



OmbudsmanSA

## Redacted Report

Full investigation pursuant to referral under  
section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012*

Public Authority	Department of Planning, Transport and Infrastructure
Public Officer	Mr Michael Deegan Ms Julienne TePohe
Ombudsman reference	2018/04050
ICAC reference	2018/003111
Date of referral	5 April 2018
Issues	<ol style="list-style-type: none"><li>1. Whether former Chief Executive Mr Michael Deegan committed misconduct in public administration by determining an internal review under the <i>Freedom of Information Act 1991</i> in respect of a request for information concerning his own meals, entertainment and purchase card expenditure</li><li>2. Whether the Department of Planning, Transport and Infrastructure's practice of funding the purchase of meals, drinks and entertainment by the former Chief Executive amounted to maladministration in public administration</li><li>3. Whether former Chief Executive Mr Michael Deegan committed misconduct and/or maladministration in public administration by making inappropriate use of public funds to purchase meals, drinks and entertainment</li><li>4. Whether Chief Corporate Officer Ms Julienne TePohe committed misconduct and/or maladministration by approving inappropriate purchase card transactions incurred by the former Chief Executive</li></ol>

## Jurisdiction

This matter was referred to the Ombudsman by the Commissioner pursuant to section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012* (**the ICAC Act**), as raising potential issues of misconduct and maladministration within the meaning of that Act (**the referral**).

Section 14B of the Ombudsman Act provides:

### 14B—Referral of matter by OPI or ICAC

- (1) If a matter is referred to the Ombudsman under the ICAC Act, the matter—
- (a) will be taken to relate to administrative acts for the purposes of this Act; and
  - (b) must be dealt with under this Act as if a complaint had been made under this Act and—
    - (i) if the matter was the subject of a complaint or report under the ICAC Act—  
—as if the person who made the complaint or report under that Act was the Complainant under this Act; or
    - (ii) if the matter was assessed under that Act after being identified by the Commissioner acting on the Commissioner's own initiative or by the Commissioner or the Office in the course of performing functions under any Act—as if the Commissioner was the complainant under this Act.
- (2) In this section—

**Commissioner** means the person holding or acting in the office of the Independent Commissioner Against Corruption under the ICAC Act;

**ICAC Act** means Independent Commissioner Against Corruption Act 2012;

**Office** means the Office for Public Integrity under the ICAC Act.

The referral gives rise to the following issues:

- whether Mr Michael Deegan committed misconduct in public administration by determining an internal review under the *Freedom of Information Act 1991* (**FOI Act**) in respect of a request for information concerning his own meals and entertainment expenditure
- whether the Department of Planning, Transport and Infrastructure (**DPTI**) committed maladministration in public administration by funding the purchase of meals, drinks and entertainment by Mr Deegan
- whether Mr Deegan committed misconduct and/or maladministration in public administration by making inappropriate use of departmental funds to purchase meals, drinks and entertainment
- whether Ms Julienne TePohe committed misconduct and/or maladministration in public administration by approving the expenditure incurred by Mr Deegan.

Mr Deegan was the Chief Executive of the Department of Planning, Transport and Infrastructure during the period relevant to my investigation. He has since left that position. The terms of the referral require me to consider, inter alia, Mr Deegan's conduct during the period in which he was a public officer.<sup>1</sup>

Additionally, as a matter referred by the Commissioner is taken to relate to administrative acts for the purposes of the Ombudsman Act,<sup>2</sup> I have considered whether the issues

<sup>1</sup> Section 5(5)(d) of the ICAC Act clarifies that the ICAC Act applies to 'conduct of a person who was a public officer at the time of its occurrence but who has since ceased to be a public officer'

<sup>2</sup> Ombudsman Act, section 14B

identified by the referral give rise to any administrative errors under section 25(1) of the Ombudsman Act, using my powers under section 13(2) of the Ombudsman Act.

### Investigation

My investigation has involved:

- assessing the information relevant to the referral
- seeking a response from Ms TePohe and Mr Deegan
- seeking further information from Ms TePohe and Mr Deegan
- seeking information from the former Manager of DPTI's FOI Unit
- considering:
  - the ICAC Act
  - the Ombudsman Act
  - the FOI Act
  - the *Public Sector Act 2009*
  - the Code of Ethics for the South Australian Public Sector
  - the following DPTI policies: *DP019 – Freedom of Information*, *DP140 – Purchase Card Policy*, *DP092 – Corporate Travel and Accommodation Policy* and *DP165 – Gifts and Benefits Policy*
  - the following DPTI procedures: *OP026 – Purchase Card Transaction Management Procedure* and *PR115 – Procurement Procedure: Confidentiality and Conflict of Interest*
  - the following publications of the Commissioner for Public Sector Employment: *Commissioner for Public Sector Employment Determination 3.2: Employment Conditions – Remuneration – Allowances and Reimbursements* and *Commissioner for Public Sector Employment Guideline: Gifts and Benefits*
  - the Office for the Public Sector publication: *Reward and Recognition for South Australian Public Sector Managers*
  - Treasurer's Instructions 8 and 12
  - ECA International travel allowance rates for the 2014 and 2016 financial years
- preparing a provisional report and providing it to the parties for comment
- preparing this report.

### Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.<sup>3</sup> It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...<sup>4</sup>

### Responses to my provisional Report

#### *Mr Deegan*

Mr Deegan responded to my provisional report by way of correspondence from his solicitor, Mr Graham Harbord, dated 20 February 2019.

<sup>3</sup> This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

<sup>4</sup> *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

Mr Deegan disagreed with my provisional views and submitted:

(...) despite your report referring to the Briginshaw test, this standard has not been met having regard to the evidence and indeed lack of evidence in relation to your findings. Furthermore, there are a number of inferences and assumptions that are made in your report, which do not form a sound basis for the ultimate findings, having regard to the seriousness of the allegations.

Mr Deegan raised various other specific issues which I have carefully considered and which I address as necessary in the body of this report.

### ***Ms TePohe***

Ms TePohe responded to my provisional report by way of an email, received by my Office on 15 February 2019.

Ms TePohe submitted:

I note that you found no misconduct and/or maladministration in my approval of the credit card transactions of Mr. Michael Deegan. In respect of your opinion that my decision in approving the expenditure was wrong, I note that although your recommendation is that there be a whole of government policy with respect to hospitality expenditure, there was no specific policy existing at that time.

Having considered both Mr Deegan and Ms TePohe's responses, my views remain as set out in my provisional report.

### ***Mr Braxton- Smith***

The current Chief Executive of DPTI, Mr Tony Braxton-Smith sought a meeting with my Office to discuss my provisional views and proposed recommendations.

Mr Braxton-Smith indicated that he did not approve of the conduct considered by my investigation. As at the time of the meeting, Mr Braxton-Smith indicated that he did not have a DPTI-issued credit card.

Mr Braxton-Smith also indicated that it would be useful if my recommendations could be more prescriptive as to the appropriate limits on hospitality and other expenses. I consider that the department is best placed to determine those limits at first instance, and, on that basis, my recommendations remain as foreshadowed in my provisional report.

## **Background**

1. Mr Deegan was employed as the Chief Executive of DPTI from approximately August 2014 to March 2018. His position was terminated following the 2018 state election. He presently resides in New South Wales.
2. Ms Julianne TePohe was employed as DPTI's Chief Corporate Officer during the period relevant to my investigation. She also held the position of Acting Chief Executive between approximately March and September 2018.

### ***Issue one - the FOI internal review***

#### ***The FOI Act***

3. The FOI Act provides that a person has a legally enforceable right to be given access to an agency's documents.<sup>5</sup>
4. DPTI is an agency for the purposes of the FOI Act.<sup>6</sup>
5. As Chief Executive, Mr Deegan was at all material times the principal officer of DPTI for the purposes of the FOI Act.<sup>7</sup>
6. Section 13 of the FOI Act provides for the process by which persons can apply for documents held by an agency. Section 14 of the Act provides that an application is to be dealt with on behalf of an agency by an accredited FOI officer as soon as practicable and no more than 30 days after it is received.
7. Section 19 of the FOI Act provides that after considering an application for access to a document an agency must determine whether to give or refuse access to the document. If an agency fails to determine an application within 30 days of receiving the application, the agency is to be taken to have determined the application by refusing access to the document to which it relates.
8. Under section 20 of the FOI Act, an agency may only refuse access to a document if:
  - it is an exempt document (exemptions are identified in Schedule 1 of the Act)
  - it is a document that is available for inspection at that or some other agency in accordance with Part 2 of the FOI Act, or in accordance with a legislative instrument other than the FOI Act
  - it is a document that is usually and currently available for purchase
  - it is a document that was not created or collated by the agency itself and genuinely forms part of library material held by the agency
  - it is a document that came into existence before 1 January 1987.
9. Section 23 of the FOI Act provides that an agency must notify the applicant of its determination of an application, including the reasons for refusing access to a document.
10. Section 29 of the FOI Act provides that a person who is aggrieved by a determination made by an agency is entitled to a review of the determination (internal review).
11. Section 29(2)(c) of the FOI Act provides that an application for internal review 'must be addressed to the principal officer of the agency.'
12. Section 29(3) of the FOI Act provides that on receiving an application for internal review, 'the agency may confirm, vary or reverse the determination under review.'

#### *The FOI application and internal review*

13. On 22 December 2016 the Hon Rob Lucas MLC made an application to DPTI under the FOI Act (the FOI application).<sup>8</sup>
14. The FOI application requested access to:

[copies of all documents that relate to a) the payment of any entertainment and meal expenses for the Chief Executive or Chief Executives from 1 January 2016 to 31 December 2016 and b) details of all transactions on the Chief Executive or Chief Executives [sic] credit card(s) from 1 January 2015 to 31 December 2016 excluding those documents already released under the Government's Proactive Disclosure Policy.

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<sup>5</sup> FOI Act, section 12.

<sup>6</sup> FOI Act, section 4(1).

<sup>7</sup> FOI Act, section 4(1).

<sup>8</sup> At the time, Mr Lucas was the Shadow Treasurer.

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15. Mr Deegan was the Chief Executive of DPTI throughout the period relevant to Mr Lucas' request. The FOI application therefore directly concerned Mr Deegan's meals, entertainment and purchase card expenditure.
16. On 8 March 2017 [REDACTED], an accredited FOI officer, wrote to Mr Lucas on behalf of DPTI (**the FOI determination**):

The period for processing your application has now passed. A determination was due on 27 January 2017. This means that the Department of Planning, Transport and Infrastructure is deemed by section 19(2)(b) of the [FOI] Act to have refused access to the documents. However, nothing prevents an agency from making a determination to release documents to you under section 19(2a).

As you may be aware, Chief Executives are required to proactively disclose a range of information on their departmental website. This includes credit card expenditure and any entertainment expenses since 2013. The relevant web link is provided below for easy reference:

[hyperlink omitted]

17. On 23 March 2017 Mr Lucas wrote to DPTI to request an internal review of the FOI determination (**the internal review**).
18. On 13 April 2017 [REDACTED] [the FOI Manager], the Manager of DPTI's FOI Unit, presented Mr Deegan with an internal review determination for settlement. In an enclosed briefing, the FOI Manager advised Mr Deegan:

The internal review is on the basis that the applicant was provided with the public link and not provided with the detail of invoices and bills of expenses.

The agency interpreted the application to be requesting the list of payments and credit card transactions and not include the invoices and bills and is upholding this interpretation on review.

It is recommended you sign the enclosed determination.

19. Mr Deegan responded to my provisional report:

[...] Mr Deegan has a clear memory that he asked that the advice contained in that note which had initially been communicated verbally to him by the FOI Manager should be put in writing so that there was a "paper trail" of the decision making process. We are instructed that he did consider the possibility that there may be a difference of view between the approach of the Department and the opinion of Mr Lucas, noting that Mr Lucas was able to apply for an external review to your office if he wished.

20. That same day, a letter was sent to Mr Lucas on the following terms (**the internal review determination**):

I have reviewed the determination on your original application and I have determined to uphold this determination. As advised in the original determination dated 8 March 2017, Chief Executives are required to proactively disclose a range of information on their departmental website [sic]. This includes credit card expenditure and any entertainment expenses since 2013. The relevant web link is provided below for easy reference:

[hyperlink omitted]

The agency interpreted the application to request the details of payments as provided in the above link. I note your internal review highlighted that no invoices were provided, the link provides a great deal of detail to any transactions [sic], the majority being for accommodation or travel. If all invoices were to be requested, then consultation with all

related parties would need to be undertaken and this would be an unreasonable use of agency's resources.

21. The internal review determination was executed by Mr Deegan in his capacity as principal officer of DPTI.
22. Mr Lucas subsequently applied to my Office for an external review of the internal review determination (although he subsequently withdrew that request). The circumstances of the external review are not relevant to this investigation.
23. The terms of the referral require me to consider whether Mr Deegan's actions in making the internal review determination were inappropriate, having regard to any actual or perceived conflict of interest arising from the terms of the FOI application.

### ***Issues two, three and four – the purchase card expenditure***

#### *The purchase card*

24. At all relevant times Mr Deegan held a DPTI-issued purchase card (the purchase card).
25. My investigation was supplied with a copy of an 'Agreement and Acknowledgement' form relating to the purchase card, executed by Mr Deegan and dated 22 December 2014 (**the acknowledgement form**).
26. The acknowledgement form relevantly provides (emphasis in original):

**I understand and agree that a South Australian Government Corporate Purchase Card is issued to me on the express understanding that I will, at all times, comply with the following conditions:**

[...]

4. I may only use the Card in accordance with Department of Planning, Transport and Infrastructure's established procurement policies and local management instructions.

[...]

I acknowledge that I have read and understood the conditions set out above which governs the issue and use of a Government Purchase card in my name.

27. At all relevant times, Ms TePohe was designated as 'Card Manager/Supervisor' in respect of Mr Deegan's use of the purchase card.

#### *The expenditure at issue*

28. My Office was supplied copies of receipts and transaction statements pertaining to Mr Deegan's meals, drinks and entertainment expenditure during the period between approximately December 2014 and December 2017.
29. All of the expenditure appears to have been approved by Ms TePohe in her capacity as 'Card Manager/Supervisor' to Mr Deegan's use of the purchase card.
30. I have summarised the expenditure in the tables below:

<b>Table 1 – Expenditure incurred in metropolitan Adelaide</b>					
<b>Date</b>	<b>Venue</b>	<b>Description on expense report</b>	<b>Amount in expense report</b>	<b>Splitting of transaction in expense report<sup>9</sup></b>	<b>Receipt amount (food/drinks)</b>
23/12/2014	Press Food and Wine	Chief Executive Meeting Over Dinner with Industry re Investment Opportunities	\$214.50	\$107.25 / \$107.25	\$214.50
12/05/2015	Rigoni's Bistro	Chief Executive – Dinner Meeting with DPTI Youth Team	\$315.70	None	\$315.70
15/07/2015	Electra House	Chief Executive – Dinner discussion re Toyoda Issue South Road	\$174.00	\$87.00 / \$87.00	\$174.00
27/10/2015	Jarmek Pty Ltd	Chief Executive – breakfast meeting with GM Project Delivery	\$24.80	None	<sup>10</sup>
29/11/2015	Gaicho's Argentinean	Chief Executive – Luke Fraser dinner	\$249.70	None	\$249.70
22/12/2015	Peel St	Lunch with Minister & Chief of Staff	\$374.00	\$249.33 / \$124.67	<sup>11</sup>
02/02/2016	Gaicho's Argentinean	Dinner with Lou Reid Assets Future Infrastructure audits	\$216.70	\$108.35 / \$108.35	\$216.70
03/02/2016	18 Leigh (Cos)	Chief Executive dinner with Paul Myers – Project Governance	\$253.83	\$115.75 / \$22.33 ('tipping') / \$115.75	\$253.83
10/02/2016	Belgian Beer Café	Chief Executive dinner with Hansen Yuncken – re safety issues	\$211.00	None	\$211.00
25/02/2016	Parlamento	Chief Executive Dinner with David Cockbain re safety audit	\$140.90	\$70.45 / \$70.45	\$140.90
01/08/2016	Adelaide Hilton Cellar Bar	Meeting between CE, Roman Garrido, Paul Myers, CPB Contractors	\$52.80	\$8.80 / \$44.00	\$52.00
25/10/2016	Mayfair Hotel	Lunch Meeting with Michael Ayers 25/10	\$112.00	\$56.00 / \$56.00	\$112.00
01/11/2016	Pranzo	Breakfast meeting – DPTI, ACC, ADVI	\$116.80	None	\$116.80
07/03/2017	Rigoni's Bistro	Breakfast meeting with Steve Ludlam re Transport Projects	\$46.40	\$23.20 / \$23.20	\$46.40
27/03/2017	Parlamento	Dinner with Safegroup	\$132.80	\$44.27 / \$88.53	\$132.80

<sup>9</sup> According to Ms TePohe, transactions are split on DPTI's expense reports in order to identify the number of public sector and non-public sector attendees for Fringe Benefits Tax reporting purposes.

<sup>10</sup> A receipt was not provided in respect of this transaction.

<sup>11</sup> A receipt was not provided in respect of this transaction.

12/04/2017	Press Food and Wine	Dinner with Lang O'Rourke & Fulton Hogan re Darlington	\$1,190.50	\$198.42 / \$992.08	\$1,190.50
29/05/2017	Insieme Restaurante	Lunch with Everard Compton	\$98.50	\$49.25 / \$49.25	\$98.50
24/07/2017	Ginza Miyako		<sup>12</sup>	NA	\$312.80
28/08/2017	Eros		<sup>13</sup>	NA	<i>Illegible</i>
07/09/2017	Press Food and Wine	Dinner with Minister Mulligan	\$247.40	\$123.70 / \$123.70	\$247.40
20/09/2017	George's on Weymouth	Dinner with Sal Petrocchio of NHVR and Emma Kokar prior to TISOC	\$140.80	\$46.93 / \$93.87	\$140.80
29/09/2017	Parlamento	Dinner with David Cockbain re SAFE, T2T, TRJ, tram projects	\$217.30	\$108.65 / \$108.65	\$217.30
04/10/2017	Insieme Restaurante	Dinner with Arthur Smith and Anne Alford re rail advice	\$262.50	\$175.00 / \$87.50	\$262.50
06/11/2017	Sean's Kitchen	Dinner with Peter Medlock & Emma Kokar re NHVR	\$332.50	\$110.83 / \$221.67	\$332.50
28/11/2017	Gondola	Meal with Pat Conlon	\$193.00	\$96.50 / \$96.50	\$193.00
18/12/2017	Jarmek Pty Ltd	Lunch meeting with Luke Fraser	\$20.00	\$10.00 / \$10.00	<sup>14</sup>
20/12/2017	George's on Weymouth	Lunch discussion re nRAH with Chris Gray and Paul Myers	\$156.00	\$104.00 / \$52.00	\$156.00

Date	Venue	Description on expense report	Amount in expense report	Splitting of transaction in expense report	Receipt amount (food/drinks)
08/10/2015	The Barn Steakhouse (Mt Gambier)	Chief Executive – Country Cabinet Meeting – Purchase of Meals	\$860.50	\$752.50 / \$107.50	\$860.00
09/10/2015	The Barn Accommodation (Mt Gambier)	Chief Executive – Country Cabinet Meeting – Meal/Incidental purchase	\$73.00	None	\$73.00
02/03/2016	Standpipe Golf Motor Inn (Port Augusta)	CE Accommodation – Country Cabinet	<sup>15</sup>	None	\$43.50
03/09/2016	United Lower Light (Lower Light)	Meal / incidentals during major storm event	\$43.20	None	\$43.20

<sup>12</sup> An expense report was not provided in respect of this transaction.

<sup>13</sup> An expense report was not provided in respect of this transaction.

<sup>14</sup> A receipt was not provided in respect of this transaction.

<sup>15</sup> The relevant expense report does not itemise food and drinks.

21/11/2016	Roxby Downs Club (Roxby Downs)	Meal at Roxby Downs – Country Cabinet	\$93.00	None	\$93.00
08/11/2016	Outback Bar and Grill (Coober Pedy)	Breakfast Coober Pedy – travel to APY Lands 8/11	\$18.50	None	\$18.50
20/11/2016	Fore Shore Motor Inn (Whyalla)	Accommodation in Whyalla for Country Cabinet	\$86.36	None	\$86.36
04/02/2017	Ellen Hotel (Port Pirie)	Dinner Port Pirie – Country Cabinet	\$376.64	\$125.55 / \$251.09	\$376.64
04/04/2017	Clare Country Club (Clare)	Accommodation & Meals for Country Cabinet	\$122.00	None	\$122.00
04/04/2017	Skillogalee (Sevenhill)	Lunch – Country Cabinet Clare	\$214.60	\$107.30 / \$107.30	\$214.60
06/06/2017	McCracken Country Club (Victor Harbor)	Accommodation – Victor Harbor Country Cabinet	<sup>16</sup>	None	\$7.50
31/10/2017	Shell Coober Pedy (Coober Pedy)	Water and supplies for drive to APY Lands from Coober Pedy	\$92.98	\$50.06 / \$42.92	\$92.98

Date	Venue	Description on expense report	Amount in expense report	Splitting of transaction in expense report	Receipt amount (food/drinks)
10/04/2015	Grand Hyatt Melbourne (Melbourne)	Chief Executive – Interstate meeting – Breakfast purchase	\$42.63	None	\$42.63
21/05/2015	Sheraton on the Park (Sydney)	Chief Executive – Interstate meetings – credit card charge for accommodation	\$14.21	None	\$14.21
30/06/2015	Sheraton on the Park (Sydney)	Chief Executive – accommodation costs for interstate meetings	<sup>17</sup>	None	\$35.00
07/07/2015	Walt and Burley (Canberra)	Chief Executive – Canberra interstate dinner meeting with Federal Govt officials (PM&C, DIRD) re road funding	\$185.00	\$46.25 / \$138.75	\$185.00
18/11/2015	Green Bean Espresso (Sydney)	Chief Executive Lunch with Client	\$53.80	None	\$53.80
23/11/2015	Seaview Indian (Portland VIC)	Chief Executive – Dinner with Minister & staff	\$175.50	None	\$175.50
04/08/2016	Mamasita (Melbourne)	Meal in Melbourne for TIC conference – CE and 1 non-government person	\$145.80	\$72.90 / \$72.90	\$145.80

<sup>16</sup> The relevant expense report does not itemise food and drinks.

<sup>17</sup> The relevant expense report does not itemise food and drinks.

05/08/2016	Pei Modern Dining (Melbourne)	Meal at TIC meeting for Chief Exec & non-government attendee	\$49.98	None	\$49.98
12/10/2016	Grand Hyatt Melbourne (Melbourne)	Incidentals – meals, telephone calls etc at ITS World Congress in Melbourne	18	None	\$69.00
03/11/2016	Crown Metropolitan Perth (Perth)	Accommodation in Perth for TIC 3/11/16	\$54.81	None	\$54.81
22/03/2017	Vibe Hotel (Darwin)	SMC Meeting Darwin – incidentals including breakfast, room service & mini bar	19	None	\$21.50
06/08/2017	Sofitel Melbourne (Melbourne)	Meals – TIC Meeting for CE and 1 non-government conference attendee	\$142.10	None	\$142.10
31/07/2017	Mercure Sydney (Sydney)		20	NA	\$58.25
17/11/2017	Eves Mercure Sydney (Sydney)	Lunch meeting with John Austen re road pricing	\$115.50	\$57.75 / \$57.75	\$115.50

Date	Venue	Description on expense report	Amount in expense report	Splitting of transaction in expense report	Receipt amount (food/drinks)
18/01/2015	Bottega Louie (Los Angeles)	Chief Executive – Overseas Travel – Meal/Incidentals costs	AUD \$376.48	None	USD \$300.00
19/01/2015	Eighteen Ten (Los Angeles)	Chief Executive – Overseas Travel – Meal expenses / Incidentals	AUD \$275.58	None	USD \$220.00
20/01/2015	Ace Hotel (Los Angeles)	Chief Executive – Overseas Travel – Accommodation Costs / Meals / Incidentals [sic]	21	None	USD \$30.00
21/01/2015	54 Mint (San Francisco)	Chief Executive – Overseas Travel – Meal / Incidentals [sic] costs	AUD \$538.70	None	USD \$420.00
22/01/2015	Intercontinental (San Francisco)	Chief Executive – Accommodation / Meals / Incidentals [sic] costs while overseas	22	None	USD \$50.00

<sup>18</sup> The relevant expense report does not itemise food and drinks.

<sup>19</sup> The relevant expense report does not itemise food and drinks.

<sup>20</sup> An expense report was not provided in respect of this transaction.

<sup>21</sup> The relevant expense report does not itemise food and drinks.

<sup>22</sup> The relevant expense report does not itemise food and drinks.

25/01/2015	Spice Market (New York City)	Chief Executive – Overseas Travel – Meals/Incidentals costs	AUD \$483.07	None	USD \$370.00
26/01/2015	Andaz (New York City)	Chief Executive – Overseas Travel – meals/incidentals costs	<sup>23</sup>	None	USD \$178.00
27/01/2015	Old Ebbitt Grill (Washington DC)	Chief Executive – Overseas Travel – Meals/Incidentals costs	AUD \$338.17	None	USD \$226.99
28/02/2015	W Hotels (Washington DC)	Chief Executive – Overseas Travel – Accommodation / Meals / Incidentals costs	<sup>24</sup>	None	USD \$457.00
29/02/2015	Zero (San Francisco)	Chief Executive – Overseas travel – meals and incidental expenditure	AUD \$499.45	None	USD \$340.00
09/08//2016	ME London (London)	Accommodation in London for travel with Minister	<sup>25</sup>	None	GBP £95.45
13/08/2016	Grill Royal (Berlin)	Dinner with Minister & Chief of Staff, Office of the Agent-General, & representatives of Berliner Verkehrsbetriebe	AUD \$1489.98 <sup>26</sup>	EUR €186.25 / €744.99 / €558.74	EUR€995.10
14/08/2016	(m)eatery (Hamburg)	Meals – Hamburg	AUD \$359.35	None	EUR €240.00

Date	Venue	Description on expense report	Receipt amount (food/drinks)
22/01/2015	Intercontinental (San Francisco)	Chief Executive – Accommodation / Meals / Incidentals [sic] costs while overseas	USD \$35.88
26/01/2015	Andaz (New York City)	Chief Executive – Overseas Travel – meals/incidentals costs	USD \$7.00
11/08/2016	Sofitel (Munich)	Accommodation Munich – Travel with Minister	EUR €4.70
12/10/2016	Grand Hyatt (Melbourne)	Incidentals – meals, telephone calls etc at ITS World Congress in Melbourne	AUD \$10.00
22/03/2017	Vibe Hotel (Darwin)	SMC Meeting Darwin – incidentals including breakfast, room service & mini bar	AUD \$19.00

<sup>23</sup> The relevant expense report does not itemise food and drinks.

<sup>24</sup> The relevant expense report does not itemise food and drinks.

<sup>25</sup> The relevant expense report does not itemise food and drinks.

<sup>26</sup> The relevant expense report bears the following notation: '\$1000AUD reimbursed by Michael Deegan to credit card. – reflects one bill – one payment. Reimbursement of state representative costs. Balance relates to external guests. [signature] Total \$1489.98 \$489.98 Entertainment \$1000.00 Other – Reimbursed'. According to Ms TePohe, the relevant reimbursement 'relates to the state government [attendees] as they were in receipt of an allowance related to these expenses.'

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06/06/2017	McCracken Country Club (Victor Harbor)	Accommodation – Victor Harbor Country Cabinet	AUD \$4.00
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31. The terms of the referral require me to consider whether DPTI's practice of funding the expenditure at issue was appropriate.
32. I am also required to consider whether Mr Deegan acted appropriately in incurring the relevant expenditure, having regard to relevant policies, determinations and other instructions.
33. I am also required to consider whether Ms TePohe acted appropriately in approving Mr Deegan's expenditure.

### Responses to my investigation

#### *Submissions from Mr Deegan*

34. Mr Deegan responded to my investigation by way of correspondence from his solicitor, Mr Graham Harbord, dated 19 September 2018.
35. Mr Deegan denied that he engaged in conduct amounting to misconduct or maladministration in public administration.

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*Concerning the internal review*

36. Mr Deegan denied that he had an actual or potential conflict of interest in respect of the internal review requested by Mr Lucas.
37. Mr Deegan denied that he engaged in conduct amounting to misconduct or maladministration in public administration.
38. Mr Deegan submitted:

Mr Deegan was the “principal officer” under the FOI Act for DPTI. It was his obligation to execute the response as the principal officer of DPTI, for the purposes of the FOI Act.

The request for information from Mr Lucas concerned our client’s expenses. The Government policy was that the Chief Executive Officers proactively disclose their expenses and Mr Deegan complied with that policy.

Mr Deegan acted on advice from departmental officers in providing a response to Mr Lucas. He also provided Mr Lucas with his rights of appeal. Mr Lucas executed his right to request an external review, which had been advised to him.

[...]

Mr Deegan recalls that he did canvas the issue of the potential conflict of interest with the FOI team. He was advised however that this was a matter of departmental policy concerning expenditure on credit cards. Our client believes that that advice is recorded in a memo or memos to him and that they may have been signed by Ms Gillian [sic] TePohe and the FOI Manager. We are instructed that our client accepted that advice.

39. Mr Deegan otherwise provided an account of his and DPTI’s usual practices in respect of requests for internal review under the FOI Act:

The normal process for dealing with an FOI request was that the FOI team within the Department would prepare advice on all internal reviews. Our client’s recollection is that he accepted their advice on all occasions, including on the request in issue from Mr Lucas. We are instructed that Mr Deegan would meet regularly with the FOI team so that they could generally keep him informed of their workload, which was significant.

*Concerning his purchase card expenditure*

40. Mr Deegan submitted that he is no longer employed by the South Australian government and that it was therefore very difficult for him to respond to my queries concerning the expenditure at issue.
41. Mr Deegan submitted:

[A]s Chief Executive Officer of DPTI our client was involved in many meetings and dinners outside of normal hours. It was his usual practice to pay for meals and related expenses, rather than contractors and third parties paying for such expenses. This was so as to avoid any real or perceived conflict of interest. Inevitably, these dinners would have been meetings discussing significant project issues and related matters such as safety etc. We are instructed that rarely did our client consume alcohol at such events given his other responsibilities, but from time to time other participants in the dinners may have had a glass of wine with their meal, and that would form part of the bill. We are instructed that all the matters referred to in your letter, as far our client can reasonably ascertain, were work related.

Our client understands that guidelines issued by ICAC do make clear that public servants should not accept hospitality from those in contractual relationships with the department, and more broadly so. As Mr Deegan was the Chief Executive Officer for a major Government department with extensive procurement, project and contract management responsibility, he closely observed the appropriate policies and also did so as a matter of his own ethical understanding of issues involving conflict of interest. The meetings for

business and other interstate Government agencies invariably involved Senior Executives, Chief Executive Officers and Chairpersons from banks, construction and related companies etc. Most of these people operate from interstate offices and as a result of the work loads and work hours of various parties, this did require extensive out of hours meetings.

42. Concerning the expenditure at issue, Mr Deegan submitted:
- 32 of the transactions fell into the category of ‘dinner and meetings with third parties, dealing with work matters’
  - three of the transactions ‘involved expenses incurred whilst [he] was travelling in the course of his duties’
  - 30 transactions involved ‘meals paid for when attending country cabinet, ministerial discussions and internal department matters’.<sup>27</sup>

43. In respect of Mr Deegan’s purchases from hotel minibars, it was submitted:

[O]n occasion if our client was very hungry he may have consumed something from the mini bar because had missed lunch and/or dinner. [...] If there is any amount [...] mistakenly claimed by Mr Deegan, then he is very willing to reimburse the department.

44. Mr Deegan otherwise addressed two transactions that were specifically highlighted in my notice of investigation:

Our client recalls [...] a payment in Mount Gambier [i.e. the \$860.50 spent at the Barn Steakhouse] when the Minister or Ministers attending had left their own credit card in their rooms. At a number of functions with the Ministers and other guests, including when overseas, our client paid the bill as being the responsible Departmental Head.

Mr Deegan recalls that the Youth function at Rigoni’s on 12 May 2015 [i.e. the \$315.70 meeting involving the ‘DPTI Youth team’] was part of an initiative of our client to meet with young people in the department and encourage them to become more involved in the department and the whole public sector. Our client recalls that this meal was one of the launching events for that initiative, with about 15 to 20 Departmental Officers being present.

45. Mr Deegan otherwise submitted:

Mr Deegan was scrupulous in ensuring that all expenses submitted by him were properly accounted for and in relation to his role as Departmental Head. His usual practice was to submit his expenditure to relevant officers for checking and approval. As far as our client can recall, there were no cases where the relevant officers raised any queries or requested any changes.

### ***Submissions from Ms TePohe***

46. My investigation requested that Ms TePohe respond to the issues raised by the referral, both in her capacity as then-principal officer of DPTI and, in respect of the approval of the expenditure, as to the question of her own conduct.
47. Ms TePohe provided written submissions to my investigation by way of an undated letter, received by my Office on 19 May 2018, and by way of subsequent correspondence dated 15 November 2018.

<sup>27</sup> One transaction, being the 21 November 2016 purchase from the Roxby Downs Club, was included in the first and third categories.

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*Concerning the internal review*

48. In regard to DPTI's ordinary practices in respect of applications for internal review under the FOI Act, Ms TePohe submitted:

Our usual practice is to engage FOI officers, who were not involved in the original FOI application, to draft determinations relating to s29(3) of the FOI Act ('internal reviews'). These review determinations are then considered and executed by the Principal FOI Officer.

The Chief Executive occupies the position of the Principal FOI Officer. Only in exceptional circumstances where the Principal FOI Officer is not available would an Accredited FOI Officer execute the internal review determination.

We note in the matter you are reviewing you draw attention to what you may consider to be a perceived conflict of interest. We are updating an internal review policy to address matters of perceived conflicts of interest for the Principal FOI Officer.

49. As to her understanding of how Mr Deegan came to execute the internal review in respect of Mr Lucas' application, Ms TePohe submitted:

As mentioned above, under usual practice at the time, Mr Deegan would have executed such an internal review in his role as the department's Principal FOI Officer. The former internal review practice did not consider conflicts of interest at the drafting stage, so these were not noted or declared on execution.

Mr Deegan was provided with a briefing [...] giving the background of the application and reasoning behind the internal review decision. This was provided to him at the time his signature was requested.

Mr Deegan was verbally briefed on the external review as matters arose. This involved some conversations regarding timelines to provide information to your office and the agency resources required to achieve this.

50. Ms TePohe supplied my investigation with an 'updated draft' policy relating to the determination of applications under the FOI Act, *DPXXX – Freedom of Information (FOI) Policy*, together with a draft procedure, *Responding to a Freedom of Information (FOI) application for Internal Review*. I infer that both documents were developed following the commencement of my investigation.
51. Ms TePohe also supplied my investigation with a draft policy relating to conflicts of interest: *DPXXX – Conflicts of Interest Policy*. Ms TePohe advised that DPTI commenced development of this policy prior to receiving notice of my investigation. Ms TePohe confirmed that DPTI did not have in place a policy specific to conflicts of interest during the period relevant to my investigation. In this regard, Ms TePohe referred my investigation to the Code of Ethics for the South Australian Public Sector.
52. Ms TePohe advised that DPTI did not retain a copy of a memo consistent with Mr Deegan's submissions to my investigation (i.e. pertaining to the potential conflict of interest). Ms TePohe stated that she had 'no recollection' of preparing or signing such a document and 'no specific recollection' of speaking with Mr Deegan about a potential conflict of interest arising from Mr Lucas' request.
53. Ms TePohe submitted that she 'would often discuss a range of matters with Mr Deegan who was passionate about controlling conflicts of interest.'
54. Ms TePohe otherwise volunteered that the right of external review to my Office under the FOI Act might provide 'mitigation to potential conflicts of interest and therefore the suggested issue of misconduct on the part of Mr Deegan'.

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*Concerning Mr Deegan's expenditure*

55. Ms TePohe submitted that she commenced the role of 'Manager/Supervisor' in respect of the purchase card following Mr Deegan's appointment as Chief Executive. Ms TePohe submitted that she was not required to execute an acknowledgement form and 'was not provided with any explanatory material other than [DPTI's] purchase card policy.'

56. Ms TePohe described the role as follows:

My responsibilities within this role were to provide approval for coding and administrative purposes to transactions already incurred and authorised by the department's previous Chief Executive in their capacity as DPTI's most senior staff member and most senior procurement authority.

My responsibilities in this role included:

- Ensuring appropriate supporting documentation was attached to each transaction in accordance with Treasurers [sic] Instruction 12
- In line with OP026 (DPTI's Purchase Card Transaction Management procedure) ensuring:
  - Transactions are in line with the department's Purchase Card Policy-DP140
  - Checking that the correct codes have been used, particularly Tax Codes, and that the description in ProMaster reflects the Tax Invoice accurately
  - Ensuring that the transaction to be approved has sufficient information which reflects and clarifies the purpose and description of the purchase.

57. Ms TePohe submitted that from 'time to time [she] had discussions with Mr Deegan, or his administrative staff, to clarify his transactions.'

58. Ms TePohe adverted to Mr Deegan's obligations as cardholder:

It is important to note that Mr Deegan, as the Chief Executive, had the highest authority in the department and his actions in the use of the purchase card gave effect to the actual approval of a transaction. On occasion, I may have discussed with Mr Deegan his transactions to clarify the purpose of the transaction. I do not recall having declined the administrative approval of Mr Deegan's transactions after seeking clarification from him.

Further, I understood that in line with [the Purchase Card Policy] Cardholders are personally responsible for all transactions of goods and services on the Purchase Card issued to them and that Cardholders are authorised to use the Purchase Card to purchase goods or services required to carry out their departmental duties and for no other purpose. Mr Deegan, as with all departmental cardholders, exercised his own judgement at the time of incurring each transaction.

59. Ms TePohe denied that she engaged in conduct amounting to misconduct or maladministration in public administration in approving any of Mr Deegan's expenditure, submitting:

I have administratively approved the processing of transactions that were in accordance with departmental policies and procedures. The former Chief Executive provided approval of the transactions that were incurred at the time of the expenditure. Importantly, the transactions were in accordance with departmental policy[.]

60. Ms TePohe addressed several transactions that were specifically highlighted in my notice of investigation. In respect of the 12 May 2015 transaction at Rigoni's Bistro (described in the relevant expense report as a 'meeting with DPTI Youth Team'), Ms TePohe submitted:

The former Chief Executive was providing reward and recognition to 5 DPTI Youth Team members. The giving of a gift of the meal in recognition of outstanding performance was in accordance with Section 8 of DPTI's Gifts and Benefits Policy. At the time of purchase the appropriate delegate (Chief Executive), provided approval.

61. In respect of the 8 October 2015 transaction at The Barn Steakhouse in Mount Gambier (described in the relevant expense report as 'Country Cabinet – Purchase of Meals'), Ms TePohe submitted:

The former Chief Executive was conducting business activity at this meeting. As above, this purchase is covered by our department's comprehensive gifts and benefits policy. This transaction is covered by Section 5.4 "Significant Gifts and Benefits (incl. hospitality)", section 5.4. states "Offers (this includes giving in line with section 8) of significant gifts and benefits may be accepted only if it can be clearly demonstrated that the following conditions are satisfied:

- There is a legitimate business reason to DPTI for accepting/giving the gift or benefit
- A reasonable observer would not consider that the gift or benefit is given with the intention to influence
- Acceptance could not be perceived to improperly influence the worker in the future performance of their duties
- Acceptance does not create an actual, potential or perceived conflict of interest between the recipient and the giver."

Given the nature of the meal following the Country Cabinet Meeting it could be reasonably expected that Mr Deegan had a legitimate business reason to undergo the transaction in question and that, [sic] he made this determination at the time the transaction was incurred. The rationale for transactions will not always be evident to a third party not present at the time.

62. In light of the above, my investigation asked Ms TePohe to clarify whether she considered that each of the breakfast, lunch and dinner meetings referred to in the expense reports involved the provision of a gift by DPTI to the other attendees. Ms TePohe responded:

It would not be unreasonable to reach the conclusion that these transactions included legitimate gift [sic] of hospitality to attendees, however, you should confirm this conclusion with the purchaser, Mr Deegan.

63. My investigation asked Ms TePohe to identify the persons in receipt of any gift of hospitality from DPTI, the business conducted and the outcomes arising from the apparent meeting at The Barn Steakhouse on 8 October 2015. Ms TePohe responded (in full):

You should identify this question to the purchaser who was in attendance, Mr Deegan.

64. At the request of my investigation, Ms TePohe supplied my Office with an extract from DPTI's gifts and benefits registry pertaining to the period of Mr Deegan's expenditure. It does not appear from this document that Mr Deegan sought to declare any of the relevant expenditure under the Gifts and Benefits Policy.

65. In respect of the 22 January 2015 minibar purchases from the Intercontinental in San Francisco, Ms TePohe submitted:

The amount approved is within the incidentals allowance for travel to the USA during the fiscal period in question.

66. When asked to comment on the appropriateness of using public funds for the purchase of alcohol from hotel minibars, Ms TePohe submitted:

Where a transaction related to an employee entitlement by way of a meal allowance the individual is free to apply this allowance as they see fit. Outside this, the delegate (in this case the purchaser) would be best placed to provide a view.

67. When asked to identify the extent, if at all, to which she consulted the relevant DPTI policies in approving Mr Deegan's expenditure, Ms TePohe submitted (in full):

I consult policy in a range of matters to the extent necessary.

68. My investigation put to Ms TePohe eleven specific transactions, in respect of which she was requested to identify to the best of her ability:

- the persons in attendance
- any business conducted
- any outcomes arising from the discussion or meeting
- the amount spent on food and drinks consumed by Mr Deegan
- whether alcohol was purchased
- why any discussion or meeting took place in a restaurant setting
- the policy authorising the expenditure (if any).

69. Ms TePohe responded (in full):

Outside the information already provided, I cannot provide detailed advice as I was not in attendance. Such questions should be directed to Mr Deegan.

70. Ms TePohe otherwise submitted that my investigation of her conduct was misconceived (emphasis in original):

Mr Deegan exercised his own expenditure authority by virtue of the use of his government purchase card. In substance I merely exercised an administrative (not approval) process. Your assertion of '*approving the expenditure incurred by Mr Deegan*' is misleading, and to suggest an officer at a lower level approves their manager's expenditure is difficult to follow given the organisational hierarchy in place.

### ***Enquiries of the FOI Manager***

71. My investigation wrote to the FOI Manager in respect of her involvement in processing the internal review arising from the FOI application. The FOI Manager was employed as Manager of DPTI's FOI Unit during the period relevant to my investigation.
72. The FOI Manager subsequently responded by way of correspondence dated 16 November 2018.
73. The FOI Manager submitted that she had 'no specific recollections' of the internal review, 'other than that it was a routine file and one of many the DPTI FOI Unit were working through.'
74. The FOI Manager indicated that she could not recall Mr Deegan seeking her advice in respect of a potential conflict of interest arising from Mr Lucas' request and could not recall producing a memo to Mr Deegan on that subject. She advised that she could not recall any other person raising the possibility of Mr Deegan's conflict of interest.
75. The FOI Manager affirmed that DPTI's Chief Executive ordinarily executed determinations under section 29(3) of the FOI Act during the period in which she managed the FOI Unit. When asked if there were any circumstances in which such determinations were made by officers other than the Chief Executive, the FOI Manager submitted:

The Acting Chief Executive Officer was the Principal Officer if the Chief Executive was on leave.

### ***The prior audit of Mr Deegan's expenses***

76. In his response to my investigation, Mr Deegan referred to an earlier audit of his purchase card expenditure:

Prior to filing his FOI request [sic], [...] Mr Deegan, on his own initiative, requested that a full audit and reconciliation of his accounts be undertaken to ensure that they were all in appropriate order. He relied on the advice of his department in this respect.

77. Mr Deegan volunteered that this audit was conducted by two officers within DPTI's internal audit team, at the request of Ms TePohe.
78. My investigation wrote to Ms TePohe to request a copy of any report arising from the audit described by Mr Deegan. On 17 August 2018 Ms TePohe supplied my Office with a copy of an internal audit report dated 16 March 2018, entitled *Travel Allowance Review*.
79. This document provides (in full):

Internal Audit were engaged by the Office of the Chief Executive (OCE) to review the Chief Executive's (CE's) travel allowances owed for travel from August 2014 (date first travelled) to 31 January 2018.

#### **PROCESS FOLLOWED**

The following steps were taken to determine the travel allowances owed to the CE:

- Employment timeframes were confirmed with OCE and copies of the CE's travel dates and calendar extracts were provided
- Allowances owed were calculated based on rates in Section 9 of Commissioner's Determination 3.2 Employment Conditions - Remuneration - Allowances and Reimbursement requirements and conditions
- Allowances were excluded if meals were reimbursed to the CE through Bizflow or paid on corporate purchase card
- Travel dates, departure and arrival times were confirmed with OCE where unable to be determined from the information provided to Internal Audit.

#### **REVIEW OBSERVATIONS**

The review noted the following:

- Supporting documentation for Bizflow reimbursements was not always attached
- Supporting documentation for the CE's Bizflow reimbursements and Promaster purchase card transactions was not stored electronically or in a central location
- Physical folders containing the CE's Bizflow reimbursements and Promaster purchase card transactions were not labelled consistently or easy to locate
- Supporting documents were not all legible
- Supporting documents were not all stored in a logical order
- 2 instances of regional travel where costs were incurred were not disclosed in line with PC035 Proactive Disclosure of Regularly Requested Information.

#### **CONCLUSION**

From the process documented above, Internal Audit suggest the following recommendations to improve management of the CE's travel allowances:

- A register is maintained of all the CE's travel which includes dates, departure and arrival times, meal purchases and travel allowance value(s), with a review performed promptly on return from travel to determine the travel allowance owed
- Travel allowances are used as the primary method, with the corporate purchase card only used for meals where an appropriate business reason is present
- The CE's purchase card documentation is saved in a central Knet folder with adequate security restrictions as an interim measure while the Promaster upgrade occurs
- Supporting documentation is attached to all of the CE's Bizflow reimbursements and allowances
- The CE's Bizflow reimbursements are saved in a central Knet folder with the appropriate security restrictions
- Develop a process for reconciling online disclosures with calendar entries and how to disclose travel and supporting documentation online in accordance with PC035
- The CE receives a travel advance prior to international travel, and domestic allowances are paid as soon as practical after return
- Perform a monthly reconciliation of the CE's travel allowances to ensure the correct value has been paid, and disclosures have been made in line with PC035 requirements.

Internal Audit will assist in implementing the recommendations by developing a travel register template which will be provided to OCE for recording all future travel and expenditure.

80. Ms TePohe submitted to my investigation:

To clarify, a review of limited scope was conducted to determine travel allowances that may be owed to Mr Deegan in his role as Chief Executive for travel from August 2014 to January 2018.

The review considered employment timeframes and allowances owed based on rates in Commissioner's Determination 3.2. The review scope did not include assessment of the appropriateness of Mr Deegan's expenditure, the review simply made a number of recommendations to increase transparency and improve process in the management of the department's purchase cards.

81. My investigation supplied Mr Deegan with a copy of the report provided by Ms TePohe. Through his solicitor, Mr Deegan subsequently responded:

We are instructed however that Mr Deegan had asked his offices to undertake a forensic audit of his expenses before any payments were reimbursed to him. We are instructed he had been assured by Department Officers that this audit was done on a proper forensic basis in line with Government and Departmental policy. The report [supplied by Ms TePohe] simply provided an overview of recommendations to improve the assessment of claims on a Departmental wide basis.

[...]

We understand that the audit that was undertaken of our client's expenses should address each matter referred to in the transactions [the subject of the investigation]. We are instructed that our client also recalls that there was a response from Departmental Officers informing our client that he was entitled to reimbursement of approximately \$6,000 following that detailed examination.

82. In light of Mr Deegan's comments, my investigation wrote to Ms TePohe a further time to request that she undertake some further enquiries into the matter. On 3 October 2018 Ms TePohe responded:

The audit did not consider the appropriateness of any expenditure incurred as stated in the report previously provided by DPTI. The report considered the completeness and administration of record keeping for Mr Deegan's expenditure and, as stated, reviewed travel allowances owed for travel between August 2014 and 31 January 2018 where no allowance was previously provided and no corporate card was used.

A "forensic audit" was not performed and at no stage was it represented by any of my officers to Mr Deegan that a "forensic audit" was to be performed. The audit was performed at the required standard in line with the scope detailed above.

83. Notwithstanding DPTI's inability to locate a document meeting his description, I have not discounted Mr Deegan's submissions as to the purported audit in formulating my views below.

## Relevant law / policies

### *The ICAC Act*

84. Section 5(3) of the ICAC Act provides:

- (3) *Misconduct in public administration* means—
- (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
  - (b) other misconduct of a public officer while acting in his or her capacity as a public officer.

85. Section 5(4) of the ICAC Act provides:

- (4) *Maladministration in public administration*—
- (a) means—
    - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
    - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
  - (b) includes conduct resulting from impropriety, incompetence or negligence; and
  - (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

### *The FOI Act 1991*

86. Section 18(1) of the FOI Act provides:

- (18) *Agencies may refuse to deal with certain applications*—
- (1) An agency may refuse to deal with an application if it appears to the agency that the nature of the application is such that the work involved in dealing with it within the period allowed under section 14 (or within any reasonable extension of that period under section 14A) would, if carried out, substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.

### *The Public Sector Act*

87. Section 6 of the Public Sector Act provides:

## 6—Public sector code of conduct

Public sector employees must observe the public sector code of conduct.

88. Concerning the duties of Chief Executives, section 32 of the Public Sector Act relevantly provides:

### 32—Duties with respect to objects of Act and public sector principles and code of conduct

The chief executive of an administrative unit is to ensure, as far as practicable, that the objects of this Act are advanced and the public sector principles and code of conduct are observed in the management and day-to-day operations of the unit.

89. The public sector principles are identified in section 5 of the Public Sector Act, and relevantly include:

#### (4) Excellence

The public sector is to—

[...]

- manage resources effectively, prudently and in a fully accountable manner;

[...]

#### (6) Ethical behaviour and professional integrity

Public sector employees are to—

[...]

- avoid conflicts of interest, nepotism and patronage[.]

### *The Code of Ethics*

90. The professional conduct standards of the Code of Ethics for the South Australian Public Sector (**the Code of Ethics**) relevantly provide:

Public sector employees will be diligent in the discharge of their role and duties and not act in a way that is negligent.

[...]

Public sector employees shall use the Government/public resources that are the property of the Crown efficiently and only for appropriate purposes as authorised.

Public sector employees will avoid actual or potential conflicts of interest.

### *Commissioner's determinations and guidelines*

91. The Commissioner for Public Sector Employment is empowered under the Public Sector Act to issue determinations and guidelines relating to public sector employment.
92. There are two such instruments relevant to this matter: *Commissioner for Public Sector Employment Determination 3.2: Employment Conditions – Remuneration – Allowances and Reimbursements (Determination 3.2)* and *Commissioner for Public Sector Employment Guideline: Gifts and Benefits (the Gifts and Benefits Guideline)*.
93. As at December 2014, Determination 3.2 relevantly provided:

## Delegation

The Commissioner for Public Sector Employment delegates to chief executives the authority under section 16(2)(d) and (e) of the PS Act to determine matters arising from, or in relation to, this Determination, provided that the delegation must be exercised in accordance with the content of this Determination.

[...]

## 9. MEAL ALLOWANCE

Tax invoices or receipts are not required.

### *Distance Travelled within Metropolitan Adelaide*

As detailed in clause 8.2 of the SAPSSEI Award, 'employees whose headquarters are located within metropolitan Adelaide (within an 80 km radius of the CBD) will not be paid allowances for the cost of meals associated with such travel when travelling within metropolitan Adelaide.'

### *Distance Travelled within South Australia*

As detailed in clause 8.4 of the SAPSSEI Award, employees travelling within a 32km radius of their headquarters will not be paid allowances for the cost of meals associated with such travel.

### *Absent Overnight*

Employees who travel within South Australia and are absent overnight, subject to distance travelled requirements and the time of travel requirements detailed at Clause 8.4 of the SAPSSEI Award, will be paid allowances for the cost of meals at the rates set out in this section.

### *Not Absent Overnight*

Employees who travel within South Australia and are not absent from their normal place of residence overnight, subject to distance travelled requirements and the time of travel requirements detailed at Clause 8.4 of the SAPSSEI Award, will be paid an allowance for the cost of breakfast and/or dinner only, at the rates set out in this section.

### *South Australia\**

	Absent overnight	Not absent overnight
Breakfast	\$17.90 per meal	\$15.50 per meal
Lunch	\$17.90 per meal	Not applicable
Dinner	\$36.90 per meal	\$22.10 per meal

### *Interstate – subject to clause 8.4 of the SAPSSEI Award\**

	Capital Cities & Alice Springs	Other than capital cities and Alice Springs
Breakfast	\$23.45 per meal	\$17.70 per meal
Lunch	\$23.45 per meal	\$17.70 per meal
Dinner	\$42.80 per meal	\$36.45 per meal

\* Note: Where meals or accommodation, or both, are included in the cost of the travel fare, accommodation and/or conference, and/or other work related function attended is paid on behalf of an officer by the administrative unit, no reimbursement will be made for these items.

94. In December 2015, the above allowances were revised as follows:

### *South Australia*

	Absent overnight	Not absent overnight
Breakfast	\$18.10 per meal	\$15.65 per meal
Lunch	\$18.10 per meal	Not applicable
Dinner	\$37.30 per meal	\$22.35 per meal

***Interstate***

	Capital Cities & Alice Springs	Other than capital cities and Alice Springs
Breakfast	\$23.70 per meal	\$17.90 per meal
Lunch	\$23.70 per meal	\$17.90 per meal
Dinner	\$43.25 per meal	\$36.85 per meal

95. In December 2016, the allowances were further revised:

***South Australia***

	Absent overnight	Not absent overnight
Breakfast	\$18.30 per meal	\$15.85 per meal
Lunch	\$18.30 per meal	Not applicable
Dinner	\$37.75 per meal	\$22.60 per meal

***Interstate***

	Capital Cities & Alice Springs	Other than capital cities and Alice Springs
Breakfast	\$24.00 per meal	\$18.10 per meal
Lunch	\$24.00 per meal	\$18.10 per meal
Dinner	\$43.75 per meal	\$37.30 per meal

96. At all material times Determination 3.2 otherwise provided:

**APPENDIX 1 - Overseas Travel Arrangements**

Subject to the specific exclusions that follow, this Appendix imposes obligations on chief executives and other agency heads covered by this Determination with respect to overseas travel by employees and other public office holders employed in or administered by the agency they lead. The obligations apply when overseas travel is funded, including partially funded, by the Crown.

[...]

**8. OVERSEAS TRAVEL ALLOWANCES**

Accurate records of all expenditure are required, with receipts where possible, as allowances are not automatically available and need to be validated. Reimbursement of expenses incurred while overseas should be for the actual amount expended by the employee. Diary notations of incidentals are only acceptable where receipts are not available. Portfolios or individual agencies need to subscribe directly to ECA International to obtain daily travelling allowances in the currency of the country being visited. Sets of travel allowances are compiled by ECA International once a year.

Administrative units should subscribe to the executive rates of travel allowances from ECA International ([www.eca-international.com](http://www.eca-international.com)), and these should be applied to all public sector employees.

97. In this case, the following ECA International travel allowance rates are relevant:

**Financial year 2014/15**

United States of America – Los Angeles	USD\$173 total per day
United States of America – San Francisco	USD\$160 total per day
United States of America – New York	USD\$208 total per day

**Financial year 2016/17**

United Kingdom – Central London	GBP£150 total per day
Germany – Berlin	EUR€140 total per day

Germany – Hamburg

EUR€133 total per day<sup>28</sup>

98. At all material times, the Gifts and Benefits Guideline provided:

### INTRODUCTION

This Guideline is intended to assist employees and agencies of the Public Sector to determine behaviour, primarily in relation to the receipt of gifts and benefits in the course of employment activities but also in relation to the giving of gifts by public sector employees to others.

[...]

### GUIDE TO ETHICAL BEHAVIOUR

An underlying guiding principle is that employees are aware of, and meet, the expectation of the community that public sector employees act with integrity and honesty in and in connection with the conduct of their duties and their status as a public sector employee. This means that they should be impartial and not be improperly influenced by, or seek to improperly influence, others. In general this will mean that the employing agency should meet expenses associated with work activities undertaken on its behalf by its employees, and in addition not use public money inappropriately or without proper consideration.

The acceptance of any gift or benefit by public sector employees has the potential to secure the influence or favour of an employee in the performance of their duties and thus give rise to an actual, potential or perceived conflict of interest. At the extreme, it could amount to a bribe, which is a criminal offence.

It is therefore unacceptable for a public sector employee:

- under any circumstance, to accept money from any party other than a wage or salary received from their employer for the performance of their work duties;
- to solicit or accept any gift or benefit, the receipt or expectation of which does or might in any way influence, or appear to tend to influence, the employee in their official capacity;
- to offer a gift or benefit to another public sector employee; and
- for a family member or associate of a public sector employee, to accept a gift or benefit, from a third party as acceptance has the potential to result in an actual, potential or perceived conflict of interest between the role and duties of a public sector employee and their pecuniary and other personal interest.

[...]

### Hospitality

Offers of hospitality from sources outside of the South Australian public sector have the potential to cause actual, potential or perceived conflicts of interest. Agencies should consider providing information to employees that will help them make judgements over the appropriateness of accepting hospitality.

### Attendance at events

Attendance at events, such as sport or theatre can provide public sector employees with opportunities to make important business or community connections providing benefit to the work of their agency, or simply providing an opportunity to represent the agency at such events. Such attendance may be seen as more questionable when the nature of the event has an uncertain or no connection to the agency's role in the public sector or the duties or role of the public sector employee. Agencies should exercise discretion when considering acceptance of an offer as to whether it would create an actual or perceived conflict of interest. An option is for the employee to pay for the entertainment. In contrast, if the event is in fact in line with the organisation's established functions and has clear benefit to the work of their organisation or has a developmental benefit such as

<sup>28</sup> ECA International, *Travel Allowance Rates*, 2014/2015; ECA International, *Travel Allowance Rates*, 2016/2017. These are the 'senior executive service rates' listed in each schedule. The allowances are divided into individual meal rates.

attendance at seminars and breakfasts then the cost of attendance may be paid by the organisation.

It is important for public sector employees to appreciate the example they set for other employees in upholding public sector values. The more prominent the event the more important it is to be mindful of perceptions. While it may be in the interests of the agency for public sector employees to accept invitations to some events, it is not appropriate for them to accept offers of paid travel or accommodation in relation to their attendance.

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

99. The Treasurer is empowered under section 41 of the Public Finance and Audit Act 1987 to issue instructions regulating the expenditure of money by public authorities.
100. Treasurer's Instruction 8 concerns financial dealings. This instruction required that all transactions made on behalf of DPTI relate to 'expenditure [...] necessary for the conduct of the public authority'.
101. Treasurer's Instruction 12 regulates the provision and use of government-issued purchase cards.
102. At all material times, Treasurer's Instruction 12 required, inter alia, that Mr Deegan 'only use the purchase card for official purposes.'
103. Treasurer's Instruction 12 also obliged Mr Deegan as Chief Executive to 'ensure that appropriate controls and procedures are established to monitor and regulate the use of purchase cards' by DPTI employees.

### ***The OPS Guide***

104. The Office for the Public Sector maintains a best practice guide for the provision of reward and recognition within the South Australian public sector. This document recognises that it may be appropriate for managers to organise 'an event morning / afternoon tea / lunch / dinner to acknowledge and celebrate achievements'. In giving rewards or recognition, managers are reminded to ensure that their use of public funds 'can be easily justified' to the public at large.<sup>29</sup>

### ***DPTI policies***

#### ***The FOI Policy***

105. During the period relevant to my investigation, DPTI maintained a policy relating to the determination of applications under the FOI Act: *DP019 – Freedom of Information (the FOI Policy)*.
106. The FOI Policy is a very brief document. It provides (in full):

#### **PURPOSE**

The purpose of the policy is to ensure the department's obligations are met in accordance with the Freedom of Information Act 1991 (the FOI Act).

<sup>29</sup> Office for the Public Sector, *Reward and Recognition for South Australian Public Sector Managers* (March 2016), available at <<https://publicsector.sa.gov.au/wp-content/uploads/20160304-Reward-and-Recognition-Good-Practice-Guide.pdf>>, last accessed 7 January 2019.

## DEFINITIONS

**“The FOI Act”** The Freedom of Information Act 1991 provides a legal right of public access (subject to certain restrictions) to documents in the possession of Ministers, government departments and authorities, South Australian Universities, as well as Councils constituted under the *Local Government Act 1999*.

**“Agency”** under the FOI Act the department’s Minister’s Offices, the Rail Commissioner and the department are agencies.

**“Principal Officer”** is the Chief Executive Officer of the agency, or person designated by the regulations as Principal Officer of the agency. For DPTI this is the Chief Executive.

**“Accredited Freedom of Information Officer”** is the Principal Officer, or a senior officer of the Agency that has undertaken State Records FOI Accredited Officer training and been designated by the Principal Officer of the Agency.

## SCOPE

This policy applies to all divisions of the Department and the Rail Commissioner.

## POLICY STATEMENT

The department will manage FOI applications in accordance with the FOI Act and other relevant legislation and across government policy.

Process, workflow and roles and responsibilities in line with this policy are published on the department intranet.

## REFERENCES

The department Freedom of Information intranet site:

[hyperlinks omitted]

### *The Purchase Card Policy*

107. During the period relevant to my investigation, DPTI maintained a policy relating to the use of government-issued purchase cards: *DP140 – Purchase Card Policy (the Purchase Card Policy)*.
108. From May 2012 until 15 January 2016, the Purchase Card Policy relevantly provided:

#### 3.0 AUTHORISED CARD USE

Cardholders are authorised to use the Purchase card to purchase goods or services required as a function of their duties at DPTI only. Cardholders must ensure the use of the Purchase Card reflects [the] Professional Conduct Standards of the Code of Ethics for the South Australian Public Sector.

Every Cardholder must read and sign an “Agreement and Acknowledgement” form when they receive their Purchase Card. This form states Cardholder obligations and is retained by Contracting and Procurement. (Appendix 1)

Cardholders and their supervisors are responsible for ensuring that they adhere to this Purchase card policy [sic], to minimise risk of cards being used for fraudulent or corrupt purposes.

#### 4.0 UNAUTHORISED AND/OR INAPPROPRIATE CARD USAGE

The Purchase Card must not be used to purchase items for personal use or for non-work related purposes. Unauthorised and/or inappropriate card use includes, but is not limited to:

1. Items for non-Departmental purposes.
2. Items for personal use.
3. Cash or cash advances.

4. Alcoholic beverages (exemptions to this restriction may be made with prior approval from the divisional Executive Director on a case by case basis. Written approval needs to be attached to the Purchase card documentation.)
5. Travel related expenses: Meals, incidentals and expenses that are not in accordance with Commissioners Standard 3.2.
6. Duplicated claims: Purchases made using a Purchase card must not also be claimed as a reimbursement or meal allowance.
7. Fuel: Fuel cards should be used at all times [...]
8. Purchase of flowers [...]
9. Transaction splitting: Transactions may not be split i.e. requesting suppliers to split a large purchase into multiple smaller payments so as to work around transaction limits. [...]
10. Personal gain: Reward items or personal reward points (example; Fly Buys, Everyday Rewards etc) must not be accrued when making purchases.
11. Shared use: It is the Cardholder's responsibility to maintain strict care over custody and use of their card at all times. [...]
12. Indirect or third party transactions must not be used (examples; Paypal, Camtech, POLi, Securepay). [...]

#### **5.0 PENALTY FOR MISUSE OF THE PURCHASE CARD**

Authorised Departmental employees issued with a Purchase card are in a position of trust in regard to use of public funds. Improper or unauthorised use of a card may result in the Cardholder being held liable for the expenditure, criminal prosecution, and termination of the card use.

Employees who fail to comply with this policy may be liable to disciplinary action which may include termination of employment in accordance with the Public Sector Act 2009 and the Code of Ethics for the South Australian Public Sector.

A clear audit trail is provided each time a Purchase Card is used and there are a number of controls to prevent misuse.

109. The Purchase Card Policy was revised and reissued on 15 January 2016. From this date, the policy relevantly provided (emphasis in original):

#### **SCOPE**

This policy applies to all staff issued with a Purchase Card, and Managers/Supervisors responsible for reviewing and approving transactions and verifying them in the Promaster Expense Management System.

[...]

#### **RESPONSIBILITIES OF PURCHASE CARDHOLDERS [sic]**

Cardholders are personally responsible for all transactions goods [sic] and services purchases on the Purchase Card issued to them.

Cardholders are authorised to use the Purchase Card to purchase goods or services required to carry out their departmental duties and for no other purpose.

Cardholders must adhere to this Purchase Card policy, and prevent cards being used for fraudulent or corrupt purposes.

[...]

Every Cardholder must read and sign an 'Agreement and Acknowledgement' form prior to receiving their Purchase Card. This form states Cardholder obligations and is retained by the Promaster Enterprise Controller (Schedule 1).

## RESPONSIBILITIES OF APPROVING MANAGERS/SUPERVISORS

Managers must adhere to this Purchase Card Policy, and prevent Purchase Cards being used for fraudulent or corrupt purposes.

Managers/Supervisors of Cardholders are responsible for regularly reviewing and approving transactions undertaken by their staff and verified within the Promaster Expense Management System. Managers/Supervisors are responsible for taking appropriate action in instances of suspected misuse of Purchase Cards.

Approval of purchases which are not in accordance with this policy may result in Managers/Supervisors being subject to disciplinary action and/or proceedings under law.

## UNAUTHORISED AND INAPPROPRIATE CARD USE

Purchase Cards may be used for departmental business related purposes. Under no circumstances are Purchase Cards to be used for personal use or gain.

Unauthorised and inappropriate Purchase Card use includes, but is not limited to:

1. Cash advances.
2. Items for personal use, or where there may be a personal benefit or the benefit of other employees (eg: club memberships, corporate memberships in an individual's name, licences and registrations).
3. Accrual of personal reward points (eg: Frequent Flyers, Fly Buys, Everyday Rewards etc).
4. Entertainment expenses that are not work related or part of an employee's official duties.
5. Meals, incidentals and travel expenses that are not in accordance with Commissioners [sic] Standard 3.2.
6. Duplicated travel or allowance claims – purchases made using a Purchase Card must not be claimed as a reimbursement or meal allowance.
7. Fuel for government fleet vehicles – authorised Fuel Cards must be used when purchasing fuel for government vehicles (exemptions to this restriction may only be made in extreme circumstances.)
8. Split transactions – Purchase card transactions must be limited to the Cardholder's transaction limit
9. Repeated transactions for the same requirements with the same company in order to avoid authorisation limits.
10. Use of more than one Purchase Card for the same requirements with the same company in order to avoid authorisation or transaction limits.

[...]

## PENALTY FOR MISUSE OF THE PURCHASE CARD

Authorised departmental employees issued with a Purchase Card are in a position of trust in regard to use of public funds. Improper or unauthorised use of a Purchase Card is prohibited and will result in the Cardholder being held liable for the expenditure, potential criminal prosecution, and termination of the Purchase Card use.

Employees and Managers/Supervisors who fail to comply with this Policy and its subordinate Procedures may also be liable to disciplinary action, including termination of employment in accordance with the Public Sector Act 2009 and the Code of Ethics for the South Australian Public Sector.

A clear audit trail is provided each time a Purchase Card is used and there are a number of controls (including data analytics and reporting) to prevent misuse.

110. The January 2016 revision of the Purchase Card Policy appears to have been executed by Mr Deegan in his capacity as Chief Executive.

### *The Corporate Travel Policy*

111. At all relevant times, DPTI maintained a policy in respect of corporate travel expenses: *DP092 – Corporate Travel and Accommodation Policy (the Corporate Travel Policy)*.

112. The Corporate Travel Policy relevantly provided:

#### **1. PURPOSE**

The purpose of this policy is to provide assistance in attaining the best possible outcome for work related travel for departmental employees and to provide guidance to ensure the agency meets its obligations under the Commissioners [sic] Determination 3.2, in particular Appendix – Overseas travel arrangements, and the *State Procurement Act 2004*.

#### **3. SCOPE**

This policy applies to all staff of the department.

[...]

#### **8. OVERSEAS TRAVEL**

Overseas travel is any travel outside Australasia and must be made in accordance [with the] conditions of Appendix 1 of the Commissioners [sic] Determination 3.2. [...]

##### **8.1 Overseas travel allowances**

The executive rates of travel allowances from ECA International should be applied.

Travel Allowance Rates are available from the Travel and Accommodation Intranet.

### *The Gifts and Benefits Policy*

113. At all relevant times, DPTI also had in place a policy concerning the receipt and provision of gifts by departmental employees: *DP165 – Gifts and Benefits Policy (the Gifts and Benefits Policy)*.

114. The Gifts and Benefits Policy relevantly provided (emphasis in original):

#### **1. PURPOSE**

[...]

This policy is designed to assist workers in determining behaviour in relation to the receipt of gifts, benefits, hospitality, prizes and preferential treatment in the course of employment activities. It also prescribes the policy for the provision of gifts by DPTI. This policy supplements the Code of Ethics for the South Australian Public Sector, the Commissioner for Public Sector Employment Guideline: Gifts and Benefits and the *Public Sector Act 2009*.

#### **2. SCOPE OF THE POLICY**

This policy applies to all DPTI and Rail Commissioner employees, and specifically includes contractors, subcontractors and any worker that is on-call or engaged in afterhours, casual and/or contract work on behalf of the department.

#### **3. POLICY STATEMENT**

It is the responsibility of all workers to ensure their judgement in assessing offers of gifts and benefits to ensure their official duties are performed in an impartial and objective manner.

[...]

#### **5. CATEGORIES OF GIFTS AND BENEFITS**

Offers of gifts and benefits can be categorised into one of five areas depending on their nature:

- Cash or Cash Equivalents (5.1)
- Token Gifts and Benefits (5.2)
- Basic Hospitality (5.2)
- Official Gifts and Benefits (5.3)
- Significant Gifts and Benefits (5.4)

[...]

#### *5.2 TOKEN GIFTS AND BENEFITS / BASIC HOSPITALITY*

A **token gift or benefit** is one of inconsequential or low value that is given in a circumstance where the provision of such gifts or benefits is customary. They are usually mass produced and can include pens, hats or USB drives, chocolates or flowers as thanks for presenting at an event. Usually gifts and benefits valued at over \$30 would not be considered as 'token' and would be treated in accordance with section [5.4 Significant Gifts and Benefits](#).

**Basic hospitality** may be offered to DPTI workers in relation to work-related or similar activities. It is likely to be of a modest nature and provided as a basic courtesy rather than being designed to influence. It can include working lunches of low value, sandwiches, coffee and other refreshments provided during normal work interactions.

In deciding whether to accept a token gift or benefit, or basic hospitality, a worker should consider:

- Would acceptance be perceived to have the potential to influence the performance of their duties?
- Would acceptance be perceived to create a potential conflict of interest (i.e. is there an existing or impending relationship between DPTI and the giver)?
- Does the cumulative value of token gifts or benefits received from a particular donor exceed a level that would be considered reasonable by the public?

If a worker answers yes to any of these considerations then the gift, benefit or hospitality should be declined and reported on the gifts and benefits register as detailed in [Section 7](#). Otherwise, it may be permissible to accept the offer subject to careful consideration by the worker that there could be no perception of influence in accepting the gift, benefit or hospitality.

Where token gifts and benefits or basic hospitality are accepted by workers, they do not need to be reported on the gifts and benefits register unless specifically directed by that worker's manager.

[...]

#### *5.4 SIGNIFICANT GIFTS AND BENEFITS (incl. hospitality)*

Gifts and benefits that do not fall into any of the above categories shall be treated in accordance with this provision. This is generally because the nature or value of the gift or benefit is such that it presents a greater risk that it could be perceived to influence a decision or create a conflict of interest.

Caution and careful consideration must be given to offers of significant gifts and benefits. It is DPTI's preference that these offers should be politely declined by a worker and the offer reported in the gifts and benefits register.

Offers of significant gifts and benefits may be accepted only if it can be clearly demonstrated that the following conditions are satisfied:

- There is a legitimate business reason to DPTI for accepting the gift or benefit.
- A reasonable observer would not consider that the gift or benefit is given with the intention to influence.
- Acceptance could not be perceived to improperly influence the worker in the future performance of their duties.

- Acceptance does not create an actual, potential or perceived conflict of interest between the recipient and the giver.

Where a worker has any doubt in relation to any of the above conditions, the offer should be declined.

All offers of significant gifts or benefits must be reported on the gifts and benefits register, whether accepted or declined, in accordance with the requirements of Section 7. Where accepted, the entry on register must contain sufficient details to fully support the decision to accept. Additionally, if it is reasonably considered that the gift or benefit is offered with the specific intention to influence that worker or a decision-making process, it must be reported to the Office for Public Integrity.

[...]

## 7. GIFTS AND BENEFITS REGISTER

Any offers of gifts and benefits required to be declared under Section 5 must be entered into the gifts and benefits register within 5 business days of the offer being made.

[...]

## 8. PROVISION OF GIFTS

Similar principles should be applied in relation to the giving of gifts or benefits by the department or its workers. In particular, consideration should be given that the offer does not give rise to a perception of intent to influence or a potential conflict of interest.

Written approval must be obtained from a level 2 eGADS delegate (including Directors), Chief Officer or the Chief Executive prior to the offer of a gift or benefit by, or on behalf of, DPTI.

**Whether former Chief Executive Mr Michael Deegan committed misconduct in public administration by determining an internal review under the *Freedom of Information Act 1991* in respect of a request for information concerning his own meals, entertainment and purchase card expenditure.**

115. Pursuant to section 5(3)(a) of the ICAC Act, a public officer commits misconduct in public administration through a 'contravention of a code of conduct [...] while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer'.
116. Contravention of the professional conduct standards of the Code of Ethics constitutes grounds for disciplinary action under the Public Sector Act.
117. Accordingly, I have considered whether Mr Deegan by his conduct in executing the internal review failed to 'avoid actual or potential conflicts of interest'. I have also considered whether Mr Deegan by his conduct failed to 'be diligent in the discharge of [his] role and duties.'
118. Mr Deegan has denied that he held an actual or potential conflict of interest in respect of the internal review requested by Mr Lucas. He submitted that 'it was his obligation to execute the response as the principal officer of DPTI, for the purposes of the FOI Act.'
119. Although section 29(2)(c) of the FOI Act provides that an application for internal review of a determination 'must be *addressed* to the principal officer of the agency' (my emphasis), section 29(3) of the Act does not require that the principal officer himself or herself determine the review ('*the agency* may confirm, vary or reverse the determination under review' (my emphasis)). I appreciate that this distinction may not be readily apparent on a cursory reading of the Act.

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120. In response to my provisional report, Mr Deegan referred to the fact that he was the principal officer of DPTI for the purposes of the FOI Act and on that basis any application for internal review must be responded to by the principal officer of the agency. Mr Deegan pointed out that I did not refer to any case law in support of the interpretation that section 29(3) of the FOI Act refers to “agency” and does not require the principal officer to make the decision on the internal review.
121. I consider that my interpretation of section 29(3) of the FOI Act is reasonably open to me in the absence of any case law to the contrary. There are sound policy reasons why a principal officer should not be determining an FOI application in relation to which they have a conflict of interest.
122. In my view, the circumstances were such that Mr Deegan should not have executed the internal review. The terms of the FOI application directly and exclusively concerned Mr Deegan’s own expenditure. The release of the documents to a (then) member of the Opposition had the potential to cause embarrassment to Mr Deegan. An impartial, fair-minded observer could reasonably have concluded that the internal review determination had been influenced by personal considerations. It is in my view immaterial that a right of external review also existed under the Act.
123. I am prepared to accept that Mr Deegan misunderstood his role as principal officer under the FOI Act to require that he execute the internal review.
124. Even if his interpretation of the FOI Act was correct, I consider that Mr Deegan should have declared and documented his conflict of interest in respect of the internal review. If it was in fact his understanding that the provisions of the FOI Act made his involvement unavoidable, this should also have been documented on the file.
125. Mr Deegan submitted in response to my provisional report:
- The application of Mr. Lucas was quite clear as to what it referred to. Mr Deegan did not consider he could simply ‘step aside’ from his statutory role. The fact of “documenting” an interest which was patently clear, on the face of the documents, would not have made any difference in the circumstances.
126. I do not accept that submission, and consider that a diligent officer in Mr Deegan’s position would have a practice of declaring and recording any actual or potential conflicts of interest in situations such as this so as to ensure transparency and accountability.
127. Mr Deegan has submitted that he ‘canvas [sed] the issue of the potential conflict of interest with the FOI team’ and was advised that his execution of the internal review ‘was a matter of departmental policy’. Neither Ms TePohe nor the FOI Manager were able to recall such a conversation, and there appears to be no record of any such advice being provided to Mr Deegan. Having weighed the evidence, I consider it more likely than not that Mr Deegan is mistaken as to the matter.
128. Having reviewed DPTI’s internal correspondence concerning the internal review, there is nothing to suggest that Mr Deegan actively sought to insert himself into the process or direct any particular outcome. I note that Mr Deegan’s execution of the document was consistent with DPTI’s ordinary practice during the period in question.
129. I also accept that Mr Deegan was entitled to place significant weight upon the FOI Manager’s recommendation that he execute the internal review. Nevertheless, the conflict of interest was his to declare. He held a position of responsibility under the FOI Act. By virtue of his position as Chief Executive, he was also responsible for promoting compliance with the Code of Ethics and the public sector principles within his agency.

130. In response to my provisional report, Mr Deegan noted that it can therefore be assumed that if Mr Deegan was required to delegate the decision, the obvious person receiving delegation would be the FOI Manager and it is unlikely that her decision would have been any different to the recommendation she made to Mr Deegan. I consider that little turns on that possibility for the purposes of determining whether Mr Deegan failed to avoid actual or potential conflicts of interest and acted diligently.
131. In response to my provisional report, Mr Deegan submitted:
- You note at paragraph 51 that Ms TePohe submitted that she "... would often discuss a range of matter with Mr Deegan who was passionate about controlling conflicts of interest". You further note at paragraph 52 that Mr TePohe considered that the right of external review might provide mitigation to potential conflicts of interest and therefore the suggested issue of misconduct on the part of Mr. Deegan. (...) Indeed we are instructed that Mr Deegan's notebook records that on 13 April 2017 that he did have a concern about a potential conflict of interest.
132. On balance, I am not satisfied that there is any evidence before me on which I can be satisfied that Mr Deegan sufficiently turned his mind to the potential conflict of interest arising from his involvement in the matter. This is concerning because it is the responsibility of all public officers to identify and manage such conflicts as they arise. Mr Deegan, as Chief Executive of DPTI, was responsible for promoting the observance of this requirement within the department.<sup>30</sup>
133. In response to my provisional report, Mr Deegan submitted that I had failed to consider the meaning of "misconduct" at law.
134. Mr Deegan submitted:
- Misconduct, in particular misconduct which constitutes a ground for disciplinary action, refers to an intentional decision or action to depart from accepted standards of behaviour. An error in judgement or mistake does not amount to misconduct.
135. Mr Deegan referred to the following in support of his interpretation of the definition of misconduct:
- NSW Court of Appeal decision of *Pillai v Messiter (2)* (1989) 16 NSW LR 197
  - *Michelle De Leon v Spice Temple Pty Ltd* [2010] FWA 3497
  - Regulation 1.7 of the *Fair Work Act 2009 (Cth) Regulations*.
136. I have considered those cases and the regulation and consider that they are of limited assistance in determining whether Mr Deegan breached a provision of the Code of Ethics which constitutes grounds for disciplinary action and on that basis breached section 5(3)(a) of the ICAC Act.
137. Further, it is not my role to determine whether a particular breach of the Code of Ethics is *likely* in practice to result in disciplinary action. In my view it is sufficient that the Code of Ethics makes clear that an employee who fails to comply with the professional conduct standards may be liable to disciplinary action.
138. I also note that the fact that the Code of Ethics provides that a lack of diligence or negligence will be a breach of the professional conduct standards suggests that 'misconduct' in this context is not limited to intentional acts.
139. While there are some mitigating circumstances, I am ultimately satisfied that Mr Deegan's conduct amounted to a contravention of the relevant professional conduct

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<sup>30</sup> Public Sector Act, section 32.

standards; namely, that he ‘avoid actual or potential conflicts of interest’ and ‘be diligent in the discharge of [his] role and duties.’

140. I am accordingly satisfied that Mr Deegan committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
141. I am also satisfied that Mr Deegan’s breach of the professional conduct standards amounted to a breach of section 6 of the Public Sector Act and was accordingly contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

## Opinion

I consider that Mr Michael Deegan committed misconduct in public administration by determining an internal review under the *Freedom of Information Act 1991* in respect of a request for information concerning his own meals, entertainment and purchase card expenditure.

I have identified recommendations in respect of this issue at the conclusion of this report.

### **Whether the Department of Planning, Transport and Infrastructure’s practice of funding the purchase of meals, drinks and entertainment by the former Chief Executive amounted to maladministration in public administration.**

142. Pursuant to section 5(4)(a)(i) of the ICAC Act, a public authority commits maladministration in public administration in circumstances where a practice, policy or procedure of the authority results in, *inter alia*, the substantial mismanagement of public resources.
143. In his response to my investigation, Mr Deegan separated the relevant expenditure into three broad categories:
- dinners and meetings with ‘third parties’ (which I understand to mean persons who were not public officers), for the purposes of ‘dealing with work matters’
  - expenses incurred whilst travelling on official business
  - the purchase of meals when attending ‘country cabinet, ministerial discussions and internal department matters’.
144. I have considered all of the expenditure outlined in this report in forming my views, and highlighted particularly egregious examples of expenditure as necessary.
145. Mr Deegan submitted that:
- as Chief Executive of a sizeable public authority, he was ‘involved in many meetings and dinners outside of normal hours’, which were convened to discuss ‘significant project issues and related matters’
  - it was his ‘usual practice to pay for meals and related expenses, rather than contractors and third parties’, as this would ‘avoid any real or perceived conflict of interest’
  - he ‘rarely’ consumed alcohol during these meetings, however other participants would occasionally do so.
146. I have significant concerns about the use of public funds for the purposes and in the circumstances described by Mr Deegan.
147. Mr Deegan submitted in response to my provisional report that he would be able to explain the relevant expenditure further if he had had access to his former secretary and the department’s computer files. I accept that that may be the case. That said, I

consider that I have sufficient information before me upon which to draw inferences about the department's practices.

148. Considering the first category of expenditure, I accept that the Chief Executive of a public authority such as DPTI may be required to meet with external stakeholders at times falling outside of ordinary business hours. However, this would not in itself justify the participants, including the Chief Executive, receiving a restaurant meal at taxpayer expense.
149. My investigation was not provided with an explanation as to why DPTI was unable to arrange for these meetings (the majority of which took place within the Adelaide CBD) to be conducted on government premises. This should have been the default position. If official premises were not readily available, a meeting room could have been hired by the department.
150. While it may not have been inappropriate for DPTI to have provided some catering in respect of meetings with external stakeholders necessarily occurring during lunch hours or outside of ordinary business hours, the amount spent by Mr Deegan in respect of many of the transactions appears entirely excessive.
151. By way of example, I do not consider that it was in any way appropriate that DPTI fund:
  - a \$214.50 restaurant meal between the Chief Executive and a private stakeholder (the identity of whom is not disclosed in any of the records supplied to my investigation), including more than \$100.00 spent on alcohol<sup>31</sup>
  - a \$1,190.50 restaurant meal between the Chief Executive and (apparently) five external stakeholders, including an astonishing \$664.00 spent on alcohol<sup>32</sup>
  - a \$262.50 restaurant meal between the Chief Executive, another senior DPTI representative and a private stakeholder, including approximately \$100.00 spent on alcohol.<sup>33</sup>
152. A member of the public could rightly question the public value arising from the use of departmental funds in such circumstances. In respect of these and other transactions, there was, if nothing else, the risk of an appearance of personal enrichment. While Mr Deegan strongly denies that he sought personal enrichment, and I do not express any view in that regard, I consider that I am entitled to express a view about the *risk* of such expenditure being viewed in that light.
153. In my view, the purchase of alcohol using public funds should rarely, if ever, be permitted. Having reviewed the relevant receipts and noting the number of participants in many of the cases, I am also doubtful of Mr Deegan's claim to have 'rarely consumed' alcohol during the relevant meetings. Save for in exceptional circumstances, I do not consider that it is appropriate for a public officer to consume alcohol in the performance of official functions.
154. I note Mr Deegan's submission to the effect that it was appropriate that DPTI meet the above expenses so as to 'avoid any real or perceived conflict of interest' which may have arisen from payment by the external participants. That submission is predicated on there having been no alternative venue or meeting method available to the department. It has not been contended that this was the case.
155. I am all the more concerned by DPTI's practice of funding restaurant meals between the Chief Executive and other public officers. I note, in particular, that DPTI appears to have funded at least two CBD restaurant meals between Mr Deegan and the Minister

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<sup>31</sup> Transaction dated 23 December 2014.

<sup>32</sup> Transaction dated 12 April 2017.

<sup>33</sup> Transaction dated 6 November 2017.

responsible for the department – at least one meeting of which involved the purchase of alcohol using departmental funds.

156. I also have great difficulty with many of the transactions that relate to Mr Deegan's travel on departmental business. In many cases DPTI appears to have retained insufficient information to identify whether the purchase of meals was in compliance with the allowances identified in Commissioner's Determination 3.2;<sup>34</sup> in almost all cases, the identity of those dining with Mr Deegan, their connection to DPTI and the relevance of the expenditure to the department's official functions is left wholly unexplained.<sup>35</sup>
157. Ms TePohe was unable or unwilling to identify the context for the majority of the transactions put to her by my investigation. Her assertion that the 8 October 2015 transaction (\$860.50 spent at The Barn Steakhouse) was authorised under the Gifts and Benefits Policy was nevertheless concerning. There was nothing in the records submitted by Mr Deegan to suggest that a gift had been made using DPTI funds. The transaction was not declared on the department's gifts and benefits registry. According to Mr Deegan, the other persons in attendance were all public officers; the Gifts and Benefits Guideline issued by the Commissioner for Public Sector Employment expressly forbids 'the offer of a gift or benefit to another public sector employee'.
158. Notwithstanding my request that he do so, Mr Deegan did not himself identify whether and how he considered his use of the purchase card complied with the Purchase Card Policy. He nevertheless submitted that he 'closely observed the appropriate policies' in incurring the expenditure.
159. The Purchase Card Policy in its earlier form prohibited the use of a purchase card to purchase 'items for non-departmental purposes', 'items for personal use' and 'travel related expenses'; meaning, 'meals, incidentals and expenses that are not in accordance with Commissioner's Standard 3.2.'
160. The Purchase Card Policy in this form also prohibited the purchase of alcohol without prior written approval from the 'divisional Executive Director'. How this clause was expected to apply to DPTI's senior executives is unclear. It was in any case deleted from the policy in its 2016 revision.
161. The subsequent revision to the policy also prohibited the purchase of '[e]ntertainment expenses that are not work related or part of an employee's official duties.' The term 'entertainment expenses' is not defined in the policy.
162. DPTI does not appear to have enacted any other policies specific to the purchase of meals and drinks in connection with business meetings, the provision (as opposed to acceptance) of official hospitality or entertainment, or the purchase of alcohol using departmental funds. As best I can tell, there are also no whole-of-government policies relating to these issues.
163. In my view, DPTI's policy framework was not adequate to regulate and sustain expenditure of the kind and for the purposes incurred by Mr Deegan.
164. The policies do nothing to clarify:
  - the circumstances in which DPTI may appropriately cater meetings convened during lunch hours or outside of ordinary business hours, including meetings involving other public officers

<sup>34</sup> See, e.g., documents relating to transaction dated 4 February 2017 (Ellen Hotel). It is not readily identifiable what purchases should be considered towards Mr Deegan's meal allowance.

<sup>35</sup> See, e.g., transactions dated 19 January 2015 (Bottega Louie and Eighteen Ten); 20 January 2015 (54 Mint); 25 January 2015 (Spice Market); 26 January 2016 (Andaz); 27 January 2015 (Old Ebbitt Grill); 29 February 2015 (Zero Zero), etc.

- the circumstances in which DPTI may appropriately extend official hospitality to persons contracting with the department or meeting with departmental officers in the course of official business
  - whether and in what circumstances departmental funds may be used for the purchase of alcohol.
165. In my view, the Purchase Card Policy and the associated operating procedure<sup>36</sup> are also not fit for purpose because they do not require the making and retention of the sort of records necessary to assess the validity of transactions of this kind.
166. The following information is in my view necessary for this purpose:
- details as to all persons present, including whether other attendees are public officers or external stakeholders
  - a description of the business conducted
  - sufficient justification for any costs incurred by DPTI in connection with:
    - convening a meeting outside of official premises
    - the provision of official hospitality to attendees
    - the purchase of alcohol using public funds.
167. At a minimum, it is essential that this information be recorded and retained because of the heightened risk of corruption and maladministration inherent in the practices that appear to have been adopted by the department.
168. On all of the information before me, I am of the view that DPTI's practice of funding the purchase of meals, drinks and entertainment by the former Chief Executive resulted in the substantial mismanagement of public resources, insofar as it:
- was done in the absence of sufficient justification for expenditure incurred
  - involved transactions which in many cases appear of dubious public value and in excess of reasonable community expectations
  - involved the purchase and consumption of significant quantities of alcohol, absent sufficient or any rationale
  - lacked necessary supporting documentation
  - was not subject to sufficient controls at the policy level.
169. It follows that I am of the view that DPTI committed maladministration in public administration.
170. In response to my provisional report, Mr Deegan submitted:
- Your finding [...] that DPTI's practice of funding the purchase of meals, drinks and entertainment by the former Chief Executive resulted in substantial mismanagement of public resources is an attempt by your office to retrospectively apply your own views as to appropriate policy to the Department and indeed to the Public Sector as a whole. It appears from your findings that no officer in the public sector should have a credit card to purchase meals, drinks and entertainment expenditure in the course of their duties. With respect, that is something that should be determined by the Government of the day and not by you as Ombudsman.
- Indeed it is submitted that your findings have an air of unreality in the context of the work environment in today's public sector and its dealings with the private sector, which often require out of normal hours meetings including at meal times. Senior Public Servants are not able to simply work 9am to 5pm which seems to be your assumption.
171. Mr Deegan also submitted that he would support whole of government policies relating to the issues considered in my report, and stated:

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<sup>36</sup> OP026 – Purchase Card Transaction Management Procedure.

However, it is submitted that such a policy would apply to all public office holders including the Premier and his Ministers. It is very doubtful that your apparent view that no meals, drinks or entertainment expenditure should be put on a personal credit card would be supported by any Government in the context of modern public sector business.

172. I do not accept those submissions. The ICAC Act envisages that I consider the management of financial and other resources, and it is perfectly appropriate for me to express a view in that regard. It is essential that I continue to hold public officers to a suitably high standard in the management of public resources.
173. It is not my view that no public officer should have a credit card to purchase meals, drinks and entertainment expenditure. It is my view, however, that a public officer must ensure that there are appropriate limits on such expenditure and that public officers comply with those limits. In that regard, I note that many agencies have policies and procedures which set out the circumstances in which such expenditure is appropriate. It is also my view that where, for whatever reason, such policies and procedures are not in place, a public officer in incurring such expenditure exercises their discretion appropriately, having regard to:
- the benefit (real or perceived) gained by the public from the expenditure
  - the public's expectations of government agencies
  - the appropriateness of the amount of the expenditure
  - whether the expenditure is reasonably necessary for the carrying out of the agency's functions.

### Opinion

I consider that the Department of Planning, Transport and Infrastructure's practice of funding the purchase of meals, drinks and entertainment by the former Chief Executive amounted to maladministration in public administration.

I have made recommendations to the department at the conclusion of this report.

### **Whether former Chief Executive Mr Michael Deegan committed misconduct and/or maladministration in public administration by making inappropriate use of public funds to purchase meals, drinks and entertainment.**

174. I have already expressed the view that DPTI's practice of funding the relevant expenditure amounted maladministration in public administration.
175. In these circumstances, and noting that Mr Deegan is no longer a public officer, I do not consider it necessary that I give further consideration to the question of Mr Deegan's conduct under the ICAC Act.
176. I am nevertheless of the opinion that Mr Deegan's use of the purchase card to incur the expenditure at issue was wrong, insofar as it was largely instrumental to the issue of maladministration in public administration identified above.

### Opinion

I consider that Mr Michael Deegan's use of public funds to purchase meals, drinks and entertainment was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

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**Whether Chief Corporate Officer Ms Julienne TePohe committed misconduct and/or maladministration by approving inappropriate purchase card transactions incurred by the former Chief Executive.**

177. Ms TePohe characterised her role as ‘Manager/Supervisor’ to Mr Deegan’s use of the purchase card as administrative in nature. In this regard, she sought to emphasise Mr Deegan’s authority as Chief Executive of the department. She submitted that Mr Deegan himself ‘provided approval of the transactions’; her conduct being limited to ‘administratively approv[ing] the processing of transactions that were in accordance with departmental policies and procedures.’

178. The initial version of the Purchase Card Policy was largely silent as to the role of card supervisors. The associated operating procedure provided for relatively limited responsibilities:

Each cardholder is allocated a ProMaster Supervisor who will approve the transactions in ProMaster by:

- Checking that the correct codes have been used, particularly Tax Codes, and that the description in ProMaster reflects the Tax Invoice
- Ensuring that the transaction to be approved has sufficient information which reflects the purpose and description of the purchase.
- Checking that a travel diary has been completed when travelling for 5 or more sequential days.

179. The 2016 revision to the Purchase Card Policy inserted the following text:

Managers must adhere to this Purchase Card Policy, and prevent Purchase Cards being used for fraudulent or corrupt purposes.

Managers/Supervisors of Cardholders are responsible for regularly reviewing and approving transactions undertaken by their staff and verified within the Promaster Expense Management System. Managers/Supervisors are responsible for taking appropriate action in instances of suspected misuse of Purchase Cards.

Approval of purchases which are not in accordance with this policy may result in Managers/Supervisors being subject to disciplinary action and/or proceedings under law.

180. This version of the policy was clear as to a card supervisor’s responsibility to identify and respond to suspected misuse of a purchase card.

181. In this regard, I am not persuaded by Ms TePohe’s characterisation of the role. In my view, there was a clear expectation that card supervisors scrutinise and, where appropriate, give their imprimatur to transactions incurred by the cardholder.

182. I am mindful of Ms TePohe’s submissions as to the Chief Executive’s authority within the department. Ms TePohe’s role as card supervisor to Mr Deegan was no doubt somewhat anomalous, insofar as the responsibility would ordinarily be expected to fall upon a person with authority over the cardholder. Ms TePohe was, in effect, tasked with ‘second-guessing’ decisions made by her superior. She was placed in a difficult position.

183. Nevertheless, the role of card supervisor exists as a necessary control over the use of government-issued purchase cards. It is consistent with the department’s obligation, per Treasurer’s Instruction 12, to ‘ensure that appropriate controls and procedures are established to *monitor* and regulate the use of purchase cards’ (my emphasis). It serves to limit the opportunities for corrupt behaviour or the inappropriate or wasteful use of government funds.

184. In this regard, the respective positions of the cardholder and supervisor within the department's organisational structure should be of only limited relevance. The fact of this investigation serves to demonstrate that the Chief Executive of a public authority is not immune from allegations of questionable spending. It is essential that all public officers act transparently and accountably when spending public funds and that there are appropriate checks in place to ensure that this occurs.
185. It is for this reason that I am greatly concerned by Ms TePohe's inability or unwillingness to identify the basis and circumstances for the majority of transactions that were put to her by my investigation. If the rationale for transactions was 'not always [...] evident' to her as 'a third party not present at the time', that information needed to be solicited in the course of the approval process. It is difficult to see how else Ms TePohe could meaningfully have reviewed the expenditure at issue.
186. As already observed, Ms TePohe also appears to take a somewhat idiosyncratic view of DPTI's Gifts and Benefits Policy. I very much suspect that Ms TePohe only came to link the expenditure to this policy after the approach from my investigation.
187. On the other hand, I have already noted that DPTI's policy framework largely failed to take a view in respect of the expenditure incurred by the former Chief Executive. This was therefore not a case of a clear breach of departmental policy by the cardholder.
188. The professional conduct standards require that public sector employees 'be diligent in the discharge of their role and duties and not act in a way that is negligent.'
189. Having had regard to the nature of Ms TePohe's responsibilities in respect of the purchase card, the fact of her subordination to Mr Deegan within the organisation and the overall deficiency of DPTI's policy framework, and despite my genuine concerns, I am on balance not persuaded that a conclusion of misconduct or maladministration in public administration on the part of Ms TePohe is warranted.
190. I am nevertheless of the view that Ms TePohe's approval of the transactions was wrong, both in light of the information that was available to her and owing to the inappropriate nature of the expenditure.

## Opinion

I consider that Ms Julienne TePohe's approval of purchase card transactions incurred by Mr Michael Deegan was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

## Summary and Recommendations

My final views are as follows:

1. Mr Michael Deegan committed misconduct in public administration by determining an internal review under the *Freedom of Information Act 1991* in respect of a request for information concerning his own meals, entertainment and purchase card expenditure.
2. The Department of Planning, Transport and Infrastructure's practice of funding the purchase of meals, drinks and entertainment by the former Chief Executive amounted to maladministration in public administration.
3. Mr Michael Deegan's use of public funds to purchase meals, drinks and entertainment was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

4. Ms Julienne TePohe's approval of purchase card transactions incurred by Mr Michael Deegan was wrong within the meaning of section 25(g) of the Ombudsman Act.

I make the following recommendations to the Department of Planning, Transport and Infrastructure under section 25(2) of the Ombudsman Act:

1. To the extent that this has not already occurred, that the FOI Policy be adequately amended so as to address the potential for a conflict of interest on the part of accredited FOI officers.
2. To the extent that this has not already occurred, that a suitable policy be developed and implemented in respect of the identification and management of conflicts of interest on the part of departmental officers.
3. That suitable polic(ies) be developed and implemented in respect of:
  - (a) the provision of catering and other forms of official hospitality through use of departmental funds
  - (b) out of hours meetings
  - (c) the purchase of alcohol through use of departmental funds.
4. That the Purchase Card Policy and other relevant policies be revised so as to expressly require that transactions be reasonable and publicly defensible, and to emphasise that it is the responsibility of both cardholders and card supervisors to ensure that all transactions meet this criteria.

In this and other recent investigations relating to the use of government-issued purchase cards, I have noted the lack of any whole-of-government policy relevant to the purchase of meals, drinks and alcohol using public funds. Accordingly, I make the following recommendation to the State Government:

5. That a suitable whole-of-government policy be developed and implemented in respect of the procurement (including by way of use of government-issued purchase cards) of meals, drinks (including alcohol) and other forms of entertainment through use of public funds.

In regard to recommendation 5, I intend to provide a copy of my report to the Premier, the Department of the Premier and Cabinet and the Treasurer.

### Final comment

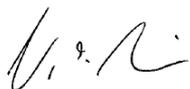
In accordance with section 25(4) of the Ombudsman Act the department should report to the Ombudsman by **27 September 2019** on what steps have been taken to give effect to recommendations 1 to 4 above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

I have also sent a copy of my report to the Minister for Transport, Infrastructure and Local Government as required by section 25(3) of the *Ombudsman Act 1972*.

I will also follow up the implementation of recommendation 5 with the Department of the Premier and Cabinet.



Wayne Lines  
**SA OMBUDSMAN**

11 June 2019