all levels of public office. In this investigation, conflict of interest in decision making was a consistent theme, as was the failure to declare, avoid or manage conflicts of interest effectively.

## Findings

This investigation revealed that family and associates of Ms Holden and Mr Austin were given consultancies, employment and contracts to their benefit. Sometimes these officers directly made the decisions that benefitted their family and associates; sometimes those decisions were made by others who worked for Ms Holden and Mr Austin. Conflict of interest was apparent in all of these matters.

### Background

On 5 November 2007, Ms Jane Holden commenced as the CEO of NWAHS in the DHHS.

Prior to this Ms Holden had held a number of roles in health care administration in New Zealand, most recently (from June 2003 – 2007) as the General Manager, Surgical and Critical Services, for the Northland District Health Board (NDHB) based in Whangarei, New Zealand.

Mr Gavin Austin was an accountant in New Zealand. He also worked at NDHB from 2003 to 2007 as Chief Financial Officer, General Manager Finance, HR and Commercial Services. Mr Austin told the Commission that he had always engaged in other business activity. For example, he was a shareholder and director of Company Health Services, and in 2004 he established an accounting practice, Austin & Associates Limited. He was principally engaged in work for Austin & Associates after leaving NDHB, although as at November 2009 he was working back at NDHB on contract as a project officer.

Mr Austin told the Commission that Ms Holden and he were members of what he described as the 'Dream Team' of high performing employees at the NDHB.

### The 'Dream Team' comes to North West Tasmania

Gavin Austin – consultancy leads to a permanent position

It was their evidence to the Commission that Ms Holden and Mr Austin's relationship did not extend beyond their professional interaction at NDHB until he sent her an email in November 2009 (when she was CEO at NWAHS) asking her to be an employment referee.

She agreed and indicated that she was looking for a Director of Finance for the Health Service. The SES position of NWAHS Finance Director had been established the month before. Ms Holden then arranged for a consultancy for Mr Austin in December 2009. No pre-consultancy documentation, particularly a written contract, or a scope or terms of reference, for the consultancy has been located. No declaration of any prior association between Ms Holden and Mr Austin was made. All the material produced to the Commission shows that the consultancy was proposed and approved by Ms Holden alone, as NWAHS CEO.

The total cost of the consultancy for eight days work, including airfares, was **\$8 494**.

No written report or other tangible product of this consultancy has been produced to the Commission.

Whilst Mr Austin's consultancy services amounted to less than \$10 000, and Ms Holden thus had discretion under requirements to procure his services without seeking other quotations, his airfares from New Zealand added significantly to the cost of Mr Austin's services. This raises the question of whether procuring his services from New Zealand was 'value for money'. There is no indication that any open and effective competition occurred. Tasmanian businesses were not afforded this opportunity to do work for NWAHS.

Although the evidence suggests that the pre-November 2009 relationship between Ms Holden and Mr Austin was that of former work colleagues, nevertheless there was still a pre-existing association, and there was at least a perceived conflict of interest in Ms Holden arranging this consultancy. There was no disclosure of the conflict of interest by Ms Holden, nor avoidance – rather, her actions in offering a consultancy to her former colleague from outside Tasmania effectively engineered the conflict.

If viewed in isolation, it is arguable that this particular procurement of services worth less than \$10 000 in late 2009 is of no great significance. However, subsequent events have rendered Ms Holden's omission to identify this conflict of interest, and her failure to take reasonable steps to deal with it, particularly significant. Markedly similar omissions have been replicated later by Mr Austin at NWAHS and THO-NW – particularly in relation to the procurement and employment of persons with whom he had pre-existing associations.

In January 2010, Mr Austin was the successful applicant for the SES position of Finance Director, NWAHS.

The 'selection report' for this senior executive position is notable in its absence of relevant documentation, including:

- no statements against the selection criteria from any of the candidates;
- only one curriculum vitae – that of Mr Gavin Austin;
- no referees' reports;
- no notes of any interview (the evidence indicates that Mr Austin was not interviewed); and
- no comparative analysis of the shortlisted candidates.

The selection panel was chaired by the CEO (Ms Holden), and two other panel members – Ms D and Ms E – were both from the NWAHS Human Resources area. Neither were SES officers.

The panel recommended Mr Austin's appointment. Ms Holden conceded to the Commission that the panel report was poor and not well documented – the only information to support the appointment of Mr Austin was that he '... met all selection criteria to an excellent standard. He has the required knowledge, skills and experience to ensure that the strategic financial and performance direction of the NWAHS are delivered.'

No conflict of interest declaration was made by Ms Holden during this recruitment process.

The absence of detail in the selection report, and the failure to follow standard processes – including interviews by the whole panel, documenting of interviews, seeking referees' reports, undertaking a comparative analysis of the shortlisted candidates – is suggestive of a process that was not merit based, but rather one where the outcome was always going to be that Mr Austin would be the successful candidate.

Mr Austin was also offered very generous terms and conditions of appointment. Some of these conditions required approvals of which there is no evidence; some were not authorised by the relevant policies. Similarly, there is no documentation justifying the quantum of the terms and conditions, which included:

- an accommodation allowance for 12 months of \$14 820, or \$285.00 p.w. (payment of such an allowance should have been limited to 12 weeks);
- \$20 000 p.a. in lieu of the provision of a privately plated motor vehicle; and
- salary set at the maximum performance incentive point \$111 802.

The record keeping in relation to this SES appointment is also notable in its absence. It appears that Ms Holden simply emailed a senior officer in DHHS the details of the package she proposed to offer to Mr Austin. That person then telephoned her with the 'good news' (allegedly that the Secretary had agreed).

The creation of the Finance Director position in October 2009 presents as a legitimate action, and was, upon creation, a vacant position that should have been open to any candidate. Although Ms Holden denied giving favourable treatment to Mr Austin, once it became clear to her that her former colleague from NDHB might be interested in the position, the open field for the senior vacancy was effectively closed.

Such omissions subsequently became a notable and regular feature of later procurement and employment processes, particularly where Mr Austin was the decision maker at NWAHS and the THO-NW. A tone appears to have been set for future procurement and employment practices in the North West.

A tone appears to have been set for future procurement and employment practices in the North West.

On 7 March 2011, Ms Holden commenced what was initially to be a three month fixed term transfer to the role of CEO of STAHS. Ms Holden also maintained her substantive role of CEO NWAHS but Mr Austin acted as CEO. Ms Holden was appointed as CEO of STAHS in March 2012; Mr Austin remained as acting CEO NWAHS.

Just before Ms Holden went to Hobart in March 2011 (and just as Mr Austin's 12 month accommodation allowance expired), the payroll area was told by an HR employee to continue to pay Mr Austin \$285 p.w. rental assistance until further notice. No authority for this has been located; the evidence suggests that Mr Austin 'authorised' this rental assistance himself.

#### *A 'recce' trip to the North West for a member of the Dream Team*

In early March 2011, Mr K - Mr Austin's referee, friend, general manager of the Taranaki District Health Board in New Zealand and former member of the 'Dream Team' - travelled from New Plymouth in New Zealand to Tasmania, via Sydney. These airfares cost **\$871.20**. The NWAHS reimbursed the cost of these airfares. Mr Austin authorised this payment.

At the time, the NWAHS had a vacancy for the position Human Resources Director. However, the position was not advertised until 23 March 2011.

Mr K's visit was likened to a reconnaissance trip (a 'recce'). He was the only candidate afforded this opportunity. Mr Austin had a clear conflict of interest in providing this advantage to his friend Mr K.

Mr Austin's actions suggest a recruitment process that was not going to be merit based and that, even at this stage, Mr K was the preferred candidate. Unsurprisingly, the selection panel (comprised of Mr Austin and Ms D) did find Mr K to be the preferred candidate, but he apparently declined the position and it was offered to the other shortlisted candidate.

#### *Another New Zealand Finance Director – via (another) consultancy*

In August 2012, Mr Austin was the acting CEO of THO-NW. In conduct remarkably similar to his own arrival in the North West, he engaged a former associate from NDHB in New Zealand, Mr L, as a financial consultant.

The cost of this consultancy was **\$4 000**, at \$100 per hour for 40 hours of consultancy; plus two nights of accommodation in Launceston, petrol, mobile phone and parking in New Zealand – **\$332.83**; and a further **\$721.32** for return Auckland to Launceston airfares.

Two reports were prepared by Mr L as part of the consultancy – six pages and four pages in length. However, no pre-consultancy documentation – particularly any written contract or a scope or terms of reference – have been located. No conflict of interest declaration was made by Mr Austin in relation to his previous association with Mr L. The procurement of Mr L's services (although valued at less than the \$10 000 threshold) did not meet the procurement requirements in relation to value for money, open and effective competition, compliance with ethical standards, or enhancing opportunities for local business.

A few months later, in late November 2012, Mr Austin's former position of Finance Director was advertised. Unsurprisingly, Mr L was appointed to the position. Mr L was offered relocation expenses and fully self-contained accommodation for a period of up to 12 months, with the first three months rental provided free of charge.

Mr L's application contained his curriculum vitae and briefly addressed each of the advertised selection criteria. The recruitment file did not provide any detail regarding the selection panel's membership and processes. There is no record that any interviews were conducted or referees' reports sought. Remarkably it took only 21 days from the date of advertisement to the appointment of Mr L.

No conflict of interest declaration by Mr Austin was made during this recruitment process.

Irrespective of whether Mr L was the best candidate, his recruitment was, in fact, solely based on the pre-existing Whangarei association between him and Mr Austin. There is no objective evidence that a merit based selection was undertaken.

#### *Extraordinary remuneration for another member of the 'Dream Team'*

By 6 November 2013, Mr Austin had been the CEO of THO-NW for nearly 12 months, when the position of General Manager, Mental Health, THO-NW - a fixed term full time Band 9 position - was advertised.

However, prior to advertisement in late October 2013, Mr Austin had approached a former member of the 'Dream Team', Ms T, to see if she was interested. She was interested and a job offer was made, which included terms and conditions which were not only very generous but also not permitted under the applicable State Service framework.

In an email, Ms T was offered (and she accepted) an annual salary package which included:

- base salary \$139 517 (top of band 9)
- market allowance \$13 951.70 ('Subject to SSMO approval-in-principle')
- salary packaging \$9 095
- laptop and internet access \$3 500
- provision of mobile \$800
- rental assistance\*\* 2 years \$36 400
- car\*\* \$20 000
- superannuation \$14 195.85

*\*\* Described as an 'unofficial arrangement between THO-North West and yourself.'*

Ms T was told by Mr Austin that 'Administratively we will advertise the job for a week internally but you will be the successful applicant. You can safely give notice ...'

In subsequent correspondence about the terms and conditions, the benefits of a car, laptop internet access, phone and rental allowance were not mentioned explicitly but, instead, reference was repeatedly made to the email offer.

Later, when the position was advertised, it offered only the base salary rate, with no mention of the additional benefits already offered to Ms T.

The subsequent selection report consists of a two page template with no supporting documentation. It indicates that there were three applicants with only one shortlisted – Ms T. There are no recorded details of the other two applicants. There was:

- no application from Ms T;
- no record of any interviews; and
- no referees' reports.

The basis for the decision was a seven line summary of Ms T's work in New Zealand. The selection report was signed by Mr Austin.

The formal instrument only refers to the salary, the market allowance (which was in fact yet to be approved) and the (mandatory) superannuation payments. Significantly, there was no reference to the other benefits with which Ms T was to be provided pursuant to the email.

A range of applicable employment policies were breached during this process, including the offering of additional benefits that were not authorised by the policies.

It is the Commission's view that Mr Austin was aware these additional benefits could not legitimately form part of Ms T's remuneration package and, for that reason, they were intentionally 'hidden'.

Local arrangements to pay additional benefits were 'normalised informal practice'.

The Commission's investigation reveals that local arrangements such as those referred to in the offer to Ms T as 'an unofficial arrangement between THO North West and yourself' were not unusual. Mr Austin told the Commission that it was common practice for THO-NW to not list additional benefits in the letter of engagement. This was to ensure that his staff realised that such benefits were not normally offered and it was 'the CEO alone who may sanction such additional arrangements'. He told the Commission that the provision of rental assistance was in line with 'normalised informal practice as advised by existing personnel'. In other words, that was the way that business was conducted at THO-NW.

The (additional) cost of the local arrangements in respect of the motor vehicle and rental assistance is **\$76 000** in the first two years of Ms T's appointment.

## A family business

A striking theme which emerged in the investigation was the employment or engagement of the direct family members of Ms Holden and Mr Austin both in the North West and later in Hobart.

### *Ms Holden's husband – a contractor without a contract*

Ms Holden's husband, Mr B, was first engaged by NWAHS to perform building, carpentry and maintenance work on NWAHS sites in early 2010 for a 'one off' job by the then Head of Facilities and Engineering. It is not known how this officer became aware of Mr B.

Mr Austin was Finance Director at this time. There was conflicting evidence as to whether Ms Holden asked Mr Austin if there was a role or any work for Mr B:

Mr B was subsequently engaged on a contractor basis as a builder/carpenter at various NWAHS sites. Hourly rates of \$40/hour and mileage of \$1/km were agreed with Mr Austin. The agreed mileage is greater than the State Service maximum award of \$ 0.71/km. The hourly rate extended to Mr B's travel time to and from jobs.

Mr Austin directly tasked work to Mr B and then, later, to both Mr B and Mr Austin's son, Mr A (who was engaged by NWAHS through Skilled Group Limited from 13 August 2011 – referred to further in this report). In other words, the Finance Director (who was later acting CEO) of a large public health body was engaging in the day to day, week by week, deployment of two tradesmen on routine maintenance and building tasks.

There was no competitive process put in place in engaging the services of Mr B – no tenders were called and no quotes from other tradesmen were requested for any of the work which he undertook. There was no written contract between Mr B and NWAHS.

Other employees with direct responsibility for building and maintenance told the Commission they were uncomfortable being placed in the position of working with the CEO's husband, and questioned the quality of the work Mr B performed. One told the Commission that he felt like leaving his position due to his discomfort.

Mr B was paid a total of **\$197 681** for building maintenance work performed between August 2010 and July 2012. The value of the individual invoices he rendered ranged from \$1 254 to \$5 432. Mr Austin approved the majority of these invoices for payment as he was the instigator of most of the building tasks carried out by Mr B.

However, Mr Austin was not in a position to physically supervise the nature or quality of the work in question. Therefore, although he was approving Mr B's invoices for payment, he was in fact unable to confirm whether the actual work had been carried out, nor could he assess its quality.

Mr Austin admitted that he was not in a position to verify Mr B's work but referred to having a general knowledge of his whereabouts because his son, Mr A, was working with Mr B.

Mr Austin's rationale for utilising Mr B's services was that his rates were such that he delivered value for money that could not be obtained through other providers.

A closed loop was created so that expenditure and payment to Ms Holden's husband bypassed internal financial controls.

It is a distinctive feature of the payment process that generally it was Mr Austin who signed off, or authorised payment. Other than Mr Austin's signature, there was usually no other employee, or certifying officer, who authorised the payment, contrary to applicable policy. With the failure to have the expenditure certified independently, Mr Austin created a 'closed loop', such that the expenditure and payment bypassed internal financial controls, contrary to good accounting practice.

In 2011, NWAHS paid the costs for Ms Holden's husband to become accredited as a builder in Tasmania, despite the fact he was an 'independent contractor'. These costs included his travel to New Zealand (to obtain his accreditation there) then his subsequent Tasmanian costs. The ostensible reason for this was that Mr B had undertaken work at the King Island nurses' quarters and after it was completed it was revealed that a sign-off from an accredited builder was required.

NWAHS paid:

- costs associated with Mr B's accreditation in New Zealand; totaling \$2 059.64, which included air fares to New Zealand, Mr B's hourly rates and the cost of the New Zealand licence fee; and
- reimbursement of costs associated with Mr B's accreditation in Tasmania. The total cost was \$4 164.70, which included hourly rates, public indemnity insurance, and Housing Industry Association membership.

Mr Austin spread Mr B's accreditation expenses across a number of cost centres which were not connected to the nurses' quarters on King Island. He used cost centres for the Rosebery Community Hospital, Mersey Hospital and North West Regional Hospital. The funding sources that he allocated were both the Tasmanian Consolidated Revenue and Commonwealth funding that was specifically allocated to Mersey Hospital.

The 'King Island incident' illustrates the inherent risks in the process that was being applied by Mr Austin - that is the Finance Director/acting CEO, with no building or construction qualifications - tasking building work to a person holding no Tasmanian building accreditation.

Mr B also received \$100 per night (total of \$9 100) whilst on King Island. This was described as an accommodation allowance, even though free accommodation was provided at the nurses' quarters there.

NWAHS paid the costs for Ms Holden's husband - who was at that time a contractor - to become accredited as a builder in Tasmania, including for his travel to New Zealand.

The quality of Mr B's work was also under question. He was described by various persons (including those with responsibility for building and maintenance at NWAHS) as a 'bush carpenter' and '... better at demolishing ... than he is a finisher', 'as a builder he was a bit rough ... '

Mr B had no public liability insurance until NWAHS paid for it in November 2011 as part of the package to have him accredited as a builder in Tasmania. There was an obvious risk in Mr B performing building work for NWAHS from August 2010 with no public liability insurance; however, this risk appears not to have been considered by Mr Austin in his assessment of the value for money provided by Mr B.

The arrangement with Mr B was contrary to requirements that procurement must not be divided into separate parts for the purpose of avoiding a procurement threshold and that tenders had to be called for procurement of all goods and services valued over \$100 000.

Mr B removed significant quantities (at least two truckloads on his own evidence) of asbestos. At that time, that work did not fall within the definition of exempt removal work. The removal should have been undertaken by an appropriately licensed person and Mr B was not so licenced. Mr Austin did not undertake any due diligence as to whether Mr B was appropriately licensed or qualified to remove asbestos before he approved payment to Mr B for undertaking the removal.

#### Summary of the procurement of Mr B's services

Mr Austin procured the services of Ms Holden's husband, Mr B, in the period August 2010 to July 2012, in circumstances where:

- an amount of **\$197 681** was paid to the contractor;
- no written terms or conditions of the contract were created;
- no competitive approach to the market was undertaken;
- the cumulative costs of the contract breached procurement requirements;
- the contractor was tasked directly by Mr Austin who also approved most of the invoices presented by the contractor;
- the contractor had no Tasmanian qualifications or accreditation to perform building work and no public indemnity insurance in respect of any work he performed for NWAHS, until NWAHS paid for his building accreditation in Tasmania;
- the need for him to become accredited was in order to obtain a certificate of completion for building work that the contractor had already undertaken for NWAHS;

- the contractor removed asbestos in circumstances that appear to be contrary to the relevant building regulations; and
- the senior managers responsible for workplace health and safety at NWAHS knew of (and in Mr Austin's case, approved payment for) removal of asbestos without undertaking any due diligence on the qualifications of the removalist, or ensuring that the circumstances of the removal were safe and lawful.

In January 2012, it appears that The Mercury newspaper was making inquiries (or had published an article) about Mr B's work on King Island. An exchange of emails took place involving representatives of a number of agencies, the Media and Communications Officer at NWAHS, and Mr Austin, about how to respond to The Mercury.

The final response to The Mercury was that:

Mr B is one of a pool of appropriately qualified workers who are used by North West Regional Hospital's Maintenance Services, on an as needs basis and at an hourly rate, to undertake maintenance work. He was one of several people from this pool who were utilised by the NWAHS to undertake work on King Island with the approval of the Manager of Maintenance Services based on an assessment of rates and availability.

The work has been completed to a satisfactory and cost effective standard.

The emails proposed various iterations of this response (before a final version was settled on) and addressed how Mr B came to be engaged; how much he was being paid; and the applicability of the relevant procurement rules. The information which Mr Austin supplied or approved of in the construction of the response was almost entirely false and misleading. While a number of public officers contributed to the 'spin' of the story, Mr Austin – who knew of and was the source of the inaccuracies – bears the principal responsibility.

Even after concerns about Mr B were raised by the media, neither Mr Austin, nor any persons involved, took any action to rectify the situation. Rather, in Mr B's case, he continued to be contracted for services to the NWAHS for a further six months until he was employed by then THO-NW.

On 1 July 2012, the *Tasmanian Health Organisations Act 2011* came into operation.

THO-NW created the position of Band 3 Tradesperson Carpenter/Joiner in March 2012. Ms Holden's husband, Mr B, was appointed to this position.

Even though the Tradesperson position was advertised as a casual one, Mr B was given a contract for a full time position at the top of the Band 3 range. Mr Austin attempted twice to have Mr B's salary upgraded through the provision of more responsible duties allowance, but these attempts were stymied by the HR area.

Mr B was employed from 8 July 2012 to 31 March 2013, when he left the North West to join Ms Holden, who was acting CEO at THO-S, in Hobart. He had been looking for a position with THO-S since December 2012.

*A job at THO-S for Ms Holden's husband*

From 1 July 2012, the THO-S commenced operating. It replaced the former STAHS.

The new THO-S assumed additional responsibilities. In particular, the new organisation had responsibility for maintenance and new works at 34 additional property sites, meaning that THO-S was required to maintain over 60 separate facilities.

Mr U, the Group Manager of the Facilities Maintenance and Engineering Department (a direct report to Ms Holden), identified to Ms Holden that there was scope for significant savings if carpentry and other allied trade works were performed 'in house'.

In due course, he sought Ms Holden's formal authorisation to create a permanent full time position for a 'Tradesperson Carpenter/Joiner'.

On 12 December 2012 (i.e. about three months prior to Ms Holden giving authorisation for the creation of the new position), her husband, Mr B, sent an email to Mr U attaching photos of the van he used at THO-NW. In his email, Mr B said it was great to meet with Mr U and that he looked forward to working at THO-S 'if that was still available' at the end of March 2013.

Mr B confirmed to the Commission that after his wife (Ms Holden) and family had moved to Hobart he had been keen to find work in the South. He said that he had looked up Mr U's details on a departmental Intranet site, made telephone contact, and may have called on Mr U at his office.

Ms Holden was aware that 'sometime toward the end of 2012, (her husband) did meet with (Mr U) to discuss whether or not there were any employment opportunities at STAHAS [sic]'. She said she did 'not recall if [she] gave him Mr U's contact or he found this out through the DHHS staff website'.

Between 10 February 2013 and 8 March 2013, a series of emails were exchanged between Mr B and Mr U. It is fair to characterise these emails as Mr U keeping Mr B 'up to date' on what was happening with the Tradesperson position. Those emails demonstrated that Mr U intended to give Ms Holden's husband employment. For example, in an email on 10 February 2013, Mr U described to Mr B 'the job I want you to do', including that he would 'like him to visit all of the facilities and conduct a condition audit'. He referred to one of his workers and said 'I would like him to work with you and he could assist you when required'.

Ms Holden signed the documentation creating the position on 7 March 2013. It stated (in part):

We need urgently a carpenter/builder to initially visit every one of these facilities and undertake a condition audit, then plan and coordinate any urgent works required.

Mr U advised Mr B the same day that Ms Holden had authorised the creation of the position and told him that he would keep him informed of progress. The next day he emailed to say that he had been told that the position had to be advertised and that he would send a copy of the Statement of Duties 'so that you can prepare your applications'.

It appears that Mr B was given an opportunity to review the Statement of Duties (SOD) before they were finalised. He told Mr U in an email on 20 March 2013 that he had reviewed the statement and that he didn't have 'the scaffolding ticket' referred to in it.

The evidence gathered by the Commission indicates that Mr U had sent to Mr B a version of the SOD which listed a 'certificate to erect scaffolding' as a 'highly desirable' attribute. However, the final version of the SOD lists these attributes as 'desirable' rather than 'highly desirable'.

Mr U did not provide the SOD in its draft form to any other applicant or potential applicant.

On 8 May 2013, the position was advertised in the Government Gazette and Mr U advised Ms Holden's husband about that the same day.

Mr U had earlier approached a Human Resources Consultant with THO-S for guidance about how to create a new position. The Consultant, Mr V, has alleged that, in seeking that guidance, Mr U revealed that Ms Holden had spoken to him about the possibility of finding work for her husband.

However, Mr U repeatedly denied to the Commission having discussed Mr B with Ms Holden. There is, therefore, no direct evidence that Ms Holden asked Mr U about the possibility of employment for her husband – as is suggested by Mr V's account.

The evidence (including evidence from Ms Holden) is that Mr U knew that Mr B was the husband of the CEO by March 2013 at the latest.

After talking to the HR Director, the Consultant warned Mr U against having any part in the selection process to ensure the application of the merit principle and avoid any conflict of interest.

Mr U acknowledged to the Commission that he had received this warning from HR and said that, acting on that advice, he arranged for three others to conduct the shortlisting of applicants.

However, when it came to interviewing the shortlisted applications, Mr U decided he would replace one of the three members of the selection panel. He said he did this because he was unhappy about the HR advice, and could not 'see why I shouldn't be on the interview panel'. He considered HR was saying 'I am not reliable, that I'll be biased or something, because I'm not'.

There is evidence that Mr U told others (such as the Director of HR) that he stepped onto the panel because one of the members was sick and unable to participate in the interviews.

It is the Commission's view that Mr U inserted himself into the selection process, despite the clear advice from HR not to, in order to provide the CEO's husband with an advantage. His motive for this is unknown, but the advantage that he provided was substantial as this report will show.

Mr U continued to keep Ms Holden's husband updated on the process by email. He apologised for the delay in shortlisting and undertook to email a copy of the questions so that Mr B could be prepared.

The chair of the selection panel (appointed by Mr U) was Mr X, Manager of Facilities and Equipment, THO-S – and a direct report to Mr U.

The selection panel sought reports from the referees nominated in Mr B's application immediately after shortlisting and prior to the interview.

On 4 July 2013, one of those referees (a Manager with THO-NW), emailed Ms Holden a copy of her referee report for Mr B. She acknowledged receipt of the email which thus confirms that Ms Holden was aware, by 4 July 2013 at the latest, that her husband had been shortlisted for the position.

Also on 4 July 2013, Mr U sent an email to Mr B:

Hi [Mr B],

This attachment *just happened to fall on to my desk.*

I believe they are checking with referees and will arrange interviews probably late next week or early the week after.

Regards,

[Mr U]

*[emphasis added]*

The document Mr U attached to this email was the list of questions intended to be asked by the selection panel during interviews. In addition, in each instance the document also sets out the 'responses to look for' – or model answers to each question. It had been prepared by Mr X, Chair of the selection panel, and was provided to members of the panel – which, by that time, included Mr U.

At this point, by providing the model answers to Ms Holden's husband, Mr U had fundamentally compromised the selection process. The subsequent selection decision could not have been made on merit.

From 43 applications received, the selection panel identified a shortlist of five for interview. One of those shortlisted was Ms Holden's husband, Mr B.

Providing the model answers to the interview questions to Ms Holden's husband fundamentally compromised the selection process.

According to the Chair of the panel, with the exception of Mr B (who participated in a teleconference from New Zealand on 15 July 2013, rather than by face-to-face interview), each shortlisted applicant was provided the list of questions a short time (five to ten minutes) prior to interview. Mr X understood that Mr B did not have the benefit of having advance notice of the questions (as he was being interviewed by phone), and that the selection panel, recognising he was at that disadvantage, had allowed him additional time to answer. Mr U did not correct the panel's understanding.

So far as the Chair of the panel understood, the model answers – or ‘responses to look for’ – had not been provided to any applicant.

Mr U claimed that providing the model answers had been a mistake; that he had been careless; it was a mistake that he ‘regretted’; he had only intended to supply the questions.

The Commission does not accept Mr U’s claim that the model answers were provided by accident or mistake.

Analysis of the selection report shows that Mr B’s responses at interview were scored the highest of any applicant for each of the six questions asked. (He had an equal top score on one question.) This is unsurprising, given Mr B’s advance notice of the questions – and their model answers.

The selection panel recommended that Mr B be offered the position.

On 19 July 2013, Mr U emailed Mr B, informing him the selection panel had recommended his appointment. He also said that ‘(A)s one of the applicants is currently employed by THO-S he has appeal rights so we cannot officially tell you that you have the position until after the appeal period. However we are confident that even if he does appeal he would not be successful.’

Mr B forwarded this email to his wife, Ms Holden. She replied, on 22 July 2013, that there was no point in him accepting the position if they wanted him to start immediately. At that point in time, Mr B still had a work contract to fulfil in New Zealand until the end of October or sometime in early November.

Fortunately, only eight days later the job that had previously been characterised as urgent to fill, became not so urgent. Mr U advised Mr B that it would take six - eight weeks before the position could be offered because the CEO was very busy and would take a while to sign off on it, then there was the appeal period and HR processes, plus the vehicle that he would need might take up to three months to be available. The proposed start date was now, conveniently, November 2013.

Mr U denied that the November start date had been ‘orchestrated to suit Mr B’s interests or personal circumstances’. However, Mr B readily acknowledged that he had asked for the job to be held back to suit his convenience.

It is evident from the email exchanges during August 2013 that Mr B was still in New Zealand, and that he was apparently experiencing difficulty gathering together the required documentation to confirm the appointment. The final piece of information was received on 30 August 2013, and the requisite checks were performed in early September.

In the event, Mr B did not commence employment until 14 January 2014.

## Failed oversight - internal audit

Ms Holden told the Commission that when the selection report recommending Mr B's appointment reached her desk, she 'didn't think it was appropriate' that she deal with the matter.

Instead, she 'felt it was much better dealt with by someone independent from myself', and therefore requested Ms Y to take responsibility for completing the selection approval and signing off on the appointment. Ms Y was to act for Ms Holden when she went on leave in August 2013.

On the Friday evening before Ms Holden was to commence leave, she approached Ms Z, a member of the Governing Council of THO-S, and Chair of the Council's Audit and Risk Committee, and told her that her husband had been recommended by a selection panel for employment with THO-S and that the selection report had been sent to Ms Holden for approval. Ms Z said that Ms Holden appeared upset and distressed. Ms Holden told her that she couldn't sign the selection report, and that the person who should have signed off (Mr U) had sat on the panel because the other panel member had 'been away'.

Ms Z and Ms Y between them determined to have the DHHS Internal Audit Team examine the recruitment. The person charged with conducting the audit was instructed by Ms Y that the scope of the audit was to be restricted to a desk-based review – that is, a review based purely on the paperwork, without face-to-face interviews. The auditor pointed out the deficiencies of a desk-top audit, and explicitly stated that if the audit was so restricted, it would only be able to provide limited assurance of the process and associated due diligence.

Ms Y 'thought it was a bit over the top' to have a really intensive audit and preferred a desk-top audit to start with and, if there were any alerts, to then reconsider the matter.

The Director of HR said that that they were 'trying to keep it fairly confidential ... (b)ut we didn't want to do an audit from woe to go and create a furore ... because that's what would potentially happen'. What was wanted was a process that was 'above board but also confidential ... trying to be both transparent and confidential at the same time ...'

A three-page report was produced detailing the result of the desk-top audit.

The report makes it clear that the audit process was restricted to a desk-top review, and that as such, 'only limited assurance is offered':

### **2. Scope**

The audit was defined by the requestors as a desk-top audit. The scope was to assess documentation relating to the recruitment, which was provided to Internal Audit, against documented policy and procedures. No interviews were to be undertaken.

As such it is noted that only limited assurance will be able to be offered as to the due diligence undertaken by the selection panel members in the course of the recruitment process.

This point is emphasised in the findings:

#### 4. Findings

**Key points of note** for this recruitment process are:

- As this audit was conducted as a desk-top audit only limited assurance is offered over processes; however the documentation provided does indicate that selection panel members applied the processes as required by the guidelines for recruitment.
- Due process requires open disclosure of actual or perceived conflicts of interest. There was no evidence on file to identify whether selection panel members were notified of or were aware of the connection between the successful applicant and a senior manager.

Unsurprisingly, the internal audit of the selection documentation found no evidence of impropriety. Nothing of the contact between Mr U and Mr B was revealed and the internal auditor remained unaware that Mr B had been given the proposed questions and model answers.

The limited scope of the audit was such that it could not have provided an adequate level of assurance that the selection process was conducted properly.

The evidence uncovered by the Commission discloses that at material times before, during and after the selection process, Mr U was in communication with Mr B with the knowledge that Mr B was Ms Holden's husband and in the face of the clear HR guidance that he should not be involved in the selection because of that fact.

This was information that should have been disclosed by Mr U as part of the internal audit process – as indeed, it should have also been disclosed by Mr U during the selection process.

Although aware of the difficulty posed by Mr U's involvement (and being herself a party to the guidance that had been given to Mr U), the Director of HR did not disclose that matter to the internal audit.

She initially told the Commission that she could not recall why that disclosure had not been made. She later advised that she had no reason to doubt the integrity or partiality of Mr U, or his ability to apply merit to the interview process, and that, as she found his explanation for covering the position of a sick panel member at the last minute plausible, she had no reason to disbelieve it, thus it did not occur to her to mention the HR advice to the internal audit.

In the Commission's view, the limited scope of the audit was such that it could not have provided an adequate level of assurance that the selection process was conducted properly.

#### Disclosure to the Governing Council

On Monday 21 October 2013, there was a meeting of the Governing Council of THO-S. The meeting concluded at 4.30pm.

At 8.47pm, Ms Holden sent an email to the Council because she was aware that The Mercury newspaper was pursuing a story about the employment of her husband.

The email asserted that:

- the recruitment was completed independently of her;
- it had been referred to Internal Audit for review;
- the review of documentation found compliance with appropriate processes, it was further followed up by the acting CEO and ascertained that there was no interference by her in any way;
- the appointment was advised to (her husband) a couple of weeks ago;
- (her husband) did not believe he had been shortlisted when he returned to undertake a contract in New Zealand in late April, and she also believed this to be the case;
- why the process has taken so long was unknown to her; and
- the process has been fully compliant with SSMO recruitment guidelines.

Given all the evidence that the Commission has about the circumstances of Mr B's appointment and the subsequent internal audit, it is the Commission's view that the email to the Governing Council was misleading and that Ms Holden intended that the email should mislead.

On 26 October 2013 – six days after Ms Holden's disclosure to the Governing Council – an article was published in The Mercury newspaper titled 'Health job for boss' hubby':

Health recruitment authorities say Royal Hobart Hospital CEO Jane Holden played no part in the appointment of her husband [Mr B] as a full-time carpenter with the DHHS.

[Mr B's] appointment complied with recruitment guidelines and was made on merit, RHH human resources director [Ms W] said.

The application process was subject to an internal audit before the job was offered to [Mr B], she said.

'DHHS staff conducted the audit to ensure transparency and independence', Ms W said. All public hospital employment is undertaken in accordance with State Service requirements, including interview and selection process, she said. 'These requirements were consistently applied in this case.'

[Mr B]'s position is responsible for construction, maintenance and repair work at all Tasmanian Health Organisation South sites, including RHH, community health centres, the Repat Centre and St Johns Park.

It is based at the RHH engineering and maintenance unit and the advertised salary range is \$53,203 to \$57,913.

Mr B was interviewed by a three person panel. Ms Holden was not on the panel. The DHHS would not reveal how many people applied for the job, or the number of internal and external applicants.

Community and Public Service Union boss Tom Lynch said all public service appointments were made on merit.

'At the end of the day, if someone applies for the job and they are the best candidate they are appointed – that's what the system of merit does,' Mr Lynch said.

Health and Community Sector Union boss Tim Jacobson described the State Service Act as 'pretty rigid' for Tasmanian Government appointments, with strict governance around the independence of the decision making process.

'An audit ensures there's no conflict of interest,' Mr Jacobson said.

Just as in the earlier case of inquiry by The Mercury about Mr B's employment in the North West, the response in this case was subject to internal discussion and, in its final form, was misleading. The scope of the internal audit was limited and could not be said to have ensured 'transparency and independence'. Clearly too, the State Service requirements were not consistently applied in this case – any honest assessment of the internal audit would conclude that it did not purport to assure that.

All senior officers of THO-S who saw the newspaper article and who were aware of the internal audit report (including the Director of HR, Ms Z, and Ms Holden) should have appreciated that the information provided to The Mercury misrepresented the scope of the internal audit.

#### *Mr Austin's wife gets a series of jobs in the North West*

Ms I is the wife of Mr Austin. She applied for the position of Business Analyst with NWAHS in August 2010. Even though the position was only advertised internally, and she was not then an employee in the State Service, Ms I was the successful (and only) applicant.

Mr Austin, as Finance Director, was the direct supervisor of the Chair of the selection panel. When the lack of referee reports was raised by DHHS HR recruitment in Hobart, they were told that 'this applicant is known to the selection panel and we know that her skills and experience definitely are suitable for the position'.

In fact the selection panel had no professional or workplace knowledge of Ms I's competencies. The only knowledge that the panel had of her was in her capacity as the wife of the Finance Director (who was, as noted, the supervisor of the Chair of that panel).

Ms Holden was the delegate who signed off on the appointment.

Ms I was offered a starting position of Band 4 level 2 range 1, which is a salary uplift of \$4 844 on the base salary. There is no documentation supporting this uplift.

It is relevant to note that Ms Holden's husband (Mr B) started receiving contracting work from Mr Austin in August 2010; Ms Holden signed off on this recruitment of Mr Austin's wife also in August 2010.

In December 2010, Ms I's contract was extended for three months to mid April 2011. In March 2011 the position was reclassified as Band 5 as part of a process of making all similar positions Band 5.

Ms I was subsequently recruited to two further fixed term positions between 2011 and 2012. Ms I's employment was extended for 12 months in May 2012, and again in September 2012, seemingly without any advertising process being undertaken.

In December 2012, the new position of Financial Accountant (working only 9.5 hours per fortnight) was created at the instigation of Mr Austin. It is the Commission's view that Mr Austin created this position particularly to suit his wife's then circumstances.

There were seven applicants, including two other candidates who appear relevantly experienced and well-credentialed for the small, part-time role. They were not shortlisted, with both applications marked 'over-qualified'. The Chair of the Selection Panel (Mr L – the Finance Director appointed by Mr Austin – see earlier in the report) dismissed some other applicants as they were 'too senior'. Mr Austin's wife, Ms I, was one of only two candidates shortlisted for interview. The other interviewee was a recent graduate with no work experience and offered no competition to Ms I. Mr Austin signed the selection report appointing his wife on 12 March 2013 as the delegate.

In respect of all of the positions that Ms I obtained, Mr Austin had an obvious and actual conflict of interest. He did not deal with this conflict in a reasonable manner.

#### *Mr Austin's son gets work*

Mr Austin engineered for labour hire firm, Skilled Group Ltd, to supply the services of his son, Mr A, to NWAHS.

None of the 331 then unemployed young men in the NW were afforded the opportunity of work on the terms provided to Mr Austin's son.

Mr Austin personally completed the Skilled Group registration for employment form on behalf of his son on 8 August 2011. At the time, Mr A was 17 years old and the form notes his only previous experience was as a 'kitchen hand'. There was a handwritten note on the registration form by an unknown Skilled Group employee: '(R)equsted by client Dad is CEO of Hospital'.

When the Physical Resources Manager of NWAHS requested labourers from Skilled Group, he specifically requested the services of Mr Austin's son. Indeed, the request was put into immediate effect as the first invoice from Skilled Group to NWAHS in respect of the son's services is for 28 hours (\$1 127.90) in the week ending 13

August 2011.

According to the Manager, this became an ongoing request from Mr Austin. He gave evidence that engaging Mr A through Skilled Group was a means of NWAHS employing him without directly employing him.

Mr Austin admitted that his son was registered with Skilled Group specifically for the purpose of him being employed by the NWAHS. He also admitted that this was an obvious conflict of interest situation and that his son had been afforded preferential treatment not afforded to others. He told the Commission 'I'd do it again, he's my son'.

This clear preferential treatment placed pressure on Mr Austin's subordinate employees at NWAHS, who understandably felt obliged to follow Mr Austin's directions, despite being aware that the engagement of his son was problematic. The Manager of Physical Resources told the Commission that he was put in a difficult position and felt he had no choice but to comply with the (acting) CEO's request to engage his son. Mr Austin created a clear conflict of interest by orchestrating the employment of his son by NWAHS via Skilled Group.

Figures published by the Australian Bureau of Statistics show there were 331 males aged 15-19 years (or 17% of the workforce) looking for work in the West and North West of Tasmania in 2011. None of these resident Tasmanian young people were afforded the opportunity of working for NWAHS on the terms provided to Mr Austin's son.

'I'd do it again,  
he's my son.'

NWAHS and (later) THO-NW paid Skilled Group a total of **\$105 135** from August 2011 to 27 October 2012 for the unskilled labouring services provided by Mr Austin's son. Mr Austin signed off on most of these invoices himself.

Mr B (Ms Holden's husband) supervised Mr A during his work and signed the time sheets attached to the Skilled Group invoices to NWAHS as 'the client'. Mr B and Mr A were tasked to outlying primary health sites directly by Mr Austin.

The position of Maintenance Support Officer was approved by Mr Austin on 22 March 2012 (at the same time, the position Tradesperson Carpenter/Joiner Band 3 was created – the position to which Ms Holden's husband was appointed).

Mr Austin's son (Mr A) was one of two successful applicants for the position commencing in October 2012 (this was the week after his employment with Skilled Group ended) for 12 months. His starting salary was at the top of the salary band, and included a 20% casual loading.

There is little in the documentation to explain the appointment or to justify the salary level.

When asked if he should have declared a conflict of interest at the time, Mr Austin told the Commission that he had not considered at the time that he should have declared the conflict of interest in relation to his son's employment, but that his interview with the Commission caused him to recognise that it was an issue and he 'probably' should have declared it to the Chair (of the THO). He explained his omission to avoid or manage the conflict of interest as this being his first appointment as a CEO and his first appointment in Australia and that the rules were not the same as in New Zealand.

## **Benefits to business associates**

Mr Austin used his positions as acting CEO of NWAHS and then CEO of THO-NW, to provide benefits to his colleagues and business associates from New Zealand. He also provided misleading information to the Department of Premier and Cabinet (DPAC) about his business interest when he was appointed as CEO of THO-NW.

### *WHS advice from New Zealand*

Dr P is a friend and business associate of Mr Austin. Like Mr K, Dr P is listed as a referee in Mr Austin's curriculum vitae. Whangerei-based, Dr P has a particular interest and expertise in occupational health.

Mr Austin had held significant shares in a number of New Zealand companies that were directed by Dr P:

- Dr P was the sole director of MCH Services Ltd, of which Mr Austin held a 25% shareholding. MCH Services Ltd was a shareholder in a number of Dr P's companies – 100% of Company Health Properties Ltd and 80% of Company Health Services (Whangerei, New Zealand) Ltd;
- Dr P was the sole director of JKG Ltd, of which Mr Austin held a 25% shareholding. JKG Ltd was a 50% shareholder in another of Dr P's companies – Advanced Recruitment Solutions Ltd;
- Dr P was the sole director of HSE Holdings Ltd, of which Mr Austin held a 25% shareholding. HSE Holdings Ltd was a 20% shareholder in another of Dr P's companies, Company Health Services Ltd; and
- Mr Austin held individual shares in companies of which Dr P was the sole director – 25% shareholding of ERF Ltd, 25% shareholding of CH Logistics Ltd, and 10% shareholding of Advanced Recruitment Solutions Ltd. <sup>4</sup>

The registered office of the Dr P-directed companies was 51 Port Rd, Whangerei, New Zealand.

Mr Jed Beney (who works as an accountant in Austin & Associates) was listed as the accountant for Dr P's companies. Austin & Associates rents an office space in the offices of Dr P's business (Company Medic) in Whangerei, New Zealand.

Mr Austin appointed Dr P to the fixed term salaried contract position of Occupational Physician at NWAHS for the period 30 August 2012 to 30 March 2013, at a salary of \$184 815 (full time equivalent). His hours of work were 'as and when required' to a maximum of eight hours per day.

A second contract on the same terms and conditions for the period 31 March 2013 to 30 September 2013 was executed on 1 May 2013. This renewed contract was instigated by Dr P via an email to Mr Austin. Dr P last worked for THO-NW in May 2013.

Dr P was employed at staff specialist classification level MR1-4 (Specialist Medical Practitioner) level 11. This is the highest level of pay for that classification. As part of his casual fixed term employment, he was paid standard rates and for additional hours worked. He worked a total 134 hours for THO-NW. In addition, Dr P received an allowance in lieu of call-back and overtime and he was reimbursed for travel to and from New Zealand. Total payments made to Dr P were **\$42 313.08**.

This position was not advertised, and no recruitment process was undertaken. Despite his clear financial and business connection with Dr P, no conflict of interest declaration was made by Mr Austin.

Mr Austin said that he employed Dr P to advise him about his liabilities under new Tasmanian workplace health and safety laws. Dr P prepared a four page report in relation to this issue.

Dr P also reviewed a number of staff injury claims. Twenty-one reviews were conducted by Dr P. The reviews were in the form of emails, written in informal language, sent from Dr P's

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<sup>4</sup> These companies were all deregistered at the date of the finalisation of this report.

Company Medic email address and do not appear by any measure to be detailed or thorough.

One consequence of conflicts of interest not being properly managed is that staff can feel compromised and uncomfortable.

THO-NW staff with longstanding involvement in workplace health and safety were unconvinced that Dr P's contribution added value to the agency. Unsurprisingly, they drew attention to his lack of knowledge and expertise in the Australian/Tasmanian legislative environment. However, staff were reluctant to speak up about this because it was clear to them that Dr P was Mr Austin's 'mate'.

Although Mr Austin took no steps to declare or avoid this obvious conflict of interest, it was common knowledge amongst THO-NW staff who interacted with Dr P that Mr Austin and Dr P were associates. One consequence of conflicts of interest not being properly managed is that staff can feel compromised and uncomfortable. This is an issue evident throughout the investigation.

Mr Austin did not declare, avoid or manage a conflict of interest involving his friend and business associate Dr P. Indeed, Mr Austin actively went out of his way to engage his associate, with highly favourable employment conditions (for example, paying a call out allowance which was unnecessary given Dr P was engaged to perform case reviews and an analysis of Tasmanian legislation).

#### *IT advice - from Whangerei, New Zealand*

In September 2012, Mr Austin engaged Whangerei, New Zealand based business Uber Group as a consultant in relation to a telecommunications issue.

That non-compliance with 'the rules' advantaged Mr Austin's friends, associates and business associates from New Zealand, in circumstances that created a clear conflict of interest, exacerbates the impropriety of his actions.

Uber Group was paid **\$A9 634.78** and **\$NZ2 453.38**. The only evidence of the terms of the consultancy is set out in the invoices as 'Consultancy provided by Hayden Simon during the week ending 14 September 2012'.

The sole Director of Uber Group is Mr Hayden Simon. Mr Austin described Mr Simon as a friend, and Uber Group as a client of Austin & Associates. Austin & Associates rents office space in the Whangerei offices of Dr P's business (Company Medic). Uber Group and Company Medic operate from a shared building in an industrial area of Whangerei, New Zealand.

The total cost of the Uber Group consultancy exceeded the \$10 000 threshold. Mr Austin did not seek any quotes for this work and certainly not from any Tasmanian provider, and thus the consultancy did not comply with procurement requirements.

In relation to this procurement from a friend and business associate, Mr Austin stated that he could 'see a problem with how it looks', however, he argued that it was a good outcome.

There is, quite simply, no valid argument that Mr Austin could raise to explain why he ignored policy in this and other procurements. The fact that the non-compliance advantaged Mr Austin's friends, associates and business associates from New Zealand in circumstances that created a clear conflict of interest exacerbates the impropriety of his actions.

#### *More WHS advice from New Zealand*

Mr Austin is a business associate of Ms O, formerly of Whangerei, New Zealand. Ms O relocated to the Northern Territory in 2013. Ms O was also involved in a number of New Zealand companies with Mr Austin and Dr P. These companies have already been referred to earlier in this report. Ms O held a 25% shareholding in JKG Ltd, MCH Services Ltd, ERF Ltd, CH Logistics Ltd and HSE Holdings Ltd. She also held a 10% shareholding in Advanced Recruitment Solutions Ltd.

Mr Austin gave evidence that Ms O and her husband believed that Dr P and Mr Austin owed them money (emails suggest the figure in question to be \$NZ16 000). Mr Austin stated that the O's perception of a debt owed is based on a moral obligation, but is not legally binding.

Like Dr P, Ms O has a professional interest, and claims to have expertise, in WHS. Mr Austin engaged Ms O as a consultant in relation to the implementation of particular WHS outcomes.

Ms O arrived at Devonport from Darwin on Sunday 14 July 2013, and flew out of Devonport on Saturday 20 July 2013. She was paid a total of **\$9 555** for this consultancy, including airfares, accommodation and car hire (just under the \$10 000 threshold at which procurement policy required three written quotes).

Like other consultancies previously referred to in this report, no pre-consultancy documentation, particularly a written contract or a scope or terms of reference, have been located. The WHS issues of concern to Mr Austin were referred to in a number of emails, but the THO-NW's expectations of Ms O's consultancy were not documented.

A very similar report to that eventually provided by Ms O, dealing with the same issues, had already been provided to THO-NW from within the Tasmanian State Service by a WHS consultant engaged by DPAC. Staff working in this area of the THO-NW drew attention to factual inaccuracies in Ms O's report and a significant number of issues that it had ignored, and were of the view that the report added nothing to the earlier DPAC report.

No conflict of interest declaration was made by Mr Austin. By procuring the consultancy services of a person with whom he shared financial and business interests, Mr Austin created an actual conflict of interest.

Although the consultancy was for marginally less than the \$10 000 threshold, and consequently Mr Austin was able to exercise discretion in relation to quotation processes, the procurement of consultancy services from his New Zealand business associate did not represent value for money (particularly with the extra expense in Ms O attending from interstate and the arguable lack of need for the report), the process was not impartial or

open and failed to encourage competition, and did not enhance opportunities for local business.

#### *Performance management from New Zealand*

Mr Austin had experience with the services of Auckland-based Ignition Training Systems Ltd (Ignition) in Whangarei, New Zealand. Ignition is a training provider in business and leadership, and had been engaged by NDHB. He considered Ignition could assist in addressing some issues – initially in relation to some behavioural problems involving some clinical staff. Mr Austin said he had no family or business connection with Ignition.

Mr Austin said that Ignition was chosen by a clinician who required some form of executive coaching or mentoring.

THO-NW paid for the clinician's travel to New Zealand for meetings with these consultants in Wellington and Auckland in late August 2012, at a cost of **\$2 644.73**.

However, this was not the only work Ignition performed for THO-NW.

Ignition invoices, approved for payment by Mr Austin, show that the principals of Ignition travelled to the North West coast as consultants for THO-NW on a number of occasions. They also appear to have invoiced for services undertaken for the THO-NW whilst they were in New Zealand.

The cost of Ignition's consultancy services between October 2012 and November 2013 (across a range of activities such as strategic planning, training, and coaching) totalled **\$48 063.66**. This increases to **\$52 172.72** when the clinician's travel to New Zealand in August 2012 and December 2012 is included.

There is no evidence of any quotations being sought by Mr Austin or any other THO-NW staff member, and no evidence of approvals by the Secretary of the DHHS for direct/limited sourcing in accordance with relevant requirements.

This consultancy – at a cost exceeding \$50 000 over 12 months – does not comply with procurement requirements in relation to value for money, open and effective competition, and enhancing opportunities for local business.

Prior to the most recent trip to the North West coast by Ignition, Mr Austin's wife emailed one of the principals (and copied in Mr Austin) requesting that he spend some time assisting Mr Austin's, son Mr A.

Mr Austin gave evidence that the planned meeting regarding his son did not eventuate, but it suggests a closer than purely business relationship existed between Mr Austin and the principals of Ignition.

#### *Not working Monday to Friday, but still involved*

Whilst finalising negotiations regarding his appointment as CEO THO-NW, Mr Austin and the Director of DPAC's Executive Division engaged in email communications in relation to Mr Austin's business interests in New Zealand. This is because the terms of his appointment prohibit Mr Austin from holding any position of profit or engaging in any activity for reward

outside the duties of CEO without approval. This was also a condition of his appointment as Director of Finance, NWAHS.

Mr Austin advised DPAC that:

As discussed I am a partner in the New Zealand accounting firm Austin's and Associates. I no longer work in the business which only trades in New Zealand, but I would prefer to stay on as a partner. I seek permission for this to continue.

This was approved in December 2012.

Mr Austin's advice given to DPAC about his business interests in New Zealand is misleading. He is not a partner in Austin & Associates, he is the sole operator.

A company extract from the New Zealand Companies Office lists Mr Austin as the sole director. Mr Austin holds 52% of shareholdings of Austin & Associates, with his wife Ms I holding 24%, and Mr Jed Beney holding 24%.

Mr Austin's email communications clearly indicate that although he employs Mr Beney as an associate in the Whangarei office of Austin & Associates, Mr Austin maintains control of the firm's decision making. A large number of emails between Mr Austin and Mr Beney – in the period 2010 to 2013 – show that Mr Beney does not make any decisions of significance without communicating with Mr Austin. Austin & Associates is clearly Mr Austin's business, despite his being based in Tasmania since 2010.

Mr Austin's explanation of this advice to DPAC was that he was just trying to convey that he did not 'work in the business Monday to Friday', his involvement is 'tiny', but that he was 'the figurehead'.

The misleading nature of the advice given to DPAC is significant given that the investigation has revealed that New Zealand clients and business/financial associates of Mr Austin and his firm have been employed by THO-NW (Dr P), and have been the providers of consultancy services procured by THO-NW (Ms O, Uber Limited). These recruitments and consultancies were very much driven by Mr Austin.

## Culture

Any organisation is defined by its culture, and an organisation's values will define what is important and how things will be done. A good workplace culture which promotes the values, code of conduct and principles of the State Service can improve morale, boost productivity, and improve an organisation's reputation with the community, suppliers and its own employees. Equally, an organisation whose leaders consistently breach the principles, code of conduct and applicable policies, and who demonstrate inappropriate and improper conduct, risks producing a workplace culture that fails to implement or even understand the principles.

This investigation revealed numerous and repeated breaches of policy and inappropriate and improper conduct by officers and employees in the health organisations which were the subject of the investigation (now THO-NW and THO-S). It is evident that the employees and officers concerned failed to comply with the policies and principles to any extent that might have been considered reasonable to undertake their duties. In some instances, from information gained across numerous interviews, it is clear to the Commission that some employees considered there to be nothing inappropriate in conduct that was otherwise contrary to applicable policy. In some instances, it wasn't until matters were put to them by the Commission that those employees actually turned their mind to the appropriateness of their actions.

Moreover, the failure to comply with policies and procedures which ought to have been easily identifiable by managers was actually instigated by those same managers, to the extent that a culture was created where, even when employees had concerns about the integrity of management actions, they did not report those concerns.

Further, the culture had eroded so significantly in THO-NW that, to the Commission's knowledge, no employee thought to raise the issue of members of Mr Austin's family or obvious associates being employed or directed by him (even though employees have told the Commission that the situation made them uncomfortable). The presence of New Zealanders in such a small regional workplace was clearly noticed but not followed up or questioned.

It is significant that with all the warning signs that were obvious in the NWAHS and later THO-NW over a period of years, it took a member of the public to complain to the Commission, rather than any staff members who, if the ethical culture had been healthy, could have been expected to have 'raised the alarm'.

Further, the culture became one of spin and cover-up. As the report notes, there were occasions when the media raised legitimate (and as is revealed by this investigation) accurate inquiries about matters of concern. The reaction of both organisations was to seek to deflect the media inquiries with untruthful or misleading information. Both the CEOs gave direct input to these media responses; both clearly endorsed this approach of deflection and less than accurate response.

## Outcomes of the investigation

### Role of the Board of the Integrity Commission

Under s 58 of the Act, the Board may refer a report of an investigation and any information obtained to various persons and entities. The Board may also make recommendations for action. The Board considers it is important that its recommendations are directed towards improving policies, practices and procedures to prevent a recurrence of any misconduct or to address any failure of governance that an investigation has identified.

Under the Act, only an Integrity Tribunal may make a finding that misconduct has occurred or may recommend a sanction. Nevertheless the Board considers its views about the conduct of the public officers investigated are useful to the relevant decision maker.

### Decisions of the Board

On 21 May 2014, the Board made decisions about:

- referral of the investigation report to the Premier and the Auditor-General for action and follow up on outstanding matters;
- misconduct prevention recommendations to the Premier and Auditor-General; and
- providing information to Worksafe Tasmania about the removal of asbestos, for its further investigation.

#### A. Observations in respect of individual officers

The Board views the conduct of the subject officers occupying the position of Heads of Agency – Ms Holden and Mr Austin – as revealed in the report of the investigation, with both concern and disappointment. It should go without saying that a person in such a position is required to set the highest standard of ethical conduct, not only because as leader they set the tone for the ethical culture of their agency, but by virtue of their breadth of authority, in practice there is no-one (except in the case of the THOs, the Governing Council which did not detect any of the conduct dealt with in this report) over-sighting or supervising their conduct. The Board is of the view that the behaviour of both officers fell below the standard which is expected of a Head of Agency.

In respect of Ms Jane Holden – the Board is of the view that it is open to conclude on the evidence that she engaged in misconduct within the meaning of the Integrity Commission Act in that she failed to comply with the code of conduct applicable to her under the *State Service Act 2000* (the State Service Act).

In respect of Mr Gavin Austin – the Board is of the view that it is open to conclude on the evidence that he engaged in misconduct within the meaning of the Integrity Commission Act in that he failed to comply with the code of conduct applicable to him under the State Service Act.

The Board made observations about other employees who have not been named in this report.

The Board required the Premier to notify it:

- within one month, of his actions in relation to the report, in particular in relation to the Board's observations and recommendations as made to him; and
- within six months, of any further actions he takes in relation to the report and in relation to the Board's observations and recommendations as made to him.

#### **B. Misconduct prevention recommendations**

The current requirements in the State Service code of conduct (and the recommendations in recruitment guidelines such as Right Person, Right Job) to declare conflicts of interest are not working. In the Board's view, this is at least partly because officers do not recognise a relationship as giving rise to a conflict (as was evident in some of the matters raised in this investigation), or because of a reluctance by officers to identify a relationship as constituting a conflict.

In 2013, the Commission conducted another investigation into allegations of misconduct in recruitment in an area of the Department of Health and Human Services unconnected with this investigation. As with this investigation, conflict of interest was at the heart of that matter. The Board recommended (via correspondence in early January 2014 with the then Secretary of the Department of Premier and Cabinet) that a mandated process of declaration of knowledge or association be established in State Service selection processes.

The Board did not receive a response from the Secretary of DPAC to its earlier recommendation.

#### **Recommendation to the Premier**

1. A mandated process should be established for the whole of the State Service whereby individuals involved in the recruitment and selection of staff (particularly those on selection panels) should in each case declare, in writing, their knowledge of, or association with every applicant. Where an actual, possible or perceived conflict of interest is identified, then an appropriate strategy to manage that conflict should be implemented and documented.

The use of 'local arrangements' to increase remuneration to employees is not authorised by applicable policies. Evidence obtained in the investigation suggests that the instances of this practice, dealt with in the report, are not isolated.

#### **Recommendation to the Auditor-General**

2. The Auditor-General should consider conducting an audit of the remuneration provided to staff in (former) NWAHS and THO-NW over at least the period covered by this investigation to ascertain the extent of any further 'local arrangements'.

If, as was contended by Mr Austin, additional remuneration is required to attract and retain staff in the North-West, then the level and availability of such remuneration needs to be clear and open to prospective applicants and be an accountable use of public monies.

**Recommendation to the Premier**

3. Consideration should be given to reviewing the remuneration arrangements offered to State Service employees (particularly those with special skills) in regional areas.

There are clearly deficiencies in the process by which outside interests of senior officers of the State Service are regulated. Such outside interests are an obvious source of conflict of interest.

Other jurisdictions (e.g. Victoria, Queensland and the Commonwealth) adopt an approach of requiring senior officers to declare all outside interests and associations whether pecuniary or not, on an annual basis. This allows the relevant supervisor to then make the decision about whether the interest or association constitutes a conflict of interest and to ensure that arrangements are put in place to avoid or manage the conflict.

**Recommendation to the Premier**

4. All Heads of Agency and Senior Executive Officers should be required to declare all outside interests and associations whether pecuniary or not, on an annual basis.

This investigation showed significant non-compliance with various procurement requirements. Of particular concern was the splitting of significant procurements into parts of less than \$10 000 so that a competitive approach to the market could be avoided. Since the completion of the investigation, the threshold has been lifted under the relevant procurement guidelines to \$50 000 but the principle is still applicable.

**Recommendations to the Premier**

5. Establish a means whereby agencies can 'flag' payments to single entities in a financial year that exceed \$50 000 to alert decision makers to the need to consider an approach to the market.
6. Information about the value of contracts and consultancies greater than \$50 000 in any agency should be published in the Government Gazette.

**Recommendations to the Auditor-General**

7. The Auditor-General consider how his office might be able to identify such procurements for examination in its annual audit of agencies' financial statements.

It is concerning that a person entrusted with the obligations of an SES Finance Director or a Head of Agency should have so little understanding of, interest in, or commitment to, compliance with applicable policies, practices and procedures as is evidenced in the investigator's report. A constant theme in 'explanations' offered by Ms Holden and Mr Austin was that they relied on their subordinates' knowledge and/or compliance with processes. Such explanations are not acceptable. Nevertheless, it is true that there does not appear to be any formal induction for Tasmanian Heads of Agency – which would be particularly relevant when they are recruited from outside the jurisdiction. While a process of formal induction could not comprehensively brief a Head of Agency on all of the relevant policies, practices and procedures and their obligations, it would at least rebut any assertions that 'they were never told' and it could alert them to, at least, the basic requirements.

**Recommendation to the Premier**

8. All new Heads of Agencies should be required to undertake an induction covering the mandatory policies practices and procedures applicable to their agency.

The Board is aware that the Auditor-General is currently conducting an audit of recruitment practices in the State Service. Whatever the findings of that audit, it is clear from this investigation (and the Commission's earlier DHHS investigation referred to) that record keeping in respect of recruitment (at least at DHHS and THO-NW) is manifestly inadequate. In THO-NW particularly, and at THO-South, the investigation also revealed non-compliance with basic requirements such as recruitment to be on merit, conducted transparently and honestly.

The investigation could not examine a great range of recruitment files from THO-NW but most of those that it did look at revealed significant deficiencies. It seems unlikely that these are isolated incidents of poor practice. The Board's recommendation to the Premier below is one he may care to raise with the Auditor-General or address by other means.

**Recommendation to the Premier**

9. An audit should be undertaken of all recruitments at THO-NW since its inception and that consideration be given to at least a sample audit of NWAHS recruitments over a longer period.

The Board is not aware of any training that is provided to or required of members of selection panels. It understands that this is a matter that will be addressed in the audit by the Auditor-General.

**Recommendation to the Premier**

10. Agencies should be required to ensure that staff who participate in recruitment actions have sufficient knowledge of relevant legislation, policies and guidelines and that this is recorded.

It appears that the Governing Councils for the THOs concerned have not been able to assert an adequate level of oversight of their CEOs – particularly in relation to compliance with relevant and applicable State Service policies, practices and procedures.

**Recommendation to the Premier**

11. It is recommended that consideration be given to reviewing the governance arrangements for the THOs in order to ensure that they are sufficiently robust and capable of ensuring that the CEOs are managing the THOs in accordance with all requirements.

## Attachment

<b>Cost of non-compliance</b>	<b>\$</b>
Austin consultancy 2009	8 494
Initial rent assistance to Austin	14 820
Contractor's payments (Holden's husband)	197 681
Additional rent assistance to Austin	25 080
Payments to Skilled Group (Austin's son)	105 135
Mr L consultancy	5 054
Payments to Dr P	42 313
Uber consultancy (not including NZD payments)	9 634
Ignition Ltd consultancy	48 063
Ms O consultancy	9 555
Rent and vehicle payments Ms T (first two years)	<u>76 400</u>
<b>Total</b>	<b><u>542 229</u></b>





INTEGRITY  
COMMISSION

