

**STANDING COMMITTEE ON
ESTIMATES AND FINANCIAL OPERATIONS**

**INQUIRY INTO WESTERN AUSTRALIAN TOURISM COMMISSION'S
INVOLVEMENT IN MAJOR TOURISM EVENTS**

Public Sector Commission

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
FRIDAY, 2 SEPTEMBER 2011**

SESSION TWO

Members

**Hon Giz Watson (Chair)
Hon Philip Gardiner (Deputy Chair)
Hon Liz Behjat
Hon Ken Travers
Hon Ljiljanna Ravlich**

Hearing commenced at 3.30 pm

WAUCHOPE, MR MALCOLM

Public Sector Commissioner, sworn and examined:

ROCHE, MS FIONA

Deputy Commissioner, Accountability, Policy and Performance, Public Sector Commission, sworn and examined:

The CHAIR: On behalf of the committee, I would like to welcome you both to the hearing this afternoon. Before we begin, I am required to ask you to either take an oath or affirmation.

[Witnesses took the oath or affirmation.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood this document:

The Witnesses: Yes.

The CHAIR: The proceedings this afternoon are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, could you please ensure you quote the full title of any document you might refer to during the course of the hearing. Please be aware of the microphones and try to speak directly into them. I remind you that your transcript will become a matter for the public record. If, for some reason, you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Also if you could note that until such time as the transcript of your public evidence is finalised, it should not be made public. This prohibition does not, however, prevent you from discussing your public evidence generally once you leave the hearing.

I invite you, if you wish, to make a statement, otherwise we will start with questions.

My first question relates to the issue of conflict of interest around Saskia Doherty. How significant was that conflict of interest matter to the external stakeholders of Tourism WA, in your view?

Mr Wauchope: The external stakeholders being people outside of the Tourism Commission?

The CHAIR: Yes.

Mr Wauchope: I would probably defer to Ms Roche to answer that; she actually made the assessment.

Ms Roche: I would not say it was a major conflict of interest. I felt it was definitely an actual conflict of interest. In terms of the level of that to external stakeholders, I think those who had a very direct knowledge of the event and perhaps a direct involvement in the event perhaps felt it was significant. Certainly there was some media reporting at the time, which suggested that there was a sense of significance to it. But in terms of conflicts of interest that we would assess and other conflict of interest cases across the public sector, I would not say that it was a significant one.

The CHAIR: One of the findings in your report was that the failure to adequately document the declaration and the management of the conflict of interest has had a negative impact on the reputation of the agency and the event itself. Could you perhaps elaborate on the extent of that negative impact?

Ms Roche: What was meant by that finding was that when there is accurate documentation, when there is a sense of transparency to issues, then when questions are raised when there is a level of

public scrutiny, then very readily explanations can be given as to why certain decisions were made and actions were taken. When there is a lack of such documentation, it tends to be more difficult to do that, so when there was a level of public scrutiny around Ms Saskia Doherty's involvement and her working for the organisers, it was much more difficult to respond quickly and readily, and explain what had happened, because there was not that documentation to assist those who had been involved. Without that, I think perhaps the department and those who were involved in having to explain it were a little bit more on the backfoot, and it did not look like it had been as thoroughly thought through as when we investigated it. It had, indeed, been thought through.

The CHAIR: So there was not documentation that backed up that?

Ms Roche: That is right.

The CHAIR: In your report you also say that Ms Doherty did not undertake any work required in these stages without others being involved, and had no delegated authority to act with referral to the Director, Event Development and Contract Management. Does this mean that after declaring a conflict of interest, Ms Doherty continued to be actively involved with advancing the funding proposal for the One Movement for Music event?

Ms Roche: Yes. What the investigation found was that, even after accepting the offer of employment, there was a period of time where she did continue to work on the festival. It was a relatively short period of about a month, I think. What we found was that there were three particular matters that she continued to have an involvement in. However, those matters were not seen as particularly significant. The actual memorandum of understanding and the main heads of agreement were well and truly signed off, and all the major funding approvals were well and truly done by then, so they tended to be not matters of significance that she worked on. I think one of the three was a briefing note, so it did not —

Hon LIZ BEHJAT: What, sorry?

Ms Roche: A briefing note to either the CEO or the minister's office. So they were not matters which were going to affect the actual arrangements of the festival, but she did indeed continue on three matters after it was known that she was going to move to work for the event organisers.

The CHAIR: And that was not considered inappropriate, in your view?

Ms Roche: That was considered inappropriate, yes. I think the report says that.

The CHAIR: It was? Okay. Were the directors of One Movement Pty Ltd interviewed with respect to the conflict of interest matter?

Ms Roche: No.

The CHAIR: I would have thought they might have been interviewed. Was it considered that they would be interviewed?

Ms Roche: No, we did not consider interviewing them. We certainly interviewed Ms Doherty, and Mr Hamilton and Mr van Ooran, who were her direct supervisors. At the time we believed we had enough information to make an assessment as to the situation.

The CHAIR: What guidance has the Public Sector Commission issued with respect to conflicts of interest?

Ms Roche: Quite a lot.

Mr Wauchope: We have actually done a lot of work in recent years around conflicts of interest, partly in conjunction with the CCC. We have used their material; they developed a lot of material a few years ago, and we encompass that in some comprehensive training around accountability and ethical decision making in the public sector. This was a program that was initiated by Alan Carpenter when he was Premier; it was really a direct response to some of the issues that had come forward through the CCC inquiries, and it was designed to embed some of the principles around

ethical decision making. A program was designed by people like Ms Roche and others in consultation with CEOs in the public sector, mainly around scenario-based training. We were trying to develop a program that did not ram black-and-white issues down people's throats; we wanted to be able to get people into a position where they could exercise judgement.

[3.40 pm]

We are trying to get them to develop skills around having judgement and to make the right sorts of decisions in an ethical way. We have been running programs since about 2007–08. We have trained pretty well every CEO now. I think about 120-odd CEOs have gone through that program. Thousands of public sector employees generally, including corporate executives, have been through this program. It is a requirement in the CEO performance agreements that they run these programs. It is one of four key requirements they have in their agreement with me. We are also doing some work with boards and committees. We have also been doing some work with the integrity coordinating group. We released major material in June this year at a forum we had that complements some of the work we have been doing previously around this as an agency within our own right. The answer is: I think we have been doing well.

Hon KEN TRAVERS: This is probably a little bit off the topic, but I think it goes to what we are talking about. If a government trading enterprise, as opposed to public sector organisations —

Mr Wauchope: Yes.

Hon KEN TRAVERS: As I understand it you have a limited role with them.

Mr Wauchope: Yes.

Hon KEN TRAVERS: What about them; are they required to follow the same standards? What happens with respect to their standards or conflicts on these matters?

Mr Wauchope: We have much less connection to them, but if they wish us to be involved in some training with them, we will do it. I think we have done it with some of the commercial boards. But I do not have a direct relationship in the sense that I am not the employing authority for the CEO and, generally speaking, in that case, the boards are. If the boards come to us and say, "Look, we want your help", yes we would provide it but we are not in a position to actually require them to undertake this.

Hon PHILIP GARDINER: On the same issue, you have had the training of your CEOs, and in this case you are not talking about a CEO; it is an officer who is interacting with the private sector. I guess a lot of public servants do that. Have you defined the procedure for what someone should do as a public service officer if they are invited to leave and go into the private sector for a company or an entity on whose project they are working with the government?

Mr Wauchope: I do not know that there is specific guidance per se. There is no specific instruction that I am aware of about separation and then taking on work in the private sector. They are covered by the code of ethics and code of conduct while they are an employee. They would also be subject to certain limitations around the Criminal Code; that is, not being able to take information they gain in a confidential way through their employment and then use that out in the private sector. I think it is section 81 or 83 of the Criminal Code, and that is a particularly hard one to stick. I suggest that, probably, that is not so much on the radar as their dealings whilst they are within government employment dealing with the people outside, so there is a fair bit of guidance around that. It is included in the training we do on how they should use official information in terms of not using it inappropriately. It can be used only in an authorised way. The focus is on them as employees rather than some future relationship they might have as ex-employees.

Hon PHILIP GARDINER: If I am working with, say, yourself as a private sector entity and we are engaging in a discussion on a particular project and the exchange is pretty open but, of course, I know what my department is thinking, which I hold to myself, but then you approach me and say

you would like to see whether you might join us, what guidance is there that you provide for me as a public service officer at that point of time that, in a way, is allied to this conflict of interest?

Mr Wauchope: If they have been offered a job?

Hon PHILIP GARDINER: Not a firm offer; just a discussion.

Mr Wauchope: I think it is covered under the code of conduct in terms of how they are supposed to behave as a public sector employee.

Hon PHILIP GARDINER: That is covered in the code?

Mr Wauchope: Each agency is required to have a code of conduct that is consistent with the code of ethics. That should give guidance on how they behave while they are a public sector employee, and that may well go to some issues about the sort of communications they have with their CEO around those types of issues. I do not know that it gets into explicit detail around what they should do in relation to getting offers from the private sector whilst they are in a position of negotiating a contract, for example. It would be covered under the general principles. Once they cease to be an employee they do not have any relationship at all.

Hon PHILIP GARDINER: As a supplementary question, can you advise us of some examples, if you like, in different departments of what procedures of guidance you have given for departments and CEOs to deal with that kind of situation?

Mr Wauchope: Yes; I will see what we have.

[Supplementary Information No B1.]

Hon LJILJANNA RAVLICH: Commissioner, I remember when we were putting through the public sector reforms last year some time, there was talk about encouraging people from the private sector to move by way of secondment into the public sector to bring with them their knowledge and expertise and vice versa. Can you advise us of what arrangements are currently in place for those people who are seconded to ensure that they behave in accordance with the public sector standards?

Mr Wauchope: Thank you member. Again it would fall within the general obligation of the CEO to ensure that people within their agency are exposed to the accountability and the ethical decision-making program; that they are inducted in a proper way so they are aware of the code and the requirements under that. In that sense they ought to be treated in the same way as any other employee. However, I make the point that there is a significant cultural difference between the private and the public sector. Certainly, when I have a new CEO coming in from outside the state public sector, I spend some additional time with them on a one-on-one basis going through the complexities of our accountability framework and, I guess, making sure they are aware of the matters they need to be across from day one. I am cognisant of that with the CEOs. I hope and expect that CEOs, when bringing people from outside the public sector into their agencies, do the same thing. In any event, they should be doing that training and the proper induction around the code of conduct.

Hon LJILJANNA RAVLICH: Is it possible to get a list of the people who have been seconded from the private sector since September 2008? It would help with the broader issue.

Mr Wauchope: It is possible in that sense that we would need to write to every agency. We would not have a central record of that.

The CHAIR: Can you say exactly what the question is?

Hon LJILJANNA RAVLICH: The question was: is it possible to get a list of people seconded from the private sector into the government sector?

The CHAIR: Across all —

Hon LJILJANNA RAVLICH: Yes.

Mr Wauchope: This is only secondments; it is not new appointments as such?

Hon LJILJANNA RAVLICH: No, no; it is just secondments.

The CHAIR: I need to discuss whether that is the kind of thing that —

Hon LJILJANNA RAVLICH: Yes, you can, but the point I am getting to is I believe that this is an emerging way in which the public sector is moving, and we have to have an understanding of just how many people we are talking about here, because it is very important to get these systems into place, particularly as those numbers grow. It may not be great; I do not know.

Hon LIZ BEHJAT: Is this not just a hearing on One Movement and WA Tourism. I did not think it was a general inquiry.

The CHAIR: Yes. I think the way to deal with this question is to discuss this after the hearing. If we do wish you to answer the question, we will send that to you with the transcript. Further questions?

Hon LIZ BEHJAT: Commissioner, in your tabled conflict of interest matter report dated 18 January 2010, there are a number of recommendations on page iv of that paper. Do you have that?

Mr Wauchope: Yes.

[3.50 pm]

Hon LIZ BEHJAT: There are five recommendations and it is recommended that Tourism WA do the following five things. I will not read through them, but we have got them there. In Monday's hearing that we held with the Tourism commission, when asked about the Public Sector Commissioner's investigation into the conflict of interest issue with respect to Ms Saskia Doherty, we asked Tourism WA whether they accepted the findings, and the answer was yes, and the extent to which Tourism WA had implemented the recommendations in the Public Sector Commissioner's report. Then the CEO, Ms Buckland, goes through the steps that were taken. From my reading of your recommendations and what they have done, they have actually done all of those things, which is really good that they have taken on board your recommendations. What I am interested in knowing is when you do make recommendations of this sort, do you automatically assume that departments will take those on board and enact all of those, or do you then go back at a later date and say, "Okay, these were the recommendations; what have you done?"

Ms Roche: We have quite recently put in place a system that does that. We have not always done it in the past and I think those are some of the things—as you know, the Public Sector Commission came into being on 1 December 2010—and we have been working through our processes. We have now very much got in place a system that when we now make recommendations, we follow up, whether it is three months or six months later, to get an update. We have done that as a matter of course on many of the investigations and work we have done, but I could not say we have done it every time. With Tourism WA, because some of the recommendations actually went to things that we were actually providing some assistance on, such as the training for the board itself, I was actually aware that the recommendations were being progressed and implemented, and we recently asked them about that and they confirmed the evidence that, obviously, was provided to you on Monday. So the answer is: quite recently we have put in place a system that does very much allow us to do that in a very systematic way using databases and things to help us, and in the past we have usually done so, but not on every occasion.

Hon LIZ BEHJAT: And so, given what you have just said now, that you have not done a formal audit of the recommendations insofar as the tourism commission is concerned because you have been directly involved in the training for the board and others, are you now fully satisfied that the WA tourism commission has now taken on board those recommendations to the best of their ability?

Ms Roche: As you said, I have not done a formal audit, I have not gone and had a look at what they have done, but we have a very good working relationship with Tourism WA, and certainly from what they have provided to me and what I am aware of, I would have complete confidence that they would have done it.

Hon LIZ BEHJAT: Would it be a very big task for you to actually do that audit and perhaps provide that to the committee by way of supplementary to then almost like round it all off to say that these were the recommendations, just so we can use those in our deliberations in this inquiry?

Ms Roche: I do not believe so. Tourism WA might be able to answer that more accurately than I might. It certainly would not be a big task for our office to seek that information. I am not sure whether providing it is a big task, but we could certainly do that if the commissioner is happy for that to occur.

Mr Wauchope: If I can just clarify: you are seeking a check by us as the commission that the five recommendations have been implemented, either in part or totally?

Hon LIZ BEHJAT: Yes. It would just make sense to me if we had that to then see what happened and we could use that in our deliberations.

Mr Wauchope: We could certainly do that.

Ms Roche: We have that information from Tourism, but we have not gone and double-checked it. What you are asking is if we can now go and double-check it and do an audit of that. Is that it, can I just clarify?

Hon LIZ BEHJAT: Yes.

The CHAIR: That would be great.

Hon KEN TRAVERS: I am sorry, I am confused. You are saying they have reported to you that they have done it.

Ms Roche: Yes.

Hon KEN TRAVERS: And you are asking that you want someone to go in and check that they actually are telling the truth?

Hon LIZ BEHJAT: No. I am happy if they have reported to you that they have done it and you are satisfied that they have, then perhaps just a letter from yourself or the commissioner saying that you are now satisfied that those five recommendations have been adhered to and met.

Ms Roche: Yes, I am happy to do so.

[Supplementary Information No B2.]

The CHAIR: We were talking earlier there just about the guidelines. What process is in place in terms of assessing compliance with guidelines? Is there a systematic checking back and auditing of whether agencies have complied with those guidelines?

Mr Wauchope: The codes of conduct and the like?

The CHAIR: Yes, the codes of conduct that we were talking about a few questions back now.

Mr Wauchope: What we do do is an annual survey—and I will get Ms Roche to talk about the detail of that—which gives us a form of intelligence from employees within the agencies about whether or not the things that are being required around accountability for agencies is actually in their perception being undertaken in their own agency, and we do that across the public sector, so we get some information at a high level and we are also able to compare that at an agency level and get an idea of whether agencies are in fact doing what they say they do. I do not think it is quantitative in the sense that every instruction that might be given is being complied with, but this is around employee perceptions of what is happening in their own agency. Perhaps Fiona can comment.

Ms Roche: As part of the commissioner's role in monitoring and reporting on the extent of compliance and non-compliance with standards and codes, we run some survey programs because what we are trying to do is gather some information from the sector about those sorts of matters and how things are organised in agencies and implemented. We survey CEOs through an annual agency survey and as the commissioner just said, we also survey employees directly. So we ask questions of CEOs about whether they have a code of conduct; whether they have a conflict of interest policy; and whether they have rolled out the accountability training that the commissioner talked about earlier. So we ask CEOs whether they have done it, a bit like we ask Tourism WA whether these recommendations were implemented, and we get that, and then we also ask employees directly through our employee perception survey whether they are aware that there is a code of conduct and what training they have undertaken in respect of all those kinds of matters. So that helps us gain a picture across the sector of how these things are done in agencies and the extent of compliance with these requirements to do things like have a code of conduct and run the training.

The CHAIR: So, in terms of the information from CEOs, are they a formal declaration of compliance; is that how that works?

Ms Roche: Yes. It is a requirement under the Public Sector Management Act that they complete that, yes.

Hon LJILJANNA RAVLICH: In response to the audits for employees, by what means is that done; is that done through a questionnaire or some other sort of instrument?

Mr Wauchope: It is electronically distributed and it is anonymous, so people cannot be identified.

Hon LJILJANNA RAVLICH: How many agencies were audited in 2010, both in terms of CEOs and in terms of employees?

Ms Roche: Would I be able to provide that information accurately by way supplementary?

Hon LJILJANNA RAVLICH: Yes, you can, and I am also wondering whether you might provide the committee with the results of those audits, both for employees and CEOs.

Ms Roche: The "State of the Sector" report, which was tabled in Parliament in November 2010, actually provides a lot of that information, but I am happy to take some of that information out and provide it by way of more specifics to the committee.

Mr Wauchope: And we will be, hopefully, tabling the next report in November, so that will have an updated picture as well.

Hon LJILJANNA RAVLICH: Is it possible for you to provide the employees' responses agency by agency?

Ms Roche: It is. I actually did want to clarify: we do not survey every single employee every year.

Hon LJILJANNA RAVLICH: I understand; you take a sample.

Ms Roche: That is right; thank you.

Hon LJILJANNA RAVLICH: Yes, I do, but what I do not want is just all of them to come in as a batch from across the public sector.

Ms Roche: Yes.

Hon LJILJANNA RAVLICH: I want to see what the employees are responding to in terms of standards and codes in Health versus Education, versus whatever others you are going to provide that you have undertaken the samples from for 2010.

Ms Roche: We have that information.

Mr Wauchope: Yes, we will provide that.

[Supplementary Information No B3.]

The CHAIR: There is a document entitled “Principles of Good Corporate Governance for Western Australian Public Sector Boards and Committees”, which was issued in 2009.

Mr Wauchope: Yes.

The CHAIR: Do you have a sense of a level of awareness and understanding from agency boards of that document?

[4.00 pm]

Mr Wauchope: I think it is fair to say that only in recent years have we commenced doing some significant work around boards and committees; probably towards the end of 2008 and onward. I would not be certain about the level of awareness across boards and committees but we have run some information sessions with boards and committee chairs over 2008–09. Barry MacKinnon and Erica Smythe came in and assisted us to run some programs. We invited chairs to come in and we ran a number of sessions pointing out the governance arrangements of boards and committees, particularly in the government sector where you have the relationship between the board and the CEO, and throw in the minister as well, which makes it slightly different from the relationship in the private sector. We are running some programs with boards. Again, I do not have the details of all the boards that have involved us in their training. They may well be using our materials and doing it themselves. A lot of them also use the Australian Institute of Company Directors’ material, which is also very good. We have based our principles on the ASX principles and tried to adapt them to be relevant to the public sector. Rachael and I have been involved in three or four board sessions this year. Typically, they are two or three-hour sessions. We try to cover the accountable and ethical decision-making program at a high enough level so that we do not get bogged down in detail. That has been run out across boards. I do not know whether we have stats on that at this stage.

Ms Roche: No.

The CHAIRMAN: Perhaps we might ask whether you could provide a little more detail on that. I am interested to know whether there is a program that you will run out over X amount of time. I think you just said that boards were invited to attend. Is it an active process or are they invited?

Mr Wauchope: No. It is fair to say that it probably has been left to them to initiate, but we have a standing offer. If anyone wants us to do it, within reason, we will do it. Sometimes it is difficult when the board is in a regional area and we may not necessarily be able to get there when they want us to, but we try to accommodate them. I have been involved in three or four this year personally because I have been asked by the chair whether I could come and do it.

The CHAIRMAN: If you have more details about what has been provided and who has taken it up —

Mr Wauchope: We can do that.

[*Supplementary Information No B4.*]

The CHAIRMAN: Does the commission also assess agency board compliance with those principles, or is it too early in your process to assess?

Mr Wauchope: It is fair to say that we are not doing it at this stage.

The CHAIRMAN: Is it intended that that will be part of the function?

Mr Wauchope: As the Public Sector Commission matures into its new role, it will get more and more into an audit-type function. We will be developing the policy framework and assisting agencies and boards to develop the skills and, as part of our monitoring and reporting function, we will look at whether or not boards and committees are in fact operating near best practice. I think it is fair to say that some are better at it than others.

Hon PHILIP GARDINER: On this issue of the auditing that you are moving towards of governance and so on, are the guidelines for the different agencies in place to guide the CEOs and the top management of those agencies about setting delegated authority for the individual risks that those agencies encounter, recognising that the agencies will encounter different kinds of risks—some will be financial, some will be contractual and others will be performance risks? Is there a structure of governance that you deal with, just as a bank would do? A bank has a financial risk division that looks at the risk limits, credit limits and performance limits for their business. Do you have something similar in mind?

Mr Wauchope: That is actually territory that is handled by RiskCover. They run a fairly comprehensive risk-management program. Most agencies participate in that and it involves the type of process where the senior management identifies the risks of their business, particularly the continuity of their business, and move to implement strategies to mitigate those risks. The answer is that that is done in the public sector, but not by us so much as it is done by RiskCover, which has been doing that for some years and has a fairly mature program.

Hon PHILIP GARDINER: Excuse my ignorance, RiskCover is who?

Mr Wauchope: It is part of the Insurance Commission of Western Australia. There is a whole area that looks at risk.

Hon PHILIP GARDINER: If you or they went to the CEOs of each agency and asked for the risk limits they have for the operations of their agency, would you expect to get a piece of paper saying, “Here they are, and these are the people who have the different risks”?

Mr Wauchope: If an agency has been through their program, they would have mapped that and you would expect to find it, yes.

Hon PHILIP GARDINER: I wonder whether, as supplementary information, we could get three random agencies—the fourth that might be included is the Tourism Commission—and ask for that data as it is. We can then assess at what level it is being carried out.

Mr Wauchope: Okay.

[Supplementary Information No B5.]

The CHAIRMAN: Obviously you cannot draw a direct parallel with public companies and government agencies, but public companies have to report compliance against the Australian Stock Exchange corporate governance principles. Is there any reason why agencies do not compare their compliance? It is early days yet, but is that where we are heading? Will there be a reporting requirement?

Mr Wauchope: I would like to think that boards and committees, as they mature, can report against those 11 principles of governance and can report against the six modules, or six areas, of the code of conduct guide that was issued, which is essentially around the areas for which we do training. For example, the management of conflicts of interest; the management of public resources; the management of individual behaviour of the board; record keeping, which is an issue that often comes up; and confidential information. People coming in from the private sector could all of a sudden have access to confidential cabinet documents, for example, and they could inadvertently release information that they should not release if they do not have that on their radar. I would like to think that over time they will start reporting as a matter of good management practice against the principles and those modules.

The CHAIRMAN: Is the commission involved in the appointment of directors or commissioners to a board?

Mr Wauchope: No.

The CHAIRMAN: Is that not being contemplated?

Mr Wauchope: Boards are usually appointed by the relevant minister. It is a government appointment and is usually approved by cabinet.

The CHAIRMAN: Has the commission had any involvement in the setting of remuneration for the Tourism WA board under the Western Australian Tourism Commission Act?

Mr Wauchope: We would have. Most of the legislation has the Public Sector Commissioner advising the minister on remuneration for the chair and members of the board, and that is approved by the Governor and the Executive Council.

The CHAIRMAN: Do you have any particular comments about the specific remuneration for the WA Tourism Commission?

Mr Wauchope: I do not have any particular observations about that, but by way of background, we have a matrix that has been developed by the Mercer remuneration company that enables us to assess the nature of the board; that is, if it is a commercial board, what is the scope of its responsibilities and the size of its business? That will then place the chair and the member in a particular remuneration framework. Equally, if it is a non-commercial board we would go through the same process. That matrix is updated from time to time.

[4.10 pm]

The CHAIR: The last question was regarding the specific principles of corporate governance. But does the commission have a more general role in terms of reviewing any board's performance?

Mr Wauchope: No, I do not think we have been involved in board performance as such. It is reasonably new territory for us. Up until recently, boards have tended to be seen to be outside the mainstream of the public sector, even though clearly there are CEOs who report to some boards. But I think since the corporations legislation was introduced some years ago, and some of the issues that have come through more recently in our own environment—for example, again, the CCC-type issues—there is a greater focus on what it means to sit on a board and the responsibilities and the risks that are attached to it. So I think people going onto boards and committees now go into it with a different mindset than perhaps they might have had 10 years ago.

The CHAIR: Do you have a view as to whether it would be appropriate or useful to have that kind of role more generally with boards?

Mr Wauchope: In terms of assessing performance?

The CHAIR: Yes.

Mr Wauchope: It may well be. I think we would not have the resources to do it currently, but it may be something that over time we would be looking to do.

The CHAIR: Last week the committee heard evidence that parliamentary questions are not normally brought to the attention of agency boards. In your view, how widespread is that practice, and why are boards not involved in that aspect of accountability?

Mr Wauchope: Madam Chair, I am not sure I can answer that question. I do not know what the boards are being provided with by way of information by their department. I would have thought that if it was a significant issue, the chair of the board ought to be informed—that would be my personal view—as obviously the minister would be, because the minister is having to handle the parliamentary question. But going back to that governance arrangement, you have the minister, the board, and the CEO. Those three components ought to be working pretty closely together. I mean, the board is the strategic setting body. But, as oversight, the board of management has a responsibility and I guess needs to know things that might be important to know.

The CHAIR: Probably only the more significant issues, not the —

Mr Wauchope: Yes, I would have thought so. I think a lot would depend on that relationship. I have seen some very good working relationships between board and CEO and I have seen others that are not so good. So a lot of it is around relationships and trust and confidence.

The CHAIR: Do other members have further questions that they want to ask?

Hon KEN TRAVERS: To go back to the report that you did on the conflict of interest matter, I note that in attachment 2, the time line of events, you are not able to say an exact date on which Ms Doherty was approached by Sunset Events with a job offer. It is only listed as late September 2008. Why were you not able to ascertain an exact date?

Ms Roche: We interviewed Ms Doherty, and she seemed to recall it was somewhere around a long weekend, and she could not remember whether it was before the long weekend or over the long weekend, and so we just put late September, because she was totally unclear. It was a phone call; it was a relatively informal initial approach, as so often these types of things are initially.

Hon KEN TRAVERS: I think the question was asked earlier about why you did not interview anyone from Sunset Events. In light of that lack of clarity around the exact date, might that not have been a reason to have at least, on that point alone, made contact with Sunset Events to see if they had a better recollection of when it had occurred?

Ms Roche: I guess there are two responses to that. The first is the main reason we did not talk to anyone from Sunset Events is that the focus of the investigation was very much on Ms Doherty's behaviour and the actions taken by the department. So it was very much about once that offer was made and an acceptance of employment, how then was the conflict of interest managed. So our focus was more on the department and on her behaviour and the behaviour of senior management within the department. In terms of why we did not feel the need to clarify precisely that date, I think it was largely around the fact that it did not matter so much the exact date; what mattered was at what point in the proceedings of the negotiations with Sunset Events and at what point the festival was at. So once we knew that the heads of agreement was signed on 24 September—so long as we were aware that it was after that—we felt some confidence then that that offer was not going to influence what was arguably the most significant step in that negotiation.

Hon KEN TRAVERS: So you are absolutely confident that there were no approaches made prior to that final heads of agreement being signed?

Ms Roche: There was no evidence provided that there was.

Hon KEN TRAVERS: But at this stage, you have only interviewed the person. You have not even asked the other parties to see whether or not they made any approaches prior to 24 September?

Ms Roche: That is true, but we felt satisfied with her evidence.

Hon KEN TRAVERS: Is it of concern, though, that at the very least, immediately, or it would appear to be within days of signing off on a heads of agreement, someone has made an offer of employment? Is that something that we should be concerned about?

Ms Roche: I guess when we interviewed the senior people from the department—it is in the report—it was interesting that they actually saw the offer of employment and Ms Doherty's decision to work with Sunset Events as a positive—that is, that somebody who was very familiar with the overall strategic objectives and direction of Tourism, and what Tourism was hoping to achieve through sponsoring that festival, was then going to go and work at the festival, was actually seen as a positive, because they could help ensure that the festival was well run and was going to meet those objectives. So I guess in terms of timing, the heads of agreement was signed, the festival was definitely going ahead, and the funding arrangements were approved. I guess it is not surprising that once the organisers knew they were full steam ahead, they were going to have to get this festival up and running, that then they were looking for the best possible people to help that happen.

So I am not surprised that they approached somebody who had that intimate knowledge of what it was supposed to achieve.

Hon KEN TRAVERS: This is probably more a question for the commissioner, but you do not see that as potentially raising massive conflicts of interest in the way in which governments departments operate with the private sector?

Mr Wauchope: I think there is always a potential for conflicts of interest anywhere. The issue is how you go about managing them. I think the review that we did indicated that at least there was an awareness of the conflict; they just simply did not document it as well as they should have and did not manage some of it as well as they could have. But there was an awareness that there was a conflict of interest, and there was some attempt to at least address that. But they did not do it as well as we would have liked.

Hon KEN TRAVERS: But that issue about people being involved in the negotiations and then ending up working for the proponent—I have to say this is happening quite regularly, from my experience, in various areas of the public service these days—is that not a risk for the state, though? Even if there is not a formal offer made, there is a relationship built up during that stage that they feel comfortable to offer them employment and for people to go across, and people almost have half an eye on the idea that if they look after the company in the negotiations, they will end up with employment with them, without a formal offer ever having even been made.

Mr Wauchope: I guess there is always that danger. I am particularly aware that we have an economy at the moment where some very attractive job offers exist outside the public sector. So it is actually getting the balance. There will always be a risk. It is identifying the risk and managing it. Equally, I would be concerned if we were to be in such a risk-averse situation, as I believe occurred following the CCC inquiries, where in fact government stopped dealing with the private sector because they did not want to be caught in the crosshairs of particular issues. Again, what we do with our training is try and impart some skills around judgements and decision making so that these types of issues are on people's radar. We have a little ready reckoner, which I do not believe we have with us today, but it is basically the size of a business card, and it has on it four or five questions that you should ask yourself when you are dealing with people or making decisions on anything.

[4.20 pm]

It might sound a bit strange, but they are actually some of the fundamental things like: am I doing the right thing and how would others see this? What is the other one?

Ms Roche: “How would others judge my actions?” And, “Should I talk to somebody about this?”

The CHAIR: “How would this look on the front page of *The West*”.

Mr Wauchope: That is actually what I would say is “*The West* test”, or “What would your mother say?” That is what we try to do. We will never have an environment where there is not a risk; and if you have a very strong economy or an economy that is attracting people out of the public sector, then you will always have that sort of interface. But it is how it is managed, and we are trying to make sure that skills are there to manage it; it will not be done perfectly on all occasions.

Hon KEN TRAVERS: I understand the point, and I am not trying to suggest any impropriety in the case of the officer—I have no evidence of that—but it strikes me that those checklists are the sorts of things my father taught me. An ethical person is going to do that. How do we prevent the unethical person from engaging in those negotiations? I would have thought the fact that there is a such a short space between the end of the negotiations and people taking up a position of employment is going to bring the public sector into disrepute on a regular basis. Whilst we can sit here and have this discussion today, I am sure there are many people—whether there is evidence or not—who will hold a perception about what occurred in terms of these events.

Mr Wauchope: You mentioned perception; that is very important and I agree that a lot of this will be around perception, even if people are not behaving inappropriately. The other check and balance in all of this, of course, is that if there was any suggestion that someone had been using their office to gain a benefit, that is, to set themselves up for a job in the private sector, it would be something that would fall within the CCC purview. I suggest that the CCC probably has from time to time received notifications around those types of issues, because people do leave the government sector. Often they have got expertise, which is what people are buying, and often they have got, I guess, the know-how in terms of dealing with the public sector. The danger is where they are actually taking with them information that could only be known within the public sector, and then that becomes something that is used in the private sector. That I think would be a problem, and that would be, as I said, potentially a breach of the Criminal Code anyway.

Hon PHILIP GARDINER: I have a question on the same thing.

Hon KEN TRAVERS: If I can keep going for a little while on this because I have a couple of other questions on this issue—if that is all right, Phil? Did you then look at whether or not Sunset Events then bid for and was successful with any Tourism WA events?

Ms Roche: No.

Hon KEN TRAVERS: Surely, if you were looking at the issues we have just talked about, that would be one of the things that you would do: after this officer has left, have they then bid for and been involved in other negotiations with Tourism WA and used that intimate knowledge to gain advantage for that organisation? Surely that would be one of the other things that you would look for in an investigation?

Ms Roche: It would have been beyond the terms of reference of this investigation, because this was about how they managed the conflict of interest about her subsequent employment with Sunset Events—the offer of employment, working at Tourism, and then going on to work there. It would have been beyond that. It is a reasonable question.

Hon KEN TRAVERS: So when you have an inquiry, you do not have a term of reference that says “other issues that arise during the course of this inquiry”, or anything along those lines that allows you, when you see something like that, to then pursue and look at those other areas to see whether there are other issues; that is, if we are about corruption prevention?

Mr Wauchope: Can I make a point that this actual inquiry or review that was undertaken was undertaken prior to the reformed act last December, so it was done under no particular power. We were asked by the CEO of the Tourism Commission to have a look at this, and it was, as Ms Roche indicated, only that particular matter that we were asked to look at and form a view on, because I think he was seeking some reassurance or guidance as to whether or not any issues needed to be managed. It was simply that range of issues that we looked at and nothing further, because we were not asked to and we did not have any wide-ranging powers to go beyond that at any rate.

Hon KEN TRAVERS: The Office of the Public Sector Standards Commissioner has always had a power to have an inquiry though, has it not? You would not need to get a term of reference to do that.

Mr Wauchope: It would have to be something that was relevant to the standards or the codes of ethics, and there was nothing there that I think led us to believe that we needed to go down that path.

Ms Roche: It was done by the Public Sector Commission, rather than by the Public Sector Standards Commissioner; it was when they were two separate organisations.

Mr Wauchope: Yes.

Hon KEN TRAVERS: Do you now have that power? You made the point that it has changed. Do you now have that power?

Mr Wauchope: What the act did was bring the powers and functions of the Public Sector Standards Commissioner and the Public Sector Commission together in one office. So the answer is, yes, I have the powers that previously were held by the Public Sector Commission.

Hon KEN TRAVERS: Is that an issue that you still think needs to be explored? If you have very narrow terms of reference that are given to you by an organisation, and the processes within it are the subject of the inquiry, effectively if you do not look at those broader issues, it can be seen to be a whitewash, for want of a better term? If you do not go broader than that to say that the issue is about conflict, so the next stage is whether that organisation has got a benefit from having employed that person with that knowledge, and to look at whether or not that organisation was involved with other bidding and was successful in that bidding through that organisation.

Mr Wauchope: If it was an inquiry of a broader kind, the answer is, yes, you would look at some of those other issues, but this was not an inquiry or investigation under any particular powers. It was a CEO coming to us saying, “Look, I’ve got this issue. You do this training around ethical behaviour. Can you come and have a look at this and give us a view?” That is basically what it was limited to doing; it was not intended to do any more than that.

Hon KEN TRAVERS: I have some more questions, but you go ahead.

Hon PHILIP GARDINER: It is on the same question. You are not really saying—I do not think you are saying—that if a private sector person approaches a public service officer to offer employment, that is wrong. We are not saying that is wrong, are we?

Mr Wauchope: No.

Hon PHILIP GARDINER: The second thing though—I think you answered this question before, and I want to be assured—is that there are procedures that the agencies know and educate their public service officers about of how to deal with that, should or when that occurs?

Mr Wauchope: I will go back to what I said before—that is, they are required to have a code of conduct and to have their staff appropriately trained in accountable and ethical decision making, and one of the modules is around personal behaviour. I do not believe there will be anything explicitly about “if you are going to get an offer from a private sector agency this is what you should do”, but there might be some agencies that have that in their code of conduct because of the nature of the agency. For example, those that do have an interface with industry, either an industry department or an environment-type department, may well have that because it is relevant to their business, but I could not say that, without going and having a look at their codes of conduct. Their codes of conduct are required to address the necessary dimensions of ethical behaviour in operating as a public servant.

Hon PHILIP GARDINER: Would it be useful that every agency at least has some uniform rules and the ethics of the conflict of what you do when you are approached by another, possibly, employer, there should be some procedures there, because a lot of people would not know how to act?

Mr Wauchope: I think it really should be in the hands of the CEO to develop a code of conduct that is relevant to their agency. We have a uniform code of ethics, which is the high level principles for the public sector. The agencies are required to have a code of conduct that is consistent with that code of ethics, but the code of conduct, say, for the Department of State Development would be quite different, for example, from another department that is not dealing with industry.

Hon PHILIP GARDINER: Would it be any different if the person in the state development department is made an offer—how they should behave from that point? I do not see any difference from Tourism or any other agency, and I would have thought there should be something about advising your CEO or superior straightaway.

Mr Wauchope: I do not know that they should be advising their superior if they are made a job offer.

Hon PHILIP GARDINER: About that first encounter—I am not thinking of an offer, as in this case where this girl had the first encounter over the long weekend—an informal encounter; that is how it happens.

[4.30 pm]

I think there should be some procedures there, so that the conflict of interest issue has got real guidelines about how to deal with it, because it could affect both that officer and the public service if it was handled the wrong way.

Mr Wauchope: I believe it is covered under the conflict of interest guidelines in any event. If you start going down that path, you get to be very prescriptive about every aspect of the employees' relationship within the department. Again, what we are wanting our employees to do is have enough skills to make judgements in the right context. I believe the training that we have done, and the material that we have put out, together with the integrity coordinating group, really addresses that. Some agencies may do that because they think it is a need. I think the role of this agency and other oversight bodies is to provide the framework and the guidance, and to monitor and report. But the actual decisions around these sorts of things need to be made by the agencies themselves—the CEOs. The Public Sector Management Act is predicated on the basis that the CEO is responsible for the management of the department.

Hon PHILIP GARDINER: I would have thought that was one area where you could have a uniform rule, if it is going at all to damage the reputation of the public service. On the other hand, I think that if people are hired out of the public service because of their skills and their professionalism, I do not see that as being a negative for the public service. That is actually a positive, even though it is unfortunate that we have got a group of people and we lose them. I did have one other question, but it has just escaped me, so I will come back to that.

Hon LIZ BEHJAT: Just to go back to the tabled document with regard to the conflict of interest, I just want to check, but on page 5 of the document—I am sure this is just a typo—in the first dot point under 5.1, it says —

... between Tourism WA and Sunset Events relating to One Movement, had been finalised on 12 September and was signed in late September 2009.

That should be 2008?

Ms Roche: Correct.

Hon LIZ BEHJAT: The next sentence says

In early October 2009 ...

That should also be 2008?

Ms Roche: That is right.

Hon LIZ BEHJAT: That is fine. I assumed that was right, but I just wanted to make sure. So in early October 2008, Ms Doherty received a written letter of offer from Sunset Events. In the course of your inquiry, did she provide you with a copy of that written offer?

Ms Roche: I do not recall whether that was specifically in amongst the papers. I would need to check that. We had a number of different papers that we looked at as a part of the investigation. I do not recall specifically seeing that letter of offer, but I would be surprised if it was not amongst all the papers that we looked at. So I can find that out.

Hon LIZ BEHJAT: If you could find that out, that would be great, because I find that then quite difficult, because it then says “In early October”. I would have thought that had you seen that written letter, it would have a specific date on the letter.

Ms Roche: Okay.

Hon LIZ BEHJAT: So I would like to ask for a copy of that. I would also like to see in that letter whether it referred to that first approach, such as “confirming the discussion that we had”, or “further to our conversation”. So, yes, I would like to see a copy of that letter.

[Supplementary Information No B6.]

Hon KEN TRAVERS: Just going on from there, I guess the two are interlinked, but, commissioner, did I understand you correctly when you were answering Hon Philip Gardiner that you are saying that if someone were to make a verbal offer of employment, that is not something that necessarily should be immediately reported—if they are actively involved in negotiations with those people?

Mr Wauchope: I would think that is something that you would expect, as part of their compliance with the code of conduct, that if it was going to be seen as a conflict of interest, then, yes, they should be declaring it. Sorry; I thought that what you were talking about was a general principle.

Hon PHILIP GARDINER: Okay. Often it is hard to define when there is a conflict of interest; and sometimes we do not recognise it, also, which in actual fact is a conflict of interest. So, yes, I was being more general than Hon Ken Travers, but nonetheless it was really applying —

Hon KEN TRAVERS: That is why I want to be clear. So you are talking about if someone is working in the public service and someone from outside comes up to them and says, “Would you be interested in coming to work with me?”, then so long as they are having no direct, ongoing negotiations with them at that point, they would not necessarily need to notify. But if they were in a situation like Ms Doherty was in, they should notify it immediately?

Mr Wauchope: Absolutely.

Hon KEN TRAVERS: What evidence is there about the date on which she notified WATC about her conflict?

Hon LIZ BEHJAT: It was almost immediately after receiving the written offer.

Hon PHILIP GARDINER: Yes. That was the written offer, though, was it?

Ms Roche: Yes. I do not have the date before me, but it was certainly her evidence that she did that very quickly, and there was that long weekend that I talked about earlier, and that straightaway she spoke to Mr Hamilton and Mr Van Ooran about it. In actual fact, the general view provided to the investigation was that Ms Doherty herself was very open and transparent about it and in fact went to great lengths to make sure that Tourism WA were made aware of the offer.

Hon KEN TRAVERS: But that is the written offer?

Ms Roche: Yes.

Hon PHILIP GARDINER: Because in your earlier evidence, you talked about the long weekend discussion being a bit informal, I thought?

Ms Roche: Yes.

Hon PHILIP GARDINER: So what was the difference in time before the informal discussion and the written offer?

Hon LIZ BEHJAT: Because that is what we do not know.

Ms Roche: I would have to check that.

The CHAIR: Would you like to take that on notice?

Ms Roche: Yes, if I could, please. I will have to re-familiarise myself with that.

[Supplementary Information No B7.]

Hon KEN TRAVERS: I have gone back and looked at the dates. The 24th was the Wednesday before that long weekend, and you are saying there was a question mark about whether it was before or over the long weekend. Is that right?

Ms Roche: I recall her evidence was that it was over the long weekend that she was approached. But I can go back to the record of interview and have a look at that.

Hon KEN TRAVERS: The significance of this is that we are dealing with a time frame where there is no written record, but a week out, suddenly you are in an active period of negotiations—which is why I would have thought that at least an attempt to quantify from other people who may have been aware of what the date was would have been an appropriate thing to do. The other issue here is that, again, it almost gives the impression—maybe that is not what you are intending—in the first dot point under 5.1, that the written offer was more significant than the verbal offer. Was it your intention to convey that, or do you accept that the verbal offer was as important as the written offer?

Ms Roche: I accept that the verbal offer was very important. I guess why I have focused on the written offer was because, again, a bit like the informality of being approached by someone, Ms Doherty's evidence was that she had not made up her mind; there was still a need to talk to her employer, which she did; but at that stage there was no definite decision, as I understand, on her part to accept the offer. So much as it was still a significant event that she had been made an offer, the need to manage any conflict of interest became more acute once there was a formal written offer and acceptance.

Hon KEN TRAVERS: The other question I have around this same dot point is that you say —

The “Heads of Agreement”, the non-legally binding name of the agreed contractual arrangements between Tourism WA and Sunset Events relating to One Movement, had been finalised on 12 September and was signed in late September 2009.

Hon LIZ BEHJAT: It was signed on 24 September, the Wednesday.

Hon KEN TRAVERS: Well, that is when it was signed. But you are saying it was agreed on 12 September?

Ms Roche: That is right.

Hon KEN TRAVERS: Is not that the date on which the proposal was sent by Ms Doherty to Mr Muirhead, Mr van Ooran and Mr Hamilton—the 12th?

Ms Roche: Yes.

Hon KEN TRAVERS: And subsequent to that being sent to those people, the heads of agreement was changed? So it was not finalised at that point, and in fact there were suggested changes made by Mr Muirhead to that draft of the 12th that, whilst not completely implemented, were implemented in part?

[4.40 pm]

Ms Roche: Are you saying this is between 12 September and 24 September, when it was signed?

Hon KEN TRAVERS: Yes.

Ms Roche: I accept that must be the case then.

Hon KEN TRAVERS: If so, do we know what date the final decisions were made about that heads of agreement?

Ms Roche: The date it was signed, I presume, on 24 September.

Hon KEN TRAVERS: Which, again, comes very close to the date on which the verbal offer was made, around which we have no clarity.

Ms Roche: Yes, but it is still before that verbal offer was made, as far as the evidence was.

Hon KEN TRAVERS: Except that the person giving you that evidence could not give you an absolute ironclad guarantee on which day it was made. Did she give you a guarantee that the offer was made after the heads of agreement was signed?

Ms Roche: Yes, she did. And she said it was after she had involvement with the heads of agreement, yes.

Hon KEN TRAVERS: She could not you tell you how long after?

Ms Roche: It was clearly not a long period of time, because we were talking about September; it is still the same month.

Hon KEN TRAVERS: Literally, it could have been a day?

Ms Roche: She talked about how her involvement on 12 September was to get it to the CEO and that, after that, changes were made at that very senior level. This is somebody who was a level 5 or 6 officer, so once it left her office on 12 September, as I understand it, she did not have any more direct involvement in it.

Hon KEN TRAVERS: I notice that she was one of the witnesses to the signing of the final agreement, if I remember correctly. That would suggest she had some level of involvement with the processes after 12 September?

Ms Roche: Yes. When I say “involvement”, I mean involvement in any decisions about how it was changed and they, I understand, were made at that senior level.

Hon KEN TRAVERS: Without any reference back to the officer who had actually put them up?

Ms Roche: I am not entirely sure.

Hon KEN TRAVERS: I would have thought these were pretty important matters to have looked at. Considering what we are looking at, these would have been fairly significant issues that should have been considered at the time of any investigation into this matter, with all due respect, about what exactly was her role. Did you question the senior officers about what her role was after 12 September?

Ms Roche: No, but again it was because the offer and the issue of any potential of her moving to Sunset Events was subsequent to the heads of agreement being signed.

Hon KEN TRAVERS: Based on her evidence and her evidence alone?

Ms Roche: Yes.

Hon KEN TRAVERS: Is it not unreasonable to suspect that if the offer was made before 24 September, you might gild the lily a little and be very vague about what date it was and suggest that it was after when it was actually before? Therefore, going back to investigate the exact occurrence of events leading up to that would make it far more significant than what you are suggesting here today?

Ms Roche: It is possible.

Hon KEN TRAVERS: Thank you.

The CHAIR: Does anybody have any further questions? I think we might be through with our questions this afternoon. I have some closing words. The committee will forward the additional questions, if there are any more, to you via the minister in writing in the next couple of days together with the transcript of evidence, which includes the questions that you have taken on notice. If members have further questions, please let the committee clerk know at close of session.

Responses to these questions will be requested within 10 working days of receipt of the questions. Should you be unable to meet this due date, please advise the committee in writing as soon as possible before the due date, including the specific reasons as to why the due date cannot be met. Finally, on behalf of the committee, I thank you very much for your attendance this afternoon, and we will close the hearing.

Hearing concluded at 4.45 pm