

---

TRANSCRIPT OF PROCEEDINGS

---

TUESDAY 5 APRIL 2016

BEFORE COMMISSIONER ANTHONY HUDSON

MURRAY SHIRE COUNCIL PUBLIC INQUIRY

1 COMMISSIONER: Good morning. We might as well keep going. All  
2 right, let's go. Councillor Pocklington, you're on your  
3 former oath, so we won't readminister an oath.

4 <JOHN POCKLINGTON, recalled:

5 MR BROAD: Where I got to yesterday was to ask you some  
6 questions about the Code of Conduct and its purpose, and I  
7 dealt with those questions. What I was proposing to do  
8 this morning was to deal with some more specific issues in  
9 relation to the Code of Conduct complaints that have been  
10 dealt with by the council, and I think generally yesterday  
11 we discussed the number and the amount and you had given  
12 your view in respect of the number and the costs. Do you  
13 regard any of the complaints that were made as  
14 trivial?---Well, it depends - yesterday the point was  
15 quite plainly made of how they came up with a number, but  
16 60 of the complaints were - 68 or whatever the number was  
17 - were found to have a case, were found. There was only  
18 11 dismissed and there was 40 still outstanding. If it's  
19 a breach of the code and it's found to be proven I could  
20 not declare that trivial.

21 In the course of preparation for these hearings I asked  
22 Mr Higgins who's the conduct coordinator to prepare a  
23 table which set out the complaints, results, costs, et  
24 cetera, and essentially the table is 22 complaints, and as  
25 we discussed yesterday one complaint might be - - -?---It  
26 could be up to 18.

27 - - - a number of councillors and a number of issues. Of that  
28 22 in fact five are outside the terms of reference. So  
29 we're down to 17 complaints, and I've got a table and I'll  
30 briefly show it to you. So we have complaint 1 to 5,  
31 which are outside the terms of reference we continue on

1 with 6, over the page to 23 or 22. I am not going to ask  
2 you questions that ask you to try and memorise one  
3 complaint to another, but I will just go through some  
4 little bits of detail in it. What I was going to do is  
5 discuss the nature of the outcomes, and in respect of a  
6 number of them there was a recommendation from the  
7 reviewer to resolve the complaint by alternative means,  
8 and that was either by way of counselling from the then  
9 mayor or through training and other outcomes.

10 COMMISSIONER: The usual ones is mediation, training,  
11 counselling and possibly a public apology.

12 MR BROAD: Some were referred to the general manager and mayor  
13 again for that sort of outcome and there were some which  
14 involved a final report on the basis of a breach, and they  
15 really were in respect of complaint No.13 which is about  
16 councillors liaising with a person with whom the council  
17 was involved with in litigation, and that as I understand  
18 it's the Deep Creek issue?---Yes, and I consider that at  
19 the extreme end of what is not acceptable.

20 Okay. I would like to explore that with you later. The other  
21 one relates to comments, and I understand that these  
22 comments made by Councillor Mackenzie which are loosely  
23 described as the Mathoura Cartel. The other one is a  
24 comment or comments made in respect of credit card  
25 facilities, and that I understand involved Councillor  
26 Campbell. In your opinion has resolution by alternative  
27 means been a successful outcome?---Generally, no.

28 And why is that?---The mediation has quite often turned into a  
29 farce if the councillors do attend, they don't always  
30 attend. The training they don't always attend. I don't  
31 know how the counselling, where the mayor or the general

1 manager has been asked to do counselling, I don't know how  
2 that has gone, and genuine apologies have not been  
3 submitted, or tendered I should - - -

4 You use the word "mediation", I take it you are not referring  
5 to the mediation which took place with convener being Norm  
6 Turtinton?---Yes, I am referring to - - -

7 You are referring to that as an outcome from the Code of  
8 Conduct?---Yes.

9 So that mediation had a number of outcomes and you  
10 say - - -?---The first one there was a - I think the first  
11 one - there was a document signed by all the councillors  
12 to improve their behaviour - - -

13 COMMISSIONER: And that was in December 2014 just to give you  
14 some context?---Yes. And within days it was completely  
15 blown out of the water.

16 Why?---The former mayor made comments before he signed that  
17 document that were, let's say inflammatory, and then he  
18 signed off on this document and certainly councillors said  
19 that the agreement was breached from there. So it turned  
20 into a fruitless exercise.

21 MR BROAD: Could I just briefly deal with one issue in relation  
22 to the mediation, and your statement to Janice Macleay.  
23 You gave a statement to Janice Macleay to the effect that  
24 the mediation agreement was not confidential at the time  
25 it was agreed but later became confidential. Let me just  
26 get that in front of you. I don't know whether you have  
27 got a copy of the statement you made to Janice  
28 Macleay - - -?---But not in front of me.

29 Sorry?---I haven't got one in front of me.

30 In the fourth paragraph you say, "A mediation agreement was  
31 reached and signed by all the councillors. It was

1 confidential." You then say, and I'm just looking for it,  
2 that the mediation agreement was released before it became  
3 confidential?---It's so long ago I've forgotten the  
4 details now. I can't understand why it had become  
5 confidential after it was a public document. So I don't  
6 know why I made that statement.

7 Let me make sure I've got it absolutely correct. What your  
8 statement said: "Before mediation things were said in the  
9 paper. Geoff Mackenzie accused the mayor of disclosing  
10 information, but that was before the confidentiality was  
11 agreed." I will show you your statement?---Yeah, it's -  
12 it's the timing of my statement.

13 COMMISSIONER: Do you mean that really that was - the point of  
14 the mediation was to stop - to say we will now keep  
15 confidential, we will do it this way, and you were saying  
16 prior to that they weren't and that was the point of part  
17 of them - - -?---It was the way that the agreement was  
18 came to in the first place.

19 MR BROAD: But most certainly the outcome of the mediation was  
20 leaked?---I can't recall if the actual agreement was  
21 leaked, but there were comments and assertions that the  
22 agreement was breached even before the ink was dry on it.  
23 The content was left to the media?---I can't recall that, but I  
24 know there were assertions that the document was worthless  
25 because councillors weren't abiding by the agreement from  
26 the get go.

27 MR BROAD: In respect of the outcomes of the conduct complaints  
28 - I think we discussed that briefly yesterday - it appears  
29 that the final reports in relation to those three I've  
30 outlined were not before council until September, October  
31 or thereabouts in 2015. So in the interim there had been

1 no final report that had come before council and been  
2 dealt with?---Very few of the codes of conduct appeared  
3 before council.

4 So to the extent that alternative measures were put in place as  
5 a way of resolving the conduct complaints did they affect  
6 any change in the behaviour of councillors?---Not that I  
7 was aware of.

8 I think we briefly discussed the voting patterns post the 2012  
9 election and I think we got to a stage where there was  
10 initially a five/four situation, but then with the  
11 retirement of Councillor Burke a five/three situation, but  
12 then with your election as mayor a four/four situation and  
13 then with the illness of Councillor Anderson a three/four  
14 situation potentially?---Yes.

15 Did that occur late into 2015; when did that actually  
16 occur?---It became apparent in the month prior to the  
17 mayoral election what was going to transpire that  
18 allegiances were shifting.

19 I was really concentrating on the health issues affecting  
20 Councillor Anderson. When did they come to the  
21 fore?---Late November if I recall correctly. He was  
22 struggling to attend council meetings due to pain he was  
23 suffering and the ability for him to walk, and I won't go  
24 too much into his - - -

25 COMMISSIONER: I don't ask you to.

26 WITNESS: But his infirmment(sic) was more serious than anyone  
27 thought.

28 COMMISSIONER: But the point is it was about  
29 late November?---Yes.

30 That's the answer to the question.

31 MR BROAD: Yes. So during the period from your election as

1 mayor to that period in November it was a 4/4  
2 divide?---Yes. Not on every vote. A lot of the planning  
3 issues were - that pattern wasn't apparent in a lot of the  
4 planning decision, and when it came to staff related  
5 issues and policy, yes, it went to that 4/4.

6 And is the percentage of council's business, how much of that  
7 was - that before council - how much was staff related or  
8 policy matters?---A fair bit of that time because we were  
9 preparing documents which were policy documents to do with  
10 Fit for the Future and a few other related issues.

11 How did it affect, and I know this inquiry is not about Fit for  
12 Future in any way, how did the divided views between the  
13 councillors affect your response to the Fit for Future  
14 proposals?---It was in the - we were united in the  
15 opposition to the merger, even though there were  
16 assertions made that not all the councillors felt that  
17 way, but the vote was always unanimous that we'd oppose  
18 the merger. It was on the content of the document and how  
19 the document would be prepared.

20 In that period from September to November in those  
21 circumstances you had the casting vote of mayor?---Yes.

22 Can I go backwards, you indicated there were issues of a divide  
23 between views from the 2012 election onwards?---Yes.

24 Were they on a similar policy-based approach, or did that  
25 extend further?---It revolved - my recollection is it  
26 revolved around staff related matters.

27 You had the previous general manager, did it relate to him  
28 solely or was it directors as well; what was the issue  
29 about staff generally?---Some councillors had it in for  
30 one particular director, and - - -

31 COMMISSIONER: Was that the planning director?---I didn't name

1 him, but I think you've got the right director. And there  
2 was assertions by some councillors that the general  
3 manager was not totally honest. I won't - I won't  
4 elaborate what was said, I don't want - - -

5 MR BROAD: The circumstances were that the general manager as I  
6 understand it had intended to retire but brought that  
7 forward?---My understanding was - I was acting mayor in  
8 the previous term and the general manager approached me to  
9 extend his contract, which was perfectly legal at that  
10 stage, and he expressed a view he wanted to extend his  
11 contract with the view of getting a few more years on the  
12 end of the current term with the view of retiring some  
13 time - I think it was - '14 is it when he retired? No, it  
14 was '13. It became effective at the start of '14. He  
15 expressed to me at that time when we were renewing the  
16 contract that it would be some time possibly late '14 when  
17 he got his numbers right, referring to his finances. I  
18 can't comment if he went earlier than he intended.

19 Dealing with Councillor dynamics, did the dynamics of the  
20 councillors change with the appointment of the current  
21 general manager?---The numbers didn't change, but the  
22 hostility increased.

23 And the hostility was between councillors?---Yes.

24 And also in relation to the general manager?---Yes.

25 Were staff issues intensified?---I would say that councillors  
26 tried to drag staff into it with other councillors and the  
27 general manager trying to circumvent that happening.

28 So did it involve more than just the director for  
29 planning?---Yes.

30 So it was other members of staff?---Yes.

31 In reviewing the documents that I've seen support Mr Higgins in

1 periods where he acted as acting general manager was there  
2 a view adverse to Mr Higgins?---The view was - my view was  
3 councillors were turning the acting general manager's  
4 position into a football, as in he was doing the job and  
5 because of the untidy way we got to that point he wasn't  
6 formally put in the position of acting, he was - he was  
7 paid a bonus and it should have been automatic - when the  
8 general manager was on leave or anything it should have  
9 automatically gone into the acting position, but because  
10 of the untidy way we got to the position we were he wasn't  
11 formally instructed, he was in the acting position.

12 Can you explain what you mean by untidy, was there a failure to  
13 put a resolution to council to appoint him as acting  
14 general manager, what occurred?---I believe the procedure  
15 is that policy is he is the acting general manager in  
16 times when the general manager is on leave or is  
17 unavailable to do the possession. Because of the way the  
18 general manager disappeared from the workplace, we didn't  
19 know her status, whether she was on leave or not, and I  
20 believe the director of corporate services was then in the  
21 poor disposition of not knowing if he was acting or not  
22 acting and council didn't give him any guidance on that.

23 In respect of your statement that you weren't made aware of the  
24 circumstances why the general manager was on leave was  
25 that an issue between councillors and a lack of advice  
26 given to councillors by staff or by the mayor, or  
27 what?---The mayor didn't formally tell council what was  
28 going on.

29 Do you know why that was?---I believe it was a political  
30 reason.

31 Can you explain that?---The mayor was jockeying to sure his

1 position up to retain the mayorship.

2 There was an issue that arose in respect of disclosure of the  
3 general manager's claim, workers compensation claim. Can  
4 you give us your understanding of what occurred in respect  
5 of that?---The council meeting I was appointed there was a  
6 motion put to council that the mayor and deputy mayor  
7 investigate the legals regarding staff matters to general  
8 manager. I spent a couple - or I spent the rest of that  
9 day in the general manager's office until about 6 o'clock  
10 that night trying to ascertain what was actually going on.  
11 I had to do farm work next morning and I returned to that  
12 office at about 10 o'clock the Wednesday, and I think I  
13 was there to mid afternoon trying to ascertain - and it  
14 turned out there was three legal cases and a couple of - I  
15 can't think of the term - to do with disclosure of  
16 information claims.

17 Was it a privacy - - -?---Privacy things, and they were all  
18 running and I was talking to three different legal firms  
19 and it just became a blur, but I informed the council what  
20 I'd been doing, and then I got an offer to attend a  
21 conference in Melbourne with Maddocks representing council  
22 and myself, and the general manager and her legal people.

23 Rather than pursue it just now, prior to you becoming mayor you  
24 as a councillor had no understanding of all of those  
25 issues - - -?---I was - I was aware that there was  
26 something there, but I did not know the detail or the  
27 volume of it.

28 So this, one assumes, Councillor Weyrich is the then mayor  
29 would have had knowledge of that?---Yes.

30 And that wasn't communicated down to you?---I was aware that he  
31 appointed Maddocks to advise him, but that's as much as I

1           knew.

2   So you weren't aware that - there seems to have been a general  
3           awareness that there was a WorkCover claim?---Yes.  
4   For workers compensation?---That we did not know the details  
5           of.

6   Were you aware that there were privacy claims?---Not before it,  
7           until after I became mayor.

8   Would it have assisted you as a councillor before you were  
9           mayor to have known that and to have understood  
10          that?---I'm weighing this up very carefully.  If council  
11          is of good will, if we were all of good will, possibly,  
12          yes, but in the environment we were in, informing the  
13          council generally was like taking a four page ad out in  
14          the paper.

15   So we come back to the question of leaks?---Yes.

16   And so we have a situation where there was clearly a leak to  
17          the Riverina Herald in respect of the general manager's  
18          compensation claim?---I can't recall it.  There was lots  
19          of leaks to the paper.  I can't recall whether there was  
20          one to do with a compensation claim, but one was there was  
21          a statement that if the general manager is adversely  
22          forced out of a job that she - we'd be open to a million  
23          dollar lawsuit.

24   That's the headline, I recall that.  There was potentially a  
25          million dollar - - -?---It was - it was just an off the  
26          cuff statement that should never have been made and it  
27          should never have leaked to the press.

28   We also have the leaking of the Janice Macleay report?---Yes.  
29   Now I think subsequently there was a concern that you had that  
30          the statements given - - -?---The notes.  
31   - - - to Janice Macleay, or her notes, were also potentially

1           being leaked?---They were leaked.

2   And of course the net result of the leaking of the Janice

3           Macleay report was adverse to Councillors Mackenzie, Moon,

4           Campbell, and of course the former councillor

5           Mr Burke?---Yes.

6   Who in your view gained benefit from that?---I have reason to

7           believe that the former mayor leaked the document.

8   Council has a policy that relates to contact with the media, it

9           has a media policy, and that emphasises the nature of

10          stories or information?---Political stories should be

11          released by the mayor, operation stories by the general

12          manager.

13   And that gives some control and its purpose was to put council

14          in a good light?---Yes.

15   If one has a different view is it appropriate that they express

16          their personal opinion?---A councillor should have the

17          ability to express their views, but they should not

18          undermine - in expressing those views use that to

19          undermine the direction council's going.

20   Council's media and public relations policy says in point 5.3:

21          "Councillors may provide media comment provided they

22          preface such comments with a statement that the comments

23          are their personal opinion and does not" - which is

24          probably incorrect - "do not represent the official

25          position of the council"?---Yes.

26   That's the constraint?---Yes.   When they make a comment it's

27          their personal comment, and they make that very plain.

28   Have you in your role as mayor had much contact with the

29          media?---I have tried to only release good news stories to

30          the media, and in my short time in this position there has

31          not been much good news to release.   The general manager

1 and I sought an interview with the Riverina Herald about  
2 the publishing of every bad news story going around and  
3 they said if someone gives us a story we'll run with it,  
4 and we said, well what about factual truth in your  
5 stories, and he said if it's give to us we'll run it. So  
6 the general manager and I gave an undertaking to the  
7 Riverina Herald, which is the only media we did visit,  
8 that we supply them regularly with good news stories, but  
9 like I said there have not been many good news stories.

10 COMMISSIONER: What about before you were mayor, did you have  
11 any contact?---Well, just prior to the mayoral election we  
12 successfully completed to removal of all timber bridges  
13 from the shire and replaced them with concrete bridges,  
14 and I think it was about a month before the September we  
15 opened the last of those bridges. It got nothing in the  
16 media.

17 So for that type of thing only - - -?---Yes.

18 You're saying something of good news story?---Yeah.

19 It was a big thing in the - - -?---Yes, it was - it was nearly  
20 a million and a half dollars worth of bridge.

21 MR BROAD: Timber bridges have been the bane of councils for  
22 years?---Yes. It was - it was a big news - - -

23 COMMISSIONER: Yes, it was a big deal.

24 MR BROAD: So you tend to concentrate on the Riverina  
25 Herald?---That's - that's the main media outlet. The PT  
26 often picks stories up from the Riv Herald, so - and the  
27 local radio station sometimes runs an article out of the  
28 papers.

29 So there's the Pastoral Times of course which is centred on  
30 Deniliquin, and of course the council's boundary  
31 effectively surround Deniliquin, and then you've got

1 otherwise really I suppose local radio ABC?---Yeah.

2 In respect of leaks have you ever leaked anything to the  
3 media?---No.

4 I asked earlier about Deep Creek as an issue and it's a matter  
5 which involved a complaint against councillors and it's a  
6 matter which has come back to council for determination.  
7 What do you understand the issues of Deep Creek  
8 are?---This is a long and drawn out saga, but the upshot  
9 of it was Murray Shire was in a position that they had to  
10 pump out houseboats at Deep Creek, and the facility that  
11 they were disposing left effluent to become unavailable.  
12 So while that issue was being resolved as a temporary  
13 measure they stuck a plastic rainwater tank on the bank of  
14 the river to pump into, which was to be pumped out on as  
15 an need case. Yes, that's it.

16 COMMISSIONER: So that was a temporary - - -?---It was a  
17 temporary thing, it was supposed to be short term, but the  
18 case turned out it was not short term, and the plastic  
19 tank was not (1) secure, (2) compliant, and there was a  
20 few problems.

21 All the problems?---But if it had only been a month or so which  
22 was when they first put it there it would have been  
23 adequate, but it turned into it was years.

24 MR BROAD: So in respect of the answer you have just given  
25 you're really talking about the issue that involved the  
26 particular tank?---The council was in a liable position if  
27 something happened.

28 COMMISSIONER: So just stop for a sec, prior to the tank you  
29 mentioned - what was there before the tank? That was part  
30 of the original approval which became part of the court  
31 case?---When the marina went in they had to have disposal

1 and they put an off-river disposal facility, and then  
2 another developer came along and they changed it from a  
3 pondage to a factory effluent treating system. Due to  
4 reasons beyond council's control that ceased to be an  
5 available option.

6 For whatever reason that was and then this became - then that  
7 became the temporary solution?---That became the temporary  
8 solution. When it became a long term problem a more  
9 permanent solution should have been found, and Councillor  
10 Mackenzie was right to raise the issue, but I believe he  
11 did it in a way that was detrimental to council's - - -  
12 Interest?---Interest is the word, in view of his own interests.

13 MR BROAD: I have got some photographs of the actual tank and I  
14 will show them to you. Essentially what you have is what  
15 appears to be a rainwater tank adjacent to the river with  
16 a drain that is facing towards the river, and there  
17 doesn't appear to be any protection - - -?---No bundage.  
18 No bundage and no protection about anyone gaining access to it.  
19 Ultimately the tank was moved to some distance  
20 away?---Yes.

21 I have got some photographs of it here and I will show you  
22 those?---Very recent photos because that's only just been  
23 completed.

24 COMMISSIONER: Is that on council land?---It's on a road  
25 reserve.

26 MR BROAD: And that shows that there is a bund around the  
27 tank?---Yes.

28 And so if there was an escape of the sewerage, which I  
29 understand is untreated?---That's correct.

30 That would protect it?---It'd stop it getting into the  
31 environment, yes.

1 And it's also, I assume, a good distance from the  
2 river?---Well, it's several hundred metres from the river.  
3 And is the natural drainage towards the river to your  
4 knowledge?---I can't comment with any certainty which way  
5 the river - the land runs that way, but generally the  
6 Murray River is a levied river, so the ground closest to  
7 the river is generally higher than the surrounding land.  
8 As at February 2015 there was some legal proceedings involving  
9 the council that affected the Deep Creek Marina and the  
10 sewerage facilities.

11 COMMISSIONER: Just before you do that, do you remember or have  
12 any idea roughly when that would have been put in, that  
13 temporary one? I'm just getting a timeline?---I'd be  
14 guessing.

15 But I mean this one is now finished, two years ago, three  
16 years, I mean even just in a broad sort of - - -?---The  
17 new one is completed only months ago.

18 Yes. So the other one had that been in position for, what, at  
19 least a year or at least two years?---Several years.

20 So that's there for several years. Did the court proceedings  
21 then come along that instigate for the new  
22 ones - - -?---The court proceedings - - -

23 I am sorry, do you remember when they started, that's probably  
24 a better question?---The court proceedings - Deep Creek  
25 has been one long - - -

26 Yes, I gather - - -?---Series of court cases.

27 Yes, there's a whole lot of court cases, but the most recent  
28 one the asserted negligence of the council?---That's - if  
29 it's resolved it's recent.

30 MR BROAD: In respect of the tank on 15 September 2015 council  
31 resolved that the wastewater tank replacement be endorsed

1 by council. I think that's the operative  
2 resolution?---Yes.

3 And I think, if I can find it quickly, you received a report  
4 back in about November to the effect that that had then  
5 been undertaken, November 2015?---So September's the  
6 resolution, is it? Yep.

7 Now going backwards to February of 2015 there was a report to  
8 council about the litigation?---Yes.

9 And that was a confidential report and it outlined the nature  
10 of the litigation?---It didn't go into the details, it  
11 just said that the proceedings - we were also verbally  
12 informed to not talk to any of the people at Deep Creek.  
13 You were verbally informed not to talk to anyone at Deep  
14 Creek?---Yes.

15 Why was that? Who informed you first?---I can't remember if it  
16 was the general manager or the director of - - -  
17 One of them, either the general manager or - - -?---It  
18 was - - -

19 Yes?---To protect council's legal position.

20 As we discussed yesterday there are two roles that a councillor  
21 has. One of course if the governance role, one is the  
22 role as an elected person. Leaving aside the risk of some  
23 admission being made in respect of litigation would there  
24 be any other reason not to go and view the tank?---A  
25 councillor would be leaving themselves open for other writ  
26 problems or issues. The direct course of action I believe  
27 would be to inform the staff that this issue has been  
28 raised with them and to either visit the site and inspect  
29 it or ask a report to be prepared on - on the issue.

30 In respect of Deep Creek I think there was an initial visit by  
31 Councillor Mackenzie and then subsequently he was

1 accompanied by Councillor Campbell, Councillor Moon and I  
2 think Councillor Burke as he then was?---Yes.

3 There were a number of emails that circulated in respect of  
4 that visit. Were you copied into any of those emails?---I  
5 received some of them, and we also had a public meeting at  
6 Bunaloo where the issue was also raised.

7 And at the meeting at Bunaloo I think Councillor Mackenzie  
8 indicated that he had a question about the Deep Creek  
9 Marina and there was a discussion between he, Councillor  
10 Mackenzie, and Mr Arkinstall?---I believe that's correct.

11 Have you seen any statement by Mr Arkinstall in respect of that  
12 matter?---I'm just trying to remember whether it was just  
13 a conversation or whether I actually saw a document. I  
14 can't recall a document, but I can remember conversations  
15 about it.

16 There was some advice given from council's  
17 solicitors - - -?---The director of environmental services  
18 sent an email explicitly asking us, directing us to not  
19 proceed with any visit out there.

20 I will just show you an email that was sent from that director  
21 to Councillor Mackenzie. I'm not sure whether you were  
22 copied in on that. It's dated 18 March and it was sent at  
23 3.27 pm?---I think we were all CC'd in on that one. I  
24 believe so.

25 I will show you another email which is dated 16 March 2015 sent  
26 at 12 noon from Matthew Rogers of Kell Moore Solicitors to  
27 Mr Arkinstall - sorry, the general manager, Michael Downe,  
28 who I understand is another solicitor in the  
29 proceedings?---That refers to a court case.

30 Yes. Do you recall seeing that?---I can't recall seeing it, so  
31 I can't - I won't comment to say I was CC'd in or not.

1 So in respect of the previous email that I referred you to that  
2 was the one of 18 March. You were aware that any contact  
3 was being perceived by staff as serious?---Yes.

4 And could possibly involve a loss of insurance and could  
5 possibly involve a surcharge being applied to a  
6 councillor?---Yes.

7 And that's a very serious thing?---Any action that portrays  
8 council in a poor light or leaves them open for a loss is  
9 very serious.

10 COMMISSIONER: Can I just come back for a second; when did you  
11 decide - you might assist with - is this what you referred  
12 to before, Mr Broad, about the temporary tank, when did  
13 the council decide to move that?

14 MR BROAD: The 15 September.

15 COMMISSIONER: Of?

16 MR BROAD: 2015.

17 COMMISSIONER: So that was a specific resolution. All right.  
18 Thank you.

19 MR BROAD: On 18 March there was a further email from  
20 Mr Arkinstall which was sent at 3.37 to all councillors,  
21 and I will just show you that email too?---Yes.

22 Do you recall seeing that?---Yes.

23 Again subsequently there was an email sent by Councillor  
24 Mackenzie on 18 March at 3.37 pm. I will show you that  
25 and I will ask you if you recall seeing that?---I'm fairly  
26 sure I've seen that. I don't know if it was emailed to me  
27 directly or I was shown a copy of it.

28 I'm sorry to be bobbing backwards here and over to you, but I  
29 think I can almost complete my trips across the room. On  
30 18 March 2015 at 4.06 pm Councillor Mackenzie sent a  
31 further email to Mr Arkinstall, and I'll ask you if you

1 recall seeing that?---Yes. Yes, I have seen that.  
2 The effect of those latter emails is that Councillor Mackenzie  
3 was putting forward a proposition that he was concerned  
4 about the potential pollution of the river?---I believe he  
5 was doing that.  
6 And he was reacting to the approach being taken by council  
7 staff to that issue?---I believe the way he was going  
8 about it was counterproductive to get the situation  
9 resolved quickly.  
10 COMMISSIONER: What were you actually being told by the staff  
11 at that time about the issue, about the pollution issue as  
12 opposed to the court issue?---The - - -  
13 Or potential - - -?---The history of it was a solution devised  
14 by the engineer - - -  
15 The temporary one?---The temporary one, and then because of the  
16 environmental risks associated with it, it was handed to  
17 Simon to resolve, and he had to gather information and  
18 work out a solution, and it would have been better to work  
19 with the staff to come rapidly to a conclusion instead of  
20 being antagonistic towards staff.  
21 In this period were the staff reporting back or telling you  
22 what they were doing in relation to finding a solution; I  
23 mean what sort of period are we in?---Well obviously it  
24 wasn't quick enough because it was first raised in March  
25 and there wasn't a resolution until September, but the  
26 staff were keeping us informed. The first temporary  
27 measure they announced to make it safe was to put bundage  
28 around the existing tank. I don't know - I can't recall  
29 if that ever occurred or not.  
30 Well, assume it doesn't matter and assume it didn't, in the end  
31 there was a different solution?---And I think because none

1 of the land out there is council's we had to find a more  
2 permanent solution, so the engineers had to come up with  
3 an engineering solution and then we had to get - - -

4 In the end they found a road reserve and they did what they  
5 did?---Yes, and then they had arranged to have a pipe to  
6 get it to that road reserve. So it would have taken a  
7 time - - -

8 Isn't it over private land or is it all - do you know if it's  
9 private?---It's - - -

10 Because it's got a fence and the river up to - it's got to  
11 be - - -?---There is a - I'm not even sure if there's  
12 Crown land immediately joining the river, but there's no  
13 council land.

14 So it's got to be pumped from the river up to the tank and then  
15 the tank gets emptied by council or disposed of - - -?---A  
16 correct.

17 Correct?. Yes.

18 MR BROAD: Now it appears ultimately that the matter came to  
19 the notice of the environmental planning authority -  
20 sorry, the Environment Protection Authority, and that  
21 there was some interplay that occurred in relation to  
22 possible pollutions or risk?---My understanding was that  
23 the EPA were already aware of the tank, but I believe that  
24 they thought it was a temporary measure and there was no  
25 formal documentation, it slipped through the - slipped  
26 through the keeper, and instead of being temporary it  
27 became semi permanent until the issue was then raised by  
28 Councillor Mackenzie, but I believe he reported - instead  
29 of reporting it to council staff he reported, I believe  
30 reported it directly to the EPA.

31 It had reported his concerns to council staff quite clearly in

1 his emails to them, hadn't he; as at 18 March he had  
2 clearly enunciated a concern of pollution risk?---Yes.  
3 From what we've heard this is an issue about a pollution risk.  
4 It's an issue that is surrounded by litigation?---Yes.  
5 Was it a planning matter?---Possibly it was one of those ones  
6 where everything overlapped, it was a governance matter,  
7 it was a political matter, and it was an engineering  
8 matter.  
9 Perhaps I should try and make myself more clear. In the sense  
10 - when I say a planning matter to your knowledge was there  
11 a current planning application before council for its  
12 consideration?---Not that I'm aware of, no.  
13 Now, one of the issues that was raised was that of a policy  
14 that required a member of staff to attend site visits with  
15 councillors?---The advice we were given is if a developer  
16 approaches us for the protection of counsel and also the  
17 protection of the councillor that they don't meet with  
18 developers one on one, they have third parties, preferably  
19 staff, in attendance in those meetings.  
20 As a keeper?---Just to more or less verified nothing underhand  
21 happens, and also to prove that nothing underhand has  
22 happened.  
23 You're talking in respect of the developer, and I assume you're  
24 talking in respect of the time preceding the determination  
25 of a developer application?---That's correct.  
26 So we try to isolate that. That doesn't appear to be the case  
27 here?---I can't recall if there was a planning matter on  
28 the thing, but there was a legal matter, and the same  
29 implications apply.  
30 The concern was I think that one or more of the councillors  
31 might make some form of admission for the purposes of the

1 litigation?---I believe that's what we were instructed.  
2 Now, that policy, have you ever seen that policy in a written  
3 form?---Not that I can recall, but it's always - every  
4 training things, induction, that has been one more thing  
5 that we're informed.

6 COMMISSIONER: In some respects the litigation - just back on  
7 the Deep Creek - the court proceedings and the concern  
8 about the temporary tank just happened - I mean it might  
9 have come up one or the other, but they're not related in  
10 any way really. The court proceedings relate - I mean  
11 I've read them and I understand it's all relating to what  
12 happened in the past and Lot 16, it all changed and all  
13 that sort of stuff. This in a sense was something that  
14 just came along, here's a pollution issue, we better deal  
15 with that. Now it sort of might have been caught up in it  
16 in a way, but it wasn't really relevant to the court  
17 proceedings, it's the bigger picture court proceedings.  
18 This is another little thing, this is something we should  
19 deal with?---That is correct, but the person who was  
20 inviting us, the councillors out there, was the - - -

21 Protagonist in the litigation?---Yes.

22 Yes, okay.

23 MR BROAD: Now I'm just quickly trying to find it, but that was  
24 the subject of a conduct complaint which came back to  
25 council, it was dealt with by council?---Possibly, I can't  
26 recall. There's just - there's been that many.

27 If you allow me again - - -?---If you explain the details a bit  
28 more about what the finding was I might be able to  
29 remember.

30 Let me just find the report and I'll go through that with you.

31 The conduct report is dated 8 July 2015 and I'll show that

1 to you so that you can be aware of it. Now it's a report  
2 of JBSA. The one I'm showing you relates to Councillor  
3 Campbell. As I understand it there were collateral  
4 reports in respect to the other councillors. Do you  
5 recall seeing this report?---Now I've actually visibly  
6 seen - I've seen portions of it. I can't say I've seen it  
7 in its entirety.

8 It deals with issues including use of and security of  
9 confidential information, obligations of councillors,  
10 inappropriate interactions, use of council information.  
11 Can I ask you to read through - particularly p.29?---Yes.  
12 Through to 41. I'm sorry to put you through that process, but  
13 there is some importance to it. I won't ask you to turn  
14 to this, but at p.9 of the report in Part 4.1 the reviewer  
15 quite correctly says, "The standard of proof in  
16 investigations such as these is on the balance of  
17 probabilities. In the case of *Briginshaw v Briginshaw*" -  
18 there's a citation - sorry the case of *Briginshaw* - "is  
19 generally regarded as authority for the proposition that  
20 if a finding on balance of probabilities is likely to  
21 reduce grave consequences then the evidence should be of  
22 high probative value." So that's the approach to be  
23 taken. If I can turn to p.29 there's consideration of the  
24 first allegation of breaching the responsibilities of a  
25 councillor in discussing with third parties a matter which  
26 had been brought to council in a confidential report and  
27 was clearly the subject of ongoing litigation. So that  
28 was the first of the allegations. If I can take you over  
29 after consideration of all the evidence to p.33, and if  
30 you go to the third last paragraph which said, "The  
31 meeting was clearly held at Deep Creek to discuss the

1 sewerage plant. It was held over a period of some hours.  
2 There were third parties including like parties to the  
3 litigation present. The Supreme Court action includes a  
4 number of claims related to the sewerage plant." Then  
5 there's the conclusion: "Therefore in our view it is  
6 highly unlikely that matters related to the litigation and  
7 brought to a confidential meeting of council could or  
8 would have been avoided." So what I'm suggesting to you  
9 is that is not evidence, it's speculation. Would you  
10 agree with that?---Yes, I would agree with that.

11 If I can then take you to the last paragraph which reads, "We  
12 believe that meeting with third parties when such a  
13 meeting was clearly not sanctioned by council, the subject  
14 of a confidential briefing of council and matters which  
15 are clearly the subject of litigation, constitutes a  
16 breach." Again can I suggest there was no evidence to  
17 assist the reviewer to come to that conclusion?---That's  
18 possibly correct.

19 Now, we have discussed whether or not this was a developer  
20 decision and we seem to be in a position where it doesn't  
21 appear to be a development decision that was being  
22 discussed, rather than litigation and potentially a health  
23 risk?---Yes.

24 And so we would have an issue on p.34 with the second last  
25 paragraph which refers to development decision. More  
26 generally what there appears to be a complete lack of is  
27 any evidence of what was discussed between the councillors  
28 and whoever was present at Deep Creek. So can I suggest  
29 to you that the opening paragraph on p.36 which states,  
30 "Now because of the actions of Councillor Campbell  
31 breached the responsibilities of a councillor by behaving

1 in a manner that could well have brought or is likely to  
2 bring Murray Council into disrepute", may not have  
3 evidence supporting that view.

4 COMMISSIONER: An asserted breach of the code is really  
5 relating to a different issue. I know it's a meeting, but  
6 it's about planning decisions as opposed to something  
7 different. I know the principle may be the same, but it's  
8 not breach of that position, of the code. We appreciate  
9 you didn't write this report, we're just asking for your  
10 reflection?---At the time I took the report on face value.  
11 In my view after reading this dissection of the report that  
12 a wise person still would of not put themselves in a  
13 position where there may be suggestions of impropriety,  
14 and we'd quite often in all our training (indistinct) if  
15 there's any possible suggestion that the public perceive  
16 that there's an impropriety don't go there.

17 MR BROAD: In fairness I haven't taken you to other findings in  
18 the report. Your last statement really is that a wise  
19 person doesn't place themselves in a position where  
20 compromise can arise?---That's correct.

21 And that's a different thing to a breach of the Code of  
22 Conduct?---Well, (indistinct) a moral issue versus a legal  
23 issues, yes, you're correct.

24 I am not saying that in respect of Deep Creek that it's purely  
25 a moral issue, what I'm saying is leaving Deep Creek aside  
26 the mere fact that you should behave so as not to  
27 compromise doesn't necessarily of itself - - -?---Is a  
28 breach.

29 - - - give rise to a breach. I suppose what I've opened up in  
30 that last line of questioning is how you as a councillor  
31 deal with conduct reports, how carefully do you consider

1           them?---Usually I read them at least twice and I don't  
2           take much comfort in the term "in all probability an  
3           offence occurred", but that's the standard that is used  
4           and I believe the reviewers are better qualified than I  
5           am. So generally I'd adhere to the recommendations, and  
6           the only time we didn't adhere to the recommendation we  
7           got chastised by the Office of Local Government with - - -

8   COMMISSIONER: That was in respect I think of the apology of  
9           Councillor Mackenzie. I'm not sure, whether it should be  
10          apology - - -?---A public apology versus a council  
11          apology.

12   Yes.

13   MR BROAD: I will show you the report in relation to another  
14          matter. This is a matter that revolves around Councillor  
15          Campbell's questions over the mayor's credit cards,  
16          procedural term as mayor. That is a matter which did come  
17          back to council as a report and it was dealt with on  
18          19 October 2015. Now in respect of this matter this is -  
19          I don't know whether you recall this matter, it relates to  
20          a council meeting on 27 July 2015, and the allegations are  
21          set out on p.4 under No.2?---Yes.

22   Did you as a councillor regard the questions being asked, or  
23          the comments made by Councillor Campbell as a serious  
24          matter?---I recall that it was - I'm trying to get the  
25          right wording - the issue itself was not serious, but the  
26          vein and the tone of voice it was put in was accusatory,  
27          but there was underhandedness on the expenses of the  
28          mayor.

29   So in the manner that it was said it was demeaning?---Well I  
30          would have been more accusatory in that the mayor was  
31          using his credit card for personal reasons and the staff

1           were covering it up.

2   In our discussions about behaviour at meetings that sort of

3           issue didn't arise from the evidence you gave. Is there

4           an issue in council meetings about the demeanour of

5           councillors, about the way they speak?---Yes.

6   Can you explain it?---There is more than one language spoken

7           around a council table. There's body language, tone of

8           voice and how people are formally addressed, and quite

9           often councillors addressing fellow councillors is in a

10          less than respectful fashion.

11   And this is in effect all councillors?---I would say all

12          councillors occasionally do it, but certain councillors do

13          it far more frequently.

14   Are your meetings fiery?---Can be.

15   In respect of what issues?---I can't be specific, there's no

16          one issue that stands out that causes a fiery meeting.

17   The planning issues cause a division of views?---It depends

18          what the planning issue, but in most cases councillors on

19          planning issues do show total independence, but not all

20          planning issues.

21   And there's some councillors passionate about certain aspects

22          of planning, whether it be preservation of trees or

23          whatever it might be?---The main issue that seems to cause

24          contention is traffic issues.

25   In respect of budget matters are budget matters

26          contentious?---Not particularly so.

27   Personnel issues?---What was that one?

28   Personnel issues?---Personnel issues can be quite contentious.

29   What other issues that you can think of?---The allocation of

30          speaking time at the table can be quite fiery at times.

31   Is that because councillors want to have the opportunity of

1 expressing their views?---Of course some councillors  
2 believe it's their God given right to speak as often as  
3 and as long as they want.

4 So do you move into committee of the whole to allow more  
5 freedom in debate?---If there's a resolution - not a  
6 resolution, a recommendation on the table and a councillor  
7 or the mayor deems that this warrants a longer  
8 conversation councillors are given an opportunity to speak  
9 more freely, but generally speaking the meeting procedure  
10 is not being adhered to and debate can get really lost, as  
11 in it rambles on, multiple speaking opportunities to one  
12 or more councillors - - -

13 COMMISSIONER: So that's a chairman issue which - - -?---That's  
14 a chairman issue.

15 MR BROAD: Can I move to a different issue, and that is the  
16 Macleay report, and can I explore your views in respect of  
17 that report?---My views on the Macleay report was not so  
18 much what the report was about, but what became of the  
19 report.

20 That is was leaked?---That was leaked and there was two parts  
21 of the Macleay report. There was the report itself, and  
22 then there were notes and the notes were even leaked.

23 I think that came later in the piece, didn't it?---Yes.

24 You became aware of that and I think you warned - I don't know  
25 whether it was the general manager or a councillor, I  
26 forget which.

27 COMMISSIONER: Who had the notes?---The only person privy to  
28 the notes was the then mayor.

29 MR BROAD: In respect of the release of the report the release,  
30 I would suggest to you, was detrimental to two classes of  
31 persons. One of course was the general manager?---Yes.

1 And the other was the councillors adversely named?---Yes.  
2 More than that of course it was an embarrassment for the  
3 council in the sense of the councillors as a whole?---The  
4 whole saga left council in a poor light and led to even  
5 worse relations between councillors and councillors and  
6 staff.  
7 So it was as it were fuel to the fire?---Yes.  
8 Can I now go to the general manager's performance review, and  
9 you will recall yesterday I asked a number of questions of  
10 Mr Hurst in relation to that process?---Yes.  
11 There is an expectation of course that the review takes place  
12 within one year - - -?---Yes.  
13 - - - of the appointment of the general manager. That clearly  
14 didn't take place?---The review was initiated between the  
15 mayor and the general manager. The general manager  
16 prepared a report and then council then resolves how to  
17 proceed with it.  
18 Had that commenced prior to your election as mayor?---No.  
19 So it was something that arose between yourself and the general  
20 manager?---Not immediately because the general manager was  
21 not then in the office. It arose when she was back at  
22 work full-time, and I said that the review was overdue and  
23 I wasn't sure how to proceed with it, but I said it was a  
24 priority that - that it be done.  
25 I think there had been some agitation by Councillor Moon in  
26 respect of that issue?---There was a meeting called by  
27 some of the councillors. The then mayor advised that that  
28 meeting go ahead, but the meeting went ahead without he  
29 being in attendance and the general manager was in  
30 attendance and it turned into a de facto witch hunt  
31 performance review, which as soon as it turned that way

1 the general manager left and the meeting didn't last long  
2 after that.

3 I wasn't seeking to refer to that meeting in November 2014,  
4 what I was wanting to refer to is an email sent by  
5 Councillor Moon on 5 October 2015, and I will show you  
6 that document?---Sorry, what was that one again.

7 It's an email sent from Councillor Moon relating to the general  
8 manager's performance review. I think I may have the  
9 wrong date. I may have to come back to that. I may have  
10 the wrong reference to that. I will come back to that if  
11 it becomes relevant. Did the GM approach you in respect  
12 of her performance review, or did you initiate that  
13 process?---In the dialogue in drawing up the return to  
14 work the performance review was mentioned, but there was  
15 no - no further discussion at that stage, but when she was  
16 back at work I informed her of trying to work towards  
17 solution to resolve it because did the performance review  
18 cover just the first 12 months or do we carry out a  
19 performance review and cover the 18 months that she  
20 already worked, and it was - I was trying to work through  
21 it, but I informed her that I was trying to address the  
22 situation.

23 And she returned on 12 October 2015. I think that's right.

24 You were probably not there and not able to recall?---And  
25 I did attend a workshop in Sydney and I sought advice at  
26 this workshop, Mayoral Mentors Program, and they say it's  
27 (indistinct) to possible resolutions to the situation.

28 Now, in respect of the process of the review Mark Anderson from  
29 Local Government New South Wales was appointed?---Yes, the  
30 last meeting in December.

31 And he appears to have undertaken that review based on the

1 general manager's assessment of her performance?---Yes,  
2 and as far as I'm aware there was no council input. At  
3 the meeting where we resolved that Mark Anderson do the  
4 job councillors were asked to put submissions into -  
5 written submissions into the review, and as far as I'm  
6 aware there was no written assessments tendered.  
7 So as part of that process there was a request?---There was a  
8 request. It was only a verbal request, it was not a  
9 written request.  
10 And that was in confidential session?---It must have - yes, it  
11 was.  
12 Who made that request?---I made the request.  
13 Had you received any legal advice about that process before  
14 putting that matter to the council meeting?---Not - not  
15 really.  
16 But verbal advice?---Verbal.  
17 And I assume from council's solicitor?---Not from Kell Moore.  
18 I approached the Office of Local Government and asked  
19 their legal team, and I approached the Local Government  
20 New South Wales and spoke to their legal people.  
21 The ultimate upshot was that the review was conducted  
22 independently?---Totally independent of council.  
23 It appears that no councillor made any submission in respect of  
24 it?---Not that I'm aware of.  
25 What was your purpose in having a sole external reviewer  
26 undertake the review?---The - I'm not sure for how long,  
27 but the usual in Greg Murdoch's reign as general manager  
28 the review committee consisted of the mayor, the deputy  
29 mayor - I can't remember if it was one or two other  
30 councillors - the general manager and the general  
31 manager's advocate, who in Greg Murdoch's day was David

1 Goh. The reason I chose to go down the path of a totally  
2 independent review was the hostility by councillors  
3 against the general manager, which I believe was  
4 unwarranted, and I did not believe that she'd get a fair  
5 review. The reason I excluded myself, I could have a  
6 resolution that I did it, at that time there's been codes  
7 of conduct taken against me that I'm too friendly with the  
8 general manager, so I chose to - there's been no - as far  
9 as I'm aware there's been no findings on that code of  
10 conduct yet, I haven't been informed, and so for propriety  
11 reasons I thought I better exclude myself too.

12 Subsequent to the resolution being passed in relation to the  
13 Code of Conduct - sorry, the performance review,  
14 Councillor Campbell sought to lodge a rescission  
15 motion?---She may have.

16 Do you recall it?---I did receive a rescission motion, but the  
17 resolution had been enacted. I received - the resolution  
18 was on a Tuesday and I received the rescission motion, I  
19 believe it was on a Thursday that I received the  
20 rescission motion.

21 COMMISSIONER: Just before we go - to the meeting of 8 December  
22 when that resolution was passed you would have received a  
23 report. Was there a report or did you just report - in  
24 the resolution you went into confidential and then it says  
25 council appoint Mark Anderson. Was there a report?---It  
26 was an agenda item.

27 Of course. Yes?---I don't have my iPad - - -

28 Okay, we can forget that?---And I can't remember how much  
29 detail was in the last - the agenda item.

30 Okay.

31 MR BROAD: Now I think you responded to Councillor Campbell

1 saying that the resolution had already been acted  
2 on?---Yes.

3 And that would have the effect of preventing the rescission  
4 motion?---A rescission motion has to be received before  
5 the resolution is enacted on. Once it's enacted  
6 resolution can't be received.

7 Did you anticipate that there might be a rescission motion?---I  
8 was informed informally after the meeting that there may  
9 be a rescission motion.

10 And were your actions in contacting Mr Anderson designed to  
11 defeat that rescission motion?---Yes. I had not received  
12 a rescission motion. I'd been informed a rescission  
13 motions that ended up stalling the enactment of while  
14 people have waited for a rescission motion that hasn't -  
15 there was ample time - if they were of the belief a  
16 rescission motion should have been warranted they had  
17 ample time to draw it up, I believe.

18 Was there any suggestion that councillors other than the  
19 personality issues you've referred to were not competent  
20 to undertake a performance review of the general  
21 manager?---When the conversation first started on the  
22 review of the general manager at one meeting I made the  
23 statement that councillors have an undertaken of training.  
24 At that time I believe no such training had been held, and  
25 I've subsequently been told there was a training session  
26 in fact conducted by Mark Anderson, and I still can't  
27 recall ever meeting Mark Anderson. At the meeting that  
28 the resolution was actually carried that we appoint Mark  
29 Anderson he made a contrary statement that there are  
30 councillors with a vested interest - that's not the  
31 correct work, but that should not be on - and that's when

1 I also ruled myself out because I had these code of  
2 conduct against me. So two different meetings I said two  
3 different things, but the thrust of it was I did not want  
4 to say in a meeting and cause more fiery debate, for lack  
5 of a better term, by naming councillors that were openly  
6 antagonistic against the general manager that should not  
7 be on the review panel.

8 Did you assume that the performance review would take the form  
9 of a face to face meeting?---Between Mark Anderson or  
10 with - - -

11 Between as it were a round table meeting where the general  
12 manager would have been present?---That's - that is the  
13 general way that it's been historically done in Murray  
14 Shire, around a table.

15 COMMISSIONER: Who suggested Mark Anderson?---At the workshop  
16 in Sydney that I attended Gina McCafferty - - -

17 Yes, I think I know who you mean, yes?---The former mayor of  
18 North Sydney.

19 North Sydney, yes?---She was there in attendance and there was  
20 Van der Graaf and a few others - - -

21 That came out of that - - -?---That came out of that workshop.  
22 - - - that session?---And they said - I was informed there  
23 there's nothing in the Act that specified a member of  
24 council must be on the review panel.

25 So that was the issue I was getting to, because you said before  
26 you did it because you didn't think they'd get a fair  
27 hearing, and that's contrary to the guidelines, call them  
28 guidelines, for relaying the performance of the general  
29 manager's contract that talks about the committee and so  
30 forth, which you understood and knew because you'd been  
31 involved in it before. So that's what you were saying

1 before when you - is that what you talked to the Office of  
2 Local Government about also, or did you get that from that  
3 meeting?---That gave me the idea to pursue that avenue of  
4 going, and that's where I went to. When I got home I then  
5 rang both those - - -

6 Yes, conversations. So we are concerned about how it happened.  
7 You go to the workshop, get the idea, come back, check it  
8 out so to speak and then put the report to council?---Yes.  
9 At no stage I was informed that it was illegal or  
10 unlawful.

11 Yes. Okay, yes. So did you have any discussions with the  
12 general manager about that?---Not until I started working  
13 the idea through.

14 What does that mean?---I had a discussion that we have to have  
15 a performance review, which she agreed with, and then  
16 there was some discussion on the would it be for the 18  
17 months or would it be just for that first 12 months.  
18 There was - it was an unusual circumstances and some  
19 things had to be worked through.

20 And I think you said before that there was some discussion or  
21 some reference to that in her return to work. I mean was  
22 it really a side issue or a big issue or - - -?---It's not  
23 in the return to work. That was one of the things that  
24 was mentioned that when she returns to work we must get  
25 this performance review done.

26 All right.

27 MR BROAD: Can I take you to another topic and that is the  
28 agreement for the general manager to work on the Fit for  
29 the Future proposal from home in the period 12 April to  
30 30 June 2015. Can you give the inquiry your understanding  
31 of what occurred in relation to that arrangement?---My

1 understanding is the general manager was being undermined  
2 at every opportunity and face to face meetings with  
3 council were not in her best interest. The mayor of the  
4 day came with the idea that if we take her away from the  
5 workplace and she works on this document from home that  
6 council would get - would be in the best position to  
7 protect her wellbeing.

8 Would it have allowed for a cooling off period?---I can't speak  
9 for the two parties involved, but I believe it was thought  
10 to be a circuit breaker.

11 So it wasn't a matter where you were personally involved as a  
12 decision-maker?---The decision was informed to me by the  
13 mayor and I concurred with his decision at the time.

14 You talk about decisions being made by the mayor at the time  
15 and certainly it seems to be a bit of an issue as to the  
16 authority of a mayor to make decisions. In what  
17 circumstances do you regard the mayor as having power to  
18 make decisions that bind council?---The mayor has under  
19 the Office of Local Government Act, the Local Government  
20 Act, has very little more authority than a councillor.

21 COMMISSIONER: Has very more authority did you say?---Hardly  
22 any more authority.

23 Hardly any more. Sorry?---Sorry - - -

24 No, that's all right?---In emergency cases he can undertake to  
25 do certain activities if there's not time to call a  
26 council to make a decision, but that is very limited and  
27 (indistinct) communications that'd be a problematic use  
28 for exercising his power. The only real power a mayor has  
29 got above a councillor, and a councillor has got no power  
30 between council meetings, is when the mayor is delegated  
31 authority.

1 MR BROAD: Can I come to deal with the return to work agreement  
2 in relation to the general manager?---Which - Mark 1 or  
3 Mark 2?

4 I assume Mark 2?---The one between myself and the general  
5 manager?

6 In your role as mayor?---Yes.

7 COMMISSIONER: August 15 to 12 October is when she was away.

8 MR BROAD: Can you give us an outline of what happened?---I  
9 went to the conference with the general manager to find  
10 out what the position between council and the general  
11 manager was.

12 Now we are talking about the conference with the lawyers in  
13 Melbourne?---Yes.

14 COMMISSIONER: Actually just before you do that; the general  
15 manager had left on 31 August and you weren't the mayor at  
16 that point?---That's right.

17 What was your understanding as to why she had left in the first  
18 place?---I was unclear. She just was not at work. I  
19 didn't know if she was on sick leave, there was assertions  
20 I think printed in the paper that she was on sick leave,  
21 whether she was just on leave or whether she just pulled  
22 the pin and gone. It was unclear.

23 So she wasn't there, you become mayor and now we pick up the  
24 story?---Yes. At the conference she made an offer to  
25 council. Council's solicitor at that stage on this  
26 particular issue Maddocks - - -

27 Hang on, so you'd become the mayor, you then think about how  
28 we're going to get back to the - how did you get to the  
29 meeting, I mean who contacted who first?---Maddocks had  
30 been appointed by the former mayor regarding to the whole  
31 issue.

1 Industrial matters. Yes?---Maddocks contacted me to say that  
2 this conference was organised. Under a resolution of  
3 council all fact finding regarding the general manager or  
4 legal matters was to be shared with the deputy mayor. I  
5 expressed that opinion to Maddocks. They went away and  
6 they came back with - - -

7 So what resolution was that?---That the mayor and the deputy  
8 mayor investigate, and I can't remember the exact - - -

9 But this is a specific resolution?---A specific resolution,  
10 investigate - not act, investigate all legal matters.

11 Relating to the general manager, and this is a resolution of  
12 the council that was passed before or after you were  
13 mayor?---I think it was passed at the meeting of my  
14 election.

15 Okay, right. So back a step, at that meeting that resolution  
16 is passed, you become mayor. So at that point in time as  
17 the mayor you've got that resolution to deal with, which  
18 is to investigate with the deputy mayor re the GM?---Yes.

19 So then who contacts him - so after that you're saying the next  
20 thing was - - -?---I was contacted - I spent that evening,  
21 the bulk of the next day and portions of several days  
22 after that contacting - it turned out we had four privacy  
23 breaches. One was concluded I think from memory and three  
24 were still pending - - -

25 They were somehow or other related to the general manager  
26 also?---I can't recall if they were all to do with the  
27 general manager or - - -

28 All right, that doesn't matter?---But there was - - -

29 Then you get to, somehow or another you get to Maddocks, that  
30 they're involved somehow?---The director of corporate  
31 services informed me of all the players involved, that he

1           wasn't across all the details, rightfully so or legally  
2           so, that under the absolutely bizarre conditions at the  
3           time there was no one who knew where everything was and I  
4           was trying to get it all - - -  
5    Get your head around it, so to speak?---To get up to speed, get  
6           my head around it and it was quite daunting. One of the  
7           players we spoke to was the legal person from Maddocks,  
8           and then I got - I can't remember if it was an email or a  
9           phone call to say this conference was - - -  
10   So in what you're saying that sounds like it came from the  
11           GM?---The GM initiated this conference.  
12   That's what I was getting at. There's a new mayor, the GM is  
13           at home and says maybe I'll go back to Wagga, whatever she  
14           says, it doesn't matter, but that's how it happened?---So  
15           I was going to this conference with a view that a  
16           separation - - -  
17   She had effectively called the meeting?---She effectively  
18           called the meeting. I took the view that as she called  
19           the meeting it was her rules.  
20   Okay. I think that's where you got to, you've now got to the  
21           meeting. Who was there?---No, prior to the meeting - - -  
22   Yes, that's a good point, prior to the meeting any  
23           communication, any documentation?---I can't recall when I  
24           got the documentation. There was an offer - - -  
25   Before the meeting?---Before - it was prior to the meeting  
26           because I had discussed it with our legal people and they  
27           - they went through it, and I won't go into the  
28           detail - - -  
29   No. We will ask for that in due course, but your evidence is  
30           that there was some sort of proposal - - -?---There  
31           was - - -

1 - - - there was a purpose in the meeting and there was a  
2 proposal?---It was a proposal, our view it was excessive.  
3 I reported back to council that - I can't remember if it  
4 was to council or just the deputy mayor - but in the  
5 meantime I got information via our solicitors from the  
6 other party that the conference would not go ahead if that  
7 woman was in attendance.

8 MR BROAD: That's the words they used?---Yes.

9 COMMISSIONER: So that was the lawyers?---That came via the  
10 lawyers from the other party.

11 So just recap, got your proposal?---Got the proposal.

12 Talk and you think about, have whatever discussions, further  
13 contact with the lawyers, we're going to come to a meeting  
14 or we're talking about arrangements and that sort of  
15 thing, and in that discussion that's the context of that  
16 comment?---And then I was instructed to dictate to the  
17 other party that the meeting would not go ahead unless we  
18 accede - unless they acceded to - - -

19 So in effect the general manager through her solicitor said if  
20 Councillor Campbell's there there's no meeting?---Yes,  
21 that's correct.

22 MR BROAD: Was it going to be a face to face meeting?---The  
23 conference?

24 Yes?---It was - it was in her solicitor's office in Melbourne  
25 and I met with Maddocks in their office in Melbourne and  
26 we discussed how we were going to handle this interaction.  
27 We walked around to their office and they read the offer  
28 to us.

29 Was the GM there?---The GM was there.

30 And her lawyer?---And her lawyer and her husband.

31 COMMISSIONER: And you were there by yourself?---No, I was

1           there with Maddocks.

2   Sorry, by yourself in terms of the council and your lawyer of

3           course?---Yes. We adjourned to another office to discuss

4           it and we went back after - that was a long time - it

5           was - - -

6   I understand. Yes?---And we went back and said the offer was

7           way excessive. We did not put a counter offer, we just

8           said that offer is too much and I'll take it away to

9           consider it, and I didn't have the authority to - the

10          authority to act had not been given to me. It had been

11          given to the former mayor, but with that resolution the

12          deputy mayor being the investigation - - -

13   Just stop there, what did you say then; you had no authority to

14          act - - -?---No, I was unclear if I had authority to act,

15          because the former mayor had been given that

16          authority - - -

17   How had he been given it?---By resolution to council.

18   By that one on 17 September you're talking about?---I can't

19          remember the date of it, but he had a resolution that he

20          could act in legal matters regarding persons - - -

21   So someone has got a general resolution for that mayor?---Yes.

22   Right. Keep going. Yes?---Then the resolution in September

23          investigating legal matters was to be done in conjunction

24          with the deputy mayor, and I was unclear that that

25          overrode that previous resolution or not, so I did not

26          make any act. I brought the information back and

27          Councillor Campbell and Councillor Mackenzie were on

28          Councillor Campbell's patio on the day when I arrived back

29          in Moama. So I walked across the street to report to

30          Councillor Campbell per the resolution of keeping it

31          informed of the information - - -

1 So you told him what the offer was?---I didn't give them exact  
2 details, I just said it was way excessive and - - -  
3 No decision had been made?---And no decision had been made,  
4 and - - -  
5 What did they say?---I recall very little on that issue, but I  
6 waited in the driveway until Councillor Mackenzie had  
7 finished his discussion with Councillor Campbell, and then  
8 as he left he gave me a verbal barrage and left unhappy.  
9 I said very little, I just sort of sucked it up, and then  
10 had the conversation with Councillor Campbell about the  
11 general thrust of the conference, and then she gave me a  
12 serve of go light on Councillor Mackenzie because he's  
13 fragile, and I thought, well that's your opinion. There  
14 was a special meeting of council called where I was given  
15 the authority then to act in legal matters regarding  
16 personnel and in the to and fro of the emails no formal  
17 offer was made by my side to her side, but leaving the  
18 conference I made an aside as I was about to walk out the  
19 door, I just made the comment that, "I wish you all stood  
20 out with Murray Shire".  
21 Hang on, just go back a step. When was the resolution that  
22 gave you the authority for legal matters? So you'd come  
23 back from that meeting - - -?---It would have been by  
24 probably - - -  
25 MR BROAD: Can I interrupt. The meeting where you appear to  
26 have obtained joint authority appears to have been  
27 15 September 2015?---Yes, that'd be right.  
28 Do I assume it's more likely to be 6 October where you got sole  
29 authority?---My recollection was at a special meeting. It  
30 seemed to be we were meeting almost weekly. Instead of  
31 the fortnightly council meeting we seemed to be having

1 every week a special meeting between council meetings.  
2 I apologise, in fact I have looked at the minutes for  
3 29 September 2015 - - -?---Well that would be an  
4 extraordinary meeting or special meeting.  
5 And it's an express authorisation for the mayor to represent  
6 the council in legal representations relating to the  
7 general manager?---That's right.  
8 COMMISSIONER: And that's the resolution you're talking about.  
9 Yes. So there would have been a report for that or some  
10 mayoral minute?---It was a mayoral minute I think - - -  
11 But using - - -?---A verbal report. I didn't specify the exact  
12 claim, I just said it's way excessive and our legal people  
13 expressed that view and - - -  
14 So in that conference - sorry?---And it was also explained to  
15 us that whatever the case was we had no authority to  
16 accede to her conditions and demands because it exceeded  
17 the 38 weeks.  
18 This is a confidential session?---Yes.  
19 And why didn't you tell them what the details were, the  
20 council?---I expressed the view that the details were - I  
21 had no trust in council keeping - - -  
22 Keeping it quiet?---Keeping that sort of stuff out of the  
23 press. I gave them enough information to say that we  
24 shouldn't accede to these things and we couldn't accede to  
25 them anyway because it required ministerial consent, so it  
26 had to - it was beyond our authority anyway.  
27 Did any of the councillors ask for the details  
28 specifically?---Most probably, I can't recall.  
29 Okay.  
30 MR BROAD: What we seem to be discussing when you talk about  
31 the general manager's offer as being excessive, exceeding

1 the 38 weeks, appears to be a termination of her  
2 employment?---Yes.  
3 So that was the discussion at that stage as to whether the  
4 general manager would leave the employment of the  
5 council?---That was the thrust of it, and I was given - I  
6 was given authority to negotiate her termination.

7 COMMISSIONER: And that's what you understood by that  
8 resolution?---That's what I understood by that resolution.

9 MR BROAD: Now, in the course of your reporting did you  
10 indicate the issue about the expressed exclusion of  
11 Councillor Campbell?---I wasn't as blunt - I expressed  
12 that view but I wasn't as blunt as the actual - - -  
13 So you didn't simply say while I can go for a meeting  
14 Councillor Campbell would not be allowed to be  
15 present?---I think I expressed the view in the wordage  
16 that the conference would only go ahead if there was only  
17 I and the legal representative there. I didn't express  
18 the view that the conference would not go ahead if that  
19 woman was in attendance.

20 There was a joint authority given for both you and Councillor  
21 Campbell to undertake those negotiations on the 15th  
22 of - - -?---Not negotiations, finding what was out there  
23 legally.

24 The investigation - - -?---To investigate what legal - - -  
25 That's the resolution you were acting under at that  
26 point?---Yes.

27 That's right. I agree.

28 MR BROAD: Did you advise Councillor Campbell that there was to  
29 be a meeting in Melbourne?---I must have done because  
30 there was dialogue about her attendance at the meeting,  
31 whether she was to go or not.

1 So I assume then that you would have told her that she was  
2 expressly excluded?---Not in the blunt terms it was put to  
3 me.

4 COMMISSIONER: Did she know you were going to the  
5 meeting?---Yes, and that's when both Councillor Mackenzie  
6 and Councillor Campbell both said I must not meet with the  
7 general manager unless Councillor Campbell is there and I  
8 expressed there will be no meeting at all if that's the  
9 case.

10 You said that?---Yes.

11 MR BROAD: Now, in the period we're talking about here leading  
12 up to 29 September we're talking about a termination or a  
13 departure of the general manager. How did that then turn  
14 around to a return to work?---As I was leaving the  
15 conference on just a personal thing I just said, "I wish  
16 you were still our GM." That was it.

17 COMMISSIONER: So hang on, that's the one in Melbourne?---In  
18 Melbourne. And I think it was about seven days later I  
19 got an offer to negotiate a return to work.

20 That would have been before the meeting of 29 September?---My  
21 recollection - - -

22 I will give you the times. You went to Melbourne - when did  
23 you go to Melbourne?---The return to work offer came after  
24 that delegation authority was given to me. I was still -  
25 when that was given to me I was still under the  
26 understanding that I was negotiating an exit.

27 MR BROAD: So in that 29 September meeting after being in  
28 Melbourne you come back, you get that thing. At that  
29 meeting are you saying it was quite clear that the  
30 authority you were being given was to terminate the  
31 general manager?---The authority wasn't directed

1 specifically to say the legal action was to terminate, but  
2 when the authority was given to me the understanding was  
3 that was the way we were headed.

4 COMMISSIONER: Because I mean a council can terminate a general  
5 manager whenever they want so long as they pay the 38  
6 weeks?---In the normal course of things I believe that is  
7 correct.

8 I mean this is legally. Whether you do that, I don't know  
9 whether it's a good idea and all that sort of stuff is a  
10 different issue?---Then we run into what they call  
11 protected actions, which I'm unclear about but I believe  
12 it complicates the issue tremendously.

13 All right.

14 MR BROAD: I will try and come to that soon.

15 COMMISSIONER: I'm just getting some factual thing, I just want  
16 to understand that point that that's - - -?---Yes. I was  
17 - I'm aware that council can terminate a general manager  
18 at any time - - -

19 You walk out of the meeting 29 September thinking, well that's  
20 my task sort of thing?---Yeah.

21 And then a few days later, it doesn't matter exactly when, but  
22 after that time you get the offer, so it's a new offer,  
23 about a return to work, and how did that come?---It would  
24 have been an email from Maddocks.

25 From your own lawyer because no doubt their lawyers contacted  
26 your lawyers?---And that return to work was negotiated via  
27 Maddocks.

28 Hopefully we will explore that a little bit.

29 MR BROAD: And I assume you would have had to have given  
30 instructions in respect to the terms of that return to  
31 work?---Yes.

1 And I understand this has been reduced to writing and  
2 signed?---Yes.

3 Did you sign on behalf of council?---Yes.

4 Did that involve payment of any compensation to the general  
5 manager?---Yes.

6 Did you report the specifics of that agreement to a council  
7 meeting afterwards?---I reported that there was a return  
8 to work agreed to, and again because the terms of the  
9 return to work were confidential between the mayor and the  
10 general manager and it's binding on myself as mayor, not  
11 on the council, I did not report the specifics to council.

12 Did the return to work agreement that you signed anticipate  
13 that it would be the subject of a formal resolution of  
14 council ratifying the agreement?---In hindsight it should  
15 have been ratified by council, but I can't recall if that  
16 procedure was ever undertaken.

17 Do you know if council acted on that agreement in the sense of  
18 making payment of any of the money - - -?---I believe so.

19 In reading the various documents that have been provided to the  
20 inquiry it's clearly an issue of concern to some  
21 councillors that they're not aware of its terms?---I'm  
22 aware of that.

23 You have, as I understand it, not made it available to other  
24 councillors?---I've not made it available. One other  
25 councillor has their co-signatory on it more or less just  
26 witnessing the document, and a couple of other people also  
27 witnesses of it, but, no, the document hasn't been made  
28 available to council.

29 So the document was signed by you in Melbourne or in  
30 Mathoura?---I think I signed it in Moama.

31 And so there would be one other councillor potentially who has

1           seen it?---Yes.

2    You say some staff may have seen it?---I know some staff have

3           seen it.

4    In what sense, has it been provided to council as a council

5           record?---As far as I'm aware, no.

6    So the circumstances that some staff may have seen it are you

7           assuming the general manager and perhaps the counter

8           signatory?---There's another staff member a party to the

9           agreement.

10   I assume that's probably council's human resources manager or

11          someone of that ilk?---Someone of that ilk.

12   COMMISSIONER: Can you tell me what you - just go back to the

13          29 September meeting - you think your mandate if you like,

14          or whatever authority is to deal with the general manager

15          in the way we have discussed, but then where do you get

16          your mandate? I mean I just put it to you directly, where

17          do you get your authority to do what you did?---The

18          resolution doesn't dictate what legal action I take, and I

19          operated on the belief with legal advice this was the best

20          outcome for council.

21   And that's from Maddocks?---What was that?

22   From the people who were giving you advice at the time was

23          Maddocks?---Yes.

24   And they were giving you that legal advice on the basis of

25          having a discussion with you about the terms of that

26          resolution, I mean the day - - -?---I didn't have either

27          discussion leading up to the resolution, but I did inform

28          them that that resolution existed.

29   Did they have it?---Yeah, I believe I emailed them or had copy

30          emailed to them.

31   And did they give you any written advice?---They - - -

1 I mean in a formal way?---No, I didn't have a formal thing, but  
2 they were - they were - there was at least two drafts of  
3 the document.

4 Of the final document?---Of the final document.

5 Who prepared the first draft?---The first draft was prepared by  
6 the general manager.

7 And their legal team?---And their legal team. I was unhappy  
8 with some of it and - - -

9 You discussed that with Maddocks, your legal team?---And then -  
10 and then in discussion with Maddocks. They were unhappy  
11 with other bits of it and we - - -

12 In the usual way that those sort of agreements - - -?---Yeah,  
13 it was argy bargy - - -

14 Yes?---And it went back and forwards.

15 Yes, that's okay - - -?---Until we came to an agreement.

16 Until everybody says that's agreeable, let's sign it, so  
17 forth?---Yes.

18 So back to my question is you took advice and you thought that  
19 resolution was enough to do it?---Yes.

20 All right.

21 MR BROAD: In not providing the agreement to other councillors  
22 what were your concerns?---It was a confidential agreement  
23 because there's mention of the wellbeing of the general  
24 manager in it and we did not want that to become public  
25 gossip.

26 So you were concerned about privacy issues - - -?---Yes.

27 - - - relating to the general manager?---Yes.

28 Assuming that part was redacted out would the - - -?---Because  
29 it's agreement between two parties I have no problem with  
30 it, but you'd have to ask the other party if they'd be  
31 happy with - - -

1 COMMISSIONER: It's an agreement between the council really  
2 because you were the delegate of the council with the  
3 delegation so you say?---But the agreement is I have to  
4 perform, not council has to perform.

5 You as the mayor?---Yes.

6 MR BROAD: So I assume it had some protective clauses that are  
7 to protect the general manager?---Yes.

8 And they put personal responsibility on you?---The thrust of  
9 it, yes.

10 To the extent that it provided the payment it appears in  
11 reality that there were three parties; one was the general  
12 manager, one was the council who would be called upon to  
13 make a payment, and thirdly yourself because you took on  
14 personal responsibilities for the protection of the  
15 general manager?---That's correct.

16 The protection issues, they didn't extend outwards to  
17 councillors along to councillors and so forth?---The  
18 protection issues is I had to make sure that the code of  
19 conduct and the meeting practice guidelines were adhered  
20 to.

21 Can I move forward to one of the later events before the  
22 suspension of councillor - - -

23 COMMISSIONER: Are we moved on a new topic? We now move to a  
24 new topic?

25 MR BROAD: Yes.

26 COMMISSIONER: When you decided to take this course of action  
27 it would have been in the context of - in terms of the  
28 discussions you had - I am not necessarily asking you to  
29 talk about all the discussions, but the context of it  
30 would have been you've received the suggestion that return  
31 to work, you thought that's a good idea for whatever

1 reason, but versus that was the 38 weeks termination. In  
2 terms of it how much of it was a financial thing in terms  
3 of, well do we go down that path and we have to pay 38  
4 weeks, or do we go down this path and keep the general  
5 manager, and if it's the latter why?---The monetary thing  
6 was a consideration, but it was minor in the scheme of  
7 things. I saw the qualities of the GM being an asset to  
8 the shire and we were privileged to be served by her. In  
9 all the dealings I had with the general manager she was  
10 always with me open, friendly and effective and she was  
11 very efficient at what she was doing. And the other  
12 consideration was if we terminated the GM that left us in  
13 a very difficult position, e.g. the director of corporate  
14 services would have become the acting GM, and I believe  
15 they were suffering overload at that stage. There was  
16 just a sheer volume - what was going on at the time was  
17 Fit for the Future, there was - - -

18 You would have had to find a new one?---And it would have been  
19 very difficult to entice people to put their hands up to  
20 apply for the job when we're going through the Fit for  
21 Future, so the job may be terminated in short order - - -

22 And given the history of the council?---And the history of our  
23 council.

24 Yes.

25 MR BROAD: In January of this year there was to be a meeting of  
26 council?---Yes.

27 And there was a notice of motion basically - - -?---No  
28 confidence.

29 - - - of no confidence in the general manager and potentially a  
30 resolution would arise as to termination of her contract.

31 Did you receive any legal advice or otherwise about

1 this?---I - I got verbal advice from Local Government New  
2 South Wales. I got verbal advice from the Office of Local  
3 Government, and they cited various clauses in the Local  
4 Government Act and the WorkCover - WorkSafe Act, and we  
5 get back to that protected action problem, and then I  
6 contacted Kell Moore's and they gave me written legal  
7 advice, which I do not have because it's on my iPad,  
8 stating that it is my decision whether something is lawful  
9 or unlawful, and it's my decision alone. All three  
10 parties when they were tendering advice was it's your  
11 decision, good luck.

12 And the advice you got what was the suggestion why the  
13 resolution may not have been lawful?---Because I believe  
14 that the action would have contravened the WorkSafe Act  
15 and this protected action - - -

16 To name a section it appears to be s.104?---Yes, that's  
17 probably right.

18 I don't want to read that out?---Yeah, well I've got a poor  
19 memory for the actual numbers of clauses and whatever,  
20 I've got to have them written down in front of me.

21 COMMISSIONER: I know how you feel. I've got to do it every  
22 day.

23 MR BROAD: You received advice in writing from Kell  
24 Moore?---Yes.

25 Roughly when did you receive that advice?---I think I got it  
26 the day before the actual meeting.

27 Did you communicate that advice to all or any of the  
28 councillors?---I must have telegraphed it, but I can't  
29 remember it was email or phone or whatever, but - because  
30 Councillor Mackenzie kept saying he had contrary legal  
31 advice, and I said well share it and he wouldn't.

1 Ultimately you indicated that you were not available for the  
2 meeting?---The meeting was adjourned for lack of quorum?  
3 Yes?---Yes.

4 A number of other councillors also indicated they were likewise  
5 not going to be available to attend the  
6 meeting?---Correct.

7 Was there any discussion between you and those councillors in  
8 relation to that aspect of the meeting?---Was it  
9 orchestrated?

10 I'm asking if there was discussion?---There was discussion  
11 about the availability of various councillors, because I  
12 informed, I can't remember if it was all or some  
13 councillors, that Councillor Anderson would not be  
14 available, and then I started getting emails to say  
15 various other councillors were also not available.

16 And to the question that you anticipated was it  
17 orchestrated?---Councillor Anderson had no part in it.

18 That's because of his health issues, so he wasn't - - -?---He  
19 was hospitalised at that stage.

20 He wasn't coming full stop no matter what was on?---Yes. I was  
21 informed Councillor Murphy had a medical appointment and  
22 she would be a non-starter. To the point of being  
23 orchestrated, yes, I had no reason not to attend, but I  
24 chose not to attend.

25 And the simple situation was given the issues affecting  
26 Councillor Anderson that it would have been a 3/4  
27 situation?---Yes, that's true. The reason I chose not to  
28 attend was I wanted to get my head around the new  
29 situation and to run all the permutations of what - what  
30 could happen, what probably will happen. As it turned out  
31 all the councillors that were available made themselves

1 available a fortnight later and we got through the  
2 business paper, or both business papers, there were two  
3 business papers and we got through both of them, so - but  
4 it gave me time to work out how to handle the situation.  
5 COMMISSIONER: So what was the particular one, it was about no  
6 confidence in the GM?---That was the one I was getting  
7 legal advice on and how to handle that. The advice I  
8 asked was under the circumstances would it be illegal. I  
9 was told in no uncertain terms don't use the term  
10 "illegal", the term is unlawful.  
11 The term is what? What did you say, sorry, I just missed  
12 that?---I don't know the difference, but one was - the  
13 term was unlawful.  
14 Unlawful. All right?---And the written one was - I'm entitled  
15 to call it unlawful because under the circumstances which  
16 I called it and ruled it out all of it.  
17 So on that paper it's the mayoral minute legal matter, mayoral  
18 minute 2 performance review of general manager. Is that -  
19 that was the - - -?---What was the second one again?  
20 Mayoral minute performance review of general manager 19 January  
21 2016?---Yeah, right-o. That was to be dealt with, but  
22 council voted to adjourn to the following meeting which  
23 never happened.  
24 So the particular issue was a no confidence - - -  
25 MR BROAD: No confidence motion in the general manager.  
26 COMMISSIONER: And that came forward how?  
27 MR BROAD: Through a motion - - -  
28 WITNESS: No, that's a motion signed by two councillors,  
29 and - - -  
30 COMMISSIONER: As part of general - - -?---And it was submitted  
31 in correct format - - -

1 On notice. What are those - - -?---It had to be you had three  
2 days - - -

3 Yes, all those - - -?---And it met all those criteria.

4 Yes.

5 MR BROAD: Can I go to a question which is not chronological in  
6 the sense that we've been going forward, and that is this,  
7 that there was a recognition of the general manager's  
8 service. Now I assume that's long service - - -

9 COMMISSIONER: This last question on the other one, sorry to  
10 interrupt. If that motion had gone through what did you  
11 anticipate was going to happen at the same time? Was it  
12 going back to - was the reality is that there was going to  
13 be a resolution that we terminate the general  
14 manager?---That could have been the case, but getting back  
15 to return to work it was my responsibility to protect the  
16 general manager, and this was I deemed another way - the  
17 notice of motion in itself was another form to harass the  
18 general manager.

19 MR BROAD: So you didn't see it as a mere expression by the two  
20 councillors who lodged the motion of no confidence in the  
21 simple form?---Well they expressed that opinion from that  
22 day we appointed her.

23 COMMISSIONER: I mean I suppose the possibility could have been  
24 that with the numbers that they could have passed the  
25 resolution, or maybe not actually. Yes, okay, I see. You  
26 don't have to answer that.

27 MR BROAD: The question which I was about to embark on is at  
28 some stage previously council recognised the service of  
29 the general manager. Do you have any recollection of  
30 that?---Because she worked with the State Government of  
31 Victoria there's no recognition of her long service in New

1 South Wales, and there was a resolution of council to  
2 recognise her long service.

3 So would that effectively add her long service entitlements in  
4 Victoria or to transfer that across?---To transfer it  
5 across, which was I believe a considerable sum.

6 I think she had been with the Victorian Government for about 15  
7 years?---I couldn't quote definitively how long it had  
8 been.

9 So was that negotiated as part of a package with her employment  
10 with council?---I think - this is recollection - it's  
11 almost two years ago, we're still interviewing two years  
12 ago - no, almost her appointment - it's two years ago. My  
13 recollection was that the standard contract of employment  
14 was to be used by the Act and between the time we said  
15 we'd employ her before she started I think that came to us  
16 before she was actually in our employment that she  
17 requested that it be included in her contract.

18 Because when she left her employment with the State Government  
19 of New South Wales that was something - - -?---Victoria.

20 Sorry, Victoria - that's something that I understand cannot be  
21 paid out in monetary terms?---I've no understanding of the  
22 Victorian - - -

23 I understand in New South Wales that there can be no payment  
24 out, rather that one perhaps doesn't resign and goes on  
25 long service leave with a (indistinct)  
26 resignation?---That's probably - - -

27 COMMISSIONER: I suppose the question really is do you know  
28 anything about how that formed, if it did form any part of  
29 the contract with the general manager?---I could be wrong,  
30 but - I'm trying to recall whether there was a monetary  
31 value attributed to it, and I can't recollect.

1 MR BROAD: Can you give an outline of the events that occurred  
2 during the general manager's interview and recruitment  
3 process?

4 COMMISSIONER: Now might be a convenient time - if you're going  
5 to go on to a new topic we might break for an hour and see  
6 you back here at two.

7 <(THE WITNESS WITHDREW)

8 LUNCHEON ADJOURNMENT

9

1  
2 UPON RESUMING AT 1.59 PM:

3 COMMISSIONER: All right, let's pick up where we were.

4 <JOHN POCKLINGTON, recalled:

5 MR BROAD: Councillor Pocklington, I was about to ask you some  
6 questions about the interview process leading to the  
7 appointment of the general manager and I'm just wondering  
8 if you can take us through that process?---The previous  
9 general manager gave a long period of notice, so the  
10 theory being that we could have the new GM appointed as he  
11 left. Off the top of my head I think he was to finish  
12 in January or February '13, and council resolved to employ  
13 an employment consulting which was Stephen Blackadder &  
14 Associates. The process was prolonged due to an error in  
15 - an oversight in the advertising process and that had to  
16 be extended. I think the first interviews were in January  
17 - don't hold me to the dates - and Stephen Blackadder gave  
18 us a dozen I think it was candidates to interview. It  
19 mightn't have been that many. In the first round we sort  
20 of eliminated most and got it down to three or four, and  
21 council couldn't come to a consensus on one, so they  
22 resolved to do the interview process a second time. By  
23 that time the previous general manager had left so we had  
24 an acting general manager. In the interview process  
25 particular councillors showed - well, Stephen Blackadder  
26 came down to interview us on what we found as desirable  
27 characteristics in a general manager and was it  
28 experience, was it - a couple of questions he posed was  
29 would we employ a New Zealander, would we employ a  
30 Tasmanian, would we employ a woman, to which one  
31 councillor vehemently said the shire would not stand for

1 the appointment of a female GM which was endorsed by a  
2 second councillor, and from then the process sort of  
3 became tensional I think would be the best term I can  
4 think of. So the advertising process was finally  
5 resolved, the candidates were weaned down to the number we  
6 were interviewing, the interviews went ahead. Two  
7 councillors from the CVs had picked their preferred  
8 candidate and pointedly turned their back on all other  
9 candidates that were addressing council in the interview  
10 process, except their preferred candidate.

11 So how many candidates did you interview?---I can't remember  
12 the exact number in the first round. I know there was a  
13 lot of discussion about if you get 12 it's too many  
14 because you can't keep a track of who said what in the  
15 interview process. I'd be guessing, six or eight or  
16 something I think.

17 Of that six or eight - - -?---Four were invited back for a  
18 second interview.

19 So the events you spoke about, about the councillors turning  
20 their backs - - -?---It was at both interviews.

21 At both interviews?---Yes.

22 And so there was a substantial number in the first instance and  
23 a lesser number in the second?---Yes.

24 In that respect it wasn't simply confined to Margot Stork who  
25 was one of the candidates?---Yes.

26 So it affected more than one?---Yes.

27 Right?---I found it quite offensive, for lack of a better word,  
28 that they turned their back on people.

29 So all councillors attended the interviews?---My recollection  
30 they were all in attendance.

31 How then did the council settle on a preferred candidate?---It

1 came down to - and I'll be honest now, Margot was not my  
2 first choice, but there was no way I can get my first  
3 choice up. It was more or less four for one candidate and  
4 four for Margot, and of the two choices Margot I thought  
5 was heads and shoulders above the other candidate. There  
6 was discussions, negotiations, whatever, to resolve that  
7 Margot wasn't the endorsed candidate. In the end the vote  
8 was taken and it was a four/five vote that Margot get the  
9 job.

10 So there was a resolution of council and some debate?---Yes,  
11 there was a lot of debate.

12 And was that debate appropriate to the point where it's such an  
13 important person or did it range away from the relevant  
14 issues?---I don't think you can confine the debate on such  
15 an important decision to points raised in the length of  
16 the debate, but when - there was more than just issues of  
17 character and qualifications came into the debate and I  
18 didn't think that was appropriate.

19 So ultimately the appointment proceeded?---The appointment  
20 proceeded with the variation, the major variation of the  
21 long service leave in the employment contract.

22 Now, can I go to another topic - - -

23 COMMISSIONER: Hold on, when you say they turned - first of all  
24 where were you sitting, were all the councillors around a  
25 round table?---We were on the trapeze or the table in the  
26 branch office, council room, meeting room.

27 Each candidate came in and - - -?---They came to the broad end  
28 of the table and it tapers down to the mayor.

29 And what do you mean when - - -?---The broad end is where the  
30 mayor sits and the candidates stood at the pointy of the  
31 trapeze or - - -

1 When you say turned their backs on it you mean physically. So  
2 the back of the chair was like that there. That was to  
3 all the candidates that they didn't want?---There was  
4 varying degrees how far they were turned around, but  
5 generally they only looked at their preferred candidate in  
6 the eye during the interview process.

7 Did they speak to each other while they had their backs  
8 turned?---Not that I observed.

9 MR BROAD: Did you interview a mix of male and female  
10 candidates?---Well, Margot was there and I think - my  
11 recollection she was the only female candidate that was in  
12 the interview process. I can't recall being another.

13 COMMISSIONER: So who did the back turning, how many  
14 councillors and who were they?---Mackenzie and Campbell.  
15 Only two?---Yes.

16 MR BROAD: Just another topic; the various documents that the  
17 inquiry has reviewed indicate allegations by Councillor  
18 Campbell that in your period as mayor she's been left out  
19 of certain activities which would normally involve the  
20 deputy mayor?---The deputy mayor carries - position  
21 carries no more authority than a general councillor except  
22 in the absence of the mayor. There was an expectation by  
23 Councillor Campbell that before I made any decision I have  
24 a discussion with her. I thought there was other avenues  
25 of advice preferable to Councillor Campbell. That's just  
26 my opinion. There was no formal reason I should consult  
27 with her in preference to any other councillor, and I did  
28 ask her to stand in for me on two or three occasions, that  
29 I couldn't attend something and I asked her to stand in  
30 for me.

31 The evidence you have given this morning is to the effect that

1 while there's a divide in views in council that that  
2 divide doesn't affect all of council's decision  
3 making?---I did express the view that a lot of planning  
4 decisions are done on a personal basis, but there are some  
5 planning decisions that seems a degenerating of the two  
6 blocks.

7 Given her role in a faction which was not the same as your  
8 faction within council did you consider it wise to obtain  
9 her views as representing that faction?---I personally  
10 didn't consider it necessary because their views were  
11 quite often expressed to me anyway without soliciting  
12 them.

13 Would it serve to moderate the divide and the perception of the  
14 divide between the two factions?---Early on I tried to  
15 have discussions with them and every time I was given a  
16 verbal barrage and I figured I don't need that, so I just  
17 avoided it.

18 Why in your opinion did the mediation agreement fail?---It was  
19 - it was an unfortunate circumstance that the mediation  
20 occurred just after the former mayor made a statement that  
21 was inflammatory in the press and it went to mediation,  
22 signed this agreement and it was doomed to failure because  
23 it was - there was - the good will had evaporated. If  
24 there was - if there was any good will there before it had  
25 evaporated.

26 And so the simple effect of the leak was to create a certainty  
27 as to its depth?---I've had it expressed to me in  
28 different ways. I'll put it in my own terms and I might  
29 supplement it with other expressions of why that - it  
30 comes back to personality and I put it down to the former  
31 mayor being a media whore, he just loves seeing his name

1 in the paper and his comments quoted, and even without -  
2 after he lost the job and he's not speaking on behalf of  
3 council he's ringing up TV stations. In fact the first  
4 meeting in Moama after I became mayor the former mayor  
5 tendered a leave of absence notice at the mayoral election  
6 meeting, which was accepted by council and approval given,  
7 and we're sitting in at a council meeting that he was  
8 unable to attend or whatever, and lo and behold the TV  
9 production crew turned up and did an interview of the  
10 former mayor speaking on behalf of council outside the  
11 Moama branch office where the council meeting was being  
12 held. So another view of his personality is he liked the  
13 drama and he did things to create drama. The mix of  
14 personalities just wasn't going to wash and it was - like  
15 I said there was no trust amongst councillors and no good  
16 will.

17 The reason why I ask you that question particularly is that I  
18 recall seeing an email from Councillor Mackenzie who  
19 indicated a desire to have mediation agreement give effect  
20 to a different outcome, I mean a proper outcome?---That  
21 could be so. I can't speak on where his mind is at the  
22 time, but that was probably, I'm only guessing, probably  
23 written about the time in this brief period between  
24 comments made in the media and it all blowing up again.

25 There again have been concerns raised there is some form of  
26 relationship, and I put this in fairness to you to give  
27 you an opportunity to respond, there is an allegation that  
28 there is some form of relationship between your mother and  
29 the general manager's family or the GM personally?---The  
30 first time I met Margot was the first interview. The  
31 second time I met Margot was the second interview. The

1 third time I met Margot, who still wasn't the GM at that  
2 stage, but she was signed on to start with Anzac Day where  
3 I invited her - I was the deputy mayor, and the mayor and  
4 the deputy mayor split the Anzac Day services, one did  
5 Mathoura and the other did Moama. I got Moama that year.  
6 Margot was in town so I invited her to share the wreath  
7 laying at the Moama service as an introduction of the new  
8 GM to the community; that was the third time I met her,  
9 and she had a friend with her and they said they were  
10 going for a drive to have a look at various things and  
11 they said they were going out to have a look at the  
12 Bunnaloo Rec Reserve, and I said, "I live at Bunnaloo,  
13 we'll meet up and I can show you around." That was the  
14 third - and after the tour around the rec reserve, the  
15 school, I took her up to the Caldwell rice sheds to show  
16 her one of our industries, a couple of hours driving  
17 around just having a look at the Bunnaloo district. I  
18 took her home to offer - country hospitality I took her  
19 home, and it was the first time my mother met Margot was  
20 the Saturday of Anzac Day prior to her commencing work  
21 that following Monday. So to assert that my mother had a  
22 relationship with Margot's family and extended family is  
23 farcical. Subsequent to that my mother has met her  
24 socially a few times just out of courtesy to someone that  
25 is new to the district and in a strange land, it's a  
26 hospitality thing. There was a meeting in Barham to do  
27 with mergers I think it was. I can't remember. It might  
28 have been water, I can't - it was a meeting at the Barham  
29 Services Club and both Margot and I attended unbeknownst  
30 to each other and I said to her, "On the way back through  
31 Bunnaloo drop in, have a cup of tea with mum", and so to

1 suggest that there's a very strong friendship and there's  
2 something there to saying there's some dishonesty or  
3 conflict or whatever I think they're drawing a strong bow.  
4 It's just country hospitality.

5 COMMISSIONER: So that was the first time your mother met the  
6 general manager or Margot Stork?---It was Anzac Day - - -  
7 Yes, like you said at that time. Since then have you told  
8 anyone, have you given that explanation?---Not so  
9 concisely and implicitly. I did - I like to think I've  
10 got some sense of humour. At the time I brought - asked  
11 Margot in for a cup of tea after the thing in Barham I  
12 think there's a quote in the thing which is basically  
13 correct, "Look what I found. She followed me home, can we  
14 keep her." It was just a light-hearted comment.

15 MR BROAD: Council adopted an interaction policy between  
16 councillors and the general manager and staff, and we've  
17 heard yesterday that that was associated with some  
18 outcomes through WorkSafe as it then was. There is an  
19 allegation that I've seen to the effect that you and other  
20 councillors did not abide by that interaction policy, that  
21 you've met the general manager outside the terms of that  
22 policy. What do you say to that?---The interaction policy  
23 between councillors and staff does not prohibit  
24 councillors and staff meeting as long as they do not talk  
25 or conduct any council business.

26 So it's purely limited to council related business?---That's  
27 correct.

28 And so do I take it your answer is, yes, but not in respect of  
29 council business - - -?---That's correct.

30 - - - to my question?---That's correct.

31 COMMISSIONER: So just be social - - -?---How's the footy

1 going.

2 Like you said saw him at the football yesterday.

3 MR BROAD: I want to in a minute ask you your particular views  
4 in relation to the terms of reference, but one of the  
5 things you refer to is how the community has been affected  
6 by the events that have occurred. Can you give a view of  
7 what sort of response you've had from the community  
8 throughout the period prior to initially and subsequent to  
9 the announcement of the inquiry?---Prior to the  
10 announcement of the inquiry the general comment from the  
11 public to me was for that (indistinct), but how can you  
12 put up with it, to how can we get rid of them, to less  
13 complimentary comments about them. Just - the public were  
14 aware that council was not a happy camping ground. When  
15 the inquiry was announced a lot of people said, hooray,  
16 finally something's going to come to a head and this issue  
17 may be resolved. When it became public that I asked the  
18 minister to suspend us, and he subsequently did suspend  
19 us, the comments would be split 50/50 being between well  
20 done, or we don't agree with your decision, but something  
21 had to be done.

22 Do many members of the public attend council's meetings?---Only  
23 if there's a controversial development, but there are two  
24 or three regular attendees at council meetings.

25 COMMISSIONER: So when you say controversial you mean DA  
26 stuff?---DA that affects them, a DA would affects them,  
27 yes.

28 MR BROAD: I was planning to deal with the terms of reference  
29 at this stage. Mayor Pocklington, the first of the terms  
30 of reference asks whether the elected representatives and  
31 staff have since the appointment of the current general

1 manager complied with applicable laws, codes,  
2 administrative procedures and policies and fulfilled its  
3 and their duties, powers and functions, particularly in  
4 relation to relationships between councillors, the general  
5 manager and senior and other staff of the council?---I  
6 can't say yes.

7 Can you say no?---I'll say no.

8 Would you like to give reasons?---Staff have been approached by  
9 councillors commenting about other staff or other  
10 councillors, which is totally inappropriate, it doesn't  
11 abide, so there's a no. As far as I'm aware the staff on  
12 all their fiduciary duties it's a yes. I think that's  
13 about the best I can answer it.

14 The second of the terms of reference ask the inquiry to  
15 consider whether the council has since the appointment of  
16 the current general manager complied with its work, health  
17 and safety obligations as the general manager's employer.  
18 Given your particular position, particularly in light of  
19 what you've said your personal responsibility is under the  
20 return to work agreement, can you give your views on  
21 that?---Councillors endeavour to fulfil their obligations,  
22 but certain councillors haven't.

23 And the councillors that haven't are the ones that you've  
24 named, Councillors Campbell, Mackenzie, Moon and the  
25 former councillor Mr Burke?---And I also include  
26 Councillor Weyrich in that.

27 The third of the terms of reference I suppose looks to the  
28 future?---Yes.

29 And it asks the inquiry to consider whether the elected  
30 representatives have been and will continue to be in a  
31 position to direct and control the affairs of the council

1 in accordance with the Local Government Act and other  
2 relevant Act so that the council may fulfil its charter -  
3 and you know what I'm referring to, that's s.8 of the  
4 Local Government Act - the provisions of the Local  
5 Government Act and otherwise fulfil its statutory  
6 functions. Could I divide my question into parts.  
7 Looking at it in the past are you able to give a  
8 view?---My view is council has failed in the past and the  
9 current structure of council continued and we're re - - -  
10 Reinstated?---Reinstated. I can't guarantee those obligations  
11 will be met in the future under the current structure of  
12 council, or current membership of council.

13 And those are the questions that I have.

14 COMMISSIONER: I have just got one. I'm just not sure, we  
15 might have asked you this yesterday, but a very specific  
16 thing; in the policy about the interaction between  
17 councillors and the general manager, and that was first  
18 passed in 2014 after the Department of Local Government,  
19 and then it was amended on 3 March, that second amendment  
20 going to admin?---Yes.

21 Do you know how that happened, did we ask, did we talk about  
22 this?---I believe that was a direction from WorkSafe.

23 All right. So you don't recall any resolution of the council  
24 or anything? I mean we can ask - - -?---I can't recall -  
25 I can't recall a resolution of council.

26 But your recollection is it follows from the  
27 WorkSafe - - -?---Yep.

28 Thank you very much. Now, the last thing is the document. Can  
29 we please have the agreement, which we will take and  
30 review overnight and then we will give it back to  
31 you?---I'm prepared to give you a photocopy of it for your

1 confidential use. It must remain in confidence.  
2 Will you give it to me on that basis and I will decide how I  
3 deal with it, thank you?---I rang the general manager over  
4 the lunch period and asked her her view on it, and her  
5 view was it's got to remain confidential.  
6 You give it to me on that basis?---Right-o. Thank you.  
7 So you're excused. Thanks very much for attending.

8 <(THE WITNESS WITHDREW)

9 (Witness excused.)

10 The next witness we have is Councillor Weyrich. Is he here?

11 Perhaps you might just check outside in the usual way.

12 He's not here, so we will deal with that. So the next is  
13 Councillor Bilkey.

14 <CHRIS BILKEY, sworn and examined:

15 Thank you for attending. If you just start - also tell us when  
16 you first became a councillor; it's your first term,  
17 second term, just that first - - -?---Sure. I was elected  
18 for the first time at a bi-election in 2013 following the  
19 resignation of two previous elected councillors.

20 MR BROAD: Just excuse me for a minute, Councillor Bilkey. I  
21 will get the pen poised and ready to go.

22 COMMISSIONER: What we are going to do is a similar thing as we  
23 did with Councillor Pocklington, just some general  
24 questions as a starting point.

25 MR BROAD: The first question in terms of what was asked of  
26 Councillor Pocklington is generic, and that is do you  
27 think the current councillors are dysfunctional and can it  
28 operate together?---I think the current council is  
29 dysfunctional, yes, and I don't believe that the council  
30 as it's currently constituted can effectively work.

31 Can you indicate your reasons for coming to that view?---The

1 reasons are based on past behaviour and the insistence on  
2 a significant campaign of undermining of certain members  
3 of staff, in particular the general manager, but also  
4 issues such as the insistence on attempting to make  
5 unlawful motions, put unlawful motions before council, and  
6 the demonstrated incapacity to behave in a manner that's  
7 consistently within the Code of Conduct guidelines and  
8 other guidelines under which councillors must operate.

9 In respect of your statement about unlawful motions can you  
10 give instances of what motions you regard as  
11 unlawful?---Well I think the motion to seek the  
12 resignation or the standing down of the general manager at  
13 a time when she was absent under a SafeWork(sic) order is  
14 in my - to my understanding would be an unlawful motion  
15 for council to move or to pass.

16 Because that action might be prevented by the Work Health &  
17 Safety Act or some other Act?---Certainly, yes.

18 You were formerly the deputy mayor up until, as I understand it  
19 up until September 2015?---That's right.

20 Was that from the date of your election onwards, or when did  
21 that occur that you were elected?---That only occurred in  
22 the year September '14 to September '15.

23 Can you give us a little bit of background in relation to your  
24 election and any former role you might have had as a  
25 councillor?---I've had no former role as a councillor here  
26 or elsewhere. In terms of my - do you mean as a  
27 councillor prior to this term, being a councillor - - -

28 A councillor prior to this term, if you've had any - - -?---No,  
29 none at all. In terms of my election to the deputy  
30 mayor's role I nominated for that role at the end of the  
31 second year I'd spent on council and was elected

1 essentially on those 5/4 - I think it went 5/4 split -  
2 basis.

3 You have made a submission to the inquiry and you give a  
4 background as having been born and raised in Echuca/Moama,  
5 but have lived away for 35 years and then returning in  
6 2009. Did you stand for election in 2012?---I did, yes.

7 And what were your reasons for standing for election then?---I  
8 didn't come back to the town to retire, I came back to the  
9 town to seek a non-city lifestyle, but I also came back to  
10 the town to contribute to the community. For example I  
11 applied for and remain a member of the hospital board in  
12 Echuca, and a number of other committees, but it seemed to  
13 me that Murray Shire was at a very exciting phase of  
14 growth in respect of the number of people that were  
15 settling here in respect of the opportunities that were  
16 presented by the twin towns for not just the time and  
17 growth and so on, but also for industrial growth and the  
18 like, and I'd had significant experience in my previous  
19 life in being a part of organisations at a senior level.  
20 I thought I had an understanding of strategic issues and  
21 could put them to good effect as a councillor, and that's  
22 the reason I stood.

23 At the time of the bi-election were you aware that there was a  
24 divide of views amongst the councillors?---Well, no,  
25 because three of the - well, four of those councillors  
26 were elected in 2012, Councillors Mackenzie, Moon, Burke  
27 and Campbell had not been councillors in the prior term,  
28 and so my understanding of the council was that it was  
29 relatively harmonious. I would - I would suggest, and  
30 perhaps I've learnt this later, that the outlier in terms  
31 of harmony was perhaps Councillor Weyrich who was somewhat

1 self described maverick in terms of his views on many  
2 issues, but by and large the council had a harmonious  
3 approach to most issues - - -

4 So at the time you stood at the bi-election you weren't aware  
5 that there were these issues on foot?---By the time the  
6 bi-election came around and there had been four or five  
7 months of the previous council in place, the one that was  
8 elected in September 2012, it was clear that there were at  
9 least a couple of councillors there who were - who were  
10 perhaps less than committed to that harmonious path and  
11 were seeking to unsettle and call into question the bona  
12 fides of people within the council.

13 When you stood unsuccessfully in 2012 did you stand on another  
14 candidate's ticket?---I did. Well, we joined - we  
15 combined a ticket that included the previous mayor and  
16 four others, including myself.

17 Other councillors, or other persons who were subsequently  
18 elected?---One councillor and the previous mayor were  
19 elected from that ticket of five.

20 And that councillor?---That councillor was Councillor Sue  
21 Mulcahy who subsequently resigned in February I think.

22 So notionally by the time of the bi-election that ticket had  
23 dissolved?---There was no one left from that ticket who  
24 was on the council.

25 COMMISSIONER: Sharp and Mulcahy they both resigned the same  
26 time you came in, and who else came in?---Councillor  
27 Mackenzie won the bi-election seat alongside me.

28 You came in at the same time?---Yes.

29 MR BROAD: And standing for the bi-election had you had close  
30 contact and had you sought the views of those former  
31 councillors or the resigning councillors?---Not

1 specifically with Councillor Mulcahy. I did speak once  
2 informally to Councillor Sharp who simply expressed his  
3 frustration with some elements on the council.

4 You provide a personal background of your professional life in  
5 the pharmaceutical industry, and indicate I suppose most  
6 generically that you've had a background in governance and  
7 human resources leadership. Did you expect that those  
8 attributes would be good to bring to council?---I thought  
9 governance certainly. Governance is a critical element of  
10 almost any organisation these days. So I felt that an  
11 exposure to governance principles, which has also been  
12 augmented by my time on the board at the hospital, would  
13 be valuable. I had less expectation that the HR  
14 experience would be of particular relevance.

15 At the time you stood for council did you have an understanding  
16 of the Code of Conduct?---Minimal. Minimal. I'd seen the  
17 Code of Conduct and I refer to it in relation to what  
18 might be expected of me as a councillor, and also sought  
19 any information was there that would relate to the period  
20 leading up to being a councillor. It's fairly silent on  
21 that issue I might tell you, but it did inform me about  
22 the kinds of behaviours that were acceptable and  
23 unacceptable for a councillor. I was particularly  
24 interested in issues of conflict of interest, pecuniary  
25 interest and that kind of thing.

26 At the time you stood for council did you have an appreciation  
27 of the way the Local Government Act operates?---Again not  
28 - not extensive. I had been involved to a limited extent  
29 with the local council on which I was a part in - I wasn't  
30 part of the council - where I lived in Sydney in relation  
31 to some planning issues, and I've had some interest in the

1 activities of the Campaspe Shire Council on the other side  
2 of the river, the Victorian shire, and have gained some  
3 understanding of broad principles of local government and  
4 accountability within local government, but if you ask me  
5 if I knew the Act and so on, no, I didn't.

6 In terms of corporate governance does the government structure  
7 in councils differ greatly from the board and the staff of  
8 a corporate structure in the private sector?--Some  
9 aspects are similar. I find financial governance to be  
10 similar and in many cases more rigorous than what I've  
11 perceived in the corporate world. Other aspects far less  
12 rigorous and far less demanding than say either the  
13 corporate world, which every one in which I worked had  
14 huge governance issues in relation to safety in a  
15 pharmaceutical company, and also on the hospital board  
16 clinical governance is an extraordinary high priority and  
17 a lot of time is spent addressing those issues of  
18 governance. So by and large I'd say the governance  
19 practiced within local government is of a less higher  
20 standard than I'm used to.

21 The Local Government Act makes express provision for the roles  
22 of the mayor and of councillors. The role of a councillor  
23 is two-fold; it's prescribed by s.232 of the Act. Can you  
24 give us your views of how that operates in respect of the  
25 council as a body and as to the community?--Well, as a  
26 councillor as part of the council you have a  
27 responsibility around governance, so there's a financial  
28 and regulatory and compliance of the Act, governance  
29 requirements in relation to your role as a councillor.  
30 There is additional requirements in order to reflect the  
31 proper strategic management of the organisation in a

1 budgetary sense, in a planning sense, and in a sense that  
2 reflects the aspirations of the community. I think you're  
3 there to provide or to contribute to the provision of a  
4 leadership role to the community to reflect those needs,  
5 and I think you're also there to ensure that the business  
6 of the council is conducted in accordance with the Act of  
7 course, which kind of goes back to governance I guess. So  
8 they're the principal areas I guess as a councillor. As a  
9 representative of the community again there's a leadership  
10 expectation, there's a reporting kind of expectation, a  
11 communication role between council and the community  
12 that's perhaps in addition to those other roles as a  
13 councillor.

14 Councils deal with I suppose a plethora of legislation. I  
15 think one of the councils in Sydney quantified it as 151  
16 separate Acts, but that was some years ago. The Red Tape  
17 Reduction program may have added to that. Was that an  
18 issue for you getting your head around Acts such as the  
19 Environmental Planning and Assessment Act?---I wouldn't  
20 put that challenge in the past tense really, it's an  
21 ongoing challenge.

22 It continues?---Absolutely, yeah. There is no way known that I  
23 will ever have a complete knowledge of all the agencies  
24 involved with which the local government has a  
25 relationship, and we rely very much on the advice of  
26 senior staff to orient us in those matters. So, yep,  
27 that's an ongoing challenge and I don't believe any  
28 councillor could claim to understand all those issues.

29 Is it in your view legitimate to question reports,  
30 recommendations and the like coming forward from  
31 staff?---Yes, absolutely. We do so commonly. We often

1 refer matters back for further information, for further  
2 evaluation in order for us to better understand or council  
3 as a whole who might take a particular view on a subject  
4 to ask council to reconsider, to ask the council office to  
5 reconsider their recommendation in relation to a  
6 particular item with the benefit of additional research.

7 For the purpose of obtaining that that is a perfectly  
8 legitimate course?---I believe so, yes.

9 COMMISSIONER: Just give us a flavour of it over a wide range  
10 of things, more DA's, that sort of thing,  
11 more - - -?---Principally in planning I would think, yes,  
12 more - more lately we've sought advice on legal issues  
13 pertaining to personnel as you might expect, but the  
14 principal area has been in planning.

15 Run of the mill things as planning - - -?---Sorry?

16 The run of the mill type things as planning?---Yes, exactly.

17 MR BROAD: Is it easy to characterise matters that fall within  
18 the role of councillors and those which are said to be  
19 operational issues and fall within the ambit of the  
20 general manager and staff?---I find that a relatively  
21 uncomplicated issue and I suspect if you asked every  
22 councillor they would also say they find that a relatively  
23 uncomplicated issue. The reality is that those views  
24 don't align many times, or often they don't align, and  
25 what I perceive to be an operational issue might be  
26 perceived by others not to be, to be a more strategic  
27 issue worthy of the consideration of council. My general  
28 view is that there's far more - far more tasks and  
29 functions that are operational than is currently reflected  
30 in the agenda, the business papers of this council.

31 COMMISSIONER: Too much operational?---Too much operational,

1           yes.

2   Just referring back to the corporate world do you have a  
3       similar sort of break up in that sort of concept of  
4       operational, or do you find it different in the  
5       council?---They're not directly translatable because  
6       commercial interests - - -

7   It's different?---Are different, yes.

8   Yes. You don't have to explore them?---I think the more  
9       relevant comparison is with the hospital board where I  
10      serve. I think that's - - -

11   Yes, a similar sort of thing?---As a body answerable to  
12      government. That's a more relevant analogy.

13   MR BROAD: So moving forward to the way in which the council  
14      operates. Council in the sense of councillors deal with  
15      the business of council through meetings and through a  
16      business paper?---Yes.

17   In respect to the business paper what's your view in relation  
18      to the responsibility of councillors to understand that  
19      business?---Clearly it's the responsibility of councillors  
20      to understand the business paper and if they don't to seek  
21      clarifying information. We find that our business paper  
22      is overwhelmingly comprised of planning decisions to be  
23      made. Certainly if you took out the planning section of  
24      our average agenda then the remaining is very small. So  
25      we have recently because of that wealth of information  
26      that's required to be digested prior to a meeting in  
27      relation to planning matters have undertaken the process  
28      of pre council meeting meetings - - -

29   A briefing?---Briefings, to give us the opportunity to ask  
30      questions of the planning director, environmental planning  
31      director, in relation to any queries we have in that - in

1 relation to these DA's - - -

2 COMMISSIONER: And that's primarily about DA's?---Primarily  
3 about DA's, yes.

4 Has that council ever thought of - have you ever heard anyone  
5 talk about the idea in IHAP, an independent hearing  
6 assessment panel where they effectively take the planning  
7 decisions away from the council, set up an independent  
8 body, and some of them recommend back to the council, some  
9 make the decision, that type of thing?---I have heard of  
10 planning matters being - - -

11 Yes, they're all planning matters?---Quote "Contracted out"  
12 unquote. It's never been seriously discussed in this  
13 council to my knowledge.

14 MR BROAD: Of course when it comes to development applications  
15 councillors have got two obligations potentially; one is  
16 to determine whether to give consent or not and there's a  
17 determination to give consent, to put their mind to what  
18 conditions should be attached. So any report, I assume,  
19 which recommends approval or which doesn't recommend  
20 consent necessarily has all the suggested consent  
21 conditions should it be given consent or not. So there's  
22 a lot of work in that?---Absolutely. The condition  
23 section is often as long as the preamble, as the rest of  
24 the DA, and clearly we look closely at the recommendations  
25 for consent that it provided by the officer. Generally  
26 speaking we agree to those conditions. Occasionally we've  
27 sought a variation in the consent conditions.

28 So we move forward to the preliminary stages of council  
29 meeting, and then council deals with the business of the  
30 meeting effectively in leaving aside matters which it  
31 noted and the like through resolutions. Through

1 resolutions council deals with that?---Yes.

2 Following those resolutions it then becomes incumbent upon the  
3 general manager and the staff to implement  
4 decisions?---Yes.

5 We have heard of - I will cut to the matter now - we have heard  
6 this morning that there was a return to work agreement  
7 that was negotiated by the mayor pursuant to a delegation.  
8 Is it your view that that agreement should come back  
9 before council for its consideration?---I think - I think  
10 most of it should come back to council. I think there may  
11 have been some issues in relation to the general manager's  
12 health that may have been - it may have been justifiably  
13 redacted, but in the case of for example then the dollar  
14 value of the settlement that was paid then I think that  
15 should have been part of the disclosure to council.  
16 Having said that I can understand the concern the mayor  
17 expressed in relation to the potential for that  
18 information to have found its way into the press because  
19 of previous disclosures of confidential information to the  
20 press indicating a very significant lack of respect for  
21 that confidentiality process.

22 Were you the witness to that agreement?---Yes.

23 Can I now go to the role of the general manager, and her role  
24 of course is defined in the Act. It then obviously fits  
25 into that divide between operational and governance issues  
26 or the responsibility of councillors. In your view how  
27 should the interaction between councillors and staff be  
28 managed?---I'm not used to working in an environment where  
29 the equivalent of councillors, say board members, cannot  
30 speak to the senior executive level, and when I first  
31 joined council there was an informal agreement that that

1           could be done. I don't believe it was reflected in a  
2           document, I could be corrected on that.

3 To directors or below or to officers?---Directors and below.  
4           Directors and GM. Yes.

5 COMMISSIONER: That's basically how the (indistinct) process  
6           was - - -?---Yes.

7 - - - you can go down to say (indistinct)?---No. The evolution  
8           of the - of the relationship between some members of  
9           council and staff, particularly the general manager, I  
10          believe fully justified the formalisation of those  
11          communication channels to be confined initially to the  
12          general manager and subsequently to an @admin address.

13 MR BROAD: Was it difficult to deal with that issue? I mean  
14          the issue of not having direct communication?---No. No.  
15          I use that @admin address all the time. I found that my  
16          correspondence was immediately passed on to the  
17          appropriate person within the organisation and responses  
18          back to me were timely and effective.

19 COMMISSIONER: Through the general manager or sometimes  
20          directly from the directors?---Sometimes directly from the  
21          directors with a copy to the general manager.  
22          Yes.

23 MR BROAD: We have, and I recollect that you were here  
24          yesterday, we had some evidence from Mr Hurst and  
25          Mr Dunphy in relation to the relevant interplay between  
26          the Code of Conduct and Work Health & Safety Act. If I  
27          can deal with the Code of Conduct, and if I can get your  
28          views as to its purpose initially?---Well, I believe its  
29          purpose initially is to define for councillors the - the  
30          levels of behaviour that it deemed appropriate, and the -  
31          in particular those behaviours that are not appropriate,

1 and to define those as succinctly and as specifically as  
2 is possible in such a code. There is a further function  
3 for the code which is to provide a mechanism whereby  
4 departures from the code can be - can be investigated and  
5 if necessary some form of sanction applied. So I see it  
6 in two parts; as a road map for councillors and as a  
7 mechanism for ensuring compliance with those - with those  
8 guidelines.

9 In light of the events that have occurred within council what  
10 are your views about the sufficiency of the code?---It is  
11 a comprehensive failure to in an expeditious way and in an  
12 adequate way review and sanction bad behaviour.

13 Is that purely within the operation of a code so far as non-  
14 compliance is dealt with by council?---No, it's in  
15 relation to the way non-compliance is dealt with by the  
16 OLG and the recommendations from the investigators, but  
17 primarily by OLG, especially in relation to the timeliness  
18 issue.

19 So the code itself in relation to a Code of Conduct complaint  
20 comes back before the council are the sanctions available  
21 to fellow councillors sufficient, or the alternative  
22 provisions which may be available to the general manager  
23 otherwise sufficient?---By and large they are sufficient,  
24 yes. The problem with those is that sanctions that may be  
25 imposed by council in relation to such issues have  
26 commonly not been complied with.

27 COMMISSIONER: So that's the issue in your mind, that's  
28 where - - -?---Well, that's one of them. That's one of  
29 them, yes.

30 MR BROAD: Two of the main outcomes available to councils are  
31 censure and apology. Do you express any view in respect

1 of the ability to censure a councillor?---I find the - I  
2 regard censure of a councillor as a fairly serious  
3 finding, however I suspect that view is not universally  
4 shared and I don't quite understand what - what the  
5 penalty is in the - in the council voting to censure a  
6 councillor other than to have it appear in the minutes as  
7 that councillor having been censured.

8 And an apology?---An apology is fine. I don't have a problem  
9 with - you know, in issues that are relatively minor - the  
10 issuance of an apology as an appropriate sanction or  
11 recompense. That's predicated on the belief that that  
12 apology is delivered.

13 One of the other avenues of course is the training. Do I  
14 assume that after your election you underwent a process of  
15 training, that you went through a process of obtaining an  
16 understanding whether through a procedure provided by the  
17 council or otherwise?---Yes. Yes.

18 COMMISSIONER: Was that the council who did it or - - -?---Yes,  
19 the council officer did it.

20 They organised it, they - - -?---Yeah.

21 So you see sufficiency of code comprehensive, one of them is  
22 the non-compliance by that code by a councillor and then  
23 the failure of OLG to sort of follow through, if you  
24 like?---And timeliness, yes.

25 And timeliness is the other reason?---Yes.

26 Timeliness of the reports coming back?---Yes, timeliness of the  
27 review process and timeliness in the application of  
28 sanctions, because sometimes the review process and the  
29 application of sanctions are not simultaneous or - - -

30 Yes, it should be a quicker process?---Yes. Yes, absolutely.

31 The timeliness and things like that. If you can't handle it

1 give it back if you're the investigator sort of  
2 thing?---Indeed.

3 MR BROAD: In your statement to Janice Macleay you refer to  
4 WorkCover and use the expression in relation to their  
5 results, "It's like being flogged with a wet lettuce,  
6 there are no sanctions." Would you have a similar view in  
7 respect of the Office of Local Government?---I wasn't - I  
8 didn't recall that I used that expression in relation to  
9 WorkCover.

10 Let me show it to you?---No, I assure you - I assure you I  
11 believe what you're saying. Perhaps I can see the  
12 context?---Okay. So, sorry, the question was?

13 Whether you had a similar view in relation to the Office of  
14 Local Government. You were critical of - - -

15 COMMISSIONER: Having heard about their response?---Flogged  
16 with a piece of boiled lettuce. You know, it's worse.

17 And again that's timeliness?---Timeliness in particular, yes,  
18 is the major issue. I think - - -

19 So even if they come back quicker and said, look we're not  
20 going to do anything or it's not enough or whatever it  
21 would be that would help in terms of timeliness?---I  
22 think, you know, the old phrase justice delayed is justice  
23 denied I think that's a significant issue in relation to  
24 this, and I think, you know, the appropriateness of  
25 sanctions is a separate issue, but it would only be helped  
26 by a greater level of urgency in evaluating the  
27 complaints.

28 MR BROAD: In asking a number of questions yesterday I referred  
29 to some tables setting out the number of complaints, the  
30 cost of complaints and the like. Essentially while it's -  
31 there are some issues in relation to how the total number

1 of complaints were calculated it's quite clear that Murray  
2 Shire Council had a significant number of conduct  
3 complaints, not only in the period from September 2014  
4 to August 2015, but prior to that. Further council has  
5 spent significant sums on obtaining investigation reports  
6 in relation to those complaints. What's your view in  
7 respect of that sort of expenditure of those numbers of  
8 complaints in a council the size of Murray?---Entirely  
9 inappropriate. It's - it's an appalling outcome, and the  
10 outcome is the result of an ongoing series of breaches, as  
11 is evidenced by the percentage of those complaints that  
12 have been upheld, but that notwithstanding that kind of  
13 number is a blight on the shire and if I were, you know,  
14 the CEO or indeed a councillor looking at those numbers  
15 there's a hundred and something thousand dollars we're not  
16 going to get back which should have gone to somewhere  
17 else. So, yeah, absolutely unacceptable, but nonetheless  
18 a reflection of the level of dysfunction exists within the  
19 council.

20 To put that into some context, and I have extrapolated some  
21 figures of some of the councils in this regional area, and  
22 I might just read those out for the sake of it. In the  
23 period September '14 to 31 August '15 Albury had one  
24 complaint, it had a cost of \$6,500; in the previous year  
25 it had had five complaints at a cost of \$3,000-odd.  
26 Balranald had had no complaints in the period  
27 ending August '15; the previous year one complaint at a  
28 cost of \$35,000. Berrigan for both years zero; Conargo  
29 for both years zero; Corowa 2015 zero; the previous year  
30 no complaints, but obviously a carry over expense of \$300;  
31 Deniliquin none and none; Greater Hume zero and zero;

1 Jerilderie zero and zero; Lockhart - there may be an error  
2 in 2015, but the previous year zero and zero; Murrumbidgee  
3 four in 2015 at a cost of \$18,000-odd, the previous year  
4 zero. In respect of Wakool three in 2015 at a cost of  
5 \$25,000-odd, the previous year nil. So you'd agree that  
6 Murray is disproportionate from its neighbours?---No doubt  
7 about that. You didn't need to read those numbers out for  
8 me to agree with that. I think what you'd also find if  
9 you went back further in relation to the Murray Shire you  
10 would find that this period of unacceptably high levels of  
11 complaint coincide very much with this term of council,  
12 and that prior to this term, that is prior to 2012, we  
13 were very much part of that pack in terms of frequency of  
14 code of complaint. I would - - -

15 The Office of Local Government has given some particulars in  
16 respect of that in its submission?---Have they?

17 Yes?---Okay.

18 I should indicate that those submissions are currently going up  
19 on the website?---No. No argument from me. Absolutely  
20 that would be the first thing I'd go to if I looked at the  
21 balance sheet of the organisation why we - why we are  
22 incurring these expenses.

23 In your view what has been the utility of the Code of Conduct  
24 reports?---Very marginal in terms of effect. I'd  
25 differentiate between the utility of the report, if it  
26 were followed through, and the utility of the report as it  
27 - as it eventuated if you like. So if in fact the  
28 recommendations of some of those Code of Conduct findings  
29 were actually implemented there may have been a better  
30 outcome. The reality is though that many times those  
31 findings have not been complied with and I think the

1 result has been nowhere near value for money.  
2 There are three complaints on a schedule that's been provided  
3 by Mr Higgins of matters which have gone before council,  
4 and there have been one or two or three - actually four  
5 I'm sorry, where no action has been recommended and there  
6 have been some others where they have been referred to the  
7 general manager, to the mayor or with a recommendation to  
8 resolve by alternative means. Do you list in your  
9 response to my last question those matters as resolving by  
10 alternative means or referred back as matters where  
11 there's been no result or outcome?---Look I couldn't  
12 comment because I don't know the specific complaints  
13 involved, but by and large those matters are the lower end  
14 of the spectrum in terms of seriousness and therefore the  
15 outcome is - I don't want to say less important, but it's  
16 less likely to be a dramatic difference in behaviour than  
17 some of the more serious Code of Conduct complaints that  
18 require changes in behaviour.

19 Has there been a change in councillor behaviour?---No, not in  
20 any material sense.

21 One of the issues, and I will take it in isolation just for the  
22 moment, is this, that there was a mediation in November of  
23 2014. There was an agreement reached between councillors  
24 to the effect that they would modify their behaviour. Did  
25 that bring about a change in behaviour?---Ultimately no,  
26 and I wouldn't lay the blame at the feet of the  
27 councillors that - that comprise that four group at the  
28 time. Their timing - I think the mayor at the time, as  
29 Councillor Pocklington alluded to, gave the lie to that  
30 agreement by conducting interviews with the press that  
31 were outside the agreements made in that memorandum of

1 understanding or agreement. My recollection is that, and  
2 here I differ with Councillor Pocklington and he may be  
3 right, but my recollection is that behaviour of the prior  
4 mayor was after the agreement had been signed, not before,  
5 and as I say I wouldn't bet my life on that. It certainly  
6 was presented by Councillors Mackenzie and Campbell as a  
7 reason for their abandonment of the principles of that  
8 agreement. I can't quite see how they could claim that if  
9 the behaviour had occurred prior to the agreement.

10 Absent the release of that agreement was there good will

11 amongst the councillors to give effect to that mediation  
12 agreement in that limited period?---You're asking me to  
13 climb inside the minds of others and I can't do that. I  
14 know at the very least on my part there certainly was.

15 Perhaps more generally, when the mediation concluded was there  
16 a feeling that the councillors were walking away from that  
17 agreement with good will?---No.

18 COMMISSIONER: Sorry, I'm not sure I understand the question.

19 MR BROAD: What I'm trying to say is that there was a mediation  
20 that occurred, heads of agreement were reached, each  
21 councillor signed that. On the day or the days that that  
22 occurred was there generally a feeling of good will that  
23 you felt?---I was optimistic about that agreement, yes.

24 COMMISSIONER: So at the time - I mean I've been involved in a  
25 lot of mediations - there was a feeling that everybody  
26 signed the agreement in the first place; that's one  
27 point?---Yes.

28 Which meant that there was a sense at the time that we'll give  
29 this a go sort of thing?---I think that's true, and I  
30 think the fact that the result of that mediation was that  
31 we put something on paper and committed to it was a good

1 sign in my view. So, yes, as I say I was optimistic about  
2 the outcome of that.

3 MR BROAD: Can I go back and discuss with you the voting  
4 patterns between councillors in a number of periods, and  
5 the first period was the period immediately following your  
6 election to council and preceding the date of appointment  
7 of Margot Stork as the general manager. Can you give an  
8 indication of what you saw as the voting patterns, whether  
9 there were issues between the councillors at that  
10 stage?---The voting patterns post my arrival on council  
11 leading up to Margot's appointment and commencement were  
12 the same as they were after that commencement, it was a  
13 five/four split. Perhaps the entrenchment of that  
14 difference became deepened after the appointment of  
15 Margot, but on many issues of contention that five/four  
16 split was quite evident.

17 In your view why was that entrenchment deepened following the  
18 appointment of Margot Stork as general manager?---Because  
19 Margot Stork was appointed as general manager over the -  
20 over the views of some of them that she shouldn't be  
21 appointed.

22 So it was, as it were, another battle in the war?---Yes.

23 COMMISSIONER: And the five/four split before that that was as  
24 a general sort of - DA's, whatever might - - -?---No. I'd  
25 certainly make the point that I think DA's were very, very  
26 largely free of factional voting. There are the odd  
27 exception, but overwhelmingly the business of dealing with  
28 planning and environmental stuff was done with - you know,  
29 logically and fairly and without - there were obviously  
30 differences of opinions but they didn't necessarily align  
31 with factions.

1 Did that continue on even after the general manager?---Yes.  
2 It continued on all the way?---Yes, I think so, yes.  
3 MR BROAD: Did a separate issue arise which related to the  
4 general manager herself post her appointment? What we've  
5 been talking about is the dynamic of five/four. Was there  
6 another issue and you said, well the appointment of Margot  
7 Stork as general manager deepened that divide. Did  
8 another issue arise in relation to the general manager  
9 herself?---Not that I'm aware. I believe that the  
10 deepening of that division was entirely due to her  
11 appointment and their reluctance to accept her as the  
12 appointee. I don't recall in the period, you know, in the  
13 six months following that any particular issue that  
14 further entrenched that divide if you like.  
15 So we then get to about August, September, October, and my  
16 understanding is at about that time there was a move by  
17 the general manager to raise concerns about the Work  
18 Health & Safety Act, issues affecting her?---Yes.  
19 Was that just - in other words what I'm saying to you is this;  
20 is she part of the five/four divide or was there something  
21 new and different that related specifically to her?---Well  
22 I think in the period immediately following her  
23 appointment the resentment of some councillors about her  
24 appointment exhibited itself in inappropriate behaviour  
25 towards the general manager, and those behaviours  
26 continued without necessarily being manifested in conduct  
27 complaints, but rather as an attitude that, "I'm here to  
28 make this work and I'm prepared to suck it up" if you  
29 like, and perhaps after six months that preparedness to  
30 suck it up so to speak had worn pretty thin.  
31 You used an expression, and I'm just getting it, which was the

1 hurly burly of council, and you used that in your  
2 statement to Janice Macleay, and you said, "There are  
3 rules in place so that their behaviour is not detrimental,  
4 it's part of the hurly and burly of council." When does  
5 the hurly and burly of council stop and there are issues  
6 in respect of Code of Conduct?---I think one of the key  
7 determinants of that issue is whether the criticism  
8 becomes personal and vindictive rather than professional  
9 aimed at actions and professional behaviours. So I think  
10 when it crosses that line you cease to be in a robust  
11 environment where hurly burly is acceptable and, you know,  
12 anyone going into any kind of elected position has to  
13 accept that that level of exchange is going to occur and  
14 it's healthy, but when the issues become personal and  
15 undermining of professional integrity and so on that's  
16 when it crosses the line.

17 COMMISSIONER: And equally general manager and directors have  
18 got to think that way a little bit too in their high level  
19 positions in a council. I am not talking about personal,  
20 but they've got to realise there's going to be hurly burly  
21 with them too?---Within the council, between council  
22 members?

23 Yes?---Absolutely.

24 And to them even in the sense that they're taking on the role  
25 that they're going to get asked questions, they're going  
26 to be put on the spot sometimes, there are going to be all  
27 those usual sort of things that happens in - - -?---Yeah,  
28 I think - - -

29 Without being personal. I understand that you cross the line,  
30 but when you're doing a job like that as a general manager  
31 it sits, that combination, it's not easy?---No, I agree,

1 but I would make a distinction between behaviours between  
2 councillors and behaviours between councillors and staff,  
3 only because the councillors have a greater responsibility  
4 to be respectful in the way in which they deal with staff  
5 and a level of batonnage(?) if you like between staff and  
6 - or councillors and staff is not necessarily as robust as  
7 it - - -

8 As it might be in the chamber or whatever?---Might be between  
9 councillors, yes.

10 MR BROAD: On pp.2 and 3 of your statement to Janice Macleay  
11 you deal with some examples of behaviour involving  
12 Councillor Campbell, Councillor Moon and Councillor  
13 Mackenzie, and I will show you your statement. Looking at  
14 the examples you gave do you believe that you were reading  
15 too much into their behaviours?---I didn't report those  
16 behaviours as being so much reprehensible that they  
17 constituted breaches or anything of the sort, I used them  
18 to illustrate at the lower end of the spectrum their  
19 disrespect for her position.

20 The reason why I asked you that is this, that you refer to the  
21 refusal of Councillor Campbell to use a salutation on an  
22 email to the general manager. You refer to a refusal by  
23 Councillor Moon to spell the general manager's name  
24 correctly, and I understand that relates to the spelling  
25 of her name as M-a-r-g-o rather than M-a-r-g-o-t, and you  
26 refer to Councillor Mackenzie railing against the  
27 bureaucratic imposition of the Code of Meeting Practices.  
28 In relation to the example involving Councillor Moon the  
29 reason why I asked that is this, that one of the  
30 submissions received by the inquiry incorrectly spelt  
31 Councillor Mackenzie's name throughout the submission. It

1 occurs to me that in respect of Councillor Moon was that  
2 just a simple error?---You would have said so had it  
3 occurred once, but it occurred consistently over a long  
4 period of time despite advice that my name is actually  
5 spelt this way.

6 If I can then go back to the dynamics between councillors in  
7 the period from the mediation agreement up to the election  
8 of Councillor Pocklington as mayor. What was your view of  
9 what was occurring then?---Well, following the mediation  
10 agreement breakdown behaviour in normal service was  
11 resumed if you like, behaviour continued to be  
12 disrespectful and it gradually got to a point where it  
13 impacted the general manager's health and there followed a  
14 fairly protracted period in which her presence at council  
15 was minimised through a mechanism that Councillor  
16 Pocklington indicated earlier where Councillor Weyrich  
17 came to an agreement to - at a time when there was an  
18 urgent report required by the government on our  
19 amalgamation, Fit for Future submission, a short time to  
20 do it, council resolved to ask the general manager to work  
21 exclusively on that and excused her from council meetings  
22 in the meantime to ensure that we met the deadline as good  
23 a proposal as we could possibly make it. That had the  
24 ancillary benefit of removing her from that direct  
25 relationship with some of the councillors that were  
26 causing difficulties. That of course had a - had a sunset  
27 on it, and subsequent to that the issues were unresolved  
28 and continued to the detriment of Margot's health and the  
29 eventual - - -

30 COMMISSION: Was that a resolution?---What's that?

31 To have the GM work on the Fit for Future?---Yes.

1 MR BROAD: So what you've just told me is that the action by  
2 councillors was specifically directed against the general  
3 manager?---There was substantial activity directed against  
4 the general manager, but it wasn't always confined to the  
5 general manager. Other councillors and sometimes other  
6 staff were intimidated by that behaviour.

7 One of the statements you make in your submission to the  
8 inquiry, paragraph 3, is in this form, "My intent is to  
9 report a sustained unrelenting pattern of behaviour by  
10 some councillors that has been injurious to the health of  
11 staff members (particularly the general manager Ms Stork)  
12 and to a lesser extent other councillors." Then you go on  
13 to describe it. You list other staff members, or you  
14 mention other staff members?---Yes.

15 Who are they?---The planning and development - environment and  
16 planning director, Simon Arkinstall.

17 Others?---Not to my knowledge.

18 Up to the election of Councillor Pocklington as mayor council  
19 stood had a five/four divide?---No.

20 Sorry, a five/three divide?---That's right.

21 With the resignation of Councillor Burke?---The resignation of  
22 Councillor Burke followed a prolonged period of his  
23 absence on sick leave. So in effect for quite some weeks  
24 prior to his resignation he wasn't at council meetings  
25 either. So in effect during that period it was a  
26 five/three divide. His resignation simply confirmed that  
27 five/three divide if you like and that changed at the  
28 election.

29 With the election of Councillor Pocklington as mayor there  
30 seemed to have been a change in the allegiance of  
31 Councillor Weyrich. Can you discuss that?---Councillor

1 Weyrich had given to many people, myself included, an  
2 undertaking that he only seek to serve as mayor for the  
3 first three years in this term, and at the end of that  
4 third year he would stand away from the mayoralty and  
5 allow others to seek the mayoralty. In the last week or  
6 so prior to the election it became obvious that he wasn't  
7 intending to do that, and that they also knew that he had  
8 lost the allegiance of myself and others, and so I believe  
9 that he consequently sought the allegiance of the other  
10 three in order to - in order to have a chance of re-  
11 election as mayor.

12 COMMISSIONER: He was mayor all the time from '12, wasn't  
13 he?---Yes.

14 So '12, '13, '14 and then '15 - yes, '15 and '16 or whenever it  
15 was he wasn't going to do anything. That was what he'd  
16 suggested he do.

17 MR BROAD: Councillor Weyrich appears to have been a staunch  
18 defender of the general manager?---He was a staunch  
19 opponent of the four, later three members of the - of the  
20 other group, and insomuch as they were clearly seeking to  
21 undermine the general manager then, yes, he was aligned  
22 with the general manager in that respect.

23 So it was ancillary to that position?---Sorry?

24 It was ancillary to that position, potentially of power?---Yes,  
25 although, you know, he voted for Margot for the  
26 appointment to the role, so one would expect that he would  
27 have had an allegiance and a loyalty to that decision.

28 What do you consider to be the importance of the  
29 mayoralty?---The mayoralty provides leadership in the  
30 community and a face to the community, and especially in  
31 this - in the environment of Murray Shire I believe the

1 mayor's most important function, the function in which  
2 they can produce the most beneficial outcomes, is an  
3 ability to manage and run meetings effectively, and beyond  
4 that, you know, the responsibilities are kind of emergency  
5 based powers, and as has become important in recent months  
6 the casting vote in four/four deadlocked situations, but  
7 leadership for the community, leadership for the council  
8 in relation to dealings with other organisations and the  
9 leadership and control of meetings themselves.

10 In your position as deputy mayor during the mayoralty of  
11 Councillor Weyrich what was your relationship with  
12 him?---For the most part very cordial, very - he often  
13 sought me out for advice on issues and so we maintained a  
14 relatively close working relationship. I recognise that  
15 that's not a relationship that's mandated. He chose to do  
16 that and I at the time was appreciative of the opportunity  
17 to work with him at that level. It changed about six  
18 weeks before the mayoral elections at which time, after  
19 which time he refused to meet with me on most occasions.  
20 I met with him once prior to the mayoral election to seek  
21 to understand why he wasn't honouring the promise that he  
22 made, and he dismissed me.

23 Is it your view that a relationship where the views of the  
24 deputy mayor are sought is a beneficial relationship?---By  
25 and large, yes, I believe that's the case, but that  
26 opinion is predicated on the basis that there is a  
27 constructive working relationship between the two people  
28 and that in the absence of such relationship - and a  
29 mutual respect - and the absence of that becomes much more  
30 problematic, but, you know, in business you wouldn't - you  
31 wouldn't have a deputy that you weren't comfortable and

1 able to work with closely. It's not necessarily the case  
2 in council where those positions are subject to council  
3 vote.

4 Are you stepping around the relationship between Mayor  
5 Pocklington and Councillor Campbell?---I am simply stating  
6 that any working relationship is dependent on good mutual  
7 trust and respect.

8 COMMISSIONER: Councillor Weyrich is saying that he was going  
9 to be the mayor for a few years and then step aside. Was  
10 that something that was well known to you? Well it's  
11 obviously known to you, but to others?---Certainly, yes.  
12 Because that's something he said in a meeting, or not a formal  
13 council meeting, but - - -?---Look I don't know to be  
14 honest. I didn't hear him say it in a formal meeting,  
15 but - - -

16 It was well understood in the group that that was - - -?---Yes.  
17 And you think that was understood throughout the whole of the  
18 council, councillors I mean?---I'd be extremely surprised  
19 if it wasn't.

20 MR BROAD: Can I deal with the behaviour you observed at  
21 council's meetings in relation to all councillors, or a  
22 selection of councillors or individuals, give an  
23 overview?---Sorry?

24 Would you give an overview of how council's meetings were  
25 conducted?---There's a substantial chunk of council  
26 meetings that proceeded amicably, professionally and  
27 appropriately. So I don't want to give a biased view or a  
28 disproportionate view.

29 COMMISSIONER: You have said, and I think Councillor  
30 Pocklington said the same thing, DA's for example take up  
31 a fair bit of time and they were dealt with reasonably

1 well?---And indeed many other aspects of the agenda, not  
2 just planning decision.

3 Not just - - -?---Yeah. So the areas where conflict regularly  
4 arose were in relation to things like general manager  
5 performance and implementations of the general manager  
6 such as the communication policy where she pulled it back  
7 to the formal one; even things like the regular re-  
8 approval or approval of an amendment to certain policies  
9 to bring them into line with State or Federal standards  
10 such as anti-discrimination policies and employment  
11 policies and so on. They were aware there was  
12 considerable dissent and the - particularly at the time  
13 when there was a five/four council there were often  
14 positions adopted by the four that were clearly not the  
15 view of the majority, that they weren't going to carry the  
16 vote. So, you know, many - often it was a case of don't  
17 bother voting on this, the cartel has got it covered.  
18 That kind of vote - that kind of comment was relatively  
19 common.

20 Just a little specific thing, only because you mention it, the  
21 anti-discrimination, equal employment opportunity  
22 policy - - -?---Yes.

23 - - - it was originally adopted 7 May 2013, so that's before  
24 the general manager comes on board?---Yes.

25 And then it was reviewed in June 2014, post general  
26 manager?---Yes.

27 And at the back of it just says "Review, no change". Was there  
28 any - I mean I've read a couple of things about that, was  
29 that an issue at all, this policy or - - -?---It was. I  
30 recall on one occasion when it was up for review  
31 Councillor Mackenzie said, "I don't agree with this

1 policy, I think we should be able to discriminate against  
2 whoever we like."

3 Yes, okay. I was just interested about that. So it was  
4 already in place before - - -?---Yes.

5 - - - before the general manager issue if you want to put it  
6 that way?---Yes.

7 MR BROAD: The instances of behaviour which we have been  
8 talking about at meetings can you give us an indication of  
9 the nature of behaviour that you think was inappropriate  
10 at meetings?---Well, certainly a lot of the behaviour that  
11 was inappropriate at meetings was the consequence of poor  
12 chairmanship where some councillors felt the need to  
13 interject and comment at any time during other councillors  
14 presentations to over-speak and to utter disparaging  
15 remarks about what was being said, and that should have  
16 been better handled by - - -

17 COMMISSIONER: Councillor Weyrich, by the mayor?---Primarily  
18 Councillor Weyrich. So there was a good deal of failure  
19 in that respect. More recently some of the behaviour has  
20 been quite intimidating and threatening. Councillor  
21 Weyrich on a couple of occasions while sitting beside me  
22 put a fist up in my face and threatened to take it  
23 outside. He's also yelled abusively in a very  
24 intimidating close to your face manner to Councillor  
25 Murphy. So those kinds of behaviours are very concerning.  
26 In terms of the ongoing behaviour within council prior to  
27 that a lot of the behaviour is in the nature of kind of  
28 snide sarcastic undermining remarks to the general  
29 manager, like "You would, wouldn't you" or "Here we go  
30 again" or something like that. They're not on the  
31 surface, you know, outrageous behaviours, but their

1 persistence and the failure to control them has made them  
2 an undesirable characteristic at meetings I guess.  
3 How was the meetings handled after Mayor Pocklington came into  
4 the chair. I mean he's only been in for a short period of  
5 time?---A short period of time. If he has a record as the  
6 shortest serving mayor in the shire I'm not sure.  
7 It's only September, isn't it, to January?---To January, yeah,  
8 four or five months. I think he has made a genuine and  
9 significant attempt to regularise the behaviour at council  
10 meetings with greater or lesser success, sometimes with  
11 significant success, particularly to cool temperatures  
12 calling adjournments and the like and attempting to bring  
13 some order to the debating process whereby, you know,  
14 speakers have a single opportunity to state their case and  
15 then move on to another speaker. I might say it hasn't  
16 worked all the time, but he has made a very, very  
17 significant improvement.

18 MR BROAD: In the second paragraph, the second page of your  
19 submission to the inquiry you make a statement, "I believe  
20 that some of the bad behaviour has arisen from those  
21 councillors ignorance of the standards of behaviour  
22 required of them." Is that something you have seriously  
23 suggested, it's just merely ignorance?---Well, I do  
24 believe - as I said in that submission I gave Councillor  
25 Burke the benefit of the doubt in relation to the time he  
26 attempted to criticise a staff member at a public meeting  
27 and he seemed genuinely unaware that such a process was  
28 inappropriate.

29 That part follows, that you say - - -?---Yes.

30 - - - "In my view Councillor Burke was the least offensive" -  
31 et cetera. I accept that?---Yes. When Councillor

1 Mackenzie says prior to taking up his role that, "I don't  
2 intend to attend the training because I don't want to be  
3 brainwashed by the staff about what my role is" one has to  
4 wonder how extensive his knowledge of the procedures and  
5 processes really are. He certainly displays no knowledge of  
6 those processes when it comes to debating. He believes,  
7 or he seems to believe that he can interject at any time  
8 and make comments at any time. So if behaviour is  
9 anything to go by then ignorance of the procedure is a  
10 significant factor.

11 In the fourth paragraph of your submission you state that your  
12 intent is to report a sustained unrelenting pattern of  
13 behaviour by some councillors. Behaviour that we have  
14 heard about and we're talking about doesn't seem to be a  
15 pattern based on ignorance?---Look, no, I don't believe  
16 so. I really mentioned that at the start to indicate that  
17 there may be a few instances where that excuse was  
18 tenable, but for the majority of the behaviour that's not  
19 an excuse, absolutely.

20 Can I deal with the issue of leaks to the press, can I ask you,  
21 and I may not get through this fully, what's your  
22 understanding of council's position in relation to contact  
23 with the media?---I believe it's a policy that we've  
24 adopted is that the mayor and the general manager are the  
25 delegated spokespeople for the media and that - and that  
26 we shouldn't be addressing the media off our own bat.

27 COMMISSIONER: I mean the policy refers to it has to be  
28 prefaced by "These are my own opinions". How do you work  
29 that, how do you actually deal with that if you're a  
30 councillor? How would you deal with it, put it that  
31 way?---Well, I would deal with it by not - - -

1 By not contacting them?---By not contacting, by not commenting.

2 I don't see the capacity to - - -

3 Form an opinion about something and says it's my personal one

4 and then wonder about how that relates to anything to do

5 with the council?---Yes. I mean I think - - -

6 Perceived as not something to do with the council - - -?---It's

7 an artificial division.

8 MR BROAD: In respect of that particular issue it is a matter

9 that's come before council for consideration and on

10 23 September council considered a report in relation to

11 comments in the press attributed to Councillor Mackenzie,

12 and these are the ones which refer to the Mathoura Cartel.

13 Do you recall those statements in the press?---Yeah. Was

14 it December last year or - no, earlier than that, wasn't

15 it?

16 Yes, it was earlier than that. The actual complaint was back

17 in June 2015?---Yes, okay. Yeah, I remember the headline

18 and the article. I think that was the same article that

19 referred to Councillor Mackenzie referring to the mayor

20 and the general manager as an epic fail from memory. Is

21 that right? Yeah.

22 Was there any doubt that they were actually expressions of

23 Councillor Mackenzie's views?---They were attributed to

24 him in the paper and I don't believe that he's denied

25 having said them.

26 But you didn't in reading those didn't see those as simply an

27 expression of his views?---No, no. Well, I see them as

28 him commenting inappropriately about his colleagues and

29 staff at the council.

30 The reason I ask you that of course is the conduct report said,

31 well there wasn't a disclaimer in the media piece that

1           said Councillor Mackenzie has provided a disclaimer that  
2           these are his views?---I don't think that matters. He has  
3           a responsibility not to denigrate the staff of the shire,  
4           whether it's in his opinion or reflecting a council  
5           resolution.

6   So it's a breach of a separate part of the code?---In my  
7           opinion, yes.

8   It's a denigration issue?---Yes.

9   In your role as a councillor and in your role as deputy mayor  
10          have you had much contact with the media?---Very, very  
11          little. I certainly haven't sought the media out to make  
12          comment on any particular issue. I may have given a one  
13          liner occasionally in response to them ringing me, but I  
14          can't recall instances. They're certainly not in a human  
15          manner that seeks to - you know, undermining or whatever,  
16          it might have been, "Yes, isn't that a wonderful thing for  
17          the council to be doing" kind of thing.

18   What's your attitude towards leaks?---Towards?

19   Leaks?---Leaks - they erode the foundation of council very  
20          dramatically and render council, not inoperable but a very  
21          hamstrung place in which to do business, because if  
22          confidential information can't be kept confidential then  
23          information that is confidential there's an encouragement  
24          to keep it confidential from council as well as from - in  
25          order to prevent it from being leaked to the media. So  
26          it's like honeycomb in the foundation of the council. It  
27          makes it very, very weak.

28   In the matters that have come to the attention of the inquiry  
29          they seem to have been used for a political  
30          purpose?---Look I think leaks in relation to the Janice  
31          Macleay report is entirely consistent with that

1 description. I think other leaks in relation to the  
2 health issues of the general manager also fall under that  
3 - under that heading as well, and - - -

4 The final question, and I notice the time, is the sixty four  
5 dollar question, have you yourself leaked anything to the  
6 media?---Never.

7 Thank you.

8 COMMISSIONER: Just if we go to the Macleay report do you have  
9 any idea who leaked that?---Yes.

10 Who?---Councillor Weyrich.

11 And why do you say that?---Because he has said so to a  
12 colleague of mine and to a member of staff.

13 Thank you. Ten o'clock tomorrow. See you then.

14 <(THE WITNESS WITHDREW)

15 ADJOURNED UNTIL WEDNESDAY 6 APRIL 2016