
TRANSCRIPT OF PROCEEDINGS

MONDAY 4 APRIL 2016

BEFORE COMMISSIONER ANTHONY HUDSON

MURRAY SHIRE COUNCIL PUBLIC INQUIRY

1 COMMISSIONER: Good morning, ladies and gentlemen, my name is
2 Anthony Hudson. I was appointed by the Minister for Local
3 Government, the Honourable Paul Toole, to hold a public
4 inquiry under s.438U of the Local Government Act into
5 Murray Shire Council. A copy of the instrument of
6 appointment is at the door and the terms of reference are
7 at the door. So this is the only public inquiry part
8 where evidence will be given.

9 I am just going to say a few things, just in terms
10 of very practical things, about when we are sitting. We
11 will just be sitting during the course of this week. We
12 will sit from 10 until one. There will be an hour for a
13 break for lunch from one until two and we will sit from
14 two to four.

15 I am going to talk a little bit about the terms of
16 reference I am just going to do a short opening statement
17 and then we will move into some evidence and Mr Hurst will
18 be the first person to give some evidence. The terms of
19 reference, and I am just going to read them out and then
20 talk about them, to go on the record because it's being
21 taped.

22 Firstly, "To inquire and report on the following
23 matters relating to Murray Shire Council: (1), whether
24 the elected representatives and staff have, since the
25 appointment of the current general manager, complied with
26 applicable laws, codes, administrative procedures and
27 policies, and have fulfilled its and their duties, powers
28 and functions, particularly in relation to the
29 relationship between councillors, the general manager, and
30 senior and other staff of council.

31 "(2), whether the council has, since the appointment

1 of the general manager, complied with its work, health and
2 safety obligations as the general manager's employer.

3 (3), whether the elected representatives have been, and
4 will continue to be, in a position to direct and control
5 the affairs of council in accordance with the Local
6 Government Act 1993 and other relevant Acts, so that the
7 council may fulfil its charter, the provisions of the
8 Local Government Act 1993, and otherwise fulfil its
9 statutory functions and obligations.

10 "(4), any other matter that warrants mention,
11 particularly those that may impact on the effective
12 administration of council's functions and
13 responsibilities, or the community's confidence in the
14 council being able to do so".

15 Then it says at the end that I may make such
16 recommendations as I see fit having regard to the outcomes
17 of the inquiry.

18 Just a few brief comments about the terms of
19 reference. I have taken the view that, basically, this is
20 about a period concerned from April 2014 until now, which
21 was really the appointment of the general manager. The
22 first paragraph of the terms of reference relate to
23 whether councillors and council staff have complied with
24 the applicable laws and policies, and fulfilling their
25 duties. And, in particular, in relationships between the
26 councillors, the relationships between the councillors and
27 the general manager, and probably a bit more ancillary,
28 the relationship between the councillors and other staff.

29 The second paragraph of the terms of reference is
30 really a specific question about the council's work,
31 health and safety obligations in relation to the general

1 manager.

2 The third paragraph is to be taken really in the
3 context of the first two paragraphs, and it's really
4 saying whether the councillors, since April 2014, and
5 continuing into the future, have been in the position
6 previously, or will be in a position in the future to
7 direct and control the affairs of council, so that the
8 council continue to operate properly.

9 The fourth terms of reference is a general term
10 requesting comment on two things: the effective
11 administration of the council's functions and
12 responsibilities and - or the impact of the effective
13 administration of the council's functions and
14 responsibilities and the impact on the community's
15 confidence in the council to administer those functions.

16 As I say, I can make recommendations. I should make
17 it clear at this point that the current merger proposal
18 between Murray Shire Council, and correct me if I get this
19 pronunciation wrong, the Wakool Shire Council, is not
20 relevant to this inquiry. This inquiry just relates to
21 the current Murray Shire Council.

22 Just a few points about how we will manage the
23 inquiry or the giving of evidence, it is conducted, as
24 I said, under 438U of the Local Government Act, which
25 provides for a number of things. It confers on me powers,
26 and authorities, and protections and immunities under the
27 Royal Commissions Act, it invokes provisions under the
28 Local Courts Act, particularly ss.27A and 27B, which
29 relates to contempt, and it brings into play other
30 provisions of the Royal Commissions Act.

31 I have got a wide discretion really about the

1 procedures that are being adopted to run the hearings here
2 and I will outline those briefly now. Firstly, on my
3 right is Mr Angus Broad, and he has been appointed to
4 assist the inquiry under s.12 of the Royal Commissions
5 Act, and behind me is Ms Nikole Scholes who will also be
6 assisting the inquiry.

7 Over there is Ms Brooke Jackson. Now, she's not
8 part of the inquiry. Ms Jackson is here to - for the
9 purposes of recording the proceedings, so that there will
10 be a transcript.

11 If there are issues that you really want to raise
12 particularly in terms of how the process might be or
13 particular things you might do, and that's probably a good
14 idea right now, and I should turn off mine, and I suppose
15 everybody should turn off their phones, is you can raise -
16 if you want to talk to something or ask a particular
17 question when you're not giving evidence, you can speak to
18 Mr Broad or Ms Scholes either at the luncheon adjournment
19 or after when we finish at the end of the day.

20 It is a fairly informal process, but having said
21 that, each witness will be coming up and sitting here and
22 being asked to give evidence. It is really - that's what
23 this is all about now, is to hear from the people that
24 we've asked to come to give some evidence.

25 Prior to the hearing there were advertisements made
26 and letters were sent out calling for submissions. We
27 have submissions. The submissions will be publicly
28 available, as there's been a little bit of a computer
29 glitch, but they should be available tomorrow afternoon,
30 I think, for everybody to look at.

31 I anticipate there's a number of people who will be

1 giving evidence. As I said, there's a representative from
2 the Office of Local Government, there will be a
3 representative from SafeWork Australia, and then there
4 will be councillors and some council staff, and some
5 members of the public.

6 A list of the persons who we think will be going to
7 give evidence are out on the front there, and we will -
8 that's the planned timetable of the order of witnesses.
9 Sometimes those things change, depending on what happens,
10 but that's what we're hoping to do.

11 All evidence is given under oath and/or affirmation.
12 That gives people giving evidence a certain amount of
13 protections, so long as what's being said and talked about
14 is within the terms of reference, which is my job to make
15 sure it does.

16 It is really about the governance of the council
17 this inquiry. It is not so much about trials of
18 individuals, and the submissions and presentations of the
19 evidence is really dictated by this. It is not like a
20 specific court case where someone might be on trial or
21 some specific person is being looked at for whatever
22 reason.

23 But as I say, the proceedings are being recorded and
24 the transcript will be made available publicly when it
25 comes online, probably shortly after the proceedings
26 finish.

27 As I say, evidence can only be given in terms of the
28 - within the terms of reference, and I will determine if
29 there's any issues about that. Public submissions, as
30 I say, have been given, and people who've made submissions
31 are probably aware of the relevant matters. But there may

1 be some evidence given during the course of the hearing
2 that some people want to take issue with.

3 So what I have decided is, the best way to handle
4 that is for a period of submissions in reply. So when the
5 hearings conclude, everybody will have the opportunity to
6 submit their submission in reply within, say, 14 days
7 after the end of the proceedings.

8 To assist you with that, you will also have the
9 transcript. So you will be able to respond that way.
10 Otherwise, we're just going to hear the evidence from each
11 of the people. We will ask questions, Mr Broad and I, and
12 that's how it will be run.

13 The primary purpose of having a submission in reply
14 is so that people can - there's a balance and people can
15 respond because they may hear things that they don't agree
16 with as the witnesses come through, which I am sure
17 naturally happens when lots of people give - talk about
18 things that have happened in the past.

19 The people who have made submissions, you can assume
20 that we've all read them. When I say "all", it's really
21 Mr Broad and myself. I don't intend to sort of go all the
22 details, specific details of everybody's submission, and
23 I don't want someone just to sit there and read their
24 submissions, there's no point in doing that.

25 The point here is to ask questions, for us to ask
26 questions, and see - and get as much information as we can
27 so that I can then make a decision and a recommendation at
28 the end of the day.

29 What we don't need also is people interjecting. So
30 I think the point really is that there has to be - the
31 person giving evidence has to have an uninterrupted

1 opportunity to be able to give their evidence. I don't
2 want people yelling out from the back or saying, "That's
3 not right", or that sort of thing. And if that becomes a
4 problem - I'm not suggesting it is, but I have just got to
5 say this - if that does become a problem, I have got
6 certain coercive powers that I can deal with it. I think
7 that's the best way to handle it and, again, as
8 I emphasised, you have got the right of reply.

9 Briefly, the report, I present a report to the
10 Minister for Local Government. I emphasise that I really
11 only make recommendations. When the report is finished to
12 the Minister, that's the end of my task.

13 The Minister will, under s.438U(5) of the Local
14 Government Act, cause the report to be laid before both
15 houses of parliament. But at the end of the day, it is
16 really for the Minister and the Governor to decide on what
17 action, if any, is taken as a result of the inquiry.

18 I am not sure if anyone has any wish to be legally
19 represented in any way in front of this hearing, but if
20 they do, they need to speak to Mr Broad at the luncheon
21 adjournment or after today, and if any application wants
22 to be made that way, we can organise that to happen.

23 As I said, 10 until one we will sit, two to four.
24 We have set aside this week. I am not sure really how
25 long it will take. It may take more or less. If it takes
26 more, we will probably move into next week.

27 So that's just my opening and we're going to move
28 straight into some witnesses, and the first witness is
29 Mr Tim Hurst from the Office of Local Government. Come
30 forward, please.

31 <TIM HURST, sworn and examined 10.14 AM:

1 COMMISSIONER: Thank you, Mr Hurst, for coming down. Can
2 I just put a little bit of context in this in terms of
3 your role in this as a starting point, and then Mr Broad
4 might ask some questions, is you've really come into this,
5 I understand, half way through all of it. If you just
6 explain when you first came to the job - first, what is
7 your position so that everybody knows?---So I'm the chief
8 executive of the Office of Local Government.

9 When did you start that role?---On 30 September 2015.

10 So by then, this saga's well on its way?---M'mm, absolutely.

11 All right. Well, I might hand over to Mr Broad to start off
12 some questioning.

13 MR BROAD: Mr Hurst, can you please give a bit of background of
14 the events that occurred that led to this public inquiry,
15 and if you can outline those events and the decision to
16 approach the Minister to convene the inquiry?---Sure. As
17 I mentioned, I - I came into the role relatively recently.
18 There was a long history to this matter and I'd only been
19 in the job for a short period of time when I became aware
20 that there were significant and ongoing issues with the
21 operation of Murray Shire Council. It was - at that time,
22 there were some investigations that were underway,
23 misconduct investigations under 440G, and the - a number
24 of those reports were prepared in a - in a draft form.
25 And as I was reviewing that material, and during this
26 period of time, there continued to be further complaints
27 made to the Office of Local Government about aspects of
28 the operation of Murray Shire Council that I began to
29 delve into more detail about exactly how the misconduct
30 provisions work, how those provisions were being used or
31 able to be used, particularly in cases of allegations of

1 bullying or harassment, and what sanctions were available
2 to the office for individual misconduct in situations like
3 that. So in November, the - the first of three misconduct
4 reports were provided to me, and in reading those reports
5 and coming to my understanding about the - the decision of
6 the report on breach and the options available for
7 penalty, I realised that the way that the Act and the Code
8 operate, particularly with regard to harassment, which by
9 its nature is a repeated series of events, meant that we
10 were limited to investigating virtually on a case-by-case
11 basis individual occurrences, and that it was very
12 difficult for the way that our investigations were
13 undertaken to deal with matters that were, by definition,
14 repeated in their nature. It was also clear that there
15 were more complaints coming in than we were able to deal
16 with expeditiously, and that when it had taken more than
17 six months for the first three misconduct matters to make
18 it to the chief executive, that I was concerned that the
19 further matters which were still being referred to the
20 office at that time were going to take quite some time to
21 resolve.

22 COMMISSIONER: Could you just stop there for a moment. When
23 you said a case-by-case basis, just explain that just
24 slightly again?---So the - - -

25 I think you said, it was going to become - you had the reports.
26 One of the issues is you had to look at it at a case-by-
27 case basis. What exactly did you mean by that?---So as
28 matters were packaged together in an investigation report
29 and presented to the chief executive, they had to be dealt
30 with individually. And yes, in considering breach, there
31 is the opportunity to look at past decisions and that

1 those would accrue over time, as it were. But that
2 actually, the way that the investigative process worked,
3 it required on - at some level - even within the
4 investigation reports, there were, for example, seven
5 matters that are investigated.

6 So it might have been - - -?---Each one was looked at
7 individually. There were - the report made findings on
8 some, but not on others, and then there has to be
9 consideration of breach and then sanction made against
10 each of those. Meanwhile, there would be other
11 investigation reports that were under preparation.

12 So the task of this is you will get a report, it looks like
13 it's going to be a lot bigger than it looks like initially
14 in the report?---Well, it's not even that, it's that even
15 when you finalise one report, the next one, presumably, is
16 then in train with matters that have happened since that
17 time, and so on.

18 Yes?---So I was concerned about the way that the investigative
19 process is able to deal with the repeated nature,
20 particularly of harassment allegations, and the time that
21 it took for - for those matters. And I think there are
22 some reasons behind why it took so long to come to the
23 point where there is an investigation report before the
24 chief executive for decision.

25 And I think that's where you were up to when I just asked you
26 that question?---Yeah.

27 Right, keep going, thank you?---So, in looking further at how
28 to - how to deal with these matters, I became aware that
29 the public inquiry provisions under the Act provided an
30 opportunity for a commissioner, if the Minister chose to
31 appoint one, to simultaneously examine all matters,

1 including the matters that I had before me, other matters
2 that hadn't made it to the Office of Local Government, and
3 matters which were still either in the preliminary
4 investigations or investigations phase of the officer's
5 work. I think it's a feature of the way that the public
6 inquiry works that the Commissioner has the power to look
7 at these things in a - in a simultaneous process.

8 (Indistinct), or individually or however you want to say
9 it?---That's correct.

10 Because we've got (indistinct) the way to do it?---Yeah. It
11 was also a feature of that process that the opportunity
12 existed for the Minister to suspend the councillors during
13 the term of that inquiry. I have the ability to suspend
14 individual councillors against a finding of misconduct,
15 but it's not clear how the actions of individual
16 councillors, combined as part of the obligations of the
17 council as a group, to maintain a safe workplace for the
18 general manager.

19 MR BROAD: You have provided those misconduct reports to the
20 inquiry?---Yes, I have.

21 And those misconduct reports relate to three councillors. Were
22 you considering in respect of either or any of those
23 councillors a possible suspension?---I think I should
24 point out at this stage that I have made my decision on
25 those reports. My decision was to take no further action,
26 and I did that on the basis of referring those reports to
27 the inquiry for consideration. In terms of what - what my
28 personal view would have been about the seriousness of the
29 breaches and the appropriate sanction in those cases, I -
30 I'm aware that the - my predecessor in the role, the
31 former chief executive of the Office of Local Government,

1 had indeed written to those councillors and suggested that
2 she was minded to impose suspension. I had a close look
3 at the history of similar matters using the decisions of
4 the NCAT as a basis for understanding where the tribunal
5 had applied penalties or sanctions for similar types of
6 misconduct in the past. And using those as a precedent,
7 and I'm happy to provide those to the inquiry, I - it was
8 not clear to me that a sanction of suspension would have
9 been appropriate in any of the three cases that was
10 provided to me on the basis of the breach that was
11 identified in those reports.

12 That relates to some hearings in the NCAT, and I think there
13 was one of Mehajer where the Supreme Court took the view
14 that there was an important role for councillors to
15 represent the community as an elected person. And I think
16 that case was to the effect that a suspension was really
17 the last possible course of action?---Yes, that was my
18 understanding. The suspension was a last resort, that it
19 was a high bar to deprive a community of representation,
20 and - and take into account those as precedents, and
21 remembering that, ultimately, any decision on penalty and
22 sanction that I made as chief executive could be appealed
23 to the tribunal. That's why I held a different view to
24 the former chief executive.

25 Going backwards, if three councillors were to be suspended at
26 the same time, how would that affect council's - and we've
27 got a council here of, I think, eight councillors. How
28 would that affect their ability to have a quorum at
29 meetings?---My understanding is that it would not affect
30 the continued operation of the council, that the quorum
31 would reduce by the number of councillors that were

1 suspended. It would, of course, change the operation of
2 the council and - and the numbers required to pass any
3 individual motion.

4 What I didn't mention at the outset is that, of course, the
5 Office of Local Government has provided a submission and a
6 formal response to questions raised by the Commissioner.
7 Now, I will delve into some of those responses as I go
8 through. Can I deal with probably the first question, and
9 probably a very important question at the outside - at the
10 outset. In your view, how effective is the code of
11 conduct of when you have a breakdown in the relationship
12 between councillors and, also, a breakdown in the
13 relationship between one or more councillors and the
14 general manager?---I think that the code of conduct is
15 effective. I think that the code of conduct provides a
16 framework for how councils are able to manage the issues
17 that occur in the way that they undertake their
18 activities. That the framework and the procedures that
19 sit alongside it provide a reasonable amount of guidance
20 about how they are to be implemented, and they're provided
21 by the Office of Local Government to assist councils in
22 managing these issues themselves. It is their primary
23 responsibility under the framework that the Act envisages
24 for councils to manage these issues in the first instance.

25 Is that then dependent on the willingness of councillors to
26 accept the need to comply with the code?---The councillors
27 have an obligation to comply with the code.

28 That's because a failure to comply can be a breach of the
29 Act?---Yes.

30 In instances where you have at the front end an unwillingness
31 to comply with the code of conduct, and at the back end,

1 if there's been a complaint and a sanction imposed, an
2 unwillingness to comply with the sanction, how then
3 effective is the code of conduct?---So obviously, the code
4 of conduct has quite extensive procedures and different
5 pathways that can be tailored to the different type of
6 matter that's being dealt with. There are various stages
7 where appeals and rights of reply are available to those
8 who are subject to a code of conduct complaint. But
9 you're right, at the end of it there are circumstances
10 where matters are able to be referred to the Office of
11 Local Government, and that serves as an escalation
12 process, particularly where the operation of the code
13 itself is called into question by the activities of the
14 councillor.

15 When a complaint is dealt with by a council, there are a
16 limited range of sanctions that can be applied, and they
17 may range from requiring an apology, they may include
18 censure. Is it your view that a censure is an effective
19 tool to deal with issues of conduct?---So - so you're
20 right, the procedures are for the administration of the
21 model code. At 8.56 talk about those different options
22 that are available to the council by resolution. And the
23 - the formal censure actually has the weight of the Act,
24 so that's under 440G of the Act. This is a serious
25 matter, and this is the way that the council is able to
26 deal with misconduct by individual councillors as a group.

27 In the circumstances that I've outlined where there's an
28 unwillingness to accept the need to comply with the code
29 of conduct, does it therefore require some action by way
30 of referral to the Office of Local Government under
31 misconduct provisions?---Yes, so that's the next stage,

1 obviously, is for it to be escalated if, for example,
2 there was a requirement to provide an apology and the
3 apology was not provided or in the form that was required
4 in the nature of the council resolution, then the next
5 stage would be to escalate that to the Office of Local
6 Government. And once again, the office would have a look
7 at the conduct reviewer's report, the material provided by
8 council, and follow our own investigative processes in
9 deciding what to do with that misconduct matter. The
10 powers available to the chief executive are in 440I of the
11 Act, and particularly at sub-section 2. And you can see
12 that there are some additional elements that are
13 available, primarily about mediation, the suspension of a
14 councillor from a specific office, and suspending the
15 councillor's right to be paid any fee or other
16 remuneration. So these are broadly the things that are
17 available beyond those available to the councillors.
18 There's also the reprimand and directing the councillor to
19 cease engaging in the misconduct.

20 Not associated with the code of conduct, but certainly at an
21 earlier stage, there was an intervention undertaken by the
22 Office of Local Government, and that took place, as
23 I understand, in 2014, which was before, of course, your
24 time with the office. There was a mediation process
25 undertaken at that stage which, I think, ultimately
26 appears to have failed. Are you able to comment in
27 respect of that?---Only that, yes, the office was involved
28 in that mediation process. It followed, as I understand
29 it, a series of meetings that occurred. It - yeah, so
30 this was in - in 2014 and the office was quite active
31 during that period in trying to work with the council to -

1 to deal with the internal issues.

2 And ultimately, the intervention by - or the intervention that
3 was done by the Office of Local Government did not resolve
4 the issues and, hence, we're here today, amongst other
5 things?---I think there were other things that changed
6 during that period of time. As I understand it, there was
7 a change in some of the councillors on council, and there
8 was a different mayor. There was some further activities
9 that were undertaken by the office, including writing to
10 the council, and - and, obviously, there were - there were
11 obviously matters that were still happening in terms of
12 the behaviour of individual councillors that were coming
13 to the attention of the office through further complaints.

14 Yes.

15 COMMISSIONER: You mentioned in your - in the submission from
16 the office the improvement and intervention framework. Is
17 that a document, is that a policy or is an actual
18 thing?---Yes, it is.

19 That's what's been developed to guide you, like any other
20 guideline, as to how you use the powers that you've been
21 talking about?---Yeah, so that's the guidance that we
22 choose to apply in how we go about out investigating and
23 intervening in councils.

24 When you receive - whatever you receive?---Information.

25 Just on that point, you must - can you just give me an
26 indication. I assume, in the normal course of things, the
27 idea of the code of conduct is the councillors - any
28 council who is regulating itself in relation to those
29 matters, and then often, I assume, that the councillor
30 will say, "I want an apology" and an apology might
31 actually be given, or it may not be given, but then the

1 councillor individually will then ask for a resolution to
2 say, "Well, we still want to send this to the Department
3 of Local Government". Do you get that a lot?---I don't
4 have the statistics, but relatively few code of conduct
5 matters end up being referred to the Office of Local
6 Government.

7 Good, okay.

8 MR BROAD: Can I take up the issue more about the code of
9 conduct and one of the statements made in the first
10 submission to the inquiry is to be found at p.2 under the
11 heading, "Model code of conduct", and it goes back to the
12 2005 model code. It is an interesting statement, and that
13 is to the effect that the code of conduct prescribes the
14 ethical standards that apply to conduct officials, and
15 that's ethics, might I suggest, is a very personal issue
16 and it's one which is difficult to oversee
17 externally?---It is, and hence the model code exists with
18 its mandate of provisions which councils can add to
19 themselves. And in the particular guidance that's
20 provided about the procedures for its operation, to
21 provide some minimum expectations that the office suggests
22 the community requires of councillors in how they
23 undertake their duties.

24 COMMISSIONER: So that's a point, the actual code is a model
25 code and the council can adopt it and change it, so long
26 as it's not inconsistent with the code. They can add to
27 it, I should say?---They can add to it, but they can't
28 water down any of the elements of the model code itself.
29 Can't water it down and, obviously, not be inconsistent and
30 that type of thing?---Yeah.

31 They can make it more stringent if they want?---They can.

1 MR BROAD: The Office of Local Government publishes data in
2 respect of both the numbers of and cost of conduct
3 complaints, and the submission from the Office of Local
4 Government provides some background into levels of
5 complaints in the period since 2014. I am just hoping to
6 quickly find some figures that were given in the earlier
7 period, and I think the earlier period, there
8 weresubstantial sums of money being spent by the council
9 on reviewing or obtaining reports on conduct complaints.

10 COMMISSIONER: I mean, just following on from your comment a
11 moment - just before you answer that, relatively few codes
12 of conduct find their way to the office. In this council,
13 that's not the - I mean, this is a - I assume this council
14 has a high number. Is that correct?---So even so, I think
15 there's a difference between the number of complaints that
16 have been made to the council, and then those that make
17 their way through to the office via the council.

18 To you, yeah?---And the complaints are also made direct to the
19 - to the office, and that's a different matter. But even
20 so, you'll find that relatively few of the complaints that
21 are complaints under the code are made to a council are -
22 end up being investigated by the council and the conduct
23 reviewer refers them to the office, or they're considered
24 to be Part 8 breaches, in which case they're required to
25 be provided to the office.

26 Sorry, considered to be what?---Part 8 of the model code, which
27 is about the code's operation.

28 Yes?---Those matters under Part 8 are required to - - -
29 In that review process you're talking about, the office has,
30 like, a review process about whether the process been done
31 correctly?---If - I'm sorry - - -

1 I will rephrase it. Is it correct that one of the roles of the
2 office is - under the model code, is if you don't like
3 what's been found by the code of conduct, if you're the
4 particular person who it's aimed at, and they can appeal,
5 it's not really a right of appeal, it's really just a
6 procedural appeal. Is that correct?---Yeah. So, there
7 are a number of - in the further submission that I made,
8 I detailed the occasions where a - a person is able to.
9 Yes. I mean, that's okay, we're diverging, really, from what
10 you were talking about?---Yeah, so Clause 9.2, this is of
11 the procedures, allows a person to request a binding
12 practice ruling from the office on a question of
13 procedure. Clause 9.1 allows a person any time prior to
14 council consideration of the final report to raise those
15 concerns with the office about procedure and non-
16 compliance. And Clause 9.6 provide that a person who's
17 the subject of a penalty can seek a review of the conduct
18 reviewer's determination and recommendation, and there are
19 three grounds for that. On the basis that the conduct
20 reviewer failed to comply with a requirement under the
21 procedures, that they misinterpreted or mis-implied the
22 standards of conduct prescribed under the code of conduct,
23 or that they failed to comply with the requirement under
24 the procedures in imposing the penalty. So it's - - -
25 It is a bit more, yes?---In every instance, this is a matter
26 that has to be a person approaching the office in terms of
27 those review mechanisms.
28 MR BROAD: So the intended review mechanism really is limited
29 to the person who has been the subject of the complaint.
30 This is under 9.6, and you had - - -?---Yeah, so 9.6 only
31 applies to the person that's the subject of a penalty

1 imposed by a council, so it must follow the council
2 resolution.

3 So what we've got is a person who's complained about, there's
4 been a review report received by the council. There have
5 been resolutions made, whether in direct line with the
6 recommendations or not, but there's been resolutions
7 passed in respect of that person, and then that person has
8 a right of review?---Yeah, so the person can approach the
9 office to review the conduct reviewer's determination and
10 recommendation.

11 Is that a procedural review or a review of the evidence?---It
12 is a procedural review. So the three grounds that I laid
13 out were about that the conduct reviewer has failed to
14 comply with a requirement under the procedures, that the
15 conduct reviewer has misinterpreted or misapplied the
16 standards, or that the council has failed to comply with
17 the requirement under the procedures in imposing a
18 penalty.

19 COMMISSIONER: So the council has gone outside its boundaries
20 about what it can do, and outside the code, that sort of
21 thing?---Outside the model code, as applied locally, and
22 the procedures for the administration of the model code.

23 Yes.

24 MR BROAD: So in those terms, it's not a review of the evidence
25 upon which the reviewer's come to his or her
26 findings?---No, it doesn't look like it.

27 Right, okay. Could I ask you another question in relation to
28 that, if a complainant is aggrieved by a reviewer's
29 process, is there a similar right to seek a review from
30 the Office of Local Government?---I'm not aware of that
31 mechanism.

1 COMMISSIONER: I don't think so, yeah.

2 MR BROAD: The reason I ask is this, that the inquiry has
3 correspondence where a reviewer undertook - - -?---Sorry,
4 I'll just - - -

5 Sorry?---Yeah, so Clause 9.1 actually provides that any person
6 can report non-compliance with procedural requirements to
7 the office at any time prior to the council's
8 consideration of the final report.

9 COMMISSIONER: Prior to the report?---Prior to council's
10 consideration of the final report.

11 After the report, but the complainant - well, that's the
12 result, the complainant's got to live - - -?---I'm sorry,
13 after?

14 But after the council's determined it, just looking at the
15 code, the complainant has got to live with it in the
16 sense, that there's no right of appeal or anything like
17 that for the complainant. That was the question, I think.

18 MR BROAD: What 9.1 said is that at an early stage any person
19 can seek a review in respect to the processes adopted by
20 the reviewer?---It's broader than that, it's non-
21 compliance with any procedural requirement.

22 Yes?---So it could be of the conduct reviewer of the council.

23 And in receiving that approach, the Office of Local Government
24 would simply look at whether the procedural steps which
25 are required in the procedures have been complied
26 with?---Yes.

27 They would not look at any underlying evidence?---Only if it
28 was relevant to understanding whether the procedures had
29 been followed.

30 Right. So it's, if I could say, a blinkered approach, it looks
31 specifically at certain items only?---Consistent

1 with - - -

2 COMMISSIONER: The code?--- - - - it being council's code and
3 the council being required to implement it.

4 MR BROAD: Now, can I jump away from that entirely and go to
5 the initial submission by the office and - - -?---Sorry,
6 if I could just - maybe a final thing to add on the code
7 of conduct report. The conduct reviewers are independent,
8 and they're required to have certain technical skills and
9 knowledge to undertake that role, and there's also exists
10 in the code an obligation for councils to notify the
11 office where they fail to adopt a recommendation made by
12 the independent conduct reviewer. This is an important
13 way to make sure that these conduct reviews are being done
14 independently and by people with some expertise, and that
15 councils are, broadly speaking, following what the person
16 says, or if they don't do so, which they can, of course,
17 make their own decision not to do, it is reported to the
18 office and the office can look into it.

19 The reason why I've asked these questions is because the office
20 was asked to look at a complaint - sorry, a matter under
21 Part 9.1 of the procedures. Review of the actual
22 complaint suggests that it could not be a conduct
23 complaint because it failed to meet the prerequisites
24 which were imposed by the code. In other words, it wasn't
25 something done in the course of officials and officers'
26 official functions, and so this blinkered approach, if
27 I can suggest this, failed to recognise, first and
28 foremost, that there could not have been a complaint for
29 the purposes of the code of conduct?---So - - -

30 COMMISSIONER: I will give you an example. I mean, one example
31 would be the leak. Someone who says they've leaked -

1 someone complained and said there's been a leak but they
2 can't identify who the leaker is. Well, can't do anything
3 at that point could you?---I don't know what the office's
4 role would be in - - -

5 No, sorry, not in the office role, just the code's role in the
6 sense that if you're the general manager of a council and
7 you received that, at first blush, you get that complaint,
8 what can that general manager do? What is the point of
9 referring that out to the - to a code of conduct reviewer,
10 they should just say no straight away, shouldn't they?
11 I mean, that's just a hypothetical, but what should they
12 do in that case? I think that's part of the question
13 that - - -?---They should follow the code of procedures,
14 ascertain whether it is a complaint under the code. And
15 if it's a complaint under the code, then follow the
16 process. Otherwise, deal with it as a normal complaint
17 made to the council.

18 Yes. So you would say - if I look at this and I say, "Well,
19 I can't see that this is a complaint under the code
20 because it doesn't have enough information for whatever
21 you want to do, so I'll treat just as a complaint to me as
22 a general manager and deal with it that way". Because
23 there's nothing specific in the code, I suppose. In the
24 code it says it comes to the general manager, the general
25 manager has got to decide whether to send it straight to
26 the Department of Local Government (indistinct), or
27 whatever that - or he can make a decision and, I mean, he
28 makes a decision that there is a legitimate thing here and
29 he can resolve it at that point in time, or he can then
30 say this is - "Oh, it needs to go out to a code of
31 conduct". But you're reading that that's how you would

1 deal with it, and you read into it - I mean, not a
2 criticism or anything, but that's how you would
3 practically deal with it. "I can't deal with this under
4 the code, I don't have to worry about it. I'll deal with
5 it as a complaint and move on and treat it that
6 way."?---Yeah. And the code and the procedures provide,
7 I believe, quite a lot of guidance for general managers in
8 how they understand what is a complaint.

9 Complaint?---Quite specific to be a complaint under the code.

10 By the definition of what a complaint is?---Yes.

11 Yes?---But the pathways available and, once again, the
12 procedures provide a very detailed flow chart, they
13 provide many different pathways that it can follow
14 depending on choices and decisions that are made,
15 including by the general manager at different points along
16 that process. But ultimately, even if it's not a code of
17 conduct complaint, it is still a complaint, and the
18 general manager can still look into it just like they
19 would any other - - -

20 In the normal course of any complaint?---Yes.

21 Of course. So would you base that answer - base it on the
22 definition of - I mean, one thing I should say, in any of
23 the evidence that you give, if you need to take it on
24 notice a little bit to come back, by all means, especially
25 given that you've come into the role. But just in - where
26 would you point to in the code of conduct to give me that
27 comfort as a general manager that I can say, "This is not
28 a complaint, I'll deal with it as A instead of B, sort of
29 thing", a non-code of conduct or code of conduct. Just by
30 looking at the definition?---Yes, so the - in the further
31 submission there is some more detail provided about this

1 question.

2 Right?---And the conclusion that we provided is ultimately the
3 question of whether a person is acting in an official
4 capacity as a council official is a question of fact to be
5 determined on the facts of each case based on an
6 assessment of the circumstances and the conduct in which
7 the alleged conduct occurred. That's this question about
8 whether or not they're acting in an official capacity. In
9 terms of whether or not it constitutes a complaint, then
10 once again, the procedures at the start talk about what
11 the form of a - - -
12 Complaint must be?---A complaint has to be. Sorry, it's in the
13 procedures, not in the - - -
14 In the code?---Not in the code itself.
15 Yes. So what I was looking for in the procedures, I suppose,
16 at the end of the day might be a statement to the effect
17 that we're talking about. If it doesn't fit the
18 definition, or if you're not acting as a councillor or you
19 make that decision as a general manager, you could reject
20 it straight away and just deal with it as an ordinary
21 complaint?---That avenue is available to the general
22 manager and (indistinct words).
23 You are saying, when you read that code - when you read the
24 procedure and the code as a whole you get that
25 anyway?---Yeah. There is - there is the - there's some
26 quite specific detail. If you can bear with me.
27 MR BROAD: Can I suggest, it's to be drawn from Part 4.1 of the
28 procedures and it says, "For the purpose of these
29 procedures, a code of conduct complaint is a complaint
30 that alleges conduct on the part of a council official
31 acting in their official capacity". And it goes on,

1 "That, on its face, would constitute a breach". Do we
2 emphasise in that, that there has to be some sort of
3 definition of who that council official is?---I think it's
4 clear who is a council official and who's not a council
5 official.

6 By definition, yes?---Yes.

7 But in making a complaint, is there a need for some sort of
8 identification of who that person might be? And the
9 reason - and I will take it out this way. One of the
10 underlying issues that will be addressed is the leaking of
11 information, and the issue that's associated with that so
12 far as the code of conduct is concerned is that an - sorry
13 an unidentified person has done so. My question is, in
14 the circumstances where a person is not identified, or not
15 identifiable at the outset, is that a conduct
16 complaint?---I think I'm going to have to take that on
17 notice. I do understand the question. It's where the
18 information was only available to people who were council
19 officials, however, no individual can be identified as the
20 official responsible does - - -

21 COMMISSIONER: Yes, a report is handed out at a confidential
22 session of a council and it's in the newspaper three days
23 later, or whatever, and no one knows who did it, but
24 someone makes a complaint, be it another councillor or a
25 general manager. It's a hard - and the reason - another
26 reason why doing it - I just don't have my copy of the
27 code, but it doesn't matter. What I was - when it first
28 gets logged into the general manager - pardon me for a
29 moment. I think when the - first, when the general
30 manager gets it straight away, I'm just looking for that
31 section. What is that? Eight. Is that eight? No.

1 5.21, "The mayor" - not that one. 5.16, I should say.
2 That sets out - sorry, it goes to the general manager
3 first?---There is the (indistinct) which I think also
4 helps.

5 Yes. But it goes to the general manager first, and in the
6 words of 5.16, he either refers it, and then 5.18, "Where
7 the general manager considers it practical and appropriate
8 to do so, he may seek to resolve the code of conduct
9 complaint and do what he can do". He can do it by
10 training, mediation or whatever, or he makes a decision
11 that it's time to send it out to the code of conduct
12 person in the council and then they refer it out to a
13 reviewer. But that's the way it works, isn't it?---Yes,
14 I'm just looking at the flow chart. Obviously, the GM may
15 informally resolve complaints about council. So if it was
16 a matter of a matter leaking from a council meeting where
17 it was available to the councillors, there are obviously
18 ways of dealing with that, including the general manager
19 raising it at a meeting of council and ensuring that the
20 councillors are aware of their confidentiality obligations
21 under the Act.

22 But, I mean, I suppose, not limited to, I suppose that's right.
23 But in the actual clause it says, "The general manager may
24 seek to resolve code of conduct complaints about
25 councillors, other than those required" - other than the
26 referral which he has to do under 5.16, okay, except that
27 - "by alternative means, such as not limited to
28 explanation counselling". But that assumes that he's
29 accepting that there is a complaint and then he accepts
30 that there is a code of conduct issue, I suppose. I mean,
31 I'm just - maybe I'm being a bit pedantic, but in a sense

1 there's - it's a little unclear as to what - whether he
2 has the power?---But, I mean, in that circumstances where
3 the action the general manager took would be to discuss
4 with all councillors the nature of their confidentiality
5 obligations, and that was done at a meeting of council.

6 I suppose that's right?---Is it necessary to know whether
7 that's something that the general manager's doing because
8 they've decided to treat it as a code of conduct complaint
9 and that's the action they've decided to take under the
10 code, or because they're treating it as a normal complaint
11 and still decided that the correct course of action is to
12 raise it with all councillors at the council meeting.

13 Do you need the label if you're going to take the same action?

14 That's what you're going to do and that's the only way you
15 can handle it as a general manager, do you need to have a
16 label on it as to whether it's one or the other, that's
17 what you're asking?---Yeah. So - and once again, I know
18 I haven't answered for you the question about whether you
19 need to identify the specific council official for it to
20 constitute a code of conduct complaint in order to go away
21 and come back to you on that.

22 Yes, think about it, that's all right, yeah?---But in this
23 particular circumstance, it doesn't seem that the two
24 different approaches, when they yield the same outcome,
25 does it make a difference which?

26 Well, I suppose only if you treat it as a code of conduct,
27 there's certain repercussions. I mean, I see what you're
28 saying too. I mean, it may be by the words, "But not
29 limited to", means that he can say that, "I treat it as a
30 code of conduct". I assume it is a code of conduct
31 complaint and I can do exactly what you just said, because

1 that's not limited to and he's not limited to that as
2 counselling training because it's a different type of idea
3 that you've just - I suppose, in one view, it's
4 training?---For all councillors.

5 Talking to the councillor who's trying to leak this

6 (indistinct) technically?---Yeah. But I think that would
7 be different if certain individual councillors were
8 approached about it. I think that that would - when the
9 allegation wasn't specific to a particular person, I think
10 that would be a different matter.

11 Yes, all right.

12 MR BROAD: Following from that - and I will deal with in a
13 minute - is the question of what council does with the
14 report which on its face is fraught, but before I do that
15 can I ask you some other questions. At p.4 in the third
16 last dot point with the first submission is a reference to
17 the expense of conduct complaints in the period 2012
18 to August 2013.

19 Now that predates the period of the inquiry, but it
20 shows that at that stage there was a fairly high
21 expenditure on conduct complaints. The information
22 provided by the Office of local government shows that
23 there has been significant expenditure over a number of
24 years on conduct complaints by the council. I think
25 1 September 2013 to 31 August 2014 council had nine
26 complaints, and spent \$34,093 on conduct complaints. In
27 the following period council spent 125,249 in respect to
28 111 complaints.

29 Now those are significant amounts that have been
30 spent.

31 Well are they compared to other councils?---Yes. Yeah, maybe

1 if I could say a few words about the nature of the conduct
2 complaints, the numbers of them and the - - -
3 The money?---The amounts. The - the information is required to
4 be provided to the office, and the office publishes that
5 information as part of helping communities to understand
6 how effective their own councils are at managing these
7 issues themselves. It is part of the information that we
8 provide, so that communities can understand how that
9 council - their own council performs. The number of
10 complaints are - a complaint can be about a relatively
11 trivial matter that can be easy for the general manager to
12 consider and - and dismiss. They can be very complicated
13 matters. We - we had one case recently at a council where
14 one single complaint had a cost of well over \$100,000. So
15 a - a conduct reviewer having to expend significant time
16 in dealing with a - a complex complaint can be very very
17 expensive for the council, and other matters deal with
18 expeditiously by the GM in a - in a way that achieves a
19 satisfactory resolution can in fact incur no costs
20 whatsoever. So these are - these are all indicators for
21 the office and for the community about how effective
22 council is at - at governing itself in - in accordance
23 with the code. The numbers of complaints is one element,
24 and the amount that's spent on investigating the
25 complaints is - is another element. I think that the
26 amount that's spent is important, because that is
27 ratepayers money that ultimately are being spent by the
28 council as part of investigating how - how the council as
29 a group are able to - to function to manage their local
30 government area. The numbers of complaints I think is
31 less relevant. If - if individual matters are - are

1 relatively minor, but many complaints are made as opposed
2 to one significant single complaint it's still only one
3 complaint, but it could be for an - an appalling breach
4 that an individual councillor made - - -

5 COMMISSIONER: Then they've got to do it properly, they've got
6 to look into it and do all that stuff - - -?---That -
7 that's right, so I would just caution about - - -

8 Yes?---Placing too much emphasis on - on particularly the
9 numbers of complaints, but the dollar figure I think is
10 important because the - the dollar figure Provides the
11 understanding towards how much resources of an independent
12 reviewer needed to be extended to adequately investigate
13 the complaint.

14 So if the statistics are that there's a high number of
15 complaints, and a high level of expenditure and at the
16 same time if you delve into it, the high number of
17 complaints, some of them might on face value be smaller
18 complaints, not so much trivial but just smaller
19 complaints then the question might be, why wasn't the
20 general manager able to, or were there reasons not able to
21 do the very things that the code's designed to, but the
22 general manager should be able to say, "Well hang on, I've
23 got to deal with this, I'll do it that way, that way",
24 then that one goes out so you don't end up with a sort of
25 a whole lot of statistics and a whole lot
26 of - - -?---Sure - - -

27 It's an indicator, that's all I'm saying?---It - it is an
28 indicator. The office just doesn't publish it so the
29 communities are aware of the performance of their own
30 council. We obviously analyse the data as well and we
31 look at those councils who have large numbers, and large

1 expenses to try and understand what's driving that,
2 whether there are underlying issues at the council - - -
3 Yes?---Whether there are ways that we can improve the code and
4 somewhat.
5 That's part of your role as the office of local government. I
6 mean - - -?---Yes it is - - -
7 There are a hundred and something councils out there, and
8 obviously most of them are operating, but there's no doubt
9 some of them come under notice and for various reasons,
10 and that's the way it works, it's always going to happen
11 like that?--- And we want the code to operate.
12 Yes?---We want it to operate effectively. We wanted to provide
13 an effective and - and straightforward way for councils to
14 be guided about how they should manage these issues
15 themselves.
16 As you move from robust discussion to small small breaches and
17 so forth, that provides a guidance to everybody to be able
18 to get on together?---And large breaches as well about how
19 serious breaches need to be dealt with.
20 That's right, yes.
21 MR BROAD: In respect of the number of complaints, the data
22 published by the office of local government indicates in
23 the period from 1 September 14 to 31 August 15 there were
24 111 complaints. Now in the submission made by the office
25 there is some issue taken with that?---Yes, I - I did
26 provide some additional information about those numbers.
27 What can I say? It is a very large number of complaints
28 to be made to a council, and I think that there's a -
29 there's a question about how effective the council could
30 be dealing with such a large volume of complaints, and
31 actually getting its other work done. The time that's

1 taken and the cost in assessing these, getting conduct
2 reviews in places where necessary, and then dealing with
3 the actions from them.

4 I think the comparison and I think we need to discuss the
5 comparison a bit more is that Murray Shire Council
6 received 111 complaints, North Sydney Council were second
7 on the list with 28 and then Eurobodalla 22, and that's on
8 the figures published. My understanding is that - it may
9 not be a question, that's more an observation - that in
10 coming to the figure of 111 there was a multiplier,
11 something this applied, that if there were - there was one
12 complaint that dealt with say six issues, that that
13 complaint was treated for six complaints. So if there one
14 letter raising six issues, that that was treated as six
15 complaints for the purpose of the figure of 111. Then if
16 that complaint affected say three councillors that then
17 that became not six but 18 complaints, and so that was how
18 the calculation was made. Now I understand that's not in
19 accordance with the suggested methodology of the OLG?
20 --- Yes. So when - when we received those - those numbers
21 from council we - we sought clarification with the
22 councillor about how that had been calculated, and that
23 was when we - we were told that the - the number of
24 complaints was divided by the number of individual
25 instances of a - a breach of the code, and by the number
26 of different councillors. I - it just means that the -
27 the number is different. It doesn't tell us anything
28 about the seriousness of any individual breach, and
29 clearly it's not going to change the cost which was
30 \$125,000 that the council spent in investigating, however,
31 many individual complaints were - sat beneath - - -

1 And that amount of 125,000 was the third highest of all
2 councils in the State?---Yes I understand that's the case,
3 yes.
4 Now, there's another question that arises - and I alluded to it
5 a minute ago - and that is, how does a council deal with
6 what is obviously a flawed reviewers report, and the
7 review reports that have been considered by the inquiry
8 suggest that some on their face simply are flawed. The
9 evidence does not lead to the findings of the reviewer and
10 the question is, a council receives back a report. One
11 assumes that that report is then read whether it be by the
12 complaint's coordinator, the general manger, whoever.
13 What does council do in those circumstances?---So I would
14 be concerned if there were investigative reports that were
15 not fit for purpose which was to allow the council to
16 understand whether, or not there had been a breach of the
17 code, and the process that the conduct reviewer followed
18 in establishing that, and making that recommendation to
19 council, which is obviously then pertinent to any action
20 that the council takes in - in response to that, the - the
21 recommendation of the conduct reviewer. Now, obviously
22 there will be different investigative approaches that
23 different conduct reviewers will take. They are guided by
24 the procedures that the office has set down in how they
25 need to acquire those investigative techniques. They need
26 to write up - obviously as part of their report - how they
27 went about establishing the - the recommendations that
28 they've made. There is also the opportunity - as we've
29 mentioned previously before - the report goes to council
30 for anyone to come to the office to talk about the process
31 that's been followed. And once it has gone to a council

1 resolution for the person affected some very specific
2 mechanisms that allow them to appeal the conduct reviewers
3 report, and the decision the council's made on the basis
4 of it to the office, but - - -

5 We come back to the question - - -?---The question here is
6 whether these are fit for purpose documents provided by
7 the conduct reviewer to satisfy the - the needs of council
8 in undertaking their obligations under the code.

9 We come back to that question earlier of course, if there is a
10 review sought then that's a procedural review, and that
11 doesn't review the evidence underlying any findings?

12 ---So I'm - I'm not - I'm not actually clear here. Is it
13 that the evidence established something as a matter of
14 fact when it wasn't?

15 What I'm suggesting is that - - -

16 COMMISSIONER: Or not enough evidence. It was clear that there
17 may be wasn't enough evidence.

18 MR BROAD: Yes. A clear failure of evidence to support a
19 finding and - - -?---Is it the standard that's applied, or
20 a - - -

21 COMMISSIONER: Because if it's a standard you can back to -
22 you've got to come back to the review aren't you? I mean
23 in one view of it I suppose a review under Clause 9 to .6
24 may be sought on the following grounds that the
25 investigator has misinterpreted, or misapplied the
26 standards. So I suppose if that was - that might be one
27 of the answers to that. I mean, who can make that
28 complaint, but I mean I suppose the council could, or the
29 general manager and say, "Well, hang on a minute" - - -

30 MR BROAD: I mean normally the that's only after the sanction
31 isn't it?---Normally the person affected by this has a

1 very strong incentive to ensure that the investigation was
2 conducted accordingly - - -
3 Of course?---And if - and if they have an issue - if they have
4 an issue with the - the evidence that was provided they
5 have multiple opportunities through the procedural and
6 it's built into the process, and they're obviously at the
7 end. I mean they - they don't have to wait until
8 council's made a decision on the report before coming to
9 the office, and complaining about an issue in how the
10 conduct review is approached, a - a gathering and - - -
11 Established, well that's true - - -
12 COMMISSIONER: But then they don't know what the - but then to
13 be fair they're not going to know what the answer is until
14 the report's been given to the council, and the council's
15 looked at it, then I can see the report obviously. Either
16 way (indistinct) till it actually goes to the council and
17 is considered.
18 MR BROAD: Well my understanding is the final report would come
19 to council would go to the individual who was complained
20 of in the report - - -?---Before, yes.
21 In other words, it's reliant I suppose on the individual
22 complained of to seek review under part 9.2, that group of
23 parts on the basis that the evidence doesn't support the
24 finding?---But they're - they're provided with that report
25 before it goes to council anyway - - -
26 They're provided and (indistinct) to it?---Yeah. And - and I'm
27 still not clear here about whether the - the issue here is
28 that something presented as fact is not fact. I mean I'm
29 just at a loss to understand exactly what - what clauses
30 the report to be flawed.
31 Where there is no evidence to support a finding.

1 COMMISSIONER: Just go back one step. Is the conduct, the
2 reviewer - get your flow chart - investigates or
3 recommended conduct review, committee investigation the
4 investigator determines breach? So where does the
5 individual fit in again? Where does the individual know
6 what conduct is? If I determine as a conduct review that
7 I think is a breach I give it to the individual first
8 before it goes to the council?---As - as a matter of
9 procedural fairness.

10 I understand that but is that in the flow chart?--- I can't see
11 it in the flow chart, but I think that that - - -
12 But if it's in the - - -?---But the flow chart is a summary of
13 the - - -

14 Yes - no, no - is it in the actual text of draft investigator,
15 I just can't remember that. Anyway, we can have a look at
16 that?---It's in the draft investigation reports.

17 Yes?---So 8.26: "The investigator must provide the
18 draft" - - -

19 Yes, must provide that draft, that's right, yes - - -?---To the
20 person" - yes - "written submission within 28 days or
21 other reasonable period." Any other person adversely
22 affected" - - -

23 And one would assume - - -?---Must also get a copy."

24 And one would assume the draft report's going to suggest what
25 the recommendation was?---Yes.

26 MR BROAD: As far as councillors are concerned would it be the
27 expectation of the office of local government that they
28 carefully read all reports whether they be conduct
29 reports, or other reports in the ordinary course of
30 business that they have to deal with at meetings?
31 ---Absolutely. It's part of their obligations as a

1 councillor to - to read and participate in - in all of the
2 matters before the council.

3 COMMISSIONER: This is probably a little bit of a side
4 question, but it's still about the code. There was a
5 statement made in some of the documents that there was a
6 duty to report a breach of a code of conduct, I struggle
7 with that?---It's probably the - - -

8 I mean if I'm a councillor I don't have to report a breach or -
9 I mean, there may be other laws about (indistinct) and all
10 those other sorts of things, but I'm just talking about
11 the codes of conduct?---So I think is actually about
12 obligations to report to the office certain types of - - -
13 Yes?---Code complaints. I'm sorry, you want it to be a little
14 bit more specific - - -

15 Yes - no, no - - -?---Actually why I just make to make a
16 complaint.

17 Well let's just go to most fundamental. Surely it can't be the
18 position that if I'm sitting in a meeting and someone -
19 one of my fellow councillors says something, which
20 technically is a breach of the code of conduct I don't
21 have to make a complaint?---Yes.

22 That'd be right would it?---Yes, you have to make a complaint.

23 Why do I to have to? Does it say that in the code of conduct?

24 ---Well it can't be a complaint unless the - we - we go
25 back to - - -

26 There's no duty on me to actually make the complaint, that's
27 what I'm getting at?---I don't believe there's a duty, no.

28 That can't be the position surely - - -?---No, but there can't
29 be a complaint unless a complaint is made.

30 Yes, yes?---Yes.

31 But the statement was made it was - the statement that I've got

1 was in here somewhere - says, "If I see a breach of the
2 code of conduct I have a duty to report it." That can't
3 be the position, that's what I'm asking you the answer.
4 Certain ones may be if there's a pecuniary interest, or
5 certain types - - -

6 MR BROAD: Perhaps - perhaps - - -

7 WITNESS: Are you able to assist me with a reference to that?

8 COMMISSIONER: No, it's just a one liner that's what it says,
9 and I'll show it to you?---Do you know what it is?

10 Yes. It's not in your - you probably don't have it - that's
11 the statement from the general manager?---From the general
12 manager - - -

13 Yes?---Sorry, I thought you meant from the office.

14 No, no, not from the office - - -?---Right.

15 It's a broad question, that's why I framed it in the way if I'm
16 a councillor. I'm a general manager, or I'm a local
17 government officer of a council, you know - - -?---My
18 understanding is that the general manager has an
19 obligation not do certain things particularly with certain
20 types of complaints including referring them to the
21 office, but not to complain if they - - -

22 Don't want to?---See something.

23 No?---I'm not aware that there's an obligation to complain.

24 Where's an example where they have to make - the one you just
25 said a moment ago - if they see something that - I mean I
26 understand corrupt conduct, I'm not talking about that -
27 is there anything in the code particularly that you think
28 a general manager would have to report?---So obviously
29 there's - - -

30 Pecuniary interest?---Yes, and complaints, heartache complaints
31 so - - -

1 Yes?---From 8.14 quote here that the - those complaints have to
2 be made to the office of local government, yes.

3 MR BROAD: But if I'm a councillor, the commissioner's a
4 councillor and I say something to the commissioner in the
5 course of a meeting which is a fundamental lack of
6 respect, if I say something which is just rude, is there
7 an obligation to report that as a conduct complaint?---No.

8 That's essentially our question?---I'm - I'm not aware of that
9 requirement. I am not an expert in the code,
10 notwithstanding what I've been able to discuss - - -

11 COMMISSIONER: No, no?---With her today, so perhaps if I could
12 take that on notice - - -

13 MR BROAD: I mean I hope the answer's no, because it would be
14 silly?---I'm - I'm not aware of that - - -

15 Yes?---But - I mean surely it would be up to the
16 individual - - -

17 Yes exactly - - -?---But that's - - -

18 I don't think we need to take any - I just wanted to test
19 whether you had any particular view on it - - -?---Yes, so
20 I'll - I'll take that on notice - - -

21 Yes certainly - - -?---With you (indistinct) answer.

22 The other question is - I suppose we've done it previously -
23 but a councillor's obligation to comply with the code is
24 when they're acting in an official capacity?---Yes.

25 It's not when they're having the barbecue with their mates, or
26 some chat at work, or something?---Well it - it depends
27 - - -

28 COMMISSIONER: It can be a grey line I imagine?---Yes, and -
29 and this is why - as I said, we provided the - the
30 guidance in our further submission that - the question of
31 whether a person's acting in an official capacity is

1 necessarily a question of fact determined on the facts of
2 each case based on the assessment of the circumstances,
3 and the context in which the alleged conduct occurred.

4 Yes?---So it's - it's quite clear that a councillor can be at a
5 social occasion, but acting in an official capacity
6 providing information to someone as a - a ratepayer in the
7 council. At that point then they are acting in their
8 official capacity.

9 It's like what they tell lawyers when they say you're at the
10 barbecue you've got to be careful of the advice you give,
11 it's the same sort of analogy?---Yes. I don't think it's
12 as straightforward as - as a narrow interpretation there.

13 Yes?---The - the code does talk about them acting in their
14 official capacity, and the other words that are used are
15 carrying out their functions, so - - -

16 So where are you reading just that little bit about functions?

17 ---So that's in the introduction and the purpose statement
18 of Part 2 - - -

19 Of the procedures?---No, the code itself. Part - Part 2 just
20 says that the model code of conduct sets the minimum
21 requirements for conduct for council officials in carrying
22 out their functions. And obviously when they're acting
23 for an official, and when they're carrying out their
24 functions have to be decided on an individual basis.

25 Very well, keep going.

26 MR BROAD: One of the other questions that was put to yourself
27 is the right of councillors to information - - -

28 COMMISSIONER: So we're moving off the code just for the moment
29 are we?

30 MR BROAD: I'm sorry, yes, I was assuming

31 COMMISSIONER: No, that's what I'm saying, so Mr Hurst - - -

1 MR BROAD: I'm trying to move forward, I think we've explored a
2 lot of the code - - -

3 COMMISSIONER: Yes. Just so he knows where he's heading?---No
4 that's all right, I've got some separate notes about that.

5 MR BROAD: So one of the questions is, "What information are
6 councillors entitled to?" In response there's a statement
7 to the effect - and it's on p.5 of your second
8 submission?---Yeah.

9 "The general manager must provide councillors with information
10 sufficient to enable them to carry out their civic
11 functions"?---That's correct.

12 Now their civic functions are to be found in s.232 of the Act,
13 and they've got two roles. One's governance role in
14 respect of the council as a body, and the other is as an
15 elected person. So it's sufficient to carry out both of
16 those functions?---Yes, as - as I say, the - the model
17 codes says that the general manager must provide the
18 councillors with information sufficient for them to - to
19 undertake those functions.

20 And by the same token there is a divide between the role of
21 councillors, and the operational role conducted by the GM,
22 the general manager and staff?---Yes.

23 And there's basically a restriction on the councillors
24 trespassing into what are referred to as operational
25 matters?---Yes, and - and there are various mechanisms
26 that guide that.

27 Well let's just talk about those for a moment, the various
28 mechanisms that guide them?---So principally the Act, so
29 the Act establishes the - the role of the mayor and the
30 councillors, but also the - the role of the general
31 manager and - and other staff. The operation of the

1 arrangement between the councillors as a group as the
2 employer of the - the general manager. And the - the
3 standard form of contract prescribed by the office of
4 local government which regulates the engagement of the
5 general manager, and also some guidelines issued by the
6 chief executive under s.23A which guide (indistinct)
7 councils - - -

8 Guide the other councillors to deal with the general manager?
9 ---Deal with the general manager.

10 Yes?---So that - that relationship is quite heavily regulated
11 and it is about providing sufficient detail about the
12 delineation between the - the governance and the
13 operational aspects implicit within the - the way that -
14 that Local Government Act sets up councils and how they
15 operate.

16 There's also those interaction policies, there's councillor
17 staff interaction policies?---Yes, which most councils
18 have in place and - and - but which can't override the
19 statutory requirements of course.

20 COMMISSIONER: With the general manager's primary function
21 being to implement the decisions of the council?---And to
22 be a conduit of information between councillors and
23 council staff.

24 And primarily the general manager's role is also to deal with
25 the staff?---The - the general manager's responsible for
26 the - the selection and - and management of the staff of
27 the council.

28 And the councillors, or the role in relation to the senior
29 staff to begin with?---None whatsoever. The - the
30 councillors are only allowed to appoint the general
31 manager. In fact it is their obligation that the

1 councillors appoint the general manager, but the - the
2 general manager appoints senior staff and through
3 delegation other staff within the council.

4 And is there anything stopping the - I mean if the general
5 manager wanted to appoint a new director of Corporate
6 Services, or a new planning one, or whatever, is there
7 anything stopping a general manager from asking the
8 council?---It's not the council's decision to make whether
9 the general manager may choose to report that information
10 to council in whatever form I think would be up to them.

11 So there's a - - -?---You need to be quite clear that - - -
12 I was just going to make the point I think that - I think we're
13 going to say the same thing - is that the role of the
14 general manager is to do that job not the councillors
15 role?---Yes.

16 They're only employment role is the general manager?---That's
17 correct. But there are other elements of the Act as well
18 including that the - the council can only delegate
19 functions to one person, and that's the general manager.
20 It's up to the general manager to delegate further to
21 other people within the council, that they're responsible
22 for the employment of and for the structure and operating
23 arrangements, management relationships within the council,
24 these are the general managers responsibilities. So you -
25 you can see that the - the Act, the framework provides a
26 very strong link between the councillors as - as a
27 government body, and the general manager has a pivotal
28 role in the operations of the council.

29 MR BROAD: The other information which of course would be
30 available, whether it be to councillors or the public at
31 large would be under the Government Information Public

1 Access Act, generally referred to as GIPA?---Yes, that's
2 correct.

3 So councillors would be able to exercise their rights to access
4 should it be considered by way of a GIPA
5 application?---Yes, so just a little aside on GIPA. So
6 obviously anyone can request information from council
7 within the way that GIPA works, and councils also have a
8 responsibility to consider proactively releasing
9 information about their operations and they also need to
10 maintain a register of material that's provided to people
11 so that others can see what's been provided to someone
12 else without necessarily having to request it themselves.
13 So I think what we're talking about is a very strong
14 framework of allowing anyone in the community, not just
15 the councillors, to have access to information about the
16 council.

17 And that's that concept of open government?---That's correct.

18 COMMISSIONER: The GIPA Act itself says that you start off with
19 the premise that you're going to release, don't you?---It
20 does carve out certain areas, and once again I'm by no
21 means an expert on - - -

22 No, I understand?---We do have to be careful that there are
23 some operational issues, including staffing issues and
24 matters that have personal privacy implications which are
25 expressly carved out.

26 Confidential matters. I mean just like any other corporate
27 body councillors have some things they don't have to share
28 with everybody. That's the way it works. Can I just jump
29 back one step, you mentioned, or Mr Broad did, an
30 important distinction or the two-fold - we talked about
31 the general manager primary functions, and then go back to

1 the councillor for a moment, put aside the mayor, but
2 councillors - their two roles to represent the members of
3 the elected representatives - sorry, to act as - and
4 they're elected to represent the people, the people elect
5 them, and secondly is this role to the corporate body so
6 to speak. I mean that's not the exact words, but they're
7 the two roles if you like?---It's the body politic.

8 The body politic?---Yes.

9 It could be an uneasy sort of - have you got a couple of
10 comments about how you see that role and where there may
11 be some conflicts at all and how you might deal with that
12 as a councillor?---I mean they are akin to a board. I
13 think it is a good analogy. There are also certain
14 specific differences. They are not a body corporate.
15 There are other obligations that work in different ways,
16 but broadly speaking if you were a councillor you could do
17 worse than considering your relationship with the council
18 to be analogous to a board's relation to the operation of
19 a company.

20 If I constantly said I'm doing this because I've been elected
21 to do it and this is what I stood for, but at the same
22 time that had an impact on body politic, well then that's
23 where they've got to come to grips with how they deal with
24 it. Is that correct?---So everyone has one vote around
25 the table or within the council chamber, and you're right,
26 the councillors have a requirement to act in the best
27 interests of the community. That's guided by the
28 commitments that they made to the community in getting
29 elected in the first place, but nevertheless when they're
30 in that chamber there are some positive obligations about
31 the decisions that they make and how they have to act

1 individually and as a group.

2 Planning decisions often end like that, people get elected for
3 all sorts of reasons and I've seen it happen often to do
4 with planning decisions, but when they get there into the
5 chamber and then have to realise that there's a whole lot
6 of policy then they mightn't like some of the decisions
7 they have to make, and they don't always have to vote for
8 them - - -?---Yes.

9 That's the way it works?---So the office does provide
10 information before council elections to perspective
11 candidates who are considering becoming councillors to
12 help inform them about what the obligations of being a
13 councillor are. There are programs that are provided to
14 assist councillors to understand once they become a
15 councillor what their obligations are in the role, and
16 obviously there's the specific interventions that the
17 office provides in circumstances where one or more
18 councillors may not completely understand their
19 obligations as a councillor. I think particularly s.232,
20 as you've said it divides into two sub-sections; the role
21 of a councillor as a member of the governing body and then
22 the role of the councillor as an elected person. So as
23 that elected person within the council the Act
24 contemplates that they represent the interests of
25 residents and ratepayers, that they provide leadership and
26 guidance to the community, and that they facilitate
27 communication between the community and council. So that
28 is clearly a role that the Act - - -

29 Absolutely?---Contemplates as individuals as a councillor they
30 would have, separate from their roles as members of the
31 governing body.

1 Yes.

2 MR BROAD: One of the statements you made was to the effect
3 that the general manager was the conduit of information to
4 the councillors. In this particular issue of course or
5 this particular instance where dealing with a situation
6 where the relationship between the general manager and a
7 number of councillors has broken down how in your opinion
8 does one deal with that breakdown when dealing with being
9 able to still provide information to councillors?---So
10 this does come up and I'm just trying to find the place in
11 the submission to assist, Commissioner, with - so this is
12 just coming from p.8 of the second submission that I made.
13 The role of a general manager as I mentioned before is
14 pivotal to the council. It is necessary for the general
15 manager to have a good working relationship with the
16 councillors. We have 152 councillors in the State. There
17 is a wide variety of ways that that relationship works,
18 but in some cases, and it happens reasonably regularly,
19 there are issues between the general manager and the
20 council. The guidance that we provide is that where for
21 whatever reason that relationship between the council and
22 its general manager breaks down the councillors as a group
23 have to make a decision about whether this is a person
24 that they continue to have confidence in and continue to
25 maintain a relationship with as their conduit to the rest
26 of the council in undertaking its operations. So it is an
27 important relationship, it is up to the councillors to
28 decide who they want as the general manager and they do
29 that within the framework that the office provides about
30 both the selection of that person initially and then
31 through how they manage the contracts with the general

1 manager moving forward.

2 In this instance the councillors staff interaction policy was
3 changed to effectively control verbal communications and
4 effectively email communications. So it put a very
5 substantial clog, if I can put it that way, on direct
6 access to the general manager?---I don't have the council
7 resolution in front of me, but - - -

8 COMMISSIONER: No, but so what happened was the policy changed.
9 You could email - as a councillor you could email the
10 general manager or you could email to an administrative
11 account - you know, like a general account staff - and the
12 policy changed where it took away that you could email to
13 the general manager directly and you could only email to
14 the accounts?---So my understanding is that this could - a
15 change to that policy could only be undertaken through a
16 resolution of the council, which I don't have in front of
17 me and I haven't seen - - -

18 Presume there was a resolution what do you think about that as
19 a process?---It's a decision that the council is open to
20 make if that's how they choose to conduct business with
21 their general manager.

22 So long as the council made that decision is really the point,
23 isn't it?---That's why my initial question was that I
24 don't have it and I've never seen it, but there must be a
25 resolution of the council. This is something that they
26 collectively decided to do to guide their interaction with
27 the general manager, for whatever reason.

28 Flowing on from everything you've said about the importance
29 between the relationship between the general manager and
30 the council?---They have to - within the limits imposed by
31 the Act and the guidance where required - - -

1 Yes, of course?---How they operate that relationship is up to
2 them and they need to make it work, and if this is how
3 they've chosen to make it work in Murray Shire then it is
4 an avenue that's open to them.

5 So be it. You mentioned a moment ago about the regulation by
6 the councillors with the general manager for hiring and
7 so-called firing for want of a better word, because
8 there's a clause that if they do a proper resolution as
9 you say they can just tell the general manager to leave
10 and they've just got to pay him out a certain amount of
11 money. That's correct, isn't it?---Yes. So there
12 are - - -

13 Thirty-eight weeks or whatever the number - - -?---There are
14 various ways under the Act, but you're right, that
15 provision - - -

16 I mean an extreme case in a sense that the electorate people
17 say, "We don't like this general manager", and they have a
18 proper majority vote, well then they've cost the council
19 that amount of money?---Yes, and arguably that provision
20 exists to cut through the process of allowing a rapid
21 change where council loses confidence in their general
22 manager.

23 Yes. By the fact that you're paying it that amount?---So it
24 streamlines the process through the Act of both sides
25 understanding how if that is triggered, the basis under
26 which the general manager would be walking away from the
27 council, remembering of course that when they took on the
28 role they would be aware of that provision in the
29 Act - - -

30 Absolutely?---And that the basis of their employment included
31 that that provision was available to the council.

1 It's part of the model contract, isn't it?---Yes. Not terribly
2 different to senior executive contracts - - -
3 Yes, anywhere else?---Exactly right, except that there's no
4 mandate to pay out.
5 And the mandate to pay out - I just can't remember the wording,
6 but is it 38 - whatever the number is - and then they
7 leave immediately after the resolution or it's up to what
8 the council decides in terms of how they do that
9 I suppose?---I don't think it's specific about when it
10 actually happens, but it's obviously from when they leave.
11 Yes. People like most of those situations are usually people
12 there (indistinct).
13 MR BROAD: One of the questions raised which was dealt with in
14 your second submission was the question of
15 confidentiality. Now the response deals with the
16 obligations to maintain confidentiality and it refers to
17 the code to s.664 of the Act. There are a number of
18 allegations about release of confidential information.
19 They seem to have been dealt with under the code which
20 constrains that sort of activity. The Act provides for a
21 prosecution power. That doesn't seem to have been used by
22 the council. Is that an option that is available for
23 councillors?---So I - I'm aware obviously of s.664 and -
24 and that it's an offence to disclose information - as
25 I say in the submission - obtained in connection with the
26 administration, or execution of the Act if it's not done
27 in accordance with the circumstances provided in the Act.
28 I am not clear whether councillors have the power to
29 pursue a prosecution under 664 or whether it would be the
30 government. Sorry, I just don't know the answer to that.
31 I have to take that on notice.

1 The other question I was interested to ask and it is not drawn
2 out perhaps, because the question wasn't well framed to
3 you, and I don't necessarily think it is something you may
4 wish to answer on the spot, and that is this question.
5 How does something become confidential in the hands of a
6 council? What makes a document confidential? We know at
7 a meeting there can be confidential business. We know
8 there is a capacity to close a meeting in respect of
9 confidential business but what actually makes a document
10 that is received by council confidential and I don't want
11 to pressure you for an answer on that now?---Look, I think
12 you are right. We could probably provide a written
13 response that goes into it in some detail but at the heart
14 of it it is about the purpose for which the information is
15 provided and I think that that is the key question here.
16 If it is made clear that that has been provided
17 confidentially to councillors for a discussion during a
18 closed session I don't know how people would mistake that
19 for being something that was not confidential.

20 If I am a councillor and I see the email from a ratepayer and
21 they say it is confidential, I just use that as an
22 example, I don't know the answer to that myself. I might
23 get a personal confidential thing. It may not even be
24 their role as a councillor but I am not sure that is
25 received on their council email and things like that I am
26 not sure it is that confidential in a way. The act talks
27 about it being obtained in connection with the
28 administration or execution of this act.

29 Yes back to that idea whether you have got your councillor hat
30 on and all that sort of stuff, yes?---As I say, I am happy
31 to go into more detail and some further written advice.

1 (indistinct) on that question.

2 It would be good if it is possible yes. I have sort of finished
3 what I think are those sort of background issues. One of
4 the major issues that has occurred or has arisen in
5 respect of the inquiry's terms of reference is the
6 responsibility for work - - -

7 Just before you do that. One topic, one other question. When we
8 were talking before about the role of the councillors, the
9 twofold role and I said, put the mayor aside for a moment,
10 let us just bring the mayor back into the picture for a
11 moment. The mayor doesn't really have a greater role than
12 the councillors. I know that in the Act, if you go to the
13 Act itself it just - if there is a ceremonial role it is
14 in between the functioning of the council in between
15 meetings and I haven't got it in front of me, it is
16 something else, but as a general proposition the mayor is
17 not a great deal higher than the councillors in a role in
18 that way we were talking about before. Do you say that is
19 correct or incorrect?---So under the Act you are right,
20 there are only a couple of specific differences including
21 those civic and ceremonial functions. The mayor obviously
22 also has the requirement to chair the meeting of council.

23 Of course?---That means to - - -

24 And a casting vote of course?---Yes, so those are some specific
25 things. Normally the council would delegate to the mayor
26 as spokesperson for the council as a group as well, and
27 there would normally be a resolution that most councils
28 would make that invest quite a lot of responsibilities of
29 the group in the mayor but these are up to the council to
30 resolve exactly how much they want the mayor to operate on
31 their behalf as a group.

1 To take on that special role?---Yes, there is also the ability
2 for the mayor to make policy decisions between meetings
3 and the office recommends that when a mayor uses that
4 power, that they report it back to the next meeting of
5 council so that the other councillors are aware that the
6 mayor has made a policy decision that binds them as a
7 council.

8 But could under the Act subject that obviously the council can
9 pass the resolutions and boost them up, so to speak, but
10 could under the Act. It is not quite as big a role as you
11 might have thought in a way. I mean it is just - they are
12 a councillor and they have some extra roles as it is set
13 out in the Act. It can be boosted by the council in terms
14 of how much they delegate to - - - ?---(indistinct) the
15 council has some extra roles but I think some of those
16 extra roles are quite significant (indistinct) policy
17 making - - -

18 The casting vote and the policy making between the meetings and
19 the matter of how you use it?---And hence why it is very
20 important that there is a strong and well understood set
21 of delegations provided by resolution of the council to
22 the mayor to ensure that the mayor is aware of what
23 they - - -

24 What they can do?---The authorisation, if I can use that word,
25 from the remainder of the councillors to deal with on
26 their behalf, because as you know, those decisions bind
27 them as a group.

28 Before I go to SafeWork there is another issue that I had
29 overlooked. That is the review of the general manager's
30 performance. The guidelines issued by the Office of Local
31 Government - I think the contract between them requires

1 that on an annual basis. If I can take you to Part 7 of
2 the guidelines?---So this is the 23A guidelines for
3 appointment and oversight?
4 The 23A guidelines?---Part 7, you say?
5 Part 7. I am looking at - I am sorry, this is the actual
6 contract you will find?---Sorry.
7 This is at p.32?---Of the standard contract.
8 Of the standard contract?---Sorry, I don't have a copy of the
9 standard contracts with me. I have the guidelines.
10 What I will do is I will show them to you and if I can take you
11 to the procedures in 7.6 onwards which - if I can allow
12 you to read it?---Yes.
13 Indicates that it is a process commenced by the general manager
14 with a self-assessment.
15 THE COMMISSIONER: Actually there might be a copy at the back
16 of the guidelines, if that helps?---That's all right. I
17 have it.
18 MR BROAD: It is a process which commences - - -?---This is the
19 annual performance review.
20 The annual performance review?---As opposed to reviews of the
21 employees' performance that need to be undertaken every
22 six months or more frequently if required.
23 Yes, but the annual performance review - no review in April
24 2015, but a review in or about I think it was October or
25 thereabouts in 2015. So we are outside the 12-month
26 period. But what it appears to be is a situation where
27 there is a self-review which is provided to councillors
28 and then the councillors put their views?---Okay. So just
29 talking through, yes, councillors, they are required to
30 ensure that the performance is reviewed at least annually.
31 So in this case it would be part - beyond the 12 months,

1 but it looks like they have got around to undertaking that
2 review. That the employee may prepare and submit to
3 council and assessment of their own performance prior to
4 the performance review, but I don't see that as an
5 obligation to do so.

6 Sorry, what number was that again you were reading?---That's at
7 7.9. But at 7.8, and I think this is probably important,
8 the structure and process of the performance review is at
9 the discretion of council following consultation with
10 employees. So I would suggest that as long as the
11 employee was advised of the process that the council
12 proposed to undertake or it was the process that had
13 previously been undertaken with that employee, that it is
14 up to council how they choose to undertake that. They
15 also have to give the employee at least ten days' notice
16 in writing that they will be conducting that review.
17 That's 7.7.

18 Under 7.1, one assumes that there is council input in the sense
19 of the councillors?---So the contract says that it is the
20 council who has to sign the performance agreement setting
21 out the agreed performance criteria. Exactly how the
22 council does that is up to them. Whether they do it as a
23 group through a resolution, whether they establish a
24 committee or whether they delegate it to the Mayor. All
25 of these options are open to them noting that at the end
26 of the day, whatever process they follow, they are all
27 bound to that contract.

28 COMMISSIONER: Yes, as the corporate body of the council and
29 this is obviously something they can't delegate to anyone
30 else. They have to do it themselves. I mean, they might
31 be able to get assistance?---Yes, a number of councillors

1 set up a subcommittee, a committee of council including
2 people who are not councillors, but who have professional
3 expertise in such matters and they assist with
4 undertaking - - -

5 The performance review?--- - - - both the establishment review
6 at the initial performance agreement, but undertaking the
7 performance review at arm's length to the council.

8 Of course?---What process the council goes through, whether
9 they require it to be reported back to the full council,
10 whether it's delegated that committee to undertake that
11 review process is up to them, but bearing in mind that
12 ultimately it is the council who is responsible for the
13 performance review, the outcome of that.

14 Yes, yes. So you are saying the actual outcome of the
15 performance review has to be a decision that
16 council - - -?---No, they're the umpire, however, they
17 have decided that decision is - - -

18 That's right, whether they have delegated it or whatever, of
19 course?---Yes.

20 MR BROAD: Would it be expected that councillors be able to put
21 their views in relation to the performance of the general
22 manager as part of that review?---All I can do is go back
23 to 7.8 which is that the structure and process of the
24 performance review is at the discretion of the council
25 following the consultation with the employee. So if
26 council has made a resolution to undertake that review in
27 any particular way that does or does not provide the
28 opportunity for any individual councillor to have input is
29 a matter for the council.

30 Yes, I mean, you could have the five/four split and they make a
31 decision and they delegate it to a subcommittee and that's

1 the end of it and then they look after it?---Yes.
2 I understand what you're saying, yes; however the council makes
3 a decision and wherever they place the power to make the
4 decision, that's how it's done and that's the ambit of
5 their discretion?---Yes, and they have rules about how
6 they vote to make a resolution about doing it.
7 In the normal way. The submission, the original submission,
8 deals with the relationship between the Office of Local
9 Government and SafeWork New South Wales which was, of
10 course, previously named WorkCover and it gives some
11 history of the liaison - the interplay between the Office
12 of Local Government and SafeWork in respect of concerns
13 about councillor behaviour in relation to the general
14 manager. In dealing with the second term of reference
15 which asks the Inquiry to consider whether the council has
16 since the appointment of the current general manager
17 complied with its work health and safety obligations as
18 the general manager's employer stated on p.9: "This is
19 more appropriately a matter to be addressed by SafeWork
20 New South Wales and continues while the officer has a
21 disciplinary role in relation to the conduct of
22 councillors. It is SafeWork New South Wales that has a
23 regulatory role in overseeing the legislation that ensures
24 the safety of workplaces." And that's the view of the
25 Office of Local Government?---So, both agencies have a
26 role here and there is overlap. Both agencies have
27 different methods for undertaking their role. They have
28 different processes that they're required to follow and
29 ultimately they have different outcomes that are available
30 to them as well. I think a further thing that needs to be
31 mentioned here is that they also have different expertise

1 about where their resources are experienced and best
2 placed to deal with certain types of matters. I think
3 that the matters at Murray Shire Council are the first
4 time that SafeWork New South Wales certainly to my
5 knowledge, has needed to come to an understanding of
6 exactly how their Act and how the WHS Act particularly
7 functions in a situation where the employer is a group of
8 councillors and that they are also regulated under the
9 Local Government Act. I understand that SafeWork's view
10 of what intervention options were available to it has
11 changed over time as they have better understood the way
12 that their own legislation interacts with the Local
13 Government Act and the way that councils operate. What's
14 constant in here is that obviously the Local Government
15 Act does deal with misconduct matters and that we have a
16 code and so on and the Office knows how to administer
17 that. What's been less uncertain is exactly how the WH&S
18 Act also applies and what SafeWork's role and what
19 features of the Act are available to it to deal with work
20 health and safety matters. And I think they're
21 complicated by the fact that it is only the general
22 manager who has a contract with the councillors. If it
23 was any other staff within the council, the relationship
24 is very clear and direct in how the Act works. But when
25 it is the general manager and given that very specific
26 contract that they have with the council which is heavily
27 regulated by the Local Government Act and the processes
28 that the Office of Local Government has put in place, it's
29 quite a complex and very specific relationship that only
30 occurs 152 times in the state.

31 Can I just go back a step? When you said it's very clear if it

1 wasn't the general manager, the relationship, just
2 elaborate on that for two seconds?---If it was a senior
3 staff member or an ordinary employee of the council, then
4 the issue of who employs them and who is responsible for
5 those duties under the WHS Act is quite clear and that the
6 council staff know that and SafeWork knows that and they
7 deal with issues and complaints and enquiries every day to
8 do with council employees.

9 Of course?---There's one council employee, just one at each
10 council, that has a special employment relationship.

11 I see what you mean, sorry. Yes, so if I've got a truck driver
12 or something like that, he's no different to anyone else
13 in terms of this thing. In terms of the concept of
14 bullying which has been part of the assertions in this
15 Inquiry and generally a very topical concept, do you see
16 that there is any problems with that concept fitting into
17 the code of conduct?---So the - - -

18 Between councillors, say, and between the council and the
19 councillors and the general manager, or even between a
20 councillor and a non-general manager?---Yes, so the model
21 code does not deal with bullying as a specific concept or
22 as a concept. It is just not a feature of the code
23 directly. There are other obligations that the code
24 imposes on councillors and there are obligations to act in
25 particular ways which I think we did go through in a bit
26 more detail in our submission. So the word 'bullying' is
27 not mentioned. I don't think that that means that it
28 condones that sort of behaviour between councillors. And
29 harassment is dealt with.

30 I was just say about to say the same word. I mean, that word
31 is there, for example?---Yes, and there are some questions

1 about the nature of those terms and how they apply
2 specifically to the model code. But, I mean, these are
3 well understood concepts within work health and safety.
4 These are not well understood within the model code and
5 the operation of the Local Government Act and it's because
6 it's relatively rare as you can see with only 152
7 employment relationships where it's relevant for this
8 issue to come up.

9 I actually tried to find out whether there was anything to do
10 with that type of concept in the commercial world, a board
11 of directors and a GM, and I couldn't find anything
12 either. So it's because again not only is there 152, but
13 it's probably not the usual place where you would find
14 that type of assertion?---So we provided some commentary
15 about the definitions of bullying and how they apply to
16 the relationship in the investigation reports which I have
17 forwarded to the Commission. And we tried as best as
18 possible to take the common interpretation of those as
19 concepts and apply them within the framework that exists.

20 Of the code?---Yes.

21 And harassment would be one of obvious ones?---Harassment is
22 easier because it is directly relevant.

23 It must be a form of bullying in itself one way or the other
24 however the definition of it is, but it probably sounds
25 like it would be, yes.

26 In the second submission, perhaps if I can go back to your
27 first submission, at p.2 you describe the code of conduct
28 as prescribing ethical standards and the ultimate outcomes
29 in respect of a code of conduct issue or a misconduct
30 issue are a potential suspension of a councillor?---Yes, I
31 think there's also disqualification which is an even

1 higher level. So there's - I don't need to go into the
2 detail about the circumstances that it's triggered, but
3 going to the tribunal, ultimately the tribunal can provide
4 for the disqualification of a councillor for five years or
5 if there are three matters of misconduct that have a
6 sanction of suspension applied then that is also
7 automatically triggered. So you're right. The ultimate
8 penalties that are available under the Local Government
9 Act for an individual who engaged in this behaviour would
10 be suspension and disqualification and also the loss of
11 access to their entitlements including the remuneration.
12 I understand this is very different to the penalties that
13 are available under the WHS Act where there are fines of
14 up to \$3m.

15 That is a prosecutorial - that is a criminal - - -?---And terms
16 of imprisonment of three to five years. These are quite
17 different penalties that are available to SafeWork to
18 administer. The Office of Local Government can't
19 prosecute under the WHS Act.

20 No?---And so for SafeWork undertaking a prosecution under the
21 WHS Act, the penalties are far more substantial. I
22 suppose the question is - and we have raised this in our
23 second submission, which Act is best placed to - and which
24 agency is best placed to pursue these matters on behalf of
25 government. Does our model code - should that be seen as
26 having a greater or a primary influence on the way to deal
27 with allegations of bullying and harassment or should the
28 WHS Act which is a fit for purpose legislation
29 administered by a specialised regulator.

30 Do you have a view on that at the end of the day if you're
31 asked?---So both apply. We have gone as far as we can, I

1 believe, with the Local Government Act and the model code
2 and the answer is that particularly to my mind the
3 question of harassment and the repetitive nature does not
4 fit well with our requirement to individually investigate
5 the matters before being able to form a pattern of
6 behaviour which is at its heart the nature of harassment.
7 The keystone - the bullying - and bullying?---Yes, and bullying
8 as well. So it's not to say that we couldn't improve the
9 code potentially to make it easier or more transparent
10 about how some of these things were to operate. But even
11 then, as counsel assisting has pointed out, the question
12 of penalty comes to that really our ultimate sanction
13 would be to stop that person from being a councillor now
14 or in the future and yet in the wider community there is
15 an expectation that significant fines and gaol terms await
16 those who deliberately or recklessly fail to provide a
17 safe workplace for their employees.

18 So two issues you have mentioned there is the later one, but
19 the other one you said also the nature of those type of
20 complaints will be if it's ongoing, it's how you package
21 the ongoing bit and dealing with it as individual
22 complaints is what we almost started the whole discussion
23 with earlier on in the morning about how you deal with
24 that. That's the two point that you're raising
25 there?---So my solution to that was that I recommended to
26 the Minister that this Public Inquiry be undertaken.

27 COMMISSIONER: M'mm?---Because Commissioner, you are able to
28 deal with these matters as a group, and with the level of
29 investigation that's appropriate to each individual
30 allegation; a power which is not available to me in the
31 way the misconduct provisions work under the Act.

1 Yeah, yeah. So at the end of the day, sorry, at the day would
2 you, I mean, would you be thinking, I mean as a result of
3 this now happening, I mean, obviously it might come out of
4 the Inquiry itself but just sitting here now, the idea of
5 whether, you have mentioned, should - are you still in two
6 minds about whether the harassment should be bullying, or
7 vice versa, it should be in or out of the Code or changed,
8 or, depending on what, I mean - - -??---Well, to the
9 extent that the Code provides guidance as counsel
10 assisting points out, about the ethical standards that
11 apply to Council officials, it is obviously part of the
12 ethical framework that we should expect of councillors.

13 Which is already there in the Code?---Yes. This to my
14 knowledge has not come up before.

15 No?---It has revealed, perhaps some limitations, in the way
16 that the Code works, but rather than change it now,
17 I would like to wait and see, Commissioner, what your
18 recommendations are about - - -

19 How it might be enhanced?--- - - - how all of this should work,
20 not just the Local Government Act, and the Model Code, but
21 the WHS Act; that we have demonstrated that we've worked
22 with SafeWork to deal with these matters and that we've
23 assisted SafeWork to understand better what their powers
24 to intervene are, but the government agencies, obviously
25 both, have a question here, about how we've each used our
26 respective powers to deal with the allegations of bullying
27 and harassment of this Council.

28 Yes, okay. Fair enough?---So I await your recommendations with
29 interest.

30 Thanks.

31 MR BROAD: I suppose I have come to the end of the general

1 topics that I was wanting to explore. In light of what
2 you have just said, does the Office of Local Government
3 have a view in terms of, the second term of reference,
4 whether Council has, since the appointment of the current
5 general manager, complied with its Work Health & Safety
6 obligation as the general manager's employer?---So I think
7 we covered that in our - in submission.

8 Is there - I suppose I am asking for a view today as to whether
9 the office had reached a conclusion?---So we - what I can
10 confirm is that we have three investigation reports, which
11 have been finalised and forwarded to the Commission.

12 COMMISSIONER: Which we have got, have we not?

13 MR BROAD: Yes?---Which have found breaches of the Code of
14 Conduct in relation to the commonly accepted term of
15 bullying and the specific provision of harassment under
16 the Model Code.

17 So that is applicable to three councillors. It is not
18 applicable to the Council as a whole, so to the extent
19 that there is a conclusion, it affects three of the eight
20 councillors and it's severable. Do you agree with that
21 proposition?---So those investigation reports relate to
22 those three individuals. I think it is a separate
23 question about the responsibility of the council as the
24 employer of the general manager, and the broader questions
25 of providing a safe workplace.

26 COMMISSIONER: Yes. In other words, that is the big - that is
27 the other question through the investigation reports, as
28 you have already explained it, it went through its process
29 and it is here now, kind of separate to that
30 here?---I don't have the power under the Local Government
31 Act to investigate all councillors simultaneously. The

1 Inquiry does. I don't have the ability to impose
2 sanctions on all councillors simultaneously. The Inquiry
3 does have the ability to recommend - - -

4 COMMISSIONER: To (indistinct)?---That he use that power, which
5 is available to him to dismiss the councillors as a group
6 from civic office. So what I'm getting at, Commissioner,
7 is that I have a good understanding that I have formed of
8 how these elements of the Local Government Act work and
9 I think that I've demonstrated how I've used those to suit
10 the circumstances in Murray Shire as best possible, but
11 noting that I am not SafeWork, and I don't have access to
12 the WHS Act.

13 Yes, all right. That is a good summary of it. All right, just
14 one other thing: in terms of your resources in the
15 Department for dealing with Codes of Conduct and things
16 like that, have you got any comment about that? I mean is
17 it something that is taking up a lot of time? Not the
18 Inquiries I am talking about, put that aside, just
19 generally, the Code of Conduct, how does it work in terms
20 of the Department?---So we have Council Governance Team
21 that is responsible for administering the Code. They
22 provide advice to Councils about the operation of the
23 Code. We have a Policy Team.

24 So there is a Governance Team just - and they are there for the
25 Code's purpose, so to speak?---And other matters of
26 Council governance.

27 Yeah. That is one of their tasks in other words?---Yep, yep.
28 That crosses over with the Policy Team, who are obviously
29 responsible for the process of changing any of these key
30 documents that underpin the way the sector operates. And
31 then separately, yes, we have the Investigations Team, and

1 the Investigations Team deals with individual matters that
2 are referred to it by me, for investigation, or in the
3 conduct of preliminary Inquiries, to determine whether
4 something warrants investigation.

5 How many in the office, I mean, altogether, just out of
6 interest? How many people are there roughly?---Roughly,
7 less than a hundred.

8 I missed that, how many?---Less than a hundred.

9 MR BROAD: Less than a hundred.

10 COMMISSIONER: Less than a hundred?---Less than a hundred.

11 Yes. And just in terms of the term of reference which is about
12 the relationship thing, as far as your submissions and
13 your concern, is concerned really limited to - between
14 councillors and councillors and general manager? You are
15 not really seeing it - well, I am asking you, are you
16 seeing it getting any further than that, in terms of that
17 first term of reference about looking at what has
18 happened? I mean, are we talking about other staff
19 members, I do not think you will have your, any of your -
20 or any of the reports. I do not know if that - does that
21 make sense that question?---So I believe that we may have
22 had complaints from people other than employees of Council
23 other than the general manager and - - -

24 But even those complaints probably relate primarily to what was
25 happening allegedly between councillors and between the
26 councillors and the general manager?---Yeah, I'm sorry,
27 I'm not across the detail of every complaint that we've
28 received.

29 No, okay, fair enough. But you will feel for what you have
30 looked at and what you have thought about ahead?---My
31 understanding is that it's primarily relating to that

1 particular relationship.

2 That you recall?---But once again, my - I come in at the end of
3 this process.

4 I mean I know, for me to look at, I am just asking, yeah?---I'd
5 be happy to provide some more detail the complaint
6 numbers, who they're from, as categories, and what they're
7 about, if that would assist the Commissioner.

8 That would be - if you have got that information in due course,
9 that would be handy?---We can obtain that, yes.

10 So how many bits of homework do you get out of that now? To
11 evaluate - - -?---As long as you don't want it tomorrow.

12 No, no. All right, anything else?

13 MR BROAD: I suppose the other question arises in respect of
14 the third term of reference, whether you have got a -
15 whether the Office has a concluded view in respect of that
16 issue?---Yes, so in the submission, we've provided quite a
17 lot of information about the interventions that the Office
18 has been involved in, in Murray Shire Council, over the
19 period of time of the Inquiry, and obviously, some of that
20 dates back to prior. There's some quite detailed
21 information in there about how we've tried to reinforce
22 with the Council what their obligations are and the
23 Standards that are expected of them as a group. They're -
24 if you ask me about where is our position now, probably
25 the most relevant thing that I can say is that I did
26 recommend to the Minister that a Public Inquiry be
27 instituted into the Council, that, my submission does
28 conclude that it is the Office's view that the Council
29 hasn't demonstrated the necessary capacity and commitment
30 to effectively manage the relationships between
31 councillors and the council's relationship with the

1 general manager and that the failure by some to adhere to
2 those required standards of conduct and the failure of
3 council to effectively manage its relationships and how
4 that's now impacting on council's functioning has led the
5 office to believe that the elected representatives are not
6 in a position to govern Murray Shire Council into the
7 future, so that is the Office's position.

8 That is your position? The position of the Office, yes?---And
9 we set that forward in our submission.

10 Yes?---And I would also point out at this stage that I also
11 recommended to the Minister, after the inception of the
12 public inquiry, that the council be suspended for the term
13 of the inquiry.

14 That was my next question. Yes?---And made the case to the
15 Minister that it was in the public interest for that to
16 occur and I believe you have the information surrounding
17 the decision.

18 COMMISSIONER: This is just a general thing. I have read in
19 some of the documents - this is about - just back to the
20 code, but you will understand when I ask the question.
21 There's references in some of the documents and sort of
22 quote almost OLG encouraging councillors to put in codes
23 of conduct for the breaches of the code. What's your
24 response to a statement like that?---So I think
25 "encourage" might be the wrong word, but this potentially
26 gets back to the question that until something is lodged
27 as a code of conduct complaint, there is nothing that can
28 be done about it under the code. The code is quite
29 specific about what forms a complaint and then the
30 obligations on how to deal with it at that point. So I
31 think "encourage" is probably a strong word.

1 MR BROAD: It is not the right word, is it?---But it is
2 certainly the fact that if people have a complaint and it
3 relates to a matter dealt with in the code of conduct then
4 they need to submit a complaint in the correct form for it
5 to be dealt with.

6 If they want something to be done about, exactly. Yes,
7 exactly?---Yes. Yes.

8 COMMISSIONER: Okay?---And without that, the Office can't do
9 anything.

10 MR BROAD: Of course?---And the general manager is not obliged
11 to do anything.

12 No. I've got nothing, Your Honour.

13 COMMISSIONER: Thank you very much for coming?---Thank you,
14 Commissioner.

15 COMMISSIONER: You are excused?---Thank you.

16 <(THE WITNESS WITHDREW)

17 (Witness excused.)

18 MR BROAD: Commissioner, I'm not quite sure if Mr Dunphy is
19 here.

20 COMMISSIONER: Well, we might take the luncheon adjournment
21 now, early today, unless he is.

22 MR BROAD: Commissioner, we can enquire outside and see. Is
23 Mr Dunphy here?

24 COMMISSIONER: Anyone from SafeWork here?

25 MR BROAD: No. I don't think we do.

26 COMMISSIONER: We will adjourn for an hour and give him an
27 opportunity to come. So meet back here at 1.30 and I
28 think the hall will be closed until then. Thank you.

29 LUNCHEON ADJOURNMENT

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UPON RESUMING AT 1.31 P.M.:

COMMISSIONER: All right. We might start up again. Is that better, up the back there? Now you are Peter Dunphy?

<PETER JOHN DUNPHY, called 1.32 PM:

MR DUNPHY: Peter John Dunphy, yes.

COMMISSIONER: We will swear you in first.

<PETER JOHN DUNPHY, sworn 1.32 PM:

COMMISSIONER: Thank you for coming. Could you just tell, just for the record for the people here, your full name and what your role is and what your job is at SafeWork?---Yes. My name is Peter John Dunphy. I'm the executive director for SafeWork New South Wales.

All right. What does that involve in terms of duties and responsibilities and that sort of thing?---SafeWork New South Wales is the independent regulator for work health and safety. We have responsibility for administering the Work Health and Safety Legislation and also some other safety-associated legislation. We have the safety inspectorate and part of the role that we do is working with workplaces to ensure compliance with the Work Health and Safety Legislation. That's done through a range of ways, so whether that's advice and assistance through to - there's a - we have a compliance pyramid where we start off normally with advice and assistance through to persuasion, through to directions and then in the most extreme cases, through to prosecution.

Is prosecution the end of the compliance triangle from your point of view? There's not an injunction type of arrangement or any of that sort of thing, is there?---No. So the way that we work, we work

1 under what's called the national compliance and
2 enforcement policy and that is consistent across all
3 jurisdictions in Australia. Our legislation is based on
4 the national model legislation for work health and safety
5 and we all adhere to the compliance and enforcement
6 policy. That does talk about how, as regulators, you
7 should work. The majority of our work is through advice
8 and assistance. We do provide direction, such as
9 inspector's notices, and then in some cases we will
10 prosecute in certain cases where it's warranted.

11 Okay. You know the main area that - the reason why you are
12 here or (indistinct)?---Yes.

13 Mr Broad will probably ask some questions and I will ask some
14 questions as we go along?---Yes, sure.

15 MR BROAD: Mr Dunphy, SafeWork issued two performance
16 improvement notices to the council in this matter?---Yes.

17 Can you confirm that the first improvement notice was complied
18 with?---Yes. So both improvement notices have been
19 complied with. So the nature of the two notices which
20 were issued were - one was around requiring an
21 investigation into the concerns in relation to bullying,
22 harassment and - or bullying in the workplace and in that
23 improvement notice, the council was required to carry out
24 investigations. There was also a requirement to review
25 their - look at their procedures.

26 That is the 18 February one. Is that the first one?---That is
27 - yes. The second notice related to putting in place some
28 requirements which required - so there's two things we do.
29 When there's a complaint about bullying in the workplace
30 we look at two things; (1), we look at the policies and
31 procedures of the organisation and look to see that

1 they've got in place appropriate policies and procedures.
2 The second thing that we do immediately is to make sure
3 that the complainant, the person who is making the
4 complaint is removed from any harmful situation. So the
5 second notice related to that in terms of ensuring that
6 the individual wasn't being exposed to any further
7 bullying through ensuring that there were other people
8 present and that there were arrangements in place to
9 witness any conversations or any interactions between the
10 people that were being alleged, in terms of that
11 behaviour.

12 COMMISSIONER: So the first step is - does that mean those
13 types of notices, the two go together regularly for a
14 bullying complaint?---That is quite - depending on the
15 circumstances. Every case is different.

16 Broadly that is how - - -?---But broadly, yes. Generally,
17 that would be normally the approach we take. The first
18 one would be around - as with any hazard in the workplace,
19 it would be about making sure proper procedures were in
20 place. Second, to make sure that the risk was removed -
21 was being controlled.

22 Straight away, I suppose?---Yes. So with any - whether it's
23 chemicals, bullying, safe - - -

24 Yes. Yes?---Whether it is an item of plant, that's the
25 approach we would normally take and that was the approach
26 that we took in this circumstance as well. So the first
27 notice required the council to do an investigation to
28 determine whether there was, in fact - because we get a
29 lot of complaints about bullying. It is a significant
30 part of the work of our Inspectorates in terms of
31 workplaces and, as you would know, with every workplace,

1 there are a lot of interpersonal issues that can arise and
2 for due process we often require that the workplace does
3 an investigation to identify what the situation is.

4 So just on that point, it's - - -?---Yes.

5 You said it's often about bullying. Just give us a little bit
6 of a feel for that comment about bullying generally in the
7 workplace?---Yes. It is a common - it's becoming more -
8 increasingly common in terms of workplaces. People are
9 making complaints about bullying and are concerned about
10 interactions within co-workers particularly, and managers.
11 So that is a common complaint that we do get and it's
12 usually to do - bullying, under the definition under the
13 national code is, "Repeated, unreasonable behaviour," and
14 that can be in a whole range of ways. So it can be - it
15 can be insulting terminology. It can be excluding people
16 from events. It can be using foul language. It can be
17 humiliating somebody. It can be mocking. So there's a
18 whole range of things. The key thing though is it has to
19 be repeated behaviour, in terms of that.

20 That is real crux to it, isn't it?---It is, yes, to meet the
21 behaviour. So - and it can be repeated. It doesn't have
22 to be the same type of behaviour. It can be different
23 types of behaviour, so - - -

24 And like all these things, circumstances may be such that
25 repeated in one workplace is different to repeated in
26 another and all that sort of stuff?---Yes, and I can say
27 that, I guess, when we do do these investigations, they
28 always are very - by the time we are involved, usually the
29 situations are quite acrimonious, so it is quite difficult
30 to resolve and we find at that point that it can take some
31 time to actually - to work through some of these issues.

1 MR BROAD: You said that the first improvement notice which was
2 a requirement that there be an investigation, had been
3 completed?---Yes.

4 In respect to issues that occurred after the investigation
5 report was made - I understand that was made back in April
6 last year?---Yes.

7 Has there been any further action against further
8 allegations?---There has been a second complaint which was
9 made in July of last year, so a further complaint. So
10 there's a couple of things that have happened. In terms
11 of the notice, the notice was issued, the council did the
12 investigation from my understanding of what occurred.
13 I wasn't involved in the investigation myself but from my
14 understanding of what occurred was an investigation was
15 carried out. It identified that there were behavioural
16 issues in terms of the councillors. That was, I think,
17 referred then to the Office of Local Government in terms
18 of the behaviour, I guess, of the council as in what
19 I understand is the Office of Local Government then
20 actually commissioned an investigation into the behaviour
21 of the councillors and we continued to work with the
22 office of Local Government in terms of that investigation
23 as well, which I think culminated in the inquiry that
24 we're having now.

25 In respect of the further complaint in June, I understand that
26 there was an interview conducted with the general manager,
27 or a statement provided by the general manager in April.
28 This was after Janice McLeay, the investigator, had
29 provided her report. How did that come about; did that
30 involve SafeWork or was that another body?---I can't tell
31 you the specifics of that. I would need to probably check

1 that in terms of what that particular matter was. But
2 what I can say is that we've done a range of things since
3 the original complaint so there is - - -

4 COMMISSIONER: Could you just stop for one moment. I just have
5 to say.. If there are things that come up and you want to
6 take it on notice and submit something back to us, please
7 say that by all means, but we prefer to have the
8 information at the end of the day. I just thought I would
9 I interrupt, so carry on?---No, that's okay, but thank you
10 for that. So there was a number of things that occurred
11 I guess. Firstly, the inspector issued the notices to
12 take immediate action in terms of controlling the
13 situation, removing the risk. We continue to work then
14 obviously with the council and also with the general
15 manager to provide support in terms of trying to establish
16 whether there are any further actions that we needed to
17 take as part of our ongoing investigation into any
18 matters. So the inspector did work closely with the
19 council in terms of providing advice on their policies,
20 providing advice to the general manager. And if other
21 issues were raised I'm not particularly aware of that
22 specific circumstance in April, I would assume that if
23 there are other concerns we often have regular meetings
24 with - it's not a one-off meeting. It will - if there is
25 a bullying complaint the inspector will often have regular
26 contact with the complainant to make sure things are
27 actually working and if there are no further issues.

28 MR BROAD: Do I assume that SafeWork has an overarching role
29 and that a specific, if I can put it this way, a workers
30 compensation issue is dealt with not by SafeWork but
31 within another authority?---That's right. So there is -

1 up until September of last year we were the one - SafeWork
2 Cover was part of one organisation which did look after
3 work health and safety and also workers compensation. My
4 role and our role of SafeWork in the former work health
5 and safety division was in terms of the prevention. In
6 terms of the workers comp that can be quite separate and
7 there are different criteria I guess as to whether you are
8 successful in terms of a workers compensation claim and
9 whether you are eligible in terms of that and also the
10 obligations under work health and safety arrangements. So
11 for instance under work health and safety it covers all
12 workplaces and all hazards. Under workers comp you may or
13 may not be covered, depending on your employment
14 relations. But certainly from what I understand there was
15 - this matter was subject to a workers compensation claim
16 and that was dealt with through what is now known as
17 Safety Insurance.

18 COMMISSIONER: But they are two different things, that's the
19 point?---They are two quite separate things, yes.

20 I mean one is about compensation and getting back to work and
21 injuries and things like that?---That's right.

22 Yours is more about the workplace itself?---That's right.

23 And the environment and - - -?---There is a little bit of a
24 nexus between the two in that there's normally a return to
25 work policy that's developed in conjunction with the
26 compensation matter and our inspectors do provide
27 assistance to the workplace in terms of ensuring that the
28 person does get back to work as quickly as possible in
29 terms of return to work. So we do have a role in terms of
30 ensuring the organisations have return to work policies
31 and advising them on what they need to do to make sure

1 they comply with it.

2 When you mentioned the first investigation, the investigation,
3 when you first got it, can you just take me through what
4 actually happened? I am the person, I make the complaint.
5 What happens next?---Well typically what - - -

6 And what sort of happened in this case, as much as you know.

7 I know you weren't involved?---Yeah. I mean typically the
8 process is we will ask the - we get a lot of people making
9 complaints about bullying so we do ask them to provide as
10 much information as possible so that we can establish
11 whether it is something within our jurisdiction and to -
12 whether it is something that we would deem to be a
13 bullying matter. So we often ask them to provide evidence
14 and information about what they're actually making the -
15 nature of the complaint about; so what was the actual
16 thing that led them to believe that they were being
17 bullied. So they would normally document the types of
18 scenarios, I guess, that would lead to that. Then the
19 inspector would normally work with the workplace to try
20 and identify what can be done.

21 Can you stop there, sir. The first thing is the information
22 comes back in and I guess there's a sort of initial
23 review, "Yes, we'll take this as a bullying complaint,"
24 and then the next step otherwise, "No, it's not bullying",
25 for whatever reason, you tell the complainant?---That's
26 right, yeah. So we have a triaging process for all
27 complaints, so anybody can make a work health and safety
28 complaint about work health and safety at their workplace.
29 When they do that it comes into SafeWork and that's
30 triaged. We identify whether it will be an inspector
31 response. Sometimes it's not, sometimes we will write to

1 the organisation and ask them what they're doing about it.
2 But for bullying matters normally we do have an inspector
3 response to try and find out what the issues are and to
4 make sure that we're aware, I guess, of trying to ensure
5 that the people are removed from risk if there is a risk
6 situation in regard to it. So in this case the inspector
7 would've been - would have been allocated to the local
8 inspectorate who would have then attended the workplace
9 and tried to substantiate I guess, the information that
10 was provided.

11 So that's a standard sort of thing, attending the
12 workplace?---Attending the workplace. So then they would
13 be looking - the thing the inspector would be looking for
14 is what sort of policies, bullying policies and procedures
15 that the council may have. What sort of grievance
16 handling policies it has. How it handles those. What
17 it's done in terms of the process to address any grievance
18 issues or bullying-related matters and whether there is an
19 effective process in place for managing those and an
20 appropriate policy that meets the requirements.

21 Would the inspector at this point interview the people or the
22 person or persons who are alleged to be bullying?---That
23 would normally be the case. We do need to be careful of -
24 I mean complaints are confidential complaints so we need
25 to get - that's the other thing that when someone makes a
26 complaint we normally ask them to agree that we can talk
27 to resolve it. We often have to talk to the other parties
28 which will identify who the person is. So, yes, so we
29 normally would talk to the parties that are involved in
30 that, yeah.

31 MR BROAD: Just to establish the hierarchy. Clearly we have

1 also the Fair Work Commission. Their jurisdiction is in
2 respect of Commonwealth. Can you explain that
3 jurisdiction briefly?---Yeah, so there was an inquiry, a
4 public inquiry at the Commonwealth level in terms of
5 bullying some years ago. It was recommended that the Fair
6 Work Commission take on a role and be able to issue "Stop
7 Bullying" notices. You have to be I think, a Commonwealth
8 entity or under the Commonwealth, which is quite broad.
9 I think a corporation that is under the Commonwealth
10 Corporation legislation to be eligible. State Public
11 Sector employees aren't eligible to apply to the Fair Work
12 Commission and there's some question about whether
13 councils are or aren't, it's a matter for - - -
14 State are or aren't did you say?---They're not, they're not,
15 yeah, so - but if you've got an award that's a
16 Commonwealth award you would be covered.
17 Of course?---I think in councils it varies depending on what
18 awards and how they are actually set up as to whether they
19 would be eligible but you can - if you are eligible and
20 well anybody can apply and they will determine whether
21 someone is eligible, they will then assess it and
22 determine whether a Stop Bullying order would be issued
23 against the individuals.
24 Which is a special procedure under their Act?---A special
25 procedure under their Act. If they believe it is a
26 Stated-based matter they will refer it back to the State
27 regulator in terms of it.
28 Local councils are a creature of the Local Government
29 Act?---Yes.
30 Which of course is a State Act?---Yes.
31 So there may be issues whether there is jurisdiction?---Yeah.

1 That's my understanding, yes.

2 COMMISSIONER: Just jumping back to the investigation. Was
3 there a report prepared, an internal report? Was that
4 something that we would have received?---There's normally
5 an inspection report which is issued when an inspector
6 visits a workplace, so they will normally do that.
7 Usually the documentation would revolve around the notices
8 which were issued. We don't normally - so the inspector
9 will gather information and they'll provide that as part
10 of their ongoing investigation into the matter.

11 I am just asking about it for my inquiry?---No, in terms of a
12 report - - -

13 So can we ask, can we get that documentation from you?---We can
14 certainly provide you with the inspection reports, yes.

15 And any internal reports that might have arisen from that,
16 yes?---Yeah.

17 Can I, just as a point, do you want me to - you'll let me
18 know - - -?---Yes, that's a good point.

19 I think in terms of where the Office of Local Government is
20 working in terms of looking at the issue and for them to
21 take - you know, to decide what they are going to do in
22 terms of the kind of conduct and there is an opportunity
23 for us to work with them to make sure that we don't - so
24 people don't fall between the cracks. So we're actually
25 working together. I think that's the thing that both Tim
26 and myself have been trying to do, is to make sure that
27 the outcome that we get at the end will address both the
28 issues, I guess, from an office or local government point
29 of view, but also from a SafeWork point of view in terms
30 of work health and safety. So we are mindful that we do
31 need to collaborate on this and make sure that we're

1 actually addressing this. But for us, I think, the issue
2 is that we would like to know, given that we are not
3 experts in elected public officials in terms of what's
4 reasonable and what's appropriate in terms of, obviously,
5 conduct in those spaces, we would like to know the views
6 of the Office of Local Government and that will help
7 inform us in terms of what further actions we may take.
8 And we certainly reserve that right to continue to do that
9 and we will revisit that should there be other issues down
10 the track.

11 The possible outcomes should be - obviously if local government
12 intervene can be twofold. On a pure code of conduct
13 complaint there are rather limited outcomes that a council
14 may impose. If, however, the behaviour moves to a higher
15 level under misconduct procedures then there is the
16 potential of disqualification of a councillor, suspension
17 or other aspects. Would you see those as being akin to
18 the outcomes potentially available under s.31 to 33 of the
19 *Work Health and Safety Act*?---You know, absolutely. When
20 we talked before about the compliance pyramid, and I did
21 omit one thing at the very top of the compliance pyramid.
22 Because the other thing that we do is we license
23 organisations as well. So in terms of the range of things
24 that we can do, it is through from advice; prosecution is
25 the thing that is most often, at the top of the pyramid.
26 But beyond the top - the very top of the pyramid is
27 actually suspending or stopping somebody from being able
28 to operate or to work. And we - and under our enforcement
29 framework that is seen as a higher penalty than
30 prosecution in terms of taking a licence of somebody or
31 stopping them from being able to do their work or for

1 their business to continue to operate. So for us that is
2 like the - probably the ultimate in terms of - on the
3 deterrent and the enforcement pyramid. So suspension is
4 quite a serious matter and that is certainly viewed in
5 terms of our enforcement pyramid as the higher penalty in
6 terms of actions in regard to that.

7 COMMISSIONER: What sort of licences are you talking about when
8 you talk about that sort of stuff?---So under SafeWork we
9 licence major hazard facilities. So any very large
10 organisation that holds very large quantities of chemicals
11 need to have a licence with us. So these are - - -
12 So there is a regime of certain types of industries, certain
13 types of workplaces that may need - - -?---Yes, high risk,
14 high hazard, yes.

15 That may need a licence?---Yes, or individuals could have
16 forklift licences. We can take those off them which can
17 affect their livelihood.

18 Yes?---We've got, you know, asbestos and demolition licences so
19 demolitioner (sic) or an asbestos removalist we can
20 remove those.

21 You do all those, do you?---We do all of those. We've got a
22 number of high risk work licences so you can be a crane
23 driver or a forklift driver.

24 Window cleaner or something?---Window cleaner, we don't go to
25 that extent. But there are actually quite a lot.
26 Scaffolders.

27 Yes?---A lot. In the construction industry there are quite a
28 lot of different ones and if people don't act
29 appropriately often a much bigger penalty isn't
30 prosecution, it's actually stopping them from doing their
31 work.

1 Yes, taking away their living, yes, yes?---Yes, and that's seen
2 very - it is seen by the courts as a much more,
3 I suppose, extreme measure to take because it is taking
4 away people's livelihood.

5 MR BROAD: It appears from what you have said that SafeWork has
6 a number of options that are available to it to drive
7 change in a workplace?---Yes.

8 And you can do that through issuing of notices, you can do it
9 through a range of options. Have you discussed - you
10 said you have ongoing discussions with Mr Hurst?---Yes.

11 Have you discussed with him the range of options that SafeWork
12 has as against the Office of Local Government?---Yes,
13 we've agreed that we do need to actually develop some
14 form of - with some of our other co-regulators we'll have
15 a - well, what we call co-regulators, we'll have some
16 form of memorandum of understanding to work out how we
17 operate. I think this case has really shown that there
18 is a need to have more clarity so that we can work more
19 closely and deal with these issues more quickly in terms
20 of outcomes. And that is something that we will look at
21 as to how we could both use what's in each of our
22 toolboxes to try and resolve these issues more quickly.

23 Just to be a bit more specific about those definitions in the
24 Code of Conduct that you read out, harassment,
25 et cetera?---Yes, yes.

26 Would you say they are part of the category, are all those
27 terms part of bullying if you assume they happened
28 regularly and that sort of thing?---Yes, so they are -
29 our definition is actually more onerous in that it has to
30 be repeated, I think, in the Code. You have to
31 demonstrate that you've reached that conclusion. But

1 those are examples that relate to examples of bullying.

2 COMMISSIONER: And I mean even if the Code was changed to

3 include an obvious definition of bullying in another

4 subparagraph in a particular Code and the Code did all

5 the things it could do it still does not take away s.29.

6 You would not have to do necessarily anything else?---No.

7 You would still have s.29 in the same manner that you have

8 talked about?---That's right, yes. So it's not about,

9 I think - it's not about saying that we want to the

10 Office of Local Government to be regulated in bullying.

11 For us it's more about working with them so that we're

12 clear on - in terms of what is - we're very cautious of

13 going into the arena where there are elected public

14 officials and we get blamed so everything is a work,

15 health and safety issue. We get blamed for everything.

16 We don't want to be the ones who are trying to make the

17 calls on how to regulate elected public officials. And

18 our view is that the Office of Local Government are the

19 right body to be doing that. Once they've made a call

20 that helps us in terms of then deciding how we will

21 progress it. But using the bullying under legislation to

22 determine whether elected officials' behaviour is

23 appropriate is probably - as I said, there's probably a

24 more indirect way of doing that. We would prefer,

25 I guess, if that's decided in terms of the Code and then

26 we - there are provisions in there that, I think, relate

27 specifically that match up with the bullying and we're

28 happy to support OLG in terms of how we would deal with

29 the bullying matters under - in terms of the council.

30 MR BROAD: The Office of Local Government describes the Code of

31 Conduct as being ethical, a set of ethical rules. Does

1 SafeWork see its role in a similar vein?---Well, we
2 administer the legislation. I guess, it's more of a
3 values - I guess, in terms of our values is about
4 ensuring safety in workplaces and that's our primary duty
5 really is to ensure that everybody comes home safe at the
6 end of the working day. So whether you call that ethics,
7 I don't know, but it's certainly our values are about
8 ensuring the safety of all people who are at workplaces
9 and ensuring that they do come home. And sadly every day
10 we see situations where people don't and, so again, our
11 focus is really on trying to prevent that from occurring.

12 COMMISSIONER: Can we just have another look at s.29? If you
13 were faced with the issue of, you know, dealing with this
14 type of thing in terms of prosecution under s.29, not
15 necessarily for a councillor but just generally?---Yes.
16 But let's think of it in a councillor role?---Yes.

17 If we look at para 29B "take reasonable care" what type of
18 factors, in your mind, would you look at if you were
19 asked - if someone comes into your office and says do we
20 prosecute this sort of person? I mean, just give us a
21 flavour of the type of thing you might be thinking
22 of?---Yes, well, there's two things to say. One is we
23 might have an outline what we think is reasonable. The
24 courts may have a different view. So again - - -

25 Of course. But then to make a decision to prosecute you have
26 got to form opinions?---That's right, yes. So in terms
27 of making a decision, I guess what we would be looking
28 there is what they were doing is what a reasonable person
29 would be doing in those circumstances, so.

30 And that would be a reasonable councillor?---A reasonable
31 councillor, yes. It's not a reasonable worker, it's not

1 reasonable person on the street. It's what a reasonable
2 councillor would do in those circumstances.

3 So in other words it is the reasonable care that has to be
4 taken is in the context of whatever the workplace is that
5 you work in?---Exactly. Yes, and the circumstances. So
6 it always comes back to what the reasonable person would
7 do in those circumstances and in that case we would be -
8 and that's, I guess, where we sort of need to be a bit
9 guided by OLG what is reasonable conduct in terms of a
10 councillor.

11 Yes, and then you go on and it says "not adversely affect the
12 health and safety of others". Well, that is the way it
13 is defined in terms of the Act?---That's right. So then
14 we need to be able to prove, because we've got to prove
15 beyond reasonable doubt that whatever they did was
16 directly related to whatever adverse effects it's had on
17 other workers.

18 Mental or physical or whatever of their health?---That's right,
19 yes. And we need to be able to demonstrate that there
20 was a direct link. That it wasn't something else that
21 had caused that, or there wasn't, you know, other issues
22 caused by other individuals or other circumstances,
23 pressures of the job or home life or whatever. So it is
24 quite a high bar in terms of getting to that beyond
25 reasonable doubt in terms of being able to sort of to
26 prove that causal link.

27 And (C) also then potentially can come into play in a way also
28 because the organisation may have issued directions or
29 instructions or things like that. So again in (C) a
30 council might have tried to grapple with a problem itself
31 and issued some directions and that may be another issue

1 for (C). "So far as a person is reasonably able, with
2 any reasonable instruction" so if it was very specific,
3 if there had been instruction about this type of
4 behaviour, well, then that may be relevant to the
5 decision under (C)?---Yes, and that's - again, that
6 provision, a good example of where we would use that
7 provision is in - so we regulate amusement devices too.
8 So if you are at Side Show Alley at the Easter Show we
9 regulate all of the licences in terms of those operators.
10 If someone, if a patron on an amusement device, you know,
11 unlocks the harness and throws themselves, you know, and
12 stands on top of the equipment or whatever and it
13 injured, that's different to following the reasonable
14 procedures and then being injured and we look at that
15 quite differently. So it's how much, I guess, they are
16 circumventing the actual requirements, I guess, in terms
17 of the policy.

18 I am sorry. I just do not have the whole Act in front of me,
19 but when you come to look at a prosecution in this
20 section it is "a person at a workplace must" and then you
21 have got (a) (b) (c), these are individual duties,
22 I assume, you would prosecute for (a) or (b) or (c).
23 Like it is not as if you have to have all of them, do
24 you?---No, no, that's right, no.

25 Each one is an offence?---Absolutely, yes.

26 Each one is separate?---Yes.

27 It is not cumulative?---No.

28 Yes, all right.

29 MR BROAD: Earlier you mentioned your memoranda of
30 understanding with other bodies?---Yes.

31 Are all of those bodies bodies with a prosecutorial

1 function?---Probably, yes. So most of those would have -
2 would be enforcing - well, all of them have - they would
3 all be enforcing legislation, yes. So they would have
4 some Act that they're enforcing that we have some
5 interface with. So it's usually a regulator, someone who
6 is responsible for a piece of legislation. And I would
7 think probably you are right, probably most of those
8 would have the ability to prosecute. But that's not why
9 we do the MOU. The MOU is more about how you coordinate
10 all of the activities and prosecution is like about
11 0.1 percent of all actions that we do, yes.

12 Now, the reason I ask is that it would follow with others who
13 have a prosecutorial function that there is the potential
14 of a penalty being imposed and that might be monetary, it
15 might be imprisonment. I am interested to see the sharp
16 contrast between what a council could do and potentially,
17 you know, the limited response of a council to a conduct
18 complaint or potentially a dismissal as one extreme. And
19 they are a very different penalty, or a very different
20 result, to a significant penalty?---That's true. I mean,
21 they all have different deterrent values, I guess. But
22 as we said before, suspension can be quite a deterrent,
23 I guess, and also can be quite a penalty in itself.

24 COMMISSIONER: I take it from your evidence that you are not
25 advocating that anything should change in s.29 in the
26 sense that - I will rephrase that. Council laws are
27 excluded in the manner that we have talked about?---Yes.

28 You are not advocating that they should also be excluded from
29 s.29 in a similar way?---No, no.

30 From your point of view given your knowledge and expertise and
31 that sort of stuff, you are comfortable with it remaining

1 in that umbrella in the manner that we have spoken
2 about?---Yes, absolutely. And I think the whole purpose
3 - when the legislation was written it was tried to be
4 written to address every contemporary workplace and it's
5 very difficult to envisage every circumstance. So it is
6 very broad to do that and that was one of the - I guess,
7 that's one of the benefits of the *Work Health and Safety*
8 *Act*, it is very broad and that's why we do get drawn into
9 all sorts of different circumstances.

10 You are saying that is the way it is designed?---It's designed
11 that way, yes.

12 MR BROAD: Would it be the preferred course for SafeWork that
13 the Office of Local Government, because of its role in
14 respect of councils, has direct powers to deal with these
15 issues involving councillors? Would that be SafeWork's
16 approach that the Office of Local Government should have
17 its powers strengthened to specifically deal with these
18 issues?---I guess that's a matter for them to decide
19 whether they feel that they need to be strengthened or
20 not. I think - I mean, certainly we're happy to continue
21 working on the issues of bullying within councils and
22 having a look at those issues. The issue about how the
23 Office of Local Government, what they can do under their
24 Code of Conduct, that's the issue we're exploring at the
25 moment. I think there are sufficient powers there for
26 them to be able to take action and sanctions for
27 councillors if they do breach the Code of Conduct. And
28 that helps us then in terms of dealing with the other
29 aspects of how a council manages any bullying issues that
30 may be there. So I mean I can't really talk on
31 government policy in terms of what should or shouldn't be

1 there but certainly I think there is sufficient there for
2 us to be able to work together in terms of addressing
3 these issues.

4 COMMISSIONER: I suppose another way to ask the question also
5 is given what you know now and we have moved on from when
6 it first started, if the problem arose now for the first
7 time with all your knowledge, do you think there would be
8 any difference in the way that it would have
9 gone?---Like, I think we've explored - because I think
10 part of the problem initially was trying to work out how
11 we can use the legislation to address the issues of the
12 councillors. I mean, I think we now know that we're
13 pretty clear and - - -

14 Twenty-nine is there?---We can go to that. There is - so there
15 are avenues for us to take action there if we need to.
16 I guess, what we need to do - and I think the Office of
17 Local Government is, you know, determining its role in
18 terms of deciding what is reasonable conduct for a
19 council so that will guide us in terms of making that
20 call. Rather than us making a call from a Work Health
21 and Safety perspective and being accused of interfering
22 with the body politic in terms of how that operates. We
23 would - I think Office of Local Government has now
24 provided a little bit more clarity around how they'll
25 deal with it in terms of the Code of Conduct. There is a
26 new Code of Conduct which they've obviously, you know,
27 put out or strengthened. And I think we can work
28 together on that in terms of working out how we move on
29 forward with reasonable conduct.

30 So if there was more of an understanding about how it might
31 happen and everybody understood how the Code - let's

1 assume the policy position of the memorandum was or a
2 similar guideline or whatever you want to call it was
3 first call, sort to speak, to the Office of Local
4 Government - then, to answer my question, you may not
5 have needed to issue the improvement notices. It may not
6 have been the correct - "correct" is not the right word
7 but you know what I mean?---I think if I had - if we
8 had - - -

9 Time over again?---Our time over again, my approach would be to
10 use a bit of a case management approach where we would
11 get the Office of Local Government involved early on.
12 We'd sit down and work out what's the best way forward in
13 terms of how we manage it together. And I think we've
14 worked individually on this for a while and it wasn't
15 until the end that we really realised we needed to work
16 obviously together.

17 Yes, with hindsight?---Yes.

18 A lovely thing of course?---Yes.

19 Get together then come up with a single solution and it may not
20 have involved an improvement notice. It might have
21 involved the things that came from the improvement notice
22 but perhaps in a different way?---Yes, that's right, yes.

23 Yes?---And knowing that we each have a different set of tools
24 in terms of how we can regulate. What's the best mix
25 that we would use to actually get the best?

26 Okay?---Or what to me in the circumstance.

27 Well, that is good.

28 MR BROAD: One of the issues that we expect to be dealing with
29 in this Inquiry is an amendment to the way in which
30 councillors were able to communicate with a general
31 manager. And there was a change to the interaction

1 policy which effectively meant that there was no direct
2 communication, that communication was addressed by way of
3 emails and those emails went to a mailbox referred to as
4 "admin". Was that a result of a direction from WorkCover
5 as it then was?---Yes, it was. And that was, I think,
6 the second improvement notice which was issued. And, as
7 I mentioned before, one of the things we try to do is
8 remove the person from the risk. So the Inspector
9 determined that the way to do that was to ensure that
10 there wasn't any interaction between the general manager
11 and the complainant - the person that the general manager
12 was complaining, the people that the general manager was
13 complaining about. So in the initial stages the decision
14 was not to have any communication. I think then council,
15 and this is part of the learning process - - -

16 Yes?---Council then came back and said to us - - -

17 COMMISSIONER: How can that work?---Yes, that's not really
18 practicable to do that way, to have that sort of, you
19 know, having to pass on messages. So we agreed that a
20 more appropriate way would be to have somebody present
21 with the general manager when they're interacting with
22 the councillors and the protocol was changed in terms of
23 what needed to be done.

24 So in answering Mr Broad's question, the first part that the
25 change in that policy came from your department and then
26 the protocols were changed, was that all something that
27 was documented or was it - how did that come from your
28 office to the council?---Yes. So initially it came by
29 way of the second improvement notice.

30 Itself, just the notice?---Yes, improvement notice. And then
31 I think in terms of that notice then there was

1 representations back to the Inspector about the
2 practicality of doing that.
3 From the general manager, from the council?---From the council.
4 Yes?---From the council that that wasn't going to be an
5 effective way to continue to manage relations. So then
6 they agreed, with consultation, on what was a better - on
7 another alternative approach which was the approach of
8 having, I think it was, the HR manager present in any
9 discussions with the - - -
10 But the actual improvement notice did not specifically say
11 those sort of things, did it? They are fairly general
12 sort of things, aren't they?---Yes.
13 Did that then come out of the discussions that happened after
14 the improvement notice?---That's my understanding, yes.
15 So there would have been emails to and from the whoever it
16 was?---Yes, yes.
17 Would we be able to get some copies of those?---I can - - -
18 In the next - - -?---Yes.
19 On notice?---Yes, I'm happy to have a look at that. I'll just
20 need to check whether it's part of our investigation. So
21 some of that might be sub judice but we'll check it.
22 I understand you will have to work out whether you are allowed
23 to give it to me at all?---I've got to check with Ellie.
24 Yes, that is fair enough?---In principle I don't have any
25 problem with - - -
26 Well, you can have that argument with Ellie later. Let's find
27 out if there is an issue first?---If it's relating to how
28 we - you know, that information was communicated.
29 Yes, yes. Because I think it is important that we understand
30 how, if we can, it came about.
31 MR BROAD: The second of the Terms of Reference calls upon the

1 Commissioner to inquire whether the council has, since
2 the appointment of the general manager, complied with its
3 work health and safety obligations as the general
4 manager's employer. Does SafeWork have an opinion in
5 respect of that question?---Yes, well, certainly the view
6 of the Inspector, he issued the improvement notices. As
7 far as we're concerned the council has done what they
8 needed to do to meet those requirements. They have done
9 an investigation; they've referred that onto the Office
10 of Local Government. They've followed the agreed
11 protocols in terms of ensuring that the general manager
12 had support in terms of any interactions with the
13 councillors. We've also reviewed their policies and
14 procedures and provided advice back to them on that and
15 then followed up on that. So as far as we are concerned,
16 they have complied with any requirement that we - - -

17 COMMISSIONER: Both notices, are you saying?---Both notices,
18 yes. Both notices, yes.

19 MR BROAD: Can I differentiate between the outcomes that may
20 have been achieved as a result of the improvement notices
21 et cetera from the nub question? And the nub question is
22 not whether as a result of the intervention of WorkCover
23 and SafeWork they are now compliant, the operative
24 question for the Inquiry is whether they have complied.
25 And it is not a matter if led to a result they have now
26 complied, it is a question whether, in the overall sense,
27 they had complied?---Yes, yes, well, my view, again,
28 would be that they have complied. They certainly have
29 policies and procedures in place to deal with them and we
30 certainly haven't found grounds for taking any
31 enforcement action. I mean, there certainly hasn't been,

1 at this point, any action taken against them which would
2 indicate the belief of the Inspector that there was a
3 breach. Having said that, in terms of work health and
4 safety you could look in any room of any workplace and
5 you would find breaches so it's not - you know, you can't
6 - never say never. But certainly in terms of their
7 general approach there wasn't - the Inspector didn't
8 identify significant deficiencies.

9 COMMISSIONER: And obviously there has been no more complaints.

10 So at the moment your ledger is closed off just for the
11 moment?---At the moment.

12 There may be more discussions with the Department of Local
13 Government?---Yes.

14 About the broad issue?---That's right, yes.

15 But the specific complaint and the improvement notice, it is
16 ruled off for the moment?---They are.

17 There may be another complaint tomorrow for all we know?---Yes.

18 But right now that is where we are at?---That's right, and as
19 far as we're concerned at the moment, the administrator
20 is now in control. The councillors are - - -

21 Of course?---There's no risk so for us that might change again
22 depending on what the outcome is.

23 Of course?--_But, yes, at this stage there is nothing further.

24 That you need to worry about?---Yes.

25 MR BROAD: I do not wish to be pedantic but I feel like I have
26 got to draw a couple more questions out. You have talked
27 about policies?---Yes.

28 This Inquiry is particularly directed to the actions of
29 councillors in respect to the knowledge of SafeWork
30 dealing only with the actions of councillors, do you
31 provide a similar response that they have

1 complied?---That, I think, we'd like to wait to see what
2 the outcome of the Office of Local Government in terms of
3 the individual councillors. I mean, I think we certainly
4 agree that the - you know, on the face of it, the
5 evidence that has been provided so far that some of their
6 behaviour would have met the definition of bullying or
7 certainly unreasonable in terms of the duties of other
8 persons. So there are elements, I think, there that we
9 would be certainly still mindful of and certainly,
10 depending on what the outcome I guess of the next stage
11 of the Inquiry is, we would still be keen to make sure
12 that those issues were followed up.

13 One of the issues that was raised by Mr Hurst is that the Code
14 of Conduct does not specifically refer to bullying?---No.
15 And so there is a disconnect. Would it be SafeWork's view that
16 the behaviour, whether it be called harassment or
17 otherwise, may of itself lead to a view by SafeWork that
18 that it, is bullying?---If you were talking about the,
19 you know, average worker in a workplace, yes, that
20 behaviour certainly would be defined - I think, you know,
21 where people have been intimidated or harassed on an
22 ongoing basis there would be grounds to say that that
23 would be of a bullying related nature. I guess, as we
24 talked about before, in s.29 we'd need to work out, well,
25 what's a reasonable behaviour for an elected official in
26 those circumstances in Council Chambers and in the heat
27 of a political discussion.

28 COMMISSIONER: Robust debate?---Yes, robust debate. So
29 certainly that sort of behaviour wouldn't be tolerated in
30 a workplace in terms of how employers and employees would
31 communicate with each other. I guess that's where we're

1 seeking some further guidance, I guess, from the Office
2 of Local Government about what is reasonable behaviour in
3 that sort of a context. But, yes, certainly if you took
4 that out and put that into a workplace that would
5 certainly not be tolerated.

6 Just going back where you said before it is basically a closed
7 matter just for the moment. But then when you were
8 answering Mr Broad's question, does that mean in a sense
9 technically it could still be opened if you wanted to
10 think about the prosecution under s.29 for what has
11 occurred?---Yes.

12 I am not suggesting it would be but that is the only thing.

13 I mean, obviously there is a time limit. Is there a
14 limitation period on those sorts of prosecutions?---There
15 are limitations, yes. But certainly in terms of - - -

16 It is not necessarily an active thing that you are looking at
17 right at this point in time?---I think we're waiting to
18 see the outcome, yes.

19 It is just open in that sense?---Yes, that's right. So I guess
20 we would be waiting to see what the next steps were in
21 terms of what happens with the council and if the
22 situation continues, well, then we would need to
23 obviously reconsider what we're going to do, yes.

24 MR BROAD: Mr Hurst has effectively handed over the misconduct
25 investigations to the Public Inquiry and determined, on
26 that basis, not to take further action. Now, would that
27 affect the approach being taken or the views of
28 SafeWork?---Only in that we - I mean, obviously we
29 haven't closed off all avenues yet. We will wait to see
30 what the outcome of the Inquiry is to know whether there
31 was something further that we needed to do. And, you

1 know, certainly that was part of, I guess, our watching
2 brief to see what actually is determined and that will
3 inform us about whether we need to continue to take
4 action, whether the risk arises again in the future and
5 whether we need to be continuing to work with the council
6 on that matter.

7 COMMISSIONER: So it was really just, I suppose, what has
8 happened to date has happened, whether any action is
9 taken while the Inquiry is happening now. As a result of
10 the Inquiry you would then review as to whether there is
11 anything further that needs to be done?---Yes.

12 And then obviously moving on into the future assuming when the
13 council comes back to be working again, I guess it just
14 becomes one of those things you keep an eye on, so to
15 speak, or wait and see if you get another
16 complaint?---Exactly, yes.

17 MR BROAD: I have got nothing further.

18 COMMISSIONER: So in terms of the list, the little list we can
19 send you an email if you would like?---If you could that
20 would be great, please.

21 I have got five things, I think, and I missed one. But there
22 is probably four or five?---Well, if Your Honour just
23 could send me through confirming I'm happy to follow up.

24 Thanks very much.

25 <(THE WITNESS WITHDREW) 2.42 PM

26 <JOHN POCKLINGTON, sworn 2.42 PM:

27 COMMISSIONER: I will just call you "councillor". I know that
28 the suspension means that you are still technically a
29 councillor, it just means you do not do any acts on it.
30 For everybody who comes here I think I will just take
31 that approach. It is just a lot easier. Can you tell us

1 just as an opening thing, when you became mayor how long
2 you had been in council? Just give us that little
3 background of how you got to the council and how long you
4 have been there?---I first came to council in 1986 for a
5 nine-year spell, three - or two and a bit terms and then
6 I - - -

7 For nine years was it?---Nine years. Left council in '95 to
8 pursue other things.

9 Yes?---And I came back in, I think it was, '08.

10 And then been elected '12?---And I also served four years as
11 deputy mayor. The previous year I was just a councillor
12 again and then elected mayor last September.

13 So elected in 2012 and then became mayor in this period?---Yes.

14 And you became mayor when?---September '15.

15 That is right, okay. All right.

16 MR BROAD: Mayor Pocklington, you have provided a submission to
17 the Inquiry. While that is not published as are the
18 other submissions not published as anticipated but that
19 will probably be published with the other submissions
20 tomorrow. And so I will in part refer to that. As an
21 opening question, is it your view that the current
22 councillors are dysfunctional and cannot operate
23 together?---Yes.

24 And why do you say that?---It's my belief some councillors do
25 not agree with working as a team and they're actually
26 there to be disruptive and destructive.

27 Do you put any reason to that?---In my submission I cite why
28 I believe that to be the case. That they've got
29 grievances against council and they're extracting a pound
30 of flesh.

31 Your submission refers to four, three councillors and one

1 former councillor, and gives a bit of background in
2 respect of each?---Yes.

3 And in respect of Cr Moon you talk about matters going back to
4 1986. You, in respect of Cr Mackenzie, talk about issues
5 in '94 and '95. In respect of Cr Burke, you relate to a
6 dispute involving the former mayor. You do not give a
7 timeframe in respect of that. Is it your contention that
8 issues that go back to 1986, 1993 still form a basis for
9 this ongoing sentiment?---Yes.

10 Why is that?---Councillors, prior to being elected, campaigned
11 on stories, for a better term, that were never
12 substantiated and they've been asked to substantiate them
13 since and they've never produced one document. Their
14 contention was the council was corrupt and there was all
15 sorts of stories which I can't - because they're all
16 hearsay because the conversations were either held one on
17 one so it's he-says she-says. Or they're to third
18 parties and I've heard about them second-hand. So I'm
19 not going to bring in those stories but the gist of them
20 is there's been - to me, there's been a substantive
21 volume of them that I believe councillors sold a furphy
22 to the public. The councils had been running extremely
23 well for a lot of years as, if you have a look at
24 Mathoura and Moama and the communities, they're an oasis
25 in the middle of, let's say, less well-run shires. And
26 I believe there's been some apathy on behalf of the
27 electors and that they have not done their due diligence
28 in selecting this current council and we've got a council
29 that was not motivated for the community's best interest.

30 COMMISSIONER: As a stranger to Moama and Mathoura, it looks a
31 very dynamic area. Moama looks to have some very

1 interesting development occurring, obviously related to
2 the river. It seems to be a council which operates
3 fairly successfully. Is the dynamic within the
4 councillors affecting the way council is going about its
5 business?---It is starting to affect the performance of
6 council and its functions because key staff are
7 distracted for their core duties.

8 And how is that arising?---The number of times planning
9 decisions are delayed. Some of the basis the council
10 votes on for some of those planning decisions, as I've
11 outlined in my submission.

12 What sort of things are you talking about when you talk about
13 planning in terms of delay? Are you saying that, what,
14 they do not make the decision on the DA up for approval
15 or refusal?---There's a DA for council and we've got to
16 go and inspect it and then councillors keep pestering and
17 it's just wanting more information, more inspections.
18 One notable one was out at Murray Bank I think, in the
19 end, we inspected it at least twice. It was months
20 before it was actually decided and the people gave up in
21 frustration and withdrew it.

22 What sort of development was that?---They wanted to join two
23 blocks of land together and build a new shed.

24 Not a big deal would you say? Is that the sort of point you're
25 making?---Well, yes.

26 I mean, some developments call for a couple of inspections
27 perhaps?---It complied with all the codes. There was a
28 disaffected neighbour who would've had their view of the
29 river blocked off. But if you don't own a block on the
30 river you're not guaranteed a view.

31 Okay.

1 MR BROAD: So it was contentious because of the interest of an
2 objector?---I believe so.

3 And the split of opinion in respect of that matter, where did
4 that lie?---It was on the 5-4 basis. The two blocks, it
5 was two parcels of land and they were both owned by the
6 same entity and it was a dispute over whether the shed
7 was over the building line or not. Over the boundary of
8 the property, the joint boundary.

9 And the staff report was saying?---The staff report was saying
10 the building is not on the boundary line.

11 It was recommending approval?---And they were recommending
12 approval.

13 COMMISSIONER: Now, what is the address? What is that property
14 called?---It was - I can't - I haven't put it in my
15 submission. It's just he asked for an example.

16 Yes, yes, no worries?---It was out at Murray Banks which is out
17 on the Picnic Point - off the Picnic Point Road.

18 All right.

19 MR BROAD: Now, you spoke about it being a 5-4 divide. So that
20 was during the period where Cr Burke - - -?---Yes.
21 - - - was in fact on council?---This is prior to the current
22 general manager being employed.

23 So it is back beyond 2013 perhaps?---Yes. My belief is this
24 antagonism has been going on and when the new general
25 manager came along, because she wasn't the choice of
26 these four councillors, it escalated.

27 All right, we will get to that in a minute.

28 COMMISSIONER: In respect of planning issues, and let's try and
29 separate those, are there other matters where you regard
30 there as being a similar occurrence?---The one that
31 I really took note of and it was so blatant that I wonder

1 that there wasn't class action taken against council, was
2 there was four - it's in my submission - identical DAs.
3 As in they were all in a flood plain. Three of them were
4 owned by one gentleman and the fourth one was owned by a
5 different gentleman. And I'm not worried one way or
6 another which way council voted. I voted against them
7 because they were in the flood plain and I thought it was
8 inappropriate but there was nothing in there that stopped
9 council approving a building on these lots. But Cr Moon
10 voted for the gentleman who had three blocks and then,
11 for no apparent reason, changed his mind for the other
12 gentleman. The only difference was who had the
13 ownership. The DAs were almost identical.

14 What was the argument?---What's that?

15 Sorry, I missed that last bit you said. You said they were all
16 the same?---The only difference was the ownership of the
17 block.

18 Sorry, yes?---So my belief is he voted on personalities, not on
19 the DAs merits.

20 And so they were all the same? All were building applications
21 on rural land in flood plain?---Mm.

22 What sort of buildings are we talking about,
23 residences?---Residences.

24 So they were all - - -?---All dwellings.

25 Okay.

26 MR BROAD: In responding to that question you have singled out
27 Cr Moon?---Yes.

28 The situation is at meetings a councillor can exercise their
29 vote according to their view?---Correct. As long as it's
30 not unlawful.

31 Subject to that constraint, yes, I accept that. What you are

1 saying at this moment is that this is an ongoing issue.
2 You have given us, as it were, one example of one
3 councillor. What I am trying to understand is whether
4 this affects other councillors and whether there is a
5 combination of councillors doing similar things?---In my
6 belief three of the current councillors aren't fit for
7 office because they're there for the wrong reasons and
8 that's my belief. And what leads me to those views is my
9 prior knowledge of them before they became councillors
10 and their carryings on at the council table up to the
11 time we were dismissed - not dismissed, suspended.

12 COMMISSIONER: I think you served with Cr Moon before; is that
13 correct?---That's correct.

14 Sorry about that.

15 MR BROAD: If we move away from development issues - that does
16 not seem to have been an issue that has been raised
17 much?---The carryings on at council and between councils
18 is they keep referring to "representing the ratepayers"
19 and I wasn't aware the ratepayers elected them.
20 I believed it was a - lost it - residential role. And
21 I believe that when the residents elect us to council,
22 they elect us to represent the whole shire not any
23 particular group. At the Council Chamber - in the
24 Council Chamber and in conversations which are generally
25 one on one, they belittle fellow councillors, they -
26 without defining - no, that's not the term I'm looking
27 for. They denigrate and belittle fellow councillors on a
28 personality basis when they should be arguing the facts
29 before the council on any particular thing being debated
30 in council. An example was I was being delegated
31 authority to act on a legal basis in - on a personnel

1 issue and Cr Murphy - Cr Mackenzie - apologies Cr Murphy.
2 Cr Mackenzie, and it was also endorsed by Cr Moon, the
3 comment that I was not fit for the job because I was only
4 a farmer. I had no managerial or legal experience. I've
5 just been running a farm for 40 years and I have not gone
6 broke and in these challenging times to say that I have
7 no debt in the farming industry I would say I've got some
8 management skill. The only people who have got legal
9 experience are people who train before the law or people
10 incompetent enough to not know what the law is and end up
11 facing the law. So on both counts I'd say I've got
12 enough talent for the job.

13 One of the aspects that comes out of the submission made by the
14 Office of Local Government is to the effect that council
15 has been getting through its business?---The business
16 paper, as a whole, has been dealt with. And it's just
17 some of the debates are personalised. There is some
18 stuff that hasn't been before council, e.g. when you're
19 talking to the Office of Local Government this morning
20 the tardiness of the performance review. The performance
21 review was mishandled from the get-go by the former
22 mayor. And you alluded that councillors should be on the
23 review committee. When I became mayor one of the first
24 things I did was get the general manager back to work
25 under a new back to work agreement which, see in the
26 submissions, I've been taken to task for keeping it
27 secret. The back to work was between myself and the
28 general manager. And the other one wants us to get the
29 performance review done. And I could not have certain
30 councillors on that review committee because I knew it
31 would be difficult to stop harassment of the general

1 manager. So I undertook a training seminar in
2 Sydney November, I think it was, and I asked about
3 performance reviews and I was of the understanding
4 councillors do not have to be, there is nothing in the
5 law that says councillors have to be on the review
6 committee, so I undertook to get someone who was
7 qualified from Local Government New South Wales to do the
8 performance review on behalf of council and council
9 resolved to go ahead with that the last meeting
10 in December. And I believe that was conducted
11 early January. So the business does go ahead but when it
12 comes to staff matters some of it is very tardy.

13 COMMISSIONER: So just back on that point. There was a
14 resolution of the council?---Yes.

15 Which enabled the engagement of Mr Anderson?---Yes, Mr Mark
16 Anderson.

17 Mark Anderson to carry out the performance review?---Yes.
18 Yes.

19 MR BROAD: Can I come back to that later?

20 COMMISSIONER: Yes, I just want to make sure that is - - -

21 MR BROAD: I was going to ask you, I am trying to get a general
22 understanding of, I suppose, what it has been like to be
23 mayor. You have been mayor since September?---September.

24 Has it been a particularly torrid time?---When people ask
25 I always say I never got a honeymoon because the
26 afternoon I was appointed I went around to the Council
27 Chamber - the office and they gave me the empty
28 GMs office to telephone - use the telephone on council
29 resources because I was authorised at that meeting to
30 obtain all the legal ramifications of where council was.
31 And I ended up spending two and a half days sitting in

1 that office talking to three different law firms and
2 council staff.

3 COMMISSIONER: So just stop there. That is all about the
4 general manager, are you talking about
5 primarily?---Primarily about the general manager.

6 Because at that point in time the general manager is not
7 there?---The office was empty.

8 And as you said, the idea was to get her back?---The
9 understanding at that time was the general manager was on
10 the out.

11 Okay?---And in that first week I was contacted by our
12 solicitors through the general manager's solicitors that
13 there'd be a conference in Melbourne.

14 Okay, we will come back to that. We are just on your
15 impressions about - because that is an important issue
16 which will be dealt with specifically.

17 MR BROAD: So I am trying to get a flavour at the time of your
18 election. Now, at the time of your election there had
19 been a 5-4 divide in the council?---That's correct.

20 And the five, as it were, were yourself, Cr Weyrich,
21 Cr Bilkey?---Anderson and Murphy.

22 Cr Anderson?---Murphy.

23 And?---Cr Murphy. That's correct.

24 The other councillors - well, actually at the time of your
25 election it was 5-3?---That's correct.

26 Because you had Cr Campbell, Cr Mackenzie, Cr Moon?---I believe
27 that Cr Weyrich swapped sides to try and keep the mayoral
28 chair.

29 Yes.

30 COMMISSIONER: We will get to that.

31 MR BROAD: Let me go backwards. Was it your expectation that

1 the status of 5-3 would continue?---Not on my election.
2 And that was something you had foresight of?---I was aware of
3 it.

4 COMMISSIONER: Because of what you just said a moment ago about
5 - because that was when Cr Weyrich lost the mayorship.
6 He was the mayor before?---It is my belief.
7 Yes?---It's not a fact, it's just my belief that Cr Weyrich did
8 a deal with the other three councillors that if he got
9 rid of the general manager that they'd support him for
10 the mayor.

11 MR BROAD: So we have gone from 2012 to 2015?---Yes.
12 We have had September 2013 Mayor Weyrich?---Was uncontested.
13 Uncontested?---He was uncontested the first two times because
14 I could not get the numbers.

15 Okay, so you determined in 2015 contest?---Yes. I contested in
16 '14 and '15.
17 So in '14 and '15. What were your reasons for contesting the
18 mayoralty?---I believe I could've done a better job than
19 the then current mayor.

20 Why?

21 COMMISSIONER: I mean, not so much the personality, what about
22 his job as a mayor that you thought you could do
23 better?---He was not really on top of meeting procedure
24 and he wasn't on top of Code of Conduct. And he was
25 letting too much go on that should've been addressed then
26 and there.

27 You are talking about behaviour at meetings?---Behaviour at
28 meetings.

29 What sort of things?---If a councillor was besmirched and asked
30 for an apology it wasn't pursued.

31 MR BROAD: So the code of meeting practice is fairly

1 concise?---Yes.

2 In respect of the role of the mayor in those instances?---Yes.

3 In the period following your election as mayor, did you have to

4 exercise your powers in respect of that sort of

5 stuff?---Yes.

6 Under the code of meeting practice?---Yes.

7 And that involved warnings?---Warnings, adjournments, asking

8 for apologies.

9 Removal of councillors?---I never went that far but it was -

10 usually when it got that far councillors would end up

11 walking out.

12 So you never got to the third time of saying - - -?---No.

13 And the adjournments, how often did you have to adjourn in a

14 meeting because of - - -?---Twice.

15 Twice? And roughly when was that?---I can't remember the exact

16 meetings but I can remember where I had to adjourn a

17 meeting because I feared for the wellbeing of one of my

18 fellow councillors and as soon as they left the room

19 I went out to query their wellbeing and the councillor

20 that was making the song and the dance came out and

21 immediately stood in my face and yelled at me.

22 Okay, who was the councillor you were concerned about?---The

23 former mayor.

24 Sorry?---Cr Weyrich.

25 Let me ask my question. Who was the councillor who you were

26 concerned about?---Cr Murphy.

27 Right, and the councillor who was the person who was

28 acting?---Cr Weyrich.

29 COMMISSIONER: And why were you concerned? Like what was the

30 nature of it? Shouting, physical?---Raised voices.

31 I can't remember the exact details but I remember

1 clenched fists waved in front of fellow councillors
2 faces. It just was not acceptable behaviour from grown
3 up people.

4 In the Council Chambers when it was happening?---Yes.

5 MR BROAD: When the council reconvened, did you call for an
6 apology?---I can't recall if I did or I didn't. No,
7 I can't recall. Probably not because if I asked for an
8 apology I probably would've had to adjourn again.

9 What I am really asking is whether or not that issue was done
10 and finished at that meeting or whether it became a
11 conduct complaint?---I don't know if a conduct complaint
12 was lodged. I didn't lodge one. I've only ever lodged
13 one. I was of the belief that if it was against me I'd
14 wear it. It was when someone - the only one I lodged was
15 against the staff member where I was personally aware of
16 the intimidation.

17 But in that sense that issue, for want of a better expression,
18 resolved or ended at that time and I assume council
19 continued after that adjournment?---Yes, the council
20 resumed in a less confrontational state of mind and
21 business was got on with.

22 Yes, now, the second time, can you give us any details of
23 that?---I can't recall. I can just recall I've done it
24 twice.

25 The issues at meetings more generally, what have the issues at
26 meetings been? Now, I am talking about the period before
27 you were elected as mayor, over the period since the
28 appointment of the general manager?---In almost 17 years
29 of being a councillor this is the only term of council -
30 no, I will go back. Every term of council there's been
31 people I've not liked but I've always been able to work

1 with them, have discussions with them, socialise with
2 them and get on with the business without acrimony. This
3 term of council I can't say that. I - it's to the point
4 where you almost dread going. You're wondering what is
5 going to blow up this time or - it's just not a good work
6 environment.

7 Can you give details of what happens? Rather than giving an
8 overview, what is happening?---Debate going off the rails
9 because the then mayor would lose track of where the
10 debate was. Allowing councillors to speak multiple times
11 and dominate the argument and not allow everyone a fair
12 chance to speak. Intimidatory language, verbal and body.
13 Just it was - it just was not a fun place to be to get
14 work done. I'm trying to think of examples. Early on
15 I was told I had a - instead of lodging a code a
16 councillor announced at a council meeting that I had a
17 pecuniary interest because I travelled with a developer
18 to a development site and I did not declare that. At no
19 time did I ever travel with the developer and I explained
20 that at the time. And he said, "I have several
21 witnesses" and I asked him to present the witnesses which
22 he refused to do. Which, in hindsight, he was probably
23 correct. I had no right to ask for the witnesses. But
24 the council should've asked him to formally lodge a code.
25 And when I asked for an apology I never got it.

26 So was this in the Chamber?---This was in the Chamber.

27 COMMISSIONER: So just go back a step. So you have got an
28 agenda in front of you. Did one of the councillors say
29 you cannot vote on this because you have got a pecuniary
30 interest, something like that? Is that how it played
31 out?---That's how it started, yes.

1 When you got to the item or something?---Yes.

2 On the agenda. So if the response was, well, it is for me to
3 determine my own pecuniary interest, what would have been
4 the response back? Or, I mean, did you say something
5 like that?---I can't remember the full details of the
6 conversation.

7 Yes, not word for word?---But I denied that there was any
8 conflict. And I denied that I'd ever travelled with the
9 said person. In fact, the councillor couldn't make up
10 his mind which brother it was that I had supposedly
11 travelled with. One of the brothers did visit me at my
12 home with paperwork in regard to the development.

13 I don't deny that. In hindsight maybe I should have had
14 a third party there to witness what went on. But in no
15 way did I ever travel with the gentleman. And - - -

16 I am not so much interested in the actual detail. Just sort of
17 in a sense if it comes up in a meeting like that, if
18 there is an assertion of a pecuniary interest, isn't it
19 your pecuniary interest? You make the decision as to
20 whether you have got one and then you decide and move
21 on?---That's correct.

22 I mean, if someone wants to make an allegation and a complaint
23 later that is when they then use the Code of
24 Conduct?---That's correct.

25 MR BROAD: You mentioned earlier poor control of the debate.
26 And poor control of the debate is probably not a good
27 reason why there should be an Inquiry here. Are you
28 saying that the debate is occurring in a way that slants
29 the debate or slants an outcome or what?---When
30 Cr Mackenzie makes the statement "In Australia I've got
31 the right to say whatever I like under freedom of speech"

1 and dominates the debate so not everybody can have a fair
2 debate so all views are heard because he's dominating,
3 I would say that is not conducive to good debate. That
4 was the reason I stood for mayor; that's not what this
5 Commission is about. This Commission is about whether
6 this council can continue to operate or whatever and
7 whether councillors treated staff fairly. And I believe
8 the emails that I have seen to the general manager are
9 both inflammatory, insulting, belittling and above all
10 else trying to direct the general manager in her function
11 when any individual councillor has not got that right.
12 That is one of the reasons all emails were then by
13 WorkSafe and whatever. And it's in our Code of Conduct
14 that the only person we contact directly is the general
15 manager. After WorkSafe intervened that was through
16 admin. Because council was not so adversarial with
17 staff, the previous general manager relaxed the rule that
18 we could go directly to senior staff asking questions or
19 clarifying points. But when that was being abused that
20 was gone back to in our Code of Conduct which was through
21 the general manager.

22 And did that happen under the old general manager, that change
23 and then back to the way it was?---It started to swing
24 back that way under the old general manager.

25 So far we have dealt with conduct at meetings. Conduct outside
26 meetings. Now, obviously you have referred to
27 emails?---Yes.

28 Passing between councillors, the general manager, I assume
29 staff. Can you give some details of that?---I am not
30 privy to all the emails to the general manager just some
31 of them. And the emails I saw were sent - I know the

1 general manager is the general manager 24/7 but to send
2 them of a Friday evening so she had all weekend to stew
3 about them I would say was designed to be harassing or
4 bullying.

5 Right, so we have talked about the time?---Yes. They were done
6 of an evening instead of in work hours and the language
7 used in the emails - in fact, it was an email that
8 I advised the code about. I don't know if I'm allowed to
9 go into the detail here.

10 COMMISSIONER: Yes, we will ask you about that in due course.
11 We are going to ask all the councillors?---Righto.
12 I won't go into it now then.

13 MR BROAD: So apart from the time are you talking about the
14 words, are you talking about what?---The timing, the
15 wording and the direction.

16 What direction do you mean by that?---There was - in the email
17 that I saw a copy of there was a direction to the general
18 manager to do - she was being directed to do something.
19 It was also in the email - - -

20 COMMISSIONER: Directed to do what? Do you remember
21 what?---I can't remember the exact action. I can get you
22 a copy of the email if I have to. Unfortunately, I have
23 not got access to it now because I've handed all my - - -
24 No, that is all right?---It was language, direction, timing and
25 also an assertion that she was doing something incorrect.

26 MR BROAD: You picked out one email?---That's the only one
27 I complained on and I've got the documentary evidence of
28 it.

29 That is the complaint one.

30 COMMISSIONER: Are there any others? I mean, I suppose the
31 question is you talk about directions, language, timing

1 that sort of thing. How about amount?---Well, I shared a
2 fair bit of confidence from the general manager and she
3 showed me emails which I do not have copies of. And the
4 gist of them were all in a similar vein. It's just this
5 one email was sent to me so I can comment on it because
6 I had a copy of it. But, yes, I saw several emails that
7 were in a similar vein.

8 Right.

9 MR BROAD: I have sort of dealt with meetings, emails and
10 correspondence?---Mm.

11 Other instances that lead you to make a statement that the
12 council is dysfunctional, what other aspects would
13 you - - -?---I have never argued the council is
14 dysfunctional because on a whole the work was getting
15 done. I came to the view the council was dysfunctional
16 after Cr Anderson became incapable of fulfilling his role
17 on a regular basis. And I knew that I could not stop
18 motions that were harassing to staff. So I wrote to the
19 Minister asking to be suspended until this Inquiry was
20 completed.

21 So there was not a capacity to stop a motion being dealt with,
22 so it did not come before council yet council, without
23 that motion, undertaking its business?

24 I mean, what would have been the numbers then? What were you
25 talking about?---It would've been 4-3 against me.

26 Yes. Because there is eight councillors and the Cr Anderson
27 cannot participate anymore and then you are down to seven
28 and that is the result?---Yes.

29 And a casting vote would only take it to 4-4?---That's right.

30 Yes?---The issues I was concerned about that - the work of
31 council would've gone on, the issues would've been

1 dealing with Codes of Conduct. They would not have -
2 they would've all been dismissed so council, I believe,
3 wouldn't have been doing its duty by dealing with the
4 Codes of Conduct correctly. And motions to do with the
5 general manager.

6 That was specifically the motion of no confidence on 19 January
7 this year?---Yes. Which I disallowed saying it was
8 unlawful.

9 I will come back to that. Can I go more generically into your
10 role as mayor and the role of councillors. I am sorry if
11 I am - it is going to take a little bit of time to get
12 through the topics?---Yes, yes.

13 COMMISSIONER: And you will be here probably tomorrow.

14 MR BROAD: Your role as mayor is, to a large extent,
15 ceremonial. It is also a leadership role?---Correct.

16 Can you indicate what you view as your role being?---It's not
17 stated in the Code of Conduct or the *Local Government Act*
18 or anywhere. But I took it as implicit with my role a
19 duty of care to my community, my staff and my fellow
20 councillors. And in my short reign as mayor, everything
21 I've done is to protect my community, my staff and my
22 fellow councillors to the best of my ability. Yes, there
23 is a ceremonial aspect to it, the pomp and ceremony. And
24 it's nice to stand there - I never got to wear the chain.
25 And it's nice being at the top of the table directing
26 people of good will getting on with the business of the
27 community. Unfortunately, we haven't had that for
28 three years.

29 You referred to having a role of protecting the community. Why
30 did you raise that as an issue today? Is there an
31 element that - - -?---Well, if council becomes

1 dysfunctional, we're not serving the people anymore in
2 the stuff they expect. Now, the way this council is set
3 up, no matter how bad the council - no, it could get that
4 bad. But it would be very, very dire if it did. But the
5 water still would run, the toilets would still flush, the
6 roads would still get patched, the lawns would still get
7 mown and the council - to 99 percent of the residents of
8 the shire it's still a well-run council. It's - where
9 the community be let down is - because we're fighting
10 over personalities, the long term has gone out the
11 window. The strategic plan is not - would be less
12 strategic. The wellbeing of the staff was being affected
13 which means they weren't doing their job with their whole
14 hearts in it so the community wasn't getting their best
15 return from the investment in staff.

16 When you say "strategic plan" there you mean the overall
17 strategic plan of the council?---The 10-year, the 5-year
18 budgets. The - where we want to take this absolutely
19 fantastic shire in the future was turning into a less
20 than harmonious dispute in council.

21 Your role and the role of others as councillors, can you give
22 your view on those roles?---The role of a councillor is
23 to represent their community but once they're at the
24 council table, as you were alluding to when you were
25 talking to the Office of Local Government this morning,
26 was you also have got a duty of care to the board, the
27 council. And that's ensuring that the staff are
28 preparing the best possible reports for councillors to
29 operate on and make decisions with. I've lost track.
30 Can you repeat the question please?

31 What I was trying to do is explore your role as a councillor

1 and to flesh out you have got one role in terms of the
2 council as governance?---Yes.

3 You have got another role in terms of your position as an
4 elected representative?---And they should not be mutually
5 exclusive. A councillor's role is to make the council
6 work for the best outcome for their community. And bring
7 those concerns - and the other role is brings those
8 concerns of the community to council to consider. The
9 community and the council are not adversarial. They
10 should be in lockstep walking towards the future.

11 In terms of the role of councillors as an elected person
12 representing their community, is it a role, in your view,
13 that requires councillors to meet with members of the
14 community to obtain their views?---Yes.

15 And is that a restricted role? Is that something that they
16 should only do in certain circumstances?---There are some
17 things they shouldn't discuss with the community. They
18 should not discuss staff matters with the community. In
19 - that's the one in particular I can think of. And
20 anything that's listed as confidential.

21 Right. And other than that they are there to hear what the
22 community has to say?---Yes. It's a two-way street.
23 They take the council's view on any program or whatever
24 council's up to to the community and then they can take
25 input from the community back to council.

26 And do you see an obligation with councillors to disseminate
27 information to each other?---If councillors have got
28 information that can sway a particular vote on council,
29 yes, that should be shared.

30 And in respect of issues that have been raised by the community
31 which may not involve any matter coming before

1 council?---If the community - a member of the community
2 expressed a view to a councillor that is - has nothing to
3 affect a decision of council that - I don't see the
4 necessity of sharing that with fellow councillors.

5 Can I look at the decision making tree within council? And
6 council meets once a month?---Twice a month.

7 Twice a month. It does do on the basis of a business
8 paper?---Correct.

9 Attachments to it. It considers reports?---Yes.

10 In terms of the business paper and the reports, what is your
11 view as to the extent to which councillors should be
12 across the contents?---They should've read the business
13 paper and made themselves relatively informed on the
14 particular detail recommendation to council to make an
15 informed vote.

16 To the extent that staff make a recommendation, what weight
17 does that have with a councillor?---It should carry a lot
18 of weight because the council staff member who makes the
19 recommendation is trained in whatever aspect the council
20 is making a recommendation on. The planning officer
21 makes planning recommendations. The corporate services
22 one makes budgetary recommendations. We should follow
23 their - question it, yes. And not blindly follow it but
24 give it a lot of weight when we're making a decision.

25 So in other words, at a meeting if councillors have a point
26 they wish to clarify that is something they should be
27 able to do with the directors?---yes.

28 And through the general manager?---Through the - well, at a
29 council meeting through the mayor. Through the mayor and
30 the general manager.

31 Yes, does council conduct workshops?---Recently we started the

1 - the council has expanded the period from close of
2 business paper before a council meeting from the Thursday
3 to the Monday or Tuesday before so they've got almost a
4 week to read the paper and then the morning of the
5 council meeting, council meetings are in the afternoon,
6 there's a workshop on planning issues or any other issue
7 that the staff think councillors need additional
8 information on.

9 COMMISSIONER: Just a very specific issue. Do you have a
10 policy about calling up development applications?---What
11 was that again?

12 Does this council have a policy about councillors calling up
13 development applications or do they all go to the
14 council? I mean, they would not all go to the council,
15 would they?---The - a lot of the planning applications,
16 DAs have got - have been delegated for the planning staff
17 that if they tick all the boxes, there's no objections
18 they just - - -

19 You do not see them?---We don't see them.

20 Right?---We only see them if there's a variance to the
21 conditions or the - - -

22 Or the controls, yes?---The controls or there's two or more
23 objections.

24 So that is the form of the deliberance. It is two or more
25 delegations or breach of - - -?---No, when we advertise a
26 development and there's two or more objections.

27 Objections, yes?---It comes before council.

28 And also breaches of the LEP and the DCP?---Yes, they come
29 before council.

30 Okay, thank you. Sorry there.

31 WITNESS: A lot of the breaches are we're notified that the

1 staff are doing something about the breach but not
2 necessarily all the details.

3 MR BROAD: And that comes to the next question I had. What
4 types of matter should council be considering? Are we
5 talking about operational matters, policy matters or
6 where council is called on to make a decision?---My view
7 is that the staff have got delegated authority to do
8 their core business from the general manager. We only
9 employ a general manager and give her a policy and a
10 budget and she's to perform - he or she, I'm trying not
11 to be sexist here.

12 Well, there is a female there and that is what is about?---Yes,
13 all morning you were referring to the general manager's
14 role in the "he" case.

15 It does not matter. In this case now what you are talking
16 about that is she?---In this case it's a female. There we
17 employ the general manager to do council's policy and
18 budget. And we set that apart from, you know, DAs that
19 don't comply with the strict code applying to whatever the
20 DA is. We shouldn't see it.

21 How do you differentiate between what are operational matters
22 and which matters are properly matters for
23 councillors?---If it complies with the policy and the
24 guidelines that's an operational matter.

25 COMMISSIONER: That is a DA but what about more broadly with
26 other things?---I'm - the budgetary process is a council
27 matter. The staff prepare a report and councillors should
28 have a fair bit of input.

29 So that is basically where the money should be spent for the
30 year?---Yes.

31 What are the priorities, how much road, how much there,

1 yes?---And we should get updates on whether that budget
2 has been adhered to during the year.

3 Yes?---on the policy side is the bylaws, for want of another
4 word, where the community's expectations of dogs in parks
5 or whatever, that's a council - function of councillors
6 making a determination where dogs are allowed to walk,
7 where you're allowed to work that's state government.
8 Where you're allowed to smoke, whether you can skateboard
9 on footpaths. Policy stuff is councillors but the
10 operation of that policy is - - -

11 So using dogs, for example, deciding where the off leads park
12 should be?---Yes.

13 There is a report, that is a decision you make that could be
14 three or two or you do not want it over that area or have
15 it in that area for whatever reason. Once it is done they
16 enforce it?---That's right.

17 MR BROAD: Using the PDNFL litigation, was it the role of
18 councillors to determine if they would support that
19 litigation?---Well, I voted for it so I must believe that
20 we had the right to do that. And even in hindsight
21 I think it was the correctness of the decision
22 because - - -

23 I do not want to debate the correct decision or otherwise.

24 I am trying to get some principles.

25 COMMISSIONER: I mean, that is an example that you are saying
26 that the council should be involved in
27 I suppose?---Because - - -

28 Generally why, I mean?---It was definitely not an operational
29 matter because it was not in the budget, it was not in the
30 policy. But it had an effect on our community and we were
31 there - councillors are there to look after their

1 community so we took action.

2 MR BROAD: Okay. And when it came to the way in which the
3 court case was conducted, was that a matter for
4 council?---I don't believe so because we direct - we set
5 the guidelines how to go forward and direct at the general
6 manager and it then became an operational matter.

7 Right, and in respect of the cost of that litigation, was it
8 appropriate for councillors to be told the cost of that
9 litigation?---We did set a top amount that the general
10 manager was authorised to go to which is a bit hard to
11 estimate what could be a maximum amount in any legal case.
12 And I believe we should've been informed in a confidential
13 nature whether that had been met or not.

14 So that was a budgetary issue?---Budgetary issue. But it also
15 should've been a confidential issue because it couldn't -
16 it was a legal matter (1) and (2) it could give advantage
17 to the competition.

18 If the matter had been completed, litigation was completed, the
19 parties have walked away. Why would it then be
20 confidential?---The amount of money should've been kept
21 confidential for the sole reason you don't telegraph to
22 potential opposition what your limit is.

23 But we are talking a different period of time. What I am
24 trying to get out is not signalling in the course of court
25 proceedings how much money you were willing to put in,
26 I am asking you whether after the court proceedings were
27 completed whether councillors would be entitled to the
28 knowledge of the costs that had been incurred when that
29 court case was running?---If it was the only court case we
30 were going into you'd be correct. It should become
31 public. But we did not know if that was going to be the

1 end of it or not at that stage, and even now. Well, that
2 particular issue, I hope, is a dead issue and won't arise
3 again. But if there was any chance of it arising again
4 I think it should remain confidential.

5 I am probably at cross-purposes. My understanding is that the
6 matter was settled?---Yes.

7 And came to an end?---It was settled. Whether you could say it
8 was definitively at an end would be debateable. The - - -

9 I am sorry, I do not understand?---I know where you - I'm
10 just - - -

11 I mean - - -?---The nature of that particular case was the
12 ground rules were changing on a weekly basis. So we did
13 not - when it was settled, it may have arisen 12 months
14 later and we'd have been in the same position.

15 There could have been another potential grand final in
16 12 months' time?---It could've been disruptive.

17 Okay.

18 COMMISSIONER: Because they did not have it in the end?---They
19 got it in the end and it was very successful thankfully.

20 I thought you missed one of them and you got it the year after
21 or something?---We missed it that year.

22 Yes?---And it was held - we got it - if we hadn't gone down -
23 supported the football club going down legal avenues they
24 wouldn't have got it for another - I'm not sure.

25 Whatever it was?---Whatever the rotation is, they would've lost
26 their run on the ladder for the rotation.

27 MR BROAD: Leaving aside the current issues involving the
28 general manager, what dependence do councillors have on
29 the general manager for advice?---The general manager
30 should be the first port of call for any advice. If they
31 can't get it from there, either their association or their

1 fellow councillors or the mayor. Whoever they trust the
2 most depending on the information they're after too
3 I suppose.

4 And so what you are saying is there is a strong need for trust
5 in the general manager?---Yes.

6 The interaction that the general manager has with councillors,
7 leaving aside the current issues, what is your view about
8 how a general manager should interact with
9 councillors?---The general manager should behave or react
10 or whatever term with the councillors in a professional
11 nature at all times.

12 And availability?---I have to say - preface it within
13 reasonable terms, they should be available any time. But
14 if something is - can wait till Monday in work hours why
15 try and contact them after Friday evening.

16 And that leads back to that question about emails?---Yes.

17 Is there an assumption in what you said that the general
18 manager would be opening emails out of hours?---Well, this
19 particular general manager had been. Now that it's going
20 through admin, no, it's Monday morning before emails are
21 dealt with, I believe.

22 Is the general manager's contract a contract for 24 hours
23 7 days a week?---I have not seen hours specified in the
24 contract. So I would've said they're general manager 24/7
25 exactly the same as a councillor or mayor and if the
26 matter is urgent they should be contactable. But whoever
27 is contacting them should also work out in their own mind
28 how urgent the issue is.

29 The interaction of councillors and staff, again leaving aside
30 any issues relating to the current general manager, what
31 is your view about what level of interaction there should

1 be between councillors and staff?---I liked it when
2 I could - if I had a planning issue I wanted an answer to,
3 I could go directly to the planning officer.

4 So you are not talking about the director of planning, you are
5 talking about the individual officer?---No, I'd go to the
6 director of planning.

7 Sorry?---Sorry for being vague there. And he may refer me to
8 the planning officer that's got the expertise in the
9 particular question I'm asking. He also may inform me
10 that I've exceeded my councillor's role by asking the
11 question and I'd take that on the chin.

12 COMMISSIONER: Has that ever happened to you?---What's that?
13 Has that ever happened to you? Has a staffer said
14 that?---Once. And so be it. I was - exceeded my
15 authority or whatever you want to call it. And - - -

16 MR BROAD: The bounds or whatever you want to call it?---The
17 bounds. I was asking for too much information which, as a
18 councillor, I did not have the authority to. And then
19 they politely informed me of that so that was the end of
20 the matter.

21 Can I stop you there? Was that in respect of a decision that
22 you would have to make as a councillor?---No, there was no
23 - I was asked by a constituent about a particular thing
24 that was happening in the shire and I had a history with
25 this organisation but I was no longer on the organisation
26 and I asked where the organisation was at. And I was
27 politely told that I have not the right to that
28 information.

29 No fishing expeditions?---Yes, so I politely told the people
30 that asked me to question, "I can't answer it for you".

31 There is a view that suggests that all questions stemming from

1 councillors to the staff should go through the general
2 manager. From what you have just said, you do not think
3 that is the best way?---In a council that's composed of
4 councillors of good will it worked well. But that's
5 predisposing all councillors are of good will. In this
6 particular council's case at present that's not the case
7 so through admin which is, I believe, in our Code of
8 conduct is the way to go. Well, not through admin,
9 through the general manager. And I also believe the *Local*
10 *Government Act* infers that, that there's no interaction
11 between councillors and staff. It's all through the
12 general manager.

13 In a small community I assume you would know staff fairly well
14 and a significant portion of the staff personally?---Yes.

15 COMMISSIONER: It would be the same for all of them. It is
16 probably the same for a lot of the councillors?---When I'm
17 at the football which is very frequent and I rub shoulders
18 with staff, I do not talk about council matters.

19 That is probably similar to any council in a small community,
20 really?---Yes. We talk football or fishing.

21 Or whatever?---Or whatever.

22 Rotary, football, anything. We are getting reasonably close to
23 4.00.

24 MR BROAD: Stop now?

25 WITNESS: Time flies when you are having fun

26 MR BROAD: I try to help that way. The Code of Conduct, can
27 I ask you a fairly upfront question? What is the purpose
28 of the Code of Conduct in your opinion?---It is a - well,
29 it's certainly more of a guideline but a guideline to
30 harmonious behaviour by councillors, between councillors
31 and councillors and staff, to get on with business in an

1 orderly and competent fashion. It is largely a document
2 for people of good will and if that's not the case, the
3 Code of Conduct falls over because council have very
4 little authority to, I'll use the term, punitive action
5 for poorly behaved councillors. And we can ask for an
6 apology, we - I thought we could sanction but I've been
7 informed we can't sanction councillors. So if we ask for
8 an apology and they totally ignore us - - -

9 What is the effect of a censure?---Apart from getting the
10 councillor's name in the paper, very little.

11 So if I, as a mayor, came to resolution from the councillors in
12 respect of a conduct complaint and the resolution was that
13 Cr X be censured, in your view would that be a meaningful
14 outcome?---I keep thinking back to those Monty Python
15 things "you naughty boy" and that's about the
16 effectiveness of it.

17 And in councils where Code of Conduct complaints are a rarity
18 would you see that as having a different context?---Yes.
19 If I was sanctioned I would feel ashamed and I would
20 endeavour not to have it - have that happen to me again.

21 The amount that council has spent on conduct complaints, and
22 I was dealing with those figures earlier?---Yes.

23 Is a substantial amount?---I would've called it an obscene
24 amount.

25 And why do you call it "obscene"?---The repetitive nature of
26 it, of some of the offences nothing has been learnt so
27 we're spending money on achieving nothing.

28 Yes, obviously over a period of three years it has been very
29 significant amounts?---And when the recommendation comes
30 back for mediation and that's not effective, training,
31 councillors refuse to do it. An apology, they refuse to

1 give it. I believe that's a s.8 to be sent off to Local
2 Government and I believe that is viewed as contempt of the
3 Office of Local Government. And the only time we've heard
4 from the Office of Local Government when these reports go
5 off to them was we watered one down. Instead of a public
6 apology, the apology would be just to the council. Just
7 to - hoping to get one over the line. Still didn't get it
8 over the line. We sent it off to Sydney and we got, for
9 want of another term, reprimanded for watering the
10 recommendation down. Nothing about addressing the
11 situation why the apology was called for in the first
12 place. So we're disappointed with the Office of Local
13 Government not giving us more support in a timely fashion.

14 I will not make a comment to the contrary.

15 COMMISSIONER: On that note we might stop. We will back here
16 at 10 o'clock tomorrow. Thank you.

17 <(THE WITNESS WITHDREW) 4.01 PM

18 ADJOURNED UNTIL TUESDAY 5 APRIL 2016