

**LOCAL GOVERNMENT PECUNIARY
INTEREST TRIBUNAL**

PIT NO 3/1996

DIRECTOR-GENERAL, DEPARTMENT OF LOCAL
GOVERNMENT

RE: COUNCILLOR JILLIANNE PATRICIA DEERING,
SUTHERLAND SHIRE COUNCIL

STATEMENT OF DECISION

Dated: 20 August 1997

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DIRECTOR GENERAL, DEPARTMENT OF
LOCAL GOVERNMENT

RE: COUNCILLOR JILLIANNE PATRICIA
DEERING, SUTHERLAND SHIRE COUNCIL

STATEMENT OF DECISION

THE OBLIGATION

At the Local Government elections held on Saturday 9 September 1995, Jillianne Patricia Deering was elected as a Councillor to the Sutherland Shire Council. Fifteen Councillors were elected, seven of them being re-elected from the previous Council and eight elected as new Councillors. The Shire is divided into five Wards each returning three Councillors. She was elected for Ward C. This was the first time she had stood for election in local government. The election poll was declared on 13 September 1995.

Division 2 of the Local Government Act, 1993 requires Councillors to provide written returns disclosing their financial interests. Section 449(1) provides that a Councillor must complete and lodge with the General Manager within three months after becoming a Councillor a return in the form contained in Part 1 of Schedule 3 of the Act. In practice, the form provided for such returns is designated and referred to as the "Primary Return".

Section 449(3) provides that a Councillor holding that position at 30 June in any year must complete and lodge with the General Manager within

three months after that date a return in the form in Part 1 of Schedule 3. In practice such a form is referred to as an "Ordinary Return".

As Councillor Deering's election as a new Councillor dated from the date of the declaration of the poll, she became obliged by section 449(1) to complete and lodge with the General Manager her "Primary Return" by 13 December 1995. The other seven new Councillors were under a like obligation. Under section 449(3) the Councillors re-elected from the previous Council would have been obliged to lodge an "Ordinary Return" by 30 September 1995 and all 15 of the Councillors were obliged to lodge Ordinary Returns by 30 September 1996.

THE COMPLAINT

On 12 April 1996 Councillor Paul Anthony Smith, a fellow Councillor, made a complaint to the Director-General of the Department of Local Government pursuant to section 460 of the Act alleging that Councillor Deering had contravened section 449(1) of the Act by failing to lodge a pecuniary interest return within three months after becoming a Councillor. As required by section 460(2), the complaint gave details in writing verified by a statutory declaration by Councillor Smith. On the same date a statutory declaration by Philip Alexander Blight, another fellow Councillor, in support of Councillor Smith's complaint was furnished to the Director-General. Both statutory declarations had been subscribed and declared on 11 April 1996. Pursuant to section 462 of the Act the Director-General decided to investigate the complaint and, in accordance with section 465, notified this Tribunal of his decision on 9 July 1996.

On 18 February 1997 the Tribunal received from the Director-General his Report dated 17 February 1997 of the investigation of the complaint (Exhibit A). This Report was furnished pursuant to the requirements of section 468(1) of the Act. After considering the Report, the Tribunal, pursuant to section 469 of the Act, decided to conduct a hearing into the complaint.

ISSUES

The material in the Report established that Councillor Deering had lodged a Primary Return on 15 April 1996 but raised issues as to whether she had lodged any return by 13 December 1995 and whether she had lodged a return sometime in January 1996. It also raised questions as to the circumstances of her lodging the return lodged by her on 15 April 1996.

Notice of the Tribunal's decision to conduct a hearing was given to the parties on 5 March 1997 (Exhibit C). The Notice gave particulars of the alleged contravention and set forth the apparent issues as follows:

ISSUES

- 1. Upon the information contained in the Director-General's Report of the investigation of the complaint received by the Tribunal on 18 February 1997 the principal issue would appear to be whether Councillor Deering lodged any return on or before 13 December 1995.**
- 2. If Councillor Deering failed to do so, incidental issues would appear to be:**
 - (a) what is the explanation for her failure to lodge any return on or before 13 December 1995.**
 - (b) whether she lodged any return after 13 December 1995 but before 15 April 1996.**
 - (c) what were the circumstances in which she came to lodge a return on 15 April 1996.**

If the Tribunal were to find that any contravention of the Act by Councillor Deering has been proved, a consequential issue will be whether any, and, if so, what action should be taken by the Tribunal.

NOTE: The parties are at liberty to submit to the Tribunal that the issues arising out of the complaint are different or that there are other relevant issues not stated above, in which case, they each should specify to the Tribunal what they contend to be the issues to be determined by the Tribunal.

Councillor Deering was requested by the Notice to advise the Tribunal whether she desired to contest the allegation and whether she would be having legal representation in the proceedings.

By letter dated 11 March 1997 (Exhibit F), Mr S Macedone of Macedone Christie Willis Solari Partners, Solicitors, advised the Tribunal that

his firm was acting on behalf of Mrs Deering and they were content with the definition of issues set out in the Tribunal's Notice. As to Councillor Deering's intentions the letter advised as follows:

Our client will contest the allegation that she did not file any return on or before 13 December 1995. If Councillor Deering is found not to have filed a return on or before 13 December 1995, she will give an explanation for her failure to do so.

The letter went on to state that it would be alleged that in any event Councillor Deering filed a further return on 15 April 1996, the circumstances of which would be explained to the Tribunal at the hearing at which she would be represented by Mr Macedone.

The Tribunal replied to the above letter on 13 March 1997 (Exhibit G) raising a question as to the statement quoted above as to Councillor Deering's intentions. The Tribunal's letter stated:

Your statement as to Councillor Deering's intentions suggest an inconsistency if meant to convey that Councillor Deering will both assert that she did lodge a return before 13 December 1995 and also offer an explanation for not having done so. However, it is apprehended that the first sentence may be intended to convey that she takes the position that she does not admit that she failed to lodge a return before the due date but if the Tribunal finds to the contrary she proposes to explain the failure. Would you please clarify her position as it would assist in the definition of issues and the preparations to be made for the ultimate hearing by the Tribunal.

Mr Macedone replied by letter dated 14 March 1997 (Exhibit J):

We would advise that your interpretation of the material we supplied to you concerning Councillor Deering's intentions in relation to the lodging of a return before 13 December 1995 is correct. We intended to convey the position duly noted by you that Councillor Deering does not admit that she failed to lodge a return before the due date, however, if the Tribunal found to the contrary then Mrs Deering would explain the failure.

The Director-General advised the Tribunal on 19 March 1997 (Exhibit K) that he accepted the issues as set forth in the Tribunal's Notice and had no further issues to add.

On 4 March 1997 the Tribunal had requested the Director-General to seek additional information in relation to some matters raised by the Director-General's Report. On 20 March 1997 the Tribunal received from the Director-General a Supplementary Report dealing with those matters (Exhibit B).

HEARINGS

Preliminary Hearing

A Preliminary Hearing on procedural matters was conducted on 24 March 1997. Mrs Josephine Kelly of counsel, instructed by Mrs Jean Wallace, Legal Officer of the Department of Local Government, appeared for the Director-General. Mr Macedone appeared for Councillor Deering.

It was on this occasion that the Director-General's Report and Supplementary Report, earlier noted here as Exhibits A and B, were admitted as evidence and information before the Tribunal for the purpose of its determination of the complaint and became for the first time fully available to Councillor Deering and her legal representative. The other documents earlier referred to, Exhibits C, F, G, J, and K, were also admitted on this occasion as well as certain other preliminary correspondence, Exhibits D, E and H, which need not be detailed.

After a general discussion of issues, potential issues and procedural matters, the Tribunal noted that the issues as set forth in the Notice of Decision to Conduct a Hearing (Exhibit C), would be the issues for consideration and determination by the Tribunal at the hearing and gave certain directions including a direction to Councillor Deering to furnish to the Director-General and the Tribunal a statement of any evidence that she desired to give in the matter additional to that already given by her by way of letters and oral statements and a statement or statutory declaration of evidence of any other witness or person on whose evidence she proposed to rely.

The Tribunal further directed that subject to any further or other order or direction the hearing proceed on the basis of:

- (a) The material contained in the Director-General's Report, Exhibit A, and Supplementary Report, Exhibit B.
- (b) Exhibits C - K.
- (c) Any further statement of evidence or documents furnished by the parties; and
- (d) Any further oral evidence and any cross-examination of witnesses at the final hearing.

Further Hearings

Further hearings were conducted on 1, 2 and 22 May and 30 June 1997. Mrs Kelly appeared for the Director-General and Mr Macedone appeared for Councillor Deering throughout.

The following witnesses were called to give oral testimony:

DIRECTOR-GENERAL:

Paul Anthony Smith, Teacher by profession, Councillor, Sutherland Shire Council.

Philip Alexander Blight, Teacher by profession, Councillor, Sutherland Shire Council.

Douglas John Chapman, Manager, Corporate Administrative Services, Sutherland Shire Council (Reports to Director, Corporate Services, Mr Robert Honeyman).

Graham Thomas Edwards, Manager, Legal Services, Sutherland Shire Council, also the appointed Public Officer of the Council and responsible for administration of the provisions of the Local Government Act regarding disclosure of interests and lodgement of returns. (As Manager, Legal Services, he reports to the Director of Corporate Services. As Public Officer he reports directly to the General Manager, Mr John Walford Rayner).

COUNCILLOR DEERING:

Jillianne Patricia Deering, Registered Nurse, present occupation part-time "Human Resources" Consultant, Councillor, Sutherland Shire Council, first elected 9 September 1995.

DOUGLAS JOHN CHAPMAN:

Grant Ashley Tyler, Administration Officer, Sutherland Shire Council. (Answers to Supervisor, Mr Trevor Rowling who reports to Manager, Corporate Administrative Services, Mr Douglas John Chapman).

At the hearing on 1 May 1997, Mr Macedone tendered a statement of evidence by Councillor Deering dated 16 April 1997 which also contained a statutory declaration of the same date by Kevin William Schreiber, a fellow Councillor who, like Councillor Deering, had been elected at the elections held 9 September 1995, and a statement dated 10 April 1997 by Mr John Greig, a licensed real estate agent, providing relevant information on the history of the development of land in the Sutherland Shire known as Sylvania Waters and the potential effects on land values in the area of certain works constructed by the Sutherland Shire Council. This statement of evidence and the accompanying documents became Exhibit L.

A number of documents additional to those already mentioned were received into evidence and marked as exhibits but they need not be detailed at this point.

Other Appearances

By letter dated 23 April 1997 the Manager, Legal Services, Department of Local Government had written to Mr Edwards suggesting that he attend the hearing with a legal representative due to the complexity of the matter and the likelihood of his being cross-examined on the evidence to be presented to the Tribunal. At the hearing on 2 May 1997, before Mr Edwards gave evidence, the Tribunal granted leave to Mr Philip Mansfield, General Counsel, Sutherland Shire Council, to appear for Mr Edwards. Mr Mansfield took part in the proceedings on that date, interrogating Mr Edwards whilst he was in the witness box, after which the proceedings were adjourned part-

heard to 22 May 1997. Prior to the adjourned date the Tribunal was notified that Mr Edwards had changed solicitors and was now represented by Mr Michael Edward McMahon, Solicitor, of M E McMahon & Associates. When the hearing resumed on 22 May 1997 the Tribunal granted leave to Mr Timmins, on the instructions of Mr McMahon, to appear for Mr Edwards in place of Mr Mansfield.

Also on 22 May 1997 the Tribunal granted leave to Mr Robert Bellamy of counsel, instructed by Gordon Robilliard & Plowman, Solicitors, to appear for Mr Chapman who had already completed his evidence on 2 May 1997.

At the close of the evidence, the Tribunal received submissions from all of the legal representatives and the hearing concluded on 30 June 1997.

The proceedings were recorded in a written transcript, references to the page and line numbers of which will be prefixed herein by the letter "T".

BACKGROUND TO COMPLAINT

The background to the complaint is provided by the statutory declaration from Councillor Blight (Exhibit A, Attachment 3), a further statement dated 27 April 1997 provided at the request of the Director-General (Exhibit N), a letter to the Director-General from Councillor Smith (Exhibit A, Attachment 1) and his statutory declaration (Exhibit A, Attachment 2) and a further statement dated 28 April 1997 made at the request of the Director-General (Exhibit O), together with their respective testimonies at the hearing.

Both Councillor Blight and Councillor Smith impressed the Tribunal as honest and reliable witnesses. Their evidence was supported by contemporary written records and the evidence of each of them corroborated the evidence of the other. As will appear, they were political opponents of Councillor Deering on the Council but their credibility as witnesses and the accuracy of their description of events was not relevantly challenged by Mrs Kelly or Mr Macedone. Councillor Blight's evidence involved encounters and conversations with both Mr Edwards and Mr Chapman. Mr Smith's evidence involved Mr Edwards. In giving evidence both Mr Edwards and Mr Chapman professed a lack of recollection of material events described by Councillors

Blight and Smith with the result that the evidence of Mr Edwards and Mr Chapman did not provide corroboration as to those events but, nevertheless, neither Mr Timmins for Mr Edwards nor Mr Bellamy for Mr Chapman made any attack on their truthfulness as witnesses or the correctness of the facts to which they testified. When it came to final addresses and submissions after completion of the whole of the evidence, the evidence of Councillors Blight and Smith was left virtually unchallenged. Thus the Tribunal may confidently accept their evidence as the basis for finding a number of facts highly relevant on the question whether, on the balance of probabilities, Councillor Deering lodged her Primary Return by the prescribed date or at any time prior to 15 April 1996. However, it should be said that important as it is, their evidence by itself does not establish conclusively that Councillor Deering did not lodge a return before that date but it called for answers and explanations from those best in a position to throw light on that question.

Background Facts Established by the Evidence of Councillors Blight and Smith

Councillors Blight and Smith were members of the Australian Labor Party and formed a caucus with other party members who were on the Council. Councillor Deering was a member of the Liberal Party whose members and supporters who were on the Council could provide a majority in the dispatch of Council business.

At the first meeting of the new Council, Councillor Deering was elected to chair the Environment and Health Committee (EHC) which had power to deal with building, subdivision and development applications. She was also appointed to chair other subcommittees of the Council.

As a Councillor, politically affiliated, Councillor Blight had an interest in ascertaining the financial interests of other Councillors that should be declared when the Council was dealing with such matters as development applications. He made it a practice to inspect Council's Register in which were filed the pecuniary interest returns of Councillors and certain designated staff. As well as showing financial interests, the returns generally disclosed a

Councillor's place of abode. Councillor Blight admitted that he had a particular interest in Councillor Deering's return because he had become aware that she was not a resident of the Shire and he desired to find out how she was eligible to be a Councillor: T71/25-57.

Councillor Blight's Inspection of Register, 1 February 1996

On 1 February 1996, Councillor Blight visited the Council's offices and asked the Council's Public Officer, Mr Edwards, if he could inspect the pecuniary interest returns, saying that he was looking for the returns for the present Councillors. Mr Edwards obtained and presented to him Council's Register of Returns comprising three volumes each with a thick cover top and bottom held together by nuts and bolts. The returns were filed by removing the top cover, mounting the returns on the bolts and replacing the top cover. The three volumes between them contained returns of designated staff members of the Council as well as returns of Councillors.

In handing these registers to Councillor Blight, Mr Edwards looked at him and said, "Oh, there's three missing" or, "Three aren't in yet and I've been chasing them up trying to get them." He then said, "Oh, look, they're not there. I'll chase them up and get them for you." Councillor Blight thought at the time that Mr Edwards was a little bit embarrassed about it. (Exhibit A, Attachment 3, paras. 1, 2; T66/13-27; T69/45-55).

Mr Chapman was present in the office throughout the whole of the above conversation between Councillor Blight and Mr Edwards and was in a position to hear the conversation but he did not say anything in relation to the returns: T69/33; T70/25-30; T74/37.

Councillor Blight looked through the register and found returns for the 14 Councillors of the 1991-1995 term of the Council. However, for the 15 Councillors elected for the 1995-1999 term, there were only 12 returns in the register. Those missing were the returns from Councillors Simpson, Thomas and Deering, all new Councillors whose Primary Returns should have been lodged by 13 December 1995: Exhibit A, Attachment 3, paras. 3, 4.

Whilst inspecting the register on this occasion Councillor Blight made handwritten notes on four pages of paper provided to him by Mr Edwards for the purpose. The handwritten notes are headed, "As at 1 Feb 96" and contain names of Councillors, the date of lodgment of the return and notes of the contents of the return. On the third page of the notes there is the word "Missing" followed by the names "Deering, Simpson, Thomas." One of the notes, relevant in a later context, is "Old - Stanton" (Exhibit T; T61/20; T61/49)

Having completed his inspection Councillor Blight mentioned to Mr Edwards the names of the three Councillors whose returns were missing and Mr Edwards said that they were the three, they were the ones he was chasing up. Councillor Blight noticed that in their first conversation on this occasion Mr Edwards had not mentioned the names of the three Councillors whose returns he was chasing up but that after Councillor Blight had identified three Councillors whose returns were missing from the register Mr Edwards then acknowledged that they were the ones. Councillor Blight again thought that Mr Edwards seemed "a little bit embarrassed" about the fact that these three were not in the register: T70/39-T71/17; T75/56-T76/3; T75/44; Exhibit N, Statement, para. 3. In a later discussion with Councillor Smith, Councillor Blight told him that it was not till he himself mentioned the names of the missing three that Mr Edwards confirmed that they were the ones he was still waiting for: Exhibit N, Statement, para. 3; T75/33; T81/47-T82/39.

In cross-examination Mr Macedone asked Councillor Blight what was the explanation given by Mr Edwards for the missing returns to which Councillor Blight had referred in the statement made by him in Exhibit N. Councillor Blight replied that Mr Edwards had just mentioned the fact that he'd been chasing them up, "**The explanation was for the fact that he didn't have them. He didn't say any reason why the three hadn't been put in; he just said he'd been chasing them up and they hadn't come in and he was still chasing them and would continue to.**" T81/31. Councillor Blight also told Mr Macedone that it was obvious to him at the time that Mr Edwards was

embarrassed that the forms were not in the register. He said of Mr Edwards, **“He’s someone that likes to do his job properly and obviously he was responsible for having them in on time and they weren’t.”** Councillor Blight admitted that he had assumed at the time this was the reason why Mr Edwards was showing embarrassment: T82/7-T83/11.

Councillor Blight was asked specifically whether Mr Edwards had made any comment in relation to the three Councillors’ missing returns to the effect that they had never been lodged and he replied, **“The implication I had was definitely they’d never been lodged.”** He was then asked:

Q, But you don’t actually recall him saying that?

A. Well, he said that he was still chasing three, which meant to me that they had never been lodged.

Q. He didn’t say to you that any had been lodged but had been lost?

A. No. No. (T95/10-24)

Councillor Blight’s Inspection of Register 27 February 1996

On 27 February 1996 Councillor Blight returned to Mr Edwards’ office for the purpose of checking to see whether the three missing returns had been received. This was after a meeting at 6 p.m. on that day. Mr Edwards was not present in the office but Councillor Blight was able to obtain access to the register through another member of the staff whom he was able to identify in his evidence as an Executive Assistant: Exhibit A, Attachment 3, para. 5; Exhibit N, Statement, para. 4; T65/9.

Councillor Blight again looked through all of the volumes of the register and found filed therein returns for the 12 Councillors that he had seen on 1 February 1996 plus two additional returns. The additional returns were for Councillors Simpson and Thomas. He noticed that Councillor Simpson’s return did not contain the date of signature although the return form provided a space for that date to be inserted as well as the date to which the information in the return related. He found that Councillor Deering’s return was still missing. He again made handwritten notes of his inspection which became Exhibit U in the proceedings. He made these notes whilst

looking at the returns in the register: T64/10-19. Under a heading Stephen John Simpson he noted that the return had been lodged between 1 February and 27 February 1996 but with “no date”. He said in evidence that his note meant that although the return had been lodged between the two dates of his inspections which he had written in the notes there was no date as to when it had been lodged written on the actual return: T64/26.

The notes, Exhibit U, also recorded that on 1 February 1996 he had inspected the register “Thru G Edwards (also Doug C)” and on 27 February 1996 after a meeting at 6 p.m. “thru Theresa T.” His note also lists under the heading “IN” eight names of Councillors. Seven of the names are the names of seven out of the eight new Councillors but do not include the name of Councillor Deering. The eighth name is that of a Councillor named Emerson, who was not a new Councillor but had been re-elected from the old Council. It appears that for some reason not fully explained in the evidence Councillor Emerson had chosen to furnish a Primary Return although not obliged to do so under section 449(1) of the Act. This return was dated 18 September 1995 both as the date to which the return related and the date of signature. The Primary Return forms provided to Councillors were coloured yellow, the Ordinary Return forms were coloured green. Councillor Emerson’s return was coloured yellow and was contained in the register in the same batch as the yellow Primary Returns bearing the names of the other seven new Councillors listed by Councillor Blight in the note of his inspection on 27 February 1996. As already mentioned, although Councillor Blight was especially looking for it he could find no return for Councillor Deering: Exhibit A, Attachment 3, paras. 5-8; Exhibit N, Statement, p.4; Exhibit U; T64/10-57; T65/9, 14-46.

Councillor Blight had no conversation with the Executive Assistant who gave him access to the registers on 27 February 1996 regarding Councillor Deering's missing return: T68/39-T69/14.

Councillor Smith's Inspection of the Register 11 April, 1996

Councillor Blight reported the result of his inspections of the Register to his colleague Councillor Smith. He first spoke of it on 2 February 1996 after having inspected the Register on the previous day: T30/52. Councillor Blight informed him that the returns of Councillors Deering, Thomas and Simpson were not in the Register and that the staff member to whom he had spoken, Mr Graham Edwards, seemed embarrassed about it and had told Councillor Blight that the forms were not in and were being chased up: T31/3; T33/5-T36/4. Councillor Blight later told Councillor Smith of his second inspection of the Register on 27 February 1996 and the continuing absence of Councillor Deering's return from the Register: Exhibit A, Attachment 2, 3; T34/38. After several discussions in the meantime they spoke at length on 4 April 1996 when Councillor Blight again confirmed that he had been told by the Council staff that the return of Councillor Deering **"was not in yet"** and Councillor Smith then decided to make his own inspection of the Register in the following week: T31/7, 10-20; T35/52.

On 11 April 1996, Councillor Smith telephoned the Department of Local Government to ascertain how to make a formal complaint to the Director-General in the event of a Councillor failing to lodge a return and after that on the same day he went to the Council's offices for the purpose of inspecting the Register. He approached Mr Edwards who produced the Register for his inspection. He counted the number of returns at 14 when, as he knew, there should have been 15. He went through every person's name and identified the returns of all the Councillors except Councillor Deering whose return was not in the Register: T36/50-37/43; Exhibit A, Attachment 2, paras 5 - 8.

Councillor Smith then asked Mr Edwards where Councillor Deering's return was. After pausing for a while Mr Edwards replied **"There's been a bit of an accident."** Councillor Smith asked for some further explanation and Mr Edwards told him that the return had **"recently been lodged"** but **"lost."** He said that the pecuniary interest form had been lodged **"about a fortnight**

ago". At that point they were interrupted by a telephone call after which Councillor Smith asked Mr Edwards to tell him the exact date of lodgment. Mr Edwards then changed his earlier answer by telling Councillor Smith the return had been lodged "**by the date required**" and had then been lost: Exhibit A, Attachment 2, paras. 9 - 14; T37/20-57; T38/1-3; T39/19-30, 42.

With regard to the reference to "**an accident**", Councillor Smith said Mr Edwards "**was very vague**" about it, saying that as a result of the Council's offices having been moved around for internal renovations, "**Somehow as a result of that, the file had - I don't know - I think his term was that it had somehow fallen apart or fallen open and hers (Councillor Deering's) had fallen out.**": T48/25, 45-51.

Before attending the Council's offices to inspect the Register, Councillor Smith had telephoned Mr Edwards to inform him that he was coming in to inspect the Register so as to make sure Mr Edwards would be in his office. T38/17-34. Councillor Smith formed a clear impression that Mr Edwards was agitated and nervous about the inspection and the questions he was being asked by Councillor Smith. He said that he had known Mr Edwards for a substantial period of time and normally their discussions on matters were reasonably relaxed, but on this occasion the tone of his voice, the look on his face and his mannerisms gave the appearance of nervousness about the occasion and, when Councillor Smith pressed him on the question of an accident with the Register, Mr Edwards seemed "**agitated and a little bit confused as to what to say.**" Exhibit A, Attachment 2, para. 15; T38/13; T38/36-T39/15; T40/11-52.

Councillor Smith was not satisfied with the answers given to him by Mr Edwards about Councillor Deering's return or its absence from the Register. He did not say it to Mr Edwards at the time, "**But I thought, 'I'm not being given a straight answer here'**": T39/13. Councillor Smith told the Tribunal that he had pressed Mr Edwards in a manner which would indicate to Mr Edwards that he did not believe that Mr Edwards was telling the truth. He decided to go away and get some advice on the matter because he was not

convinced that he was being told the facts. T39/58-T40/9. One of the matters that concerned him was Mr Edwards' indication that Councillor Deering's return had somehow fallen out of the Register. The state of the Register when Councillor Smith saw it gave him no cause to believe that what Mr Edwards was saying was correct because the Register looked to be **“A very solid document”** and **“Didn't look like one that had recently fallen apart or had had an accident.”** T49/25; T52/1. Councillor Smith found that Mr Edwards' explanation as **“Highly unbelievable”** but, he said, **“I didn't press him on it, because I didn't think it was very likely, given the file looked to be in good condition and I think if there are hundreds of returns in these it seems unlikely only one falls out if the thing falls apart. I didn't press him on it, because, quite frankly, I didn't believe it.”** T48/36, 51-58.

Before taking any further action, Councillor Smith decided to seek confirmation from Councillor Blight as to what Councillor Blight had been told when he inspected the Register. He drove straight over to Councillor Blight's house after leaving Mr Edwards' office. Councillor Blight re-confirmed his previous accounts. He specifically said to Councillor Blight, **“Look, are you certain that Mr Edwards told you that they weren't in, they were being chased up etcetera”**, he said, **“Absolutely”**. I said, **“Alright. Well, clearly there's something that needs to be looked into here.”**: Exhibit A, Attachment 2, T40/56-T41/23; T41/35. Councillor Smith told Councillor Blight that he was going to lodge a complaint and requested Councillor Blight to prepare independently of Councillor Smith a statutory declaration with the facts relating to Councillor Blight's inspections of the Register to be forwarded to the Director-General separately from Councillor Smith's own letter of complaint and statutory declaration. Councillor Smith then went home and typed up his own documents for the purpose of lodging the complaint which was faxed to the Department on 12 April 1996: T41/15-47.

Councillor Smith was asked to explain his reasons and motivation for lodging his complaint against Councillor Deering. He acknowledged that he

had a political interest in ascertaining the financial interests of Liberal Party Councillors, including Councillors Deering, Thomas and Simpson. When first told by Councillor Blight that the returns of these three Councillors were not in the Register on 1 February 1996, Councillor Smith was inclined to put it down to incompetence or the intervention of the holiday period and did not act on it but when he found that it was still missing as late as April 1996 he considered it to be a serious matter: T32/26, 32. He told the Tribunal that his concern at the absence of Councillor Deering's return was motivated by the fact that he was not happy about the way things were going on the Council at the time. He said, **“There had been a number of decisions where the Liberal group had the majority where I was very concerned about development applications, etc., and I was concerned as to the pattern of those decisions and I was concerned that the Councillor had not made the disclosure ... I was looking to find out what sort of interests these people have that were new to the Council and I think those sorts of things should have been displayed. I was surprised that it wasn't lodged but I went up to find out what the situation was.”** T31/30-45.

In his letter of complaint to the Director-General (Exhibit A, Attachment 1) he stated that he regarded the matter to be of serious concern as Councillor Deering was the Chairperson of the Council's Environment and Health Committee and therefore had a significant influence over the approval of Development Applications and had moved approval for many controversial applications since her election. He requested the Director-General, in investigating the matter, to inquire as to whether Councillor Deering or her husband had any interests in building and related industries which should be declared.

Councillor Smith told the Tribunal that he also had a particular interest in Councillor Deering's return which he had discussed with Councillor Blight, namely, the possibility that she had not put in her return because it would disclose that she was not a resident of the Shire and so was ineligible to be on the Council: T48/13-21.

DEPARTMENTAL ACTION ON THE COMPLAINT

On 15 April 1996 at 3.45 p.m. Mrs Janette Ryan, Senior Investigations Officer with the Department of Local Government, telephoned Council's General Manager, Mr Rayner, to arrange a visit to the Council to inspect the Register of Returns. He being then unavailable, she arranged with his secretary an appointment to see Mr Rayner at 11 a.m. the following day, 16 April 1996. Mr Rayner afterwards returned Mrs Ryan's call to confirm that 11 a.m. would be suitable. She informed Mr Rayner that information had been referred to her to the effect that the Register was not complete and that she wished to discuss Council's procedures and examine relevant files as well as the Register. He informed Mrs Ryan that Mr Graham Edwards was the officer responsible for the Register and she told Mr Rayner that she had already left a message for Mr Edwards to call her. Mr Rayner told her that he would arrange for Mr Edwards to be in attendance with the records she had requested when she met Mr Rayner the following day: Exhibit A, Attachment 13, Janette Ryan's file note signed by her on 17 April 1996. That same afternoon Mr Ryan also telephoned Councillor Smith. She informed him that his complaint had been received and that she had spoken to the Council that afternoon and officers from the Department would be seeing the Council first thing the following morning to investigate the matter: T43/42-T44/11.

COUNCILLOR SMITH DECIDES TO RAISE HIS COMPLAINT AT COUNCIL'S MEETING ON 15 APRIL 1996

Having thus learned that a departmental investigation into his complaint was going to commence on the following day, Councillor Smith made a decision to raise the matter of his complaint at the Council meeting that was to be held that same evening. It was a Monday. Over the preceding weekend Councillor Smith had informed Councillor Blight and three Labor Party colleagues on the Council that he had lodged a complaint against Councillor Deering and told them not to tell anybody: T42/34-T43/3; T72/7. Neither he nor Councillor Blight told Mr Edwards or any other Council officer of his intention to lodge a complaint to the Department or that he had lodged

it or that a departmental investigation was on the way: T42/34-T43/3; T72/28. Shortly before the meeting on the Monday evening Councillor Smith told Councillor Blight that he had decided to raise the matter in Council.

There is a clear inference to be drawn from the evidence before the Tribunal of what occurred at the meeting that night and Councillor Smith's decision to raise the matter of his complaint at the meeting that he and Councillor Blight knew that a highly controversial public issue was on the agenda for decision by the Council at the meeting, that a large public audience as well as the news media could be expected to attend it and that it would be an opportunity to extract the maximum political advantage out of a pending investigation into allegations of a breach of the law by Councillor Deering.

Mr Macedone asked Councillor Smith why he had told his Labor Party colleagues not to tell anybody about his having lodged his complaint. Councillor Smith said that the reason was that he did not want anyone **"tipped off"** until the Department had commenced its investigation. He was then asked why he decided to make it public before the investigation had commenced. He said it was because he had learnt that the Department had already contacted the Council about commencing the investigation the following morning: T43/9-58.

When Mr Macedone sought elaboration of the reasons for his actions, Councillor Smith said that he wanted to bring the matter out into the open and have it on the public record because he was concerned that given his previous conversation with Mr Edwards there would be some attempt to cover up the matter as it was his belief that the matter was already being covered up to some extent from his conversations with Mr Edwards. He said that his purpose was to ensure that any comments or explanations put forward in answer to the allegations at the Council meeting would not have been pre-prepared or rehearsed and that whatever was said that night would be on the public record and any subsequent explanation offered would have to fit in with that given to the meeting: T44/13-T45/29.

Mr Macedone put a number of questions to Councillor Smith challenging him to justify his suspicions before the meeting of 15 April 1996 of a possible cover up for Councillor Deering. Councillor Smith explained his causes for concern. He said that he believed something was “amiss” because he was unhappy with Mr Edwards’ demeanour when he had spoken to him about the Register and Mr Edwards had given him inconsistent answers. Mr Edwards had told him that Councillor Deering's return had been lodged but at one stage Mr Edwards said that was “**A fortnight ago**”, which would mean about the end of March 1996, and at another stage had said, “**By the due date**”, which would have meant before 13 December 1995: T46/58-T47/9; T47/11-30. Twice on the same occasion Mr Edwards had told him that even though the return had been lodged it had been lost whereas, according to Councillor Blight, Mr Edwards had told Councillor Blight that the return was “**Not yet in**” and was “**Being chased up**”: T47/32; T47/43; T47/37-T48/5. In addition to these things Councillor Smith from his own observations of the condition of the Register when he had carried out his inspection, had found Mr Edwards’ vague explanation that Councillor Deering's return had fallen out of the Register when it had somehow fallen apart, unbelievable. Councillor Smith told Mr Macedone, “**I quite honestly didn’t believe that I was being told the truth**”: T51/5-9.

COUNCILLOR DEERING LODGES A RETURN DATED 11 DECEMBER, 1995 ON 15 APRIL, 1996 BEFORE THE COUNCIL’S MEETING

On 15 April 1996 at 5 p.m., which was before the commencement of the Council's meeting, Councillor Deering lodged a signed and completed Primary Return by delivering it to a Council officer named Mrs Jean Parker, a clerical officer in the Legal Services Office of which Mr Edwards was the Manager. Mrs Parker was answerable to Mr Edwards who was not present at the time. Although the form is signed and filled out in handwriting Councillor Deering's name and both the return date and the date of signature are typed.

The date in both places is typed “**11/12/95**” and there appears above both dates handwritten faintly in pencil “**11.12.95**”: Exhibit Q.

There is conflicting evidence before the Tribunal as to when, how and in what circumstances this return form came to be in Councillor Deering's possession. For present purposes it is sufficient to say that it is not disputed that the form in the condition described was delivered by Councillor Deering to Mrs Parker at the date and time just mentioned.

There is also conflict in the evidence as to what precipitated this action by Councillor Deering. So that it may be seen in the present context reference will be made at this stage to some of the evidence given by Councillor Deering on the subject with more detailed reference to her evidence to be made later.

Councillor Deering's evidence was that she had received the typed return form dated 11 December, 1995 prior to 11 April 1996 at a date which, in the evidence, is a matter of dispute. She told the Tribunal that she had received it from Mr Edwards personally with a request by him for her to complete it and return it to him. She said that she still had it in her possession on 11 April 1996 when Mr Edwards made a telephone call to her. Councillor Deering was interviewed by two of the Department's investigation officers, including Mrs Janette Ryan, in the presence of her solicitor, Mr Macedone on 13 September 1996. She told Mrs Ryan that she could remember Mr Edwards call distinctly because she was in her car and it was on the car phone. Councillor Deering had a mobile phone supplied by the Council which she carried and used in her car and this is the phone to which she was referring. It will be necessary to deal later with Councillor Deering's account of all that was said to her by Mr Edwards on this occasion. For present purposes it is sufficient to say that Councillor Deering told Mrs Ryan that Mr Edwards told her in this conversation that he needed her to get the form in, saying that “**We’d better get it in**” and “**A few people have been inquiring.**” She said, “**He did tell me that a few people had looked, you know, asked to look at the Register, and he said, “Look you really do**

need to get it in.” She also told Mrs Ryan that she had asked Mr Edwards whether it would be alright to bring the form in on the Monday, 15 April, 1996 when she would be coming up to the Council for the meeting, and he replied that Monday night would be fine. Exhibit A, Attachment 8, pp.32.9, 34.9 - 35.5. When giving evidence to the Tribunal about the lodgement of this form she was reminded by Mr Macedone that she had said that Mr Edwards had told her that people had been asking him about the form. She then gave the following evidence:

“Q. Just what did he say?

A. He said, “There’s been a few people inquiring about your form”, and I said, “Oh, who?” I mean, I must admit I was at a loss as to who would be wanting to look at my form.

Q. Did he tell you who?

A. No he said to me - and I remember his exact words - and when I said to him “Oh, who?”, he said to me, “Councillor, I’d rather not say.”:

T307/57-T308/13

Councillor Deering told the Tribunal that in consequence of Mr Edwards’ telephone call to her on 11 April 1996 she filled out the form pre-dated 11 December, 1995 on the Sunday night 14 April, 1996 before the Council meeting which was due to take place on the following day and that she afterwards handed it to Mrs Parker at about 5 p.m. on the Monday night and then went to the meeting which started at about 6.30 p.m.: T303/34, 55-T304/15.

BLANK FORMS GIVEN TO NEW COUNCILLORS

There was evidence before the Tribunal that prior to her receiving the typed pre-dated form that she lodged on 15 April, 1996, whatever date she received it, she had already been given a blank Primary Return form in time for her to fill it in and lodge it before the prescribed date of 13 December, 1995.

Her evidence was that between 13 and 15 September, 1995 she was given by Council officers an information kit containing information and

guidelines for new Councillors together with a blank Primary Return form in a large envelope with a letter advising her how and when it was to be completed and lodged. She also gave evidence that she had filled in that form sometime prior to 20 October 1995 but, although she had intended to lodge it, she had no recollection of ever having done so. The circumstances and details of her evidence as to this and other matters will be dealt with more fully later.

Mr Chapman gave evidence that on 3 October 1995, at the request of the General Manager in the absence of Mr Edwards, he had given blank Primary Return forms to all of the new Councillors, including Councillor Deering, at an EHC meeting attended by her and had requested the Councillors to complete and return the form to Mr Edwards before the due date. Councillor Deering denied this evidence, claiming that the only blank form she ever received was the one given to her in September 1995.

Mr Edwards gave evidence that the type-dated form which Councillor Deering lodged on 15 April, 1996 was given to her by him on or shortly before the date 11 December, 1995 which is typed on the form after he had just previously checked the Register and found that no return had been lodged by either her or Councillor Thomas. He said that he had also given a similarly typed and dated form to Councillor Thomas who returned it signed and completed soon afterwards but Councillor Deering had not returned her form and he did not see it again until 16 April, 1996 when he came to work and found that she had lodged it on the afternoon of the previous day. Mr Edwards said that the form was pre-dated 11.12.95 because that was the date of an EHC meeting at which Councillor Deering and Councillor Thomas would be present and he expected that they would complete their forms and return them to him at the meeting. Councillor Deering denied this evidence, claiming that Mr Edwards had not given her that form until late February or early March of 1996 and that she was not aware until filling it in on 14 April, 1996 that it had been pre-dated to 11 December, 1995.

The conflict between Councillor Deering's evidence and that of Mr Chapman and Mr Edwards on the above and some other matters will be dealt with in due course.

THE COUNCIL MEETING OF 15 APRIL, 1996

As predicted, there was a large public audience in attendance at the meeting because of the controversial proposals before Council. The media was present. Councillor Deering recalled that there were even children parading in the Council Chamber with placards. However, the eagerly anticipated debate was delayed by a motion put by Councillor Smith at the outset of the meeting to the effect that the Council order that Councillor Deering be suspended from performance of the office of Councillor pending the outcome of an investigation by the Department of Local Government into her contravention of the Local Government Act by her failure to lodge her pecuniary interest return as required by the Act.

In speaking to the motion, Councillor Smith at some length laid emphasis upon the statutory obligations of Councillors to disclose their financial interests in public returns which would reveal any private interests they had in business before the Council. He made comments suggesting that Councillor Deering, by failing to lodge her return, may have been endeavouring to conceal connections with development applications and, by not revealing her home address, to avoid questions as to her eligibility to be on the Council because of the fact that she did not reside in the Shire.

Councillor Deering had no forewarning of and was caught utterly by surprise by Councillor Smith's motion. Councillor Smith on the other hand had no knowledge that as he spoke a pecuniary interest return had already been lodged by Councillor Deering that very evening prior to the commencement of the meeting.

As shown by a tape recording of part of the meeting which is included in the Director-General's Report (Exhibit A, Attachment 27), the meeting was soon in uproar as the Mayor endeavoured to make rulings, Councillor Deering attempted to defend herself, other Councillors and members of the

public jeered and shouted interjections, apologies were demanded and refused and members of the public clamoured with the support of some Councillors for the meeting to get on with the business they had all come to hear.

The Mayor was doing her best to control the meeting but it was extremely difficult. Having heard what Councillor Smith had to say in support of his motion, she ruled that it was out of order because the Council had no power to suspend a Councillor. There was dissent from her ruling. She maintained her ruling but permitted Councillor Deering to answer Councillor Smith's allegations.

The controversy provoked by Councillor Smith's motion and his remarks proceeded for a considerable length of time. In an endeavour to reduce it to its essentials for present purposes an extract of the tape was transcribed which became Exhibit V in the proceedings. Subject to one matter to be mentioned shortly Exhibit V is considered by the Tribunal to accurately reproduce statements made at the meeting which are relevant to the present proceedings.

In the course of answering Councillor Smith, Councillor Deering said to the Council:

“First of all. Yes my pecuniary interest sheet is late and yes I make no apology about that simply because I did forget but as we speak the Council staff has my pecuniary interest and I am happy for it to be brought up here and I request that it be brought up here now and Councillor Smith sees it. General Manager would you ask the staff to bring my pecuniary it was handed in this afternoon. It was given to Mr Graham Edwards' assistant, I forget her name. It was given to her. I am sorry it is there First of all my pecuniary interest is with Council at this moment as we speak and I am happy for it to be shown. I've got nothing to hide and it can be presented whenever Council staff can find it.”

Councillor Deering then went on to reply to remarks that had been made concerning her place of residence and in the course of ending her speech said, **“I will conclude by saying my pecuniary interest sheet is present within the Council walls as I speak”** (Exhibit V).

There followed a considerable amount of acrimonious debate as to whether Councillor Deering was entitled to an apology from Councillor Smith for disparaging remarks that he had made about her in purported support of what the Mayor evidently regarded as a spurious motion. There were points of order with the Mayor taking the view that Councillor Deering was entitled to demand an apology and Councillor Smith refusing to apologise for bringing a breach of the law to the Council's notice. Eventually Councillor Deering was permitted to make a further address to the meeting in the course of which, as it appears from the transcription in Exhibit V, she said as follows:

“Secondly, there was also some dispersions (sic) against my character as to some underhanded reason as to why there was no availability of my declaration of interests. Madame Mayor simply, I’ve been speaking to Mr Edwards and, yes, it was available, I had done it and then I didn’t put it in and then he said, “Where is it”, then I lost it” (after which the next few words are obscured by the noise made by those present at the meeting).

It should be mentioned here that in relation to the words **“then I lost it”**, firstly, Mr Macedone contended that the word to be heard on the tape was **“and”**, not **“then”**. The Tribunal, after listening again to the tape, agrees with Mr Macedone and, accordingly, the word **“then”** should be read as **“and”**. Secondly Councillor Deering claimed in the course of her evidence that the words **“I lost it”** should be in inverted commas, thereby attributing the remark to Mr Edwards so that it should be read as, **“he said, “Where is it”, and “I lost it”**. Councillor Deering told the Tribunal that she could not accept that she had told the meeting that she had lost her return because it was never in her mind that she had done so: See Exhibit L, para. 2(d), pp.4-5. This and other evidence given by Councillor Deering concerning what she said and what she meant to say at this meeting will be considered later.

As Exhibit V records, Councillor Smith, on several occasions after Councillor Deering had spoken reiterated that his complaint against her was that she had failed to meet the requirements of the Act and had been in

breach of the law. Councillor Blight made an interjection, **“I found out where she lives. I think she admitted it’s Bruce Street, Kogarah Bay.”**

During the course of the controversy, Councillor Deering's request that the General Manager ask staff to bring to the meeting the pecuniary interest return which she had lodged resulted in the General Manager despatching Mr Chapman to look for it, Mr Edwards being absent from the meeting. Mr Chapman, after telephoning Mr Edwards at his home, found the return in an envelope on Jean Parker's desk and, having checked to see that it was Councillor Deering's return, took it up to the meeting and gave it to the General Manager.

In cross-examination, Mr Macedone asked Councillor Smith whether he was suggesting that Councillor Deering's lodgment of her return on the afternoon of 15 April, 1996 was **“part of this cover-up”** which Councillor Smith had said that he suspected of Mr Edwards: T45/31. Councillor Smith responded by saying that he had seen the return on the night of meeting and noticed that it bore a date in December 1995 which he found **“quite extraordinary”**. He said that the Council had been informed that afternoon that there was going to be an investigation and he assumed that there had probably been some communication between the Council and Mrs Deering which led her to lodge the return and he considered that, **“That was the most logical reason why it had been lodged that day”**: T45/31-T46/42. He conceded, however, that his reasoning depended upon someone from the Council having told Councillor Deering of the impending investigation: T46/44-56.

COUNCILLOR DEERING'S ACTIONS AFTER THE COUNCIL MEETING OF 15 APRIL 1996

At this point it is convenient to give an account of Councillor Deering's actions after 15 April, 1996 in response to the allegations which had been made at the meeting and then to consider the implications and her explanations of her subsequent conduct.

Letter to General Manager dated 15 April 1996

Councillor Deering told the Tribunal that she was greatly upset by the unexpected turn of events at the Council's meeting, which she described as “**horrendous**”. She agonised about the possible implications for her of the pending departmental investigation and she was particularly concerned about having signed and lodged a back-dated return form as she had been taught that it was wrong to back date a signature and this played on her mind:

Exhibit A, Attachment 8, p.56; T316. Late on the same night she composed a letter to the General Manager which, she said, was for the purpose of explaining the back dating of the document. She dated the letter 15 April, 1996 and faxed it to him at 9.37 a.m. on the following day: Exhibit A, Report, p.9, para. 5.2.1; Exhibit M. The letter contained the following:

“As there were concerns expressed regarding the late arrival of my pecuniary interest form the following information is offered by way of explanation.

Firstly, it has been a genuine mistake on my part as I was moving house and it was packed away as I intended to lodge the form with council when I unpacked.

Mr Edwards from Council rang me last week and informed me that my form was outstanding and could I check at home as he thought it my have been misplaced in the Councils resent move. Upon a search at home I found my form and lodged it with council staff before our next council meeting.

Furthermore, I clearly place on record that I did realise the urgency of the situation. As a new Councillor I believed that when we are asked at the beginning of Council meetings to declare our interests that it covered us and that the form was a matter of course.

Please note the date was typed on the form which I subsequently filled out and signed. However, it was not lodged until 15.4.96. due to the reasons outlined above.”

It should be noted here that Councillor Deering pointed out that she had made an error in the fourth paragraph of her letter. Where it states “**I did realise the urgency**” she had intended to say that she did not realise the

urgency. The remainder of the paragraph is consistent with her having made that error.

Admission made to Janette Ryan on 16 April 1996

The Department's Investigation Officers Janette Ryan and Tony Day visited the Council on Tuesday 16 April, 1996 to inspect the Register and meet with Mr Rayner and Mr Edwards. While at the Council, Mr Rayner advised them that Councillor Deering said that she would make herself available for an interview while they were there if they so desired. As the purpose of the visit was to examine the Register and ascertain the Council's procedures they decided not to interview Councillor Deering at that stage but when Janette Ryan returned to her office she telephoned Councillor Deering and left a message on her answering machine. Councillor Deering telephoned her late in the afternoon. She informed Councillor Deering of the allegation made against her. She made a file note of Councillor Deering's response which is in the following terms:

“She conceded that she had not lodged her Primary Return within the required time and was apologetic adding that she would have declared an interest if she did have a pecuniary interest at the Council or committee meeting.”

Councillor Deering then asked Janette Ryan what would now happen in the matter and Janette Ryan told her the general procedures which the Department followed when such an allegation had been made, advising her that the Department would write to her stating the alleged breach and providing an opportunity for comment following which an assessment would be made on the information obtained in relation to the breach. Councillor Deering asked whether the letter she had written to the General Manager would suffice. Janette Ryan replied that it would not be sufficient and the matter was a serious one considering that she was the Chair of the committee which determined the major and most contentious developments in the Shire. Councillor Deering told Janette Ryan that she would not wait for the

Department to write to her but would write to the Director-General providing more detailed comments in reply to the allegation: Exhibit A, Attachment 13.

Councillor Deering's "Leader" Letter dated 22 April 1996

On 18 April, 1996 a local newspaper, called the St George & Sutherland Leader, published a report of the Council meeting of 15 April, 1996 under the heading, "**Smith Hits at Deering in Council Debate**". The newspaper report stated that Councillor Deering had said to the meeting, "**Her pecuniary interest sheet was late only because she had forgotten, and that she had nothing to hide.**": Exhibit S.

On 22 April, 1996 Councillor Deering wrote a letter to the Editor of the "**Leader**" which she headed, "**An Open Letter to the Residents of the Sutherland Shire**". An extract from this letter was published by the "**Leader**" on 24 April, 1996: Exhibit L, Attachment 2; Exhibit A, Attachment 14.

The letter she wrote referred to the allegations made by Councillor Smith, describing them as "**malicious and unsupported**", and stated that she believed that the community should know all the facts. The letter went on to say:

"Subsequent inquiries have revealed that my original pecuniary interest form appears to have been lost during the Council's renovations and it was my replacement form which was outstanding."

The letter went on to welcome any investigation and to state that the whole issue was a witch hunt used by the ALP to divert attention from the real issues. The letter concluded by claiming that at the Council elections in September 1995 the residents had voted overwhelmingly for the local Liberal team to stop the ALP from using their local Council for their own political careers and that she was determined to stay and serve the community to ensure that the residents got a fair deal and the agenda was not "**highjacked by the ALP for their own political gain.**"

Councillor Deering's Solicitor Tina Spiegel's Letter 26 April 1996

On 23 April, 1996, the day after she had written her letter to the “**Leader**”, Councillor Deering instructed Tina Spiegel of Spiegel & Associates, Solicitors, to act for her in the matter: Exhibit AC:. On 26 April, 1996 Tina Spiegel wrote a letter to the Director-General advising that she was acting for Councillor Deering and had been instructed to respond to allegations made about her disclosure of pecuniary interests during a telephone conversation with Janette Ryan. The letter requested exact particulars of the alleged breach of the Act. After commenting that “**lateness**” in lodging a return might constitute a “**technical breach**” of the Act the letter went on to state that Councillor Deering's instructions were that she had had ample opportunity at Council meetings to disclose any pecuniary interests and had made no disclosures to date as a result of which there was “**no practical import of the late lodgment**”. The letter went on:

“Furthermore, upon reflection in calmer circumstances, my client believes that she completed the disclosure form and may have given it to the Council staff. Mr Graham Edwards, the Public Officer, who collected forms, believed that the form may have been lost during Council renovations. There was no intent to misguide or not disclose and it is certainly not clear whether the form was lost by my client or by the Council.”: Exhibit A, Attachment 4.

Tina Spiegel's Letter 29 May 1996

On 14 May, 1996 the Director-General wrote to Tina Spiegel with particulars of the allegation and inviting further comments before the Department completed its assessment of the complaint: Exhibit A, Attachment 5.

On 29 May 1996, Tina Spiegel wrote a reply stating Councillor Deering's instructions as to the facts of the matter and urging the Director-General to exercise his powers under section 463(1) of the Act not to take any action. The letter stated:

“Councillor Jill Deering has instructed me that her pecuniary interests return was completed and given to Council staff shortly after she took

office. She believes that she gave her form to the appropriate Council staff member. Subsequently the Council changed location and Councillor Deering changed residential accommodation. The matter of the pecuniary interest form was not again considered until Mr Edwards of Council asked Councillor Deering to supply him with another because he believed that Council had lost the original during their renovations. When Councillor Deering inspected the Pecuniary Interest Register with Mr Graham Edwards recently, the Register fell apart and forms were scattered in all directions. Under these circumstances we believe that it is highly likely that the original form was lost and Councillor Deering was required to provide another form.” Exhibit A, Attachment 6

The letter later stated, **“We have discussed these issues fully with Councillor Deering and believe that in accordance with section 463(1) of the Act, the complaint is frivolous, vexatious and not made in good faith. The complaint is also trivial and does not warrant the time your Department has spent upon it.”** After querying whether the only allegation was that the form had not been placed in the Register, the letter concluded, **“We do not believe that time spent fighting shadows is constructive for either the Department or the workings of local government.”**

On 3 July, 1996 the Director-General informed Tina Spiegel that it had been decided that the matter should be the subject of an investigation under section 462 of the Act and that on completion of the investigation a Report would be made to this Tribunal under section 468 of the Act: Exhibit A, Attachment 7.

COUNCILLOR DEERING’S EXPLANATIONS FOR HER ACTIONS

There are ambiguities, inconsistencies and contradictions in Councillor Deering's assertions and explanations made in response to and following Councillor Smith's allegations at the Council's meeting on 15 April, 1996. It is appropriate to deal with them in the present context under the sub-headings which follow:

Statements Made by Councillor Deering at the Meeting on 15 April 1996

In the evidence before the Tribunal, there is no room for doubt that, whatever else Councillor Smith said about Councillor Deering at the time, he was accusing her of never having lodged a Primary Pecuniary Interest Return. He referred specifically to the requirements of the Act in that regard, claimed that she had failed to comply with them and, in that respect, was in breach of the law: Exhibit A, Attachment 16, Exhibit B, Attachment 1; Exhibit V. That was the charge he was challenging her to answer at the meeting. However, she professed to the Tribunal that, at the time, she did not understand what was being alleged against her in relation to the pecuniary interest form: T304/45-57. She had the advantage of Councillor Smith in that, unknown to him, she had actually lodged a return that very day just before the meeting.

Her first unrehearsed response to his accusation that she had never lodged her return was to tell the meeting, **“My pecuniary interest sheet is late”** and to give as her explanation that this was **“Simply because I did forget”**, before going on to say that, **“It was handed in this afternoon.”**: Exhibit V. In the context the only construction that could reasonably be placed on what she said at this stage of the meeting was that she was admitting that she had not lodged a pecuniary interest return within the prescribed period, that she had failed to comply with the requirements of the Act and the only explanation she had was that she had forgotten to do it. The remainder of what she said in relation to returns and forms at this stage of meeting is all expressed in the singular so as to convey that the only return that she had ever lodged up to that moment was the one that she had lodged that afternoon.

During the debate on whether Councillor Deering was entitled to an apology, as the Mayor had ruled, a Councillor took a point of order saying, **“If the reality is the pecuniary interest is late there is a breach of the Local Government Act - why is there any need for an apology?”** The form of

this point of order is consistent only with that Councillor having understood that the basis of the debate was an allegation that no pecuniary interest return had been lodged by Councillor Deering within the prescribed period and Councillor Deering had admitted as much to the meeting.

The singularity of reference to the act of lodging a return was repeated by Councillor Deering when addressing the meeting on the second occasion. She was endeavouring to deal with a suggestion that there had been some **“underhanded reason”** as to why there was, as she expressed it, **“no availability of my declaration of interests”**. After saying that she had been speaking to Mr Edwards, she said, first of all, **“Yes, it was available. I had done it and then I didn’t put it in.”** (Exhibit V) Again, in the same context, the only construction that can be placed upon this statement is that she was telling the meeting that she had had no intention of concealing her interests because she had filled out her return but had then failed to lodge it, once again conveying that she had not lodged any return before the one she handed in that afternoon. Having said, immediately before this, that she had been speaking to Mr Edwards she continued (according to the transcription in Exhibit V, as corrected), **“Then he said, “where is it”, and I lost it.”** The apparent, simple, and reasonable explanation of this passage would seem to be that she was saying that she had had a conversation with Mr Edwards after she had completed her return but failed to lodge it, he had asked her where was her return and she discovered that although she had completed her return she had lost it. However, Councillor Deering disputed this interpretation with a somewhat convoluted interpretation of her own which needs to be examined.

Councillor Deering was obviously worried about what she had said at the meeting. When she was interviewed on 13 September, 1996, she told the interviewers that a couple of days after the meeting she had asked to hear the tape recording played when she was in the General Manager's office with the Mayor. She also told them that she actually had a tape as well and had listened to it: Exhibit A, Attachment 8, p.23. She therefore had plenty of time

to think about the implications of what she said between the date of the meeting and the dates of her interview and the subsequent hearing before the Tribunal.

It is apparent from the evidence that Councillor Deering was fully aware that what she had said at the meeting presented a problem for her because it amounted to an admission that she had not lodged any return before 15 April, 1996 and so had been in breach of the Act. Indeed, in her evidence she conceded that what she had said to the meeting conveyed that she had not lodged any return form until 15 April, 1996: T351/9-12. It appears to the Tribunal that, troubled by the possible consequences, she has since put her mind to finding ways and means for explaining away the words that she used so as to be able to make out that she had really made no such admission or that she had not intended to make any such admission. To achieve this purpose she has attempted, as the evidence will show, to dismember what she said to the meeting so as to be able to allocate part of it to the Primary Return form she received on her election in September 1995 and part of it to the return form pre-dated 11 December, 1995, so as to say that she was actually talking about two different forms and, also, to attribute to Mr Edwards statements that she appeared to have been saying about herself.

As to the expression “**It was available**” she told the investigators that that referred to the second form she had been given, the one pre-dated 11 December, 1995, in the sense that she was saying that it was available because she had lodged with the Council that afternoon: Exhibit A, Attachment 8, p.23. However her evidence to the Tribunal was that the words referred to the first return form she had been given, the blank form she had been given on her election in September, 1995, and that what she was conveying was that Mr Edwards had told her that that return “**had been available**” but he could no longer find it: Exhibit L, para. 2(d), p.5

As to the expression, “**I had done it and then I didn’t put it in**”, she told the investigators in September 1996 that this referred to the second form;

but in her evidence to the Tribunal she broke the phrase into two parts, one part of which she related to the first form and the other to the second form. She said that the words **“I had done it”** meant both that she had done it and had put it in, referring to her first form, and the words **“I didn’t put it in”** referred to the second form which she had neglected to put in until 15 April, 1996: Exhibit L, para. 2(d), p.5; T310/10-23, 25-34, 42-48. It was not surprising that in treading this tricky path Councillor Deering foundered when the composite phrase was put to her:

“Q. What were you referring to, “I had done it and then I didn’t put it in.”?”

A. To me, I was talking about my second form because I hadn’t put it in. I still had it - well, I’d handed it in that afternoon.”: T310/30-34

After she was reminded that she had given evidence that she had only filled the second form in on the weekend before the meeting whereas she had previously given evidence that she had filled the first form in sometime prior to 20 October, 1995 and that the composite phrase made sense if it was referring to the form that she originally received in September 1995, she was asked:

“Q. Now, if you didn’t lodge it or had no recollection of ever having lodged it, then it’s easy to understand what you are saying: “I had done it; I filled it in and then I didn’t put it in, I didn’t lodge it.” Now, how can that be referring to what you choose to call the replacement form?

A. I don’t know, Mr Holland. I really don’t.”: T310/36; 311/7

As to the phrase **“And then he said, “Where is it?””**, she told the investigators that it was Mr Edwards who asked that question: Exhibit A, Attachment 8, p.23; in her statement for the Tribunal she claimed that the words **“Where is it?”** could in fact be **“There it is”**: Exhibit L, para. 2(d), p.5; but when the phrase was referred to her by Mr Macedone in the course of her evidence she said that she believed that it was herself saying to Mr Edwards **“Where is it? Where is my first form?”**: T312/3-34.

As to the expression, “**and I lost it**”, she has done her best to disown it by attributing it to Mr Edwards on the basis that she didn’t believe that she would have said that she had lost it. She told that to the investigators, going so far as to suggest that in listening to the tape recording of the meeting, “**You’re flat out sort of hearing who said what**” and then suggesting somebody other than herself may have said “and I lost it” at the meeting and that these words are out of context: Exhibit A, Attachment 8, p.23.8.

In her endeavours to have the words “**I lost it**” coming from the mouth of Mr Edwards, she has shifted her ground as to who spoke the words, “**Where is it?**”. In her statement Exhibit L, para. 2(d), p.4, she said that she had listened to the tape of the meeting several times and believed that what she said was, “**He said, “Where is it?” and “I lost it”**”. In addressing the Tribunal on the accuracy of the transcription of the tape in Exhibit V, Mr Macedone said, “**I think it is clear from Councillor Deering's statement that what she says is that: the message I was putting across was that Mr Edwards told me two things. The first thing he told me was, “Where is it?” and the second thing he told me was, “I lost it”.**”: T157/5-38. However, as mentioned above, Councillor Deering claimed the expression “**Where is it?**” was a question by her to Mr Edwards. The reason for her doing that is apparent, namely, it is easier to contend that the words, “**I lost it**” are Mr Edwards’ words and the question, “**Where is it?**” was asked by Councillor Deering, than it is to attribute the words “**I lost it**” to Mr Edwards if it is Mr Edwards who is asking the question “**Where is it**” because, then, we would have him asking and answering his own question, which is most unlikely. There is no such problem if Councillor Deering was saying to the meeting that it was Mr Edwards who asked the question and she who answered him by saying, “**I lost it**” and this is the more reasonable interpretation.

Finally she endeavoured to undermine her apparent admission to the meeting that she had lodged no return prior to 15 April, 1996 by having told the meeting that her pecuniary interest sheet was “**late**” because she “**did forget**”, by claiming that those statements were references to the second form she had been given, the pre-dated one: Exhibit L, para. 2(d), p.5; T310/20-23.

In the Tribunal's view, Councillor Deering's efforts to evade the apparent meaning of the statements she made to the meeting have failed to dispel the clear impression that she was admitting to the meeting that she had not lodged her Primary Return as required by the legislation but had sought to rectify the breach by filing a return in the afternoon before the meeting. There can be no doubt that the excuse she gave to the meeting for being late with her return was that she had forgotten to lodge it. This is borne out not only by listening to the tape recording of the meeting but also by the press report of what she had said at the meeting and notes made by Councillor Blight at the time.

As mentioned above, the report in the “Leader” of 18 April, 1996 stated that she had told the meeting that her pecuniary interest sheet was late only because she had forgotten: Exhibit S. Councillor Blight had made notes at the meeting on the back of the Notice of Meeting which he had received. The relevant notes read, “**J.D - Yes, late; forgot. - in now. (this afternoon Mon 15.4.96) due - early Dec. Established: 5 months late PI Return.**”: Exhibit R. Neither the “Leader” article nor Councillor Blight’s notes record that Councillor Deering also said to the meeting the words, “**I lost it**”. The tape recording leaves no doubt that she did use those words but immediately afterwards there was so much interjection and shouting that it is possible that persons present at the meeting were distracted from or did not hear that part of what she said. Apart from his notes, Councillor Blight told the Tribunal that his recollection of what she said at the meeting was that she was late with her form, that it had been

lodged for the first time that afternoon with the emphasis on **“forgotten to lodge”** rather than **“lost”**: T59/39-60/7. However, he said that he did not recall Councillor Deering suggesting that a Council officer had lost the form: T59/45.

Letter to General Manager 15 April 1996

Consistently with what she had told the meeting just hours before she wrote it, Councillor Deering's letter to the General Manager is expressed in terms which suggest that she is referring throughout to only one pecuniary interest return having been lodged by her. She uses the singular **“it”**, **“my form”** and **“the form”**, never suggesting that she was referring to different forms at different times in her letter.

She told the investigators that the **“concerns expressed”** mentioned in the first paragraph was a reference to Councillor Smith's allegations at the meeting.

The second paragraph makes reference to her **“moving house”**. The evidence established that this occurred on 20 October, 1995. She told the investigators and the Tribunal that she recalled filling out the first form that she had been given, that is the blank form given to her with the information kit for new councillors shortly after her election in September 1995, and packing it away before she moved house with the intention of lodging the form with the Council when she unpacked. Thus the **“genuine mistake”** to which she refers in this paragraph is part of the explanation that the letter says she is putting forward for **“the late arrival”** of her pecuniary interest form. When asked to say which form she was referring to as having arrived **“late”** she replied **“At that point in time I didn't know which one I was referring to.”**: T349/36. However she agreed that the second paragraph of her letter referred entirely to the first form she had received and her statement in that paragraph that she intended to lodge that form when she unpacked implied that it was an intention that had never been fulfilled: T350/19.

After referring to a telephone call from Mr Edwards, the next paragraph asserts that he told her that her form was outstanding and asked her to check at home as he thought it may have been misplaced in the Council's recent move. It is significant that she does not assert that Mr Edwards told her that Council had lost her return. The sentence implies that Mr Edwards was not asserting any explanation for the form being outstanding but was asking her to make a search at her home in case the missing return was there but he was also acknowledging a possibility that if she had lodged her return it may have been misplaced by the Council. She concludes her explanation in this letter by saying that she made a search and found her form at home and lodged it with Council staff before the Council meeting. At this point there is ambiguity, not on the face of what she wrote, but arising out of the fact that the form she lodged was not the blank she had originally but one pre-dated 11 December, 1995 given to her by Mr Edwards. On the face of what she wrote in this letter, however, she is indicating that there was only one form involved which she had intended to but had not lodged and which she found on a search at home after Mr Edwards telephoned her and told her that her return was outstanding.

Councillor Deering rejected a suggestion that, having no recollection of ever having lodged her original return form, when she searched at home she had found only the second form which Mr Edwards had given her and concluded that she had lost or may have lost the original form: T350/38.

She finally concluded the explanation in her letter by referring to the pre-dating on the form and stating that it was not lodged until 15 April, 1996 due to the reasons previously given in her letter. The implication to be derived from what she had said earlier in the letter was that the original form that she had received before moving house was a pre-dated form as, throughout her letter, she only ever spoke of having had one form. An alternative explanation is that she carefully framed her letter in order to conceal the fact that there had been two forms, the original which she had

failed to lodge and/or had lost and a substitute pre-dated form which she had been given by Mr Edwards to repair her failure.

The Tribunal would conclude on what she told the meeting on 15 April, 1996 and what she wrote to the General Manager in her letter of the same date that her state of mind at that time was that she had not lodged any pecuniary interest return before 15 April, 1996. When it was put to Councillor Deering that this was the impression that she gave by both her statements to the meeting and her letter to the General Manager, she agreed that that was the impression that she had given on both occasions: T351/9-16. It is an impression which she confirmed when she spoke to Janette Ryan on the telephone on the following day.

Admission to Janette Ryan

The accuracy of Mrs Ryan's file note as to her telephone conversation with Councillor Deering on 16 April, 1996 was not challenged at the hearing. The significant part of this record is in the statement, "She conceded that she had not lodged her Primary Return within the required time." There was no suggestion in the file note that Councillor Deering had made any reference to her having had in her possession two return forms one of which she had lodged prior to her lodgment of the second form on 15 April, 1996. However, when interviewed on 13 September, 1996, Councillor Deering made an attempt to suggest that Mrs Ryan had asked her in their telephone conversation about two forms. This came about when Mrs Ryan had reminded her of their telephone conversation on the day following the Council meeting. Councillor Deering then volunteered, "**That's right and I think you asked me about the two forms and I think I remember saying something like oh no, there was only ever one because at this stage I thought we are talking about the replacement because for me it was a replacement form. Then I got off the phone and I just sort of thought oh I don't want - I didn't know what I meant, I was confused**": Exhibit A, Attachment 8, p.27.10. This appears to the Tribunal as a deliberate attempt on Councillor

Deering's part to divert the admission which she had made to Mrs Ryan away from her original return to the pre-dated second form she had lodged on 15 April, 1996. However, the attempt failed because Mrs Ryan then proceeded to read to her verbatim the relevant portion of her file note of the conversation and then to ask Councillor Deering whether she agreed that the file note was a fair and accurate and reasonable description of the conversation.

Councillor Deering agreed that it was, adding, **"I was in shock."**: Exhibit A, Attachment 8, p.28.

The fact that Councillor Deering's admission to Mrs Ryan was made and was intended to be made in relation to not having filed any return form within the required time and was not intended to relate only to the pre-dated second form is corroborated by the fact that the only **"required time"** was the period of three months ending 13 December, 1995 laid down by the Act for a Primary Return. The concession that she had made that she had not lodged her Primary Return within that time was a concession that she had committed a breach of the Act as had been alleged by Councillor Smith. By inference, it was also a concession that the pre-dated form which she had lodged on 15 April, 1996 was the first return that she had lodged. The expression **"Within the required time"** could not have been intended by her to refer to the pre-dated second form because she was claiming that that form was intended to be a **"replacement"** and there was no required time for the lodging of any replacement form.

In the course of her evidence Councillor Deering agreed that what she had conceded to Mrs Ryan was that she did not lodge her return within the required time, that she always knew that the required time was a particular time laid down by the Act and that her admission to Mrs Ryan was not related to the pre-dated second form: T316/51; T343/1-6; T394-395/1-31; 43-52.

Letter to "The Leader" 22 April 1996

The letter Councillor Deering wrote to "The Leader" on 22 April, 1996 shows that by that date she had decided on a radical change of tack by

suggesting to the public that the admissions of late lodgment that she had made at the Council meeting related exclusively to the pre-dated return she had lodged on the day of the meeting (which, it should be noted, she chose for the first time to call her “**replacement form**”), and that she had actually lodged an earlier original Primary Return which the Council appeared to have lost during renovations.

However, she sought to conceal in the letter that this explanation was a reconstruction of events arrived at entirely by herself. She did this by attempting to endow the revelation in her letter with a veneer of independence and officialdom. Writing for publication to the residents of the Shire, she stated that, “**subsequent inquiries**” had revealed the new explanation that she was giving. It should be mentioned that the newspaper article to which she was replying had stated that the Department of Local Government had been “**told ... to investigate**” Councillor Smith’s allegations and that a departmental official had confirmed that “**preliminary inquiries**” were being made: Exhibit S. Councillor Deering must, therefore, have appreciated that a reference in her letter to “**subsequent inquiries**” would be likely to be construed by the public as a reference to official or, at least, independent inquiries. The opposite was the truth. No such inquiries had revealed the explanation in her letter which she wished to have published.

When confronted with this by the Department's investigators on 13 September, 1996, Mrs Ryan asking her, “**What were the subsequent inquiries?**”, Councillor Deering replied:

“That's an inquiry by me - I mean, they weren't official type inquiries. It was just my, sort of - I guess, my, me saying, you know, further inquiries or further questions that I'd been asking; and I guess probably, for me, further inquiries should mean for me actually sitting down and thinking to myself, “Now, Jill, think about what happened”: Exhibit A, Attachment 8, p.40.

In her evidence to the Tribunal, she offered the same explanation for using the expression, “**subsequent inquiries**” but added that these included her

making a search of her house looking for the original return form that she had been given: T352/32-56.

Councillor Deering admitted in her evidence that her letter to the newspaper was the first time that she had asserted that it was only a **“replacement form”** that was outstanding and that the new explanation offered in her letter was a conclusion arrived at by herself alone. In particular, she said that she had not discussed “The Leader” article with her solicitor, Tina Spiegel, or sought her advice as to how she should reply to it: T352/13, 27.

Councillor Deering’s claims in her letter that the Council had lost her return and that the return lodged by her on 15 April, 1996 was a **“replacement form”** now became the foundations upon which she based subsequent explanations for what had happened.

First Letter from Tina Spiegel

Tina Spiegel’s letter of 26 April, 1996 contains the first suggestion from Councillor Deering that she had actually lodged her original return form but it is put forward as only a possibility.

What she had appeared to say at the Council meeting was that she had filled in a return form but had not lodged it and had lost it. Now her solicitor is saying that upon reflection she believed that she may have lodged it; but, as that would require an explanation for why it was missing from the Register, the letter suggests a further possibility, namely, that Council may have lost it. To support this further possibility, the letter attributes to Mr Edwards, the Public Officer responsible in the Council for the returns, a belief that the return may have been lost during Council renovations.

A question to be considered is whether it is the second possibility put forward that has given birth to the first, in which case, the attribution of belief visited upon Mr Edwards has to be justified as well as the possibility of the Council having lost the return; but, for the present it is the letter’s conclusion that calls for attention. The letter ends by saying, in effect, that it is an open

question whether the original form was lost by Councillor Deering or by the Council.

In the context in which this letter is written, a lawyer could construe it as saying, so long as the Council concedes the possibility that it lost the return, it will have to be proved that Councillor Deering didn't lodge it; and she has instructed her solicitor that she "**may have**" lodged it. At the same time the letter concedes that she may have lost it herself and, therefore, never lodged it at all. This latter concession Councillor Deering subsequently sought to disown.

As it is not suggested that Tina Spiegel had any prior knowledge of the matter, her letter, prima facie, accurately reflected her client's instructions. Moreover, Councillor Deering conceded to the Department's investigators and to the Tribunal that she had been provided with a copy of the letter before it was sent, she had reviewed it and approved it: Exhibit A, Attachment 8, pp.42-43, p.44; T355/51-T356/16. Nevertheless, Councillor Deering denied telling her solicitor anything to suggest that she may have lost the form. In spite of what the letter said, she claimed that all she had told her solicitor was that she could not remember when she lodged the return, which, of course, implies that she was telling her solicitor that she had lodged and, therefore, not lost the form. She denied a suggestion that she must have told her solicitor that she could not remember whether she had lodged it: T356/24-47.

Councillor Deering refused even to accept the fact that the wording of the letter clearly inferred that she may have lost the return. However, she also said, in effect, that if that was what the letter said it was her solicitor's fault for using words that did not reflect her instructions and she sought to excuse herself from having endorsed the letter by saying that she was allowing herself to be guided by her solicitor as what should be said in the letter: Exhibit A, Attachment 8, p.44; T356/55-T358/16.

In the Tribunal's view, having regard to the terms of the letter, it is more probable than not that at this time Councillor Deering was telling her

solicitor that she could not say that she had lodged her return because she had no recollection of doing so and that as she no longer had the original form it was a possibility that she may have lost it. Such instructions would not have precluded her solicitor from seeking in her client's interest to take advantage of the suggested possibility that the return may have been lost in the course of the Council's renovations and that, therefore, it might not be possible to prove that Councillor Deering had not lodged her return.

Second Letter from Tina Spiegel

Tina Spiegel's letter of 29 May, 1996 followed the Director-General's invitation for further comments from Councillor Deering on Councillor Smith's complaint before the Department proceeded further with the matter.

According to the terms of this letter, Councillor Deering's instructions to her solicitor had altered. According to this letter, she had now instructed her solicitor that the return had been completed and given to the Council staff and, furthermore, she was now able to give an indication of when that happened, namely, "**shortly after she took office**", notwithstanding that her evidence to the Tribunal was that at the time of the solicitor's first letter to the Director-General she had told the solicitor that she could not remember when she had lodged it.

When interviewing her, Mrs Ryan asked her to put a "**time frame**" on the expression "**shortly after she took office**". She replied, "**Somewhere in that three month period**", however she excluded the period from 13 September to 20 October, 1995 by saying that she remembered packing the completed form away before she moved house on 20 October: Exhibit A, Attachment 8, p.45. This left a "**time frame**" of at least five and up to thirteen weeks from the date she took office, which somewhat strains the expression "**shortly after**".

Councillor Deering told the Tribunal that she had also read this letter before it was sent and had approved it: T358/43-51. She was then asked about the instructions attributed to her by her solicitor that her return had

been completed and given to the Council staff shortly after she took office. She admitted that this was **“a leap”** from what she had previously been saying when the reality was that at no time had she had any recollection of handing the return to Council staff. She further admitted that the statement in the letter was **“quite misleading”** but, once again, sought to avoid admitting that it had been made on her instructions by blaming her solicitor for the wording of the letter and excusing herself on the ground that in approving it she was just following her solicitor’s advice: T359/1-31. However, she admitted that she had allowed the solicitor to make that statement to the Department when it never was correct: T359/30-43. She denied that she was trying to shift the blame for the missing return from herself to the Council but she said, **“I agree it (the statement in the letter) is not the reflection of what I would want to be sent, that is why I changed solicitors, because I wasn’t happy the way things were going. It was very gung-ho at that time.”**: T359/45-T360/18.

The letter next stated that Councillor Deering believed that she gave her form to **“the appropriate Council staff member”**. Councillor Deering told the Tribunal that she knew that it was Mr Edwards who was responsible for keeping the Register of Pecuniary Interest Returns and that it was Mr Edwards to whom the letter is saying that she believed that she had given the return: T360/51-T361/7. Contrary to what the letter said, Councillor Deering told the Tribunal that she had no belief as to who it was to whom she gave the form because she had no recollection of giving it to anybody. She affirmed that what she had told the Tribunal was the correct position and admitted that the statement made in the letter, that she believed that she gave the form to Mr Edwards, was false: T361/9-17.

The next sentence in the letter stated that subsequently the Council changed location and Councillor Deering changed residential accommodation. As the intended significance of the two events and the existence of any link between them was obscure and they had happened nearly five months apart, Councillor Deering was asked to explain the

connection. It was put to her that the letter was implying that the fact that the form was missing could be attributed to the fact that the Council changed its offices, or it could be attributed to the fact that she had changed her residential accommodation, implying that it could have gone astray on either occasion. Councillor Deering agreed that that is what the letter appeared to be implying: T362/47-T363/13.

The next statement in the letter asserted that the matter of her return was not again considered **“Until Mr Edwards of Council asked Councillor Deering to supply him with another because he believed that Council had lost the original during their renovations.”**

In due course the whole question of what Mr Edwards told Councillor Deering on this subject and the circumstances in which it occurred must be dealt with. It will be seen that Mr Edwards does not admit that he told anyone that Council had lost Councillor Deering's return. Though she wavered somewhat, she agreed that Mr Edwards never used the word **“lost”** when speaking to her about her return but, she said, he implied it. Asked about the explicit statement in her solicitor's second letter that Mr Edwards had told her that he believed that the Council had lost her original return during the renovations, she admitted that he had never used the word **“lost”**, nor had said that he believed the return had been lost. What he had done was to inform her that it couldn't be found: T361/51-T362/1.

The letter then referred to a recent inspection of the Pecuniary Interest Register by Councillor Deering with Mr Edwards when, according to the letter, **“the Register fell apart and forms were scattered in all directions.”** On Councillor Deering's own evidence that statement was an exaggeration. When asked by Mrs Ryan to describe the event, Councillor Deering told the investigators that she had asked to see the register three or four weeks after the Council meeting of 15 April, 1996 and that, when Mr Edwards got it out for her, three or four pecuniary interest forms that had been interleaved but not yet placed on the bolts and secured between the folders of the register fell on the floor after which Mr Edwards actually picked them up and placed them

back in the register and gave it to her to inspect: Exhibit A, Attachment 8, pp.50-52. When giving evidence to the Tribunal she said that this happened after she had finished inspecting the register: T364/50-T365/13; T366/16-T366/30. She said that after her inspection when the binder was closed Mr Edwards picked the register up and went to walk away and three or four forms fell on the ground; but the covers of the binder did not come apart. She said that she and Mr Edwards picked up the fallen forms and she remarked **“Do you think we should buy a new folder?”**: T363/32-T367/18. However, she would not admit that it was an exaggeration to say that the register had fallen apart and that forms were scattered in all directions: T367/20-T368/6.

Councillor Deering agreed that the succeeding statement in this letter that **“Under these circumstances we believe that it is highly likely that the original form was lost”**, was not excluding the possibility that she had lost the document but was implying that it was more likely that the Council had lost it than that she had lost: T368/8-28.

It is significant that in spite of the fact that the letter contains an assertion that she had given it to Council staff shortly after she took office, Councillor Deering does not assert that the intention of the letter was to exclude the possibility that she herself may have lost the return. The most probable explanation for this is the fact, as she admits, that despite what the letter said, she had no recollection of giving her return to Mr Edwards or of lodging it at all, which meant that the possibility remained that she had lost the return herself.

COUNCILLOR DEERING’S ACCOUNT OF EVENTS GIVEN TO THE TRIBUNAL AT THE HEARING

As Councillor Deering's account of events has varied in significant respects up to the time of the hearing by the Tribunal, it is necessary before proceeding further to set forth a summary of the position which she took at the hearing. Her position may be summarised as follows:

1. She first received a blank Primary Return form and a covering letter dated 13 September, 1995 in a large white envelope with her initiation kit on 13 or 14 September, 1995. She was only ever given two return forms. This was the first. She remembered it clearly: Exhibit A, Attachment 8, p.4; T288/48; T289/1-11.
2. She looked at the form. It impressed her as very official and so important that she decided to seek advice about it from the General Manager: Exhibit A, Attachment 8, p.4.
3. She met with the General Manager on 15 September, 1995. He told her not to worry about the return because she had a couple of months to deal with it: Exhibit A, Attachment 8, p.4; T289/37.
4. She moved house on 20 October, 1995. She had the original form at that time because she remembers filling it out before she moved. She had reason to remember because she found it a **“quite daunting”** experience and she had problems deciding what she was required to put in under some of the headings: Exhibit A, Attachment 8, p.47.9. She also remembers packing it away for the purpose of moving and thinking to herself at the time that she must lodge it: Exhibit A, Attachment 8, pp.33-45.
5. She has no recollection of unpacking the return itself but after she had unpacked and set up her office desk in her new home, with IN, OUT and READ trays for Council business, she remembers seeing the return still in its large envelope sitting in her IN tray before moving house: T291. She also remembers seeing it sitting in her IN tray in its envelope after her unpacking and before going on Christmas holidays: T293/28; T294/20-56. Her office system was to keep the IN tray for Council business that required her attention but had not been attended to. The OUT tray was for completed business and papers waiting to be filed away. She had a special filing cabinet supplied by the Council for filing papers to do with the Council: T292. In that cabinet she kept a PERSONAL file for Council papers that affected her personally as

- distinct from general Council business but this file was not for personal domestic papers which she kept separate: T325/30.
6. She has no recollection at all of ever lodging the original return: T340/4-17 or of its going from her IN tray. After having seen it there she has no recollection of ever seeing it again: T295/27.
 7. Moreover, she is a precise person who worries about not having done things that she is required to do and she remembers going on holidays at Christmas feeling conscience free at having left nothing undone before going on holidays: Exhibit A, Attachment 8, p.10.9; T293; and had the form still been in her IN tray before going on holidays she would have noticed because it was in its large white envelope: T293/20. She told the Tribunal, "As far as I was concerned, the tray was empty when I went away. There was nothing to be done.": T335/52-54
 8. She gave no further thought to the matter of her return until late February or early March 1996 when Mr Edwards spoke to her about it. This occurred after the Council had moved offices for the purpose of renovations: It "**definitely**" did not happen in December but in the new year: Exhibit A, Attachment 8, pp.11.3-12.2. At the time of the hearing before the Tribunal she had come to believe that the occasion when Mr Edwards had spoken to her was after an EHC meeting during the second week of March 1996: Exhibit L, para. 7, p.10.
 9. On that occasion Mr Edwards told her that he could not locate her return and handed her another return asking her to fill it out and return it: Exhibit A, Attachment 8, pp.11-12; T298. At the same time he mentioned the Council's move of offices: Exhibit A, Attachment 8, p.16.1, 16.5; and from that she inferred that although he was "**very non-descriptive**", he was intimating that the return had been lost or misplaced: Exhibit A, Attachment 8, p.41: T298/41.
 10. The form that Mr Edwards gave her on that occasion was pre-dated in typewriting 11 December, 1995: Exhibit A, Attachment 8, p.15.10. Her

attitude to that, as she expressed it at the hearing was, **“It may well be that Mr Edwards had pre-dated the replacement form to make it either look like my original form, or, as I believe, to take the place of my original form that he had lost. I didn’t think much of it other than a replacement form for the one they (Council) had obviously lost.”**: Exhibit L, para. 7, p.11.

11. She did nothing about this form until Mr Edwards telephoned her on 11 April, 1996 after which she made a search at her home and found the pre-dated form: Exhibit A, Attachment 8, pp.32.8; 34.9; 36.5. She completed this form on 14 April, 1996: Exhibit A, Attachment 8, p.17; and handed it in on 15 April, 1996 before the meeting.
12. She was so upset and confused at the meeting that she could not give a proper account of what had happened.
13. A couple of days after the meeting she made a complete and thorough search of her home, office and filing cabinet and was unable to find her original return. As told to the investigators, she said, **“I literally ripped my office apart; couldn’t find it.”**: Exhibit A, Attachment 8, p.38.7; and as told to the Tribunal, **“I must have pulled the place apart, upside down and inside out.”** She said she looked in the filing cabinet and every file she had and behind the filing cabinet but did not find the form: T295.
14. Since then, after reflecting on past events, she came to believe that, as she couldn’t find the original return, she must have lodged it with the Council although she could not recall doing so or when she might have done so: Exhibit A, Attachment 8, p.37.5-38.8; p.45; except that it would have been within the three months period. She has no recollection that she certainly did not lodge the return; her position is that she really doesn’t know: T317/12-21.

Mr Macedone submitted in his final address that on the basis of the facts set forth above the Tribunal should find that it was more probable than

not that Councillor Deering lodged her return within the prescribed time or, alternatively, that the probabilities that she did or did not were of equal weight so that on the evidence it was not proved that she did not duly lodge her return.

The validity of this submission obviously depends greatly on the extent to which the Tribunal accepts the assertions of fact by Councillor Deering upon which the submission rests. Its validity is also affected by other evidence before the Tribunal to which attention must now be given.

EXHIBIT P - LETTER GENERAL MANAGER TO COUNCILLOR DEERING, 13 SEPTEMBER 1995

Councillor Deering's claim that she first received a blank Primary Return form with the initiation kit given to her just after her election is supported by Exhibit P. This is an original letter dated 13 September 1995 signed in the name, J W Rayner, General Manager and addressed to her with the heading, "Disclosure of Interests - Primary Return". The letter informs her that under the Local Government Act she is required to complete "the enclosed return" known as the Primary Return within three months from the date of becoming a Councillor. For her assistance it enclosed an extract from the Act detailing the matters to be disclosed and then went on to make reference to returns known as Ordinary Returns which were required to be furnished by the 30th June for the preceding year. The letter stated that the completed return was to be forwarded to Council's Public Officer, Graham Edwards, for placement in the Disclosure of Interests Register which is a "public document" under the Act and that Mr Edwards was available for assistance and advice if needed.

The existence of this letter was unknown to the investigators, the Tribunal or even Councillor Deering's own solicitor, Mr Macedone, until 1 May 1997 which was the first day of hearing following the earlier preliminary hearing. The letter was not mentioned in Councillor Deering's statement, Exhibit L, which had been prepared specially for the hearing and was tendered on that day: T25/26. Mr Macedone produced it while telling the

Tribunal that Councillor Deering had handed the letter to him only that morning: T27/40; T29/25.

Neither Mr Rayner nor Mr Edwards mentioned the existence of the letter to the investigators. Mr Edwards told the investigators when interviewed with Mr Rayner on 16 April 1996 that Mr Chapman compiled an information package for new Councillors and enclosed a Primary Return with explanatory notes. On 17 April 1996 he telephoned Mrs Ryan and told her that a Primary Return had been issued to Councillor Deering and to all new Councillors with the information kit for new Councillors on 18 September 1996 and, as Councillor Deering had not lodged a completed Primary Return promptly, the matter was followed up with her on 2 October 1996: Exhibit A, Attachment 13. However, when interviewed by the investigators on 4 September 1996, Mr Edwards told the investigators that forms had been issued to new Councillors in the first week of October 1995 whilst he was leave, his understanding being that the General Manager had requested Mr Chapman to issue them in his absence: Exhibit A, Attachment 10, pp.4.5, 9.3. He completely contradicted what he had previously told the investigators by saying that he had no knowledge of blank return forms having been issued to new Councillors with their information kit. When it was pointed out to him that the Register contained Primary Return forms dated 15 and 19 September and 2 October 1995, he suggested that those may have been issued by Mr Chapman in response to inquiries generated by the information kit and that that could be the explanation why those three had been issued prior to the "general issue date", being the first week in October: Exhibit A, Attachment 10, pp.7.5, 9.3-9.5.

In giving his evidence to the Tribunal, Mr Edwards repeated what he had told the investigators on 4 September 1996. He denied that there was pecuniary interest return included in the kit that went to new Councillors, saying that that was not his understanding, and that no pecuniary interest return had been included in the kit, the returns had been issued after the October long weekend while he was on leave and that was at a direction

given to Mr Chapman by the General Manager: T160/54-T161/8. He was asked whether this understanding came from a conversation he had had with Mr Chapman but he denied that suggestion, offering the explanation that he had been the liaison officer for the Council election in September and had been heavily involved in post-election matters because they had a returning officer who was doing a local government election for the first time. He said that he had had no involvement in the preparation of the kit that had been issued to Councillors: T161/10-21. Mr Edwards was then shown the letter, Exhibit P. Having examined it, he told the Tribunal that the signature, "J W Rayner", on the letter was his own handwriting, he having signed on behalf of the General Manager pursuant to delegated authority. Typed at the top of the letter was Mr Edwards name and telephone number. However, Mr Edwards said that he had no recollection of the letter at all: T161/162. He also said that he could not recall having told the investigating officers on 16 April 1996 that the pecuniary interest return forms had been issued to new Councillors with their kit and that at the time of that interview it was his belief that they had not been issued then but had been issued after the long weekend in October: T162/43-T163/3.

Whilst having no recollection of doing so, Mr Edwards agreed that it was possible that he had given directions to an employee in the Council's secretarial pool to prepare a letter in the same form as had gone out the previous year and signed it: T163/25-40; T171/33-46.

When Mr Chapman was interviewed on 4 September 1996, he told the investigators that in September 1995 he was responsible for providing new Councillors with their initiation kit entitled, "Information and Guidelines for Councillors" and that he had distributed them personally: Exhibit A, Attachment 11, p.3. He also told the investigators that Councillors were not provided with a blank Primary Return form when the kit was issued. He was then asked whether he knew when the new Councillors were given their forms and he replied, "On 3 October, the Tuesday after the long weekend. Graham Edwards was away and the General Manager did ask me at what

stage these return forms were at and I followed up on it and on that night I handed out Primary Return forms to the Councillors.”: Exhibit A, Attachment 11, p.5. He went on to say that he personally gave a copy to each Councillor and talked to them, telling them that the form had to be completed within three months, to please complete it as soon as possible and give it to Mr Edwards: Exhibit A, Attachment 11, p.6. He said that Councillor Deering was at the meeting when this happened and that she would have received the form, “for sure” by the end of the meeting: Exhibit A, Attachment 11, p.7.1-7.5.

In the witness box, Mr Chapman affirmed on oath what he had told the investigators regarding the information kit and handing out blank Primary Return forms to Councillors on 3 October 1995. He added that as far as he was aware, these were the first forms given to new Councillors and that he could not recollect any Councillor saying to him when he handed them out, “I’ve already got one”, or “I’ve lodged it.”: T96/28, 44-50; T98-T102. As to the instructions he had received from the General Manager, he said that Mr Rayner did not elaborate when asking him to make sure that all of the new Councillors had a return form, he just got enough forms and made sure that each new Councillor got on: T101/1-29.

Mr Chapman was shown the letter Exhibit P. He said that this letter did not form part of the information kit when he handed it out and that he had never seen it before: T97/18-29. However he also said that whilst it was his responsibility to produce the kit, the responsibility for pecuniary interest returns was Mr Edwards and he understood that the provision of a pecuniary interest return would have been separate from the kit: T98/33, 38.

Mr Rayner was of little help to the investigators on the matter when he was interviewed on 4 September 1996. He vaguely assumed that the Primary Return form would be included in the induction kit as a matter of “normal practice”: Exhibit A, Attachment 9, p.11. However, when Mrs Ryan informed him that she had been told by both Mr Edwards and Mr Chapman in their interviews prior to the interview with Mr Rayner on the same day that,

contrary to what they had been told on previous interview with Mr Rayner and Mr Edwards on 16 April 1996, it was Mr Chapman who had provided new Councillors with their Primary Return forms and that he had done so on 3 October 1995 at Mr Rayner's request. Again, Mr Rayner was very vague. He said he certainly could not recall the background to that having occurred and that, if he had made that request to Mr Chapman, "that would have just been one of these things that I have either thought about or has been brought to my attention, but I wanted to make sure that the Councillors had them - but I certainly don't remember in detail about that.": Exhibit A, Attachment 9, p.12.9-13.3. Mr Rayner himself asked whether there was a covering letter and Mrs Ryan told him that she had not been given one: p.13.5. Mrs Ryan then put specifically to Mr Rayner Mr Chapman's account, confirmed by Mr Edwards, that he had approached Mr Chapman to make sure that the new Councillors had their return form and asked Mr Rayner directly whether he recalled having given a direction to Mr Chapman. Mr Rayner's reply was, "It was probably with Mr Chapman at the time. It's not unlike a few things that happened - I'll have a reason for thinking about something. You know, I'll see whoever is responsible or might be dealing with at the time, and just orally say, just go to them and say, we are chasing this up for me. So that's part of the way that we can operate.": p.14.7-15.2.

In spite of Mr Edwards' inability to recollect anything about Exhibit P, there is no reason to doubt the authenticity of the letter or that it was accompanied by a Primary Return form and extracts from the legislation relating to the manner of its completion. Councillor Deering told the investigators on 13 September 1996 that when filling out her original form prior to her moving house on 20 October 1995 she had made reference to the extracts from the legislation and that these had come with the letter: Exhibit A, Attachment 8, pp.33.7-34.1. Three Councillors undoubtedly had Primary Return forms before 3 October 1995 because they had completed them prior to that date, Councillor Redmond (dated 15 September 1995), Councillor Emerson (18 September 1995) and Councillor White (2 October 1995), as is

testified by the Register: Exhibit Q. Councillor Schreiber whose return dated 14 November 1995 is in the Register furnished a statutory declaration that he had received that return form with his induction kit in September 1995: Part Exhibit L. Mr Chapman said that he was sure that he had handed forms to all new Councillors on 3 October 1995, in which case Councillors Redmond and White might have been expected to protest that they had already lodged their form and other new Councillors including, at least, Councillor Schreiber could have been expected to tell Mr Chapman that they already had received a form, yet Mr Chapman cannot recall any Councillor making any such comment. It seems highly unlikely that none of the eight new Councillors would made no comment when being presented with another form at that time and a further exhortation to lodge their returns within the three month period. Councillor Deering denies having received another form from Mr Chapman on 3 October 1995 or at any time. On the evidence, her denial should be accepted.

It is not easy to understand how Mr Edwards, having signed the letter Exhibit P and having originally told the investigators that a Primary Return form had gone to all new Councillors with their induction kit, came afterwards to tell the investigators and the Tribunal that that had not been the case and to adopt Mr Chapman's account that he had given out the first Primary Return forms on 3 October 1995 in the manner which he described. It is possible that Mr Edwards, distracted by his electoral duties in September 1995, forget about having given instructions for the production of the letter Exhibit P and signing it and that that letter with its enclosures had been distributed by secretarial staff so as to reach new Councillors with their induction kit. It seems likely that Mr Edwards' only source of knowledge of Mr Chapman's account would have been Mr Chapman because the only other possible source would be Mr Rayner who appeared really to have no recollection of giving any instructions to Mr Chapman.

Mr Chapman's story sounds plausible if Mr Edwards was away and it be assumed that the General Manager wanted to ensure that all the new

Councillors had a return form; but there are many discrepancies in the evidence. As mentioned already, it must be inferred from what Mr Rayner told the investigators that he had no real recollection of giving the instructions which Mr Chapman attributed to him. Mr Edwards' adoption of Mr Chapman's story was not based on his own knowledge. Although Mr Edwards denied that the story came from Mr Chapman: T161/12, it most probably came from a conversation with Mr Chapman when, after the investigation of the matter had been announced, they went over the events together to recall what had happened and Mr Chapman told Mr Edwards his story of handing out forms in October: Exhibit A, Attachment 11, pp.22.8-23.1; T129/18-21. Mr Edwards told the investigators that they had been handed out on 2 October 1995, which was a Monday. The Council held meetings on Mondays but this one was a public holiday. Mr Chapman says that the forms were handed out by him on 3 October when Mr Edwards was away; but Mr Edwards said he checked his diary and found that he was on leave on 5 and 6 October, not 3 October: T164/24-32. Mr Chapman changed his original story somewhat. After having told the investigators that he had mentioned to the new Councillors the need to return the forms to Mr Edwards by the end of the three months period, he told the Tribunal that he had not said anything to them about that: T102/57-103/1

In their submissions to the Tribunal, both Mrs Kelly and Mr Macedone rejected Mr Chapman's story. Mr Timmins backed away from it by describing it as "grey area" about which he declined to make a submission, preferring to leave it to the Tribunal to decide. Mr Bellamy sought to put the issue aside by submitting that it was a not improbable story on which doubts had been thrown but not a lot turned on it.

One might ask why would Mr Chapman invent such a story if it was not true? Mr Macedone suggested that he would do it in the belief that it might somehow protect Mr Edwards whose duty it had been to see that all new Councillors had received return forms. This suggestion is made plausible by the fact that Mr Chapman had no knowledge of Mr Edwards' letter to

Councillors of 13 September 1995 until after he had told his story for the second time and this letter was then shown to him in the witness box: T138/6-45; and the fact that Mr Edwards would not have told him of that letter because Mr Edwards had totally forgotten it until he too had told the same story to the Tribunal and was then shown his letter. Mrs Kelly suggested that Mr Chapman's evidence generally could be explained as an attempt to protect Mr Edwards who was a fellow Council officer and a colleague of many years standing. However, she also suggested that, if this was so, it was probably voluntary on Mr Chapman's part as there was no evidence that they had connived in the story. On behalf of Mr Edwards, Mr Timmins told the Tribunal that he was unable to explain Mr Chapman's version of the facts. He said they might be true or false but Mr Edwards was unable to assist one way or the other because Mr Chapman's evidence was not in accordance with the facts which Mr Edwards asked the Tribunal to find.

Whatever might be the true explanation for the conflicts of evidence on the present issue, there being numerous others in this case, the Tribunal concludes that the weight of the evidence is against Mr Chapman's story of handing out forms on 3 October 1995 and finds, on the probabilities, that the only pecuniary interest form given to Councillor Deering before she received the typed pre-dated form which she lodged on 15 April 1996 was an original blank Primary Return which accompanied the letter, Exhibit P, which she received with her induction kit on or about 13 or 14 September 1995.

COUNCILLOR DEERING SEES IN HER IN-TRAY THE ENVELOPE CONTAINING HER ORIGINAL RETURN FORM

One of the cornerstones of the position Councillor Deering took at the hearing was that she had seen the envelope containing her original return form in her IN tray, and, sometime after having seen it there, it was no longer there. The Tribunal was thereby invited to draw the inference that she must have lodged it, and, because of her desire to get everything done before going on holidays, she must have lodged it before 26 December 1995 which is the date on which she says she began her holidays: Exhibit L, para.1, p.1;

Exhibit AA. There are a number of difficulties in the way of accepting this part of Councillor Deering's evidence.

It is critical to her story that she had not lost the original form which she received in September 1995. In spite of what had been said at the Council meeting on 15 April 1996 by her and in her solicitor Tina Spiegel's two letters, by the time she was interviewed on 13 September 1996, she was firmly rejecting that idea. As she claimed to have had the form in her possession before moving house on 20 October 1995, she needed to account for it after that.

She told the investigators that she could remember sitting down and completing the form and packing it away, and then she said, "Somewhere a couple of weeks later I unpacked it and handed it in": Exhibit A, Attachment 8, p.46. Her state of knowledge as established by her own evidence makes this statement untrue in all respects. Firstly, although she tended to frame her answers so as to imply that she had a recollection of actually seeing the return itself when she unpacked, she swore when pressed that she had no recollection of physically unpacking or seeing it then: Exhibit A, Attachment 8, p.37.5; T292/35-37; T293/25; T293/54-T295/4. Secondly, as already mentioned, she told the investigators and affirmed positively in her sworn evidence that she had no recollection of lodging the form with the Council: T340/4-17. Thirdly, as to the time "a couple of weeks later", she has given a number of variations of that estimate, such as "Shortly after" her election, "Three weeks after moving house", "Middle to end of November" and, within the period of three months to 13 September 1995: Exhibit A, Attachment 8, pp.45, 46; but has sworn that she has no recollection of when it was that she lodged it. For these reasons the above statement to the investigators may be discarded, in which case, to counteract any suggestion that she may have lost it, she is thrown back on her claim that she actually saw the return in her IN tray.

Councillor Deering had mentioned to the investigators that she kept IN and OUT trays and that the return was not there in December 1995: Exhibit

A, Attachment 8, p.10.9; but the first time that she claimed that she had actually seen the return in her IN tray, and that it was in an envelope, was when she was being led in her evidence at the hearing by her solicitor, Mr Macedone: T291; T292/44-51; T293/25. When cross-examined about this, she admitted never having mentioned the fact to the investigators and, further, that she had had no such recollection at the time she was being interviewed: T330/31, 33, 37; T331/44; T332/9-27. At one point she had said that she had remembered putting the return in her IN tray but she switched from that to remembering seeing it there: T294/20-56. At another point, when she was being questioned about seeing her return in an envelope, she made a slip and said that she had handed the original into the Council in a white envelope: T332/46; but she corrected this soon after in view of her having sworn that she could not remember handing the return in at all: T333/6.

Her alleged recollection of seeing a return form in an envelope in her IN tray underwent a further development when Councillor Deering, in order to redeem a further slip she made, extended, for the first time, her visual awareness to having seen the pre-dated form, which she said was given to her in March 1996 by Mr Edwards, also sitting in her IN tray. She was asked by Mrs Kelly to affirm that her only specific recollection of seeing the envelope in her IN tray was in 1995 before Christmas. She replied, "No. It was after Christmas - definitely after Christmas in the New Year it was there." Now the only form under consideration when she was asked the question by Mrs Kelly was the original return. By asserting in her answer that she still had that return in her possession in the New Year, she was contradicting her case that the return must have been filed by her by the due date of 13 December 1995. Obviously realising what she had done, she ingenuously asked Mrs Kelly, "Are you talking about the first one, I'm talking about the second." Councillor Deering was then forced to admit that, in relation to her claim of seeing the form in her IN tray, there were, or she had in mind, two different events although previously she had referred only to one. The first

event related to the original return she had received in September 1995, which she said she had furnished by Christmas, and the second related to the pre-dated return that Mr Edwards gave her in March 1996, which she had lodged on 15 April 1996: T369/34-370/44.

The Tribunal does not accept Councillor Deering's evidence that she saw her original return form in an envelope sitting in her IN tray after she had moved house on 20 October 1995 and until some date before 26 December 1995 when she went on holidays. On the evidence, the Tribunal believes that this piece of evidence was most likely a late invention by Councillor Deering designed to lend force to her denial of having lost that return and to promote her prospects of the Tribunal accepting the hypothesis that she had lodged or may have lodged her return by the due date because she had completed the return with the intention of lodging it and, having then had it in her possession, it had ceased to be in her possession about the time for compliance under the Act. The slips she made in giving evidence on this matter would be enough to undermine any confidence in accepting her story; but an even stronger consideration is that, although she must have realised the significance of the evidence and its value in the case she was putting forward, she failed to take the opportunities she had to mention it before going into the witness box.

WHEN DID COUNCILLOR DEERING RECEIVE FROM MR EDWARDS A RETURN FORM PRE-DATED 11 DECEMBER, 1995?

Mr Edwards' claim that he gave Councillor Deering the form pre-dated 11 December 1995 on or shortly before that date has already been mentioned briefly.

In both his interview with the investigators on 4 September 1996 and in his evidence to the Tribunal, Mr Edwards gave a detailed account of giving Councillor Deering that form and the circumstances in which it occurred. His account is quite incompatible with Councillor Deering's evidence.

He swore that as the closing date of 13 December, 1995 drew near he checked the forms in the Register for the returns which had been lodged and it thus came to his attention that there were no returns for Councillors Deering and Thomas: Exhibit A, Attachment 10, p.13. He carried out this check himself by looking at all of the returns that were in, including those that were in the Register or were loose in the office unfiled: T172/32, T173/36.

There was an EHC meeting coming up on 11 December 1995. On Thursday 7 or Friday 8 December, 1995 he instructed a typist to type up forms for Councillors Deering and Thomas and date them 11 December, 1995. His intention in doing so was to have the forms completed at the EHC meeting and returned to him then: Exhibit A, Attachment 10, p.11; T168. Although he was aware at the time that both Councillors Deering and Thomas had previously been given a return form, his purpose in giving them a second form pre-dated rather than ask them to fill in the original form that they had been given was to give them "A direct prompt.": T232/20. Mr Edwards said that these return forms were either put with the business papers that were given to Councillors on the Thursday or Friday preceding the coming meeting or handed out by him personally at that meeting, it was one or the other: Exhibit A, Attachment 10, p.11; T171/56.

The Council's records establish that there was an EHC meeting held on 11 December 1995 with Councillor Deering being present and chairing the meeting and also Councillor Thomas being present: Exhibit A, Attachment 19. Councillor Deering's diary records the meeting: Exhibit AA.

Mr Edwards told the investigators and the Tribunal that Councillor Thomas completed and returned his copy either the same night or on the following day but Councillor Deering failed to lodge her copy: Exhibit A, Attachment N, p.11; T174/23-57. Mr Edwards identified the return from Councillor Thomas which is in the Council's Register as the one which Councillor Thomas gave him: T182/38-56; Exhibit Q. Apart from the different name, it is identical in the typed portion to the return form filed by Councillor Deering on 15 April 1996. One difference in relation to the typed section is

that Councillor Deering's form bears the handwritten date in pencil in Mr Chapman's handwriting which has already been mentioned. Councillor Thomas corroborated Mr Edwards evidence as it related to him when, by letter dated 3 June 1996, Councillor Thomas wrote to the Department of Local Government stating that he had completed his return, with the name and date as they appear on the form already there when he did so, and that to the best of his recollection he completed the form on 11 December 1995 and returned it to Council's officers immediately: Exhibit A, Attachment 26.

When it was put to him, Mr Edwards denied having prepared the typed forms in February 1996, backdating them to 11 December 1995, and firmly denied having given Councillor Deering her copy of the backdated form only in late February or early March 1996. He rejected the suggestion put to him by Mr Macedone that he did so because he could not find Councillor Deering's original return after Council moved offices and was asking her to supply a replacement: T196/21-53; T240/21.

Councillor Deering told Mr Timmins that she rejected Mr Edwards account of how she came by the pre-dated return, saying that it never happened: T414/2-32. She adhered to her evidence that she was given the form in late February or early March 1996: T414/34. This conflict in the evidence will be dealt with after Mr Edwards' account of what took place between himself and Councillor Deering at that time.

THE STATE OF THE REGISTER IN FEBRUARY AND MARCH 1996 ACCORDING TO MR EDWARDS

Mr Edwards told the Tribunal that he became alerted to the need to prepare for the Council's moving of offices when the staff was given notice in approximately the first week of February 1996. He said that he started to clean out his office and there were a number of return forms in the office which had been submitted by Councillors and designated persons. Some of these had not yet been filed in the Register: Exhibit A, Attachment 10, p.17.4. He was asked to state what enabled him to say that there were unfiled returns in his office and he replied, "Because I can recollect that there

were a number of returns from designated persons and Councillor returns waiting to be filed.”: T182/15. Amongst these were the returns for Councillors Thomas and Simpson, which he had “sighted” but none for Councillor Deering: T182/6-39. Mr Edwards said that the return of Councillor Thomas which he sighted was the one pre-dated 11 December 1995; but the one from Councillor Simpson was in Councillor Simpson’s own handwriting: T182/46-56; T235/26-39, 47. He also said the unfiled returns from Councillors Thomas and Simpson were in a tray behind his desk where they had been placed prior to his going on leave on 1 January 1996: T254/9-20.

Mr Edwards said that he instructed his secretary, Mrs Parker, to file in the Register all returns that were unfiled and afterwards he observed her filing the returns as instructed and to the best of his knowledge she filed all of the returns that were sitting there waiting to be filed. This would have been in the second week or end of the first week of February 1996 when he was preparing to move from his office: T236/14-31. He also said that all returns which had not previously been filed had been filed in the Register by 22 February, 1996: T236/33-46.

Mr Edwards told the Tribunal that after Mrs Parker had completed her filing he checked the Register to see that it was in order before they moved offices. He did this in the first or second week of February 1996: Exhibit A, Attachment 10, p.24; T205/33-58. He said that he went to the Register and counted the returns by simply flicking through them without noticing the contents or the Councillors’ names knowing that he had to account for nine Primary Returns. Although there were only eight new Councillors he was aware that Councillor Emerson’ had lodged a Primary Return form even though she was not a new Councillor. He said that he counted the distinctively yellow primary forms. “I just simply opened the Register after Mrs Parker had finished the filing and just flicked through them”: he said that his recollection prior to and at the time of giving his evidence was that there nine Primary Returns on the file: T176/56-T177/8; T177/10-12-T178/5; T255/15-21.

Consistent with Mr Edwards' recollection that he had counted nine Primary Return forms are statements he made to the investigators. On 16 April 1996 he told them at the interview with Mr Rayner that a couple of Councillors had been slow in lodging but to the best of his knowledge all returns were lodged by the due dates and no Councillor had lodged a late return: Exhibit A, Attachment 13. When interviewed in September 1996 he told them that he had thought that the Register was complete before Council moved offices: Exhibit A, Attachment 10, pp.8-19. He also told the investigators that whilst it was a possibility that he had miscounted, it was only a "very remote" possibility: Exhibit A, Attachment 10, p.26; T238/47-T239/19. He told Mr Macedone that although he could not say whether Councillor Deering's form was one of the nine or not, he had assumed that her form was in the nine and was quite certain in his own mind that there were nine forms: T234/44-50. In due course, Mr Edwards' evidence on the state of the Register in February will have to be reconciled with Councillor Blight's unchallenged evidence as to the state of the Register when he inspected it on 1 and 27 February 1996.

Mr Edwards gave evidence that the Council's move took place in the first week of March: Exhibit A, Attachment 9, p.14; when the files were first moved to a holding area and then into the staff's temporary offices: T234/235. Mr Edwards told the investigators that after the move the Register was found in a damaged box and had come apart. On its being reinstated it was found that there was no return from Councillor Deering on the Register: Exhibit A, Attachment 10, p.14, 27. Mr Edwards told the Tribunal he came into his temporary office on the Monday morning after the move to find what he called "absolute chaos." He said that the packing carton in which the Register had been placed had obviously been dropped and the Register had come apart and a number of returns had come out or partly out of the Register and into the box: T200/8; the top cover had come right off and "at least half a dozen of the returns" had separated from the spine. He put the Register back together and then, in accounting for the returns, found that

there was no return for Councillor Deering: T200/18-33. Mr Edwards said that the packing box had split open and the Register was protruding through the burst side of the box: T200/40-49. He said, however, that there was nothing to indicate that what had been in the box, before the accident which broke it, might have been misplaced or lost somewhere and that he put the Register back together with whatever was there: T200/51-T201/1. Mr Edwards also said that everything he had seen that had been in the box appeared to be still there and he had just put it back together. It was then put to him that this would be consistent with Councillor Deering's return not having been in the Register in the first place. Mr Edwards replied, "That would not be my conclusion ... because my honest belief was that I had accounted for nine forms." He said that this was the sole basis on which he drew the inference that Councillor Deering's return had actually been lodged, although he had never seen it. He agreed that this inference depended on whether or not he had counted correctly because he hadn't checked the contents of the returns to see whose they were: T201/5-41.

The validity of Mr Edwards' inference is strongly challenged by Councillor Blight's evidence and the inferences to be drawn from it. Although Mr Edwards had told the investigators that Councillor Blight had requested him to allow Councillor Blight to inspect the Register, he had avoided having to give an account of Councillor Blight's inspection by telling the investigators that, "It was not in my direct presence.": Exhibit A, Attachment 10, p.16.10. He also told the investigators that he was not aware that the returns of Councillors Deering, Thomas and Simpson were missing from the Register on 1 February 1996 when Councillor Blight inspected it and said that it was a possibility that at that date the returns were in a manilla folder in his keeping awaiting filing: Exhibit A, Attachment 10, p.17.4. At the hearing, Mr Edwards shifted his position and denied having any recollection whatever of Councillor Blight's inspection on 1 February 1996 or of their conversation regarding the three missing returns.

As indicated earlier, the Tribunal accepts Councillor Blight's evidence and, on the basis of that evidence and Mr Edwards' own account of what took place in relation to the Register before Council moved offices, Mr Edwards' conclusion that Councillor Deering must have lodged her return is untenable.

If, as Councillor Blight found, the returns of Councillors Thomas, Simpson and Deering were not on the Register on 1 February 1996, they could have been either lodged but not filed, or not lodged and, therefore, not in the Council's possession. Mr Edwards swore that the returns of Councillors Thomas and Simpson were in the office awaiting filing because he had sighted them but he had not sighted any return for Councillor Deering. Of course, it is possible that Councillor Deering's return might have been in the office also without Mr Edwards knowing; but then, within the next two weeks of February, Mrs Parker at Mr Edwards' direction and to his personal observation, had filed in the Register all the unfiled returns that were in the office. So, if Councillor Deering's return had been in the office it would have been filed with the others and should have been there on 27 February 1996. But, although the returns of Councillors Thomas and Simpson had been placed in the Register by 27 February when Councillor Blight again inspected it, there was still no return for Councillor Deering. There are only two possibilities: first, the Council had her return, Mrs Parker had filed it in the Register, Mr Edwards had counted it and afterwards it had mysteriously vanished between the second week in February and 27 February, a period of only about two weeks; second, the Council did not have a return from Councillor Deering, so no return from her had ever been filed in the Register. Whichever it be, however, one thing is certain. That is that the Council's moving of offices had had nothing to do with the absence of Councillor Deering's return from the Register after the move because, whether it had ever been filed in the Register or not, it was not there when the move took place. Consequently, any presumption made by Mr Edwards on the basis of damage to the packing box when the Register had been moved, or his belief that he had counted nine forms so the Register was complete prior to the

move, is simply invalid. If in fact he did carry out such a count then he must have miscounted. Mr Edwards could not explain to the Tribunal how, if Councillor Deering's return had been in the office, Mrs Parker would not have placed it in the Register. He agreed that, if she had not done so, it should be inferred that the Council did not have the return in its possession and that he must have miscounted when flicking through the Register after Mrs Parker completed the filing: T204/18.

Mr Macedone relied strongly on Mr Edwards' evidence that he had counted nine Primary Returns when he checked the Register in February 1996. He submitted that there was no reason for Mr Edwards to make that up as it could not assist him or anyone else: T542/52. However, there is a possible reason for making it up. Mr Edwards had told the investigators on 16 April 1996 that to his knowledge all returns had been lodged by the due dates and no Councillor had lodged a late return, in other words, his belief was that the Register was then in order. Maybe he felt that he needed to be able to justify that belief to the investigators when requested to attend a further interview. The story he then told them and later the Tribunal of his check of the Register has unlikely features to it. If, in his role of the responsible officer, he had wanted to ensure that all new Councillors had lodged their returns he could be expected to have at least looked at the names but the account he gave was of the most superficial of checks, merely flicking through the forms and sighting none of the contents. This account has the advantage of leaving Mr Edwards uncommitted to the presence in the Register of any particular Councillor's return and is casual enough to leave room for his having made a miscount if his profession of a belief that all returns were in was challenged or proved wrong.

Mr Edwards told the Tribunal that he could not recollect having told the investigators on 16 April 1996 that he believed that all Primary Returns had been lodged by the due date but he would not deny it: T231/15-32. The Tribunal regards Mr Edwards' story of counting the returns as suspect. Contrary to Mr Macedone's submission, there was a possible reason for him

to make it up but, even if not made up, the story makes a miscount a possibility and Councillor Blight's and other evidence makes a miscount more than likely even if there was a count.

The Tribunal concludes that on all the evidence, it is more probable than not that the Council did not have Councillor Deering's return in its possession in February 1996, that it was not on the Register when Council moved offices and that it did not go astray by reason of the move or anything that happened to the box in which the Register was transported or as a result of the Register coming apart at that time.

It appears to the Tribunal from the evidence on this aspect of the matter that Mr Edwards tried to make the best of the problem presented by his discovery in March that Councillor Deering's return was not in the Register. As he had never actually seen any return from Councillor Deering he could not say for certain that she had ever lodged a return. Indeed, he told the Tribunal that his position was that he had no idea whether Councillor Deering had lodged any return in the period from 11 December 1995 when he gave her the pre-dated form until he went into work on 16 April 1996 and found that she had lodged that return form on the day before: T191/47. For the same reason, he was not in a position to say that her return had been lost: T193/44-55; T194/12-22. He appears to have endeavoured to maintain a neutral position with Councillor Deering by simply telling her that he could not locate her return after the Council's move in which an accident had happened to the Register and requesting her to lodge a return: T196/8-13. By taking that course Mr Edwards avoided accusing Councillor Deering of not having lodged a return and also avoided making any admission of blame for its absence from the Register if she had lodged it.

According to him, he reminded her three or four times after the move to lodge her return: T196/8-13; T197/1; but he swore that he never gave her a return form to lodge in that period: T196/21-46; T239/240. It is to be noted that Mr Edwards said that he never questioned Mrs Parker or other Council officers on whether Councillor Deering had lodged any return or on how, if

she had done so, it came to be missing after the move: T247/20, 40. It is also significant that Councillor Deering never responded to Mr Edwards' request to file a return by voicing any complaint, request for a search to be made or a demand for an explanation of how her return could have been lost. Her reaction at the time, according to her own evidence, was barely an acknowledgment of Mr Edwards' request and was consistent with her not being surprised that her return was not in the register because she knew then that she had never lodged it: T338/39-T339/24. However, Councillor Deering rejects this hypothesis and, as it appears to the Tribunal, has sought to capitalise on Mr Edwards' neutrality.

Firstly, she appears to have seized upon the fact of the Council's move and the accident to the Register to postulate the probability or, at least, the possibility, of the Council having lost her return, thus to account for its absence from the Register. Secondly, she has sought to attribute to Mr Edwards an admission by him to her that the reason why her return was missing was that the Council had lost it. Thirdly, she has attempted to suggest and then to consolidate the idea that Mr Edwards expressly asked her to provide him with, not a return, but a "replacement" return, which would import an admission by him that she had previously lodged a return. She also embraced the word "replacement" to describe the pre-dated return which she lodged on 15 April 1996, implying by the use of that word that she had previously lodged a return and that, in lodging the pre-dated return, it was never in her mind that she had not already lodged a return.

As to the first, Councillor Blight's evidence excluded the Council's move and damage to the Register as a possible explanation. As to the second, Mr Edwards denied telling Councillor Deering that Council had lost her return. All he said to her was that he did not have it. As mentioned already, Councillor Deering was forced to admit that Mr Edwards had never used the word "lost", that was an inference that she had drawn for herself. However, in giving her evidence, she attempted for the first time to attribute to Mr Edwards another word, the word "misplaced". When challenged, at first

she said that she thought “misplaced” was the word Mr Edwards used but she did not have a clear recollection of the conversation: T298/46-52. Finally, she admitted that “misplaced” was not Mr Edwards’ word but was her “impression”: T300/15-19; 26-36.

As to the third, for her letter to The Leader dated 22 April 1996, she adopted the expression “replacement form” to describe the form she lodged on 15 April 1996. She thereafter, apparently deliberately, used the word at every opportunity, particularly during her interview with the investigators, even, having referred to it as “the second form”, correcting herself by calling it, “the replacement form”. When Mrs Ryan referred to, “this dated return here, dated the 11th ...”, Councillor Deering interposed, “the replacement form, right.”: Exhibit A, Attachment 8, p.52.10. She used the expression at least 18 times during that interview and continued to use it whenever possible in her evidence to the Tribunal, in the course of which she endeavoured to put it in the mouth of Mr Edwards. She was asked to relate the conversation when Mr Edwards telephoned her in her car on 11 April 1996. She said, “Mr Edwards rang me on the car phone. He said that my replacement form, the form that he’d given me, could I get it filled out ...”: T302/52-55. When it was put to her that the expression “replacement form” was not his, she said that his words were, “The form that I have given you” and that she could not remember Mr Edwards using the word “replacement”: T303/2-8.

THE CONFLICT OF EVIDENCE BETWEEN COUNCILLOR DEERING AND MR EDWARDS

The evidence of Councillor Deering and Mr Edwards left them in outright conflict as to when she had received from him the pre-dated return form, she alleging that it was in or about the second week of March 1996 and he alleging it was on or about 11 December 1995. The reliability of both of them as witnesses is open to some question.

On numerous occasions Mr Edwards denied having any knowledge or any recollection of relevant and important matters that were put to him by the investigators and in the course of his evidence to the Tribunal. They were

matters as to which he could be expected to have some knowledge or recollection. They are too numerous to list them all but reference will be made to some of the significant ones.

Mr Edwards said that he could not recollect telling Mrs Ryan on 16 April 1996 that new Councillors had been issued a Primary Return form with their induction kits: T162/49, 53; T164/39-46; or that he kept loose unfiled returns in a manilla folder in his office: T169/48. He could not recall having told Mrs Ryan that all Councillors had lodged their returns by the due date. He admitted that if he had done so, it was untrue: T194/24-54; T231/15-26. On several occasions Mr Edwards swore to the Tribunal that he had no recollection at all of Councillor Blight's inspection of the Register on 1 February 1996 or of having had a conversation with him on that occasion concerning returns missing from the Register: T178/10-36; T190/10; but as already mentioned above, he had told Mrs Ryan on 4 September 1996 that he did recall Councillor Blight requesting to see the Registers but his inspection was not in Mr Edwards' "direct presence": T190/12-44. When reminded of this, he insisted that he no longer had any such recollection and that his answer to Mrs Ryan had not been correct: T190/467. He claimed that his recollection when giving evidence was better than it had been on 4 September 1996 when he was interviewed: T190/51. He said that he was unable to account for the change in his recollection but when it was put to him that he was trying to distance himself from questions by Mrs Ryan as to the state of the Register or was seeking to evade such questions or to protect somebody, he denied it: T191/23-28; T190/57-T191/4, 6-15. When asked whether he suffered any memory disability, Mr Edwards said that he had noticed over the last 12 months that his memory was not as good as it had been a couple of years ago: T191/31. If this was true, he had experienced a sudden reversal in his recollection of what occurred regarding Councillor Blight in February 1996.

Mr Edwards had similar problems of recall regarding Councillor Smith's inspection of the Register on 11 April 1996. Mrs Ryan showed Mr Edwards

Councillor Smith's statutory declaration and drew his attention to the statement attributed to Mr Edwards, "There's been a bit of an accident. It had been lodged but lost. The form had been lodged about a fortnight ago by the date required and then lost." She asked Mr Edwards if that was a correct account of the conversation. Mr Edwards replied, "I can recall advising Councillor Smith that it was my understanding that I had the return. Following the move the Register was disturbed. I replaced the returns and noted Councillor Deering's return was missing. I cannot recall making a statement about, "the form was lodged a fortnight ago." I may have said, to my understanding that I had the form a fortnight ago and that's the best of my recall": Exhibit A, Attachment 10, p.18. Mr Edwards firmly denied that he had told Mr Smith or sought to convey to him that Councillor Deering's return had been lost. He swore that he did not consider that it had been lost, that he never told anybody that it was lost because that would have been untrue as he did not know one way or the other: T193/27-35; T193/44-55; T194/12-22. Mr Edwards insisted that to the best of his recollection he did not tell Councillor Smith that the form had been lost. What he said was that there had been an accident and the form was not in the Register: T194/7; T195/18-21. Mr Edwards maintained this position when cross-examined by Mr Macedone with whom he agreed that he was conveying to Mr Smith, "We had it, but now we don't.": T239/21-35

A notable absence of recollection on Mr Edwards' part related to the telephone call from Mr Edwards that Councillor Deering claims to have received on her car phone on 11 April 1996. Whatever may have been said at the time, there is no reason to doubt that such a telephone call was made or that as a result of that call Councillor Deering was bestirred into completing the pre-dated form which she had at home and lodging it before the Council meeting on 15 April 1996. To a whole series of questions related to that subject, Mr Edwards gave the answer, "I cannot recall." The more important questions were whether he had had any conversation with Councillor Deering after Councillor Smith left his office on 11 April 1996,

whether he might have had a telephone conversation with her, whether he had any conversation with her from 11 April to the night of the Council meeting on 15 April, whether he had told her at any time that anybody had been inspecting the Register or inquiring about her return, whether he had rung her up and told her that persons were making inquiries about her missing return and that she should get it in as soon as possible or words to that effect, whether, knowing that Councillor Deering's return was not on the Register and Councillor Smith was asking questions about it, he contacted Councillor Deering to let her know that it was a matter of urgency that she should get her return in and whether she asked if Monday night would be alright and he told her yes. He said that to the best of his recollections she never made such a request: T195/55-T198/8. He specifically denied tipping her off about Councillor Smith's inspection and inquiries and swore that he had no knowledge until the morning of 16 April 1996 that the Department of Local Government was coming to inspect the Register: T198/10-42.

Mr Edwards agreed with both Mrs Kelly and Mr Macedone that although he had no recollection of any conversation with Councillor Deering relating to Councillor Smith's inspection of the Register, he was not denying that a conversation could have taken place: T208/5; T250/5-29.

It has already been mentioned that, in support of her claim that Mr Edwards gave her the pre-dated return form in March 1996, Councillor Deering suggested that Mr Edwards may have pre-dated it to 11 December 1995, whether to make it look like the form originally issued to her or to take the place of the original form that he had lost. That is a serious allegation to make because it implies that Mr Edwards was willing to falsify Council records and was inviting a Councillor to participate in his falsification. The value to Councillor Deering of making this suggestion was that, if it was true, it would stand as an admission by Mr Edwards that she had lodged her original return, had done so prior to the expiration of the prescribed period and, in fact, had lodged it on 11 December 1995. It must have appeared a safe enough suggestion to make when she was asserting that although she must have

lodged her return before the prescribed she had no recollection or means of knowing when that was. The only evidence that gives any plausibility to the suggestion that Mr Edwards might have been willing to lend himself to the falsification of the apparent date of lodgement of the pecuniary interest return was evidence before the Tribunal relating to Councillor Simpson's return.

It will be recalled that when Councillor Blight inspected the Register for the second time on 27 February 1996 he found that although Councillor Simpson's return was filed in the Register it was undated as to signature although the date 1 Dec 95 appeared in the space for the date to which the return related. As mentioned above, Mr Edwards had stated in his evidence that the return lodged by Councillor Simpson was in his own handwriting: T182/55. When the investigating officers inspected Councillor Simpson's return in the Register on 16 April 1996 they found that the date 1 Dec 95 had been inserted against Councillor Simpson's signature: Exhibit A, Attachment 26, letter dated 14 May 1996 from the Director-General to Councillor Simpson. The returns in the Register, Exhibit Q, before the Tribunal, contain numerous examples of Mr Edwards' handwriting, including the words and figures of dates which leave no room for doubt that the date 1 Dec '95 against the signature on Mr Simpson's return is in the handwriting of Mr Edwards and must have been inserted there sometime after Councillor Blight's inspection on 27 February 1996. When Mr Edwards' attention was first drawn to it, he said, "I cannot identify it.": T183/23. When it was suggested to him that it was his handwriting he agreed that it looked like his but said that he could not state that it was: T183/27. Having been taken to a number of examples of his handwriting in the returns in the Register he eventually admitted that the date on Councillor Simpson's return was in his handwriting: T185/34; but when asked when did he put it there he said that he could not recall: T185/37. When it was suggested to him that he put it there after 27 February 1996 when Councillor Blight had found the return undated on his inspection, Mr Edwards again said that he could not recollect: T185/40-48. When asked why he had chosen to write the date 1 Dec '95 as the date of signature he

said he did it to correspond with the return date which Mr Simpson himself had put on the form: T186/13. Whilst this seemed to be a reasonable explanation for choosing that date, Mr Edwards conceded that the date he had written gave no indication of when the return had been lodged and the same could be said for his pre-dating 11 December 1995 the returns he had prepared for Councillors Thomas and Deering: T186/16-24.

On the basis of Councillor Blight's inspection of the Register on 1 February 1996 Councillor Simpson was asked by the Department to comment on the absence on his return from the Register on that date. Councillor Simpson obtained from Mr Edwards a letter dated 17 May 1996 signed by Mr Edwards on behalf of the General Manager and addressed to Councillor Simpson. The letter states that it is in reference to Councillor Simpson's inquiry in regard to "the effective date of lodgment" of his Primary Return following his election in September 1995. The letter states, "In reply thereto I confirm the oral advice given that I, as Public Officer to Council regard the date shown on the left hand side of the form, in the vicinity of the provision for signature, as the effective date of lodgment. In your return this date is 1 December 1995." The letter does not disclose that that date had been written on the return by Mr Edwards himself. The letter also speaks of an "effective" date of lodgment which sidesteps the question of the actual date of lodgment. Councillor Simpson utilised Mr Edwards' letter by forwarding it to the Director-General with a letter from him dated 29 May 1996 in which he said, "In regard to this matter, my Primary Return was duly completed, signed and lodged with the relevant Council officer within the prescribed period ... as stated by the Council officer in the attached letter." The letter went on to say that Councillor Simpson was unable to explain why the return could not be located after he had lodged it because he was unaware of the processes of filing and control of returns by the Council staff. He continued, "In conclusion, my return was completed and signed by the due date ...": Exhibit A, Attachment 26. There is some ambiguity in the letter as to when the return was actually lodged by Councillor Simpson but is clear that he is asserting that it was

lodged within the prescribed period and Mr Edwards has given evidence that the return was in the Council's possession in his office waiting to be filed at the beginning of February 1996.

As has already been mentioned, Councillor Thomas responded to a similar request for comment about the absence of his return from the Register by informing the Director-General that to the best of his recollection he had completed the form on 11 December 1995 and returned it to Council's offices immediately.

Mr Edwards said in evidence that the letter he wrote for Mr Simpson was in response to a specific request by Mr Simpson to state what the Council regarded as the "effective date" of lodgment of returns and he had replied accordingly. He said that Councillor Simpson had never told him that he wanted the letter to send to the Director-General and that the first he knew that Councillor Simpson had been asked to account to the Director-General was when he was told in the witness box: T188/45-57; T189/1-8. Mr Edwards admitted that he did not know when Councillor Simpson had lodged his return: T186/52; but he rejected a suggestion that he had deliberately put the date 1 Dec 95 in Councillor Simpson's return in order to help him to establish a date of lodgment within the prescribed period: T189/55-T190/1. He also denied that it was his intention to conceal the true date of lodgment: T186/46-50. He conceded that the notion of using an "effective date" instead of the actual date of lodgment could be seen as calculated to deceive: T188/29; but said that it was not his intention to deceive as to the true lodgment date: T188/15-27. In particular, he denied that he adopted the concept of an "effective" date to assist Councillors: T188/33-43.

POSSIBILITY OF LOSS BY COUNCIL

The possibility of Council losing a Councillor's return after lodgment calls for consideration as a specific subject.

Apart from relying on the accident to the Register when moving offices to suggest that Councillor Deering's original return may have been lost by the Council, Mr Macedone also sought to rely on evidence he adduced from Mr

Edwards as to the Council's system for dealing with returns and other documents and papers in its possession.

Mr Edwards admitted that it was possible for returns to remain loose in the office for a considerable time before being filed. According to Mr Edwards' evidence the returns of Councillors Simpson and Thomas had stayed loose in a tray in his office from 1 or 11 December 1995 to the second week of February 1996 without being filed.

Mr Edwards agreed that the system might be considered to be "sloppy" but said, "It's a question of priority" and that getting returns and filing them in the proper place was not on the top of his list: T219/10, 37; T233/38. Mr Edwards also described an unusually heavy workload with which he had to cope in the period in question and which made filing returns a low priority: T218/51-T219/35. Mr Edwards agreed that there were a great number of documents and papers in his office and that it was possible that under the pressure of work a return might have been misplaced or misfiled without his knowing: T219/47-T244/54.

As against the potential for loss of a return painted by this picture of Mr Edwards' office system is the fact that Mr Edwards pointed out that there was a designated area on a shelf behind his desk for storing unfiled returns: T220/22-23. Moreover, the returns of Councillors Simpson and Thomas had remained loose in that area for a long time without going astray and had found their way into the Register by 27 February 1996 where Councillor Blight saw them together with the Primary Returns of all other new Councillors except Councillor Deering.

The return forms themselves are large and distinctive in form and colour. They are of thick stiff paper 30 cms wide and 40 cms long. They have been around in Council offices for a long time, are easily recognisable and would be familiar to Council officers. Although in any busy office the possibility exists, it would seem very unlikely that a return would be misfiled or misplaced by a Council officer. However, Mr Macedone was able to point

to the case of Councillor Stanton's Ordinary Return for the year ended 30 June 1995 which was required to be lodged by 30 September 1995.

Councillor Blight had identified Councillor Stanton's Ordinary Return in the Register on both 1 and 27 February 1996. He had recorded its presence in the notes he made on 1 February 1997 against the word "old" meaning that Councillor Stanton was from the previous Council and he did not need to note down the details in his return because he was already familiar with them: T79/55; T80/4. Councillor Blight said that he was sure that he saw the return in the Register: T80/10.

As to the state of the Register, Councillor Blight told the Tribunal all the Councillors' returns were properly secured in the Register and that the Register itself was secure and in good condition. He said he did not notice that the cover could not be secured, it did not come off or cause any problems for him. He looked at the Register as he would a book, turning the pages. He had had all three binders of the Register open and at no stage did any of them come apart: T85/2; T86/2; T89/17-27; T91/53-T92/8; T93/47-T94/16, 25-33; T94/18.

However, the investigators found Councillor Stanton's return missing when they examined the Register on 16 April 1996. Mr Macedone submitted that if it could happen to Councillor Stanton's return it could have happened to Councillor Deering's. The possibility has to be conceded but it begs the question whether she ever lodged it. Councillor Stanton wrote to the Director-General on 21 May 1996 stating that he had a very clear recollection of handing his return to one of the Council's officers at a Council meeting and on being informed of its absence from the Register he immediately went to the Council and completed another noting on it that he had previously lodged his return: Exhibit L, Attachment 1. His notation on the return reads, "As previously submitted last year!!": Exhibit Q. Mr Stanton said in his letter to the Director-General, "One of Council's Managers came up to me, and commented that he recalled having previously handed it in while Graham Edwards was on holidays (Mr Chapman), and another (Mr Graham Edwards)

was also convinced that on previous checks of the Register, my return had been present.” How Councillor Stanton’s return came to be missing from the Register by 16 April 1996 after having been seen there by Councillor Blight on 1 and 27.2.96 was not explained by the evidence.

THE TRIBUNAL’S FINDINGS WITH RESPECT TO THE PRE-DATED RETURN 11 DECEMBER 1995

Mr Edwards’ account of giving Councillor Deering the pre-dated return on or before 11 December 1995, which Councillor Deering has rejected, was not sympathetic to the case she put forward to the Tribunal in a number of important respects.

If Mr Edwards’ story was true, it would mean that, in spite of what she had been saying or suggesting up to the date of the preliminary hearing, to the effect that she had or must have lodged her original return within the prescribed period, she had not in fact done so up to the time when Mr Edwards checked the Register, 7 or 8 December 1995, or at the time he gave her the pre-dated 11 December 1995 return form to fill in.

If she had already lodged her return, it is to be expected that she would have protested to Mr Edwards that she had already lodged it and would have demanded to know what had happened to it; but she just accepted the new return given to her by Mr Edwards without protest or query. That would be consistent not only with her having failed to lodge the original return at that date but also with her no longer having it or having mislaid it or having simply overlooked or ignored it.

Mr Edwards’ story was also incompatible with her claim that the pre-dated form was given to her as a replacement form to take the place of her original that had been lost by misadventure during the Council's move in March 1996 because, on his evidence, it was never given to her as a replacement for a lodged but lost return but as a “direct prompt” and means of rectifying an existing failure by her to have lodged any return.

Also, if Mr Edwards’ story was true, she could not maintain the link she endeavoured to make out between an alleged loss by the Council discovered

after Council's move in March 1996 and her subsequent possession of a pre-dated 11 December 1995 return form. Councillor Deering had already committed herself to an explanation to the investigators as to which that link was critical and when she received a copy of the Director-General's full report at the preliminary hearing and discovered for the first time what Mr Edwards had told the investigators about the pre-dated returns prepared by him for her and Councillor Thomas in December 1995, it was too late for her to adopt Mr Edwards' account without serious loss of credibility. Be that as it may, she has maintained her own account and the question is which one is true.

At the close of the evidence Mrs Kelly submitted that the Tribunal should accept Mr Edwards' account of the date and circumstances in which he gave the pre-dated return to Councillor Deering because it would have been the logical thing for him, as the Public Officer delegated to getting in the returns of the new Councillors, to check the returns near to the closing date and chase up any errant Councillors. As to Mr Edwards' credibility in regard to his professed inability to recall significant events, including the telephone call which Councillor Deering claims to have received from him on 11 April 1996, Mrs Kelly suggested that this could be explained on the basis that Mr Edwards would appear from the evidence to have made it a habit of endeavouring to avoid personal involvement in any political conflict between Councillors. She submitted that the reluctance by Mr Edwards to name the persons making inquiries about Councillor Deering's return, as claimed by Councillor Deering, was consistent with Mr Edwards' desiring to be and to be seen as "the neutral bureaucrat."

Mr Timmins submitted that, bearing in mind that the issue was whether Councillor Deering lodged any return by 13 December 1995, the Tribunal should be satisfied that she did not do so. He submitted that the evidence was "overwhelming" that she never lodged a return before 15 April 1996. Mr Timmins told the Tribunal that he rejected the theory that the Council had lost her return because, he submitted, it was more likely on the evidence that it had never been lodged. It is notable that in the course of his submissions, Mr

Timmins never endeavoured to support his client's story of counting nine Primary Return in the Register in February 1996. According to Mr Timmins, it came through like a "shining beacon" that Mr Edwards would have prepared and given the pre-dated 11 December 1995 form to Councillor Deering close to the prescribed date of 13 December 1995. Mr Timmins suggested that Mr Edwards' inability to recollect matters should be put down to a conscientious refusal on his part to express a view unless he had a positive and clear recollection. He submitted that it should be taken into account that at the period in question Mr Edwards had an overwhelming workload in which pecuniary interest returns represented a very small proportion of his work and was very low in terms of priority and importance to him in relation to the likelihood of his being able to recollect when compared with what Councillor Deering could be expected to recollect if in fact she had filed her return.

Mr Bellamy submitted that Mr Edwards' story relating to the pre-dated 11 December 1995 return form was highly probable given the approaching due date and the fact that there was a meeting of the EHC on 11 December 1995 at which the two errant Councillors, Thomas and Deering, would be present. Mr Bellamy pointed to the similarity of Councillor Thomas' pre-dated return and the fact that there was no reason in the evidence to suppose that that return was backdated after the expiry of the due date.

Mr Macedone submitted that Councillor Deering's version should be preferred because it was probable that Mr Edwards pre-dated in March 1996 the return she lodged on 15 April 1996 for the purpose of concealing the fact that the Council had lost her original return and had then sought to have Councillor Deering complete it and return it to him so that he could put in order the Register, for which he was the Council officer responsible, by having in the Register a return signed by her bearing a date within the prescribed period. He submitted that the reason why Mr Edwards was claiming that he had given her the return in December 1995 was that he wanted to distance himself from any suggestion that in March 1996 he gave Councillor Deering a return form pre-dated to 11 December 1995 in case it

would be interpreted as an attempt on his part to conceal a breach of the Act. Mr Macedone also submitted that there was no basis for supposing that there had been any collusion between Mr Edwards and Councillor Deering in relation to the procuring of a pre-dated form and that the Tribunal should accept Councillor Deering's evidence that she was not aware that the form was pre-dated until she filled it in on the Sunday 14 April 1996 before the Council meeting. Mr Macedone suggested that, in giving her the pre-dated form, Mr Edwards was simply trying to protect his own neck and that the Tribunal ought to disregard his evidence.

The Tribunal prefers the evidence of Mr Edwards to the evidence of Councillor Deering on the question of the pre-dated 11 December 1995 return. Having carefully considered all of the evidence on this matter, Mr Edwards' account of events seems to the Tribunal to be far more probable than Councillor Deering. It is strongly support by all of the evidence relating to Councillor Thomas' parallel return which has already been detailed above.

Notwithstanding the questions which arise as to Mr Edwards' credibility in consequence of his frequent inability to recollect important matters, he impressed the Tribunal as giving a truthful account when dealing with this matter. The impression was not diminished by cross-examination.

The Tribunal accepts Mr Edwards' explanation for type-dating the returns 11 December 1995 for Councillors Thomas and Deering in an endeavour to prompt them to get their returns in before the prescribed date expired. However, the Tribunal must point out that pre-dating a return is bad practice for Council officers to be engaged in and should be condemned because it can lay Council staff open to suspicion and criticism if afterwards there is any dispute about the date of lodgment.

The Tribunal also accepts the reason given by Mr Edwards for completing in his own hand the dating of Councillor Simpson's return although, again, it would be a dangerous practice to put a date against a Councillor's signature without the Councillor's express authority and while being unaware of the date of lodgment. It is obvious that Mr Edwards' notion

of an “effective” date is untenable and unacceptable because it is calculated to be misleading as to the actual date of lodgment.

Councillor Deering's version of not having received until March 1996, after the Council had moved offices, the pre-dated return which she lodged on 15 April 1996 would appear to the Tribunal to be likely to have been driven by her adoption of the idea, which she attributed to Mr Edwards, that her return may have been lost at that time by the Council. If Mr Edwards' version is right, as the Tribunal believes, it means that Councillor Deering had had the pre-dated form in her possession since December 1995 and had done nothing about it. If, as she said, Mr Edwards suggested to her in March 1996 that she make a search at home and she did so, finding the pre-dated return, the fact that it was pre-dated may have appealed to her if in fact she had not lodged any return and she thought that Mr Edwards was willing to accept from her for the Register the pre-dated return he had given her in December 1995. There was no need to link it with the idea of her return having been lost by the Council when it moved offices, but that would make a convenient explanation for lodging a pre-dated return and letting it appear on the Register as one that had been lodged on the date it bore.

The Tribunal accepts Councillor Deering's evidence that Mr Edwards telephoned her on 11 April 1996 suggesting that she get her return in because people, whom he declined to name, had been inquiring. The Tribunal also accepts Mr Edwards' evidence that he did not then know that Councillor Smith had actually lodged a complaint with the Director-General as a result of which there was to be an investigation commencing the very next day. Mrs Ryan's file note, Exhibit A, Attachment 13, indicates that she did not pursue her attempt to contact Mr Edwards on 15 April 1996 after she had spoken to Mr Rayner because Mr Rayner had told her that he would arrange for Mr Edwards to be present at their interview the next morning.

The Tribunal accepts that, however differently it may have appeared to Councillor Smith, whose suspicions were reasonable in the circumstances, Mr Edwards did not tip off Councillor Deering to there being on foot a

complaint and pending investigation about her return when he spoke to her on 11 April 1996. If he had done so, it would most probably have alarmed Councillor Deering into being more circumspect about lodging at that date a return pre-dated 11 December 1995; but to be told only that people were inquiring and, as Councillor Deering told the hearing, not being pressed by Mr Edwards with any need for urgency and with Mr Edwards agreeing to her leaving it until she came up to the Council meeting on the 15th to lodge the return: Exhibit A, Attachment 8, pp.17.5; 32.9; 34-35; 38.9; 59.1; T308/15-42; there would not have appeared to Councillor Deering any cause for alarm or fear of repercussions if she were to sign and lodge a pre-dated form. She was totally unaware of the three inspections of the Register carried out by Councillors Blight and Smith and of Councillor Smith's complaint to the Department and his planned public exposure of Councillor Deering's alleged breach to the coming Council meeting. It was only after the furore at the meeting that Councillor Deering realised the possible implications for her of having signed a pre-dated return. This could well have led her to hit on the idea of calling it a "replacement" which would both explain the date on the form and cover up the fact that it was the first return that she had lodged. Such a strategy was likely to give rise to future problems for Councillor Deering to have to deal with but these may have not have been evident to her at the time.

Councillor Deering did not have to accept the typewritten date when she signed the return with a view to lodging it on 15 April 1996. However, she told the investigators that she had chosen not to date the return herself: Exhibit A, Attachment 8, p.18.8; and reference to the transcript of her interview shows clearly that she evaded questions, though with some difficulty, about the fact that she had been prepared to adopt the date typed on the return when she signed it before lodging it on 15 April 1996: Exhibit A, Attachment 8, pp.55-56.

On the basis of the Tribunal's findings, the suggestion made by Councillor Deering in her statement to the Tribunal, Exhibit L, that Mr

Edwards may have pre-dated the “replacement” form either to make it look like her original form or to take the place of original form that he had lost, to which reference has already been made, must be regarded as a piece of artful dissembling.

WHAT HAPPENED TO THE ORIGINAL PRIMARY RETURN FORM GIVEN TO COUNCILLOR DEERING?

It is not possible on the evidence to be certain what happened to the Primary Return form which Councillor Deering received with her induction kit; but some consideration must be given to the possibilities. Evidence given by Mr Chapman suggested a possible answer but will need to be considered as a separate topic. First there are other considerations to be dealt with.

Assuming that Councillor Deering, as she has sworn, had the return in her possession and packed it away preparatory to moving house on 20 October 1995, the question is what happened to it after that date.

The Tribunal has rejected her evidence that she saw that return in its large envelope in her IN tray after moving house and until some unspecified time before 26 December 1995 when she went on holidays.

According to her evidence, the first time she made a search at her home was after Mr Edwards telephoned her on 11 April 1996. She said that on that occasion what she found was the pre-dated 11 December 1995 return which Mr Edwards had given her sitting in her IN tray in its envelope which was large enough to make it conspicuous even though it was near the bottom of the IN tray: T334/30-42.

Having filled in the pre-dated return and lodged it on 15 April 1996, she says that, as a consequence of what had happened at the Council meeting that night, she conducted a further search a couple of days after the Council meeting. As has been seen above, she gave a detailed account of this search to both the investigators and the Tribunal, emphasising the thoroughness with which she had carried it out, but she failed to find the original return.

If the matter had stopped there, a reasonable explanation for the disappearance of the return form, apart from the possibility that she puts forward that she might have lodged it, would have been that it was overlooked, lost or misplaced during the course of her moving house. She gave the investigators and the Tribunal a detailed account of such troublesome circumstances attending the occasion of her moving house as to make the chance of the return being overlooked or going astray at that time a very real possibility. It is to be remembered that in her evidence of unpacking after the move she could not recall either unpacking the return itself or seeing it while unpacking. Taking into account the rejection by the Tribunal of her claim that she had afterwards seen the original return sitting in her IN tray, there is no evidence that she ever saw it again.

It may readily be accepted that September-December 1995 was a very hectic period for Councillor Deering. In what she described as “those heady days of first becoming a Councillor”, with the huge learning task that entailed for her, she had heavy domestic and family problems to cope with at the same time. Her workload and responsibilities on the Council were increased by her having been elected to chair the EHC which, she says, was a very controversial committee which had the largest workload on the Council. At the same time she and her husband had sold their house and were planning to move to another property when they were “gazumped” on that property and had nowhere to go. Having just been elected as a Councillor she was running around trying to find somewhere to live. Her sister was in hospital trying to avoid losing her baby, her previous baby having been born prematurely. She was visiting and supporting her sister, doing her washing and other things, whilst at the same time she was running her own family, helping her husband in his business and caring for her sister’s three year old child whilst her sister was recovering and holding on to her pregnancy. Whilst this was happening she moved house. She described to the investigators the day of the move:

“When I moved house I broke a glass and got glass in my foot so I spent most of the day at the doctor’s and my husband ended up trying to move and then they were going to put me into hospital because they thought the glass was moving up my foot, so I know that probably sounds insignificant to you, but for me - I think my husband ended up throwing everything into a big bag and just - because at that stage they were going to put me into hospital because it was moving and they thought they’d have to cut my leg open that night, so it was a horrendous day as well.”: Exhibit A, Attachment 8, p.46

Having moved house she had to settle her 12 year old daughter into a new area while at the same time she was undergoing an IVF program at King George V Hospital. She was also President of a charity committee working for the Sutherland Hospital, had to do canteen duty at her daughter’s school, follow her occupation as a human resource consultant and help a friend run a campaign to become elected to the Federal seat of Hughes. She was an active member of the Customer Council at Sutherland Hospital. On the Council front, she had Council and committee meetings to attend, together with meetings with residents on site a couple of times a week and having to cope with absorbing a large amount of written material from the Council and attending to letters from residents and community bodies and telephone calls which occupied a couple of hours per night: Exhibit A, Attachment 8, p.34; Exhibit L, para.2(c); T345-346. Her statement in the quotation above that she thought her husband ended up “throwing everything into a big bag” graphically indicates the pressure under which their moving house was conducted.

There is, however, a further complication on the question of what might have happened to the original return. According to evidence Councillor Deering gave for the first time at the hearing, notwithstanding her meticulous searches in April 1996, she did not discover Mr Edwards’ covering letter dated 13 September 1995 (Exhibit P) until the night before it was produced to the Tribunal, 30 April 1997, 19 months after she had received it and 12 months after she had made her thorough search of the files: T325/20-55.

She told the Tribunal that she had not come across it in her previous searches but on the night before the hearing she found the letter loose inside a manilla folder labelled "Personal" which she kept at home: T325/57-T326/41. She told the Tribunal that the file was kept for just personal matters relating to the Council and that the file in which she found the letter was in her Council filing cabinet, which was the cabinet in respect of which she had given the evidence of the searches she carried out in April 1996: T326/52-T327/10. She also told the Tribunal that she could not account for why she did not find it when she did her big search in April 1996 because, she said, she thought she went through everything and does not know why it wasn't there then. She said that she did not know how she could have missed it: T327/12-27. She gave this evidence:

"Q. Was there anything attached to this document when you found it on 30 April this year?

A. No, no.

Q. Are you sure?

A. No, it was - no, it was just sitting in the folder pushed up, yes, with a whole lot of other things.": T326/43-50

Councillor Deering must have had this letter in her possession all the time, most probably in her Council filing cabinet. If it was contained in the personal file she kept especially for Council matters which related to her personally, there would be very little more personal than the matter of the return of her pecuniary and other interests, so that file would be logically one of the first to search. On a thorough search, she must have found it. If she did so, why did she not produce it until the day of the hearing?

It is difficult to accept that she was unable to explain to the Tribunal why she had not done so, unless the explanation would be damning for her. It would be damning if she had found the letter with the original return form still attached to it after she had been writing to the press, and her solicitor had been writing to the Department, to the effect that she had lodged that return with the Council by 13 December 1995. It would be better for her, at

that time, to say nothing about it. But finding the letter, with no form attached, and failing to find the form itself could found an inference that she had detached the form for the purpose of lodging it and had lodged or may have lodged it, and this is why she was able to find only the letter by itself. She admitted that she was aware that the letter was “very relevant” to the investigation by the Department: T326/3.

In the view of the Tribunal, the evidence of Councillor Deering's actions and explanations put forward since the Council meeting of 15 April 1996 which has been detailed here suggests a tendency and ability on her part to adjust, embellish and improve on her version of events as the occasion arises or further ideas come to her. That being so, it may not be beyond her inclination and capacity, if she had found both the letter and the original return form and at first decided that it would not serve her interests to produce them, to change her mind by the time of the hearing and decide to produce only the letter so as to have the benefit that might flow by inference from her having found the letter by itself.

Having regard to the large body of questions, information, statements and documents that the investigation had produced up to the commencement of the hearing of oral evidence and to the failure of Councillor Deering's statement, Exhibit L, to mention the letter, its production on 1 May 1997 took everyone by surprise, including her own solicitor. It is to be noted that, in his final submissions, Mr Macedone made the point that, until Councillor Deering had seen the statements of Mr Chapman and Mr Edwards contained in the Director-General's report alleging that the first return forms were given to new Councillors on 3 October 1995, the claim that she had made to the investigators that she had been given her form in September 1995 with her induction kit had not been put in issue, and that it was only then that the letter Exhibit P became important. However, Mr Macedone did not make a submission to the Tribunal that it should be inferred from the fact that she was able to produce the letter with nothing attached to it that she had lodged her return. It should be mentioned that the Tribunal does not base any

conclusions on Mr Macedone's failure to make that submission because he had many points to make in his address and may have overlooked that specific one. However, the point made by Mr Macedone was not dealt with in her statement Exhibit L, or put forward by Councillor Deering in her evidence to the Tribunal as her reason for the late production of the letter, which must remain suspicious.

The foregoing analysis of the evidence and the possibilities that arise from it leads the Tribunal to conclude that, having regard to all of the evidence on the matter, Councillor Deering's evidence of failing, after searching, to find or produce to the Tribunal the original Primary Return form is not, in all the circumstances, sufficient foundation from which to find, as Mr Macedone contended the Tribunal should, that it was more probable than not that Councillor Deering had lodged her return and had lodged it in due time. In the Tribunal's view, it is at least as probable, if not more probable than not that the original return went astray in the course of her moving house or became lost, misplaced or overlooked by her due to the heavy burden of official, family and other responsibilities that beset Councillor Deering in the period in question. However, the ultimate issue for the Tribunal is whether Councillor Deering lodged her original return, not what happened to it if she did not lodge it. That is a relevant but subsidiary consideration.

DID COUNCILLOR DEERING LODGE A RETURN WITH MR CHAPMAN IN JANUARY 1996

Cutting right across the other evidence in the case was evidence given by Mr Chapman that Councillor Deering had actually lodged a return with him in January 1996 while Mr Edwards was away on leave from 1 to 12 January.

Mr Chapman told the investigators and the Tribunal that before going on leave Mr Edwards had told him that Councillor Deering had not lodged her return and asked him to follow it up while Mr Edwards was away: Exhibit A, Attachment 11, pp.9, 15; T104/5-17, 30; T105/44.

Mr Chapman says that he telephoned her and asked her, if she had completed her return, would she bring it in and she said that she would do so: Exhibit A, Attachment 11, p.9; T104/50-58; T105/29.

He said that, afterwards, during the period of Mr Edwards' absence, Councillor Deering attended at the Council's office and, making some comments about problems she had in deciding what was required to go in it, she handed her return to him. He placed it on Mr Edwards' desk or in his IN tray: Exhibit A, Attachment 11, pp9-10, 11; T105/33; T105/58-T106/10-18.

A few days later, Councillor Deering returned and asked him to retrieve the return for her because she wished to check that its contents were correct. He did so and she took it away; Exhibit A, Attachment 11, p9-10; T106/28.

Shortly after, she brought the return back again when he was present and he saw her place it on Mr Edwards' desk or in his IN tray, after which he made a check to satisfy himself that it was there and saw it in the tray: Exhibit A, Attachment 11, pp10-11, 19; T106/34-38; T106/50-T107/38; T141/15-28.

Mr Chapman affirmed to the Tribunal that all of the above happened between 1 and 12 January 1996 while Mr Edwards was away: T108/37-41.

Mr Chapman told the investigators that afterwards he had mentioned to Mr Edwards that he had followed Councillor Deering up and got her return back to Mr Edwards: Exhibit A, Attachment 11, p18; but he could not pinpoint the date and was vague about the conversation, the detail of which he could not recall: T118/55-T119/47.

Mr Chapman had nothing further to do with Councillor Deering's return until he was despatched by Mr Rayner on 15 April 1996 to bring it up to the meeting, Mr Edwards not being present at the meeting: Exhibit A, Attachment 11, pp16, 17. He says that he could not find her return in the office so he rang Mr Edwards at home who told him to look for it on Mrs Parker's desk. He found the return there in an envelope and returned with it to the meeting: T134/23-T135/1. Mr Edwards in his evidence did not agree that in this

conversation he told Mr Chapman to look on Mrs Parker's desk because Mr Edwards says he had no knowledge until the following day of Councillor Deering's having handed a return to Mrs Parker. He claimed that Mr Chapman telephoned him in a panic to ask him where was the Pecuniary Interest Register and he simply told Mr Chapman where it was. He could not remember Mr Chapman saying that he was looking for a return from Councillor Deering: T192/2-56.

If Mr Chapman's story was true it would mean that Councillor Deering had not lost possession of her original return but, although somewhat out of time, she had actually lodged it at the Council and that, as Councillor Deering herself was alleging, the Council must have afterwards lost it. But Councillor Deering utterly rejected the story, swearing that it never happened: T414/24-32. She also said that she was on holidays at the time and had not visited the Council's offices in that period, her first visit to the Council being on 15 January 1996 for a committee meeting: Exhibit L, para.1. Whilst rejecting Mr Chapman's account and maintaining her position that she had no recollection of lodging her original return, Councillor Deering suggested in her statement for the Tribunal that perhaps Mr Chapman was recollecting having received her original return from her in early November or early December and was just getting his dates wrong. She made a further suggestion that, having regard to what Councillor Stanton stated in his letter on 21 May 1996 to the Director-General concerning Mr Chapman (Exhibit L, Attachment 1), quoted above, Mr Chapman could be confusing her with Mr Stanton: Exhibit L, para.1, p2. However, when the statement in Mr Stanton's letter was put to Mr Chapman in the witness box, he said he could not recall the event which it described but he denied that he could be confusing Councillor Deering with Councillor Stanton: T128/28-T129/1. He told the Tribunal that there was no chance that he was mistaking Councillor Deering for someone else: T113/7-9, 22-46; and when he was cross-examined by Mr Macedone he adhered firmly to his story by saying that he was "certain" that it had happened as he had stated: T128/2-7; T132/9-23.

Apart from Mr Bellamy, nobody espoused Mr Chapman's January story. Mrs Kelly described Mr Chapman's evidence as "quite extraordinary" and submitted that the Tribunal would not accept it. She pointed out that if Mr Chapman's story was story, Councillor Deering's return should have been in Mr Edwards' office on 1 February and in the Register on 27 February when Councillor Blight inspected the Register before the Council moved. As it was not there Mr Chapman's story should be rejected.

Mrs Kelly's submissions raised the question, if the events described by Mr Chapman did not occur, why would he say they did? Mrs Kelly told the Tribunal that she did not submit that Mr Chapman or Mr Edwards conspired with each other or with Councillor Deering to protect Councillor Deering, or that they had connived to protect each other but Mr Chapman's evidence could be the result of his attempting, on his own initiative, to protect his colleague Mr Edwards because of Mr Edwards' concern that, being the responsible officer, he had failed to ensure that all the returns of new Councillors had been lodged. A problem with this submission is that if Mr Chapman's story was true then Mr Edwards would still be in trouble for having failed to ensure that the return was filed in the Register and for having apparently lost it.

Mr Macedone also submitted that the Tribunal should reject Mr Chapman's story. On the present question, Mr Macedone also submitted that Mr Chapman's evidence was an attempt to cover up, not for Councillor Deering, but for Mr Edwards. However, Mr Macedone advanced a different reason for the attempted cover up of Mr Edwards. He suggested that Mr Edwards' worry was not about his failing to have got in Councillor Deering's original return but about having given her in March 1996 a return which he had back dated to December 1995 after having lost her original return. He suggested that Mr Chapman could have decided to protect Mr Edwards by telling a story that would make it more likely that Mr Edwards' pre-dating of Councillor Deering's return was done in December, not March, so he made up the story that she had lodged that return in January.

Mr Macedone's theory at this point depends upon the fact that, at one stage, Mr Chapman identified to the investigators the pre-dated return lodged by Councillor Deering on 15 April 1996 as the one which she had delivered to Mr Chapman in January 1996: Exhibit A, Attachment 11, p.12.9. He later vacillated about whether he had seen the typed date on the return lodged with him in January when he was forced to identify the pre-dated return as the same one as he had found in an envelope on Mrs Parker's desk and returned to the Council meeting on 15 April 1996: Exhibit A, Attachment 11, pp16.9-17.3, 25.5. Mr Chapman was unable to explain how he could identify the same document as having been delivered to him by Councillor Deering in January and delivered again by her on 15 April 1996. He professed to be mystified and suggested that there could be circumstances between January and April in regard to Councillor Deering's return he knew nothing about: Exhibit A, Attachment 11, p.17.6; T130/5-T131/36.

A problem with Mr Macedone's theory is that Mr Chapman was at the Council meeting on 15 April 1996, would have heard Councillor Deering telling the meeting that she had handed her return to Mr Edwards' assistant that afternoon and was the one who brought the return up to the meeting from Mrs Parker's desk. With that knowledge, he could hardly expect to be able to protect Mr Edwards against a charge of pre-dating that document by claiming that it had been lodged with him the previous January; but his story could still be true if he had made a mistake in identifying the pre-dated return shown to him by the investigators to be the same one as Councillor Deering had brought to him in January.

Mr Macedone submitted that Councillor Deering deserved credit for refusing to take the lifeline offered by Mr Chapman's evidence that she lodged her return in January because, according to her, it did not happen. He submitted that her refusal to adopt it shows her to be a person of good conscience. He pointed out that Mrs Kelly was in error in suggesting that the reason Councillor Deering did not adopt Mr Chapman's story was that it would not have assisted her case because it would have supported her claim

that she lodged her return prior to Councillor Blight's inspection on 1 February 1996 and it was lost by Council in the move.

On behalf of Mr Edwards, Mr Timmins disowned Mr Chapman's story of Mr Edwards' request in January to follow-up Councillor Deering's return for him and the events which Mr Chapman said followed. Mr Timmins said to the Tribunal, "As I said, I have to disassociate myself from Mr Chapman's evidence about it generally because on Mr Edwards' instructions and on the evidence it would be my submission it just seems to be peculiar, it doesn't seem to gell. If you could remove that out of the equation probably everything else falls into place very neatly.": T549/23-37.

As Mr Bellamy submitted, on the evidence, Mr Chapman's story is not lightly to be dismissed. It was not simply a story of having received a return from Councillor Deering in January. It had detail and logical circumstance. It contained reason for Mr Chapman to remember the event, because he knew Councillor Deering and, on his account, she had come into the office in January not once but three times. He recalled the conversation with her about problems she had in filling out the document. She has told the investigators and the Tribunal of having had such problems. When she saw the investigators on 13 September 1996 she was not aware of what they had been told by Mr Chapman and, whilst they asked her questions related to it, they did not tell her the full story. Mrs Ryan mentioned Mr Chapman's name to Councillor Deering and she indicated that she knew him. When, referring to her return, Mrs Ryan asked, "You wouldn't have handed it to him?", Councillor Deering replied:

"Look, it's possible. It is possible that I could have given it to Graham, I could have given it to Mr Chapman, but I'm not going to say to you - I'm not going to swear on a stack of bibles and say, "This is what happened."

....

"I should have asked for a receipt; but so much was happening. Look, I was coming to terms with a whole lot of stuff, let me tell you. So, yes, it

is possible but I would not swear on a stack of bibles.” Exhibit A, Attachment 8, 39.7-40.1.

If, as Mr Edwards said, the only returns outstanding at 11 December 1995 were those of Councillors Thomas and Deering and Councillor Thomas had lodged his return at that time leaving Councillor Deering's return as the only one still outstanding, it would not be unreasonable to expect Mr Edwards who was going on leave and had been overboard with work from September to the end of December to request Mr Chapman to follow up Councillor Deering for him while he was away. However, at the time of her interview with the investigators, Councillor Deering had already been saying that she had, or suggesting that she must have, lodged her return prior to the due date of 13 December 1995 and it would have been inconsistent with that to be admitting that she had taken her return into the Council offices in January and given it to Mr Chapman then.

As Mr Bellamy pointed out in his submissions, Councillor Deering's evidence of her whereabouts in January has varied a great deal and it was only late in the case that it came to be established that she was in Sydney and in the Sutherland Shire during part of the period 1 to 12 January 1996 when Mr Edwards was on holidays and at a time that she had previously claimed or suggested that she was on holidays and out of Sydney. She was asked a number of questions by the investigators in an endeavour to ascertain whether she might have visited the Council's offices during the first two weeks of January. On a careful reading, the answers that she gave suggest that she might have been endeavouring to avoid revealing that it was possible or likely that she had come into the Council chambers in that period.

Although she had her diary for reference, because she told the investigators that she had been through it to establish an event in February: Exhibit A, Attachment 8, p.6.9; she several times suggested in her answers to Mrs Ryan that she had been away from Sydney on holidays for most of January. She told them that her recollection was that Mr Edwards had given her the pre-dated return somewhere about late February/March, “Because we

had sort of most of January off. We came back the end of January.” Exhibit A, Attachment 8, p.11.4. She repeated this later when she said that, “Given that we had January off my recollection was it was a couple of weeks after we got back, so for me it places me late February early March.”: Exhibit A, Attachment 8, p.12.3. In these answers she seems to be pushing the date back in time, avoiding the first two or three weeks of January, but not committing herself to precise dates. She evaded a suggestion that she might have attended a Council meeting earlier in January by saying, “I think we came back 24th or 25th of January roughly, ” whereas, if she had been through her diary, as she said, she would have known that she attended an EHC meeting on 15 January. Mrs Ryan asked her whether she was on holidays during that period, in particular the first and second week of January. Councillor Deering told Mrs Ryan that she and her family were out of Sydney holidaying at that time at a caravan on the Hawkesbury River to which they went backwards and forwards during the school holiday period. Mrs Ryan then asked, “So whilst there were no meetings during that month of January would you have been calling into the office of the Council?” Councillor Deering replied, “No.” and Mrs Ryan asked, “May you have called into the office?” to which Councillor Deering made the following reply:

“No, not that I recall but I remember having a telephone conversation as - I remember - I was talking to another Councillor and they said they’d been trying to get me and my phone was diverting all the time so I wasn’t getting calls and I can remember ringing the Council and saying look, something has happened to my phone, it just keeps diverting and I spoke to oh one of the fellows there, Grant Tyler, and I said can somebody tell me how to reprogram and I remember they telling me how to reprogram it so I could fix the phone. I don’t recall going to Council during that period of time, no, except for this telephone conversation while I was holidays.”

Mrs Ryan pressed on with further questions referring to the kind of business that may have led Councillor Deering to attend the Council. In the course of responding, Councillor Deering said, “I would concede that I may have called

in, but I don't recollect calling in but, yes, I may have gone in, but from my mind I really went away on holidays to really have a break. It had been an horrendous three months and for me the object was holidays. ..." Mrs Ryan asked about personal as distinct from Council business and Councillor Deering said:

"I suppose I might have dropped something off. Yes, I could have because I've got a friend who works at Sutherland and I may have dropped into the Council for - to drop that bit of paper off but I don't have a specific recollection of doing that, but indeed, yes, we had expenses and so on and I may have while I was on holidays fixed up those bits and pieces of paper and yes, I probably could have dropped it in."

Mrs Ryan then asked what Council officers may have dealt with such matters, mentioning the names of Mr Edwards and Mr Chapman; but Councillor Deering told her, no, Sharon Morgan was the officer who dealt with those things and who was also the communications person. She was having trouble with her mobile phone but as Sharon Morgan was not available she remembered speaking to Grant Tyler: Exhibit A, Attachment 8, pp12-14.

Hypothetically, if Councillor Deering had lodged a return with Mr Chapman in January, as he claims, but the investigators did not know about it, or Councillor Deering was unaware whether or not they knew about it, and she preferred not to be the one to reveal it because of its inconsistency with her suggestions that her return had been lodged by 13 December 1995, the way that she answered Mrs Ryan's questions would have enabled her to avoid being absolutely committed whilst at the same time suggesting that it was improbable that she would have come to the Council to hand in a return during the first two weeks of January.

From her diary, Exhibit AC, and her mobile telephone account, Exhibit AE, it came to be established that she was temporarily at her home in Sydney on 2, 3 and 4 January and came home to stay on 6 January, but, she says, she was still on holidays until 14 January: T288/32; T426/6. She told Mr

Bellamy in cross-examination that she could not recall having any cause to visit the Council chambers on her return to Sydney and did not recall what she was doing on 8 January 1996. After referring her to her diary she agreed that it indicated that on that day she had called at premises in Sylvania Waters where her father resided to pick up the Council business papers that had been sent there for her, Sylvania Waters being in the Sutherland Shire, and that on the same day she, with a friend, had visited the office of Mr Chris Downing, the local member of parliament, in Sutherland, because his secretary was also a friend. However, she said that she did not believe, being in Sutherland, she had had cause to visit the Council Chambers: T427/36-T428/57.

Mr Bellamy presented a written statement by Grant Ashley Tyler dated 26 May 1997, which became Exhibit AD, and called him to give sworn evidence in verification of his statement. Mr Tyler is an administration officer in the employment of the Council. In January 1996 his work station was in the administration area near Mr Chapman's office. He recalled being at work sometime between December 1995 and February 1996, he thought it was after Christmas, and speaking to Sharon Crawford (formerly Sharon Morgan) who looks after the Councillors' mobile phones. She mentioned to him that Councillor Deering had a problem with diverting calls on her mobile phone and asked him to assist. His evidence was that Councillor Deering came up to him in the administration area and told him that she needed to divert her mobile phone and did not know how to do it. He told her that he had a Telecom Diversion Card and showed her the information on it. He could not recall whether he wrote out the diversion details or photocopied his card but he did not give her the card which has remained in his possession ever since. He thought that the conversation took place in late morning or at about lunch time and said that this was the only occasion he could recall ever having spoken to Councillor Deering about her mobile phone. He did not recall Councillor Deering contacting him by telephone before they had the

conversation. He was unable to fix the exact date but knew that it was before the Council offices moved to a new work location.

It was not suggested by anyone that Mr Tyler was not a credible witness. On his evidence, Councillor Deering was present at the Council Chambers in the area of Mr Chapman's office at a time which, on Councillor Deering's own statement to the investigators about her conversation with Mr Tyler, must have been in the early part of January during her holiday period, a period in respect of which, in her answers to the investigators, she would not eliminate the possibility that she may have called in to the Council and dropped something off. She told the investigators that her conversation with Mr Tyler was by telephone but it is more likely that it was face to face in view of his evidence that he recalled showing her his mobile telephone diversion card at the time.

Whilst Mr Tyler's evidence establishes Councillor Deering's presence at the Council office in January and an opportunity for her to lodge a return, it does not establish that she went there for that reason or that she did lodge a return. Nevertheless, it remains a factor to be taken into account in weighing the evidence and considering the probabilities on the question whether the Tribunal should accept Mr Chapman's story.

TRIBUNAL'S FINDINGS ON THE CHAPMAN STORY

Having reviewed all of the evidence on this issue, the Tribunal is not prepared to conclude that Councillor Deering did lodge a return with Mr Chapman in January 1996. The Tribunal's reasons follow:

One powerful factor against reaching such a conclusion is the rejection of Mr Chapman's story by Councillor Deering, whose position in relation at least to sanctions for a breach of the Act would have been improved by it, by Mr Edwards, whose alleged request to Mr Chapman to follow up Councillor Deering for him was the only basis on which Mr Chapman could have become involved at all in Councillor Deering's return, and by the Director-General's counsel whose task it was to assist the Tribunal to get at the truth of a complaint.

Another factor is Mr Chapman's own reticence and tardiness in disclosing the events he described in the context of a raging dispute taking place between Councillors, heavily involving his colleague Mr Edwards and reflecting on the Council's administrative efficiency in dealing with Councillors' returns. The Council's Chief Administrator, the General Manager Mr Rayner, only became aware of Mr Chapman's story when it was put to him by the investigators five months after Councillor Smith's complaint became known to the Council. Mr Rayner told the investigators that it was news to him and he was surprised that Mr Chapman's allegations had emerged only on the day of his interview. Mr Rayner said, "If that was generally known we wouldn't be going through a lot of this. It's news to me.": Exhibit A, Attachment 9, p25.3-26.3. Mr Rayner told the investigators that Mr Chapman did not tell him about it on the night of the Council meeting of 15 April 1996, at which time Mr Rayner assumed that Councillor Deering had lodged her return for the very first time that afternoon: Exhibit A, Attachment 9, p27.6. Mr Chapman himself had corroborated Mr Rayner by having told the investigators on the same day, but prior to Mr Rayner's interview, that he was sure that he had not mentioned the matter to the General Manager: Exhibit A, Attachment 11, pp21.2, 23.2. Mr Chapman had also told the investigators he had had no conversation with Councillor Deering about it. She never contacted him and, although he had talks with the Councillors all the time, he never mentioned it to her: Exhibit A, Attachment 11, p.15.3-.5, 21.4-22.7.

Revealing the story told by Mr Chapman would have mattered most at the time of the Council meeting on 15 April 1996. It could have instantly defused the issue, at least until the matter was further investigated, because a large part of the force of Councillor Smith's complaint was that no return had been lodged by Councillor Deering in the seven months that had elapsed since her election. Mr Bellamy submitted, rightly in the opinion of the Tribunal, that Mr Chapman was not to be criticised for failing to speak up at the meeting itself because, as a Council officer, he had no right of audience and, as Councillor Deering herself agreed in evidence, it would have been

most inappropriate for him to speak or interject at a Council meeting. Furthermore, Councillor Deering was speaking for herself in answer to a political attack and there was no opportunity for Mr Chapman to speak. However, it was a different situation after the meeting. Mr Chapman had a conversation with Mr Edwards about the events at the Council meeting involving Councillor Deering prior to the investigators interviewing Mr Rayner with Mr Edwards present the following day, but neither Mr Edwards nor Mr Rayner said anything about it to the investigators. The investigators discovered it from Mr Chapman only when they interviewed him on 4 September 1996. Mr Bellamy submitted that Mr Chapman was to be excused for not reporting what he knew to the Department before then as that was the first time he had ever been spoken to during the course of the investigation. In the Tribunal's view, that fact does not excuse Mr Chapman from not pressing his information on Mr Edwards if it was true, and Mr Rayner or informing the investigators knowing, from his presence at the meeting, that an investigation was in progress. The fact that Mr Chapman appears to have made little if any efforts to ensure that the information that he had come to those who were seeking and needed to have such information does not imbue confidence in its truth.

It was put to Mr Edwards that if he had requested Mr Chapman to chase up Councillor Deering while he was on holidays, which Mr Edwards said that he could not recall doing, it would have meant that Mr Edwards knew in January that Councillor Deering had not filed a return or that he believed that she had not done so. He was asked whether that was his belief and he answered, "That's my belief.": T215/31-41. Mr Edwards was very evasive on the question whether and if so when Mr Chapman informed him of Councillor Deering's lodgment of her return in January: T214-T215; but when he was interviewed on 4 September 1996 he did not tell the investigators that Mr Chapman had received a return from her in January. He told the Tribunal that to the best of his recollection he did not know at the time of his interview

of the situation whereby Mr Chapman was saying he had received the return in January: T244/15; T244/52.

Councillor Deering's spontaneous reaction at the meeting of 15 April 1996 to the effect that she had only lodged her return that afternoon is inconsistent with Mr Chapman's story. Mr Chapman's story is also inconsistent with what Councillor Blight discovered on his inspections of the Register in February.

In the Tribunal's opinion, these reasons outweigh the considerations in the evidence which tend to support Mr Chapman's account. As a result, the Tribunal does not accept that Councillor Deering lodged her original return in January 1996 as asserted by Mr Chapman. Of course, even if she had done so, it would have been out of time and a contravention of the Act.

MOTIVE

Mr Macedone submitted that Councillor Deering's claim that she must have lodged her return in due time is made the more probable because no motive or reason has been shown for her not to lodge it. The investigators looked into that question and at the Tribunal's request sought additional information which is in Exhibit B.

It was ascertained that Councillor Deering and her sister owned a house property in the area in the Sutherland Shire known as Sylvania Waters which they had inherited on the death of their mother in 1992 subject to a life estate given to their father, Mr G Evans, who is alive and still resides in the property.

Sylvania Waters is a private waterway for waterfront owners managed and controlled by a company Sylvania Waterways Pty Limited which before and after the elections in September 1995 had an active agenda with the Council regarding proposals put to the Council to establish a gross pollutant and silt trap at Gwaley Creek and to provide certain forms of financial assistance to the company to aid it in the dredging of silt from the waterway in order to maintain its navigability.

As a candidate for the Council, Councillor Deering had been lobbied by the company prior to the election to seek her support in the company's concerns with the Council. Councillor Deering attended the company's annual general meeting on 21 March 1996 at the request of and in lieu of the Mayor who was the one who had been invited to attend. In April 1996 the company provided her, as well as other Councillors, with a copy of correspondence that the company was having with the Council.

Waterfront owners in Sylvania Waters were required to hold shares in the company in order to enjoy privileges in the use of the waterway. As it was their father who resided in the property in terms that he paid all outgoings, Councillor Deering and her sister did not acquire any shares in the company until June 1996: T351/1; Exhibits Y and Z.

Although she was a non-resident owner in the period of present concern to the Tribunal, namely, September 1995 to April 1996, Councillor Deering would be expected to have an interest in any Council business affecting the welfare of the company, the shareholders and the landowners; but, in the opinion of the Tribunal, the evidence and information obtained by the investigators and adduced at the hearing before the Tribunal did not disclose any Council business or pending decisions affecting the interests of the company during the period in question sufficient to provide a possible motive for Councillor Deering to have endeavoured to conceal her ownership of the property during that period. Later such business did arise before the Council. It was at a meeting of the Council on 3 June 1996. At that meeting Councillor Deering declared a pecuniary interest in the matter on the basis that she was "part owner of a property in Sylvania Waters."

With respect to the suspicions of Councillors Smith and Blight that she might have been endeavouring to conceal that her home address was not in the Shire in order to avoid questions about her eligibility for election to the Council, Councillor Deering told the Tribunal that, although she did not reside in the Shire, she was eligible to be elected as a Councillor on the basis of her ownership with her sister of the property in Sylvania Waters.

Councillor Deering's eligibility is not an issue in these proceedings. The Tribunal has nothing to say about it except that there is provision under the Local Government Act, 1993 for a person who is not a resident but is an owner of rateable land in the Shire to be eligible for election to the Council: Sections 274(a), 266, 270.

TRIBUNAL'S FINDING AS TO ALLEGED CONTRAVENTION - REASONS

By section 483 of the Local Government Act, 1993, a finding by the Tribunal is to be made on the balance of probabilities, not the criminal standard of proof beyond reasonable doubt. In making its findings the Tribunal applies the principles laid down by the High Court in *Briginshaw v Briginshaw* (1938) 60 CLR 336 to the effect that the cogency of the evidence on which a finding is to be made should be of the same order as the seriousness of the finding. The finding that a Councillor has contravened the pecuniary interest provisions of the Act may have detrimental consequences for the reputation and career of a Councillor, especially if there are ambitions and opportunities to promote a reputation for community service or a political career by service on a local Council. The Tribunal therefore always has regard to the question of whether the evidence before the Tribunal is of sufficient strength to justify an adverse finding in the particular case.

In the present case, in the opinion of the Tribunal, there is strong and convincing evidence pointing to a conclusion that Councillor Deering failed to comply with the requirements of the Act in relation to the lodging of Primary Returns by new Councillors. As stated at the outset, the truth and accuracy of the evidence of Councillors Blight and Smith is not questioned. Councillor Deering's spontaneous reaction at the Council meeting on 15 April 1996 to the charge then being levelled against her by Councillor Smith constitutes strong evidence that the return which she had lodged that afternoon was the first and only Primary Return she had lodged since her election as a Councillor. Her letter to the General Manager dated 15 April 1996 and her unqualified admission to Mrs Ryan on 16 April 1996 provide cogent evidence

to the same effect. Councillor Deering's unremitting attempts, as opportunities arose thereafter, to recover lost ground and to build, by the tortuous task of reconstruction which she followed, a different case, one by which she might be able to explain away her previous admissions, have, in the view of the Tribunal, only added strength to those admissions. Her failure to protest to Mr Edwards that she had already satisfied the requirements of the Act when he, as the Tribunal has found, furnished her with a further return on or about 11 December 1995 and her unquestioning acceptance of his request after March 1996 that she lodge a return because he could not locate one from her, are not only consistent with the unrehearsed responses she made at the meeting and on the following day but also strengthen the inferences and the probability that her state of mind throughout the whole period in question was that she had not lodged a return.

In his submissions Mr Macedone sought to make much of the fact that Councillor Deering told the investigators and the Tribunal that she was not prepared to make up an account of lodging her original return when, although she believed she must have done so, she had no recollection of date, time or place. Mr Macedone submitted that this greatly enhanced Councillor Deering's credibility. Contrary to this submission was the fact that, according to her own evidence, she was so impressed with the apparent importance of the return form she received with her induction kit that she decided to consult the General Manager about it and later she had found completing the return before she moved house a daunting experience. In the Tribunal's view, it is therefore more likely that she would have remembered lodging the return if she had done so than that she would have forgotten, in which case, her professed lack of recollection would have been, as on the evidence, the Tribunal infers that it was, a tactical device to take advantage of any weakness in the case sought to be made against her without being committed to a version of events which might be open to attack.

The Tribunal's earlier findings on related issues and the reasons for those findings need not be repeated again. They are to be taken as being incorporated here.

For all of these reasons the Tribunal finds that Councillor Deering failed to complete and lodge with the General Manager of the Council within three months of becoming a Councillor the return required by section 449(1) of the Act. The Tribunal therefore finds the complaint to be proved.

FINDINGS ON INCIDENTAL ISSUES

The Tribunal's Notice of Decision to Conduct a Hearing (Exhibit C) has set out some incidental issues.

On the question whether Councillor Deering lodged any return after 13 December 1995 but before 15 April 1996, the Tribunal finds that she did not do so.

On the question of what were the circumstances in which she came to lodge a return on 15 April 1996, the circumstances have already been detailed earlier in the course of this decision. No formal finding is necessary.

MR EDWARDS AND MR CHAPMAN

Counsel for Mr Edwards and Mr Chapman both expressed great concern at the possible repercussions for their respective clients in their professional careers in the event of any adverse findings or comments by the Tribunal in relation to their credibility as witnesses before the Tribunal or the performance of their duties and responsibilities as Council officers.

On the first matter, the Tribunal is mindful of the observations made by the High Court in *Smith v New South Wales Bar Association* (1992) 176 CLR 256, on which Mr Bellamy relied, concerning the difference between preferring the evidence of one witness to another or rejecting the evidence of a witness, on the one hand, and a finding that a witness has knowingly given false evidence on the other.

As mentioned already, Mr Timmins emphasised Mr Edwards' apparent reluctance at times to commit himself in the absence of a positive clear

recollection of events. Mr Bellamy pointed out that Mr Chapman was a witness on peripheral matters outside his area of responsibility and said that mistakes in his recollection could account for any errors in his evidence.

In the course of this Statement of Decision, the Tribunal has said all that it needs to say about the evidence of Mr Edwards and Mr Chapman in order to reach conclusions on the conflicts of evidence which emerged in these proceedings.

As to their performance of duties as Council officers, Mr Timmins, rightly in the opinion of the Tribunal, pointed out that if any matter of criticism of Mr Edwards' conduct of duty arose, it could only properly be dealt with as a completely separate matter in relation to which other relevant evidence might be called which, if called in the present proceedings, would be ruled irrelevant to the issues which the Tribunal had to determine or which could be directed to matters over which the Tribunal had no jurisdiction. Mr Bellamy's submissions were to like effect in relation to Mr Chapman, Mr Bellamy pointing out the likelihood of procedural unfairness to Mr Chapman which could result from the fact that the Tribunal's conduct of the present proceedings was directed to determining a specific complaint made against Councillor Deering's conduct, in respect of which Mr Edwards and Mr Chapman were merely witnesses.

The Tribunal agrees that the roles of Mr Edwards and Mr Chapman are and could only be witnesses in the proceedings, not persons the subject of a complaint against them to be determined by the Tribunal. In so far as it might reflect upon the reliability of the evidence they gave to the Tribunal or explain relevant events, the conduct of their duties is, in the Tribunal's view, open to scrutiny by the Tribunal but only for that purpose, not as an end in itself. Any comments that the Tribunal found necessary to make on that basis have been made in the course of dealing with the evidence. It is not proposed to make formal findings on the subject of their individual performance of duties as separate matters. That was never contemplated by the Tribunal.

MR CHAPMAN'S OBJECTIONS TO THE PROCEEDINGS

On behalf of Mr Chapman, Mr Bellamy furnished written submissions objecting to the manner in which the proceedings were conducted by the Tribunal, not only in relation to Mr Chapman, but generally.

The basis of the objection was that the proceedings had been conducted as though they were inquisitorial rather than purely adjudicative and adversarial. Mr Bellamy submitted, "That the empowering provisions of the legislation establish that the role for the Tribunal is one of adjudication, rather than investigation." He presented an analysis of those provisions in an endeavour to support that contention.

On the basis that the contention was correct, Mr Bellamy submitted that the nature and extent of the Tribunal's intervention in the proceedings by suggesting or raising issues that might require attention or findings, and by questioning witnesses, had constituted an error of law, a denial of procedural fairness to Mr Chapman, and a reasonable apprehension of bias. He submitted that, as a result, the Tribunal should order that the proceedings be discontinued and, in the alternative, "The Tribunal member disqualify himself from further involvement."

The nature of the functions to be performed by this Tribunal depend primarily upon a proper construction of the provisions in the legislation by which it was constituted and a consideration of the nature and extent of the powers vested in it to enable it to perform its functions. The "empowering provisions" to which Mr Bellamy referred are to be read in the context of the whole of Chapter 14 of the Act which is expressly dedicated to the promotion of honesty and responsibility in the carrying out of functions by Councillors, Council delegates and Council staff by imposing various obligations on them to disclose private interests that might compete with their public duties.

Unlike adversarial proceedings where it is a party who decides to invoke an exercise of the Tribunal's functions and powers and the parties who declare the issues and elect what course of litigation they will pursue, the legislation here imposes on the Tribunal itself the responsibility of

deciding, after considering a report of an investigation of a complaint, whether or not to conduct a hearing into the complaint: see Sections 469, 470. The Director-General will generally be a party to the proceedings whether or not the Director-General is the complainant but neither the Director-General nor other complainants may initiate a hearing by the Tribunal. In reporting an investigation to the Tribunal, as required by section 468, the Director-General makes no request for a hearing and no recommendations as to the desirability or otherwise of conducting a hearing or any comments as to the weight of the evidence obtained, the credibility of witnesses interviewed, possible outcomes or other matters which might be considered.

The reports set forth the complaint made or received by the Director-General and the information gathered by the Department's investigators concerning the complaint. As the Act contemplates, the Tribunal, on the basis of that information, makes its own independent decision whether to conduct a hearing and decides what procedures will be followed in order to determine the allegations made by the complaint.

Having regard to the responsibilities placed on the Tribunal by the legislation, the Tribunal takes the view that the role of the Director-General and any legal representative appointed for the purposes of a hearing is the public duty of assisting the Tribunal to carry out its functions. The role is not that of an advocate in pursuit of his own or a client's cause as in adversarial proceedings and the Director-General's presence is not for the purpose of relieving the Tribunal from having to take an active role in the proceedings if the need arises. (The Tribunal's views in this respect were recently expressed in the course of the decision in Councillor Judge's case, mentioned below, at pp.99-101). There are other aspects of the legislation to be taken into account.

The legislation invests the Tribunal not only with adjudicative duties in regard to complaints made of contraventions of the Act, but also with a wide range of investigative powers, akin to those vested in a Royal Commission.

The Tribunal has had occasions in the past to consider the nature of its functions having regard to the provisions of the legislation and has concluded that, on a proper interpretation, the purpose of the legislation in conferring such powers was to arm the Tribunal with the means by which it might, if possible, ascertain the truth when conducting a hearing into a complaint and that, consequently, it was the duty of the Tribunal to employ those powers for that purpose.

The view taken by the Tribunal can be expressed by repeating here what it had to say in the course of the proceedings in ***Director-General, Department of Local Government re: Councillor Dianne Virginia Judge, Strathfield Municipal Council***, PIT4/1995, 9 January 1997 at pp.77-79:

“As pointed out in the course of the hearing the legislation has invested the Tribunal with comprehensive investigative powers for dealing with a complaint of a breach of the pecuniary interest provisions of the Act. By section 471 the Tribunal may determine its own procedure and in the conduct of any proceedings the Tribunal may inform itself on any matter in any way it thinks fit, is not bound by the rules of evidence, may receive information or submissions in the form of oral or written statements and may consult with such persons as it thinks fit.

By section 472 hearings are to be held in public but the Tribunal is given power to conduct private hearings subject to its giving due regard to the public interest. The Tribunal has power to summon persons to appear to give evidence and produce documents and to require a person appearing in the proceedings to produce any document. It has power to take evidence on oath and may require a person appearing in the proceedings to take an oath or make an affirmation before giving evidence: section 475. The Tribunal may require any person to attend before the Tribunal to produce documents: section 476. Disobedience to the requirements of sections 475 and 476 will incur a penalty.

Of particular relevance to the present issue is section 477 which provides that a witness summoned to attend or appearing before the Tribunal is not excused from answering questions or producing documents on the ground of self incrimination, any other ground of privilege, duty of secrecy or other restriction on disclosure or on any other ground. However, if a witness objects to giving an answer or producing a document, whilst the witness must nevertheless provide the answer or produce the documents, they are then not admissible in evidence against the witness in any civil, criminal or disciplinary proceedings: section 477(2), (3). The only recognition of legal professional privilege required of the Tribunal is in relation to a privileged communication passing between a legal practitioner in his or

her capacity as such and a person for the purpose of providing or receiving legal professional services in relation to the appearance or reasonably anticipated appearance of a person at a hearing before the Tribunal unless the privilege is waived by a person having authority to waive it: section 477(4). No other form of legal professional privilege or any ground of secrecy or confidentiality will excuse the witness from answering questions or producing documents or any other thing.

As a further aid to investigation the Tribunal is given power to make suppression orders directing that the name of any witness be not disclosed in the proceedings or that the name and address of any witness, complainant, or person against whom a complaint has been made, or any specified evidence or the subject matter of a complaint be not published. The person who contravenes such a direction is guilty of an offence: section 480. The purpose of providing a Tribunal with such powers is obviously to enable it so far as possible to discover the truth when conducting a hearing into a complaint. Implied by the nature and extent of the powers is an obligation on the Tribunal to use its powers to establish, if it can, the true facts in respect of any complaint as to which the Tribunal has decided to conduct a hearing. The provisions in question reflect an underlying policy that the public interest in having the pecuniary interest provisions of the Act enforced demands no less.”

The conclusion thus expressed does involve the Tribunal taking, as occasion demands, an investigative role as well as an adjudicative role in dealing with complaints. This is a situation which, if it is a true interpretation of the legislation, must be accepted and applied by the Tribunal even though it might be considered to be an uncommon combination of functions in our legal system. It does not mean, as Mr Bellamy on behalf of his client appeared to fear, that the rules of procedural fairness cannot be applied by the Tribunal when exercising the dual role of investigation and adjudication. The Tribunal has certainly not experienced in past cases any difficulty in abiding by the principles of natural justice in pursuing both roles in the conduct of its proceedings. The Tribunal does not consider in the present proceedings that it has failed to comply with those rules and principles in relation to Mr Chapman or Councillor Deering and Mr Edwards.

It is true that the investigative role does involve the Tribunal in a degree of what Mr Bellamy called “intervention” in the proceedings when, in

its judgment, some form of intervention by the Tribunal is necessary for the purpose of seeking to discover the true facts of the matter.

The Tribunal's intervention may, as occurred in the present proceedings, involve the Tribunal in raising for consideration and investigation in the evidence questions that appear to arise from material in the Director-General's report of his investigation or from documents before the Tribunal or the evidence given by a witness. It may also involve, as in this case, the Tribunal itself asking questions of witnesses in order to obtain clarification of a matter or in an endeavour to seek the truth, including questions in the nature of cross-examination when considered appropriate. Mr Bellamy's submissions seeking to characterise the Tribunal's intervention in the present proceedings as grounds for a reasonable apprehension of bias appear to the Tribunal to be a misinterpretation of the occasions on which he sought to rely to support those submissions. The question of the validity of the submissions would require a full consideration of all the circumstances and the whole course of the proceedings in relation to the present complaint which, in the Tribunal's opinion, it is not for the Tribunal itself to undertake. In the Tribunal's view, his submissions were incorrect and were not warranted by the events on which they based.

Addressing Mr Bellamy's written submissions, counsel for the Director-General submitted, contrary to those submissions, that the Tribunal's description and the nature of its functions which has been quoted above from Councillor Judge's case was a correct interpretation of the legislation. Neither Mr Macedone nor Mr Timmins sought to support Mr Bellamy's submissions or sought for their clients the orders Mr Bellamy was seeking on Mr Chapman's behalf. The Tribunal declines to make the orders sought by Mr Bellamy.

ACTION BY THE TRIBUNAL IN CONSEQUENCE OF THE TRIBUNAL'S FINDINGS

The Tribunal listed as an issue in its Notice to Conduct a Hearing the question, what is the explanation for Councillor Deering's failure to lodge any

return on or before 13 December 1995? This question relates to the action which the Tribunal ought to take in the exercise of its powers under section 482(1) of the Act if it should find that there was a contravention rather than whether a contravention had been proved.

As Councillor Deering was postulating as a probability that she did not fail to lodge her return in time, possible explanations for her failure, as found by the Tribunal, emerged in the evidence only indirectly.

As the Tribunal has detailed earlier, Councillor Deering's evidence emphasised the many and diverse stresses under which she had to undertake her responsibilities as a newly elected Councillor in the period to the end of December 1995, in particular, but continuing thereafter into April 1996.

According to her evidence, there was a further factor that affected the amount of attention that she gave to the lodging of her return and detracted from the degree of importance she placed upon it.

She complained that the new Councillors were never given a proper orientation by the Council's administration, the importance of lodging her Primary Return by the prescribed date was not brought to her attention by Council staff; Exhibit A, Attachment 8, p.30; she was told that the returns were just a piece of paperwork that got filed away, as a matter of course, and their unimportance was shown by the fact that no-one ever inspected the Register: Exhibit A, Attachment 8, pp.35-36; T290, 296. She told the investigators that she had received no real assistance as a Councillor and felt at the end of the day that she had been let down: Exhibit A, Attachment 8, p.58. Whilst she acknowledged that the Council officers had been very nice to her, she said, "But when I look back now they did me no favours and basically the procedures let me down miserably.": Exhibit A, Attachment 8, p.42.5. The investigators questioned Mr Rayner and Mr Edwards on Council procedures relating to Councillors' returns. The information which they gave to the investigators provides a background which tends to support Councillor Deering's impressions.

The investigators drew Mr Rayner's attention to the Department's circular to Councils 94/30 dated 21 October 1995 providing guidelines on the pecuniary interest provisions of the Act (Exhibit A, Attachment 21). In relation to returns, the circular contained the following which the investigators read to Mr Rayner at the interview:

“The General Manager should as far as possible ensure that Councillors and staff comply with the requirements of section 449 of the Act for the completion and lodgment of returns. To this end the General Manager should provide to Councillors and designated persons pro-forma returns and the relevant sections of Chapter 14 and the whole of Schedule 3 to assist in completions of their returns; regularly remind Councillors and designated persons of the deadline for returns; and advise Councillors and designated persons that failure to comply with section 449 is a breach of the Act, and that such breaches will be reported to the Department.”

Mrs Ryan asked what procedures were in place in the Council between September 1995 and April 1996 to meet these guidelines. Mr Rayner claimed that as far as reminding Councillors, getting information to them and providing them with returns, those requirements were met but he had never at that time suggested to the Public Officer if there was a failure to comply it should be reported to the Department. He said, “We took it on the basis of reminding rather than coming in heavy.” It was apparent from what he later told the investigators he was not at all sure whether reminders were given to Councillors or what form they took but he understood that it was not formal: Exhibit A, Attachment 9, p.6.

The investigators also drew Mr Rayner's attention to departmental publications issued in March 1995 and October 1995 which contained information for Council's concerning returns of pecuniary interests. (Exhibit A, Attachment 22). These publications contained advice to General Managers on the procedures they should follow to aid in ensuring compliance with the Act, including procedures for recording the date of receipt on returns and issuing acknowledgment letters. Mr Rayner claimed that he would have

read these publications but admitted that he had nothing to implement the advice: Exhibit A, Attachment 9, p.7. The later of these publications provided advice for newly elected Councillors as to their obligations to complete and lodge returns. Mr Rayner admitted to the investigators that he was not sure what the arrangements were for getting this sort of information to the Councillors: Exhibit A, Attachment 9, p.8. Mr Rayner ended up informing the investigators he virtually left it entirely to Mr Edwards to follow-up Councillors who had failed to lodge returns and had disregarded the obligation to inform the Department. He said, "I would have seen it more as a technical breach that should be followed up and let's get it right, let's not - get into the paperwork.": Exhibit A, Attachment 9, p.21.6. The Department's advice to place a notation of the date of receipt on returns and to issue a letter of acknowledgment to Councillors lodging returns would have been simple administrative procedures to follow and would have helped to avoid the kind of doubts and disputes which arose in the present case.

The investigators showed Mr Edwards the same departmental circular and publications which had been shown to Mr Rayner. Mr Edwards had no recollection of the circular but it was obvious from his responses that he had never read the other publications or even received them: Exhibit A, Attachment 10, pp.5-6.

Mr Edwards told the Tribunal that the policy at Sutherland Council was that Councillors were the ones responsible for the completion and lodgment of returns: T170/14. When it was suggested to Mr Edwards that he appeared to be distancing himself from any responsibility for the performance by Councillors of their statutory duty, he denied this and said, "I was operating under established policy that the onus was on the Councillor to complete and lodge the form.": T210/9, 16. He said that this policy was given to him orally, possibly by Mr Chapman, but his understanding was that it came from the General Manager: T210/32-47; T211/9-23.

Mr Edwards agreed with Mr Mansfield, then appearing for Mr Edwards, when Mr Mansfield put it to him that pecuniary interest returns were given

“low priority” in the overall scheme of his work: T275/51-T276/1. Mr Mansfield then asked the question, “Is it correct to say the reason for that low priority was it was seen to be - and I put this most properly, a black letter statutory responsibility with little daily application to the business of the Council.”: T276/3-7. This leading question, coming from the Council's own General Counsel, appeared to be intended to state an official position and was withdrawn when the Tribunal questioned the wisdom of pursuing it.

However, even without that question being asked by Mr Mansfield, the impression given to the Tribunal by Mr Rayner and Mr Edwards was that, apart from Mr Edwards' initial letter of 13 September 1995 (Exhibit P), no positive procedure was established or even contemplated by the General Manager for impressing upon Councillors the importance of compliance with the requirements of the law or the possible consequences of their failure to do so in relation to pecuniary interest returns.

The legal obligation to comply with the duty laid down by the Act is clearly upon the individual Councillor but the absence of any formal positive reminder procedure or stress upon the importance of compliance coming from the Council's own administration is conducive to an attitude of complacency by both staff and Councillors which may well have contributed to Councillor Deering's failure to ensure that her return was lodged. As she had a responsibility of her own to know her duties and had had the benefit of the advice contained in Mr Edwards' letter of 13 September 1995, this does not excuse her; but it could help to explain how she came to fail to lodge the return.

Councillor Deering has said that she was led to believe that the return was not all that important, and as she appears to have had more Council, family and domestic responsibilities than she could cope with, she may well have simply neglected or overlooked the filing of her return and, as discussed earlier, it could well be that she lost it when she moved house or afterwards. However, the truth as to why she did not lodge the return must remain, on the

evidence, a matter too speculative for a positive finding to be made by the Tribunal.

Character References

Councillor Deering has furnished the Tribunal with a large body of written references from reputable and responsible persons who speak in glowing terms of her integrity, good character, services to the community and high reputation. These references weigh in her favour by tending to show that she is a person of such good character that she would take her responsibilities seriously and would not be prone to failure in carrying out her legal obligations. Accepting that normally to be the case, the strength of the evidence before the Tribunal in favour of a conclusion that in this instance Councillor Deering contravened the Act outweighs the force that might otherwise be given to her good reputation. However, her character references remain relevant on the question whether any, and if so, what action should be taken by the Tribunal.

Conclusion

When the Tribunal finds a complaint is proved it has power under section 482(1) to counsel or reprimand the Councillor, suspend the Councillor from civic office for a period not exceeding two months, or disqualify the Councillor from holding civic office for a period not exceeding five years.

In the opinion of the Tribunal, Councillor Deering's breach was not a trifling matter. It persisted for a period of four months beyond the expiry of the three months allowed for lodging returns. In that period she occupied one of the most influential positions in the Council's organisation and was an active participant in many controversial issues. Under the legislation, other Councillors and members of the public had a right to know by inspection of the Council's Pecuniary Interest Register where her financial and other relevant interests lay. Her failure to lodge her return deprived them of the opportunity to exercise that right during the period in question.

Counsel for the Director-General submitted that Councillor Deering's contravention and her subsequent attempts to evade responsibility for it merited a period of disqualification.

Mr Macedone submitted that if Councillor Deering was found to have contravened the Act, nevertheless she should not be penalised for exercising her right to defend herself or for seeking to persuade the Tribunal that the evidence had failed to establish the complaint against her.

The Tribunal takes these submissions into account. It also takes into account that at the conclusion of her interview with the investigators on 13 September 1996, Councillor Deering said:

“...if for some reason the first form, you know, went missing or - I don't know what I did with it in the end; for me I handed it in; but because I can't say to you, this is what happened, I apologise for that and I should have been more diligent. I do apologise for not being as diligent and I do apologise for not asking for receipts and doing all those things but as a new Councillor I didn't - I just - I guess I was too accepting and I admit now that - let me tell you, I understand the significance ...”: Exhibit A, Attachment 8, p.59.

As well as taking into account this expression of regret, the Tribunal has regard to the fact that the evidence did not show that at the relevant time Councillor Deering stood to gain financially or otherwise from the non-disclosure of her interests or that she obtained any improper advantage thereby. The Tribunal also takes into consideration her previous good character and community service.

For the foregoing reasons the Tribunal considers that disqualification from civic office should not be imposed in this case but at least a period of suspension is called for. The commencement of her suspension will be postponed for a short time to enable Councillor Deering and the Council to reorganise their respective schedules so as to avoid undue disruption to Council's business and Councillor Deering's affairs as a result of her suspension.

ORDER OF THE TRIBUNAL

The Tribunal's Order is as follows:

The Local Government Pecuniary Interest Tribunal **HAVING FOUND** that a complaint against Councillor Jillianne Patricia Deering of Sutherland Shire Council, namely, that having been declared elected as a Councillor on 13 September 1995 she failed to complete and lodge with the General Manager of the Council within three (3) months of that date a return in the form in Part 1 of Schedule 3 of the Local Government Act, 1993 in contravention of the provisions of section 449(1) of that Act, has been proved **NOW ORDERS** pursuant to section 482(1) of the Act that Councillor Jillianne Patricia Deering be and she is hereby suspended from civic office for a period of two (2) months commencing on 1 September 1997 and expiring on 31 October 1997.

The Tribunal's Order will be furnished to Councillor Deering, the Director-General and the Sutherland Shire Council forthwith.

Copies of the Tribunal's Statement of Decision will be provided to Councillor Deering, Councillor Smith and the Director-General in accordance with section 484(1). Pursuant to section 484(3) copies will also be provided to Sutherland Shire Council and such other persons as the Tribunal thinks fit.

DATED: 20 August 1997



K J HOLLAND Q.C.
Pecuniary Interest Tribunal