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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE REGINALD BLANCH AM QC

PUBLIC HEARING

OPERATION SCANIA

Reference: Operation E15/0978

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 22 AUGUST, 2016

AT 10.00AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

ASSISTANT COMMISSIONER: This is a public inquiry into allegations against Mr Craig Izzard who was then an enforcement officer of the Western Sydney Regional Illegal Dumping Squad. The first allegation is that between 1 January, 2015 and 19 May, 2015 Craig Izzard partially and dishonestly exercised his public official functions by soliciting a corrupt commission from Antonio Barillaro in exchange for Izzard not investigating allegations that Barillaro was involved in carrying out illegal landfilled operations.

- 10 The second allegation is that between 1 January, 2015 and 19 May, 2015 Craig Izzard partially and dishonestly exercised his public official functions by soliciting a corrupt commission from Reuben Matthews in exchange for Izzard not investigating allegations that Matthews was involved in carrying out illegal landfill operations.

- The third allegation is that on a date prior 8 December, 2015 Craig Izzard partially and dishonestly exercised his public official functions by soliciting a corrupt commission from Ibrahim Baydoun in exchange for Izzard visiting property at 30 Bellfield Avenue, Rossmore to ensure the occupant was  
20 leaving so that Baydoun could then utilise the property as a waste transfer station.

The fourth allegation is that between 1 November, 2015 and March 2016 Craig Izzard partially and dishonestly exercised his public official functions by soliciting a corrupt commission from Nosir Kabite in exchange for Izzard not investigating allegations that Kabite is involved in carrying out illegal landfilled operations.

- 30 The general scope and purpose of this public inquiry is to gather evidence relevant to the allegations being investigated for the purpose of determining the matters referred to in section 13(2) of the Independent Commission Against Corruption Act, 1988.

- The standard directions for public inquiries will apply to this inquiry and copies of those directions have been made available at the bar table. And they're also available on the Commission's internet site. I should indicate at this stage that I will not be sitting tomorrow because of other commitments, otherwise I will not be able to sit on the morning of 30 September, and I will advise the parties if other issues arise.  
40

Mr Mack is Counsel Assisting this inquiry and after he has made his opening address I will take a short adjournment and take any applications for leave to appear.

Yes, Mr Mack.

MR MACK: Thank you, Commissioner. The Commission is conducting an investigation into allegations of corrupt dealings relating to the illegal

dumping of waste in Western Sydney. The investigation is being conducted for the purpose of determining matters referred to in section 13(2) of the Independent Commission Against Corruption Act 1988. The investigation and public inquiry concerns the large scale dumping of waste in the building industry. The dumping of waste in the building industry lends itself to noncompliance. Compliance costs money. The more dangerous the waste, the more expensive to comply. The more expensive it is to comply, the greater the incentive to not comply. The result of this dynamic is a perverse incentive to dump dangerous substances such as asbestos illegally. The economics create a black market for dumping. Concerned residents are usually the first to notice the black market operating. Once reported, residents have an expectation that laws and organisations exist to punish those responsible for flaunting the law. They also expect those laws will be enforced.

Central to this inquiry is whether Mr Izzard, whilst working with an organisation known as the Western Sydney Regional Illegal Dumping Squad, which I'll refer to as the Western Sydney RID Squad hereafter, solicited payments in return for not investigating and not enforcing breaches of illegal dumping laws. More generally this inquiry will focus on laws and organisations with a view to determining whether methods, practices or procedures encourage or cause corrupt conduct.

There is a blurring of responsibility in relation to the investigation and enforcement of breaches of illegal dumping laws between three organisations that will assume central relevance to this inquiry. Firstly, the New South Wales Environment Protection Authority which I'll refer to as the EPA, secondly, local Councils and thirdly, regional illegal dumping squads.

All of these organisations have powers conferred by the illegal dumping regime in the Protection of the Environment Operations Act 1997 New South Wales which I'll refer to as the POEO Act. The touchstone of the illegal dumping regime are sections 143 and 144 of the POEO Act. Section 144 makes it an offence to use any place as a waste facility without lawful authority. A waste facility is a defined term in the POEO Act, however it is synonymous with what is more commonly referred to as a dump or a tip. Section 143 makes it an offence to transport waste to an unlawful waste facility.

There are also specific regulatory offences that relate to the unlawful dumping and transport of asbestos. In Sydney the EPO imposes a levy of around \$130 for every tonne of waste disposed at a licensed landfill site irrespective of whether the waste contains asbestos or not. On top of the levy operators will charge additional handling fees. The handling fee will be more if the waste is contaminated with substances such as asbestos. It is readily conceivable that over \$10,000 in handling fees and levy can be

avoided on a typical 30 tonne truck and dog load of waste that is contaminated with asbestos.

10 The POEO Act converts powers of investigation and enforcement on both the EPA and local Councils. Local Councils in turn also delegate the powers to RID squads. The power conferred upon the EPA is limited to the investigation and enforcement of more serious offending. Throughout the Greater Sydney area the EPA exercises its illegal dumping powers through the Sydney Waste Compliance Unit which consist of four teams and until recently spanned 43 Council areas.

The power conferred upon local Councils and in turn from local Councils to RID squads is more circumspect and relates to smaller amounts of waste. Importantly, the powers of local Councils that are in turn delegated to RID squads can be exercised concurrently by both the local Councils and also RID squads. Since 2001 a group of Western Sydney Councils have delegated their illegal dumping powers to the Western Sydney RID Squad.

20 More recently, other Councils have moved to that RID squad structure. This is because the nature of illegal dumping lends itself to the RID squad structure. Often an offence will commence in one local Council area, continue through another area and conclude in a different area. The benefit of a RID squad is that it allows a specialised team to share resources unencumbered by the boundaries of a local council.

30 Currently there are four RID squads in New South Wales, the Hunter Central Coast RID Squad, secondly, the Southern Councils Group RID Squad, thirdly, the Sydney RID Squad and finally, the Western Sydney RID Squad. The Western Sydney RID Squad is of central importance to this inquiry. Its current existence is owed to a 2015 agreement which finds the following seven Councils, Blacktown City, Fairfield City, Holroyd City, Parramatta City, Liverpool City, The Hills Shire and Penrith City Councils. It also finds the EPA who is a silent partner in the scheme and contributes 50 percent of the Squad's funding.

The other 50 percent of funding is contributed in equal parts by member councils. Administration of the Western Sydney RID squad falls to Penrith City Council who is known as a host council.

40 As host council Penrith City Council is responsible for providing pay, training and delegations to squad employees. All member councils also appoint one representative to a management committee. The management committee is responsible for approving budget and reporting. The day to day running of the squad is the responsibility of a coordinator.

The objective of the Western Sydney RID squad is the identification, investigation and prosecution and deterrence of illegal waste dumping offences utilising a range of enforcement strategies. To achieve this

objective the Western Sydney RID Squad employs investigators to use the powers conferred by the POEO Act. There are currently seven investigators. One of the seven investigators is a senior investigator who has higher responsibilities such as team support and development. Each investigator is assigned a local council area. An investigator exercises the powers of an authorised officer and an enforcement officer under the POEO Act. This means an investigator has the power to issue penalty notices for non-compliance with the illegal dumping regime. They also have the power to issue clean-up notices. When an investigator issues a notice to an offender it is commonly referred to as breaching an offender.

As stated earlier the principal person of interest in this inquiry is Mr Izzard. Mr Izzard was first employed by the Western Sydney RID Squad in 2010 as an investigator. Since this time and up until March this year, when his employment was terminated, Mr Izzard has been a public official within the meaning of Section 3 of the Independent Commission Against Corruption Act.

Throughout the majority of Mr Izzard's employment with the Western Sydney RID Squad he was allocated responsibility for the Liverpool City Council area. In 2015 responsibility for enforcing the illegal dumping laws within Liverpool City Council area was at least partly taken away from the Western Sydney RID Squad and exercised by officers within the Liverpool City Council. Around this time Mr Izzard was allocated responsibility for the Blacktown City Council area. The move by Liverpool City Council to take control from the Western Sydney RID Squad came after community concern over inaction on illegal dumping. Once the investigations were transferred Liverpool Council officers commenced investigating locations that were receiving constant and ongoing complaints of illegal dumping.

The three allegations in this inquiry relate to the investigations undertaken by Liverpool Council officers following the transfer of investigations from the Western Sydney RID Squad. The fourth and final allegation does not relate to the investigations of the Liverpool City Council officers.

All four of the allegations have a distinct and different factual matrix. Each allegation relates to a separate location. Common to all of the allegations is the conduct of Mr Izzard. Common to all but the first allegation is the conduct of Kabite.

The first location and the first allegation relates to 100 Martins Road, Badgerys Creek. The first allegation is that between 1 January, 2015 and 19 May, 2015 Mr Izzard partially and dishonestly exercised his public official functions by soliciting a commission from Antonio Barillaro in exchange for Mr Izzard not investigating allegations that Mr Barillaro was involved in carrying out illegal landfill operations.

This allegation does not require much expansion. It is straightforward. Simply put it is alleged that Mr Izzard asked Mr Barillaro for cash in return for Mr Izzard not enforcing illegal dumping laws.

I anticipate that Liverpool City Council officers, Mr Serge Luna and Mr Frank Bono will give evidence of a conversation they had with Barillaro on 18 May, 2015 during which Mr Barillaro tells the officers of Mr Izzard's attempt to solicit money from him. The attempt was unsuccessful.

- 10 The second allegation and the second location relates to 405 Willowdene Avenue, Luddenham. The second allegation is that between 1 January, 2015 and 19 May, 2015 Mr Izzard partially and dishonestly exercised his public official functions by soliciting a corrupt commission from Reuben Matthews in exchange for Izzard not investigating allegations that Matthews was involved in carrying out illegal landfill operations.

20 Much of the evidence in this inquiry will centre on events that took place at 405 Willowdene Avenue. There is little doubt that 405 Willowdene Avenue has been used as an illegal waste facility. There is little doubt that the property has been used for the dumping of asbestos.

The owner of the property Mr Reuben Matthews pleaded guilty to precisely this in Liverpool Local Court and was fined \$55,000. Mr Nair Kabite was – also pleaded guilty for transporting waste to the property and was fined \$25,000.

- 30 The circumstances surrounding these offences will be revisited in this inquiry with a particular focus on Mr Izzard's involvement. The allegation as it relates to Mr Izzard is that in return for Mr Izzard not investigating and enforcing breaches under the POEO Act in relation to 405 Willowdene Avenue, Mr Izzard solicited money.

40 The third location and the third allegation relates to a property at 30 Bellfield Avenue, Rossmore. The third allegation is that on a date prior to 8 December, 2015 Mr Izzard partially and dishonestly exercised his public official functions by soliciting a commission from Ibrahim Beydoun in an exchange for Izzard visiting a property at 30 Bellfield Avenue, Rossmore to ensure the occupant was leaving so that Beydoun could then utilise the property as a waste transfer station.

The dynamic at play in relation to 30 Bellfield Avenue is complex. 30 Bellfield Avenue is owned by Nick Kolovos. On 25 March, 2015 Mr Kolovos leased part of his property to a company owned by Raed Ykmour. Mr Ykmour was a new entrant into the waste industry. Mr Ykmour briefly operated a skip bin sorting and storage business from 30 Bellfield Avenue. Mr Ykmour moved to a location at Prestons after a Liverpool Council officer breached him for transporting waste to an unlawful waste facility.

Mr Ykmour was also issued a clean-up notice in relation to 30 Bellfield Avenue, which he subsequently complied with. Mr Ibrahim Beydoun is a more established operator in the waste industry. Mr Beydoun had up until around November 2015 operated a waste business at 763 Wallgrove Road, Horsley Park. However he moved his business after being served by Fairfield City Council paperwork which indicated the council suspected that Mr Beydoun was operating a waste transfer facility in an environmentally unsatisfactory manner.

- 10 Consequently Mr Beydoun was in the market for a new site to operate his waste business from. 30 Bellfield Avenue was suggested as a suitable place. However there were two problems, firstly it was occupied by Mr Ykmour and secondly it was not approved as a waste transfer facility. In order to overcome both these hurdles it is alleged that Mr Izzard solicited a corrupt commission from Mr Beydoun in exchange for both, ensuring Mr Ykmour was vacating 30 Bellfield Avenue and assisting in the approval of a development application which would allow 30 Bellfield Avenue to be used as a waste transfer facility.
- 20 It is further alleged that Mr Kabite acted as a middleman for the payment from Mr Beydoun to Mr Izzard.

The fourth and final allegation is in relation to a property at Bandon Road, Riverstone. It is that between 1 November, 2015 and March, 2016 Mr Izzard partially and dishonestly exercised his public official functions by soliciting a corrupt commission from Nosir Kabite in exchange for Izzard not investigating investigations Kabite is involved in carrying out illegal landfill operations.

- 30 The Bandon Road site was leased by a company known as ATM Excavations around October, 2015 from a company known as Riverstone Parade. The terms of lease prohibited ATM Excavations from storing waste on the site and from bringing hazardous waste on to the site. Mr Sam Taleb signed the lease on behalf of ATM Excavations and Mr Kabite signed the lease as a guarantor.

- 40 The Bandon Road site was in part managed by Mr Angus McVay from Sakkara Property Services. I anticipate the evidence will show that Mr McVay noticed that substantial amounts of dirt had been dumped at the site in breach of the lease. Mr McVay then arranged for Ms Anne Bartlett, a Property Manager for Bartlett and Laing Property Agents to issue a clean-up notice to ATM Excavations. ATM did not respond.

Around the time these events were happening Mr Izzard had been assigned to Blacktown City Council area, which encompassed the Bandon Road site. Mr Izzard contacted both Ms Bartlett and Mr McVay. Mr Izzard told Ms Bartlett that he could vouch for Mr Kabite and that Mr Izzard was happy

with what was on the site. Ms Bartlett took a contemporaneous note of the conversation.

Mr Izzard also told Mr McVay that he was happy with what ATM Excavations were doing on the site. Neither the lessor nor the EPA shared Mr Izzard's comfort. The lessor evicted ATM Excavations and the EPA commissioned to report into the site. The report found that large amounts of illegally dumped asbestos had contaminated the site. It is alleged that Mr Izzard solicited a corrupt commission from Mr Kabite in relation to the Bandon Road site. The solicitation was in return for Mr Izzard not investigating breaches of the illegal dumping laws at the Bandon Road site.

There are serious questions being pursued in relation to all four of these allegations. There are also serious issues to be explored relating to the assignment of responsibility for the investigation and enforcement of illegal dumping laws. If those responsible for the enforcement of the laws are not subject to proper oversight and environment is created where corrupt culture can permeate the regulatory system. When this occurs an inquiry in this Commission may be the only way to properly identify the full extent and the ramifications of the corrupt conduct. It will also reduce corruption.

ASSISTANT COMMISSIONER: Thank you, Mr Mack. As indicated we'll take a short adjournment now. Perhaps the efficient way of doing that is for this to be a morning tea adjournment, so I'll resume the hearing at quarter to, quarter to 11.00.

#### **SHORT ADJOURNMENT**

**[10.21am]**

ASSISTANT COMMISSIONER: - - - and apparently I indicated that it would be 30 September that I wouldn't be available in the morning. I meant 30 August, next Tuesday in the morning. We're hoping that by 30 September the inquiry might be concluded but I'll advise you if there are other days as I indicated that I won't be available for sitting. Now, are there any applications for leave to appear?

MR RUSHTON: If the Commissioner pleases, my name is Rushton. I seek your authorisation to appear for the New South Wales Environment Protection Authority.

ASSISTANT COMMISSIONER: I grant you leave, Mr Rushton.

MR PATTERSON: Commissioner, if you please, Patterson. I seek permission to appear for Mr Izzard.

ASSISTANT COMMISSIONER: I grant leave, Mr Patterson.

MR PATTERSON: Thank you, Commissioner.

MR LEWIS: Commissioner, Lewis my name. I seek leave your authorisation to represent Reuben Matthews.

ASSISTANT COMMISSIONER: I grant leave, Mr Lewis.

MR LEWIS: Thank you.

10 MR FRASER: My name is Fraser, Commissioner. I seek your authorisation to appear for Penrith City Council.

ASSISTANT COMMISSIONER: Thank you, Mr Fraser. I grant you leave.

MS JONES: Commissioner, my name is Jones. I seek authorisation to appear for Ms Tracy Chalk.

ASSISTANT COMMISSIONER: For?

20 MS JONES: Ms Tracy Chalk.

ASSISTANT COMMISSIONER: Yes, I grant leave. Thank you. Any others? Yes, Mr Mack.

MR MACK: Commissioner, there's two housekeeping matters which I wish to raise first. The first is just an indication to everybody present of who has been summonsed to appear and I'll just go through a list. Ali Taleb, Mr Andrew Reece, Mr Angelo Cannuli, Mr Angus McVay, Ms Anna Kypriotis, Mr Antonio Barillaro, Mr Ashish Gulati, Mr Atef Fattah,  
30 Mr Barry Ryan, Mr Ben Krkach, Mr Christopher McElwain, Mr Craig Izzard, Mr Faid Fram, Mr Frank Bono, Mr Ibrahim Beydoun, Mr John Kolosakas, Mr Mohamad Taleb, Mr Nick Kolovos, Mr Nosir Kabite, Mr Raed Ykmour, Mr Reuben Matthews, Mr Sam Abbas, Mr Sergio Luna, Ms Sophia Le and Ms Tracy Chalk.

The second item of housekeeping is the tendering of a document bundle. What I propose to do is tender a hard copy disc of the document bundle. I understand it's a 20 volume bundle and it's been redacted and there's been some recent redactions and so I seek to tender that and that will be made  
40 available to interested parties online if they don't already have it.

ASSISTANT COMMISSIONER: Yes. There are no objections to the tender then it can be Exhibit 1.

**#EXHIBIT 1 – PUBLIC INQUIRY BRIEF (FOLDERS 1-20)**

MR MACK: Commissioner, I propose to call three witnesses today. It may be that today won't go until the end of the day but we'll just see what happens. The first witness I wish to call is Mr Christopher McElwain.

ASSISTANT COMMISSIONER: Thank you.

MR MACK: So I call Mr McElwain.

10 ASSISTANT COMMISSIONER: Mr McElwain, will you take an oath or an affirmation?

MR McELWAIN: An affirmation, Commissioner.

ASSISTANT COMMISSIONER: Thank you.

ASSISTANT COMMISSIONER: Thank you. Just take a seat there. Yes, Mr Mack.

MR MACK: Mr McElwain, you've - - -

10 MR RUSHTON: Can I just raise one matter, Commissioner. I don't appear for this witness of course but I wonder whether he could be informed of his rights under section 38. He's unrepresented.

MR MACK: I have no objection to that.

20 ASSISTANT COMMISSIONER: What they're talking about, Mr McElwain, is the possibility that in giving any evidence you might say something that causes you a problem either criminally or civilly and I can make an order giving you protection against that so it's suggested just as a matter of precaution that I could do that.---I'd appreciate that.

ASSISTANT COMMISSIONER: Yes. Thank you.

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR**  
40 **THING PRODUCED.**

ASSISTANT COMMISSIONER: Thank you. Thank you, Mr Ruston.

MR MACK: Mr McElwain, you've signed a 23 page statement in preparation for today's hearing, haven't you?---I have.

And that's dated 19 August, 2016?---It is.

And have you read that recently?---Yes.

And you understand that part of the inquiry's ambit is to investigate what might be able to be done in terms of processes and procedures to prevent corruption.?---Yes.

And do enhance processes surrounding the illegal dumping of waste?---To target illegal dumping of waste, yes.

10

Yes. There just are a few issues I was hoping you could assist the Commission with. I'll start very broadly and I just want to tease out a few things that are in your statement in relation to the EPA. Can you tell the Commission your role within the EPA.---I'm currently the Senior Manager Waste Compliance in the Waste and Resource Recovery branch of the EPA and I've held that position since late 2013.

20

All right. And are there any other branches within the EPA which are focused on illegal dumping which don't come under the Waste Compliance Unit?

---So the Waste and Resource Recovery branch has approximately 140 staff in the EPA. The Sydney Waste Compliance team has as its focus the administration and enforcement of the POEO Act - - -

Yes.--- - - - in Greater Sydney.

Yes.---Which is from approximately Hornsby to Sutherland and west to Penrith.

30

Yes.---Outside of the Greater Sydney region the - there's the Regional Waste Compliance Team which is also in what I'll call the WARR branch, Waste and Resource Recovery.

Yes.---It has offices in Coffs Harbour, Newcastle and Wollongong.

40

Yes.---And they regulate or conduct the administration and enforcement of the POEO Act with a focus on waste activities on those councils from about, I think it's Kiama in the south, along the coast, to Tweed in the north, east of the Great Dividing Range. And those two combined areas, the Sydney areas and the other areas, are generally referred to as the regulated area.

Yes.---Outside of those areas, so in the rest of New South Wales, there are divisions of the EPA that administer and enforce the POEO Act with respect to waste activities. But that's part of a range of general duties. So they would also have to deal with pesticides matters, water pollution, licensing, dangerous goods, the whole gamut of EPA responsibilities.

Is there, all of those organisations you've mentioned, or most of them, have as their focus compliance under the POEO Act. Is there any other – do you accept that?---Yes.

Is there any other organisation that might not be required to enforce compliance under the Act but are otherwise related to the prevention of illegal dumping within the EPA?---Yes.

10 Yes. Can you tell the Commission about those organisations?---Well, there's both in general and specifically. Specifically there's another team within the WARR branch called the illegal dumping team.

Yes.---They are a small team with a team leader and less than six staff, but they don't have an operational role.

20 Right.---So they are not involved in direct enforcement but they are involved in the development of strategy and policy to target illegal waste dumping. So they are the team that helped develop the New South Wales illegal dumping strategy. They are also the team that conducts the development and testing of new systems to improve the handling, say, of asbestos waste. They are also the team that prepare and manage the agreements between the EPA and the RID squads.

30 Okay. All right. And - - -?---Sorry, and I had said, at the beginning of my answer, both in general and specifically. All of the WARR branch, so all 140 staff, would have in their mind and as their goal the better management of waste in New South Wales and the increased recovery of materials. So all of their work, to some extent, is designed to achieve those twin goals. But much of it, say the other parts, are grant program arrangements to help councils improve tackling illegal waste dumping or building infrastructure to improve recycling. But they don't have a direct enforcement or operational role.

All right. I understand. So in your role as senior waste manager of the Waste Compliance Unit, do you interact much with the illegal dumping team?---Yes.

40 And what's the nature of that interaction between the unit and the team? ---Well, until recently we were on the same floor in the EPA. So daily on an informal basis. But more formally, when a policy or a strategy was being developed, there'd be consultation between the two teams to make sure that anything that was being developed made sense from an operational perspective.

And in terms of relationships with local councils are those relationships more likely to be held within the illegal dumping team or within the compliance unit?---Both, but for different reasons.

All right?---So the illegal dumping team will have a stronger relationship with councils that are either involved in the RID squads or where they're say, when they were doing the development of new systems to deal with asbestos waste, the directly with the councils, that were involved in those programmes.

10 All right?---In relation to the City Waste Compliance Team the, the staff depending on which of the four units in the City Waste Compliance Team it is, will have a relationship with all of the – well it used to be 43 councils in the greater Sydney area. And then for myself, not so much on a day to day basis with the Council Enforcement Officers but with officers of a more senior level or the GM's or CEO's of the councils.

20 So I take it from your answer that the illegal dumping teams will have more of an interaction with the RID Squads than the Compliance Unit. Is that a true statement?---They do from the point of view of administering the RID Squad agreements. The officers in my team will have a more direct relationship with the RID squads arising out of any either joint investigations or referrals of matters backwards and forwards. So they'll work with the officers in the RID squads on particular matters.

And just tracking back a bit to the systems that are in place within the Compliance Unit. Can you just tell the Commission what systems the Compliance Unit utilises to identify, investigate and enforce their compliance under the POEO Act?---Sure.

30 Just a broad - you can keep it as general level and I might need to just go down a bit into more specifics?---All right. Well leaving aside, so a large body of the City Waste Compliance Teams work is to do with facilities that hold an EPA license, so the waste facilities that hold licenses in the Greater Sydney region, there's about approximately 160 or so of those. Putting that to one side the, there are systems in place to deal with allegations of unlawful, unlawful waste transport or illegal waste operations. And they come to our attention broadly in three ways. From our own investigations, from notifications through Environment Line which is the EPA's, it's actually the Office of Environment and Heritages hotline. And matters that are referred to us by, for want of a better term, whistleblowers or members of the community directly to the EPA. So those are the three sources of information.

40 All right. And once the source comes in what happens internally in terms of systems within the Compliance Unit?---So the – each of – if it comes in through Environment Line then the Environment Line officer enters the details such as they are, whatever is available in terms of information into our computer database called CIRAM. I can't tell you what CIRAM stands for.

So that's C-I-R-A-M?---Yes.

And that's an acronym. Okay?---And if it comes to us in another way, so not through Environment Line then the officer to whom the matter is allocated creates an investigation file in CIRAM. Either way the matter is put in the database. It is then allocated to – so if it comes straight to an officer or a team leader then it's allocated to a particular investigative officer within the team. They look at the information that's available in CIRAM and make a determination about whether or not actually it's a matter for the EPA to investigate and that is based on the legislative regime that's set out in the POEO Act which talks about an appropriate regulatory authority or ARA for short.

But will it be sometimes hard to tell at that initial stage if it falls within the EPA's jurisdiction?---Yes. So - - -

And so you'll go off photographs and reports and intelligence, which is separate from an officer going out and directly observing the waste, is that correct or - - -?---So you may have photographs or you can look on Nearmap or Google Earth to determine the size of the alleged incident. You may, so, yes, each officer will have to make a decision based on the information that's available to them about whether or not the EPA is the ARA or not.

And by ARA you mean the appropriate regulatory authority?---Yeah. And if it looks like the EPA is not the ARA, then it would be referred off to the ARA, which is generally, not universally but generally, in relation to illegal dumping activities, the relevant local council which has administrative responsibility for the area. If not then it stays with the EPA.

And just to stop you there, when it gets referred to a local council, does all of the data that EPA has in relation to that incident, does that go with the referral?---Yes. So it will have the address, the nature of the material, persons of interest.

And when you say the address, will it have a GPS location or a longitude and latitude type - - -?---Well, that's not generally how it comes in through environment line. It's more normally like a street address and/or potentially a lot and DP.

Right. And I'm just trying to get an understanding now of the structure within the unit. You mentioned line officers and investigative officers before. Can you just tell me how the hierarchy works within the unit? ---Sure. There are four teams in the Sydney waste compliance team, and they each have a team leader, who reports directly to me, and then up to about six staff of varying seniority who report to the team leader. The teams are a municipal solid waste team, which generally deals with waste and facilities that arise from residential premises. So essentially what you put in your red bin and yellow bin and green bin, and collected by councils. And

then another team which – so there's a municipal solid waste team. A commercial and industrial waste team, which deals with, as its name implies, commercial and industrial waste. And then two construction and demolition teams, which deal with facilities that manage construction and demolition waste, such as facilities that take skip bin waste.

10 All right. How does the allocation work? When a job comes in, how does it get allocated to teams?---So if the allegation or issue or concern is in relation to a licensed facility, then it's just allocated to the relevant team that manages that licence.

Okay.---Leaving that aside, if there's an allegation of some kind of illegal waste activity not associated with a licensed facility, the team leaders monitor the incoming emails.

Yes.---And they allocate it according to a roster to the investigative officers.

20 And all four of these teams that sit inside the unit, where are they physically located, are they in the one office in Sydney somewhere?---Yes. So they're all in the EPA's offices in Goulburn Street in the City CBD.

30 All right. And does anybody – within these teams do they have a surveillance role where they go out and monitor sites or patrol sites?---Well, we have to – so we certainly need to conduct inspections and audits and where necessary surveillance of the EPA licensed sites and then about – you will remember me saying we get about a third of our incoming information about illegal activity from our own activities and that's because we'll conduct our own enforcement campaigns. So based on our own intelligence we will develop a campaign and we'll either work with local Councils to target hotspots, conduct surveillance of suspects or based on other intelligence try and tackle some important environmental problem that needs to be addressed, and all of the officers including the team leaders can be involved in those campaigns.

40 All right. I just want to circle back to the illegal dumping team. Do they have visibility on the CIRAM system?---I don't think they have – well, the CIRAM reports are not allocated to them. I think some of the officers might be able to access CIRAM but that's only because they were formerly officers in the compliance teams. So they may have the ability to look in CIRAM but it's not a part of their formal role to look at the CIRAM reports or allocate them.

And inversely, does the compliance unit have visibility on any of the systems of the illegal dumping team?---Well, there's only one database that I'm aware of that the illegal dumping team have responsibility for that has some direct role in relation to illegal dumping and that the – what's called the RIDonline system are ID online system and the compliance staff, I think some compliance staff have access or can get access to the RIDonline

system but they don't utilise that on a day-to-day basis but they can look into that system to help develop intelligence to guide the development of the enforcement campaigns that I was talking about.

10 Do you know what type of data the RIDonline system captures?---In general, yes. So it was originally a database prepared to help the RID squads. It was prepared by the and paid for by the EPA to allow them to record illegal dumping incidents so as they had a way of tracking events and then also looking for patterns of behaviour or persons of interest who might be repeat waste offenders across Council boundaries. That was expanded I think last year in 2015 to include the increased number of RID squads and also allow other public land managers, such as national parks or the forestry operators and others, to access RIDonline and then put information into it so as they could also see if there were hotspots or possible repeat offenders in being identified in the RIDonline system.

20 So just to summarise that the RIDonline system can receive data from RID squads and local councils and then also other ARAs that have access to it. Is that a fair summary of it?---Well sometimes, so yes for RID Squads, yes for councils, it's other public land managers, but they may, may or may not be ARAs under the POEO Act. They might have their own abilities under their own legislation.

All right. Which is a quite different set of access if you contrast that with the CIRAM system?---Correct.

30 All right. So you're a lot more data, a lot more people entering data into the RIDS online system than there would be into the CIRAM system?---Yes. So there are more officers who have access to it online and there are more officers who are entering data into that system.

40 And does the compliance – is this a fair statement, does the compliance unit only share the data on the CIRAM system with the local council if they – if the EPA forms a view that they are not the ARA for a particular incident? ---Yeah, yes, because it's, it's in keeping within our normal realisms of the EPA. If the matter is an EPA investigation then generally speaking it's kept confidential. But we would pass the details on through, they've come in through the CIRAM system if it appears that somebody else is the ARA and there's some legislative scope for that with POEO Act. I can't remember the precise section.

It's not important?---Yeah, all right.

And so I'm just trying to explore with you the compliance unit going to local councils, but now I want to explore with you matters where the local council might initially think they're the appropriate ARA and then make the decision that they're not and it goes back to the EPA, what are the systems in place to manage that transaction?---Well there are at least two ways that

happens. One, the council may discover some event or set of circumstances or conduct their own investigation and realise that they are not the ARA, in other words it's a matter where the amount of material or the types of material means that they are not the ARA and they just refer that to the EPA.

When you say they just refer, what do you - - -?---So they may ring Environment Line and make that report.

10 And at that stage would it get into the CIRAM system?---Correct. Or they may just refer it directly by writing a letter and we don't – so they can come to us in a variety of ways. Sometimes they write to the EPA Chair, sometimes they write to the Director of – the Executive Director of Waste, who's my immediate supervising officer. Sometimes they write to me. Sometimes they'll write to team leaders or officers so that councils send it in a range of ways but it comes in on letter with some or all of the evidence that's available to council to say this is a matter for the EPA. So those probably the two ways, either they report it to Environment Line or they write directly in to the EPA.

20

Are you aware of any situation where it's being referred through RIDonline through to CIRAM or through to somebody in the EPA?---No. So it doesn't, I'm not personally aware of a situation where it's been reported in real line and then it becomes a matter that's actually referred to the EPA.

Do you think that would be something that might assist in transferring of data between one system and another system?---I think there are risks with that.

30 And what are those risks?---At least with CIRAM and, oh, well certainly with CIRAM. That system, well, the environment line system associated with CIRAM has been specifically set up to allow the EPA to track the information that's coming in and what is happening to that information. And that arose out of a review of the EPA's systems conducted by the audit office. So they made some recommendations a few years ago and that is why the CIRAM system is set up and that system can still be used where a letter is coming in from Council because it's recorded initially in the related EPA's document tracking system. And then that at least there's a note that it's arrived and then the officers can enter that information into CIRAM.

40 RIDonline at the moment is not set up as an investigation allocation system.

When you say at the moment do you mean that it could potentially be developed into that?---It could but there – remember the purpose of RIDonline at the moment is not that process in the normal sense because a, a very wide range of officers have access to the information and it may not be appropriate to have such open access to any investigative allocation system. So RIDonline at the moment is to allow Councils and public land managers and the EPA to look for patterns of behaviour or particular hot spots or

types of waste that are presenting threats to the community and the environment. And that's how that tool gets used so - - -

It doesn't allocate jobs to a particular Council it's - - -?---Correct. Or to - - -

So it's not a case management system - - -?---It's not set up as a case management system and that's not how it's used at the moment. And it's not what it's designed for.

10 Just moving onto a different area. I want to just flush out with you your understanding of the EPA's jurisdiction in relation to asbestos and asbestos plants?---Sure.

In your statement you give this broad fault line between categories of waste that are less than 200 metric tonnes and categories of waste that are greater than 200 metric tonnes. Does that sound familiar? I can take you to your statement if you want?---Yeah, yeah. So there are different thresholds for different types of material that are either and what's referred to in the POEO Act as land applied but what might broadly be called dumped or stored. So  
20 if it looks more like storage, in other words it's a stock pile above ground level.

And that distinction you're drawing between land applied, that comes at clause 39 of schedule 1 of the POEO Act is that the - what you're referring to?---Yes.

And when you say storage you mean clause 42 of schedule 1?---Yes.

30 And so your understanding is that if something is dumped that falls within clause 39 because in effect it's land applied?---Generally speaking that's correct, yes.

And is it your understanding that that 200 metric tonne threshold applies to general waste, all waste?---No, it's quite specific in clause 39. So within the Sydney area it says and I'll - - -

I don't - - -?---Yeah.

40 I'm not trying to - but it says building and demolition (not transcribable)?---?---Yes. So anything that's land applied generally - is the EPA's, the ARA for. However the exception is if it's less than 200 tonnes of building and demolition waste, which is a term defined the POEA Act or building and demolition waste and virgin excavated natural material which is another term as defined. So if, if it's building and demolition waste or building and demolition waste and VENM and it's less than 200 tonnes then Council is the ARA. And then going through the rest of clause 39 there are other thresholds for different types of material.

I don't want to go there but do you understand that the definition of building and demolition waste, does that include or not include asbestos waste?---It does not include asbestos waste.

But the end result of that is that the EPA has jurisdiction for asbestos waste. Is that how it's understood?---That's correct.

10 All right. And in relation to storage of asbestos waste, this is clause 42, what is your understanding in relation to when the EPA has jurisdiction over storage, as opposed to dumping or applying for - - -?---I can't remember the threshold amount in tonnes. But it is in clause 42 and it might be five tonnes or ten tonnes. I can't remember.

Right. So you've effectively got two dimensions to the schedule. One is applying for land and one is storage. If it's applying to land and you're applying asbestos waste to land, the EPA has jurisdiction, do you accept that?---Yes.

20 And then if it's in relation to storage, it has to be over five metric tonne for the EPA to have jurisdiction?---Yes. There are some geographical aspects to clause 39 about where the events are taking place, whether it's inside or outside the regulated area. But in relation to in the Sydney area, what you've just said is correct.

30 All right. I want to focus now on transport of asbestos and types of asbestos. That is not found in the POEO Act as a scheduled activity. Is that your understanding?---I think the interstate transport of asbestos waste may require a licence under section 49. I would have to check, but I think that's correct. But inside New South Wales there's no requirement for licensing the transport of asbestos waste. We removed that requirement a few years ago.

Right. So if somebody wants to transport asbestos in New South Wales, what are the regulatory requirements imposed by the EPA?---Well - - -

40 Broadly?---The requirements are imposed by the POEO Act, not by the EPA. But there are rules in the Protection of the Environment Operations (Waste) Regulation 2014, which set out particular requirements for the safe transport of asbestos waste. And they are, and I can't remember them precisely, any particular clause, that the material needs to be, if it's asbestos sheet, then asbestos waste is considered essentially in three forms: bonded cement, fibrous asbestos like the woolly cladding, and then asbestos in soils. Those are essentially the three ways it appears. There are rules in relation to the transport of those materials, like if it's bonded asbestos it must be wrapped or it must be kept damp. The truck must be covered. There is a ban on the recycling or reuse of asbestos waste in New South Wales, and that's in the regulations. And all asbestos waste can only be sent to a landfill that's licensed to receive the asbestos waste.

All right. Thank you for that. And then putting aside – oh, sorry, just still on the transport. If those requirements are not complied with, does the EPA routinely breach people for that?---Yes.

Yes. And are you aware of local Councils breaching people for noncompliance with those regulations?---No, and you would – you can tell – when you say breach I assume you mean issue a penalty notice or fine.

10 Yes.---And I would need to look in the regulations to see whether Council officers are empowered as an enforcement officer for those clauses of the waste reg because if they are not then they don't have the ability to issue a breach for those alleged offences.

Okay. Well, they either have the power to do it or they don't but you're not aware of them doing it?---No.

20 Okay. And more generally, do you have visibility on the penalty notices that local Councils issue in relation to the POEO Act or the transport regulations?---I'm not quite sure what you mean by that, do we have visibility.

Can you - - -?---Do we know what Councils have issued penalty notices for?

Yes.---Generally, no.

Okay.---Unless we make a specific inquiry about some operator or event.

30 Okay. The final area in relation to asbestos I want to ask you about is in relation to the disposal of asbestos. You said earlier that you need to be, well, can you tell the Commission the requirements for the proper disposal of asbestos.---So the Waste Regulation 2014 and the earlier version of the Waste Regulation 2005 had specific requirements in the clauses that direct – or now they direct both the person bringing the material to a landfill and the landfill operator on particular requirements for the disposal of asbestos waste, such as in general, that the dust shouldn't be generated when the material is taken out of the vehicle and it needs to be covered immediately I think with 15 centimetres of soil and then covered at the end of the day to give protection from the tracking over the top of the material by vehicles  
40 and then when that part of the landfill is closed by at least one metre of soil, and all of that is aimed at reducing the risk from that material by preventing the generation of dust.

So it's not the case that asbestos material, let's take the example of a truckload of sheeted asbestos. It's perfectly acceptable for that to be included in landfill if it complies with those requirements. Is that - - -?  
---Yes. That's the proper place for it.

Is in the land, buried?---Is in the landfill.

All right. And is there any reporting that identifies that a particular piece of land has asbestos waste or asbestos material as part of its landfill?---So all of the current landfills that can lawfully take asbestos waste must have that specifically noted on their licence. So there'll be on the environment protection licence issued by the EPA there'll be the categories of material that that landfill can take and on that will be asbestos waste specifically. There are some exceptions to that in Western New South Wales but that's generally not – I guess not relevant currently. All of those facilities in New South Wales that are licensed to take that material are listed on the EPA's website so as members of the community can find out where they can take their material. There are perhaps oh, less than five recycling facilities that can lawfully take asbestos waste but they have specific controls in place to allow the material to be brought, aggregated, stored and then moved on to a landfill.

I understand.---And those facilities I think, and I haven't checked recently but I think they are also listed on the EPA's website so in the sense that you've said is there some way that that's noted, the answer is yes. It wasn't always the case so there are many old and former landfills in New South Wales that probably did take asbestos waste that will only be noted now if they're recorded as a contaminated site.

All right. And the requirement to ensure that the asbestos waste is covered with dirt, that's to – why is that? It might seem like a simple question but I just want to tease that out a bit more.---So the risk from asbestos occurs when the fibres are released and they get within a human's breathable zone.

Yes.---Which is about 30 centimetres. So all controls, whether you're demolishing your house or transporting the material or disposing of it, are designed to minimise the risk of any dust containing asbestos being released. So that's why the regulations have controls on the handling of the material at the source site, on the transport and on the disposal. And the simple mechanism for dealing with dust at the receiving landfill is to make sure the material is covered.

Right. I just wanted to narrow in now on the transport aspect of it. You give evidence in your statement about a system called Waste Locate. Can you just tell the Commission in broad terms when that system came into existence and what it's designed to do?---So, the regulatory changes that were brought in with the Waste Regulations 2014 allowed the EPA to create a new waste tracking system called Waste Locate. There's another waste tracking system called the Online Waste Tracking system, or OWT for short. Its focus is on dangerous or hazardous wastes that are specifically listed for the Online Waste Tracking system, and they're called trackable waste. Leaving that system to one side, the EPA wanted to create a new system to allow for the tracking of two kinds of wastes initially, waste tyres

and asbestos waste. And that is why the Waste Locate was created. And it was also to do away with what was seen as an inefficient regulatory system requiring licensing for transport of materials. So in earlier days there was a licence required to transport waste tyres and for asbestos waste. We discovered that that was not actually working from a regulatory perspective because in fact operators would apply for a transport licence and then show that to the waste generators, in other words tyre retailers or demolishers, and say, "This is an EPA licence. You can give me the material. It's all lawful." And that had obvious risks and consequences. So that licensing system was removed with a view to moving everybody into a Waste Locate system. And the way that works is if more than a particular amount of waste tyres or wrapped asbestos, so not asbestos with soils at the moment, and I can't remember the precise amounts, but it's in my statement. I think it's a hundred - - -

I think it's 10 square metres.---Yeah, 10 square metres or 100 kilos of asbestos waste and 200 kilos of tyres. It's in my statement. When that amount of material has to be moved it must be consigned by the generator and each load must then be swiped off, in other words accounted for, at a receiving facility. And the system is designed to use smart technology, like a smartphone or an iPad, and they recognise a QR to ID code at the receiving facility, and the particular load is then accounted for. And we use that. That system came online in 2015 and we've been since conducting education and enforcement campaigns to push all of the operators for waste tyres and asbestos transport into that system.

So if, so if an operator wants to transport asbestos that meets the threshold they have to have access to the, is it an app or is it - - -?---Yes, well two things. You need to be registered with Waste Locate, so you exist in the system initially and then you need to – the load, any particular load needs to be created in the system and consigned to a receivable facility that can lawfully take that material. And then the load is collected and when it's delivered swiped off as being accounted for.

What do you mean by swiped off?---Literally you point your mobile phone with the app at the QR2ID plate at the receiving facility and then the app will bring up is it this particular load that you are accounting for, click, yes.

And - - -:?---And all of that information gets uploaded into Waste Locate which is a system run by the EPA.

Okay. So at the time of consignment does the consignment detail how much waste is there?---Yes.

And at the other end when it's disposed does somebody check how much waste is being deposited?---For those facilities there should be a weigh bridge and it should be weighed – so for part of the changes in 2014 were

that all waste recycling facilities and all landfills had to have a weigh bridge. So they would be required to weigh it in, in any event. But - - -

There's no weigh bridge at the origin though?---No.

So how does one know at the origin how much the waste weighs?---Well that will be up to the – both, either the generator who can be in the system or more usually the transporter.

- 10 To give an estimate or - - -?---Yes. Well on some occasions there will be the ability to weigh the material at the generating site, but there's no requirement necessarily for them to have a weigh bridge. So yes, it would be an estimate on some occasions.

All right. And how has the scheme been accepted? Has it been taken up broadly within the industry?---It's still in its early stages, but yes, we have many hundreds of from memory, many hundreds in the Waste Locate system for asbestos transport and I, I have not looked, so I don't know what the numbers are for the transport of tyres, but generally speaking  
20 anecdotally the feedback that's been provided to the EPA is that lawful operators welcome that and indeed the receivable facilities are also supportive because it means they can say when a load of material arrives, why isn't this recorded in Waste Locate when you're delivering it to me. And the system requires them to report to the EPA anybody who arrives with material that should have been in Waste Locate but has not been consigned to them as another method to encourage people into the system.

And has there been any complaints about the introduction of the system, common complaints I should say?---Not that I'm aware of. I know that  
30 some operators have contacted the relevant EPA officers who were initially managing that system kind of asking questions about how to get set up. Like it's specifically designed to be as simple as possible.

And does it cost an operator, or somebody that wants to register, any money to participate?---No.

And is the app a native app or is it a web-based app? And do you understand that distinction?---I am not sure what you mean by that but I've  
40 seen it in operation on a smartphone.

All right. Do you know if there's a different app for, say, people who use an Android and somebody that uses an iPhone?---I don't know the answer to that.

All right. What I propose to do now is just take you to a couple of examples and ask you how they would be treated by the EPA. And the first example I want to go to is just a picture of a load of waste at volume 20, page 106.

And I'll just get it brought up on the screen. And what you'll see is a photo of a fairly typical, I would say fairly typical, dump.---I can see that.

You can see that. All right. I'm just trying to understand if this came through one of your sources, what would be the process for a line officer in relation to somebody that's reported this and included a photo such as this? And I want you to assume that it doesn't contain asbestos.---Well, you can't tell from the photo whether it does or it doesn't.

- 10 All right. So - - -?---So, normally once, if that had come in and was in CIRAM and it was on public land that was where the Council would be the ARA, so if it was in a national park or in a state forest, then we might ask those relevant public land managers to go and look.

All right.---In other words, refer it to them and ask them to conduct the initial inspection. Otherwise we would also ask Council to conduct the initial inspection and then that would be – and we'd await the outcomes. So it may be that the public land manager or the Council then deals with that.

- 20 And when you say deal with, do you mean report back to the EPA that it may or may not contain asbestos? Or deal with it in a different way? ---Well, if Council was of the view that the EPA is the ARA, then it could be referred back to us. And the same with the public land manager. But as is set out in my statement, often councils or the public land manager will just, if it's in effect orphan waste, in other words there's no evidence about whose committed the dumping and there are no leads, then they will take steps to get that material cleaned up.

- 30 All right. Now, I want you to assume that it does contain asbestos, and you send somebody out to have a look and they report back that it has asbestos, what would be the usual course of action once you'd found out that it's asbestos?---Well, the EPA is the ARA at that point. But, as I say, often the public land manager or the Council will take steps to clean up the material, especially where there are no investigative leads. So if you have no evidence about the source of the material or who's transported it or who's dumped it, and there is asbestos waste in the material, then the public land manager or the Council will generally arrange for that to be cleaned up. And they can, through the EPA, and I can't remember if this is in my statement or not, they can take steps to access funds through the  
40 Environmental Trust.

I'll come back to that. But is it your understanding that if it contained asbestos and the local Council decided to clean it up, would they then be engaged with the tracking system and have to track that waste through? ---Well, the contractor who did the work, if it's above the thresholds, yes. But I'd have to check whether there's an exception from the tracking for emergency or clean-up situations.

Okay.---And I can't recall off the top of my head if that's so. But otherwise, in general, would need to be recorded.

10 All right. And does the EPA routinely breach Councils for – sorry, does the EPA issue clean-up notices to Council for waste like this if it doesn't get cleaned up?---Well, there are two different circumstances. One is where Council is responsible for an illegal dumping incident and if the EPA has evidence that it's Council that's responsible then it exercises its normal regulatory powers and it has done so on many occasions. The other  
10 circumstance, and I'm not sure if this is what you're referring to, so in relation to my first point if the activities have been conducted by Council the EPA is the ARA.

20 Yes.---So it has a responsibility and it needs to exercise its powers. There is a power within the POEO Act that's given to the EPA under section 92 where the EPA can direct a public authority to take clean-up action and that can be any public authority. So it is open to the EPA if Council were for some reason not stepping in to clean up this material even if Council was not the ARA, it's open to the EPA to direct the Council or other public  
20 authority to clean that material up. In practice, it has been very rare for the EPA to issue that direction and there are a few reasons for that. One, generally once the EPA has a conversation with the public authority they will step in to do the work. It could be that the EPA could threaten to issue a section 92 direction and that's sufficient and there are – I think there have been very limited circumstances, and you would have to check in the EPA's database, where a public authority has been asked – has asked for the EPA to give that direction and the reason for that is the issuing of that direction to a public authority allows the public authority to take steps to recover the  
30 costs of clean up from anybody who they suspect has been involved in the dumping.

And just tracking back to the first situation where the EPA prosecutes Councils.---Yes.

Is that an ongoing problem that local Councils themselves are in fact in breach of the POEO Act – I don't want you to go into specifics but just as a general comment, is it?---The short answer is yes.

40 Do you know what incentives there are for a Council to not obey the POEO Act?---In my – so I've been involved in a number of investigations in relation to Council activity for breaches of the POEO Act. There are a number of prosecutions that have been completed and they're reported in the Land and Environment Court decisions. Generally speaking the major failure is the separation inside Council between the operational field staff who deal with waste, in other words, the people who build the roads and generate green waste from managing parks and other public lands, from the teams that run the environmental enforcement and compliance. In other words, the engineering operational parts of Councils are completely separate

from the parts of the Council that enforce the POEO Act. So there is one part of Council that's keenly aware of its environmental obligations and indeed are co-regulators with the EPA and they do not speak at all nor do they supervise the engineering operational parts of the Council and so - - -

But it must – I mean even if there's two separate parts presumably they would be funded by the same sorts of funding?---Only in an overall sense of out of one single Council budget.

- 10 But what I'm trying to drill down into is that if you're on the engineering side of that equation there must be something built into the system economically that it will make it – there must be some economic benefit that the engineering side gets from dumping waste illegally? Is that how you understand it?---Well the engineering team would be allocated an overall budget for particular projects is my understanding. I'm only going from what I know from my investigations into Council's activities. And in relation to say the two prosecutions that have been run that I was involved in the activities, the illegal activities would have resulted in savings to that budget, the construction or operational budget. Although in the long term
- 20 arising out of the investigations and all the clean-up action it actually meant Council's, overall Council's budget went dramatically backwards because of the consequences of the prosecution, the legal costs, the clean-up costs, those sort of consequential costs.

But you understand that those savings would attach to the Council not to individuals or contractors that are engaged by the Council in relation to the engineering side?---Yes.

- 30 All right. I want to take you to another example that's in volume 20, it's at page 61. This isn't a photo but I just want to use it as an incident that happened in 2007 in a place called Phoenix Park and if you could just at the bottom of the page there you'll see example of a publication order sought and granted for a case prosecuted by the EPA. If you could just read very quickly the facts in that situation?---Yes.

- 40 So in effect what's happened is there's been over 1300 tonnes worth of waste transported to a location and that location, because it was, sorry, and because it was building and demolition waste it was required to be a licensed facility and the location where it was going in Phoenix Park wasn't a licensed facility so therefore they were in breach. What I want to explore with you is the penalty imposed there for \$40,000 for the company and \$20,000 for the individual. And I want to explore that with you in relation to the waste levy and you give evidence in your statement of the waste levy being over \$100 per tonne and so the potential savings in waste levy alone in an example like this is well beyond the fine. Do you understand that dynamic that I'm getting at there?---Well, the waste levy as I said earlier in my statement, the waste levy at the moment is \$133.10 per tonne in Sydney. I can't remember what the waste levy was in 2005 but it would have been

considerably lower because for every year since about 2007 it went up by \$10 a tonne plus CPI. But the waste levy then would have been known. But I understand your point that there's a differential between moneys that can be made and fines that are imposed by courts as a result of prosecutions.

Right. And so in your opinion, other penalties that are imposed equivalent to the savings in waste levy that can be made, as a general comment. I'll put it this way, is it in somebody's interest to ignore the law and cop the fine in a court rather than go through legal means and pay the waste levy legally?---  
10 I'm a little concerned by that question because you are asking me to comment on fines imposed by the Land and Environment Court and the local courts. And - - -

All right - - -.---As a public servant, I don't think I'm entitled to a public view on that.

All right. I'll ask the question about the maximum penalty imposed under the regime. Do you think that the maximum penalty under the regime is high enough to avoid the situation whereby somebody saves money by not  
20 complying with the Act?---All right. So there's a tiered regime for penalties in the POEO Act. It's three tiers, tier one, tier two and tier three. Tier three penalties are what we've been referring to as breaches, which is where an on-the-spot fine issued, where the offence is generally clear-cut, one-off and an on-the-spot fine is appropriate. Those penalties can be up to \$15,000, especially for unlawful waste facilities breach of section 144, unlawful waste transport, section 143. Those penalties are, I think, the highest in New South Wales for those offences anywhere in Australia. My view is they're probably about right for one-off offences. They are not right for  
30 continuing courses of conduct. That is more appropriately dealt with by a tier two prosecution. The maximum penalties for tier two strict liability offences are up to a million dollars for a company plus a continuing penalty each day. I can't remember what the amount is for individuals but in any event it's in the sections. It's a quarter of a million dollars plus perhaps maybe \$60,000 a day. If the full range of the penalties was being utilised, that could provide a financial deterrent.

But the full range of penalties, correct me if I'm wrong about this, will only be utilised if the matter proceeds to court?---Correct.

40 And those maximum penalties that you just gave examples of are only enforceable by a court.---Yes.

And in situations, take for example a tier three offence, that is not enforced by a court but is served by an officer, an authorised officer, an enforcement officer, the maximum penalty is much lower, is that correct?---Well, yes, so as I just was explaining, the maximum penalty for an on-the-spot fine is \$15,000, where the penalty is issued by an EPA officer. And the maximum penalty for a tier two offence is a million dollars, where it can be imposed

by the Land and Environment Court. There's a jurisdictional limit in local courts, I think, of \$110,000. And of course then there's the tier one prosecutions, where there must be wilful or negligent conduct, and that has to result in harm or likely harm to the environment, and then I think the maximum penalty is \$5 million for companies and, for individuals, maybe a \$2 million penalty and/or up to seven years in jail if the proceedings are brought in on indictment in the Supreme Court or two years if the proceedings are brought on a summary basis in the Land and Environment Court.

10

So the EPA in effect has a choice to make between whether reaching somebody by way of penalty notice or pursuing it through the courts. Is that correct?---Yes, that's for all the regulatory agencies, they need to decide.

20

And what governs within the EPA, within the Waste Compliance Unit, what governs those decisions?---So there's a, a range of documents. It's the, most important being, it's the EPA's prosecution guidelines. And the EPA's, I can't remember the exact title, but it's the compliance policy. And then you need to rely on the officer's experience and discretions in the same way as you would for any regulatory agency about how are you going to get the best environmental and regulatory outcome by using any particular tool. And you'll see in the prosecution guidelines some considerations that need to be taken into account, it's not mandatory, it's – that need to be referred to say when determining whether or not to breach somebody. And from memory it's like is the evidence relatively clear cut, is it not a serious matter, will you get the relevant general and specific deterrents, are there other factors that can be taken into account like cooperation or clean up of the material most importantly when you're dealing with illegal dumping. So those are the, those are the main documents apart from relying on officers experience about is this a relevant matter that needs to be dealt with by a court or is it more appropriate for dealing with it by way of other regulatory tool like clean up and issuing a fine.

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ASSISTANT COMMISSIONER: Mr McElwain, if you decide or if the officer decides that it should be dealt with through a court how do you do that?---Well the short version is no officer gets to decide that. The initial step, Commissioner, is the officer and the team leader and myself will look at a particular matter. If it's not appropriate to deal with it by way of some other regulatory response, like on the spot fine on clean-up we will prepare what's called a breach report, which is a summary of the event and that contains information known at that particular point in time and what investigative steps have been taken. That document is then approved of by the Executive Director of Waste, in other words my boss. If that is approved it's then referred to the legal branch for consideration. If – and then advice is received – the breach report is then allocated to a case solicitor and then the case solicitor works with the investigators. If there's sufficient evidence a document called a Prosecution Unit prepared and that outlines the investigation, the evidence that has been obtained and whether

or not it's in compliance with the EPA's prosecution guidelines to proceed and a recommendation is made. That recommendation is then considered either by the Chair's delegate, so that in this case it's the Chief Environmental Regulator or the Chair himself, because the Chair exercises the powers of the EPA under the Protection of the Environment Administrations Act. If the Chair accepts that recommendation in relation to defendants and charges and that's referred back to the legal branch and they will then commence proceedings in the relevant jurisdiction, either the Local Court or the Land and Environment Court and can have then conduct of the prosecution.

Thank you.

MR MACK: That ties into another line of questioning I want to pursue in relation to how many of these cases come before the EPA. So what I want to ask you is what is the case load of your officers in relation to the POEO Act and incidents that get reported? And when I say case load, are they, are there not enough cases for particular officers? Are there too many officers? ---Are there not, are there not - - -

Are there too many officers and too little cases?---Absolutely not. For any regulatory agency in the country, there's more work than they can do.

Well I'm talking specifically about the Waste Compliance Unit, the caseload as it relates to a particular officer, if it's not – if there's no too many officers it must be the inverse, is that correct, that there's too many incidents and not enough officers?---There's, there's, well so there's – as I explained earlier there's – we have some other responsibilities apart from illegal dumping. So it's administering, enforcing and the licences for EPO licence facilities and dealing with complaints about them. And all of those whether it comes in through environment line or we discover it ourselves or somebody refers it to us there's always a greater amount of work that can be dealt with on any day to day basis than there is officers.

All right. So there's a certain level of proration that goes, prioritising that goes on in relation to incidents, is that a fair statement?---Yes, absolutely, there must be.

And can you explain how that prioritising works?---So well, it depends on what the issue is. So if, if the matter is say dealing with a particular EPA licensed facility or a particular investigation that the EPA's already dealing with then we already know about it. Although if it becomes more urgent either because the community is more concerned or we become aware that the activity is continuing and so undermining the regulatory regime and still having or increasing the environmental impact of the activity then that could raise the priority of that particular matter. But in general the – when reports come in we'll need to check whether we already know about it or whether we've referred it off to some other agency. If or as can be the case it's brand

new. If we already know about it then we're already dealing with it, whatever the issue is - for the landfill, illegal waste dumping, water pollution. And the teams will look at each particular notification then make a decision about is this something we already know about so we've already, we've already allocated it's priority or is it brand new or do we need to refer it on. Of the matters that we're already addressing that needs to be managed on a day to day or week to week basis and that happens inside the teams between the team leaders and the officers. And then as between myself and the team leaders we meet and we all discuss whatever is on the work load and whether there needs to be a higher or lower priority given to any particular matter.

And is the end point of all of those discussions that some matters remain not actioned and outstanding for lengthy amounts of time?---Well, all matters need to be addressed in CIRAM. So the idea of CIRAM is that at least everything is addressed but one of the possible outcomes of looking at a matter is deciding that there should be no regulatory action in response to that, maybe because it's too small or you have absolutely no leads or it's just not big enough compared to all of the other matters that you currently are addressing to warrant more than that attention, i.e. we've looked at it, it's too small and we've got all these other matters. And that's common on a regular basis and you have to do that as matters come in. So for example the other day there was the fuel tanker that rolled over down near the airport. That is incredibly urgent. That matter makes all other matters for the officers who are allocated stop because you need to give that priority and the same kind of risk-based analysis needs to be done on any particular investigation or matter referred to the EPA.

Do you know how – what proportion of incidents are noted as no regulatory action in the system?---I don't know what the number is but there will be – you could look in CIRAM to see how matters which have remained with the EPA which have not been given priority action.

All right. And one other action that could be entered into CIRAM is that it's been referred to a local council. Is that - - -?---Yes.

And at that stage that incident is closed off for the purposes of CIRAM and the EPA. Is that - - -?---Yes.

All right. And if that matter is then – if somebody complains about the same location and the same matter and it comes back through your sources, will you then reopen the matter and reassign it?---Generally we would continue to refer it on to Council for action but here are – well, it does happen that either the Council will subsequently refer the matter back to the EPA because the EPA is the appropriate regulatory authority or if we're continuing to get complaints about a particular event or site we would check with the Council or the RID Squad or whoever is dealing with it to say hi, this is still an issue. Why is it still an issue? Can you tell us what you're

doing about it. But we don't – there's no formal oversight of matters referred to Council because they're the ARA and they should be dealing with it.

I understand. But what I'm getting at is could CIRAM identify a cluster of inactivity by a local Council through your system in the sense of - - -? ---Potentially if there's a matter that we already know has been referred to Council and we're continuing to get reports about it, yes.

10 Because those continual reports will continue to be logged?---Because they will still come in through Environment Line. They'll be entered into the system and allocated to the clearing house. The team leaders will look at it. Allocate it to whoever has dealt with it earlier, and when I say allocated I mean allocated to the officer inside the EPA who has dealt with it. That officer will continue to get the reports so in that way you would become aware of something that's continuing to be an issue and at that point you might be asking Council what are you doing about it.

20 All right. I said I'd come back to the topic of Environmental Trust. You mention it twice in your statement. Do you have your statement there in front of you?---Yes.

At paragraph 35 of your statement, and this is – Mr McElwain's statement is volume 15. In the final sentence there is says, "Councils usually report these matters to the EPA for the purposes of seeking authorisation to access funds from the Environmental Trust to do a local clean-up of waste from unknown dumpers often called orphan waste".---I see that.

30 So I take it from that that Councils are aware that they can recoup money for orphan waste through an environmental trust fund?---Yes.

All right. And I'm just trying to reconcile that with what you say at paragraph 59 of your statement, and the final sentence.---I see, I see, oh - - -

"In most years the fund is not fully spent, partly because some Councils do not make or follow up on applications."---Yes.

40 Are those two statements consistent? They usually report them and then just don't follow up on them?---So we have had, and we continue to have, circumstances where Councils have made the initial report for the purposes of seeking the EPA's authorisation to get access, and they get allocated a number saying this is your approval number that you can use to track through the system. And then they remain outstanding sometimes for months or even years. So there's no follow-up and completion of the application to actually get access to the funds.

So there's an underutilised body of funds that Councils are entitled to but they're not claiming on. Is that an accurate summation?---Correct.

Do you know why?---I'd be guessing. Mr McElwain, have you read Mr Reece's statement that's been tendered in relation to this inquiry?---No.

No. All right. Well, do you know Mr Reece?---I do. So he's on secondment from the EPA to Penrith Council and he is one of the officers in my Sydney waste compliance team.

10 And in his statement, at volume 20, page 285, he expresses the opinion that the New South Wales EPA is not adequately resourced to tackle the issue of illegal dumping or landfilling. Is that an opinion that you share?---Well, I would put it more generally. I mean, both generally and specifically. All regulatory agencies could do with more resources to tackle important issues, to protect the public and the environment or whatever it is they're doing, child protection, animal protection, whatever. As a manager whose job it is to protect the environment, you would always want more resources. As it happens, the EPA is overall, amongst New South Wales government agencies, from what I know about how other agencies are resourced, a relatively well-resourced agency, mainly through the current government  
20 program, which is called Waste Less, Recycle More. So that - - -

But if we take the issue, being illegal dumping or landfilling, and the effects that has on the environment, as one part of the equation, and then the resources that the EPA has to deal with that significant problem, do you share the opinion that there's not enough resources to tackle that problem? ---Well, we could always use more resources.

Mr Reece also says, paragraph 65, that the EPA prioritises work on dumping matters involving asbestos. Do you agree with that?---Yes, that's  
30 part of the former illegal dumping strategy. It's our own internal notified priority. And I think it's part of the new draft illegal dumping strategy. I'm not sure whether that's come out for comment. But, yes, the kind of target matters for attention have been, pretty much since I've been in the waste team, since 2006, construction and demolition waste, asbestos waste and, to a smaller extent, green waste.

So you'd be less likely to find within CIRAM no regulatory action items for items involving asbestos? Is that a fair statement?---Yes. Well, I mean, they can be sometimes referred to Council because they can arrange for the  
40 clean-up. But, yes, generally speaking.

And Mr Reece also introduces this idea of having a liaison officer between EPA and local councils. Do you think that a liaison officer between your unit, the Waste Compliance Unit and local councils would be an effective strategy in dealing with - - ?---So we've trialled that, starting last year. A long time ago prior to the current EPA structure there was in fact a part of the Sydney Enforcement Teams that was called the Sydney Local Government Team, that team no longer exists. Inside the Waste team we

identified that particular councils were being targeted for illegal dumping and we have trialled having a particular officer work with those councils to conduct joint investigations, conduct joint surveillance, target hotspots and generally build the capacity inside the councils. That in trial worked very well, but it's officer dependent in part, so you're relying on the particulars of the individual officer that's nominated. And the other difficulty is that officers in any public agency are not static. In other words they are promoted and they get a different job, they go secondment, they have maternity leave, they resign.

10

I understand?---And so you have constant turnover but we recognise that liaison is a strong way to build, build skills, capacity and target important problems and operations. And we're progressing that internally.

20

All right. And does that just relate to the relationship between the Waste Compliance unit of the EPA and local councils or does that extend to the Waste Compliance within the EPA and RID squads?---So there's a, there's a, there's an internal officer in the waste bridge, so not waste compliance but in the illegal dumping team on the management committees for each of the RIDS squads. And they are usually the internal point, the first point of contact. However there are strong informal relationships between officers in the RID squads and the, and the supervisors in the RIDS squads and particular EPA officers, mainly because they work together on particular matters they know each other well and they just pick up the phone and talk.

30

All right. And I've almost finished my questioning. I just wanted to understand, when you were head of the Waste Compliance Unit, I understand that there was an expansion of the RID squad structure throughout the Greater Sydney area. Is that correct?---So the first RID squad is, was the Western Sydney RID Squad.

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Yes?---I think the matter that's currently before the inquiry now, that the, it's part of the Waste Less Recycle More Programme of the New South Wales government. It was recognised that we should expand the number of RID squads and as outlined in your opening, now there are more, although they operate differently or on different models in different areas. So there's the second one in Sydney, the more inner Sydney RID squad. And then then one in the Hunter along the Central Coast and then the one that's on the south coast.

Sorry to pull you up, but did you have any role in the decision-making process in relation to the creation of those RID squads?---No. So I didn't have a role in deciding which ones get set up or which Councils are in it or the creation of the documentation. But I know about it just through my work.

Okay. All right. And if I could just take you to paragraph 18 of your statement. I just want to make sure that I'm understanding that correctly.

There might be a missing word. Could you just read the first sentence of that. It says, "Where the EPA is not the ARA, it cannot exercise any clean-up notice powers but it can exercise its investigative or prosecution powers unless there is an emergency."---Yes, that needs some clarification. So, where the EPA is not the ARA, in general it can't issue a clean-up direction under section 91, subject to this exception, and that is if there's an emergency.

10 Okay.---But even if it's not the ARA it can exercise its investigative powers and its prosecution powers. So it can prosecute even if it's not the ARA.

And would that require a referral from the ARA?---It doesn't require a referral. It's just because of the operation of the POEO Act. So we can prosecute for any offence. And I can't remember, I think it's, it'll be in the, it's about section 218 or something like that. But it's expressed in the statutory power of the EPA.

20 All right. Thank you, Mr McElwain. I'll just take some instructions just quickly. Just one final question in relation to the Waste Locate system and rogue operators within the asbestos industry. Does the EPA have any procedures for dealing with known rogue operators who do not use the Waste Locate system?---So because the system is relatively new, we have been focusing on education to move people into the system, to become registered and to start using it. But we have already identified some operators who are either not registered or are registered but not using it for particular - to properly log in and log out the transport of material. And we have - and that is the beauty of the Waste Locate system. You can start to conduct enforcement by noticing the exceptions. In other words, 30 somebody's not registered or they're not logging it, even when we know that they have done the work. Mainly because they will turn up at a facility and it's not logged in Waste Locate. So the idea is, over time, as you move more and more people into the system, it becomes easier to conduct the enforcement because you're looking for exceptions. We have already issued some fines to operators who have not properly used the system. I.e., they may be registered but didn't log particular loads.

All right. They're all the questions I have for you, Mr McElwain.---Thank you.

40 ASSISTANT COMMISSIONER: Any of the representatives want to ask any questions of Mr McElwain?

MR PATTERSON: Commissioner, I have some brief questions.

ASSISTANT COMMISSIONER: Yes.

MR PATTERSON: Mr McElwain, early in the evidence you gave this morning you identified three sources of information about illegal activities

they being your own investigations or EPA's investigations. EPA Line, online, I think that's the term you used?---Environmental Line, yes.

Environmental Line and whistle blowers. Would you agree with me that a fourth source of information would be RIDS?---Yes. It's a more informal source but they certainly provide us with intelligence and sometimes they'll use Environmental Line itself to refer matters to us. And sometimes there's an informal exchange of information.

- 10 And would RIDS online also be used for that purpose?---Well as I've said, Rid online is not an investigative referral tool so it's for – originally it was for use by the RID Squads. It's since expanded and it's the - the creation and its purpose is to allow RID Squads and public land managers and others to keep track of their own matters.

And are you able to say when RID online actually came online?---I don't know when it was created originally but that information should be available.

- 20 You were taken to volume 20, page 106 which was a photograph of what was described as an example of waste?---I remember.

And you said that you couldn't tell from the photo whether or not it contained asbestos?---That's right.

- 30 Are you able to say from your own knowledge what training or education is given to RIDS officers in relation to identification of asbestos?---I don't know what training is given to RID officers. I know the EPA conducts training for Council officers and RID Squad officers. I have presented at, at least one of those training days from memory although my focus is on the use of statutory powers and investigative powers and the conduct of investigation so I don't know what training has been provided to RID Squads about asbestos.

Thank you. And you spoke of clusters of inactivity. I think being identified through Waste Locate, is that correct?---I don't, I'm not sure if that was my evidence. I think - - -

- 40 In relation to matters that had been referred to Local Councils?---Well Waste Locate is not used to identify inactivity by Local Councils.

Pardon me. Sorry, go on?---So I think Counsel Assisting was taking me to the CIRAM system and how matters were referred to Council and then I was explaining how we may become aware of some particular event that is continuing to be reported through Environment Line that has been reported to Council.

And that might cause you to ask the question, what are you doing - - -?---  
Correct.

- - - I think were your words?---Yes.

Are you aware of any such inquiries concerning matters investigated by Mr Izzard?---Me personally, no.

10 Thank you. Thank you.

ASSISTANT COMMISSIONER: Yes. Yes.

MR FRASER: If I might. Thank you, Commissioner. Mr McElwain, I think you said that the RID Squads, particularly the Western Sydney RID Squad is funded equally by the EPA and the Local Councils involved, roughly?---I didn't say that but that was in the opening address and it's correct.

20 And you were described, I think in the opening address as a silent partner in that exercise. Do you accept that as a proper description of the role of the EPA in the RID Squads?---Well the EPA provides the funding and it has a representative on the supervisory committee, I don't know what the correct name is. So that's perhaps more than, slightly more than being a silent partner. But that's – and there's – as I understand it through the agreement between the EPA and RID Squads. There's a report back process where information is provided from the RID Squads to the management committee about the expenditure of budget, the number of matters that have been referred to the RID Squad, overall what have they done, you know how  
30 many off the, whatever it is and I'm just picking numbers, 2,000 matters that have been notified to the RID Squad, 1800 were investigated, 400 fines were issued, clean up notices, that kind of data comes back to the EPA for as I understand it, to demonstrate that there's value for the money that's provided.

Can I summarise a short answer to that to be not completely a silent partner?---Not, not totally silent but it doesn't – the EPA doesn't have any particular say supervisory role over any particular regulatory action that the RID squads are taking. So if a RID squad is doing an investigation of one  
40 particular site or another the EPA does not sit in an oversight role in relation to that.

Right. Now, the EPA is the primary environmental regulator in New South Wales. Its purpose is it not is to improve environmental performance in waste management for New South Wales and work hard to achieve this through a wide variety of programs and initiatives?---It sounds like you're quoting from something but, yes.

And does not the EPA also assist local Council and state Government agencies in fulfilling their regulatory responsibilities under the POEO Act through capacity building efforts such as joint inspections, campaigns and training where possible?---Yes.

10 They're stated objects in fact of the RIDS scheme in the New South Wales Illegal Dumping Strategy. That's from where you recognise the words, Mr McElwain.---Well, it sounded like you were reading it. I don't know that that's from any particular document but the – what you say is true.

The EPA is the initiating authority, it is a leading authority in a trickle-down effect in New South Wales for regulating amongst other things waste dumping.---It is the primary environmental regulator and it does have a role to build capacity and train other agencies but it is also a very clear goal of the POEO Act given the earlier – or the history of the legislation prior to POEO and how that was administered and enforced, that Councils are co-regulators.

20 Right. Now, can I take you to paragraph 39 of your statement where you say, “As far as I am aware”, and then you make some statements.---Yeah.

Can I just deal with, deal with the precursor “as far as I am aware”. Am I right that when you say those words you mean this is your general understanding or belief based upon actual knowledge and observations of yourself plus attitudes and conduct of officers of the EPA that you've observed over time?---Correct.

30 Right. All right. Now, you then state as you've already said today, “The EPA does not have or perform any oversight function in relation to any particular regulatory actions or activities undertaken by RIDS.”---Are you asking me if I state it or are you asking me if it's true?

I'm just drawing your attention to that particular statement. I presume you think it's true because it's in your statement.---Yes.

40 Now when you say it does not have as opposed to does not perform, let's just focus on the point that it does not have for a moment, do you mean by that it places no statutory obligations?---Correct.

Or no other obligations created by an agreement or arrangement?---As far as I'm aware yes.

And when you say does not perform do you mean by that as far as you're aware the EPA does not perform, that is in fact does not participate in, in practice?---That's right.

All right. Now you're aware that there's a corporation agreement that's been signed jointly by the RIDS councils for Western Sydney and the EPA?---I'm aware that that document exists.

Right. It's in volume 2 of the tender bundle. Now firstly in respect of that the, the parties at page 3 are firstly the Director General of the Department of Environment Climate Change and Water New South Wales. And I draw your attention Mr McElwain that this is a 2009 agreement and is it not the case that - - -

10

MR MACK: Sorry, can I assist, there's a more updated copy of the agreement in the tender bundle which might be more instructive. It's at volume 20, page 351.

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MR FRASER: Oh, I haven't seen that particular volume in full yet. For my purposes it won't matter exactly what date this is, Mr McElwain, is it not the case that in February 2012 the New South Wales government re-established the EPA as an independent statutory authority before this the EPA was part of the Office of Environment and Heritage, EOH within the Department of Premier and Cabinet?---Yes. So the EPA, well strictly speaking since 1 March, 1992 the EPA has always existed as a statutory authority representing the Crown under the protection of the Environment Administration Act. However, after about 2003 it was merged with other government agencies and the names of the agencies have changed over the years and then I think on 29 February, 2012 the EPA became an independent statutory authority with its own staff again, although all the administrative functions are carried out by the office, including legal representation are carried out by the Office of Environment and Heritage. Prior to 29 February, 2012 I think you said we were part of the Office of Environment and Heritage and I think that's correct. It's in the administrative orders but I think that's right.

30

I'm getting to the point of (not transcribable) to agree with a proposition that this agreement, the 2009 agreement, (not transcribable) agreement is in the name of the Director General because the EPA fell within the umbrella of the Director General back then?---Yes.

40

So the Director General of DECCW and Department of Environment and Climate Change and Water was also the Director General of the EPA is my understanding. And today given the independence, as an independent statutory body these agreements might (not transcribable) by the EPA directly under its own name I presume?---Correct by the Chair or the Chair's delegate.

So we can treat this operation agreement as being, when it refers to the Director General it's effectively referring to the EPA?---Yes. I don't know if this is the current agreement but, yes.

All right. Now at page 4, I don't know what page it is in volume 20, but page 4 of the agreement itself, just sticking with volume 2, page 4 for the time being, under the heading Background, Recycle F states DECC wishes to assist the implementation of the project by contributing financially to the cost of the operations and by participating as a member of the management committee?---I see that.

10 Now, that puts a bit more flesh onto the question of how solid the partnership was. Participating on the management committee is more than just a silent partnership is it not, Mr McElwain?

MR RUSHTON: Well, I object if I can.

ASSISTANT COMMISSIONER: Yes.

20 MR RUSHTON: The agreement is going to speak for itself. It's not even clear whether this witness has seen the agreement and to talk about putting more meat on a particular proposition in my respectful submission is not helpful. If submissions want to be made in relation to the document at some point they can be made but the witness is not the person to ask in my respectful submission.

ASSISTANT COMMISSIONER: Yes, I'll allow the question.

MR RUSHTON: May it please.

THE WITNESS: Sorry, Mr Fraser, can you repeat the question.

30 MR FRASER: I'll just rephrase it, not recalling the exact words I used, Mr McElwain, but I was getting at the point that by participating as a member of the management committee there is actually an active role of the EPA in the RID Squad?---Oh, well, I think consistent with my earlier evidence when I agreed with you that perhaps it's – the EPA's role is more than silent partner, so the – it's not an active role in the RID Squad. It has a role in the – I can see from the document it has a role in the management committee so EPA officers unless there's a joint investigation don't do RID Squad investigations, they don't make decisions for the RID Squads, they don't – as I've said, they don't supervise the RID Squads but there is this role that you've referred to in paragraph (f).

40

All right. So insofar as you said previously the EPA does not perform as part of the RID Squad, it does perform to the extent you've just said on the management committee?---It has a representative on the management committee, yes.

Going to recital (f) again, the EPA is contributing financially to the cost of operations, and then if I take you to page 6 you will see operations defined at the bottom of the page there alphabetically. Operations means all

activities, transactions and work carried out in connection with the conduct of the project by the strategic alliance as outlined in the operations program. And then operations program is defined at the top of the next page. Do you see those things, Mr McElwain?---I see the definition of operations.

All right.---And I see a definition of operations program.

All right. And then you will see the operations program as part of its definition is as approved by the management committee.---I see that.

10

Now, are you aware of any operations program that's been prepared and approved by the management committee including the EPA?---No, I've never seen one.

If there was one would have you seen it prior to today?---Not necessarily, no.

All right. Where would one search in the EPA to find that operations program?---That would be held by the illegal dumping team.

20

All right. Now, at page 11 there's a section dealing with the management committee. 6.2, each party is entitled to appoint to the management committee one representative as a voting member. I think you mentioned the position in the EPA which was to perform that role earlier, did you not? ---I did.

And what – just remind me, what was the position?---So it's usually held by an officer in the illegal dumping team.

30

So an officer who – in your illegal dumping team. Okay.---Sorry. So when I mean illegal dumping then that's as a specific meaning. There is team inside the waste branch called the illegal dumping team. It's not part of the Sydney Waste Compliance.

All right. Thank you. 6.9 sets out the functions of the management committee and at 6.14 the particular role of the management committee is to do various things including make policy decisions relating to the operation of the project to guide the employees and administrator, approve operations program which you mentioned a moment ago. (e) monitor the implementation of the operations program and (g) review the services specification administrator and approve changes to services, et cetera.---I see that.

40

So far as you're aware has the EPA actively been involved in any of that decision making process for the Western RID squad?---Not from my direct knowledge, but I would – to directly answer that I would have to make some assumptions about what particular officers have done. But I am aware that

there is an officer who sat on the various management committees for the RID squads including the Western Sydney RID Squad.

And is that a witness for, being brought forward today so far as – in this inquiry so far as you're aware?---Not that I'm aware of.

10 All right. So who's the person who had that knowledge?---There'd be one of – in the past it would have been an officer called Roberta Beale, who was the team leader up until some months ago. The new team leader is a person called Danielle Playford and the person who, he's their delegate is an officer called Renee Fairhurst.

ASSISTANT COMMISSIONER: How many people are on the management committee? Do you know?---I don't know the answer to that but I assume it's one person from each council plus the EPA, perhaps including the supervisor for each RID squad.

Yes, thank you.

20 MR FRASER: Can I take you to the EPA's New South Wales Illegal Dumping Strategy 2014-2016 in volume 20 at page 199? This is a document I presume you are very familiar with, Mr McElwain?---Yes.

I draw your attention to the numbered page, page 203, page 1 of the strategy itself, the numbered page 1, the third, fourth paragraph under the heading 1.1, Integrated Approach, the New South Wales EPA is charged with leading the work to deliver the strategy, coordinating efforts with any stakeholders holders working to combat illegal dumping and managing the funding for that work?---I see that.

30 That – what one might call an objective I suggest hasn't been achieved having regard to the obligations under the Cooperation Agreement that the EPA has with the Western Sydney RIDS?

MR RUSHTON: I object.

ASSISTANT COMMISSIONER: Yes.

40 MR RUSHTON: In my respectful submission that question is meaningless until the obligation is identified by my learned friend, what obligation is he talking about of the agreement?

ASSISTANT COMMISSIONER: Yes, perhaps you can clarify it Mr Fraser.

MR FRASER: Mr Commissioner, I've taken the witness to as obligations already to participate the immediate – the obligation in the way that (not transcribable) is to make policy decisions relating to the operation of the

project, to guide employees and administrator, approve the operations programme, more to the implantation of the operations programme and other things. So that's, that's the role of the management committee. On the management committee is a 50 percent military stakeholder and the stakeholder who says that they are leading the charge, charged with (not transcribable) work to lead a strategy coordinated efforts to many stakeholders are working to combat illegal dumping and managing the funding for that work. And what I am suggesting to this witness and will do to other witnesses is that there's been a bit of a break down in the  
10 management of the Western Regional, Regional Illegal Dumping Squad. It might be warranting some recommendations from you, Commissioner.

MR MACK: Commissioner, might I assist. I'm not sure if my friend has seen volume 20. I'm concerned that volume 20 contains the updated language, the updated parties. It also includes a statement from Ms Playford who was recently mentioned by the witness. Perhaps if, I note the time being 1 o'clock now. If that was material was provided over lunch and perhaps those questions can be confined and have a bit more meaning if we come back after the lunch and we can - - -

20

ASSISTANT COMMISSIONER: Yes. Well it is 1 o'clock. Mr Fraser, that will made available to you over lunch.

MR FRASER: I've got it here now, I just haven't had a chance to get to it, your Honour, Commissioner.

ASSISTANT COMMISSIONER: Oh, O.K. All right. Well we resume at 2.00. Thank you, Mr McElwain.

30

**LUNCHEON ADJOURNMENT**

**[1.01pm]**