
TRANSCRIPT OF PROCEEDINGS

TUESDAY 12 APRIL 2016

BEFORE COMMISSIONER ANTHONY HUDSON

MURRAY SHIRE COUNCIL PUBLIC INQUIRY

1 COMMISSIONER: Good morning. Today will be our - I think today
2 will be our last day. I think we will hear from Ms Stork
3 and, hopefully, we'll be finished by the end of the day.

4 What we propose to do is sit from 10 until one and
5 then just have a very short break from - say, 20 minutes
6 until 1.20 and then just plough on through. It may be
7 finished by then, I don't know, but I'm just saying,
8 that's what we're aiming to do today and we'll round off
9 about four or quarter past four, something like that if we
10 need to, but that's what we're going to aim to do today.
11 We have decided we don't need to hear any more evidence
12 after that, we have got all the statements and we will go
13 from there.

14 <MARGOT STORK, recalled:

15 COMMISSIONER: Now, I think yesterday we just left off - we
16 finished up about some information about the long service
17 leave, we don't need to take that any further, so we're
18 going to move on from there?---Mr Commissioner, if I may,
19 I do have three matters that I would seek to clarify with
20 you, if that's at all possible.

21 Certainly?---It should only take a few moments.

22 Yes, by all means?---The first is in relation to the
23 recruitment process, and one of the questions I was asked
24 in the line of questioning was whether or not - it was put
25 to me by Mr Blackadder, given the circumstances leading to
26 the recruitment, whether I should simply withdraw. I
27 think - I'm paraphrasing, but I think that that was what
28 was put to me. Mr Blackadder didn't suggest that to me,
29 but I have here an email which was provided to me by Mayor
30 Tom Weyrich, which was provided to him by Mr Blackadder at
31 the time of the recruitment process, and I would seek to

1 hand that up to you. It relates to Mr Blackadder's
2 concerns regarding Councillor Mackenzie's behaviour, and
3 Mr Blackadder's clear recognition of Councillor
4 Mackenzie's gender bias.

5 Yes, well I'll grab that?---Thank you. The second matter that
6 I'd like to clarify is the question regarding my long
7 service leave of entitlements, and I would draw the
8 Commissioner's attention to the standard contract of
9 employment of general managers in New South Wales local
10 government and confirming that we are not in a position to
11 alter any of the clauses within that contract. The clause
12 within this in relation to long service leave is clause
13 9.3, and it clearly states, "The employee's entitlement to
14 long service leave is to be calculated by the same method
15 that applies to a non-senior member of council's staff".
16 As a consequence of that clause, it means that long
17 service leave for general managers in local government is
18 governed by the Local Government State Award, and I have
19 in front of me the 2014 award, that it replaced the
20 earlier award in local government but had the same clause.
21 And the clause in that reads as follows, "An employee
22 shall be entitled to long service leave at the ordinary
23 rate of pay as follows: After five years of service, 6.5
24 weeks", and that is exactly what was agreed for me. The
25 third matter that I would like - - -

26 What clause is that? 9.3 was it?---9.3 of the Local Government
27 State Award.

28 Then it went to the local government - the award - - -?---Yes,
29 sorry, it was the Local Government State Award under leave
30 entitlements, section E, long service leave.

31 COMMISSIONER: Thanks?---The third matter that I would like to

1 clarify was a simple matter of dates. I was asked a
2 question regarding the dates of the interviews for my
3 recruitment process. Having gone back through my emails
4 last night, I can confirm the following dates. The
5 application was sent by me to Mr Blackadder on 25 November
6 2013. I was advised that the closing date for the process
7 was extended to 6 January 2014. The first interview
8 I attended was 28 January 2014, and the second interview
9 was 24 February 2014. The Riverine Herald article
10 regarding the gender bias situation was published on
11 Friday 21 February 2014 and aligns not with the dates that
12 I gave but with the days that I gave concerning my
13 attendance here.

14 MR BROAD: Just a question that follows, does the Local
15 Government State Award apply to contracts between councils
16 and general managers?---What the - sorry, what the general
17 manager's contract says in relation to long service leave,
18 "The employer is entitlement to long service leave is to
19 be calculated by the same method that applies to a non-
20 senior member of Council staff. A non-senior member of
21 Council staff is governed by the award".

22 I understand you?---Those were the three matters that I'd like
23 to bring to your attention, and I apologise for the
24 incorrect dates.

25 No, that's all right. What I commenced yesterday was a number
26 of questions which were tending to be chronological in
27 their order, and what I wanted to explore with you now is
28 a matter that came out of the evidence during the course
29 of these hearings, and that is that there were meetings
30 between yourself and individual councillors. Can you tell
31 the Inquiry when that occurred and the matters that were

1 discussed in general terms and how they proceeded with the
2 various councillors?---Certainly. May I refer to my
3 diary?

4 Yes?---So when I commenced at Murray Shire I commenced on the
5 basis that I contacted each of the councillors asking if
6 they would like to meet with me to discuss, I guess, their
7 goals or ambitions in office, you know, what some of their
8 particular interests were within the Council. Those
9 meetings occurred some time within the first two or three
10 weeks of my employment, and my diarised notes talk to me
11 about what each of those meetings discussed, so did you
12 want me to go through those diarised notes regarding what
13 the matters were about?

14 Just broadly what were you talking about?---Okay, so they
15 differ greatly depending on each of the councillors, and
16 probably not surprising. I've got in front of me my notes
17 from my meeting with Councillor Murphy which was on
18 29 April. She raised with me financial sustainability was
19 important to her, the new bridge over the Murray River,
20 the issues of amalgamation, happy to look at the bigger
21 regional picture. So they were the types of discussions
22 we had. Those meetings on 1 May, I had a meeting with
23 Councillor Campbell. The tone of that meeting was quite
24 different. Councillor Campbell raised issues such as the
25 delivery of Council materials by which I believe that she
26 meant meeting papers. Her concern was around the taping
27 of meetings, the accuracy of reporting of the meetings of
28 councils by officers, the perks that staff enjoyed,
29 et cetera, so there was a whole range of issues raised by
30 her, so they were very different as between councillors.

31 We have also heard evidence to the effect that there was an

1 indication given to councillors that these one-on-one
2 meetings would continue into the future?---Yes.

3 Were there further one-on-one meetings with
4 councillors?---There were some further one-on-one
5 meetings, but they weren't held as I had initially
6 envisaged, being a monthly meeting, and I'd like to put
7 some context around that.

8 You had in mind originally that that might be a monthly
9 meeting, whether it was individual or two at a time or
10 whatever you might do?---Correct, yes. That was certainly
11 my aim, but the context that I'd like to put around that
12 was some of the incidents that started to occur with
13 councillors, and you raised with me yesterday the public
14 meeting and the criticism of Councillor Burke of council
15 staff, and by imputation of myself as was found by
16 Ms Macleay on 20 May in the LEP meeting. I'd just like to
17 draw your attention to the fact, that meeting was a mere
18 22 days after I started work at the Shire. The issue with
19 the Campaspe Shire Council dinner that I've raised with
20 Ms Macleay, and which in Ms Macleay's report was
21 inconclusive, but which I now believe has been made
22 conclusive by evidence, happened a mere 43 days after
23 I commenced at Murray Shire. The after hour meeting at
24 Moama with Councillor Mackenzie, which was clearly a
25 threatening meeting as far as I was concerned, which
26 Ms Macleay agreed with, occurred a mere 77 days after
27 I started with the Council.

28 Can I go back to that - - -?---Yes, certainly.

29 - - - first meeting, the meeting where Councillor Burke made
30 comments and allegations about staff?---M'mm.

31 As you indicated yesterday, he was talking about a matter that

1 had been in the Land and Environment Court in 2013?---Yes.
2 How did you see that as disparaging of yourself given that the
3 events had taken place quite some period of time before
4 you were appointed as general manager?---Because it was my
5 belief in the way that it was raised at that meeting was a
6 suggestion of ongoing issues within the Council, and
7 I certainly felt that not only my Director of
8 Environmental Services, but myself were well and truly put
9 on the spot in a public meeting in relation to what was
10 going on in Council, and certainly it was in relation to a
11 2013 issue, and certainly it was not directed personally
12 at me as it would turn out, but I do note from Councillor
13 Burke's submission that there is a suggestion that,
14 I think his word was I was "flippant" with him when I met
15 with him to discuss this issue and I don't believe that
16 that's the case. I actually met with Councillor Burke and
17 I sat down and I walked through the judgment with him and
18 I explained why the headline item that he'd raised, which
19 was that we'd shared a solicitor with the other party, was
20 simply incorrect.

21 If we can go forward, and I'm basically going through the
22 chronology in your second submission as I indicated
23 yesterday?---If I may just ask, which second submission
24 are we speaking about?

25 I'm sorry, I will show you the document. Before I go to that
26 any further, you said that there were some further
27 meetings with councillors?---Yes.

28 Can you tell me with whom you met and when you met as best you
29 can?---Yes, there was a meeting with Councillor Mackenzie
30 on 14 July after hours at Moama. There was also a meeting
31 with Councillor Moon. I need to just try and find the

1 date.

2 COMMISSIONER: I mean, it doesn't matter the exact date, but it
3 was probably around the same sort of time?---Yeah. Look,
4 I think it's fair to say that there was far less meetings
5 than I would have hoped and the outcomes of those meetings
6 are unfortunately far and away included in the bullying
7 and harassment allegations.

8 So you say at the meetings you felt bullied and harassed? Is
9 that what you're saying?---I'm saying that at those
10 meetings I raised concerns which have since been
11 substantiated as bullying and harassment, yes.

12 MR BROAD: Were there other meetings that were occurring with
13 Councillor Weyrich's, the then Mayor, with Councillor
14 Pocklington, with Councillor Bilkey, were they occurring
15 or were the only meetings you were having - - -?---No,
16 there were certainly regular meetings with the Mayor,
17 Councillor Weyrich in his time as Mayor, and Councillor
18 Pocklington in his time as Mayor, and there were certainly
19 meetings with Councillor Pocklington, with the Mayor when
20 he was Deputy and the same with Councillor Bilkey when he
21 was Deputy.

22 So was this in 2014? Did it continue in 2015?---Yes, it did.

23 COMMISSIONER: Can we assume that there would have been
24 ongoing, constant discussions with the Mayor like most
25 general managers and Mayors?---Yes.

26 I mean, they come into your office, sit down and talk and do
27 all that type of thing?---Yes.

28 It happens all the time?---Yes.

29 MR BROAD: Can I go through to the next matter which is raised
30 in your chronology and that is 10 June?---Yes.

31 Can you give us some details in respect of that matter?---So

1 the 10 June matter was a meeting between councillors of
2 Murray Shire and Campaspe Shire that was a dinner get-
3 together. It was a - not an agenda-ed meeting. It was to
4 be a social occasion and the CEO of Campaspe at that time
5 and myself had agreed, following some discussion between
6 the Mayors of Campaspe and Murray, that that would be an
7 event that we would hold six monthly and that Murray would
8 host the first of those events. It was a dinner held at
9 Madison's Restaurant and it was attended by a member of
10 councillors from both Campaspe and Murray, as well as the
11 general manager, myself, and the CEO from Campaspe.

12 What occurred?---So I have notes here regarding the dinner, and
13 my notes tell me that during that dinner there was a
14 number of conversations going on around the table, and in
15 the early evening Councillor Mackenzie was sitting across
16 the table from me and he was speaking to another
17 councillor, who was a Campaspe councillor, and when
18 I wrote these notes, which was the next day, I couldn't
19 remember who the councillor was, but I overheard a
20 conversation that was occurring, and during that
21 conversation Councillor Mackenzie was stating, "I'm the
22 sort of bloke who didn't worry about sacking someone who
23 had worked for me for nearly 30 years, so I'm not going to
24 worry about sacking somebody who's been here two months".
25 At that point in time I had been with the Shire just on
26 two months, just a fraction under, and it was certainly my
27 interpretation that that was a warning that was being
28 given to me across the table.

29 It was being given to you because you were present when he was
30 discussing that with someone else?---Correct.

31 And that was your view of his intent?---It was.

1 The contract of employment general managers provides that
2 either party may terminate the agreement on giving 38
3 weeks', effectively, on giving notice and payment of 38
4 weeks' salary?---Yes.

5 It is not constrained, and so it's a matter where a resolution
6 of Council could be passed and that could bring about the
7 end of the contract with the general manager?---Yes.

8 At 10 June had Councillor Mackenzie given you any indications
9 that he was dissatisfied with your performance?---Yes.

10 How had he done that?---This particular incident became a
11 series of, my correction was a series of questions on
12 notice, although it may have only been one, which was
13 about how did this event come about in terms of the
14 choosing of the venue. Councillor Mackenzie was
15 particularly unhappy that I had chosen the venue for this
16 event in collaboration with the Mayor and he'd felt that
17 that was something that should have come before Council.
18 I saw it as a simple invitation going out to councillors,
19 and it was the tone of question on notice that indicated
20 to me that he was unhappy with my performance in this
21 matter.

22 This meeting, was it a meeting of councillors and senior staff
23 in respect of each Council?---It was a meeting - yes, it
24 was. It was a meeting of councillors and the CEO and
25 general manager.

26 Right. It didn't extend down to directors?---No.

27 So it was predominantly councillors. I don't dismiss your
28 attendance or the attendance of the CEO of the Victorian
29 counterpart?---M'mm.

30 What was the nature of the discussions? Was it, "Let's get to
31 know each other", "Let's work more closely"? What was the

1 nature of the meeting?---Certainly my understanding of
2 what the Mayor was seeking to achieve was an opportunity
3 for us to get together with the closest neighbouring
4 Council in Victoria, have an informal discussion, share a
5 meal and to do so each six months. There was no agenda in
6 terms of, "We need to get an outcome for a particular
7 thing".

8 Was the venue important?---Was the venue?

9 Yes?---I don't believe so. There were seen to be a member of
10 suggestions about possible alternative venues. There also
11 seemed to be a suggestion that the venue that we had
12 chosen was inappropriate because it was in a public open
13 area. I certainly didn't see that that was an issue.

14 Right, and those views about the alternative venues, were they
15 put forward before the booking was made for the
16 venue?---I don't believe so.

17 COMMISSIONER: Where is Madison's? Victoria or New South
18 Wales?---New South Wales, Moama, main street.

19 MR BROAD: So you went away from that gathering with a view
20 that there had been a warning shot fired about your
21 employment?---That was the first incident that occurred
22 that night. The second incident that occurred was a
23 comment again made by Councillor Mackenzie as I picked my
24 handbag up from under the table to go and pay the bill,
25 Councillor Mackenzie across the table said to me, "Is that
26 your handbag?", and I said, "Yes, it is", and his comment
27 then was, "There's not much in it compared to how bloody
28 much we pay you".

29 Was it simply a joke?---I didn't take it as a joke, no.

30 COMMISSIONER: He says it's the other way around. He says it's
31 more along the lines of, "It's too light. We're not

1 paying you enough", as a joke?---M'mm. I didn't take it
2 as a joke and I think that's an incorrect interpretation
3 of what was said.

4 MR BROAD: You then refer to an attempt by Councillor Moon to
5 influence you to reconsider two planning matters on
6 18 June?---Yes.

7 Can you detail the events in the circumstances?---Yes,
8 Councillor Moon approached me, and I can't remember
9 whether that was in person or by phone, asking whether
10 I would meet with Mr Peter Hill to discuss with him some
11 planning matters. I rang Mr Hill and asked him would he
12 like to come into the offices and he indicated to me that
13 he had too much volume of information to bring in the
14 offices and he would prefer that I came to his workplace.
15 He also indicated that by coming to his workplace it would
16 give me an opportunity to see his business interests as
17 he's a significant businessman within Moama. I agreed to
18 that meeting and I have notes in my diary from 12 June
19 that I attended with Mr Hill, and certainly Mr Hill gave
20 me a tour of the business operations that he was involved
21 in. He then took me to the conference room within his
22 offices and spread out on the conference table was an
23 enormous amount of folders, and he told me that he wanted
24 to discuss two matters, and I've got these recorded as the
25 Ham Application and the Manningham Estate. He ran through
26 some details of these two matters with me, I've taken some
27 notes of those but I had no clear understanding of these
28 matters.

29 Were they development applications? At the time were they
30 things, consents or applications?---Yeah, so the notes -
31 the notes that I have is, "Manningham Council refused the

1 application. Council's planning to rezone your land.
2 Council refused to rezone".
3 So that's a concern about something that's already happened in
4 terms of refusal of a DA?---Well, that's right. Yes,
5 that's correct.
6 As far as you knew at the time, I mean?---Yeah
7 Yes, and what was the other one?---"Ham, two lot subdivision,
8 approved subject to conditions."
9 He didn't like the conditions?---"Removed Condition 3. Refused
10 to issue certificate of compliance." I then asked him
11 about the timing of these matters and he indicated that
12 one was between seven and 10 years ago.
13 Right?---And I've made a note here that I advised Mr Hill that
14 if he had evidence of corruption he needed to send it to
15 ICAC, so I haven't actually noted what it was that he said
16 was corrupt.
17 Was that when he was making some assertion about
18 corruption - - -?---Correct.
19 - - - which occurred in the Council seven to 10 years
20 ago?---Correct.
21 That is the way you - that's what your notes and the way
22 that - - -?---That's right. So on 18 June I met with
23 Councillor Moon and my notes are as follows, "Councillor
24 Moon advised me that KSK, which was a legal matter that
25 Council was involved, stinks to high heaven" - "to high
26 hell", in fact, "stinks to high hell", and then he went on
27 to say that the two developments, and my understanding was
28 he was talking about the two developments to which I had
29 spoken to Mr Hill, "need to be reinstated and done with.
30 On the balance of probabilities and reading all the
31 material, I believe someone intervened in these

1 applications. I believe it's completely unjust and just
2 needs to be reinstated", and by that stage I was aware we
3 were talking about matters that had been decided by
4 Council.

5 What did he mean reinstated, do you think?---Well, my notes
6 say, "Councillor Moon continued to push the two planning
7 matters raised by Peter Hill must be reinstated.

8 I advised that I'd get advice from Mr Arkinstall and legal
9 advice if necessary to decide what, if anything to do. He
10 scoffed at this and said he would accept Peter Hill's
11 evidence before anything else. Councillor Moon then
12 raised a range of supposed corruption issues and when
13 I advised him to go to the ICAC he told me they were
14 useless. He then went on to talk about an investigator
15 who had been in town during the last week who had also
16 said that ICAC was useless". I can continue through the
17 notes if you wish.

18 MR BROAD: How did you see him as trying to influence you? Can
19 I put this proposition to you, there had been some
20 development applications no doubt lodged, considered, and
21 one of them appears to have been refused?---M'mm.

22 The other appears to have obtained conditional consent?---M'mm.
23 Council's position, having made those determinations, was that
24 it was functus officio it had undertaken its task. Would
25 you agree with that?---Yes.

26 The simple situation in respect of the matter that had been
27 refused is that it was open to whoever the developer might
28 have been to have lodged a fresh development
29 application?---Yes.

30 In respect of the matter which it obtained conditional consent
31 it was open to the developer again, whoever that may be,

1 to lodge a s.96 application for modification?---Yes.

2 Wasn't the simple answer to Councillor Moon that it was up to
3 the developers to engage in the course of conduct?---Yes,
4 which is where we ended up.

5 You ended up - - -?---Well, we took no further action in this
6 matter and I certainly indicated to Councillor Moon that
7 this was a matter for the developers. Where we're talking
8 about - I'm talking about that I felt that I was being put
9 under pressure was, I was a new general manager. These
10 were matters that were very old and it was my belief that
11 Councillor Moon was attempting on behalf of the developer
12 to put some pressure on, you know, "These two developments
13 need to be reinstated and done with". The discussion was,
14 "These are done with. This is done with. The matter was
15 before Council a long time ago".

16 So why is it pressure on you? Just explain that again?

17 I mean, that would be the obvious answer that, "There's
18 nothing I can do about it"?---Yes, that's right. It was
19 the answer, but I think that that was the reason that the
20 meeting was held. The reason that I was directed - no,
21 I wasn't directed, I was asked to meet with Mr Hill, and
22 that there was a reason that Councillor Moon was then
23 providing a follow-up with me to reinforce with me how
24 important it was that these be reinstated.

25 So even if you look at it as upon a councillor trying to get
26 you to do something, at the end of the day it's just,
27 "Well, it's nothing to do with me. I can't do anything
28 about it", sort of response?---Correct.

29 COMMISSIONER: Why is that pressure on you, that's what I'm -
30 why do you feel as though that was a - I mean, that's just
31 someone trying to get something that they want, and you

1 say, "Well, it's" - I mean, it's almost so obvious that,
2 "There's nothing I can do about it"?---Sure, it is, but
3 that was the way that I felt at that time. I believed
4 that Councillor Moon was meeting with me in order to put
5 some pressure on to get decisions for Mr Hill.

6 MR BROAD: Was it a simple misunderstanding by Councillor Moon
7 of the development consideration process?---I would have
8 thought that was a question for Councillor Moon. I didn't
9 believe that was the case. I believed that he understood
10 where these matters were and was attempting to reinstitute
11 them if possible.

12 COMMISSIONER: Did he say there were more DAs from Hill or did
13 Hill say he had DAs in at the Council?---No.

14 Or was there any active ones?---No. I mean, there may well
15 have been active ones, but no, that wasn't part of the
16 conversation.

17 It wasn't put to you in that way?---No.

18 MR BROAD: Could we go forward to 14 July? You indicate that
19 you had an after-hours meeting between Councillor
20 Mackenzie and yourself?---Yes.

21 Councillor Mackenzie had behaved in a manner that was rude,
22 demeaning and designed to threaten and intimidate?---Yes.

23 And I assume you mean by that to intimidate you?---Correct.

24 Can you indicate what occurred?---Yes, Councillor Mackenzie
25 contacted me and requested that I meet with him, and there
26 was little in the way of detail provided as to why he
27 wished to meet with me. I had hoped to have a meeting
28 during office hours and my recollection is that Councillor
29 Mackenzie stated that he wouldn't be returning to Moama in
30 time for the meeting to occur during office hours and
31 indicating that it was important to meet that day. As a

1 consequence, the meeting was arranged for 5.30 at the
2 offices in Moama, and certainly when I arrived some time
3 before 5.30 Councillor Mackenzie was waiting there waiting
4 for me. Councillor Mackenzie and I entered the offices at
5 Moama and we sat in a meeting room in those offices.
6 Councillor Mackenzie had with him a small yellow Post-it
7 note with a number of dot points on it, and my notes taken
8 - some of those notes were taken at the time of the
9 meeting and some shortly thereafter were that Councillor
10 Mackenzie wanted to raise a number of issues with me, the
11 first of those being that he believed that I was squashing
12 debate and that was a serious matter. I took that to mean
13 that I was squashing debate in the Chambers, and he said
14 that I was not impartial. He then spoke about councillor
15 Bilkey who he referred to as the "crossword specialist"
16 and he indicated to me that he "would grab somebody by the
17 throat soon". This was Councillor Mackenzie speaking
18 about himself. He also indicated to me that he would
19 definitely not be attending the Bullying Workshop, which
20 was how he categorised it. He then went on to talk about
21 a railway line issue where the Mayor and I had had some
22 photographs taken shortly beforehand in a newspaper
23 article. He said, "The railway line's not of any
24 relevance and it's just publicity crap given that they've
25 closed all the silos up the line". He then went on to
26 raise issues regarding my EA, Kerrie Keogh, and indicating
27 to me that he did not want Kerrie Keogh to write directly
28 to him. He then said that there was allegations and Code
29 of Conduct matter. He didn't know what allegations had
30 been made and he wanted a list of those allegations or he
31 wanted the transcript of the allegations. By that,

1 I assumed that he was discussing the Code of Conduct
2 matter that related to the "gender bias" comments during
3 the recruitment process. I then went on to talk about the
4 Bullying Workshop, which in fact was of course the Anti-
5 Discrimination and Bullying and Harassment Workshop.
6 That's when you bring in that policy. That is all part of
7 bringing that policy in?---No, it was a direct consequence
8 of the Code of Conduct outcomes that required them all to
9 attend the training, and he had said earlier in this
10 conversation that he would definitely not be attending
11 that workshop. I then put to him, "If we held the
12 Bullying Workshop at 6 pm would you attend?". He said,
13 "I don't know". He said, "am meetings, so before lunch
14 meetings were no good for him". He said, "I set aside
15 Tuesdays for Council business", and he then asked me to
16 show him the Code of Conduct outcomes. He then went on to
17 make comments about, "This isn't Russia and I don't have
18 to go to this. If, as I suspect, it's a thing from the
19 Mark Larby Investigation, I haven't seen anything back
20 from him. I don't care who tells me to go, I'm not
21 going". He referred to the meeting Code of Practice, and
22 he said, "I don't care what New South Wales Government
23 says. Questions without notice have been around for
24 thousands of years. Surely you understand democracy. You
25 can't tell me what to do. I'm not doing anything you
26 say", and part of the conversation when he was talking to
27 me about not having discussions with my EA, Kerrie Keogh,
28 I suggested to him that what he was really trying to do
29 was tie me up in administrivia so that I didn't have time
30 to do my job and he agreed with that.

31 MR BROAD: He agreed with that that he was trying to tie you

1 up?---Yes.

2 On 25 July you wrote to the Office of Local Government, to

3 Mr Friend, do you recall that?---Yes.

4 Do you have that letter in front of you?---No, I don't.

5 I will give a copy to you?---Thank you.

6 In that letter you largely set out, and it's really to be found

7 on p.3 under point 8, the meeting with Councillor

8 Mackenzie. It seems to be the only difference that

9 I noted was the statement of questions on notice. In your

10 letter you refer to them as being around for "hundreds of

11 years". In your evidence you talked about them being

12 around for "thousands of years". In relation to the

13 matter in the second dot point, and that is you were

14 squashing debate in council meetings, did

15 Councillor Mackenzie enlarge on what he meant by

16 that?---No, he didn't at that meeting, although I put

17 together the comment regarding a squashing debate with the

18 comments regarding questions without notice as being two

19 parts of the same issue in Councillor Mackenzie's mind.

20 Turning over the page. At the foot of p.4 you say, "In the

21 three months that I have been at Murray Shire Council as

22 general manager it has become increasingly clear that it

23 is difficult for either the mayor or I to deal with

24 conduct matters as there is a small minority of

25 councillors who believe that neither the mayor nor I have

26 the authority to manage the conduct of meetings or council

27 business". Can you tell me, you have certainly referred

28 to this meeting. Previously you have referred to other

29 issues relating to code of conduct matters but I don't

30 think you have referred in that letter, and I may be

31 wrong, to issues involving meetings?---M'mm.

1 Can you indicate what issues had occurred as at that date in
2 relation to meetings?---Yes. The discussion here
3 regarding questions without notice was really, I believe,
4 a corroboree of some of the behaviour that was going on in
5 council meetings and prior to me commencing at
6 Murray Shire it would appear that questions without notice
7 were simply a process of council meetings where towards
8 the end of the council meeting the mayor went around the
9 table and took questions without notice. It appeared that
10 the mayor had no understanding of the process in the
11 meeting practice around questions without notice, that
12 there needed to be a decision of the mayor regarding the
13 urgency of that question before it proceeded. And it was
14 my belief that questions without notice were being used
15 incorrectly in the meeting; that they were very personal
16 in nature and a lot of the breakdown in the meeting
17 process was as a result of those questions on notice
18 towards the end.

19 You seem to be referring to two types of questions. We have
20 questions on notice and we have questions without
21 notice?---My apologies. I am talking about questions
22 without notice.

23 A question without notice?---Correct.

24 COMMISSIONER: What did you understand that - - -?---That
25 process?

26 What did you think questions without notice were meant to be or
27 to do, or the process or whatever?---My understanding of
28 questions without notice are questions that have some
29 level of urgency to council business that particular week.
30 Those questions can be raised and then the first condition
31 pressed into those, if you like, is that the mayor needs

1 to make a decision about the urgency or otherwise of the
2 question before it is taken further at that meeting. None
3 of that process was occurring.

4 Where do you get all that information from?---From the Meeting
5 Practice Notes - the code of meeting practice for
6 Murray Shire. I can direct it - I don't have it in front
7 of me but I can direct it to you if you wish.

8 No, that's fine.

9 MR BROAD: I have got the Meetings Practice Note in front of me
10 and Part 30 deals with questions may be put to councillors
11 and council employees and it provides that a councillor
12 may, through the chairperson, put a question to another
13 councillor or may, through the general manager, put a
14 question to a council employee. And then it says,
15 "However, the councillor or council employee to whom the
16 question is being put is entitled to be given reasonable
17 notice of the question and in particular sufficient notice
18 to enable reference to be made to other persons or
19 documents".

20 COMMISSIONER: Noting that the agenda - 21 says that there is
21 an agenda item for questions and statements without
22 notice?---Yes.

23 So that's a standing agenda item?---Yes. The advice of the
24 Office of Local Government is that shouldn't be on the
25 agenda as a standing item.

26 So that's not in the regs, that's something that's been adopted
27 by - - -?---It appears to have been, yes.

28 MR BROAD: In responding to a question, whether it be on notice
29 or not, there is an opportunity to say - well it can be
30 addressed directly at the meeting?---Yes.

31 Or it can be addressed on the basis there will be a report

1 provided to a further meeting?---Correct.
2 The opportunity to provide a report to a future meeting really
3 appears to comply with providing an opportunity to provide
4 a fulsome answer without being forced on unnecessarily.
5 Do you agree with that?---Yes.
6 So the process of asking questions is a recognised
7 process?---Yes.
8 Under the code of meeting practice. You take issue about
9 whether there should be an agenda item for questions
10 without notice?---Yes, I have an issue with questions
11 without notice unless there is some relevant urgency at
12 that particular meeting for those questions.
13 But on the basis that you can take those questions away and
14 respond to them, whether it be at the next meeting or at
15 some time after that, would you have an issue with the
16 concept of a question with notice on the premise that an
17 answer is not required at that meeting?
18 COMMISSIONER: Without notice, I think that means?---Without
19 notice?
20 Yes?---If we are talking about the situation at Murray Shire,
21 that wasn't what was occurring. What was occurring was
22 disorder in the chamber as a result of those questions
23 being asked, significant numbers of those questions being
24 asked, and then demands being made for answers.
25 So really it would have been up to the mayor or the chairman of
26 the meeting I suppose, obviously the mayor, to say take
27 questions without notice. Say you raise a question, say
28 "Well I can't answer it" or maybe consult with you or
29 whatever it might be and say, "We will take it on notice.
30 Next question?", and move on like that around the
31 table?---Correct.

1 You are saying it turned into - what are you saying
2 happened?---What am I saying happened?
3 Yes?---We didn't move on around the table. What I'm saying is
4 that often - - -
5 It just went on and on?---Yes.
6 And then are you saying anything about the manner in which
7 those questions were put or discussed, or what they were
8 actually asking or anything like that, in terms of
9 yourself?---In terms of me?
10 Yes?---It was really around trying to assist the mayor in
11 keeping the meeting moving. I would need to look at the
12 meeting code of practice - - -
13 No, I am just asking you what happened?---Yeah, but I just have
14 a concern that there is clearly a clause in there
15 regarding the question of urgency for matters being raised
16 as questions without notice.
17 Yes, I understand there's all that about urgency and all that,
18 but just your impression; I mean I'm - - -?---My
19 impression - - -
20 I am seeking to see whether you say that as a general sort of
21 position that when these questions without notice were put
22 and then discussed, I mean were you then taking some of
23 the answers and the questions in a way that was it an
24 attack on you in any sense?---It was more about the
25 behaviour within chambers. This process was one that just
26 got out of control.
27 You are saying, "I'm the general manager sitting there" and
28 I say, "Well maybe this is an issue we've got to deal
29 with. This is just going on and on and on", something
30 like that?---Yes, yes.
31 MR BROAD: In the paragraph I've just quoted you make the

1 statement to the effect, "That it has become increasingly
2 clear that it is difficult for either the mayor or I to
3 deal with conduct matters"?---M'mm.

4 Can you explain your role at a meeting in relation to conduct
5 matters?---What I was talking about in that letter was the
6 attempt, I guess, really to set in train the outcome from
7 conduct matters. So this was around - at that point in
8 time when this letter was written I believe that we only
9 had the two conduct matters; one was in relation to the
10 gender bias and one was in relation to the leak of that
11 gender bias comment to the media.

12 COMMISSIONER: As you said yesterday, that was a complaint made
13 by the mayor was it?---Correct, yes.

14 And then sent to a conduct reviewer?---Yes, that's right. And
15 the outcome of that was training in relation to - my
16 recollection was it was training in relation to
17 antidiscrimination, bullying and harassment and it may
18 have been training in relation to either the code of
19 conduct or the meeting code of practice.

20 Was it only to Councillor Mackenzie that one?---No, everybody
21 was asked to attend.

22 No, the actual complaint; the complaint that was actually
23 referred out to the conduct reviewer?---Yes.

24 The assertions and allegations and so forth, was it just at
25 Councillor Mackenzie?---It was in relation to
26 Councillor Mackenzie, yes.

27 Only?---Yes.

28 But as a result what came back was the recommendation that
29 everybody get involved?---Everybody attend, yes.

30 MR BROAD: That was the IAB report that came back on
31 7 May?---Yes.

1 In respect of the second part of that paragraph, and you refer
2 to councillors believing that neither the mayor or you
3 have the authority to manage the conduct of meetings or
4 council business. Can I put to you that you don't have a
5 role in the conduct of meetings. Your response?---Yes.
6 So - so the statement that I've made is incorrect. What
7 I was, I think, attempting to get across was I had already
8 felt that there was a level of feeling amongst councillors
9 that I didn't have a role in the organisation and
10 certainly that was reinforced with me in the discussion
11 with Councillor Mackenzie about, "You will not tell me
12 what to do. This is not Russia".

13 But that's not the nature of what you put in this?---No, that's
14 incorrect what I've written there.

15 COMMISSIONER: Just while Mr Broad is looking for something,
16 I will just go back one in your - I think this is the code
17 of conduct complaint, you probably recognise that,
18 April 14, February 2015. Just the first one and I think
19 you mentioned it the other day was an allegation about
20 disseminating information by Councillor Mackenzie?---Yes.

21 He received an email from Matthew O'Farrell?---Yes.

22 Matthew O'Farrell is someone outside of the council?---Correct.

23 So someone from outside of the council sends

24 Councillor Mackenzie an email and then he circulates it
25 and then your concern was what?---The email that was sent
26 to Councillor Mackenzie was in fact sent to all
27 councillors and it was sent on the Murray Shire Council
28 system. If you read the email that was sent it contains
29 quite an amount of what I would consider defamatory
30 material, both in relation to a current staff member and a
31 former staff member. My concern was why that was then

1 disseminated further by a councillor.

2 Because?---Because of the nature of the material and given that

3 it was disseminated on the Murray Shire system.

4 There was a defamatory concern?---There was a defamatory

5 concern. It was a risk mitigation concern for me for

6 Murray Shire.

7 For that sort of thing?---Correct.

8 Can councils be held for defamation? I'm not sure they can,

9 can they? Anyway, that was the issue?---It was the issue

10 that I was raising concern about, yes.

11 It was really just that. That inside the document there was

12 stuff that shouldn't have been floating

13 around - - -?---Correct.

14 More than it had to?---Yes.

15 MR BROAD: Can I show you some extracts of minutes which were

16 attached to a subsequent conduct complaint that you made

17 and just go through some of the questions on notice

18 contained in that?---Yes.

19 The first part is an extract of minutes of the meeting of

20 20 May 2014?---Yes.

21 There were questions and statements on notice, firstly by

22 Councillor Burke?---Yes.

23 Would you give your view as to whether or not that was an

24 appropriate question?---I thought that was an entirely

25 appropriate question.

26 Commencing at the bottom of the page and continuing over were a

27 number of questions asked by Councillor Campbell?---Yes.

28 Can you give your view in respect of those?---Question 1 in

29 relation to amalgamations; clearly Councillor Campbell is

30 putting a view there and the mayor responded to that.

31 I think the mayor responded correctly, that it was still a

1 live issue. There seemed to be that because of a
2 statement made by a member of Murrumbidgee that this was
3 no longer an issue, I think that that's a reasonable
4 question. The question regarding LED lighting is clearly
5 a question on notice you would expect. The question
6 regarding the engineering department; there is some
7 question in my mind as to why that was a question on
8 notice rather than simply a question to the organisation
9 that could have been answered.

10 How would a question to the organisation be answered?---The
11 query would come into the organisation. It would be
12 directed to the director of engineering and an answer
13 provided to the councillor.

14 And that wouldn't necessarily have been made public in the
15 sense of it being made public at a meeting?---Correct.

16 Would you agree that there is a benefit for certain information
17 to be made publically available during the course of a
18 meeting?---Yes.

19 COMMISSIONER: And that a councillor might want for their own
20 reasons to make it public, obviously?---Yes.

21 I mean it just follows, doesn't it.

22 MR BROAD: I think we have got to - - -?---Question 4.

23 Question 4?---Yes, that question appeared to be a question
24 regarding Councillor Campbell's home. My understanding
25 from the director of engineering is that they then
26 arranged to check that water level and it was in fact as a
27 result of a barnacle in the pipes and that was corrected
28 for Councillor Campbell. There didn't seem to be any
29 suggestion that the water supply was at a trickle. If
30 that was in fact an issue that rural water supply was at a
31 trickle that would have been a question I would have

1 assumed would have come straight into the organisation
2 when the question was raised, rather than keeping it for a
3 council meeting. The data regarding - Question 5, "Wish
4 to see the data that was used to evaluate the cost of
5 installing a pipeline underground to the Moama Recreation
6 Reserve", that report was provided - - -

7 COMMISSIONER: It was coming up?---Sorry, it was coming up,
8 that's right. Weeds on the footpath, and again it was
9 answered. Raised footpath in Mathoura was again answered.
10 And then Question 8 is one that was of concern to me
11 regarding - the previous meeting I asked the mayor for an
12 explanation on his actions for accessing the Murray Shire
13 cheque account, waiting for and still asking for the
14 legislation that states what constitutes an emergency.
15 And that was a matter that had been raised previously and
16 dealt with as best we could.

17 COMMISSIONER: That meeting like you say?---I'm sorry?

18 That meeting, like on 2 May?---Correct.

19 So this is an example of where you then start to get why are
20 you asking this question, we've already answered it before
21 and along the lines that you've talked about?---Correct.
22 And I think all of the history of this matter shows quite
23 clearly that the mayor did not ever access the shire
24 cheque account.

25 And is that what you would have told them in the 2 May?---Yes.

26 Yes. And I think I've repeated the answer there, at no
27 time has the mayor accessed the Murray Shire cheque
28 account and he's not a signatory of the account. I mean
29 that was well known. "With the technology at the mayor's
30 fingertips via mobile phone or iPad why is communication
31 with all councillors an issue?"

1 That's the mayor's answer I assume?---Yes.

2 MR BROAD: So you'd suggest that's inappropriate?---Yes.

3 Okay, moving to - - -

4 COMMISSIONER: Just for a moment, stop. I mean that's the type
5 of things but it was dealt with, I mean I understand what
6 you're saying, why don't they communicate, it's a general
7 thing, and the mayor says, well, he made his own
8 assessment. I assume that's his response because these
9 are questions on notice, aren't they?---Correct.

10 MR BROAD: Moving to item or question 10?---"Wish to have a
11 copy of the mayor's prepared speech that was delivered to
12 the C4EM breakfast I believe I'm entitled to a copy."
13 This matter had been subject to a whole range of emails
14 previously where I'd been asked the same question. The
15 mayor had made it very clear to me he didn't have a copy
16 nor would he provide it to Councillor Campbell. "In light
17 of reported disparaging comments about some of the present
18 councillors by the mayor." You talk about these being the
19 mayor's answer but clearly I needed to be heavily involved
20 in collating these answers.

21 COMMISSIONER: Of course. Yes, I understand?---So the time
22 consumed in these was significant. My view on these is
23 that we moved to significant numbers of questions on
24 notice because of the dealing with questions without
25 notice.

26 And I mean I would assume when you get these type of questions
27 on notice that the mayor would just simply go to the
28 general manager and almost say help me with this. I mean
29 that would be - - -?---Correct.

30 - - - a normal thing that happens in any council or in my
31 experience anyway. And just what was the issue then? Why

1 do you think this question was even asked about C4EM
2 breakfast meeting?---Because the mayor attended at the
3 breakfast and made a speech. I attended at the breakfast,
4 Councillor Bilkey attended in his personal right and
5 Councillor Campbell was seeking answers.

6 And as far as you know was Councillor Campbell concerned about
7 something that had been said in that speech?---Well, she
8 said, "You made disparaging comments".

9 Right, okay.

10 MR BROAD: Going over the page item, question 11, sorry. What
11 you say is that there's been something already
12 tabled?---Yes, that's correct. So this was one - - -
13 So you'd suggest that was inappropriate?---In the
14 circumstances, yes. The RSL had written to us seeking,
15 this is my recollection, seeking support for a New Year's
16 Even event. It had been put to council and then there
17 seemed to be some suggestion that there was something
18 underhanded going on, there seemed to be a suggestion that
19 the RSL hadn't sought financial support from us. And my
20 understand on that was following Councillor Campbell
21 having a discussion with members of the RSL board, that's
22 my belief. I spoke to my staff member, she made it clear
23 that she'd had discussions with the relevant officer at
24 the RSL. And certainly, as it panned out, the event
25 didn't proceed is my recollection but there was nothing
26 underhanded going on. We'd been asked about money,
27 clearly we do not hand over money unless the event is
28 proceeding.

29 COMMISSIONER: And then there was some sort of letter. You're
30 saying there as actually a letter from the RSL?---Yes.

31 MR BROAD: Moving to question 12?---Yes. Yes, this was

1 interesting. So this was our last joint meeting with
2 Shire Campaspe, it was 2013 and will Murray Shire be
3 proactive in arranging the meeting.

4 COMMISSIONER: Was that the meeting that - - -?---Yes.
5 That we talked about?---Yes. So I had organised it and then,
6 of course, the flipside of that was that why had
7 I organised it without bringing to council.

8 MR BROAD: Well, that question is on its face a very simple
9 question. The answer is on its face a very simple answer,
10 yes?---Yes.

11 The council has been proactive and you were saying, well,
12 there'll be further details provided?---Yes.

13 And so is that an inappropriate question?---No.

14 Go to question 13?---This was about why the Australia Day
15 Committee hadn't been constituted, as I understand it.
16 And the answer was that the committee hadn't - there'd
17 been no call for the committee to be brought together.
18 And this committee is one that meets very close to
19 Australia Day, most of the work around setting up the
20 processes around it fall to my EA and then the council
21 gets together and looks at the submissions in terms of
22 recipients.

23 COMMISSIONER: So this is for the following year. We're in May
24 and this is - - -?---Correct.

25 - - - not until so many months away?---Well - - -
26 Numbers of months away?---And as you'll see from the question,
27 it was actually raised on 18 February.

28 MR BROAD: And it's a matter for Councillor Burke to respond
29 to?---Yes.

30 So that was not reflective on you or the staff?---We call the
31 meetings and we certainly run the process, so we certainly

1 responded to it.

2 The 14th question?---"Expressly asked to have the conversation
3 minuted in regard to the Winbee Subdivision (indistinct
4 word)."

5 COMMISSIONER: This is the minutes?---Yeah.

6 This is about the minutes?---"Find it unacceptable that
7 statements made that can't be minuted and critical
8 information of statements lost as a matter of convenience
9 or misunderstanding." I consider this one inappropriate
10 both in language and in the understanding of what minutes
11 of the meeting constitute.

12 So as you note in that, that was already told to the councillor
13 before back in February 2013, a similar - the above
14 information about what you can and can't minute. And
15 I think there's some set of emails that you've also sent
16 to her that show it?---There's been a lot of toing and
17 froing about minutes and what should be in them.

18 And correctly you referred them to what it says in the
19 regulations and so forth about what you put in the
20 minutes?---And I can give you an example, if you wish. We
21 were talking about this question of minuting, I remember a
22 specific meeting where Councillor Weyrich, the mayor at
23 the time, made a statement in the meeting saying that
24 something was a moot point. Councillor Campbell
25 immediately yelled out across the table, "I want that
26 minuted, I want it minuted that the mayor said 'Moot'".

27 MR BROAD: So you regard that as inappropriate?---Yes.

28 Question 15?

29 Question 15?---"Why are meetings not electronically recorded?"

30 This again is a matter that had come to council and there
31 had been a resolution.

1 COMMISSIONER: I mean that's one of those things that are going
2 to come up and down all the time depending on what happens
3 but, yes, I understand now. I mean it depends on
4 resources, all sorts of things, yes?---Yes, and I don't
5 think that there's any issue if a councillor wishes to
6 move a motion and have it heard by council but continuing
7 to raise it with the officers is not assisting anything.
8 It's already happened in March. Well, there are certain rules
9 about - anyway, there's certain rules about resolutions in
10 three months. Anyway I understand?---Yes. And then the
11 question - - -

12 MR BROAD: About the photograph?---Yes.

13 What's she understanding of the problems with the
14 photograph?---I don't know.

15 It's just minuted, that the problems with photograph was not
16 pursued?---Yes. So I must say that I don't understand the
17 question. I don't know that it's a question, it seems to
18 be a statement. "I believe the photograph sent by the
19 mayor to all councillors showing water laying in a
20 backyard of an existing Winbee property was not that of
21 the existing landholders but run off from the new
22 development. I sent photographs that I'd taken that show
23 fill above the existing sewage pit". There was an ongoing
24 issue at this property, the director of engineering was
25 dealing with it, the vying photos didn't really add
26 anything to it.

27 COMMISSIONER: That's the same property about the minutes, the
28 item in number 14 about the minutes. Anyway, it doesn't
29 matter?---Correct.

30 MR BROAD: So it seems to follow on that, you know, what
31 Councillor Campbell was pressing for is some alteration in

1 one, the way the council conducted its meetings, firstly
2 to record and secondly, to make available on a screen
3 things like photographs, so that the gallery would have a
4 better understanding?---Yes.

5 Now, that's commonly done by other councils?---Yes.

6 And was - I know it had been to a meeting previously, it wasn't
7 simply just a live issue, that council should
8 consider?---It was or it wasn't?

9 I'm asking you rhetorically whether it was or wasn't a live
10 issue that council should change its practices associated
11 with its meetings?---In a personal sense I would have been
12 all for the board with the motions up. And, in fact, in a
13 personal sense I saw no issue with the recording of
14 meetings. If we look at these minutes I had been there
15 for a period of 22 days at this stage and what
16 unfortunately unfolded from that time onwards was so much
17 in dealing with these type of issues that dealing with the
18 real issues of getting these things changes almost wasn't
19 on my radar.

20 To an extent was that associated with the, and I don't mean
21 this in a derogatory way, was it associated with you
22 coming to the council and trying to hit the ground running
23 and there were all these ambit issues that would have
24 impacted on you to get round? My question is this,
25 whether these were issues that any general manager would
26 have faced coming to the council at that time or whether
27 those issues were directed to you personally?---I believe
28 that these issues were directed to me personally.

29 COMMISSIONER: Because the general manager was Margot Stork as
30 opposed to Anthony Hudson or something?---Because the
31 general manager was Margot Stork, female, from Melbourne,

1 from State Government, not their choice. And my belief is
2 that all of those things led to actions from the moment
3 that I started that were attempts to push me out of my
4 role. Yes, there were a lot of things that would be
5 normal pressure on a general manager and I believe that
6 I was doing a role that was normal pressure on a general
7 manager plus a whole range more, which included dealing
8 with Fit for the Future and dealing with a council that
9 was clearly out of odds with each other. But we were
10 talking about a situation where I believe from very
11 shortly after I started, if in fact, not before I started,
12 there was a group in council who would prefer to have seen
13 me leave and that these difficulties were associated with
14 that. When you talk about improvements in how we did
15 business I actually put a paper up to council in relation
16 to doing away with hard copy papers and going entirely to
17 iPad use. iPads had been introduced to councillors on the
18 basis that there would be a period of transition and then
19 we would do away with the hard copies of documentation.
20 When it came to council they refused to do away with hard
21 copies, that could have, in fact, saved us close to a
22 day's work a fortnight and provided us resources to direct
23 to other things.

24 MR BROAD: Look, there was one other question I wanted to come
25 back to and it doesn't relate to the questions on notice
26 but if I can interpose it now. At a meeting councillors
27 can expressly vote in favour of a motion by either their
28 eye or raising their hand or whatever?---Yes.

29 If they don't do so those that are present are deemed to vote
30 in the negative?---Yes.

31 If a councillor does not want to have their vote registered

1 either in favour or against it's incumbent on them to
2 leave the meeting at that time, do you agree with
3 that?---Look, I honestly don't know the answer to that.
4 My understanding was it was incumbent on them to vote.
5 So we come back to a question whether a councillor can leave a
6 meeting during any time in the course of the meeting, are
7 they entitled to?---My understanding of the requirements
8 order that it was a requirement for councillors to vote
9 when they were at a meeting. That certainly doesn't stop
10 councillors from leaving meetings because they certainly
11 do.
12 Right, thank you. If we can move forward going further down
13 the page there are some questions attributed to Councillor
14 Mackenzie. What's your view in respect of that first
15 question? It appears at the bottom of p.25. Sorry, there
16 was only one question?---Yes, that's Councillor
17 Mackenzie's question.
18 Do you have any view on whether that's an inappropriate
19 question?---I think it's a question that the councillor is
20 perfectly entitled to ask.
21 On 3 June I think it probably follows from the documents you
22 have there, do you have that extract of the
23 minutes?---Yes, I do.
24 Councillor Pocklington asked a number of questions. The first
25 question do you regard that as appropriate or
26 inappropriate?---It's a question that I thought could have
27 easily been asked to the organisation.
28 Right. And the tenth question?---The same, it could have
29 easily been asked to the organisation.
30 And the next question?---The next question. These particular
31 questions on notice I'm aware why Councillor Pocklington

1 has raised them because this was the Bunnaloo meeting and
2 they are Bunnallocalocentric.

3 And in other words he was raising them for the benefit of his
4 local community?---Yes, that's right.

5 And he was doing so, I suggest, so that the information became
6 available to his community?---Yes.

7 COMMISSIONER: Sorry, this point in time when you said, "That
8 could have been addressed to the organisation", at this
9 time there's still the policy in that councillors can
10 speak to directors directly?---Correct.

11 And no doubt they were?---Yes.

12 MR BROAD: Can I take you over the page?---Yes.

13 There's a question from Councillor Campbell about debates in
14 respect of the local environment plan?---Yes.

15 Did you regard that as an appropriate question?---Yes.

16 And down further under 231 there appears to be another question
17 from Councillor Campbell, did you regard that as
18 appropriate?---The one regarding donations?

19 It's the one above that, "To I note that the mayor stated at
20 our last council meeting 25/14, that the local government
21 association rang him one night"?---Yeah. No, I didn't
22 consider it appropriate as a question on notice.

23 And the question below that?---It seems appropriate.

24 Right. In relation to the second question, had you raised any
25 issues with the local government association about
26 questions without notice?---The local government
27 association?

28 Yes. The second question put by Councillor Campbell relates to
29 a phone call from the local government association. I'm
30 just wondering whether at that time you raised any
31 concerns about it?---No. No, I didn't.

1 So it appears to have arisen - - -?---From the mayor.
2 - - - from the mayor?---Yes.
3 Were you aware of that?---No, I wasn't.
4 Right. There were two questions at that meeting without
5 notice?---Yes.
6 One relating to the signal warning bells at Moama raised by
7 Councillor Campbell?---Yes.
8 And the upshot of that was that you would
9 investigate?---Correct.
10 Right. And the other one was from Councillor Moon, which
11 raised issued about an intersection. And again, I think
12 there's a suggestion there'd already been a report
13 provided?---Yes, is this at page - I'm not sure which
14 page - - -
15 On p.13. I'm sorry if I've missed some.
16 COMMISSIONER: Have you got it? I'll show you.
17 MR BROAD: I'll show you it?---Thank you. That suggests to me
18 that the director of engineering provided an update on the
19 spot.
20 Do you have the minutes of the meeting of 17 June 2014? I'll
21 just briefly show you them. I don't need to go through
22 them in detail with you, if you don't have them?---I don't
23 appear to, no.
24 There was one question, which I will take you to, in which
25 Councillor Campbell raised the following question,
26 "I would like discussion regarding our council values.
27 I make particular reference to promote a culture of team
28 work and cooperation. I read in the local paper 9/6/14
29 comments from our mayor in relation to a Murray Shire
30 councillor". It then goes on, "I'm concerned that our
31 mayor's constant criticism of fellow councillors is not

1 upholding his position of mayor".

2 COMMISSIONER: Have you got it?---No, I know the question.

3 MR BROAD: Okay?---Yes, thank you.

4 "And further to this I would also like to raise the directive
5 from the mayor that was emailed to all councillors from
6 our general manager prior to our joint dinner at
7 Campaspe." You recall that question?---I do, yeah.

8 Do you regard that as appropriate, in appropriate?---I don't
9 think that there's anything inappropriate about the
10 question, I think that there is preferable ways for the
11 councillors to have a discussion regarding those type of
12 things.

13 There was a suggestion in the evidence, particularly by
14 Councillor Moon, that a lot of issues between the
15 councillors could have been resolved by informal
16 discussion. Do you believe that that could have been the
17 case?---As between councillors?

18 As between councillors?---Yes.

19 Right. I haven't asked you the question previously whether,
20 and I suppose it's implicit from what you've written,
21 whether there were distinct divisions along the lines of
22 divisions between the councillors and divisions between
23 some councillors and yourself, is that your
24 perception?---Yes.

25 Did it occur after September 2015 or in the lead up to the
26 mayoral election in 2015 that the divisions had a further
27 aspect and that is there was a division involving
28 Councillor Weyrich himself?---That's my perception, yes.

29 So we effectively come to this inquiry with three divisions.
30 We've got a division amongst councillors, a division
31 involving yourself as general manager and a division

1 involving Councillor Weyrich as the former mayor?---Yes.
2 I don't want to go through further detail the questions on
3 notice. The responses to questions on notice appear to
4 have been relatively concise. One of the issues that
5 you've raised is effectively that a great deal of staff
6 time and your time was spent in answering those
7 questions?---Yes.

8 How did that arise?---It arose in two ways. One was that
9 significant numbers of questions on notice started coming
10 in. They often came in reasonably late in the meeting
11 cycle and they would require immediate attention. Towards
12 the latter stages of answering those questions on notice
13 I would sometimes say that they wouldn't be prepared for
14 the next meeting but certainly I was attempting to get
15 those answered in the early stages as quickly as I could.
16 Whilst the answers might be precise finding out the
17 details of the circumstances is not necessarily precise
18 and what started to occur from my perception was that we
19 were getting multiple questions on notice that were
20 similar in nature and it will then require me to go back
21 and check what had been responded to earlier to make sure
22 that we were being consistent with those responses, so it
23 was time consuming.

24 COMMISSIONER: So you had to check the source and then the fact
25 that you'd already recorded it, check that again and
26 yes?---Correct.

27 MR BROAD: In receiving questions on notice, did you farm those
28 out to the appropriate directors for their response?---If
29 they were technical issues, yes.

30 And in the lead up to council meetings did you have MANEX
31 meetings?---Yes.

1 Right. And so would that be a pre-meeting to determine the
2 agenda, the information that would be provided as part of
3 the agenda and the business papers?---Sometimes that
4 occurred at MANEX, sometimes it occurred individually with
5 directors. But questions on notice, you know, often I'm
6 talking about they came in on perhaps Tuesday evening with
7 the council papers being prepared for the next day. So
8 they weren't dealt with in the same way, they were dealt
9 with by me letting each of the directors know individually
10 what I needed responses to.

11 Was there a close off period for putting matters forward for
12 inclusion in the agenda when it came to
13 councillors?---There hadn't been in the past, no.

14 COMMISSIONER: There hadn't been?---No. Didn't appear to be.
15 There's not been in any of the documentation that suggests
16 there has.

17 MR BROAD: And was that something that you moved towards to
18 say, well - - -?---Something I would like to move towards,
19 yes.

20 But you weren't able to?---Look, with the questions on notice
21 my perception was that many, many of those questions on
22 notice, this was providing a lot of questions to respond
23 to. I started this process on the basis that I would get
24 those responded to and get them back to councillors as
25 quickly as possible. I had a view that the questions were
26 likely to ease off over time. So that doesn't answer the
27 question about a close off, no. I consider there was a
28 large amount of work that needed to be done at Murray
29 Shire around updating the meeting Code of Practice and
30 I saw that as one element of it all needed to be resolved.

31 Can I move forward? You refer to the ordinary meeting of

1 19 August 2014 and you say that Councillor Mackenzie
2 engaged in behaviour towards yourself that was
3 inappropriate. Can you give an indication of what
4 behaviour was?---Yes.

5 COMMISSIONER: Sorry, what date was that?---19 August. So the
6 meeting of 19 August was an ordinary meeting of council
7 being held at Mathoura and part of the process around that
8 meeting was that councillors were going to have their
9 annual photograph taken. So my EA Kerrie Keogh had put a
10 note on the front of the meeting papers as she often did
11 regarding extraneous matters that were important to
12 council. And my recollection of her statement on those
13 papers was that there will be a council photograph taken
14 today, please dress appropriately, I think that that was
15 the wording that she used.

16 So this is the dress appropriately issue, right?---Yes. Yes.

17 So just prior to the council meeting I came to chambers
18 and I was sitting at the head table where I would normally
19 sit with the mayor and Councillor Mackenzie approached me
20 and sat down in the chair beside me and I took some notes
21 of the conversation that was held at that time between
22 Councillor Mackenzie and myself. Councillor Mackenzie
23 indicated to me that he would not be in the photo today
24 and objected to being told to dress appropriately. He
25 then went on to tell me that, "I am not your employee,
26 I don't work for you, I'm elected by the ratepayers in
27 this shire and you will not tell me what to do". He then
28 went on to make a comment that, "I had a wife who used to
29 tell me what to do and she is gone, so take note". He
30 then advised me that the negotiations that had been
31 handled by the mayor and I in regard to the Mathoura

1 football/netball saga had obviously gone badly as he got
2 around the district a lot and he had heard how amateurish
3 those negotiations had been.

4 MR BROAD: In relation to the netball league you say that
5 in July Councillors Mackenzie, Campbell, Moon and Burke
6 undermined you in carrying out a resolution of council.
7 How do you say that that occurred?---It is my belief that
8 those councillors were involved in direct conversations
9 with the Picola District Football/Netball League in
10 relation to how we were managing this process. And the
11 comments that Councillor Mackenzie made regarding what he
12 heard around the district also indicated to me that he was
13 having conversation regarding how it had been managed.

14 I think there was an issue taken about the manner of the
15 support being provided to the football league, sorry, the
16 netball league.

17 COMMISSIONER: No, to the Mathoura?---An issue taken by whom,
18 sorry?

19 MR BROAD: I understand there was an issue taken whether it be
20 Councillor Campbell I think it was about the way in which
21 council had resolved - the council would bring proceedings
22 and, in fact, that council did not bring those
23 proceedings.

24 COMMISSIONER: There was some - the actual resolution of the
25 council - - -?---Yes.

26 - - - says that the council will bring proceedings, there's
27 some wording like that. And Councillor Mackenzie I think
28 it was said, therefore it was meant to be that the council
29 should take the proceedings and they didn't, so therefore
30 the resolution wasn't properly enacted. And, in fact,
31 what was happening was the dispute was, in fact, between

1 the football club and the league and the council was
2 really resolving to provide some funds to the football
3 club to fight the league?---Correct. That was always my
4 understanding of council's position.

5 So I think Councillor Mackenzie was making the point that when
6 you read the minutes they said council will take the
7 proceedings and they didn't, so therefore there was an
8 incorrect - - -?---It was never the intention of council
9 to take the proceedings, it was always the intention of
10 council to support the football/netball, sorry, the
11 Mathoura Football/Netball Club in those proceedings.

12 Yes. And when that resolution was put up to the council was
13 there a report to the council?---There was.

14 And did the report outline what the purpose of - I assume the
15 report said this is what the report's about, we're going -
16 and the recommendation or whatever or the suggestions for
17 recommendation would have been to do this and the
18 proceedings had not commenced I don't think maybe at that
19 time?---No, the proceedings hadn't. There had been an
20 earlier directive of council to write to the league and
21 attempt to achieve some outcome.

22 Yes. In the usual sort of way, yes?---Yes. And then that
23 didn't occur and so the next step in that was to support
24 the football club in the proceedings.

25 Who would be the ones who would obviously have to take the
26 proceedings?---Correct.

27 MR BROAD: There was an issue that arose in respect I think
28 there was a request made that Mr Railton who was I think
29 president or had an official role with the league to
30 address councillors at a meeting and that appears to have
31 been quashed. Is that the issue? Or, sorry, was that

1 quashed?---What do you mean by "Quashed"?

2 Well, I understand that there was - - -

3 COMMISSIONER: He wasn't allowed to attend?---The proposal that
4 was put forward by council was that the board of the
5 Picola District Football/Netball League meet with council
6 to discuss the issues involved. And Mr Railton refused to
7 allow his board to meet with council.

8 MR BROAD: I understand there was further emails sent, which
9 asked that Mr Railton be given opportunity to address
10 councillors, do you recall that?---I don't recall the
11 actual email but I certainly know that there was some
12 councillors who were seeking to have Mr Railton attend
13 both prior to the proceedings and then following the
14 proceedings.

15 And that didn't take place?---No, it didn't.

16 Why not?---Post the proceedings there was a request from a
17 couple of councillors that Mr Railton attend and having
18 discussed with the mayor felt that there was not an issue
19 on foot for council at that point in time for Mr Railton
20 to address. This council has attendees address a
21 particular issue and there was nothing before council.
22 Prior to that the decision had been taken by the mayor
23 that it was either the attendance of the board of the
24 Picola District Football/Netball League but not Mr Railton
25 alone.

26 COMMISSIONER: Can I just come back to two seconds because to
27 be fair to Councillor Mackenzie I should say - go back to
28 that. I mentioned how it appeared in the minutes. Now,
29 he said in his evidence that may seem that I'm being
30 pedantic, which on the face of it is, and he said the
31 reason for that is but they were being pedantic to me, so

1 I was going to be pedantic back. What's your response to
2 that? I mean that was his explanation, well, as I say, on
3 the fact of it it is pedantic?---I'm not sure who they are
4 and I'm not sure what - - -

5 I think he meant you?---Yeah, well, I'm not sure - - -

6 And the other councillors who were voting presumably and not in
7 the same way he was?---I'm not sure what we were being
8 pedantic about.

9 Yes, I think he meant the way that you were attempting to run
10 the council and try and quash debate, do things like
11 that?---Yes.

12 I mean that's what he was asserting?---Yes.

13 MR BROAD: Going forward, you refer to on 7 October 2014
14 Councillor Campbell approaching a member of staff to
15 discuss an operational decision. Now, I understand that
16 to be a decision not to allow a member of staff to attend
17 a particular conference?---Correct.

18 Councillor Campbell has given evidence to the effect that that
19 was a chance meeting, that she wasn't aware that there'd
20 been an operational decision made. Do you accept
21 that?---Yes, I do accept that. I guess the issue for me
22 was that this was a throwaway line at a council meeting.
23 I spoke to the council staff, I can't remember the actual
24 wording, I spoke to the staff member and they're not
25 allowed to go to the conference. That is not what the
26 resolution of council was. The resolution of council was
27 that a councillor and/or a staff member attend the
28 conference. I saw that as an issue for me then with the
29 staff member. And after discussion with the relevant
30 director we'd made a decision now to allow the staff
31 member to attend the conference.

1 And how do you see that as undermining your duties?---It's the
2 public nature of the comment. If Councillor Campbell had
3 an issue with me not allowing the staff member to go,
4 I think I'd actually sent Councillor Campbell an email
5 about this later, so just raise it with me and I can
6 explain to you why not. Why does it need to be in a
7 public meeting?

8 COMMISSIONER: The way Councillor Campbell put it was that
9 she'd helped a person, something had happened, someone had
10 injured themselves or something like that?---Yes.

11 And she did what she did and then this particular staff member
12 came out and also assisted and she said, well - they were
13 talking and, you know, given the event that was happening
14 there was some discussion, and she said, "It's a pity you
15 couldn't come to the", whatever it was, the meeting. It
16 doesn't matter but what we're talking about, that's all it
17 was?---My understanding from the staff member was that the
18 conversation was, "Well, you're coming to the conference".
19 And the staff member said, "I don't know anything about
20 the conference". I mean there's an assumption there that
21 we only had one indigenous staff member because my
22 recollection was that the resolution was an indigenous
23 staff member and then that the staff member was attending
24 and that's not what the resolution said.

25 MR BROAD: My question was whether it was nothing more than a
26 mistake?---That may well be.

27 COMMISSIONER: I mean was that an overreaction to get upset by
28 it?---On my part? I don't believe so, not when it's
29 raised in a public meeting. And I'd also like this to be
30 taken - - -

31 Sorry, when you say, "A public meeting", you mean in

1 public?---It was in a council meeting.
2 When she then raised it?---Yeah.
3 Sorry, yes, okay?---Yes.
4 From that point of view, not the fact that she said it on the
5 street when it happened?---No, no. It was raised in the
6 council meeting. And it is very easy to look at each one
7 of these things individually and say this is an
8 overreaction on your part. I'd ask that you look at the
9 very long - - -
10 Yes. No, I understand, I know exactly what you're going to
11 say?---Yes.
12 MR BROAD: In your chronology you refer to a meeting that
13 occurred on 24 November and various emails that were sent
14 in the lead up. Now, we've got the entirety of those
15 emails?---Yes.
16 We've got your notes of the meeting?---Yes.
17 We've got your view that the meeting had turned into a
18 performance review?---Yes.
19 I'm not trying to gloss over that meeting but given the extent
20 of the information is it necessary to deal with other
21 issues or deal with the matter further? It seems to be a
22 matter where there's an abundance of evidence, is there a
23 need to ask further questions of you about that?---No.
24 COMMISSIONER: I mean Councillor Moon, for example, did say, as
25 you said, when you got to the point this seems like a
26 performance review?---Yes.
27 He said, "Yeah, well, let's turn it in". Now, he said it in a
28 certain way, he said, "I probably might have said
29 something like that, whether it was jokingly or not
30 jokingly whatever". So I think I'm just reinforcing what
31 Mr Broad said?---Yes.

1 I think we have all the information about that?---Yes.

2 About the way it panned out and the different perspectives of
3 what it was, including Councillor Campbell as to why she
4 said she called the meeting in the first place?---Yes.

5 MR BROAD: Again, your submission refers to the mediation
6 conducted by Norm Turkington?---Yes.

7 I assume by the signatures on the agreement that you were not
8 present?---No.

9 Not a party to that?---No.

10 We've heard evidence from the councillors to the effect that
11 they were optimistic that it would bring about a change.
12 We've also heard evidence that that was short-lived. Can
13 you give your view as to the events that transpired
14 firstly immediately after the mediation to the extent that
15 you were able to see them and then after the leaking of
16 the outcomes?---The leaking of the outcomes of the
17 mediation?

18 Yes?---To whom?

19 To the press?---Were they?

20 I understood they had been leaked?

21 COMMISSIONER: Maybe not?---I don't have any knowledge of that.
22 We got that response a few times from people?---Well, I don't
23 have any knowledge of it being leaked to the press.

24 All right?---If I could just clarify, I was involved with the
25 mediation, the mediation had three distinct parts to it.
26 The first part was, as I understand it, individual
27 conversations with the councillors and then a joint
28 workshop as between the councillors. The second part of
29 the mediation was individual conversations with the
30 directors and myself and then a joint workshop between the
31 directors and myself and that occurred. The third part of

1 the mediation, as I understood it, was to be a joint
2 workshop between myself, the directors and the councillors
3 and that did not occur.

4 So that would have been - that was meant to happen after they
5 signed the agreement, I assume?---No, it was meant to
6 happen before.

7 As part of the process?---Yes.

8 Okay, right?---It was part of the process that we'd paid for.

9 So you say that because that's what you were told, so is that
10 Norm Turkington?---Turkington.

11 Said that this is what I propose to do had outlined those steps
12 that you've just indicated?---Correct.

13 And they took place except for the one that you mention at the
14 end?---Correct.

15 And did he ever come back and tell you why that didn't take
16 place?---During the meeting between my directors and I and
17 Norm Turkington one of the directors specifically asked
18 him why that meeting wasn't going to occur.

19 And that's the comment where - I think I know what you're going
20 to say. Yes, okay, you say it, please respond?---Sorry.

21 Yes, continue?---And Mr Turkington advised at that point in
22 time that he couldn't provide a safe environment for me to
23 mediate with the councillors.

24 Right. Now, that puts that in perspective?---It is not my
25 recollection that the agreement was leaked to the media.
26 My understanding post the agreement is that there was a
27 newspaper article that was quoting the mayor and that that
28 I understand was in breach of the agreement that they'd
29 reached between them. Although whilst I've now probably
30 seen the document I've never actually read it.

31 MR BROAD: So in the short term after the mediation so far as

1 your ability - well, in your view did the behaviour of the
2 councillors changed?---The date of the mediation was?
3 COMMISSIONER: 9 December 2014?---No, it didn't change.
4 MR BROAD: Okay. In the longer term?---No.
5 COMMISSIONER: And that goes for all councillors? I mean in
6 the sense things stayed as they were whatever the position
7 any of the councillors took?---Correct.
8 Mayor included?---Yes.
9 MR BROAD: On 4 December 2014 you wrote to the mayor a formal
10 letter of complaint?---Yes.
11 I'll show you that letter. In that letter you sent out a
12 history of the events that had occurred to that
13 date?---Yes.
14 In the last paragraph on the second page in the third sentence,
15 sorry, in the fourth sentence you say, "Should the current
16 behaviour continue I will have no choice but to seek legal
17 redress to secure my position" and then continue about the
18 potential costs. What were you alluding to in making that
19 statement?---What I was alluding to in making that
20 statement was that I had, as I saw it, attempted to bring
21 to the attention of the relevant authority, which I saw as
22 the Office of Local Government, the ongoing behaviours of
23 Murray Shire that I thought were unacceptable when
24 directed to an employee. The Office of Local Government
25 had made it very clear that they considered that this was
26 a contract dispute, I didn't agree with them. They made
27 it very clear that I should take my own legal advice given
28 that nothing else was being done as I saw it, that's
29 exactly what I did. My lawyers made it very, very clear
30 to me that it was a complex situation and that there could
31 be a number of jurisdictions involved in sorting the

1 matter out. I thought that that was a situation that was
2 not going to be good for either Murray Shire or myself and
3 that I wanted to try and get this situation resolved.
4 I note that you have quoted me there in relation to the
5 legal proceedings, I also note that the paragraph above
6 I talk about the fact that I'm extremely disappointed to
7 find myself in this position. I came to the role in good
8 faith, I moved my family from my home, my husband gave up
9 his job, and I'd shown my commitment to the region by
10 purchasing a home. I said that I have considered that the
11 treatment I'd received was unfair, irrational and
12 unwarranted and it appeared that nobody in authority was
13 doing anything about it.

14 COMMISSIONER: So, yes, because by now you'd already obviously
15 made the complaint to - did they write to you
16 specifically?---Who?

17 Office of Local Government?---Yes, they did. Yes, and
18 specifically told me it was a contract dispute. By this
19 time I'd been in dialogue with the Office of Local
20 Government and SafeWork New South Wales.

21 MR BROAD: And the ultimate sentence in the letter was to make
22 a call on the council to protect your health and
23 welfare?---Yes.

24 And to deal with the group of councillors?---Yes.

25 So what we're talking about is a two-fold issue. One is a work
26 health and safety issue?---Yes.

27 And the other is a conduct issue?---Yes.

28 You then refer to the leaking of information on 9 December
29 2014?---Yes.

30 Relating to your WorkCover complaint?---My SafeWork complaint.

31 Sorry?---My complaint to SafeWork New South Wales as opposed to

1 WorkCover.

2 COMMISSIONER: One and the same, isn't it?---No longer.

3 WorkCover is in relation to compensation for lost time and
4 injury.

5 In that sense?---SafeWork New South Wales in relation to an
6 unsafe working environment.

7 But they were together at that that time?---They were at that
8 time.

9 Yes, so we'll just - - -?---Yeah. I just want to make it clear
10 that my complaint was to SafeWork about an unsafe work
11 environment, it wasn't about a claim in relation to my
12 injuries.

13 A workers' comp claim?---That's right. At that time.

14 And have you ever made one of those?---Yes.

15 Yes, okay.

16 MR BROAD: We seem to have got a bit caught up in a change of
17 name from WorkCover to - - -?---Yes.

18 - - - SafeWork in this period too?---Yes.

19 The question's been asked in the course of this inquiry as to
20 who may have released that information. Do you have any
21 views on who may have done so?---This is the newspaper
22 article of 29 December?

23 Yes?---Yes. My view always was that it was one of the
24 councillors given that there was only councillors present
25 in the meeting in which it was discussed, there was no
26 officers and I have no reason to believe that an officer
27 would have been involved. The outcome of the Code of
28 Conduct complaint was that a councillor of Murray Shire
29 leaked it. The outcome of the Macleay Investigation was
30 that Councillor Mackenzie leaked it. I have no further
31 information on that.

1 You then refer to the councillor Christmas party and comments
2 attributed to Councillor Moon?---Yes.
3 Do you recall who that was said to?---I believe it was to
4 Councillor Murphy.
5 Right. So Councillor Murphy alone?---I don't know. The only
6 person I've spoken to about it is Councillor Murphy.
7 Right. And it's a clear sentiment against you?---Clearly.
8 If the matter had become before council and council had passed
9 a resolution, and I've dealt with this before and I'm not
10 repeating it for the moment of it, that was an option open
11 under the contract to bring the contract between the
12 council and yourself to an end?---Yes.
13 Obviously on a compensatory basis?---Yes. If council had
14 sought that.
15 Sorry?---And this was part of my argument about why I say this
16 was not a contract dispute. Council as a body was not
17 suggesting that they bring the contract to an end.
18 COMMISSIONER: Sorry, just say that again?
19 Council - - -?---Council as a body was not suggesting at
20 that point in time they bring the contract to an end.
21 No, no?---This was my argument with the Office of Local
22 Government - - -
23 No, I understand?--- - - - about why I was - - -
24 But there was no resolution of the council - - -?---No.
25 - - - at that point in time that they would exercise their
26 option - - -?---Correct.
27 - - - of the 38 weeks?---Correct. This was a minority view.
28 Yes, I understand.
29 MR BROAD: As an individual councillor is it open to me to
30 express my personal opinion about the performance of
31 another councillor, a general manager, a member of

1 staff?---To whom?
2 To another councillor?---I believe that it's a Code of Conduct
3 issue and I guess it will partly depend on the
4 circumstances in which that was done.
5 Absent some of the language in that statement why would it be a
6 Code of Conduct matter?---Because I considered that it was
7 denigrating the general manager. The comment appeared to
8 be based on nothing other than a personal view and it's
9 not council - - -
10 But that's a personal view surely. Why does a personal view
11 become a breach of the Code of Conduct?---Because
12 I believe that it's actually denigrating the general
13 manager and I don't believe it's allowed under the Code.
14 COMMISSONER: Just on the code of conduct issues, you made a
15 statement that the general managers are - sorry, not
16 general managers, I think, well, because - I am not sure -
17 I will rephrase that. You made a statement that said, "I
18 am under a duty to report codes of conduct issues"?---My
19 statement about reporting codes of conduct related, I
20 believe, to pecuniary issue or to corruption. I don't
21 believe I am under a duty in any other matters, no.
22 Good. No, I was just going to say that doesn't make sense
23 because obviously - - -?---No, not at all.
24 Only corrupt conduct and those sort of things?---And pecuniary
25 interest matters, yes.
26 Yes, okay, thanks.
27 MR BROAD: Moving forward, and I don't want you to go into
28 detail about the improvement notices, we will no doubt
29 deal with aspects of the Janice Macleay report with you
30 when we get to that?---Yes.
31 But it's only a simple matter of fact that the improvement

1 notices were given and that there were amendments made to
2 various things as a result of those?---Correct.
3 One question does arise and that's this. The amendment to the
4 staff interaction policy?---Yes.
5 Did that proceed to be adopted by way of resolution at a
6 council meeting?
7 COMMISSIONER: Can we just go back before you answer that
8 question? I understand, first of all, that policy came in
9 - whenever it was - the first - the actual
10 policy?---October. I think it may have been the 19th.
11 Yes, that's right, 28 October they adopt the policy?---M'mm.
12 And then we get the change. So it goes from - - -?---Sorry, if
13 I could just take you back just one step. It was a
14 council resolution to adopt that policy.
15 Absolutely?---Yes. It was not my policy, no.
16 No, no, absolutely. Yes, I understand?---And that was as a
17 direct result of Office of Local Government directives
18 regarding the policy.
19 No problem. I understand that exactly?---Yes.
20 And, in fact, it even says it on the policy itself?---M'mm.
21 You know, you always have those sort of things that tell you
22 when it was?---Yes.
23 The next question is: "Reviewed 3 March 2015." Now, how did
24 that happen? The simple issue we are getting to is we
25 couldn't find any resolution of the council to say that
26 that was - and it says in the back that it was just - I
27 mean, we know what it was, "Go to admin," and all that
28 sort of stuff?---M'mm.
29 But it just says 3 March, so tell us how did that happen.
30 That's the question that Mr Broad is asking?---So how was
31 it changed?

1 Changed, yes. I mean, I know what the change was?---Yes.

2 What was the process?---So 3 March, p.25 of the minutes is:

3 "Urgent general business."

4 So, hang on, this is in the minutes, the council minutes, yes,

5 sorry?---Sorry, council minutes, 3 March 2015.

6 3 March, yes?---Page 25: Discussion took place on council's

7 councillor access to information and interaction with

8 staff policy, particularly in reference to 4.1.2 and the

9 councillors' request to access records. It was decided

10 that 4.1.2(c) has to be amended to ensure all

11 correspondence goes to the Admin Murray NSW email

12 address."

13 So can I have a look? Just have a look at that?---Yes,

14 certainly.

15 So that's the one before, adoption?---Yes.

16 That is moving to (indistinct words). That's that?---Yes.

17 Is that part of that?---No, no, no, it's - - -

18 So where is the resolution for that?---I suspect there probably

19 wasn't one. Because - 3 March - I don't have the full

20 minutes. My suspicion would be - - -

21 3 March?---Yes - that I wasn't actually at this meeting and

22 that that's it.

23 So whatever that means, that's it?---That's it.

24 Sorry, what page was that? I know you told me, but I didn't

25 write it down?---3 March minutes, p.25.

26 Thanks very much. So whether that was a resolution of council

27 or not, who knows. Was that an issue then? How do you

28 see it? I mean, is that a resolution of the

29 council?---That's a very good question, isn't it?

30 Yes, it's difficult, isn't it?---Yes, it is.

31 I mean, I don't ask you. You can't make a - - -?---The

1 difficulty that started to occur with all of this was that
2 there was an enormous amount of criticism if I was
3 involved in any of this and trying to keep my distance in
4 terms of what came out.

5 And the way the evidence has come out before was: "We changed
6 the minutes because there was a direction from SafeWork."
7 Is that correct?---My understanding was that SafeWork did
8 indicate that the policy needed to be tightened and any
9 failure to do so would result in another improvement
10 notice.

11 So you are not privy to any of that particular
12 information?---M'mm.

13 That is not something that has come across that is in your
14 notes or - - -?---No, no.

15 So I guess in a sense that is then the corporate body of the
16 council or the mayor or whoever has that?---Yes. It's
17 quite difficult to be the general manager and the
18 recipient.

19 Absolutely.

20 MR BROAD: Going forward, your chronology indicates that on
21 18 February 2015, four councillors intervened in a matter
22 in which legal proceedings had brought against the Shire.
23 Are we talking about the Deep Creek matter?---Correct.

24 COMMISSIONER: Actually just before you go to that, just go
25 back to the minutes. Because that has been such an issue
26 about this whole policy, did you look at - because then
27 you had to enforce that effectively, that procedural
28 change?---M'mm.

29 Did you ever look at those minutes? Did you ever come to grips
30 with it?---No, I hadn't picked that up. I hadn't picked
31 that up previously. The only other matter that has come

1 up in relation to this is that Councillor Moon again
2 raised it on 17 March and his motion was, "The following
3 motion to be considered by council, that council discuss
4 and review the Murray Shire Council Councillor Access to
5 Information Interaction with Staff Policy," and that
6 motion was withdrawn. The mayor updated the council on
7 this issue and then it was withdrawn.

8 So that was a notice of motion of Councillor Moon?---Yes. It
9 was a - it was more a question on notice of Councillor
10 Moon where he wanted council to consider it.

11 I mean, that was effectively an attempt to say, "Let's review
12 it," and then the mayor said whatever he said and he
13 withdrew it?---During this period of time, I was
14 actually - - -

15 What date was that? 17 March?---3 March. I was at work.

16 I know you were there?---I was there.

17 That doesn't happen until April, I think?---That's right.

18 Yes, okay, thanks. Sorry, Deep Creek.

19 MR BROAD: Deep Creek. On 26 March 2015, you lodged a conduct
20 complaint in relation to the actions of Councillors
21 Mackenzie, Campbell. Moon and Burke, in attending the
22 meeting?---Yes, I have it here.

23 You have got a copy of your conduct complaint?---Yes, I do. I
24 do.

25 COMMISSIONER: What date is that again? I have got it here.
26 It's all right.

27 MR BROAD: Do you want to use it?

28 COMMISSIONER: Yes, I have got it here.

29 MR BROAD: You have got it?

30 COMMISSIONER: Yes.

31 MR BROAD: To briefly cut across the issues in this matter, I

1 think it starts with a confidential report to council's
2 meeting which outlines that there have been proceedings
3 instituted in the Supreme Court by two parties?---Correct.
4 And the report to councillors gives some outline of the nature
5 of the issues and an issue in relation to the sewerage
6 treatment plant?---Yes.

7 COMMISSIONER: Just in that report on the 17th - this is the
8 first report, isn't it, 18 February?---Yes.
9 Did that attach a copy of the proceedings?---No.
10 Because all the councillors said they had never seen the
11 proceedings. That is not a criticism?---No, they weren't
12 attached.
13 Why not?---It was normal process here to do the report but not
14 attach the proceedings. We have had some difficulty at
15 Murray in a couple of recent matters where the solicitors
16 for the insurers had asked that we actually not put a
17 settlement to council because they were concerned that it
18 would be leaked to the media and my guess would be that
19 the usual way of managing these reports wasn't to include
20 those documents because of the sensitivity.
21 But at this point in time, this is the first time that you have
22 reported it to the council leaking - well, it's not even a
23 leak. I withdraw that. Having the proceedings, in a
24 sense a fairly public document in one way, you could go
25 and get them from the Supreme Court if you wanted
26 to?---You could. You could.
27 So that wouldn't be an issue for the proceedings
28 themselves?---No, but it's just it was not done that way
29 at Murray. Yes, it's not the way it was done.
30 It is true that they didn't have it at that point in
31 time?---No, they didn't.

1 MR BROAD: And those proceedings had only been recently
2 issued?---Correct.

3 COMMISSIONER: Yes, this is the report to say, "We have
4 received some proceedings," and it correctly presumably
5 sets out exactly what they were about. Complex, I must
6 say?---Yes.

7 MR BROAD: Separate from that, there appears to have been a
8 discussion between Councillor Mackenzie and Mr Arkinstall
9 that raised some issues in relation to the sewage
10 issue?---Yes.

11 Mr Arkinstall made some form of note in relation to
12 that?---Yes.

13 Were you appraised of that note in the early part of the
14 process?---My recollection is that I had an email from
15 Mr Arkinstall on the Sunday or perhaps the Monday morning
16 following the discussion and I asked whether he had taken
17 a file note of the discussion.

18 I assume he subsequently provided that to you?---Yes.

19 It became obvious to you that there had been a request from
20 some person for Councillor Mackenzie and potentially
21 others to attend?---Yes.

22 The issues raised by Councillor Mackenzie appeared to be issues
23 relating to the operation of the sewage treatment
24 plant?---Yes.

25 Going forward, council appears to have sought advice from its
26 lawyers and in that respect it had local lawyers?---The
27 complexity in this was that we had local lawyers because
28 there's more than one issue at Deep Creek, but there was
29 lawyers in - who were employed by the insurance company.
30 So we were dealing with two lots.

31 COMMISSIONER: So the ones - the local lawyers, when you say

1 there were issues in Deep Creek, what do you mean by that?
2 Like, other than the issue we are going to talk about,
3 which is the tank and you probably know what we are
4 talking about?---Yes, yes.

5 Were there other issues also? Like, did the lawyers Deep Creek
6 - a numbers of files about it? That is what I am just
7 asking?---Yes, there's been a number of issues out there
8 and I think when you look at the email from Mr Matt Rogers
9 at Kell Moore who were the local solicitors that came in
10 on Monday, 16 March, I think he outlines to there what the
11 - in there what the complexities are. I defer to Michael
12 who was the solicitor acting for the insurers in relation
13 to the current question and unlikely to see resolution of
14 the ongoing uncertainty. So there was the current issue
15 and then there was the more long-term issues.

16 Yes, all right. Go on.

17 MR BROAD: And his advice seems to be contained to the STP, the
18 sewage treatment plant?---M'mm.

19 And there appears to have been an ongoing issue of the need to
20 resolve that issue?---Yes.

21 What was that issue?---He sets it out here, really. The fact
22 that the STP is constructed on the land that is in private
23 ownership and council has no control over fees and
24 commercial arrangements between the owner and the operator
25 of the land. As long as that arrangement remains, there
26 will be tension between the current personalities. So
27 that's something that he had been indicating for a period
28 of time that needs to be resolved.

29 On Monday 16 March at 12.09 pm, you sent an email to
30 Mr Arkinstall, Mr Rogers and Mr Down. In other words, to
31 the respective lawyers and to Mr Arkinstall?---Yes.

1 And you said you were concerned about councillors going off on
2 a frolic of their own thereby damaging council's
3 position?---Yes.

4 Hadn't Councillor Mackenzie made it very clear that they had
5 been asked to attend and what they were being asked to
6 look at was a tank, not the sewage treatment plant, but a
7 very, very narrow issue?---No, I don't believe so. I
8 would refer to Mr Arkinstall's notes where he says part
9 way down - - -

10 COMMISSIONER: Sorry, which one are you reading now?---Sorry,
11 Saturday, 14 March, the conversation between Mr Arkinstall
12 and Councillor Mackenzie at Bunnaloo.

13 Statement of Simon Arkinstall, that one, yes?---That's right.
14 Bundaberg Recreation Reserve. The conversation?---"I'm only
15 going to listen, but as an option could council operate
16 the plant. Yes, that would be an option, but you should
17 not be having those discussions due to the pending legal
18 action. Are you meeting with developers? Both, but we
19 could still install a pond ten kilometres away from the
20 site and just pump the shit up there to resolve this
21 issue." I saw that as much more than going to look at a
22 tank. It was offering operational options to how to deal
23 with the more long-term issue of the tank and I had
24 concerns about what discussion was going on and what was
25 being said to this person about what might happen with the
26 tank.

27 MR BROAD: Hadn't Councillor Mackenzie said in very clear and
28 certain terms that he was only going to listen and wasn't
29 he simply posturing what might be done to resolve an
30 issue?

31 COMMISSIONER: That was the question I was going to ask.

1 WITNESS: That's one view of the matter. My view of the matter
2 was that we were at risk of those type of matters being
3 raised with the person involved with this issue and then
4 council being in some sort of position where there was
5 information backwards and forward that we didn't know the
6 nature of.

7 COMMISSIONER: He wouldn't have had much information about the
8 proceedings anyway in the sense at that point in time all
9 he had was the report from Mr Arkinstall previously
10 in February?---M'mm.

11 That was the only report so far. So, I mean, the concern that
12 you had was?---My concern was the discussion that may
13 occur and where that would lead council.

14 In what sense? That he might say something to bind the
15 council?---Yes.

16 How could he do that as an individual councillor, do you
17 think?---Well, he may not be able to, but if we were in
18 the middle of legal proceedings and the party who has sued
19 council says, "Well, I have spoken with councillor such
20 and such who told me A, B and C." That was the concern
21 for me.

22 MR BROAD: And on 16 March at 2.41 pm, Mr Down gave some fairly
23 pragmatic advice, didn't he?---M'mm.

24 His pragmatic advice was to ensure that councillors do not go
25 off and promise something or make representation or
26 representations which might provide an avenue for further
27 action or anyone else - sorry - by the developers or
28 anyone else?---M'mm.

29 And then it provided if they are going to have discussions,
30 though, it would be good to know with whom and what they
31 asked for at least?---Yes.

1 COMMISSIONER: But why not at that point - I will just put, you
2 know, the other side to you - why not at that point say to
3 Councillor Mackenzie, "Well, go and have a discussion."
4 You know, "Have a discussion with him about what you have
5 been told by the lawyer. Go and talk about the sewage
6 tank and nothing else"?---For me to do that or for - - -
7 Yes?---Yes, because we were then caught up in the situation
8 where my relationship with the councillors was breaking
9 down.

10 It wasn't amenable to do that sort of thing?---No, it wasn't
11 and my understanding is that by this stage I certainly
12 didn't know at that time two meetings had already occurred
13 with the developer anyway, one on the Sunday and one on
14 the Monday.

15 Yes, yes.

16 MR BROAD: And rather pragmatically, Mr Down says part of the
17 solution to the whole of this is working out what
18 alternatives there may be for the sewage?---Correct.

19 COMMISSIONER: And this is indicative of the whole issue, I
20 suppose, this is a good example of what you have just said
21 because if you accept Councillor Mackenzie, what he said,
22 which was really not damaging in any way to the
23 litigation. Just for the moment just assume that?---M'mm.
24 And then he can't talk to you, you can't talk to him and, I
25 mean, that's just indicative of where we are at?---Well,
26 it is not that he couldn't talk to me. He wasn't - he
27 wasn't keen.

28 He might have chosen not to?---That's right, and he wasn't keen
29 to go through admin@murray and there has been a very
30 lengthy code of conduct in relation to this and the code
31 of conduct investigator has made it very clear in her

1 findings that that information should be provided and
2 still hasn't been.

3 Be that as it may, we are talking about - - -

4 COMMISSIONER: It probably has now publicly, in a sense, but
5 not to you?---Well, it hasn't. I don't know what, but I
6 don't know who the discussion has been with or what was
7 discussed.

8 No, I accept what you say. No, I accept what you say, that's
9 correct?---Yes, yes.

10 MR BROAD: Be that as it may, what we are dealing with at this
11 moment is the events that took place in March, not the
12 finding of the conduct reviewer?---Yes, the subsequent
13 findings.

14 COMMISSIONER: That's right, yes.

15 MR BROAD: On Tuesday, 17 March, Councillor Mackenzie sent an
16 email titled "Urgent Request" and it sets out the issue
17 and if you go over the page it says: "Firstly, the sewage
18 appears to be held in temporary tanks at holiday units,
19 hotels, shops, and other facilities. This sewage is held
20 in what appear," without the 's', "to be purpose built
21 water storage tanks, some are situated in what also
22 appears to be a flood zone." Then it continues: "Added
23 to this situation is a large number of house boats (plus
24 100 moored at the marina). These boats obviously pump
25 their effluent out at the (council query) facility pump-
26 out point. The holding facility for this pump-out station
27 appears to be a large capacity rainwater tank (plus 10,000
28 query litres). This sewage storage tank is situated in
29 close proximity to the Murray River and raises concerns
30 about accidents, mishaps, et cetera." It continues, "What
31 I am seeking" - and this is the closing part - "What I am

1 seeking is advice from the shire executive as to what we
2 do from here." The question is whether he is taking the
3 concern to the right department, whether he should go to
4 the EPA and asks for a response. Now, isn't the situation
5 at that stage very, very clear that he is raising concerns
6 of a possible pollution incident, nothing more?---Yes.
7 Do you agree with that?---Yes.
8 Can you look at the email from Mr Arkinstall which was sent on
9 18 March at 3.27 pm?---Yes.
10 Would you agree it is not responsive?---Mr Arkinstall's?
11 Yes, Mr Arkinstall's email?---I think it is responsive. I
12 understand what you are saying that it's not answering
13 Councillor Mackenzie's questions regarding the ecological
14 disaster, no.
15 It is responsive in the sense that it tells that there is a
16 meeting to occur?---Yes.
17 It is responsive in the sense that it repeats earlier advice
18 that it would be advisable?---M'mm.
19 It is responsive to the amount that it indicates that it is a
20 very significant claim that council is facing?---M'mm.
21 And it is responsive in that it gives a warning about
22 negligence and misconduct on the part of the councillor
23 and the risk of surcharge?---Yes.
24 It doesn't respond in any way to the simple question about the
25 risk posed by those sewage tanks?---No.
26 Not at all. Would you agree that it is a disproportionate
27 response?---I don't believe it was a disproportionate
28 response when we didn't know what we were facing in
29 relation to what had been set out there. We were taking
30 our advice from the insurer's solicitors and formulating
31 responses as a consequence.

1 The legal advice that you were receiving was very pragmatic,
2 wasn't it?---M'mm.

3 It was saying there is no reason why you should stop a meeting,
4 but if there was a meeting, then steps should be taken to
5 ensure that there were no admissions made?---Yes.

6 And steps should be taken to ensure that evidence in relation
7 to any matter discussed should be made available to the
8 council?---Correct.

9 You don't see that as heavy handed?---I didn't believe it was
10 heavy handed in the circumstances, no.

11 Can you attribute your reasons why you didn't think it was
12 heavy handed?---Because we were attempting to deal with a
13 very large legal matter and we didn't know what we were
14 facing in terms of what was going on out there. So what
15 we were trying to do was to at least bring to the
16 councillors' attention that this was an issue.

17 Was it a planning issue?---The tank, in fact, was the
18 responsibility of the director of engineering.

19 As an operational issue?---Correct.

20 Was there a planning issue in relation to Deep Creek being
21 considered by council at the time?---Not this particular
22 matter, no.

23 COMMISSIONER: Why couldn't have either Simon Arkinstall or
24 Leigh Robins - is that right, is that the
25 engineer?---Leigh Robins, yes.

26 Why couldn't they at this point in time have said, "I will come
27 out with you, Councillor Mackenzie, and I will look at the
28 tank. We will work out" - well, that is all he needed to
29 say at that point in time?---Yes, they could have.

30 That might have diffused it?---It may have.

31 I mean, hindsight is a lovely thing?---It is.

1 And I understand what you are saying?---M'mm.

2 But that is a possible - that is probably a - yes, okay, you

3 have probably answered it?---It's also interesting, of

4 course, to look at the proximity of these emails. We are

5 not talking about a matter of days.

6 It is all happening in - - -?---It is in real time.

7 I understand. I did notice that?---That's right.

8 Yes, yes.

9 MR BROAD: And quite clearly if one looks at the emails that

10 passed on 18 March, the issue became very divided that

11 Mr Arkinstall sent emails to councillors raising concerns

12 about the issue of meeting with basically, I assume,

13 meeting with the owners or developers in relation to the

14 litigation?---Yes.

15 Councillor Mackenzie took issue saying: "Well, it's a health

16 crisis, not a litigation issue"?---Yes.

17 He took issue on the basis that he saw - and I am referring to

18 the later email of 18 March at 4.06 pm - that, in fact, he

19 felt he was being threatened?---Yes.

20 COMMISSIONER: Back to my other question a moment ago, did

21 either of the directors suggest that they go out? I mean,

22 did they come up with that suggestion to go out at

23 all?---No.

24 Thank you.

25 MR BROAD: Going without dealing with every email, at 8.35 pm,

26 Councillor Mackenzie sends yet another email and it was

27 sent to council and to councillors which enunciated his

28 concern as having nothing to do with the legal

29 challenge?---M'mm.

30 He had then, of course, arced up further on 19 March with a

31 potential threat by Councillor Mackenzie to release

1 council documents?---M'mm.

2 Was the issue being raised by Councillor Mackenzie, absent the
3 legal issue, a significant issue?---The tank that
4 Councillor Mackenzie was talking about, as I understand
5 it, has been located on the bank of the river for some six
6 to seven years. It has been in situ there for that period
7 of time.

8 That is what we were told, yes?---It wasn't something that had
9 been brought to my attention prior to this. But when it
10 was brought to my attention, I spoke to both of my
11 directors, environmental and engineering, and Mr Robins,
12 particularly, was across this matter and felt that unless
13 and subject to sabotage of the tank or a shotgun blast
14 through it, it wasn't either an environmental issue or the
15 catastrophic disaster waiting to happen that Councillor
16 Mackenzie suggested. What I asked Mr Robins to do and
17 what he did do was obtain some advice from an appropriate
18 body as to what the risks of that tank were on the banks
19 of the river at that point in time. That was what led to
20 me forwarding an email to Councillor Mackenzie on the 19th
21 at 8.55 am saying that: "In the interim, planning and
22 engineering staff continue to monitor the situation at
23 Deep Creek with respect to health, safety and legal
24 issues." We are talking about Councillor Mackenzie
25 sending that email through at 8.35 pm the night before and
26 this answer coming through to him at five to nine the next
27 morning. In the interim, of course, Mr Arkinstall had
28 suggested that Councillor Mackenzie, as we knew in the
29 earlier emails, please provide details of who he had
30 spoken to.

31 COMMISSIONER: Yes, yes, we are aware of that?---And Councillor

1 Mackenzie's response was, of course: "Unfortunately, I
2 can't speak to you, thereby I can't send you the answer."
3 MR BROAD: Councillor Mackenzie also indicated that he would
4 provide documents to council's lawyers, didn't he?---He
5 did.
6 COMMISSIONER: Did they contact him?---I am not aware that they
7 did, no.
8 Did you suggest to them that they should contact him or
9 did - - -?---I had a conversation with them that said, you
10 know, "You may need to contact Councillor Mackenzie
11 directly."
12 So you actually told him?---Yes.
13 MR BROAD: Have you seen photographs of the tank as it then
14 was?---Yes.
15 The tank, would you agree, is close to the bank of the
16 river?---Yes.
17 I will show you one in particular. That appears to be a valve
18 which would allow the tank to be emptied?---Yes.
19 The tank was unbunded?---It was.
20 It was unsecured in the sense that there was no fencing around
21 it?---Correct.
22 And your comment about its potential to be damaged whether by
23 shotgun or sabotage, can I suggest to you that is a fairly
24 blithe response given the simple position of the tank and
25 the ease of access to it?---I think that my comment was
26 that bar some event of that nature, the tank was safe.
27 That was the advice I was receiving from my director of
28 engineering.
29 COMMISSIONER: Subsequently, they relocated it and put it
30 somewhere?---Yes, they have.
31 And I assume he did that - organised that?---Yes.

1 And it had been put there in the first place because of the
2 problems that we now have as a result of all the earlier
3 litigation?---Correct.

4 MR BROAD: I don't want to go through the emails as they
5 transpired, but just take you to two aspects of the
6 conduct complaint. Your conduct complaint on 26 March
7 alleged at the foot of the first page that Councillor
8 Mackenzie's actions breached a number of responsibilities
9 of a councillor. One, by discussing with third parties a
10 matter which had been the subject - which had been brought
11 to council in a confidential report?---M'mm.

12 Did you have any evidence of that?---This was the report of
13 Mr Arkinstall of 18 February.

14 You were relying on Mr Arkinstall's report?---I am sorry?

15 No, I am dealing with your conduct complaint of
16 26 March?---Yes, yes.

17 And your statement at the foot of the first page which says in
18 the first dot point - it alleges that Councillor Mackenzie
19 had discussed with third parties a matter which had been
20 brought to council in a confidential report?---Yes, yes.

21 Did you have any evidence of that?---Only in terms of
22 Mr Arkinstall's confidential report to council and what I
23 had understood had subsequently gone on with the
24 councillors attending out there and discussing those
25 matters. That was the evidence that I had.

26 The evidence you had from Councillor Mackenzie was to say that
27 that had not occurred. Do you agree with that?---Yes,
28 yes.

29 I think you have already indicated that the matter wasn't a
30 planning matter?---Yes.

31 And you also assert in the second dot point that there was an

1 attendance in a planning matter without an accompanying
2 officer?---Yes.

3 Does council have a policy that requires in respect of planning
4 matters a member of staff accompany councillors?---That
5 was certainly my understanding out of the councillor
6 access to information policy.

7 It then continues over the page again to make positive
8 assertions that there were discussions in respect of a
9 matter that was subject to court proceedings?---M'mm.

10 I don't think I need to ask you a further question about
11 that?---M'mm.

12 You then allege that there was a disclosure of confidential
13 information. Did you have any evidence to support that
14 allegation?---In terms of to the newspaper?

15 Yes?---Yes, I had discussions with Mr Horneman who said that
16 Councillor Mackenzie had attempted to contact him several
17 times on the Friday and who believed that the purpose was
18 to give him some information about Deep Creek.

19 So can I suggest to you that Horneman's speculation of what
20 Councillor Mackenzie might have been wanting to provide is
21 not of itself evidence?---No, and my understanding is what
22 I was doing here was setting out what I believed to be the
23 situation which would then be investigated by the code of
24 conduct investigator.

25 COMMISSIONER: So to be fair to you, you are saying: "Here is
26 what I had. You make of it what you will." And I don't
27 mean that in a flippant way. I meant that in the correct
28 way. "You carry out an investigation and tell me whether
29 it is right or not." Or not even that it is right, just
30 whether there is a breach or not?---Correct.

31 But you felt strong enough to say, "This needs to be

1 investigated and I could be totally wrong or I could be
2 totally right," or whatever. It is just: "Here is what I
3 have at this point in time"?---Well, is that not what
4 occurs with all code of conduct matters? You put the
5 situation there and the code of conduct investigator
6 investigates it.

7 I suppose that is right?---I am not - I am not - - -

8 I mean, you make the discretionary call in the first place to
9 do it obviously. That is the first point?---That's right,
10 and each of these people have the right and the ability to
11 provide their version of the events to the investigator.
12 Of course, to go from there.

13 MR BROAD: So do I take the point that in making a complaint,
14 it is open to you to make allegations which may not at the
15 time be supported by any evidence?---What I was attempting
16 to do in this complaint was set out what I believe had
17 occurred. Now, what you are putting to me is those things
18 hadn't occurred. This was a situation that I believe
19 that's what had gone on. Clearly, the code of conduct
20 investigator was investigating those and, as I said, just
21 as clearly each of the councillors could put their version
22 of their reality there.

23 COMMISSIONER: I think also the test is if they were on their
24 face proven, then that satisfies your discretion in a
25 sense because of the definition of the way it is put in
26 the code of conduct. It says: "If on the face it would
27 demonstrate a breach of the code." That is the sort of
28 trigger into, "Okay, I will exercise my discretion. I
29 think that is the position, so therefore I will make the
30 complaint"?---M'mm.

31 MR BROAD: Moving forward, on 20 February you lodged a conduct

1 complaint?---Yes.

2 It has been referred to, I think, elsewhere as the "omnibus
3 conduct complaint"?---Yes.

4 You raised a significant number of matters and I don't mean
5 that in any disparaging way?---Yes.

6 There were a number of matters that you raised and you dealt
7 with each and every one of those matters and provided
8 evidence supporting those matters?---Yes.

9 They were referred to Kath Roach of SINC Solutions?---Yes.

10 And, ultimately, they were not determined, but they were
11 referred. I will ask you. Were you aware that they were
12 referred to the Office of Local Government as part of its
13 misconduct investigations?---I didn't know where they
14 went. I didn't think that they went anywhere in their
15 totality. I think that they were separated out. That was
16 my understanding.

17 COMMISSIONER: That is the SafeWork one we are talking about,
18 isn't it?---No.

19 What was that, sorry? I just missed the beginning of that -
20 that document that you are looking at, Mr Broad?

21 MR BROAD: It is in the chronology referred to as 24 February.
22 If I can show you this document.

23 COMMISSIONER: That one, okay, yes. I beg your pardon, yes.

24 MR BROAD: And subsequent to that, you forwarded a further
25 conduct complaint which is a document dated 15 March
26 2015?---Yes.

27 Again, a number of complaints about councillors. In respect of
28 the first complaint which is in your chronology as being
29 24 February, I noted that you acknowledged that it was out
30 of time?---Yes, yes.

31 On 4 December, I think it was, you had written to the

1 mayor?---M'mm.

2 I assume you had contacted SafeWork?---Yes.

3 As we indicated, as at 4 December there were two avenues of

4 complaint, SafeWork, basically conduct?---M'mm.

5 Why is it that it was not until February 2015 that you lodged

6 that complaint?---So the sequence of events was, in

7 effect, for a period of time from my commencement at

8 Murray Shire until I think the watershed moment was the

9 pseudo performance conversation on 24 November.

10 24 November, yes?---I consider that I had done was sat back and

11 basically let the behaviour that was coming my way keep

12 coming and tried to get on with my job. That behaviour,

13 however, was starting to impact quite heavily on my health

14 and as a subsequent action I made the complaint formally

15 to the mayor and as you would see in that complaint to the

16 mayor I think I indicated that everything that I had

17 complained about had previously been provided to the

18 Office of Local Government. I believe that I said that.

19 I also made the complaint to SafeWork New South Wales.

20 The second watershed moment for me was the 29 December

21 newspaper article where my efforts to protect myself

22 because I felt I wasn't being protected were then splashed

23 all over the front page of the local paper. And I saw

24 that as direct retaliatory action for having made a

25 complaint. I saw that as a case of: "You make a

26 complaint about us and this is what we will do to you." I

27 was extremely distressed about it and I had a number of

28 conversations with the Office of Local Government and the

29 Office of Local Government had made it very clear to me

30 that they believe that the only way they had of dealing

31 with conduct issues was if they had conduct complaints.

1 So I made the decision to make a conduct complaint out of
2 time and including the conduct that I had been subjected
3 to. And why February? That happened on 29 December. It
4 took some time to put it together and in the interim, of
5 course, I had made a code of conduct complaint in relation
6 to the leaking of the article - sorry, the article
7 regarding the leaking of the private information.

8 COMMISSIONER: Sorry, leaking of the?---Of my SafeWork claim.
9 Yes, yes?---Yes, yes.

10 So you have done the code of conduct for the leak and then you
11 have said, "Right, now, I want to go" - - -?---Correct.
12 "Watershed - I am going back and I am going to make the
13 complaint," yes?---Yes.

14 MR BROAD: Moving forward - - -

15 COMMISSIONER: Sorry, you don't know who leaked it? Do you
16 have the code of the conduct?---Sorry, the article
17 regarding my SafeWork claim?

18 Yes?---I think I answered this earlier. The code of conduct
19 investigator found that it was one of the councillors.
20 Ms Macleay found that it was Councillor Mackenzie. I
21 don't have any further information.

22 Yes, yes, that is okay. Yes, you did too, yes.

23 MR BROAD: I was about to come to the investigation conducted
24 by Janice Macleay and it arose from two notices or one of
25 two notices issued by WorkCover on 18 February
26 2015?---Yes.

27 And in respect of that investigation, you provided information
28 to Ms Macleay?---Yes.

29 Again without glossing over things too much - excuse me -
30 Ms Macleay made a number of findings in respect of four
31 councillors?---Yes.

1 Shortly after the report or her report was released?---Yes.
2 It led to obviously a damning report in the local paper?---Yes.
3 And there was a sub-report which, of course, affected
4 you?---There was what, sorry?
5 There was another part of that report which affected you, as I
6 recall?---Yes, I think the whole of the report affected
7 me.
8 It certainly brought you into sharp focus?---Yes.
9 Again, it was a matter leaked?---Yes.
10 Do you have any view on who may have leaked that report?---I
11 have no knowledge of who leaked the report. I can - I
12 have since spoke to one of my staff members who has told
13 me that Councillor Weyrich leaked it, but I have no
14 personal knowledge.
15 Given the nature of what I have gone through and the depth that
16 I have gone through in respect of certain others issues
17 that arose with councillors, I don't propose to deal with
18 the matter involving Councillor Moon on 19 March unless
19 you wish to make further comment about that?---This is the
20 code of conduct complaint?
21 It is a code of conduct matter. Perhaps actually I should. I
22 should ask you a question about that. Perhaps I can go
23 through it. It would be better if I went through this to
24 get your formal response?---Sure.
25 On 5 March 2015, Councillor Moon sent an email to Phil Higgins
26 which read: "Could you please advise councillors the list
27 of so called serious allegations made against the Murray
28 Shire Council and the full contents of the claim. It is
29 ludicrous that up to \$30,000 has been voted on and made
30 available for an investigation, yet councillors, maybe
31 with the exception of the mayor, have no knowledge of such

1 claims. The mayor has not been forthcoming with any
2 information on occasions that I have made enquiries of
3 what the claims are. I would further like to bring your
4 attention to the interaction with staff policy" - sorry -
5 "I would further like to bring your attention that the
6 interaction with staff policy is unworkable and some
7 councillors cannot get a response from the appropriate
8 staff member in a reasonable and timely manner. I refer
9 to my recent email to Simon Arkinstall." Was there an
10 issue about timely responses to emails?---No.

11 COMMISSIONER: So did those sort of responses, as you said,
12 when it is going to admin, how did the system work? Just
13 give us - how did that - yes, tell me how that
14 worked?---So the emails went - originally went to admin
15 and then they were allocated.

16 Who controls that?---The admin - the admin staff.

17 The admin person, they come in?---Same as - the same as they if
18 anybody else's enquiry comes in. So if an enquiry comes
19 in via the switchboard from any member of the community,
20 it is logged into the system and forwarded to the
21 appropriate officer for response.

22 And the admin person who is looking at those emails makes the
23 decision?---Correct.

24 And do they seek any support or - that is not the right word -
25 do they ask - if they don't know, they ask someone else
26 there?---If they don't, there is one of two things that
27 can happen. If they don't know, they ask. If they don't
28 know and they believe that they know, they might send it
29 to one director who then reallocates it to another.

30 Then if it comes to you and it should go to the director, the
31 same sort of thing, it just makes it away around to the

1 correct person in the normal way?---Correct, yes, that's
2 right.

3 So if it lands on my desk as the director of planning, it is
4 then my responsibility to answer it?---Answer it or
5 reallocate it.

6 Let's assume it is my area and it is a councillor who makes it,
7 do I then respond to it and send you a copy?---The system
8 is such that if I have allocated them out - and I just
9 need to talk to you in a minute about what has happened
10 more latterly - that the directors would CC me into the
11 response, yes. In more - - -

12 More latterly?---Yes, so more latterly, since I returned to
13 work in October, it was my perception that what was then
14 occurring was there was a lot of effort going to bypass me
15 in my role in terms of understanding what was going on. I
16 had our IT people then reconfigure the system so that all
17 councillor emails came directly to me via admin. So they
18 came to admin, to my name, and then I allocated them.

19 Only the councillor emails?---Correct, unless they were, you
20 know, public emails for me, yes, yes.

21 MR BROAD: I don't know whether you have got the emails in
22 front of you, but there was a subsequent email sent by
23 Councillor Moon on 6 March at 9.30 pm to
24 Mr Higgins?---M'mm.

25 Again pressing for contents of the claims against Murray
26 Council?---M'mm.

27 And I assume that he was referring to the claims made by
28 you?---Presumably. I don't know that I have seen these.

29 Sorry?---I don't know that I have seen these emails.

30 I am sorry?---You know, I don't need to necessarily see them,
31 but I don't know that I have been across them. Thank you.

1 In that email, Councillor Moon took exception to the

2 interaction with staff policy?---Yes.

3 And asked the question: "I further asked the question, have

4 the lunatics escaped the asylum to find sanctuary of full

5 employment in New South Wales state government, drafting

6 documents such as (interaction with staff policy)" - and

7 quotes the version - "and expect that this document could

8 work to enhance or achieve any worthwhile results in

9 governing of local government." I will show you an email

10 that you sent to Mayor Weyrich on 9 March?---Yes.

11 In that email you wrote: "Councillor Moon appears to be

12 running a very targeted campaign against me with both

13 staff and the community. Sending an email of this type to

14 my staff is reprehensible and suggests that" - sorry, I

15 will say it in full. The email continued: "I suggest you

16 speak to Councillor Murphy regarding the comments that

17 Councillor Moon made to a member of the public about me at

18 Bunnaloo on Wednesday, 4 March." Now, how did you see

19 that as a very targeted campaign against you?---Because it

20 was what I saw as just another example of what had been

21 going on for months and months and months. It is very

22 difficult when you raise a single incident and say to me,

23 "How do you see this as targeted?" When you take into

24 account all of the circumstances that led to Ms Macleay

25 finding that there was bullying and harassment going on

26 which has to be a pattern of behaviour - it is not a

27 single incident - and then a whole range of code of

28 conduct matters. What I saw occurring was councillors

29 attempting to target me through questions on notice,

30 emails, out of hours, et cetera. That was clearly closed

31 down by the councillor/staff interaction policy. What

1 then commenced was comments to my staff, comments to
2 members of the community and I brought code of conduct
3 complaints in relation to those. What then commenced was
4 a very public campaign in the newspapers of: "She is
5 vexatious, she is frivolous." And then when that campaign
6 stopped, what started then was the leak of confidential
7 information about me. So this one email, yes, I thought
8 it was part of a pattern.

9 The campaign you talk about in newspapers, I don't know whether
10 I have seen many of the media reports in respect of
11 that?---M'mm.

12 What are you referring to?---I am referring to the article that
13 is headed "Leaked details of a confidential Murray Council
14 meeting show that Ms Stork must have her performance
15 conversation one by an external. Leaked details of Murray
16 Shire council meeting." I have all the articles in the
17 car if you would like.

18 COMMISSIONER: Can you provide them to us later?---Yes, of
19 course. Of course. And this to me commenced around the
20 time that I went off on sick leave.

21 So if you just provide them in due course, say, "Here are the
22 articles that relate to that period," that would be
23 fine?---Yes, yes.

24 MR BROAD: Can I move forward to 31 March in relation to your
25 absence from work?---Yes, yes.

26 COMMISSIONER: Just before you go to that, if we just come back
27 to the policy and I want you to give me the - I will put
28 it to you and then you could it the way you want to put
29 it?---M'mm.

30 A lot of the concerns of the councillors have said: "How can
31 the general manager expect us to operate as a council to

1 cut us off from the information by bringing this policy in
2 at this time? It was, first of all, the policy came in
3 that we couldn't speak to the directors
4 specifically"?---M'mm.

5 "Okay, we have to email the general manager. But then to say
6 that we don't have access to the general manager is
7 madness." And on face value, there is some truth in that.
8 I want to hear what you have got to say because it is,
9 especially putting it in the perspective that the
10 councillors put it to us?---M'mm.

11 And you can understand it. A group of councillors in a rural
12 area, they always say, you would have heard it, "We can
13 talk to the directors. It was like that before. It's a
14 small rural community. We should be able to talk to the
15 people. We see them in the street," et cetera,
16 et cetera?---I didn't put the policy in place. The policy
17 in place. The policy was put in place at the request of
18 the Office of Local Government. Councillors passed a
19 resolution to that effect. It was tightened because there
20 was clear recognition by SafeWork New South Wales of an
21 unsafe working environment. I think it's kind of madness
22 to have three councillors who have been found guilty of
23 bullying and harassment now sitting here for another
24 12 months without penalty. There is quite a lot of
25 madness that has been going on in Murray Shire really.

26 Yes, I understand. But you as the general manager - I mean, I
27 think I know the answer, but I am still going to put it to
28 you that you could have said: "This is not working. I am
29 going to put a report to the council and say change the
30 policy. This is causing too much of a rift. They need
31 more information." What would you say to that?---I could

1 have done that, yes, I could.

2 No, no, but why wouldn't you?---Because of the circumstances I
3 found myself in.

4 So at this point in time we are in major camps, so to
5 speak?---No, no, we are not in major camps. We are in a
6 situation where we have been proved to be bullyers and
7 harassers and nothing is being done to resolve that
8 situation. I am not - - -

9 Both internally in the council and externally by government
10 agencies?---Correct. Correct. You know, this council was
11 told by SafeWork New South Wales to review the Fair Work
12 Commission Australian bullying processes. I would have a
13 fair guess that there is nobody in this council that has
14 ever looked at that document in terms of what you are
15 supposed to do to protect a worker. Now, if that was me
16 and it was one of my workers I would have quite rightly
17 been sacked by now. No doubt. No doubt.

18 All right.

19 MR BROAD: I suppose the questions that the Commissioner has
20 asked you lead forward to another question. Had the
21 behaviour become too entrenched that intervention would
22 not resolve it?---The behaviour of the councillors?

23 Yes?---I don't know, because none of the councillors ever
24 engaged with any of the outcomes from the codes of
25 conduct. So perhaps if those codes of conduct outcomes
26 had been engaged with, perhaps they would have.

27 The code of conduct outcomes were various?---Yes.

28 There were three reports which were considered by council. The
29 first one which related to Deep Creek involved a
30 breach?---M'mm.

31 The other one involving Councillor Mackenzie's comments about

1 the Mathoura cartel also resulted in a final report and a
2 breach?---Yes.

3 And questions asked by Councillor Campbell about the credit
4 card resulted in a final report and breach?---Yes.

5 Other matters suggested an outcome by resolving by alternate
6 means?---Yes.

7 Whether by reference, I assume, to yourself or the mayor.

8 There were some where no action was taken. I think there
9 is three of those or four of those, I am sorry. So we
10 have a situation where as at the end of 2015, we have got
11 three physical outcomes that have come to council?---M'mm.

12 And those outcomes have required apology or whatever?---M'mm.

13 The earliest outcome I think appears to have taken place
14 in July 2015. Are you saying that resulted in no change
15 in the councillors' behaviour?---Which particular outcome
16 are you talking?

17 I am talking about Deep Creek as the first one?---M'mm.

18 That didn't result in any change in behaviour?---I think Deep
19 Creek is slightly different to the other ones, you know.
20 I think most of the other ones that you are talking about
21 are in relation to me personally and I think they would
22 have to be separated out. Deep Creek was an individual
23 issue, if you like.

24 I am not trying to separate it out?---Yes.

25 I did not attack it in that context?---No.

26 What I am trying to look at is we have got three matters that
27 came to council for its consideration. My question is
28 simply on its face. Did any of those matters which were
29 considered by council where there was an outcome result in
30 any change in behaviour?---No.

31 In respect of the other ones where there was either a

1 recommendation to resolve by alternative means or to refer
2 matters to yourself or to the mayor, did they result in
3 any change in behaviour?---No.

4 In respect of the attempts to resolve matters by alternative
5 means, I think there were suggestions of training, that
6 there be, you know, training on the code of
7 conduct?---M'mm.

8 I think there was training on meeting procedure. Did any of
9 those have any effect?---No.

10 So as a tool for bringing about change in the behaviour of
11 councillors, none of those complaints brought about a
12 change?---No.

13 And, of course, it is quite clear from your submission that
14 your expectation was that the Office of Local Government
15 would act positively and deal with those misconduct
16 complaints?---Yes, and certainly I dealt with a level of
17 frustration in what I saw as the seesawing backwards and
18 forwards between the Office of Local Government and
19 SafeWork New South Wales. The codes of conduct, certainly
20 I felt that they were going nowhere and you just asked me
21 whether I thought there had been any outcome as a result
22 of those codes of conduct. The only outcome that I could
23 see was an escalation in the retaliatory action as a
24 result of me bringing those complaints. You know, there
25 is ample newspaper stories where these councillors talk
26 about the vexatious complainant and my reading, despite
27 the fact that there are, you know, multiple - hundreds of
28 codes of conduct alleged, because of the way they have
29 been recorded, my reading of the spreadsheet is there may
30 be some 22 or 24 individual code of conduct complaints.

31 COMMISSIONER: Yes, yes, that is what we have been saying?---My

1 reading of it is that I brought perhaps half of those
2 which of course leads a half that have been brought
3 councillor to councillor. That certainly has never been
4 made clear to the public.

5 No?---It has also never been made clear to the public that
6 there is a condition precedent of the code of conduct
7 process where the investigator has to consider is this a
8 vexatious or frivolous matter. And none of mine have been
9 found to be vexatious or frivolous. But they are the
10 words that these councillors continue to use to damage me
11 in the media and with the public.

12 We might - - -

13 MR BROAD: I notice the time. I was about to embark on a
14 little bit of a topic that arises from that, but given the
15 time we might come back and do that - - -

16 COMMISSIONER: We are just going to take a 20-minute
17 break?---Sure.

18 Is that enough for you to get on with it, sort of thing?---Yes.

19 MR BROAD: Yes.

20 COMMISSIONER: Thank you.

21 <(THE WITNESS WITHDREW) 12.58 PM

22 LUNCHEON ADJOURNMENT

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UPON RESUMING AT 1.23 PM:

<MARGOT STORK, recalled 1.23 PM:

<MARGOT STORK, examined 1.23 PM:

Ms Stork, just prior to the luncheon adjournment the description of one of the councillors had been raised in relation to yourself and no doubt as you've read in the submissions to the Inquiry there are some comments made by various councillors in relation to your performance as general manager?---Yes.

What I want to do now is give you an opportunity to respond directly to those matters. If I can deal with one from Councillor Mackenzie and in particular to his statement in his submission about two-thirds of the way down the page, the first page. It reads, "I believe that the general manager has waged a long and sustained attack on selected elected councillors". Your response to that please?---I haven't.

He also alleges that very soon after you were appointed you took a position aligning yourself with the ruling faction of council and described them as containing three long-serving councillors. Your response?---I didn't.

Councillor Moon has submitted that you appear to have a litigious and vexatious nature. How do you respond?---I don't.

That you joined - sorry, probably to make sense of it I'll go through the whole sentence. That you appeared to have a litigious and vexatious nature and has joined with this embedded culture of a small group that exists within the Shire. How do you respond to that?---That's not correct.

If you will allow me a minute I will just search out

1 Councillor Campbell's submission in that respect.
2 Councillor Campbell has made the following submission in
3 referring to the ex-mayor's unrelenting - what she says,
4 unrelenting toxic campaign against four democratically
5 elected councillors. She then continues, with the
6 campaign continues with yourself colluding with the
7 defunct ruling faction who refuse to attend 19 January
8 council meeting. The question to you is obviously had you
9 colluded with a faction of council?---No.
10 The next allegation is to the effect that you have, and
11 continued to have, a recognised dislike for certain
12 elected officials, a view which you harboured prior to
13 your appointment. Can I deal with that in two parts:
14 (1), do you have a dislike for certain elected
15 councillors?---No. What I do have a dislike for is
16 behaviours that have been displayed towards me.
17 Did you harbour a view about councillors before your
18 appointment as general manager?---No.
19 What I wanted to deal with next is, rather than deal with the
20 individual conduct complaints, was to deal with the
21 periods where you were not at work?---M'mm.
22 The first period was in the period of 31 March 2015 to
23 10 April 2015?---Yes.
24 Without disclosing when you refer to issues of particular
25 injuries in your report, without going into the detail of
26 those injuries, can you indicate the reasons for that
27 period of absence?---Because I was injured.
28 And that was recognised as a compensatory claim?---Correct.
29 The Janice Macleay Report was released on 15 April. What were
30 your feelings about that report?---Relief. Relief that
31 I'd been believed.

1 Did you feel that the findings made by Ms Macleay would bring
2 about a change in council?---Yes.
3 You were optimistic?---Yes.
4 Why were you optimistic?---Because I couldn't imagine anybody
5 being faced with findings of that nature and not pulling
6 up and saying, "Well, we've been engaging in stuff that's
7 unacceptable. We've got to draw a line".
8 So you saw it as a watershed?---Yeah. Yes, I did.
9 Did it turn out to be a watershed?---No, it didn't.
10 Did the behaviour of councillors towards yourself
11 change?---Yes, it did.
12 In what sense?---It got a lot worse.
13 Can you provide some detail in respect of that?---Yes,
14 certainly. The nature of the abuse changed. The nature
15 of the abuse became far more public and the nature of the
16 abuse started to involve my staff, members of the public,
17 the media and what I saw as clear retaliatory action for
18 having pursued my rights in respect to not being bullied
19 and harassed in the workplace.
20 When the Macleay Report, or the content of the report, was
21 released there was substantial headlines?---Yes.
22 In respect of that?---I'm sorry, can I just draw a distinction
23 between it was released and it was leaked. It was
24 released?
25 I am sorry, it was leaked?---Yes.
26 COMMISSIONER: We know it was leaked?---Yes.
27 MR BROAD: Mine was an euphemism. Leaving aside the leaking of
28 that report, you were talking about there being content in
29 the media by councillors. Can you give examples of
30 that?---Yes, certainly. So immediately following the
31 period of time that I was off work, which was the period

1 of time around the Macleay investigations, as in the
2 attendance of Ms Macleay down here, and there was two
3 incidents that led to me going off work, two incidents
4 that were both quite harrowing for me. And then I came
5 back to work on a return to work agreement agreed with the
6 mayor and the deputy mayor and that return to work
7 agreement was that I would predominantly work on the
8 Fit for the Future process but I would continue to work on
9 anything that was directly with the mayor and also
10 strategic processes, RAMROC et cetera.

11 COMMISSIONER: And that's Weyrich at this point
12 obviously?---Correct. That's right. And it was around
13 this time that the news articles started to appear, with
14 councillors making comment in chambers, such as "Don't
15 know where the general manager is. I may have been absent
16 for four meetings but she's been absent for six without
17 excuse". And it was very clear to me that as a direct
18 consequence of the tightening of the policy and no longer
19 being able to direct those type of niggles to me, then the
20 councillors were taking the opportunity to have them
21 picked up by the media in chambers. And there was a whole
22 range of articles.

23 Because the media is obviously in the chamber?---I'm sorry?

24 Because the media is usually in the chamber?---Correct.

25 Correct. But there was nothing - there was nothing honest
26 about what was being said. My working on Fit for the
27 Future was clearly a resolution of council and it was
28 clearly conveyed to councillors what I would be doing.
29 And I note even now in some of the submissions there is
30 this suggestion that I was absent from work for five
31 months, and that's clearly a fabrication.

1 In fact there was a resolution on 12 April 2015 that related to
2 you working on this position?---Correct, that's right. So
3 then you have councillors saying, "Oh we don't know where
4 the general manager is, we haven't" - - -

5 Do you know whether there was a report that went with
6 that?---I've got no idea.

7 Because you weren't there obviously?---No.

8 No, okay, for that period?---And quite clearly council did not
9 appoint an acting general manager, so quite clearly I was
10 on deck doing my job.

11 MR BROAD: The difference was that you weren't formally in the
12 Civic Centre, the council offices?---No, that's not
13 correct either. I was in the council offices most of the
14 time. The only difference was that I was not attending
15 council meetings.

16 COMMISSIONER: In that period, I think we're talking
17 about April to June roughly?---Yes.

18 You weren't at home?---No, I wasn't at home. I was at home of
19 course - - -

20 I just tell you that because that's what - - -?---I used to go
21 home to sleep and on occasion I would work at home.

22 You weren't - - -?---No.

23 You were coming to work - - -?---Absolutely.

24 In the normal hours?---Absolutely.

25 Anyone could have come along and stuck their head in and seen
26 that you were you at work, you would say wouldn't
27 you?---As they did.

28 MR BROAD: The issue she was talking about were in the nature
29 of that, that you report as having occurred on
30 21 April 2015 in your chronology?---Which was what?

31 I am sorry, I'll read it out, it will make life easier. The

1 content of your chronology is that, "At an ordinary
2 meeting of council on 21 April, Councillor Mackenzie
3 states that I have been absent from four meetings
4 since November 2014 without apology"?---Yes, that's
5 correct.

6 Is it incumbent upon you to make an apology for not attending a
7 meeting?---No, it's not.

8 There is the next piece of the chronology which talks
9 about April 2014 and ongoing. Do I assume that's April
10 2015 and ongoing?---Yes.

11 Or is it more generic?---No, that was - that was April 2014 and
12 ongoing.

13 You confirm that year. We have already dealt with things like
14 questions on notice. You refer to GIPA
15 applications?---M'mm.

16 Do you take issue with - and I assume you are referring to a
17 GIPAA application lodged by Councillor
18 Campbell?---Correct.

19 Do you take issue with the right of a councillor and member of
20 the public to seek information under GIPA?---No, I don't
21 take issue with the right of a councillor or a member of
22 the public to obtain information under GIPA. What we were
23 talking about in the action that I brought was whether or
24 not that was part of the pattern of behaviour that
25 amounted to bullying and harassment and I believe that it
26 was. I think that we're getting very caught up here in
27 three different jurisdictions; GIPA, the Code of Conduct
28 and the Work Health & Safety legislation of bullying and
29 harassment. They are all slightly different and my - the
30 exception that I took with this was that I simply saw it
31 as yet another tool to harass me.

1 As a matter of principle, what information do you regard
2 appropriate for a councillor to have?---I don't have an
3 issue with councillors seeking information. What I have
4 an issue with is the purpose for which that GIPAA was
5 being sought.

6 I understand that. I understand the delicacy of that. What
7 I'm asking you is the primary question. I think you have
8 already indicated that you saw the application brought by
9 Councillor Campbell as part of a course of
10 conduct - - -?---Yes.

11 Directed against you. My question to you is generic and
12 whether it be Councillor Campbell or any councillor, what
13 is the nature of the information that should be available
14 to a councillor?---I'm not certain that I can answer that
15 in a generic sense. I mean information is information.
16 The GIPA legislation clearly has the ability for some
17 documents to be withheld in the public interest,
18 et cetera. I'm not sure whether I can answer that as a
19 generic question; you know, what do I answer, my petrol
20 receipts, you know, whether I carry dogs in the car. You
21 know, which ones of those do I say that are appropriate
22 for a councillor to ask for? I don't know unless I see
23 them in an application.

24 We are going back to the specifics of what Councillor Campbell
25 sought. I am trying not to deal with that, I'm trying to
26 divorce that as an issue and ask a very, very simple
27 generic question. Councillors have got a particular role
28 in the, as it were, the business of council, the dynamic
29 of council; whether it be at a governance level, whether
30 it be as an elected representative. Generically, what
31 information should be available to councillors whether -

1 I'm not talking about GIPA, I'm talking about in a generic
2 sense, what information should they have to undertake
3 their roles?---The policy information of the Shire,
4 minutes, ordinary meeting documentation. They clearly are
5 entitled to have my contract. I'm not sure where you want
6 me to go with it. Are you talking about classes of
7 documents? Are you talking about - - -

8 I am talking about in the most generic sense?---Then in the
9 most generic sense they're entitled to generic
10 information. I don't know how I can answer it.

11 COMMISSIONER: Are you saying one of the GIPA questions was
12 whether you carry dogs in the car?---Absolutely. Well it
13 may not have been a GIPA, it may have been a question
14 asked of my 2IC but it was, "Can the general manager carry
15 dogs in the car? Can she rally the vehicle? Can anybody
16 else drive?

17 This is part of the issue about how you use your motor vehicle
18 and all that sort of stuff?---Yeah.

19 And so you say, I mean obviously you can't deny it, anyone can
20 make GIPAA applications for all of this but there was a
21 different reason for this GIPA application?---Correct.

22 MR BROAD: Moving forward, there appears to have been a further
23 statement at a meeting about your whereabouts, at the
24 meeting on 5 May?---M'mm.

25 So that's the sort of thing you're talking about with your
26 whereabouts?---Correct.

27 I don't want to go through and ask for details in respect of
28 the allegations on 30 May. We then deal with the matter
29 they raise on 8 June which is comments made by
30 Councillor Mackenzie in relation to the Mathoura
31 Cartel?---Yes.

1 One of the issues raised in that conduct complaint is the
2 limitation imposed by the media policy adopted by council
3 and the need for a disclaimer that councillors making
4 comment should make it clear that that's their personal
5 opinion?---Yes.

6 You are aware of the comments that were being made?---Yes.

7 Is it usual for there, in a report in a media outlet, to be a
8 disclaimer like that?---I'm not aware, you know, of -
9 I don't know. I don't know is the answer.

10 In reading the report in the newspaper would you agree that it
11 was very clear that Councillor Mackenzie was expressing
12 his views?---Look I don't know. I think that's one
13 interpretation of it, yes. It is an interpretation but
14 I think it was open for members of the public to see that
15 anyway, really. I haven't done a poll of members of the
16 public.

17 I mean the code of conduct probably talks of two things. It
18 talks about compliance with policies and an issue was
19 taken as to whether or not there was strict compliance
20 with the media policy?---Yes.

21 The code of conduct also talks about actions which are
22 basically - that denigrate council. Now quite clearly the
23 latter could be an upshot arising from the nature of
24 comments but my question was aimed at the former. It
25 appeared, on my reading, that it was very apparent that
26 Councillor Mackenzie was making a personal - or
27 communicating a personal view. You don't agree with
28 that?---No, I don't.

29 COMMISSIONER: Just as a complete aside, as between councillors
30 do you think there was any sort of issues that Moama
31 Mathoura-type - - -?---Yes, yes.

1 MR BROAD: And that caused a division amongst the
2 councillors?---Yes. I can actually - you asked me a long
3 time ago, it seems, about some of the discussions I had
4 with councillors in that very first meeting with each of
5 them and one of the things that Councillor Mackenzie
6 raised with me is move the council to Moama.

7 COMMISSIONER: It's in those minutes too?---Sorry?
8 It's in those questions, when notice and all
9 that - - -?---Offices at Mathoura won't keep getting
10 support.

11 MR BROAD: The next item in the chronology is an ordinary
12 meeting of council on 23 June and you refer to an attempt
13 by councillors to have a resolution passed to have you
14 stood down?---Yes.

15 You then say despite you being on a protected return to
16 work?---Yes.

17 What do you mean by that; what was a Safe work protected return
18 to work?---I had suffered an injury at work that was
19 directly attributable to my work environment and my claim
20 had been accepted by Work Cover as a claim.

21 And so there was protection?---There was a protection for me as
22 a consequence. My understanding is that the primary
23 requirement for the employer is to attempt to get you
24 reintegrated back into your role as soon as possible.
25 That is my understanding.

26 COMMISSIONER: This is the workers comp?---Correct. And in
27 fact I have been on a Work Cover protected return to work
28 since that time. My understanding, and I may be
29 incorrect, is that you were handed one of my certificates
30 of capacity for work yesterday. I may be incorrect.
31 I believe that Councillor Moon may have handed you that.

1 I might have, yes?---Which is clearly, clearly a confidential
2 document that should not be in Councillor Moon's
3 possession and that will be an issue that I'm sure Work
4 Cover New South Wales will deal with. But as a
5 consequence of injuries in the workplace the primary
6 requirement for the employer is to reintegrate you back
7 into your role. And that's what I was attempting to do
8 throughout this period.

9 Do you know if councillors had been informed of that
10 obligation?---No.

11 You don't know?---No, I don't know.

12 All right.

13 MR BROAD: But going forward you refer to a letter from
14 Councillor Murphy. Of course Councillor Murphy has given
15 evidence and we explored that letter with her?---Yes.

16 So I don't need to go further into it. On 21 July you refer to
17 an ordinary meeting where there are allegations in respect
18 of perks?---Yes.

19 Arising from the mayor's credit card?---Yes.

20 Did you see that as an issue involving yourself?---No.

21 Can I explore the matters in relation to the Mayoral election
22 and you refer to it as being on 11 August?---Yes.

23 I think those matters are generally set out in detail in your
24 application for an order to the Fair Work
25 Commission?---Correct.

26 In previous evidence we have effectively gone through that
27 detail which is contained in the relevant annexure to your
28 complaint with Councillor Weyrich and Councillor Moon.
29 I don't particularly want to ask that evidence again
30 viva voce unnecessarily. Is there anything you wish to
31 add in respect of the discussions that took place as

1 contained in your complaint to the Fair Work
2 Commission?---I think the only matter that arises is
3 I believe that there has been a suggestion made that I was
4 responsible for Councillor Burke not being in attendance
5 at the mayoral election meeting and I'm happy to walk
6 through that with you if you would like me to.

7 If you could please?

8 COMMISSIONER: That is the letter - - -?---I'm sorry?

9 And about the letter and all that you - - -?---Yeah, that's
10 correct. So Councillor Burke had been absent from council
11 meetings for an extended period of time in the lead up
12 to August 2015 and Councillor Burke was clearly, according
13 to his solicitors, unwell.

14 When you say - weeks, months - sorry, it's only months isn't
15 it?---Months. Yeah, I'm thinking about three months but
16 you know I don't have that in front of me.

17 No, no, but it's not just one month?---No, it was an extended
18 period of time. And during that period of time that
19 Councillor Burke was absent council was served with
20 correspondence from Councillor Burke's solicitors and in
21 that correspondence, which was addressed to five
22 counsellors being Councillor Weyrich, Murphy, Pocklington,
23 Anderson and Bilkey and myself and the three directors.
24 And in that correspondence from Councillor Burke's
25 solicitors there was a whole range of allegations which
26 were largely concerning bullying and harassment of
27 Councillor Burke and it was an interesting letter in that
28 it talked about those various nine people named attempting
29 to get Councillor Burke to toe the party line. And there
30 was some demands there regarding all of those named
31 parties undertaking not to continue doing so, et cetera.

1 So that matter was handed to the Shire's - - -
2 What was the threat? Usually those solicitors' letters have a
3 sort of, "Please undertake not to do, and if not we will
4 do something about it"?---Yeah, and look I haven't printed
5 out the letter but my understanding it was, you know, "We
6 will injunct you and we'll seek damages against you".
7 I may be paraphrasing but that was certainly my
8 understanding.

9 That is a letter to all those people and I suppose effectively
10 it would be taken to be to the council, it must be?---Yes.
11 So this matter was provided to council's insurers to deal
12 with and those insurers engaged CBP Lawyers to manage the
13 matter for council and their advice - there was a couple
14 of things that they had decided and I sent an email to
15 them on 18 June saying, "After discussing the matter with
16 Mr Higgins we thought it might be appropriate if the
17 letter received from Councillor Burke's lawyers was
18 provided to the nine named parties and request they
19 provide information that may be relevant", because
20 Councillor Burke's solicitors talked about emails and
21 phone calls and so forth, and the lawyers certainly
22 affirmed that course of action. Sometime prior to the
23 mayoral election - - -

24 Just stop there a second. The insurer's solicitors must have
25 taken the view that this is an employment issue or
26 something and they then engaged the others - I mean the
27 insurer's solicitors engaged other solicitors. Is that
28 what you're saying?---No, no, no. The insurer's
29 solicitors were acting and they - no, they were acting,
30 so - - -

31 To your insurer's, sorry I got it wrong. I understand, to the

1 actual insurers, yes?---Yeah. So the insurer's solicitors
2 were Colin Biggers & Paisley.

3 Yes. Sorry, my mistake?---No, that's okay. So I was provided
4 information by Councillor Weyrich and it's probably most
5 succinctly put in my email to Colin Biggers & Paisley on
6 4 August and this is what I had been told: "Councillor
7 Burke is currently off on pre-arranged holiday leave but
8 has indicated that he may seek a further medical
9 certificate from 18 August onwards. There has been a
10 suggestion that Councillor Burke will return to council
11 for the mayoral election on 16 September but will then go
12 off on sick leave again. Given that his solicitors have
13 indicated that his health is extremely fragile, what if
14 anything is Murray Shire's responsibility towards
15 Councillor Burke in this respect? If I had an employee
16 who had been off work for so long I would require them to
17 provide a medical clearance before returning to work but
18 I don't know about councillors. Your advice would be
19 welcome."

20 So as a consequence of that and an earlier enquiry
21 to them about given the state of Councillor Burke's health
22 should I be continuing to send him council papers, CBP
23 prepared a letter to go to Councillor Burke's solicitors,
24 which I understand you have been provided a copy of.

25 Yes?---And that's - - -

26 That's how it came about?---That's the sum of the involvement.

27 We can get a copy of those?---Yes.

28 And a copy of the letter from the original - whatever the
29 original letter was from Councillor Burke's solicitors,
30 yes?---Yeah. So from my perspective this was a risk
31 mitigation exercise, given the exposure as I saw it of

1 both council and nine individuals.

2 MR BROAD: And in view of the nature of the concerns raised by
3 Councillor Burke's solicitor you have emphasised -
4 I probably am putting words into your mouth - that the
5 letter was not provided to you. What I'm leading to is
6 this; I will probably phrase it a lot better if I ask it
7 properly. In your chronology in respect of the date of
8 18 August you talk about Councillor Burke handing a letter
9 of resignation to the mayor?---Yes.

10 And then on a side comment, on the right-hand side, you comment
11 that the mayor did not provide the letter to
12 you?---Correct.

13 If a councillor was to resign in other circumstances, where
14 there weren't issues raised of the nature of the work,
15 health and safety issues that were being raised in this
16 letter, I suppose it would be provided to the general
17 manager really as a record?---My understanding of the Act
18 is that it is required to be provided to the general
19 manager.

20 Sorry?---It is my understanding of the Act that it is required
21 to be provided to the general manager.

22 In this case I assume there is two levels of importance; (1)
23 there's a statutory compliance and (2) there was an ambit
24 claim?---Correct.

25 Going forward again, on 28 August you were advised not to be
26 working with council; to have a period away from
27 council?---Correct.

28 I don't want to explore the pecuniary interest claims. And
29 again you say on 29 September that there was a further
30 attempt, by way of resolution, to have you stood
31 down?---Yes.

1 What happened with that particular resolution?---My

2 understanding was it wasn't adopted.

3 In the period following the change of the mayoralty, did your

4 relationship with Councillor Weyrich change?---Sorry,

5 could you repeat that?

6 In the period following the change of mayoralty in

7 September 2015, did your relationship with Councillor

8 Weyrich change?---No, my relationship with Councillor

9 Weyrich changed before the mayoral election.

10 And that was as a result of those discussions that we have been

11 talking about, that are set out in the Fair Work

12 Commission claim?---Correct.

13 What was the nature of the change?---The nature of the change

14 was that Councillor Weyrich during that period in the lead

15 up to the mayor election made it reasonably clear to me

16 that his faction would no longer support him as mayor and

17 that as a consequence of that he was treating with

18 Councillors Moon, Mackenzie and Campbell to have them

19 support him as mayor, and it was certainly my

20 understanding, both explicit and implicit, from the

21 conversations I had with him that part of that deal was to

22 get rid of me.

23 COMMISSIONER: They are the conversations that are set out in

24 the - - -?---Correct.

25 And then you said, "Why are you telling me this?" and all those

26 conversations?---That's right, yes.

27 MR BROAD: On 1 October 2015 it appears that - sorry, you

28 indicate that Mayor Weyrich released witness statements

29 held by Janice Macleay?---My understanding is what the

30 mayor had been provided sometime shortly after the Macleay

31 Report was released on 15 April was copies of the notes

1 that Ms Macleay used to prepare her final report. I'm
2 uncertain whether they're handwritten notes or whether
3 they are the statements of witnesses, but I believe that
4 either way they identify the witnesses and what witnesses
5 said.

6 How did that come to your notice?---Because when I was talking
7 to Mayor Pocklington I indicated to him that I thought
8 that he should ask for former mayor for those notes
9 because I was aware that the former mayor had them and he
10 made some comments such as "Too late".

11 COMMISSIONER: When Councillor Pocklington asked for the notes
12 from Weyrich, is that right?---No, I don't believe he ever
13 asked for them. I believe that he had already been made
14 aware that they'd been released to the councillors who had
15 bullying and harassment allegations substantiated against
16 them.

17 MR BROAD: In or about the beginning of October there were
18 negotiations between you and Mayor Pocklington in relation
19 to your return to work?---Correct.

20 There had been some issues in relation to the confidentiality
21 of that agreement. What is your view in respect of the
22 confidentiality of that agreement?---My return to work
23 agreement?

24 Yes?---As far as I'm concerned it's a confidential document.
25 I've not been asked to release it to anybody, other than
26 to the code of conduct investigator and I said I wouldn't
27 do so.

28 That was JohnKleem?---No, it was - - -

29 Sorry, I'm getting the wrong one, am I?---Yeah, you are. IAB,
30 I think.

31 COMMISSIONER: You know that we've seen it and that Mayor

1 Pocklington, I asked him for it and he gave it to me and
2 we gave it back to him?---Yes. Yes, he advised me he was
3 going to do that.

4 MR BROAD: It has been returned to him?---M'mm.

5 The Commission has not retained a copy?---Thank you.

6 Do you regard that agreement as an agreement between yourself
7 and Mayor Pocklington?---I regard that as an agreement
8 between myself and Murray Shire, negotiated by
9 Mayor Pocklington on behalf of Murray Shire.

10 And it binds Mayor Pocklington into certain personal actions
11 too?---Sorry?

12 It binds Mayor Pocklington to certain personal actions
13 too?---Correct.

14 So in that sense it's between effectively three parties because
15 there's, I suppose - because it binds three of you,
16 I suppose it becomes a three-way agreement?---It's
17 probably a - it binds five parties if you look at the
18 signatories to that document.

19 COMMISSIONER: As part of that negotiation it was suggested by
20 your team that the Deputy Mayor, Councillor Campbell,
21 was not to be involved?---Correct.

22 You agree with that?---Correct.

23 Why was that?---Councillor Campbell is one of three councillors
24 who have been found to have bullied and harassed me for
25 most of the time that I have been at Murray Shire. Those
26 actions of councillors led to the significant injuries,
27 workplace injuries that I suffered. The idea that
28 Councillor Campbell would then be involved in negotiations
29 with me, whatever they may be, was abhorrent to me.

30 MR BROAD: Let's move forward and I will just very briefly
31 gloss over. You returned to work in October?---Yes.

1 I don't want to go into the great events that occurred
2 between October and January this year at this stage, but
3 there's been a suspension imposed on the
4 councillors?---Yes.

5 Has that been of benefit to your health?---Yes.

6 On 14 October you refer to Councillor Mackenzie giving an
7 interview to the Riverine Herald in which he claimed that
8 there were an unprecedented number of codes of conduct
9 being imposed on councillors by a single
10 claimant - - -?---Yes.

11 And that was becoming a vexatious issue?---Yes.

12 Do I correctly assume, or do you assume that he's referring to
13 yourself?---Yes.

14 Do you regard the issue as becoming vexatious?---No.

15 Why not?---Because as we discussed previously there are in
16 fact, despite the very elevated figures, there are
17 probably 22 or 24 code of conduct matters. Of those,
18 I suspect that you'll find about half of them are code of
19 conduct complaints that I have brought. Those code of
20 conduct complaints have been through the appropriate
21 processes and channels and each one of those that has been
22 found proved has been found not to be either vexatious or
23 frivolous. Those that have been found not proved have
24 also not been found vexatious or frivolous. So this is
25 actually a term within the code process that is just
26 clearly incorrect and I believe that what I'm doing, or
27 have been doing, is actually taking appropriate action in
28 terms of poor behaviour. What councillors have been doing
29 is running a campaign in the media.

30 COMMISSIONER: What is the break-up roughly of the proved/not
31 proved?---I think it's 10/2. Somewhere thereabouts. That

1 might be not exactly, yeah.

2 No, but it's well and truly up the end

3 where - - -?---Absolutely. Absolutely.

4 MR BROAD: I am not trying to gloss over but we've heard quite
5 a substantial body of evidence in respect of the meeting
6 of 20 October 2015, where there was Councillor Bilkey
7 putting forward a motion to welcome you back?---Yes.

8 Is there more that you'd like to say about that?---No, I don't,
9 I don't believe so.

10 One of the issues that's come up and it's referred to in your
11 chronology in respect of 17 November 2015 is your
12 performance review?---Yes.

13 Can I go back a stage. We have a circumstance where you joined
14 council in April 2014?---Yes.

15 I think the expectation is that there would be at least an
16 annual performance review?---Correct.

17 Can you indicate why there had not been a performance review
18 within the first or immediately following the first annual
19 period?---Certainly. So my first return to work
20 agreement, which was specifically in relation to working
21 on Fit for the Future and strategic imperatives, included
22 a clause that said there would be no performance review
23 until 30 June. And that was to bring it in alignment with
24 what we rather helplessly and hopelessly thought would be
25 an outcome from the Office of Local Government in relation
26 to the outcomes of the Macleay Report. So there was an
27 agreement with the mayor at that time that there would be
28 no performance conversation until then and in fact the
29 performance conversation for that period would include the
30 fact that it was specifically looking at Fit for the
31 Future.

1 COMMISSIONER: Did you have a written agreement about that one
2 there?---Yes.
3 And in that written agreement it specifically made reference to
4 that?---Yes.
5 That written agreement would have really been signed by the
6 mayor, I assume?---Signed by the mayor and the deputy
7 mayor at that time.
8 I am not sure I've seen that one. That's all right.
9 MR BROAD: Were you aware of that being placed before
10 council - - -?---No.
11 By way of resolution?---No.
12 Were you aware whether they had a delegation in respect of that
13 agreement?---I'm sorry?
14 Were you aware whether the mayor and deputy mayor had a
15 delegation in relation to that agreement?---No. No.
16 I was off work at the time. So that covers the period
17 to
18 30 June. Just prior to 30 June, it may have been the 27th
19 or the 28th, the mayor issued an email to all councillors,
20 a copy of which is on my employment file, which said that
21 in light of no outcomes of the Macleay report, and I'm
22 paraphrasing, the general manager would not be attending
23 council meetings until such time as there is an outcome to
24 this. I then didn't attend any council meetings until
25 I returned to work in October, after the election of
26 Mayor Pocklington. So my suspicion is it would be very
27 difficult to have had any sort of performance conversation
28 during that phase.
29 COMMISSIONER: You were at work from 12 April to
30 30 June?---Yes.
31 Doing the Fit for Future?---Correct.

1 And then the next period where you're actually away from work
2 was 31 August, is that right?---Correct, yeah.
3 So in that period for that one month you would have been back
4 at work and then - July?---June, July, yes.
5 Sorry, two months?---Nearly three months.
6 Yes, all right, thanks.
7 Just going back to the return to work and I'm talking about
8 the October one?---Yes.
9 At any time did you consider whether it would be appropriate
10 for the councillors to know what the terms of the return
11 to work agreement were? I know you said it was
12 confidential and I know you want it to be confidential but
13 did you ever think maybe - well you know the
14 question?---No, I didn't.
15 Because you felt so strongly for all the reasons you have
16 already given us really?---Well the main reason was, of
17 course, anything that was to do with my employment and
18 that made me look bad appeared on the front page of the
19 Riverine Herald, as a direct consequence of leaked
20 information from councillors.
21 So that was probably the main reason you would want
22 it?---Correct.
23 MR BROAD: The process of the performance review, one of the
24 issues that has arisen, and I suppose it doesn't affect
25 you personally, is that there appears to be a limited
26 opportunity of councillors to put their views in a
27 performance review. Is that an essential element?---May
28 I ask what the limited opportunity was? Because I don't
29 know?
30 You don't know?---No.
31 Well can I ask it in generic terms. In respect of a

1 performance review there is a primary document provided by
2 the employee which gives a personal assessment of their
3 performance. You agree with that?---Yes.

4 And that's provided for in the pro forma contract for general
5 managers?---Yes.

6 Allied to that is an opportunity for the employer to provide
7 their or its view in relation to the performance of the
8 member of staff and it provides a balance?---Yes.

9 In the case of your performance review, the review was
10 conducted externally?---Yes.

11 By an independent person, and there are suggestions, and as
12 I say it doesn't involve yourself, that there was not an
13 opportunity provided to councillors to put their views?---
14 I don't believe that was correct. My understanding was
15 that councillors were invited to provide feedback if they
16 sought to do so. My understanding from speaking to
17 Mayor Pocklington was they were told that if they didn't
18 trust him, which appears to be one of the issues, that
19 they put it in a sealed envelope and he would pass it on.
20 Now that may be out of the ordinary but it's certainly is
21 not unheard of, and what I have in front of me is the
22 councillor handbook prepared by the Office of Local
23 Government or its predecessor, and what it states is
24 that - - -

25 COMMISSIONER: That is the handbook for - - -?---The
26 councillors.

27 A general handbook?---Yes. And what it states is "Councillors
28 are selected to take part in the panel", well that clearly
29 didn't happen. "All councillors should be notified of
30 dates. Councillors not on this panel should provide
31 comments and feedback to the mayor in the week prior to

1 each review session." They had the ability to do that.

2 There was an issue taken in respect of convening a

3 panel?---Yes.

4 If council had convened a review panel, in your view would that

5 have been a useful tool to adopt in the

6 circumstance?---No.

7 Why is that?---Because I don't believe that I would have

8 received an objective performance assessment from those

9 councillors who had been found to have had bullying and

10 harassment allegations substantiated against them and then

11 who had engaged in a longstanding process of retaliation

12 as a result of that. And one of the challenges I believed

13 as part of the performance assessment would be that part

14 of my time that had been diverted as a result of all of

15 those things. And to my way of thinking none of those

16 councillors acknowledge their culpability in that process,

17 so how could they assess me against what I had been

18 facing.

19 MR BROAD: You are talking about three or four

20 councillors?---Correct.

21 We have a group of eight councillors?---Yes.

22 And so one would assume that there was an opportunity for the

23 other councillors to provide balance to those views.

24 Would you agree with that?---Look it wasn't my call.

25 I wasn't involved in that.

26 I realise that.

27 COMMISSIONER: Equally if the panel was made up from not the

28 three councillors, would you have been able to get a

29 performance review that might have been useful?---Perhaps.

30 Look, I thought it was quite problematic because the level

31 of conflict between the councillors would have simply led

1 to a "you said/I said, I should be involved/you should be
2 involved". Just as a matter of interest, so I can close
3 the loop on this, the last comment in this regarding the
4 process is, "The panel should maintain the confidentiality
5 of the review process, including the paperwork and the
6 substance of the review". Nobody in council could
7 guarantee me that.

8 Did Mark Anderson, he's the one that did it, isn't
9 it?---Correct.

10 Do you know did he ask - because in this particular instance,
11 unusually for all the reasons we understand, it was just
12 really delegated to him to do?---Yes.

13 Do you know if he wrote to the councillors or asked the
14 councillors to provide anything?---No, I don't. I don't
15 know. What I do know is - - -

16 He didn't tell you one way or the other?---No.

17 Did he talk to you about, in the discussion you would have had
18 with him I assume, did he say, "I have received no
19 responses" or "this is what councillors say"?---No, he
20 didn't.

21 Or anything like that?---No, he didn't.

22 So at the end of the day I suppose the performance review was,
23 as far as you know - or he didn't tell you, I should say,
24 whether there was any input from anyone else?---No.

25 Thank you.

26 MR BROAD: Do you know if Mayor Pocklington provided a response
27 on behalf of council?---No, I don't know.

28 You refer to the meeting of 17 November 2015?---Yes.

29 And to Councillor Moon providing emails to the Riverine
30 Herald?---Yes.

31 Did you see the content of those emails?---No.

1 Did you assume that they were confidential in their
2 nature?---Yes.

3 On that assumption, did you also lodge a privacy
4 complaint?---Yes, I did.

5 COMMISSIONER: Take me through the purpose of that?---The
6 privacy complaint?

7 Yes?---The privacy complaint is one of five that have been
8 lodged. One of those has been settled by Murray Shire and
9 one - - -

10 Five that you have lodged?---Yes.

11 Yes?---So these relate to continuing breaches of my privacy by
12 councillors in terms of providing information to the
13 Riverine Herald. So there is a second one that has been
14 proved and that is in relation to Councillor Moon's
15 comments regarding my return to work and there are another
16 three pending at this point.

17 Right.

18 MR BROAD: So is it fair to say that these two complaints were
19 based solely on an assumption that there might be
20 something or there would be something confidential in
21 those emails?---No, they weren't. I had a discussion with
22 the reporter to whom they were handed who I said, "My
23 assumption is that these are the two emails, one to
24 the Mayor and one to the Director of Corporate regarding
25 my performance cycle." She agreed with that and said,
26 "They're sitting in my recycle box because I thought they
27 were inappropriate."

28 That was the reporter?---Yes.

29 So you assumed that there was something more?---Yes.

30 If I suggested to you that the emails we saw were nothing more
31 than the content of the boilerplate provisions in the

1 general manager's contract in relation to performance
2 review, would you suggest there was any privacy attached
3 to that?---Contained in an email that starts off saying,
4 "I'm raising with you the long overdue performance
5 assessment of the general manager," would that be correct?
6 Well, that is the one I'm referring to - - -?---Yes.
7 - - - and there's another one?---Yes. I've never seen the one
8 to the mayor. Murray Shire hasn't provided those
9 documents as part of the NCAT process at this stage. But
10 certainly the one that was headed "Overdue Performance
11 Conversation" is clearly incorrect. It may be overdue in
12 terms of timing but there are clear reasons for that and
13 the implication contained in those emails is that that is
14 something that I have done that has led to that.
15 You are reading that into it?---Yes, I am.
16 You don't see it as a factual statement?---No.
17 Right. Where does that breach your privacy?---Where is it at
18 the moment?
19 Where does it breach your privacy?---Working on the basis of
20 this documentation, it says quite clearly the process
21 around my performance assessment should be confidential.
22 But that is performance assessment?---M'mm.
23 Not a performance review?---Well, I think it's splitting hairs.
24 I believe it's part of my privacy that my performance
25 assessment should be private.
26 I accept that. The issue I'm taking with you is whether the
27 fact that you have had a performance review is a privacy
28 issue?---Well, it's not - - -
29 And there is a difference, isn't there?---Well, it's not the
30 fact that I've had a performance review. It's the fact
31 that my performance review is overdue, according to

1 Councillor Moon, that's what the email says.
2 You can't take issue with the fact that someone says as the
3 general manager has a performance review in its generic
4 sense. You're saying it's the bit - the word "overdue"
5 probably is the issue, is that it?---Correct. Yes.
6 If I can gloss over the 11 December. I don't want to deal with
7 the matter on 18 December?---M'mm.
8 The 8 January is the performance review?---Yes.
9 I come to the motion of no confidence in you?---Yes.
10 We come back to what you have previous referred to as
11 retaliatory behaviour?---Yes.
12 It is your understanding that there was a restriction on taking
13 what would be seen as retaliatory behaviour?---Yes.
14 In January 2016 you lodged an application to the Fair Work
15 Commissioner?---Yes.
16 What was your purpose in making that application?---The purpose
17 in making that application was that on 15 January we were
18 notified by the Minister for Local Government that there
19 would be a public inquiry launched into Murray Shire
20 Council and the circumstances that have led to the current
21 situation that we are facing. I then had a number of
22 discussions with the Office of Local Government and during
23 those discussions the Office of Local Government indicated
24 that such a public inquiry could take up to six months.
25 It was my view of my circumstances that the level of
26 retaliatory action had escalated to such a point that my
27 health and wellbeing were again at risk if we were to
28 remain in situ for a period of a further six months. So
29 what I was seeking from the Australian Fair Work
30 Commission was what is colloquially known as an anti-
31 bullying order. I was seeking an order that the bullying

1 behaviour cease, which included the leaks to the newspaper
2 and it included the retaliatory action.

3 Right. The Mayor, as representing the corporate body, the
4 governing body, provided a response to the
5 application - - -?---Yes.
6 - - - taking a jurisdictional issue?---Yes.
7 Had you received any advice about that jurisdictional
8 issue?---Yes.
9 You received advice before lodging the application?---Yes.
10 Was the nature of your advice that there wasn't a
11 jurisdictional issue?---No. I believe that there is an
12 arguable case that following the decision of Queensland
13 Rail, the High Court decision, that there is an arguable
14 case that local government are in fact caught by the anti-
15 bullying legislation.

16 Right.

17 COMMISSIONER: But then when the councils were suspended you
18 withdrew it?---I had to withdraw it because you have no
19 cause of action. The orders are to protect people in
20 situ. They are not monetary. They are not compensatory.
21 They are to protect you in the workplace. If the
22 workplace situation resolves, you have no cause of action.

23 I see. Yes?---So in fact my understanding was all the
24 councillors were aware of the reason for me withdrawing it
25 because I wrote a letter setting that out.

26 If the source of the bullying, for want of a better term, goes
27 away, it is not there anymore - - -?---Correct.
28 - - - then you don't have to worry about it?---That's right,
29 there's no action.

30 Yes. Right.

31 MR BROAD: If you will excuse me for a minute, I am just

1 looking for a document I want to take you to.

2 COMMISSIONER: Just while he's doing that, I'll just do a very
3 specific one. Two things Councillor Moon said yesterday,
4 this is completely off - these are random - that you spoke
5 to Lana Murphy at the Riverine and said, "Why are you
6 trying to destroy my reputation"?---I'm sorry? I spoke to
7 who?

8 Lana Murphy, a reporter at the Riverine?---I'd need some
9 context. I don't remember making that sort of comment.
10 I'm just interested. One other thing he mentioned was at one
11 stage, I think this goes back to an allegation against him
12 back in May 2014, disclosed details of a confidential code
13 of conduct matter to the Riverina Herald, that sort of
14 thing?---Yeah.

15 But in the course of talking about that, he said that at one
16 stage he'd heard, and he did say it like that and I just
17 wanted to know what you say, that you asked two reviewers
18 in Sydney to look at it and they said, "Not a goer" and
19 then you went to someone in Melbourne. Like forum
20 shopping, for want of a better term, for the purposes of
21 having that code of conduct complaint investigated?---That
22 matter was referred to the Office of Local Government.
23 That's the only place it was referred.

24 As a general comment, have you ever engaged in that conduct
25 that I just outlined?---No.

26 So in fact all codes of conduct that are referred out go
27 through the complaints coordinator, don't they?---Correct.

28 That is Phil Higgins here?---Correct.

29 So he makes the decision about who he sends it to?---Yes.

30 In the code there are some rules about you can't send it to the
31 same one so many times that sort of thing, I think.

1 Yes?---You know, this is kind of having a bob each way.
2 You know, there was a complaint I noticed in one of the
3 submissions that we didn't try to resolve these codes
4 locally.

5 Yes?---Given that I had councillors, you know, claiming that
6 I was having an affair with the Mayor and the Mayor and
7 I are both the ones who have the responsibility for the
8 code, how are we going to decide these locally.

9 Good point. Also just for the record, do I take it that you
10 did not know - well, when is the first time you ever met
11 Councillor Pocklington and his mother?---Councillor
12 Pocklington at the interview on the - - -

13 Yes. After the interview?---After the interview? I think
14 I said yesterday that I travelled to Moama to take up my
15 role and my first day at work was the 28th of April but
16 I was in attendance in Moama on the 25th of April, which
17 I think was the Friday, and I was here with a girlfriend
18 and the girlfriend and I - - -

19 Yes, he mentions that?---Went to Moama, we went to the Anzac
20 service at Mathoura and then we went to - it must have
21 been a 9 o'clock service in Moama.

22 Yes, he said yesterday?---Yeah, and Councillor Pocklington and
23 I were required to lay the wreath at that service. He and
24 I and my girlfriend then had a cup of coffee together and
25 during that time, Councillor Pocklington gave us a bit of
26 an outline of the type of work they do at the farm, rice
27 farm, which neither of us knew anything about and offered
28 to take us and show us around Bunnaloo and we agreed. We
29 went around the Bunnaloo, had a look at stuff and then he
30 asked would we like to call in and have a cup of tea and
31 that was when I first met Mrs Pocklington.

1 All right.

2 MR BROAD: Ms Stork, could I show you a document entitled,
3 "Issues at Murray Shire in 2015 - Information to Code of
4 Conduct Reviewers"?---Yes. Thank you. Yes.

5 Were you aware of the creation of that document?---Yes.

6 Did you have any part in its creation?---No.

7 Was that something done by Mr Higgins?---Yes.

8 Did Mr Higgins discuss that with you?---Not the creation of the
9 document. I knew it had been created to provide to
10 conduct investigators, yes.

11 Was the referral of conduct matters a matter solely undertaken
12 by Mr Higgins?---Yes.

13 Did he ever speak to you about what should be attached to any
14 conduct complaint?---My understanding is that that
15 document came about because I wrote to the Office of Local
16 Government at a policy level and said that I had concern
17 that part of the code of conduct related to looking at
18 patterns of behaviour and because conduct matters were
19 sent out to different conduct reviewers, there was little
20 if no chance of a pattern of conduct emerging from
21 investigations. And in addition to that, because of the
22 way these various codes of conduct matters panned out,
23 they were actually assessed out of chronological order and
24 they were assessed in widely divergent timeframes. The
25 Office of Local Government wrote back to me and told me
26 that they didn't believe it was a policy matter. What
27 I was saying, in their policy role there should be some
28 policy around - you know, even if it was a data base that
29 could show a pattern of behaviour. I don't think I used
30 those words but that's where I was heading. I believe
31 that as a consequence of that, Mr Higgins created that

1 document to go with code of conduct complaints.
2 The pattern of behaviour in respect of conduct complaints, did
3 that relate to you?---I'm sorry? Did that?
4 The pattern of behaviour, did that relate to you?---Yes.
5 Did it relate, so far as conduct complaints were concerned, to
6 other councillors?---I don't know because I don't have any
7 knowledge of the code of conduct complaints between
8 councillors.
9 None whatsoever?---I've never been privy to - I have been privy
10 to the early ones but certainly - - -
11 COMMISSIONER: Yes, if any came to the council and you were in
12 the meeting, I suppose?---Sorry?
13 If any came to the council and you were in the meeting,
14 I suppose, you might have seen them in that sense?---Yes,
15 that's right, I did, but I think we're talking more about
16 code of conduct complaints that came in from councillors
17 and my understanding is that the last round of code of
18 conduct complaints, if I can call them that, relate to
19 complaints against the current Mayor in his dealings with
20 me, and I have certainly not been privy to those.
21 Right.
22 MR BROAD: Because the usual provision, of course, is that all
23 code of conduct complaints other than those relating to
24 the general manager are to be made to you in
25 writing?---Correct. Correct.
26 So you're the first person to receive them?---Correct.
27 In respect of reports, the reports that come back to the code
28 of conduct coordinator - - -?---Yes.
29 - - - are they presented to you?---Not necessarily, no.
30 In what circumstances are they not presented to you?---Well,
31 the ones that I have seen are the ones that I have lodged,

1 so I've seen the outcomes of those as the complainant.
2 And the ones that go before council. But I think other
3 than those I haven't seen any.

4 COMMISSIONER: As the complainant in those codes of conduct and
5 you're the general manager, did you just, I suppose, just
6 procedurally looking at that policy, I suppose you'd just
7 look at it and say, "Well, I must just give this to the
8 conduct - - -"?---I wasn't asked.

9 No, I'm just saying. But the policy is silent really in a
10 way?---Yes, and I wasn't asked. The conduct - the code of
11 conduct coordinator and Office of Local Government chose
12 the course of action.

13 Yes, because it's - - -?---And I'm not saying that there's -
14 that's an error - - -

15 No, no, no - - -?---Or it shouldn't have happened.

16 - - - but it is silent. It is silent when you're the general
17 manager and you want to make the complaints?---Mr Higgins
18 was in a very difficult position and I accept that.

19 Yes.

20 MR BROAD: In your view, is there a necessity for fairness in
21 the information that is provided to a conduct
22 reviewer?---Yes.

23 Can I turn to the report of Mr Kleem?---I have a copy of it,
24 yes.

25 COMMISSIONER: What date is it, again?---The 29th of October.

26 MR BROAD: The date is 3 October and 29 October. In respect of
27 Mr Kleem's report, and it is a report dated 29 October
28 2015, I think, you wrote to the Office of Local
29 Government?---I did.

30 You raised concerns about Mr Kleem's report?---Yes.

31 Essentially, what you took issue with appears to be the lack of

1 contact between Mr Kleem and yourself?---No. What I was
2 concerned about was the way the investigation was handled.
3 Could you explain that, please?---Yes. I actually had an
4 unusual interaction with Mr Kleem where he contacted me
5 and discussed this matter and he then advised me that he
6 would be back in touch, and you're right that he hadn't
7 been, and I then contacted him and I had a conversation
8 with him on the phone, which made it clear to me that
9 Mr Kleem and I didn't appear to be talking about the same
10 matter.

11 The complaints surrounded certain comments made by Councillor
12 Campbell?---Yes.

13 At her place of work?---Yes.

14 COMMISSIONER: At the end of the day - well, not at the end of
15 it. What he has put in his report on 29 October, did h
16 have the right conduct complaint in the end in that
17 report?---I'm sorry? Did he have the right?

18 You just said then that he seemed to be talking about two
19 different things?---Yeah. Look - - -

20 Well, did he investigate, to the extent that he did, the right
21 thing?---Yes.

22 Thanks.

23 MR BROAD: Can I take you to it? There appear to be two
24 complaints?---Yes.

25 Each of which relate to Councillor Campbell?---Yes.

26 One of which relates to conversations she had at her
27 workplace?---Yes.

28 The other relates to a conversation she had with Councillor
29 Weyrich's wife?---Yes.

30 The Code of Conduct Part 2 sets out the purpose of the code of
31 conduct as "setting the minimum requirements of conduct

1 for council officials in carrying out their
2 functions"?---Yes.

3 And I emphasise those latter words?---M'mm.

4 The introduction to the code of conduct again talks about
5 councillors carrying out their functions?---M'mm.

6 Is it your view that in having these two discussions Councillor
7 Campbell was carrying out her functions as a
8 councillor?---It was my view that it was arguable. If
9 Councillor Campbell is talking about information she
10 obtained as a councillor and what that purportedly
11 disclosed in terms of corruption and other matters, then
12 she was acting as a councillor at that time.

13 That is in respect to the first one?---Yes.

14 At the nursing home?---M'mm.

15 In respect to the other one?---So where are you reading from
16 when you're talking about in respect of the other one?
17 I'm sorry. There was one lodged by the Mayor?---The Mayor.
18 I'm sorry about that. So you took, in respect to the complaint
19 that you lodged - - -?---Yes.

20 - - - a view that she was carrying out her functions?---Yes.

21 Right. You don't think you were drawing a long bow in respect
22 of that?---I think that it was open to interpretation that
23 if you are telling members of the community that you have
24 documentation from council that shows corruption then you
25 are acting in your role as councillor at that time.

26 So that was the first part. She had a folder full of evidence
27 showing conflicts of interest and corruption?---Yes.

28 She made a comment that the general manager sides with
29 the Mayor because of the conflicts of interest?---Yes.

30 You don't suggest - or do you suggest that the second issue
31 raised in that - you've got that in front of you, haven't

1 you?---Yes, I do.

2 The second issues raised in relation to the photo as falling
3 within the ambit of the code of conduct?---I don't know
4 what the photos are supposed to be, so I don't know
5 whether they do or not.

6 Look at the third one?---Yes.

7 Did you regard that as falling within the ambit of the code of
8 conduct?---Yes, I did.

9 On what basis?---Well, I thought that it was a matter that was
10 bringing local government into disrepute.

11 Yes. Thank you.

12 COMMISSIONER: So is what is contained in your email to

13 Tim Hurst really what your issue is with this

14 report?---Yes, it was, and that was accepted by Office of
15 Local Government, I believe.

16 Then what happened? It's now being done again or something, is
17 it?---Correct.

18 That's still outstanding?---No. It has actually been found
19 that it isn't a code of conduct matter because it wasn't
20 in the exercise of her function as a councillor and it is
21 now part of an internal grievance.

22 Sorry, it's part?---It's an internal grievance.

23 So it has been determined. Can we get a copy of - I can get
24 that from Mr Higgins?---Yeah, Mr Higgins will have it.

25 So when did that finish?---Quite recently. And it is not
26 finished. It is part of a grievance process now. So if
27 it's not a code - - -

28 Can you just explain, what do you mean by that? So that it was
29 found she wasn't a councillor but?---Sorry. What was
30 found was that it wasn't misconduct under the code of
31 conduct but it still should go through the Murray Shire

1 grievance process.

2 I see.

3 MR BROAD: Sorry. When you refer to it being misconduct, you
4 mean a breach of the code of conduct?---Yes.

5 Yes. I'm trying to differentiate between - - -?---Yes.

6 - - - the Act which talks about misconduct as a separate
7 issue?---Yes.

8 Can I ask you some generic questions?---Yes.

9 COMMISSIONER: Sorry, is that one of the two, (indistinct) you
10 said before?---I'm sorry?

11 You know how you mentioned the number - - -?---Yes.

12 That's the second one?---Yes.

13 What was the other one?---The other one was one where

14 Councillor Campbell told the Mayor of Deniliquin

15 that Mayor Weyrich and I were having an affair and the

16 code of conduct investigator clearly said that it was a

17 conduct issue but when the Mayor of Deniliquin was asked

18 about it, he said he had no clear recollection of who had

19 told him.

20 So there was no - yes?---Yes.

21 MR BROAD: Can I ask you some generic questions?---Yes.

22 In respect of the code of conduct, can you give your view in

23 relation to the utility of the code of conduct?---The

24 existing code of conduct?

25 The existing code of conduct?---I think the existing code of

26 conduct has some very major issues in terms of its

27 operability, particularly in the current circumstances,

28 and if the code of conduct is the only thing that a person

29 can rely on for work health and safety because of the

30 issue between safe work and OLG, then it is quite

31 deficient. In terms of teeth, if you like, there doesn't

1 appear to be any. There doesn't appear to be any ability
2 to go from an outcome in a code of conduct matter to
3 actually ensuring that some positive action is taken to
4 address the situation.

5 Which would lead me to my next question?---Yes.

6 About the utility of the misconduct provisions of the Local
7 Government Act?---In what respect? I don't know what you
8 want me to answer.

9 The simplest question - - -?---Yes.

10 - - - what do you think of it?---I think that the ability to
11 manage councillor misbehaviour of the magnitude and the
12 type that we've seen here doesn't exist.

13 One of the comments made by Mr Hurst was to the effect that one
14 of the difficulties is you deal with matters matter by
15 matter - - -?---Yes.

16 - - - and don't have a roll-up provision in the ordinary
17 course?---Yes.

18 In respect of bullying, the nature of bullying is not
19 necessarily an individual matter but a course of
20 conduct?---Yes.

21 You see that as an issue?---I see that as an issue. I also see
22 it as an issue that there appears to be this anomaly
23 regarding whether councillors are caught by the Work
24 Health & Safety provisions. It seems to me to be a
25 nonsense.

26 One of the issues that has arisen really stems from your letter
27 of 25 July 2014 where you sought intervention from the
28 Office of Local Government?---Yes.

29 Would you like to comment, firstly, on the nature of the
30 intervention or the response from the Office of Local
31 Government?---I don't have the letter in front of me.

1 I don't have the letter in front of me so I'm not sure
2 which one you're referring to.

3 I'll give it to you?---Thank you.

4 COMMISSIONER: Again just while he's doing that. Two other
5 little things. One of them. There was a mention in one
6 of the - and I think Councillor Weyrich mentioned it, that
7 at one stage there was an issue about someone making a
8 comment back to you about you doing some restructuring and
9 staff - - -?---Yes.

10 What was that issue?---So as part of the Fit for the Future
11 process, - - -

12 It was in the context of that?---Yes, the restructuring of
13 that.

14 The idea of it being restructured, yes?---So it was part of the
15 Fit for the Future process, if Murray Shire wished to
16 remain standalone it needed to be able to show significant
17 changes in its financial position going forward. And the
18 position that we took to do that would need to be
19 three-fold or a three pillar approach to improving our
20 financial sustainability, and that would be looking at the
21 structure of the organisation, looking at the structure of
22 the elected representatives and looking at our rating
23 policy. So there was three processes to be looked at. We
24 did some modelling around all of those and in fact when
25 the Fit for the Future process outcomes came they clearly
26 stated that our financial sustainability had been achieved
27 but we have failed on the scale of capacity, as did more
28 shires.

29 Those proposed restructures were part and parcel if
30 we were to remain standalone. There has been no time that
31 the New South Wales Government have told us to this point

1 and continuing that we will be standing alone and in fact
2 they have proposed a merger with the Wakool Shire. So
3 Councillor Weyrich was well and truly aware that the only
4 time those restructures would be happening is if we were
5 to stand alone. And, indeed, with the merger proposal our
6 staff have comprehensive protections for at least three
7 years to their employment.

8 I understand. So in that context, to make any comment

9 I understand?---Sorry?

10 I understand now?---Yeah. I mean why it was done, it was done
11 to destabilise me, and I'll accept that, but what it did
12 was damage the organisation and a whole lot of individuals
13 who didn't deserve it. Yes, so I have the letter in front
14 of me.

15 Yes?---I can't remember what your question was regarding this,
16 I'm sorry.

17 MR BROAD: The question was aimed this way. On 25 July 2014
18 you wrote to the Office of Local Government?---Yes.

19 My recollection is that there was a response from the
20 Office?---Yes.

21 My recollection is that there was a subsequent attendance by
22 two members of staff?---Yes.

23 My recollection is that there was ongoing communication with
24 the Office of Local Government?---Yes.

25 What is your view of the response provided by the Office of
26 Local Government; your initial concerns and subsequent
27 concerns?---Okay. So to my initial concerns, the Office
28 of Local Government, and I think it was made clear in
29 Mr Hurst's submission, was that officers were coming down
30 to interview a councillor in relation to a pecuniary
31 interest matter and so they took it as an opportunity to

1 look more broadly at Murray Shire and what was going on.

2 I considered that was an investigation of sorts.
3 The two officers came down here for a period of two days.
4 They interviewed all councillors, they interviewed myself.
5 They took statements, they took documents, they asked for
6 follow-up documents. I considered that it was a
7 preliminary investigation and certainly the first response
8 following that was the letter of 3 October in which there
9 was quite a strongly worded letter to council concerning
10 their behaviours and their behaviours towards each other
11 and towards myself and acts of disorder in chambers, and a
12 whole range of actions that councillors were to take. Now
13 council adopted all of those actions and in the main part
14 they were carried out.

15 The actions didn't lead to any change from my
16 perspective and the disappointment for me was that that
17 strongly worded letter suggested that there would be
18 continuing oversight by the Office of Local Government but
19 I see now that that oversight was in terms of councillor
20 misconduct; it wasn't meant in terms of health and safety
21 in the workplace, and that for me is where the disconnect
22 is. And the disconnect for me, and you talk about the
23 response and I talk about the broader picture, the Office
24 of Local Government came and they did that investigation
25 and they were overseeing it. Nothing changed in my world,
26 other than for the worse, and in December I took the very
27 highly unusual step of making a complaint to SafeWork
28 New South Wales.

29 Before I deal with SafeWork, can I ask you this question. What
30 do you think the Office of Local Government should have
31 done and when do you think the Office should have done

1 that?---I think one or two things should have happened.
2 The Office of Local Government should not have written and
3 said SafeWork New South Wales is now doing an
4 investigation so we will await the outcomes of that
5 investigation in order to decide what to do. That
6 investigation came out and they didn't use that as the
7 basis to decide what to do, they did another
8 investigation. And as soon as they launched into their
9 second investigation SafeWork said, "Well we can't do
10 anything now because the Office of Local Government are
11 investigating". You know it was just a nonsensical,
12 bureaucratic response to an urgent health and safety
13 issue.

14 If I can turn to SafeWork. I think we've got a clear
15 indication why you approached them?---Yes.

16 One of the facets that Mr Dunphy, who gave evidence on behalf
17 of SafeWork, emphasised is that s.4 of the Work Health &
18 Safety Act makes an express disclaimer in respect of
19 responsibility for councils as elected officials and we
20 have explored the reasons for all of that process. What
21 is your view about the way in which s.4, and you're aware
22 of s.4 I assume?---I am.

23 Operate to exclude councillors in their role as
24 councillors?---My understanding is that the advice
25 obtained by Local Government New South Wales suggests
26 otherwise because councillors still fall into the category
27 of persons who owe a responsibility in the workplace.

28 COMMISSIONER: That is 29?---Yeah, 29.

29 It is the only coverage at the end of the day?---Yeah.

30 So they say, is 29?---Yes.

31 And otherwise there's nothing else?---No.

1 And we have got all the evidence from Mr Dunphy that that's the
2 last port of call almost in the sense of the scheme and
3 the hierarchy of duties in the workplace?---And what that
4 effectively means is you've got 152, plus or minus,
5 general managers in New South Wales who have absolutely no
6 protection in the workplace. None. Now I know from my
7 own research, I could name five general managers who have
8 been in the same position over the last 12 months and
9 I know that what general managers do is they walk away.
10 They walk away. Councillors make it too difficult for
11 them to stay in their roles.

12 MR BROAD: And in respect of that, you've clearly dug your
13 heels and said, "That's not going to happen with me"?---At
14 my cost.

15 Please don't think I'm being dismissive but that's certainly
16 been an indication of your strength?---No, it's not.

17 COMMISSIONER: I know.

18 MR BROAD: Again can I - I will give you a minute?---Thank you.
19 You know, just to add to that, I don't think that there is
20 - there must be a minimum of people in Australia who have
21 to be in the position where every aspect of their health
22 and safety has to be publically talked about; that their
23 return to work agreements need to be discussed in public;
24 that their certificates of capacity are handed to people
25 who have bullied them. You know, this is an absurd
26 situation. Absurd. It may all be nice, packaged up as
27 misconduct. It's not so nice packaged up as work health
28 and safety. It is an anomaly.

29 In your view, given your background, particularly in HR, what
30 is the way forward?---Councillors need to be fully
31 responsible for their behaviour as to any other

1 individuals in work health and safety jurisdiction.
2 I thought Ms Macleay was being absolutely clear in saying
3 in an employee's position or a contractor's position you
4 have all sorts of options open to you including sacking or
5 getting rid of. Now we've got round to this point of a
6 public inquiry but two years, two years this has taken and
7 this has been happening since before I was employed. So
8 to me the answer is a far more responsive outcome when
9 it's somebody's health and safety at risk. I mean for
10 goodness sake, there was five councillors writing to the
11 Office of Local Government saying, "We are concerned that
12 there is going to be a tragic outcome for the general
13 manager".

14 The suggestion put forward - - -

15 COMMISSIONER: Are you all right?---Yeah.

16 MR BROAD: I am not trying to dwell on this unnecessarily
17 but - - -?---No, it's all right.

18 It is an important facet of this Inquiry and it's a facet that
19 relates directly to yourself?---I haven't come this far to
20 chuck it in now.

21 COMMISSIONER: And you are the trailblazer I understand too,
22 about SafeWork and all that.

23 MR BROAD: What I am leading to is this. There seems to be a
24 handover of responsibility from each department to the
25 other in respect of the misconduct provisions of the Act,
26 leaving aside the code of conduct, we look at a higher
27 level. Is the response available sufficient, in your
28 view, to deal with bullying workplace issues?---No. No.
29 What needs to be done?---There needs to be a single approach
30 that protects general managers. So there needs to be a
31 move away from this idea, "You know what love, you're

1 earning \$220,000 a year, suck it up". You know I heard
2 comments in the chambers, "Have a great big cup of
3 concrete and toughen up". Well, you know what, I don't
4 have to. I'm in a work environment and I can accept that
5 it's a tough environment but I still need to be protected.
6 I still need to be protected from poor behaviour and the
7 protections need to be a far more concerted, coordinated
8 and quick response.

9 COMMISSIONER: Because you are in a tough environment, there's
10 no doubt about it?---Sure. It's not the first tough
11 environment I've worked in.

12 No, I can imagine that, but any general manager is in a fairly
13 tough environment and there's a certain level that they've
14 got to deal with but I understand - - -?---Yeah.

15 Your position is well they went well beyond that.

16 MR BROAD: Moving totally away from the discussion we've just
17 had. If we go back to the statistics, and we have some
18 statistics that say 111 complaints and \$125,000 in
19 expenditure in previous years, so much for the
20 expenditure. Do I assume there are other on costs
21 associated with the code complaints providing training in
22 respect of the work health and safety issues, the cost of
23 investigation?---Yes.

24 Have there been other costs?---There are other costs in
25 relation to training. There is also, I think, the hidden
26 cost in the organisation. I'm not the only one who's
27 being bullied at Murray Shire, not by a long shot. There
28 are other councillors and there are other staff. Now
29 I try to protect those staff as much as I can but there is
30 clearly a cost to the organisation, both in lost
31 productivity and diversion of our time and resources to

1 stuff that's just not important. You know, I've only got
2 to see how my life has improved in the, what is a month,
3 with an administrator. We are actually doing council
4 stuff, we're actually doing council work.

5 COMMISSIONER: Just in terms of the fit for future. When you
6 were working on that, what was the final product that was
7 sent in? I mean Councillor Moon yesterday said it was a
8 one page document or a two page document?---Yeah, I've
9 heard that several times. If you want to see the
10 Fit for the Future submission you just need to get on to
11 the IPART website. I've sat through two or three
12 workshops where Councillor Campbell would say, "We gave
13 the general manager three months off work and all we got
14 was one page of data". It's a nonsense. There was
15 several spreadsheets that sat behind it in terms of an
16 organisational restructure. All of that stuff.

17 All that stuff you talked about before?---Yeah. And there was
18 clearly documents attached to it. There's no issue about
19 that but it appears that there seems to be a suggestion
20 that because you attach other information it's not your
21 work. And what I did, and these councillors are unaware
22 of this, because of the level of criticism of the document
23 that I've produced - and let's remember I have public
24 relations and communications qualifications and I wrote
25 speeches for the Victorian Treasurer, so I can write
26 reasonably well - what I did was I actually engaged a
27 Local Government expert from New South Wales, somebody who
28 actually wrote one of the successful Fit for the Future
29 submissions. I said, "Please have a look at this and tell
30 me is there an issue with it" and he came back and said to
31 me, "You have fulfilled all the requirements of your

1 council's resolution".

2 And that's on the IPART website?---M'mm.

3 MR BROAD: Ms Stork, I am getting, and I don't know to what
4 extent the Commissioner has other questions, but I'm
5 getting towards the questions that I have wanted to ask
6 you?---That took a while.

7 COMMISSIONER: About - he's about to say, there was one other.

8 MR BROAD: It is that dreadful history of having dealt with
9 matters in court, they never stop.

10 COMMISSIONER: I will give you one last comment. Yesterday
11 there was an assertion made that since the councillors
12 have been suspended, their iPads are handed in and you
13 have been looking at their iPads?---Their iPads?
14 Organising the IT people to be able to review and take
15 documents from them and look at their iPads and their
16 personal documents?---It's incorrect. What's occurred
17 since the suspension - the Act is very clear saying that
18 suspended councillors are not entitled to use any of the
19 resources of council. I worked closely with the Office of
20 Local Government how to best handle the situation during
21 the suspension. What I was advised was that the iPads
22 should be disabled, which they have been, and that
23 equipment should be handed back in. All equipment has
24 been recovered, other than the iPads in the possession of
25 Councillor Campbell, Councillor Moon and 15:06:55
26 Councillor Weyrich and they have been requested on more
27 than one occasion to hand those iPads back.

28 The ones that have been handed back have been disabled in the
29 sense that you can't operate them?---No - as have the ones
30 that are in their possession, as I understand it.

31 Of course, yes. But as to trawling through them or looking at

1 them, have you had any involvement in that?---No. No.

2 MR BROAD: What I have done, with respect to each and every
3 councillor who has given evidence, is ask them for their
4 views in respect of each of the terms of reference.

5 I propose to do that with you?---Yes.

6 The first of the terms of reference asks whether the elected
7 representatives and staff have, since the appointment of
8 the current general manager, complied with applicable
9 laws, codes, administrative procedures and policies and
10 have fulfilled its and their duties, powers and functions
11 particularly in relation to the relationships between
12 councillors, the general manager and senior and other
13 staff of counsel. What are your views?---My view is that
14 it's been very difficult to try and enforce any policies
15 with the councillors. I really believe that with a number
16 of the councillors, and predominantly Councillors
17 Campbell, Mackenzie and Moon, there is a real
18 master/servant relationship; "You will, you do, I want"
19 and there seems to be no recognition of the role of a
20 general manager or a mayor in the operation of the Shire
21 and, you know, a number of the complaints in relation to
22 Councillor Mackenzie in particular about, you know, "You
23 do not tell me what to do". And there seems to be a clear
24 understanding from them that the policies are my policies,
25 rather than policies that have been implemented by
26 resolutions of council. I think that my staff have
27 attempted as much as possible to follow policies and
28 procedures. I know that we picked up some today where
29 that clearly hasn't happened but this has been a
30 tumultuous environment that has really affected the good
31 functioning of the council.

1 In respect of the second of the terms of reference which asks
2 whether the council has, since the appointment of the
3 current general manager, complied with its work health and
4 safety obligations as the general manager's
5 employer?---Yeah. You know this is a really tough one, in
6 that I think that there's a huge amount of buck-passing
7 here. You know I pointed out in my submission,
8 Murray Shire can only do so much and that's only if the
9 mayor is strong around this stuff. It's difficult for the
10 mayor to be strong in an environment that's so
11 confrontational and adversarial. If the mayor is not able
12 to do anything effective then the Office of Local
13 Government has a role. I believe in that, and yet we sign
14 up to contracts which we cannot alter in any way, that
15 says we have no cause of action against the Minister or
16 the Office of Local Government. It's so circuitous this
17 whole issue, so I don't believe that Murray Shire has been
18 able to protect my work and health and safety.

19 COMMISSIONER: And it goes around in a circle in a way because
20 the councillors are not - well there's those exclusions we
21 talked about, I'm talking about the work health and
22 safety. There's those exclusions that you refer to and
23 then there's this s.29, but then at the same time the
24 council as a corporate body is still the employer so it's
25 - yes?---And then they will tell you they're not a
26 corporate body because they're not caught by the
27 Australian Fair Work Commission anti-bullying.

28 In that sense, yes?---Because they are a body politic, and
29 that's clearly another anomaly. You know, the decision,
30 putting it in the most colloquial terms, the decision in
31 Queensland Rail effectively, as I see it, said, "If it

1 walks like a duck and it quacks like a duck, it's a duck".

2 MR BROAD: The third of the terms of the reference asks whether
3 the elected representatives have been and will continue to
4 be in a position to direct and control the affairs of
5 council in accordance with the Local Government Act 1993
6 and other relevant acts so that council may fulfil its
7 charter, the provisions of the Local Government Act 1993
8 and otherwise fulfil its statutory functions and
9 obligations. Your views?---No.

10 COMMISSIONER: No, is the answer.

11 MR BROAD: I know, I caught that. I wasn't asking for any
12 more.

13 Well that's it. I don't have any other questions for you. do
14 you have any other comments?

15 COMMISSIONER: Do you have anything else you want to
16 say?---I reckon I've said it all really. Probably way too
17 often too, yes.

18 I hope you've had the opportunity, I mean you've written it and
19 I hope you've had the opportunity. If there is anything
20 else? So that brings us to the end of the public hearing
21 part of the Inquiry. As I said at the beginning, if
22 anyone wants to make a submission in reply to what they've
23 heard please do so. If you do it in the next 14 days,
24 I mean it's not - I mean I'm not going to write a report
25 in the next 14 days anyway, it's not going to happen that
26 quickly but please hand it on the internet or you can
27 speak to Mr Broad if you need any other further guidance.
28 Otherwise, I now do a report and, as I said at the
29 beginning, I give it to the Minister and then it's a
30 matter for the Minister. Thank you very much.

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