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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE REGINALD BLANCH AM QC

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

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AT 2.00PM

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ASSISTANT COMMISSIONER: You're still on the same oath, Mr McElwain, to tell the truth. Yes, Mr Fraser.

10 MR FRASER: Mr Commissioner, may I just address one matter for your attention for clarification. You might recall that Counsel Assisting drew my attention to the 2015 co-operation agreement in volume 20 at page 351 and I was cross – I was asking questions of Mr McElwain about a 2009 agreement at page 1 of volume 2. What I wanted to draw to your attention was that the agreement of 2015 is unsigned whereas the one at 2009 is signed but redacted and whilst I've got no evidence of this to put to you I'm instructed that so far as Penrith Council is aware the 2015 agreement has never been completely executed by all the parties and brought into operation in that way. So whilst it was proposed it hasn't been completed as yet is what we understand to be the situation. So that explains why I'm drawing – why I'm focusing on the 2009 agreement. Even if there's a change, and there are some small changes between the two which might be material in terms of the questions I've asked Mr McElwain, nonetheless the overall matters I'm seeking to raise to assist you with your obligations arise anyway so it's just a way to get to an end in a way.

ASSISTANT COMMISSIONER: Yes.

MR FRASER: So I hope that's of help in understanding why I'm doing what I'm doing.

30 ASSISTANT COMMISSIONER: Yes. Okay. Well, we'll note that and perhaps that can be clarified at some stage during the course of the inquiry. Now, have you got any further questions to ask the witness?

MR FRASER: Yes, if you don't, Mr Commissioner. Yes, thank you. Mr McElwain, at paragraphs 42 and following of your statement, at page – you will see that you set out what you describe starting in paragraph 42 to be a number of decision-making, safety and anticorruption controls that are in place - - .---Yes.

40 - - - within the EPA and you describe those. Now, in terms of safety, is the safety factor, you're referring in particular perhaps to the fact that two officers are required to investigate matters by the EPA?---That's part of our WHS system to ensure the safety of officers both in the office and in the field and one of the rules within the Waste Compliance teams, so it's not necessarily a rule that applies to other EPA officers is that generally speaking all inspections require that two officers be present and that's in part a safety step and in part an anticorruption step.

The latter for obvious reasons there's two persons present therefore opportunity to act individually is less available?---Yes.

All right. Now, all these matters you've described in paragraphs 42-44 weren't practices of the Western Regional Illegal Dumping Squad so far as you're aware?---I can't really comment on that.

10 All right. Accept for a moment that that is the case. Is there a material difference between what's being investigated by RIDS, the RID Squads and those things being investigate by the EPA through its officers that would justify there being a difference in terms of the approach taken to decision-making, safety and anticorruption?---Well, I'm just, I'm just expressing my own view. There is a difference in scale necessarily because of - - -

Statutory controls?---Correct. The allocation of responsibilities under the POEO Act but they've both groups of officers who are dealing with illegal waste dumping which will present similar risks to safety and of corruption.

20 Would it be your view that there ought to be one set of guidelines or, or practices applicable to all investigating authorities dealing with this problem of illegal dumping?---Not necessarily. I can see circumstances where you're going to need agency or event particular rules and indeed they do exist. So from a safety point of view my understanding and the way I've overseen the implementation of safety rules inside the Waste Compliance branch is that they are always agency, team and site specific so you need to tailor the safety rules to address each particular kind of risk either on a general basis or on a site-specific basis. You could have I guess some overarching principles in relation to – and I'll give you some examples shortly. In relation to anticorruption measures the EPA and indeed the
30 Waste team has been keenly aware of the risks of corruption arising out of an earlier report of the Independent Commission Against Corruption entitled "Taking the whiff out of waste," which occurred I think in the late '90s and related to circumstances where there was an EPA officer who was found to be corrupt not least because of the involvement of businesses in the waste industry. So from the very beginning of my career in 2006 we have taken steps to prevent those risks as much as possible. However, there are regulatory agencies that have to deal with amongst other things illegal dumping and that's like National Parks and some Councils with limited resources and very big areas to cover so Western New South Wales and
40 those on the South Coast amongst others where it's not possible always to say send two officers to investigate a matter because we just do not have the resources. So we in the EPA are in the lucky position of being able to require that. It may – I don't know in relation to the RID Squads whether that would be a workable solution because the obvious consequence of requiring two officers to go in the field for every matter is you are going to lower the amount of jobs you're going to be able to deal with. So maybe there's a trade off at some point that needs to be made in relation to that.

Now in terms of matters being reported to RIDS there's a telephone number which is publicised on the Web site 1-3-1-5-5-5?---Yes.

Which I presume you recognise?---I do.

10 And that's the number which if you go to the Web site for RIDS that is the Regional Employment, Regional Illegal Dumping Squads for all of the Squads which are now in existence. There's one central number and that goes through the EPA?---Its Environment Line and that is operated by the Office of Environment and Heritage but that is the system that I've described earlier today with the phone number coming – the phone call coming in, it being recorded by the call officer, the information being put in CIRAM and so on.

20 And tagging it, report illegal dumping which has it the same, first letter of each word is the RIDS Teams themselves, but report illegal dumping is a clever branding by the EPA which they own the branding of that particular collection of words, is that - - -?---I don't know the answer to that whether they do or they don't on the branding.

30 O.K. Now nonetheless there's this central gathering of complaints about illegal dumping through this number. What I'm leading to is asking you a next general question in terms of recommendations and changes that might be contemplated. Would it be preferable to have a central recording aid, recording of all these complaints so that as soon as the complaint is lodged it's recorded, the property's recorded and that way things could be traced more fully through a single system. Is this, is this something worth contemplating in your view?---I think when you say through a single system are you distinguishing that from the situation now?

30 Yes. Where in the case of at the time that is under inquiry the Western Regional Illegal Dumping Squad had one officer appointed for any one council area at a time and they operated alone within those council areas and indeed took phone calls direct to them from time to time as I understand the evidence I've read. That's what I'm contrasting it to?

40 ---Right. Well if the suggestion is that the only way information could come into a RID squad to allow it to act was through Environment line and not through some direct report either from a member of the community or from the member councils that wouldn't make sense to me.

40 I can understand why you might say that. I'm more getting at the idea of that whatever method something becomes reported it immediately goes into some central register and controlling mechanism so that whether it's investigated by one body or another it's been centrally recorded and is known to all?---I'm still, I have to think about that. I'm not sure, so there's like one illegal dumping report in database or of all agencies in New South Wales. If that's the suggestion and I'm happy for you to correct me if I'm wrong, I'm not sure that would be effective. I'd have to think more about it,

because remember there are a wide range of agencies dealing with a wide range of issues and people often report because the community although they may see government or even state government and councils as one great big thing, they report it in all sorts of different ways. They'll report material on the M4 to the Road Authority, they'll report material on parks to the council, they'll report material on national parks to National Parks. Sometimes they'll report it to the EPA through Environment Line. You would need to create one state government wide database and as far as I'm aware that's, for illegal dumping, that's never been done. It's never been
10 done for any environmental issue, litter, water pollution, illegal dumping. The RID online process is expanding, but as I've said it's not a case management system. It's designed to generate intelligence, so I'm not sure it would especially be helpful to create a single database and you'd have the problem of having to, having to make sure that all the information is put into it. And I know from my own direct experience with CIRAM and RID online and other systems it's not, well it may not always be used if there's a direct report of some event from a member of the community to an officer. It should be inside the EPA, I don't know how it works in councils or in
20 RID squads.

You mentioned in your evidence before, before lunch that matters might be reported to a RID squad and make their way up to the EPA because of the nature of them and vice versa?---Yes.

Matters come into the EPA from other authorities and then put away into your system?---Yes, that's true.

What you've been describing are existing idiosyncrasies of the system are they not? This problem of, you know, a report from a citizen finding its
30 way to the correct authority eventually will occur always?---Yes, it's a standard issue.

What I'm talking about is subject to it being redirected when it hits the appropriate authority that there should be a central recording of the, of the same kind of issue particularly illegal dumping if we're going to tackle this in a, in a consistent way to get a better outcome?---Well there could be a standard set of questions to ask anybody reporting illegal dumping so as you're eliciting a kind of standard information about a particular event and to the extent that the information is available that could be provided in a
40 standard format. Often people don't know, they're not good at estimating what it is or how much it is or tell you precisely where it is, but those questions can and should be asked. It could be a standard for asking those questions and trying to elicit that information and if it's provided it certainly would go into CIRAM in the EPA's case.

An alternative way of structuring things quite apart from a computer recording and CIRAM and the various (not transcribable) machines you have, would it be worth considering and maybe those various bodies

interested to look at the prospect of having one authority that then directs matters to the appropriate other authority if that's what needs to be done, again for record, records, consistency and approach to investigation and the like. That is in paragraphs 42 and following of your statement?---Well the matters in, thank you, the matters in 42 and so in 43 and a little bit in 44 are waste compliances internal processes with the exception of the way the EPA wide PALMS system works, it could, any other agency or council or the RID squads could adopt them as they thought were appropriate subject to what I said about say resources. That, that to me is different from the, so
10 these are, these are safety in corruption prevention systems, that's different from the system to manage incoming information and intelligence and reports or events, which is the CIRAM system. There could, there could be, as I say, it's possible, it's never been done and you're suggesting if there's one agency to have oversight of allocation I would have to think about that.

But there'd be other agencies who might wish to have input into – if it was to be done, how it be done?---Oh, of course.

It's not something that you and I can resolve here in a quick chat - - -?
20 ---Correct.

- - - quite frankly. Now, but importantly in the context of what's under inquiry what didn't happen was the EPA didn't go to the management meetings and suggest to, to the Western RIDS they adopt some of these practices. That never occurred.

MR RUSHTON: Well can I object to that? It hasn't been established that this witness would have any knowledge of that. He's not a member of the management committee.
30

ASSISTANT COMMISSIONER: Yes, I think that's fair enough. Do you have any knowledge of it?---I, I couldn't answer that question. I don't know what's happened at the meetings.

MR FRASER: For present purposes assume that that hasn't occurred. It's that fact which prompts the earlier questions as to whether a single system of approach and management where there's actually real – whether – put aside where there is the EPA's obligation to have some management control of this particular one. We can argue about that if we need to. The
40 documents speak for themselves as it's been said. Put that aside. In this case there's been some kind of a break down in terms of that process insofar as these matters that you've drawn attention to as being best practice haven't been implemented by this RIDS and you just – you've said they could have adopted this practice but nothing has prompted them to do that. That's the issue that I'm raising with you?

MR MACK: I'm sorry, Commissioner. Perhaps if you distil that a little bit further. I'm unsure what the question is for the witness.

ASSISTANT COMMISSIONER: No, I'm not sure what it is either. Mr Fraser, perhaps you could think about it and put it in a phrase that everybody can understand.

MR FRASER: Thank you, Commissioner. I'm just, I'm just going – having drawn your attention to those matters, I'm going back to just this, this concept of perhaps a single authority with a single set of investigation rules as being something that in your opinion is worth considering?

10 ASSISTANT COMMISSIONER: We've been over that, haven't we? I think we've covered that ground.

MR MACK: And these might possibly be a matter for submissions at the end of inquiry as well?

ASSISTANT COMMISSIONER: Yes. And that's the other issue. Yes, I think he's answered that question, Mr Fraser.

20 MR FRASER: Yes, I accept that, Commissioner. Unless it was going to assist you to go into more detail in all of that and I suspect not, I wouldn't want to ask any more questions about that area.

ASSISTANT COMMISSIONER: All right, thank you. Do you have any other questions?

MR FRASER: No, thank you.

30 ASSISTANT COMMISSIONER: Thank you. Mr Rushton, do you have questions?

MR RUSHTON: I do. Mr McElwain, I want to ask you some questions concerning some matters raised with you by Mr Fraser on behalf of Penrith City Council?---Yes.

He drew your attention to the fact that the EPA is a member of the management committee, do you recall that?---Yes.

40 And it's the case is it not that it is just one of eight members of that management committee?---That's my understanding in relation to that RID Squad.

Yes. And the others being the participating Councils who have appointees to that particular management committee?---So I think all of the Councils are represented and there may be and I'm not sure but it will be spelt out in the relevant document. There may also be a like a supervisory officer.

All right. I was going to draw that to your attention to you. Are you aware that the Chairperson of the management committee is a senior employee of

Penrith City Council? If you're not - - -?---I don't know whether that's the case or not.

All right. Are you aware that each member of the management committee have one vote only?---That would be I guess determined by the documents but it seems plain.

10 All right. Can I draw your attention again and invite you to read a particular part of the 2009 agreement which Mr Fraser on behalf of Penrith City Council drew your attention. And this is page 4 of the document. It's in volume 2, page 4 of the Corporation Agreement. And he drew your attention amongst other things to Recycle F, do you see that?---Yes, I remember that.

20 DECC, which is 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. Now I wish to draw to your attention some matters that Mr Fraser on behalf of Penrith City Council didn't bring to your attention. Are you aware that the agreement is administered by an administrator?---That's my understanding.

And are you aware that pursuant to that agreement the administrator is charged with the management of the operations?---I can't say that I know that that's the role but I presume it's spelt out in the documents somewhere.

30 Well perhaps I can just draw your attention to it. Might the witness be shown clause 7.8 page 14. "Unless the parties otherwise agree in writing, the obligation activities and authority of the administrator pursuant to this agreement will be limited to the management of the operations and the Western Sydney Regional Illegal Dumping Squad in accordance with the service specification"?---I see that.

Yeah. And are you aware that the administrator who has those obligations, that is management of the operations and management of the Western Sydney Regional Illegal Dumping Squad, is in fact Mr Fraser's client Penrith City Council?---I don't know, I don't know that from my own knowledge.

40 Well, I'll just draw your attention if I may to the definition of administrator on page 5 of the agreement.---I see that definition, yes.

Thank you. Now, Mr Fraser on behalf of Penrith City Council put to you that the EPA was the initiating authority and the primary environmental regulator and you responded by saying that Councils are co-regulators. Do you recall that?---I do remember saying that.

And in describing Council in such a way was that a reference by you to the fact that Council have regulatory obligations under the POEO Act because

they are approved regulatory authorities?---Yes. They're – so they are the other primary appropriate regulatory authority or ARA under the POEO Act.

Thank you.---That's the specific way that the POEO Act is designed to operate.

Now, you've been working for the EPA I think since May, 1995.---That's correct.

10

And that was of course prior to the POEO Act of 1997.---Yes. So the POEO Act passed through Parliament in late 1997 and came into force and effect on 1 July, 1999.

And prior to that there were various pieces of legislation that governed environmental regulation in this state. Do you agree?---Yes. The Clean Waters Act, the Clean Air Act, the Noise Control Act, the State Pollution Control Act, the Environmental Offences and Penalty Act and the Waste Minimisation and Management Act.

20

Thank you. Now, as you understand it, what were the matters which drove Parliament to create in the new legislation this concept of an appropriate regulatory authority and in answering that question would you do so by reference to local Councils?

MR MACK: I'm just not sure whether or not this can give meaningful evidence about the intention of a Parliament 20 years ago.

MR RUSHTON: Well - - -.---I was one of the two solicitors for the EPA team that developed the POEO Act.

30

ASSISTANT COMMISSIONER: Okay.

MR MACK: I withdraw my objection.

40

MR RUSHTON: Might have an idea.---So I was on the team from the commencement of my career in 1995 until the Act went through Parliament in late '97. So it is an Act of Parliament but I helped develop the policy behind the Act and the problem that the concept of ARA is designed to fix is that under the previous legislation, under the Clean Air Act and the Clean Waters Act and the Noise Control Act, et cetera, the EPA had – there was a list of activities that were licensed by the EPA for any particular medium, air, noise, water waste, and Councils were given powers in relation to all other activities but often and it was written into the legislation if Councils didn't take action the EPA could and that was a structural legislative failure which meant that Councils could refuse to take action or not take action which meant that the matter then fell to the EPA for regulatory response and also there was an additional problem which meant that perhaps a site was

licensed for its air pollution emissions but regulated by Council in relation to the other media and that meant that you had two umpires dealing with one site at the same time using different pieces of legislation. So to address those two problems the idea is under POEO there's one list of activities, it's in the schedule, and it should be either EPA or generally speaking local Council and the whole purpose of giving those responsibilities to Council well, it's extremely plain. Councils have a charter under their local Government legislation to deal with environmental issues including the provision of waste management services and protection of the community and the local environment. They are given the regulatory powers to deal with it. They get some of the, so the breaches or their on-the-spot fines and the administrative fees from issuing statutory notices go to Councils to help defray their costs. That was a deliberate design from the POEO Act. And councils have the local connection with their community and the resources and plant and equipment – you can argue about the adequacy of that, but they have the charter, the plant and equipment and their connection with their community and so it's appropriate that they deal with the smaller more local matters and they're also, generally speaking, far closer to any particular event than the EPA officers. So there are I think 10 actual physical EPA officers across the state, Grafton, Coffs Harbour, Dubbo, Armidale, Griffith, Sydney, Newcastle, Wollongong, Queanbeyan, I can't remember them all but they're listed on the website, whereas of course there are or there were 152 local Councils. There are now, I don't know, 135 and so the idea is that for the smaller matters, i.e. the matters not listed on schedule 1, it's best and appropriate that Councils deal with those issues so for those reasons that is why we created the PEOE structure.

Thank you. Now you were asked some questions about anti-corruption measures and I think safety procedures. Do you provide instruction from the two members of your Waste Compliance Team from time to time in relation to the recording of communications?---Yes. So there's been - - -

What are those instructions?---It's been my standing rule when I first arrived in Waste, I was a team leader and then I think in 2009 or so I became the manager of what was then Waste Operations, which is essentially the same job as mine. I think from 2010 until 2013 I managed a larger section of the Waste team so it was the Compliance, all of the Compliance staff, so Sydney based and regionally based plus all of the strategy and innovation team about 60 or 70 officers. And it was, and it has been my standing rule that all advice needs to be in writing so you can have a telephone conversation or you can have a conversation in the field, but if there's some position that needs to be stated it needs to be in writing precisely to avoid the circumstance where there's an allegation that Joe Blogs told me when they were at, I don't know, Kemps Creek that this was okay. So precisely to avoid that problem and unless specifically authorised, those communications need to go through a team leader. So officers can communicate by email but it needs to be approved by another officer or myself.

Thank you. Thank you, Commissioner.

ASSISTANT COMMISSIONER: Are there any other questions of the witness? Yes. Sorry, could you, when you stand up to ask questions for the sake of the record could you announce who you are and who you appear for so that it appears on the transcript.

MS JONES: Ms Jones, I appear for Ms Chalk. Mr McElwain - - -

10 ASSISTANT COMMISSIONER: It's a bit hard to hear.

MS JONES: I beg your pardon, Commissioner. Mr McElwain, it's been established through your answers to previous questions that you were not a member of the management committee nor did you attend management committee meetings?---That's right, that's right.

been presented at those meetings. I may have seen documents presented at the meetings in other contexts but not in the context of the meetings.

20 In view of that, would you agree that you were not aware of the documents which were presented at management committee meetings?---Yes. I agree that I'm not aware of documents that may or may not have been presented at those meetings. I may have seen documents presented at the meetings in other contexts but not in the context of the meetings.

Would you agree, then, that if an operations program was tabled or presented at a management committee meeting, you would not be aware of that?---That's correct.

30 Thank you. No further questions.

ASSISTANT COMMISSIONER: Yes, thank you. Any other questions? Anything arising? Well, just before you do, Mr Mack, remember I asked you about the actual prosecution of cases before courts, and you outlined a rigorous examination of whether that should happen. And as I understand one of your answers later, after that rigorous process that you outlined it's then sent to the solicitor, but the solicitor who's going to do it is not in the EPA, the solicitor is somewhere else?---Correct.

40 Is that whole process a disincentive to taking action before the courts? ---Any investigation with a view to either civil enforcement or criminal proceedings takes a lot of resources. It's a major investigation to establish the elements of the offences beyond reasonable doubt. And the EPA won't take proceedings unless it receives advice from the solicitors that it has good prospects for success. But the initial process of preparing a breach report and sending it up to legal branch and having a case solicitor allocate it does require additional time and resources. In my view, that's appropriate because we are not a regulatory agency like the police, which has a different

way of collecting evidence and referring the matter to the DPP, nor do we have the resources that are allocated to the police force. So we need to establish our credibility as a regulator by being able to say, generally speaking, if we commence criminal proceedings we are very confident that there will be a conviction, and that's borne out by the results. In my experience, over 20 years, we are probably successful 18 or 19 times out of 20. But it does mean that extra resources are going to always be required if you're going to run a criminal prosecution or obtain an injunction. And you need to carefully consider that when you're deciding what the regulatory
10 action is. And often you'll have a list of matters and you'll look at the matters towards the bottom of the list and think, well, it's possible that we can run that prosecution but it might be appropriate to issue, say, a few breaches and get the matter cleaned up, because you've got other more important matters that you need to address.

So the answer to my question is yes?---Short answer is yes.

Yes, Mr Mack.

20 MR MACK: Just in relation to that decision to prosecute, when you say it goes to a solicitor and you receive advice, are you referring to a body established under the Protection of the Environment Administration Act? The Administration Act, I'm talking about.---No.

No. All right.---So, in the Protection of the Environment Administration Act, there's a special procedure set out for the most serious offences, the tier one offences.

30 Yes.---And they cannot be commenced unless two things exist. One, advice from environmental counsel, which is a statutory position. So members of the bar are appointed to that position. I think by the Minister, but I can't remember exactly. And then the brief of evidence must be supplied to environmental counsel. They must prepare advice. That advice must go to the EPA board, and the board alone decides on whether or not tier one proceedings are commenced, not the chair. But for all other matters it's the arrangement. Because at the moment the solicitors are in the Office of Environment and Heritage, but prior to that, so prior to 2003, the EPA had its own legal branch. And indeed I was a part of that branch. But once the agencies were merged in 2003 and then de-merged in 2012, the solicitors
40 actually stand outside the EPA and so the brief of evidence goes to them, they make a recommendation, and that recommendation comes to the chair or the chief environmental regulator. And it's that person who decides whether or not to commence proceedings.

So the process you described to the Commissioner beforehand, that was in relation to tier three offences only? Is that accurate?---No. So tier ones have a special process that I've just outlined, with environmental counsel on the board. Tier two matters, which are all the strict liability matters and

include section 143 and 144 and water pollution and licence breach and land pollution, et cetera, they all are in the process that I've described.

Okay.---Where there's a breach report, solicitors, a recommendation, and a decision. Tier three matters are where a breach is issued, which are where an on-the-spot fine can be issued. The way that works is that there's a discussion. So that decision is never made in the field. The officer comes back, or the officers come back. They make a report to the team leader. The team leader will discuss it with the officers about what's the best regulatory response. Often that discussion will involve me. A briefing is prepared. It's authorised by the team leader. The fine is then issued.

Okay. Understood. There's just three other things that I wanted to cover off. You'll recall being asked some questions by Mr Izzard's legal representative in relation to training, and training in relation to asbestos, and you couldn't provide an answer in relation to asbestos training for the Western Sydney RID Squad. I want to ask you about training in relation to asbestos for people within your unit. What type of training is there in relation to the identification of asbestos? And then, once identified, procedures for their own health and safety?---All right. There's a few steps. So on a semi-regular basis, over the 10 years that I've been in the waste team, we have arranged training to be provided initially by officers from what was then WorkSafe NSW. Sorry, WorkCover NSW, now SafeWork NSW. So the primary work health and safety agency in New South Wales had officers who came and trained us in asbestos identification and sampling procedures. And that's happened perhaps twice or three times. And then more recently we arranged for training because new officers come in and old officers leave, so the new officers need to be trained. More recently, and we can look it up but I can't remember what date it was, I think we had training from a private expert on those matters. And then more recently we've also had what we call our JSAs, which are job safety analysis, and they are a particular set of procedures for dealing with any risk.

Does the A in JSA stand for asbestos or - - -?---No, it's job safety analysis.

Okay, sorry?---So, so that's a document prepared for any particular job and that, by that means particular category of work, ie. driving, conducting inspections, being in the office, and in particular conducting inspections where there might be asbestos at the facility or at the illegal dump facility. And that has a list of the risks, how bad the risk is and the steps that need to be taken to either avoid or mitigate the risk. And that's a document prepared internally. They're all over the EPA but in relation to waste we have our own particular set. They were, they existed in the past, they've just been recently reviewed and they are prepared, they are signed off and they are distributed. Everybody gets told about them and then the team leaders and the officers are under an obligation to look at them or if new staff arrive review them together so as any particular work or job is safe. And then

there's a last step because we realised that there was a gap and that is some new people who come, new staff who start at the EPA may never have been in the field before and may never have encountered asbestos and so telling somebody this is how we be safe at a particular facility that has asbestos is not helpful if they don't know what it looks like. So we now have a two-page sheet, I can't remember the title of it but it's something like Asbestos for Starters and it has photographs, a description, links to other places to find out more information and information about how to work safely with it, ie. showing the officers where the JSA's are stored in the EPA computer database so as this can be handed to somebody who's newly arriving and they can be fully informed.

And that Asbestos for Starters document is your terminology. Are you confident that that would enable members in your team to raise the alarm in their own minds in relation to asbestos on site?---That in combination with the fact that officers always go in pairs.

Yes, right. Let's touch number 4, this question of systems and whether an overarching system would be beneficial. I don't want to read - but there's a statement in volume 20 which you wouldn't have seen and what I'm going to propose is at the end of your examination that you be stood down and not excused in case there's something you want to read and refer to in relation to what I'm putting to you. But there's a statement here from Ms Danielle Playford, volume 20, page 144. And at paragraph 24 of that statement it says "In addition to EPA, RIDS, Local Councils, public land managers and members of the public can report dumping incidents using the RID online reporting portal. Public reporting began in February, 2016"?---I see that, yes.

Did you know that before reading that part of her statement, sir?---I can't remember clearly if there were public reporting. So I know that other, that as it says there, EPA, RID, Councils and public land managers could report illegal dumping through the portal. Ah, no. I remember being shown the link, the link that allowed for public reporting. So, yeah, that was within my memory but I've forgotten about that.

But you certainly haven't seen any data in relation to how many incidents have been reported by the public - - -?---No.

- - - or RID online?---Not, not in RID online.

All right. And just finally. The statement by a Mr Peter Wood and that's at volume 20, starting around page 333, sorry, 328 it starts. And Mr Wood, you can take it from me is a development services manager for Penrith City Council. And his present role requires him to manage Councils, development assessment and certification process. Are you familiar with what somebody in his position would do?---In general, yes.

Well, at paragraph 5 it just fleshes that out a bit more. It says – he’s talking in relation to the waste management plans for development applications and it goes through what developers need in terms of their waste management before they’re approved for development and then what I want to draw to your attention is paragraph 39 of Mr Wood’s statement and this one is after him going through possible ways to improve compliance with the waste management programs. He says that he’s not familiar with the WasteLocate system for tracking contaminated waste. Does that come as a surprise to you that somebody in his position at Penrith City Council would be
10 unfamiliar with the WasteLocate program for tracking asbestos?--I’m not surprised because we haven’t targeted – well, I’m not aware of the outreach that happened in relation to the creation of the WasteLocate program but we have focused on the tyre retailers and the demolishers and transporters.

All right. And so is it fair to say that you focused on people who play by the game within a defined industry for rolling out your WasteLocate program?
--Well, not people who play by the game. So we’ve, we’ve tried to find as many operators as we could say in relation to demolition companies so I –
20 we ran an education campaign I think earlier this year and I signed a letter to 2,500 operators. So we are trying to bring everybody who we think may have some role – well, we’re trying to raise the awareness of anybody who may have some role in the transport of asbestos waste about the WasteLocate system and the obligations created by it.

All right. And if there was somebody that didn’t comply with the previous regime in relation to the licensing, what in your opinion would make them more likely to comply with the WasteLocate regime?--Well, the usual rule applies if – in the sense that people who aren’t complying with one set of rules are not necessarily inclined to comply with another set of rules.
30 However – and those, you know, are obviously targets for regulatory action. However, the advantage of the WasteLocate system is it’s far simpler for people to get into the system and register so the access burden is much lower and that’s lower for people who are regulated and lower for the EPA and over time the idea would be that you would be able to scoop up more and more people into the system partly by using the EPA licensed facilities which are required to have a weighbridge and required to report and to have an interest in maintaining their EPA licence and have an obligation to say if material has arrived and it should have been tracked it was not, and that can be reported to the EPA and the EPA can then go out to those operators and
40 say why aren’t you in the system. So the value of the system increases over time in way that has become apparent with the EPA’s online waste tracking system for the more what’s called track – unhelpfully, trackable waste. And now we have a complex matrix of particular waste types that we can interrogate the system about and say – so for example, there’s a particular chemical used by dry cleaners which is perchloroethylene. It’s a suspected human carcinogen and we can look to see that every dry cleaner in New South Wales is registered and also where are you sending your material.

Okay.---So that's the ultimate goal of those systems.

All right. I have no further questions.

ASSISTANT COMMISSIONER: Is there any reason that Mr McElwain can't be excused?

MR MACK: My only thinking was Commissioner that he - - -

10 MR RUSHTON: I wonder at this stage whether he could just be stood down and I say that because I've got access to a statement today that I need to get instructions on. I'm not suggesting for one moment that he should come back, I just wonder Commissioner at this point you just stand him down.

ASSISTANT COMMISSIONER: Yes, all right. Yes, it may be possible, we can't release you just yet. So thank you Mr McElwain, you can step down now?---Thank you.

20

<THE WITNESS STOOD DOWN

[3.00pm]

ASSISTANT COMMISSIONER: Yes.

MR MACK: The next witness I want to call is Mr Andrew Reece.

ASSISTANT COMMISSIONER: Certainly. Mr Reece, will you take an oath or an affirmation?

30

MR REECE: An oath.

ASSISTANT COMMISSIONER: Sorry?

MR REECE: Oath.

ASSISTANT COMMISSIONER: Thank you.

ASSISTANT COMMISSIONER: Thank you. Just take a seat there. You observed what's been happening previously. In the course of the proceedings it's always possible that you might say something that could lead to some civil or criminal liability. Would you like me to make an order protecting you against any such thing?---That would be appreciated.

10 All right. 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.

20 **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 ASSISTANT COMMISSIONER: Thank you. Yes, Mr Mack.

MR MACK: Mr Reece can you tell the Commission your current position, employed position?---My current position is with Penrith City Council as a Senior Development Compliance Officer.(Auditing).

All right. And have you sworn two statements in relation to this inquiry?
---Yes, I have.

40 And one's a 12 page – 23 page statement dated 19 July, 2016?---I believe so.

And the other is a 12 page statement dated 11 May, 2016?---I believe so.

All right. And can you tell the Commission what other positions you've recently held within Penrith City Council?---Yes. So prior to or during this position I acted as the Coordinator of the Western Sydney Regional Legal Dumping Squad for a short period, approximately 2 ½ months. And then

prior to that I was in my Western – Penrith Council Audit position and then prior to that a long term employee of the EPA.

And in your statement dated 19 July, 2016 were you employed then as Acting Coordinator of Western Sydney RID Squad?---Partially because of – which statement, the first one?

No, this is the second one, 19 July, 2016?---Yeah, so the second one I believe I'd just returned in my audit position.

10 Okay. All right. So how long were you employed as the Acting Coordinator of the Western Sydney - - -?---I think approximately 2 ½ months.

2 ½ months. All right. Can I get you to have a look at volume 1, page 70, and this is a position description albeit from 2010 for the Coordinator of the Western Sydney RID Squad and you'll see in the bottom right hand corner a reporting structure. Can you identify for the Commission where your role fitted into that structure?---Well it's as, as documented on the structure which is RID squad coordinator.

20

All right. So you reported to the Waste and Community Protection Manager. Is that - - -?---Yes. that's correct.

And who held that position at the time you were at - - -?---Tracy Chalk.

And do you know who held the position immediately prior to you?---Yeah, immediately prior to me was Craig Izzard.

30 Craig Izzard. Right. And prior to that do you know?---I believe it was, yeah, Craig Izzard and before that Barry Ryan.

Okay?---To the best of my knowledge.

Okay. And whilst you were in the role, did an administration officer report to you?---Yes.

And who was that?---That was Lorraine. I think her last name's Howard. Sorry, I'm a little nervous.

40 That's all right. There's no need to be nervous. And the senior investigative officer who was reporting to you at that time, who was that? ---That was Steve Gillis. However, his employment finished before I. He resigned.

And when you took over the role from Mr Izzard, were you provided with a set of policies and procedures to be followed in that role?---To a certain extent. A lot of the information was on the operations drive for the RID

Squad. So I did start reviewing a lot of those documents and standard operating procedures and so forth.

And those documents that you reviewed, were they documents created by investigators and senior investigators? Or were they documents created by coordinators?---I couldn't, couldn't say, sorry.

Was there a folder or a file available created by Mr Izzard whilst he was in the role?---Not that I'm aware of.

10

All right. I just want to explore with you the systems that were in place when you arrived as acting coordinator of the Western Sydney RID Squad. Could you describe to the Commission your understanding of RIDonline and the role that played within the Western Sydney RID Squad?--- Yeah, the RIDonline was the replacement for a database that was prior to RIDonline. And the way RIDonline was used by the RID Squad officers was not a case management system as such, but the number generated from RIDonline, if you found some waste or waste had been reported, your initial step was to enter the data and some photographs and some of the evidence into
20 RIDonline and it would generate you a number. You would then use that number to create a subfolder in the operations drive and all evidence, photos, letters, everything generated in relation to that were put in that subfolder allocated with that RIDonline number. So statistically we were able to track our jobs, the number of jobs that were done, by using RIDonline.

Right. And who showed you how to use RIDonline when you arrived?---I'd had some exposure of it at the EPA.

30

Okay.---And then it isn't utilised inside Council and it wasn't utilised at EPA such for the RIDonline purpose, but we went to days where they showed us what it was going to be like and tried to encourage a number of councils to get involved.

40

Okay. And when you arrived as acting coordinator, did you also exercise functions as an investigator?---Yes. To a certain extent. I made it very clear when they asked me to go into the role that I believed there needed to be a lot more emphasis in, you know, coordination and looking at a lot more of the work that was being done at the time, and also working with Tracy to try and identify what had caused the matters, what had caused - - -

What had caused?---These allegations.

All right.---So look at better governance.

Okay. And what were some of the shortcomings in governance that you identified?---Like, a patrolling coordinator, I thought, meant that there wasn't any coordination of staff.

Sorry, just to break it down a bit, was there a patrolling coordinator before you commenced?---Yes. So seven areas, seven officers. And one of those areas belonged to the coordinator.

So sorry, there was - - -?---So if you had seven areas and eight officers you would've had them a patrolling coordinator.

10 I understand. Okay. And in your opinion did you identify the role of the patrolling coordinator as being deficient when you arrived?---I come from the EPA model which was very much of you had a team leader that didn't go out in the field as such and reviewed everyone's work. That's a very different model to all the Councils that I've worked in. Well I've worked in two Councils previously. And that's a different type of model.

It's a different type of model at the Western Sydney RID, so, yes?---Yeah. And Local Councils.

20 And Local Councils. So you've worked in Local Councils and also Western Sydney RID Squad?---Yeah.

And you say that - - -?---And EPA.

And EPA?---Yeah.

And at the EPA they had a different governance procedure in contract to both the Local Councils and the Western Sydney?---Yes, that's correct, (not transcribable)

30 And if you were to contrast the governance that the Land Council to the governance at the Western Sydney RID Squad what – were there any differences between those two?---The work is very different so, and I've addressed it in my statement that there's a big difference between illegal dumping and illegal land fill.

40 All right?---In that illegal dumping is a matter that can quite easily be cleaned up and is quite effectively and efficiently cleaned up by RID Squad officers, has a much lower risk in that the waste is on public land, it's in front of you, there's other witnesses, there's people around. Illegal land filling occurs on rural blocks of land often in more remote areas. So when you're investigating those sort of matters even at Council you tend to go two people up and you'll go in and you'll investigate those matters and other people in your organisation are aware of it. Whereas illegal dumping on a public land quite often one person investigator is more than sufficient.

So have you worked for Penrith City Council as an investigator into illegal dumping?---Only in the fact, only in my acting coordinator role.

Okay. All right?---Of the RID Squad.

Of the RID Squad, okay?---Yes.

So officers within Penrith City Council who aren't part of the RID Squad, you're evidence is that they would investigate the more intricate and large scale matters, is that correct?---You've got a couple of different officers. So the unit that I'm in is called the Development, currently, my current role -
--

10

Yes?--- - - - is Development Compliance. More focused on the environmental planning and assessment.

20

Right?---And this is what Chris was talking about previously. That if you find a large scale illegal land fill it's not very clear to be able to just say, right, one authority deals with that. Because of, the Environmental Planning and Assessment Act will talk about rules under local environmental plans, development control plans, zonings that say you can't put certain things in these areas. And then you'll have the POEO Act which will be more specific about the type of waste that's there. So in Penrith Council you've got a development compliance unit and then you've got waste rangers and general rangers. Now a waste ranger will investigate illegally dumped household waste and other items, smaller items that are closer to the definition of litter in the POEO Act in the more suburban areas, The Development Compliance Unit that I'm part of will investigate the much bigger illegal land filling matters as well as matters for illegal structures, illegal construction works, all of those sort of things.

30

And what will – if you take the rangers within the Penrith City Council as investigating small scale household rubbish?---Yeah.

And then let's say a large leap up into the development compliance which you say investigates large scale dumping. Is it fair to say that the Western Sydney RID Squad inserts - - -?---Landscape, land filling.

Land filling?---Yeah.

40

Is it fair to say that the Western Sydney RID Squad has authority and jurisdiction over somewhere in the middle of that spectrum?---Yes and no depending in which Council area you operate in. And

All right?---And as I said in statement that in the Liverpool area in particular it's my experience that there was a lot of land filling going on. It was – that we identified. It was a joint operation that I ran between when I was an EPA employee. Well we used to work really well with the RID Squads because they had the vehicles and the communications and a lot of the necessary skills. Where we'd do a lot of covert surveillance work, following trucks around when they entered these private properties. So we'd work

with them and we identified quite a hard number of illegal land filling matters. And at that stage when Barry was the coordinator it was – we were unclear if those matters were being investigated by Council. And I wasn't investigating them as an EPA officer at that stage because of – we didn't identify you know asbestos waste. It was more large amounts of fill material.

10 How large?---Oh, thousands of tonnes in some instances. But you could never really tell how much was there because a lot of them had construction works going on, like someone was building a house and so then they put in a pad to build the slab on so then you'd start the investigation and someone would say well, that waste was generated on the site.

All right.---So that's a cut and fill.

Cut and fill.---And then you look at it and go okay, if it's cut and fill then that isn't – if the waste isn't brought from off it's not captured under the POEO Act.

20 All right. So that was when you were working for the EPA - - -?---Yes.

- - - in their compliance unit or - - -?---Directly under Chris.

Directly under Chris. All right. And correct me if I'm wrong, did you say you were working in a joint investigation with the RID Squad at that time? ---Yeah, I was in part of a unit for a number of years that did a lot of proactive work and we'd say capacity building with Councils to do proactive campaigns, whether it be education or compliance.

30 And I think you gave the example of surveillance before.---Yes.

Would you do joint surveillance operations when you were with the EPA with the Western Sydney RDI Squad?---They – yes, they were the most successful ones when we worked with the RID, Western Sydney RID Squad.

And what time frame are we talking about?---Oh, on and off since – I'd have to take advice on it but from the – when Barry Ryan was the co-ordinator so - - -

40 Okay. And can you recall the officers within the Western Sydney RID Squad that you worked with at the time?---Yes.

And who were they?---Craig, Eric - - -

Ryffel?---Yeah.

Yeah.---Andrew Bowles to a certain extent and a lot of officers that are no longer there as well.

Okay. All right. I just want to explore with you now this distinction that you say exists between Penrith City Council on one hand investigating landfill and the Western Sydney RID Squad investigating illegal dumping. Do – in your experience people who are employed by the Western Sydney RID Squad do they all operate under that distinction?---No, and it's not that distinct. It's each Council can choose so if the Council had gone to a
10 committee meeting and said I would like the RID Squad officer allocated to my area to investigate illegal landfilling then, yes, they could have been tasked with that and I believe it was done in The Hills Shire where one of the officers worked with the Council officer to do some targeted landfilling matters.

So your evidence is that it's the local Council who determines what matters a Western Sydney RID Squad officer investigates?---Yes, and I believe there was – I didn't – I wasn't there long enough to really get involved but there were a number of priorities and things that were performance that
20 were agreed to between the Council and the RID Squad of focuses they wanted the RID Squad to work on over that 12 month period and often it could be something like green waste, MUDS dumping, which is multi-unit dwellings, so people were putting all their furniture out the front of those dwellings. Different initiatives for things that suited each Council.

Okay. And was this documented anywhere?---I believe there was some documentation. I remember seeing some documents that just it was like – Barry may be able to expand on it a bit more. I, I wasn't involved in one of those documents but I do recall seeing one.

30 Okay. And when you were Acting Coordinator were you assigned a local council area?---Not really. It was only a short period of time and Tracy and I focus was to come up with some draft recommendations and review a lot of templates and just look at a lot of different material, standard operating procedures.

Okay. And I think you mentioned in your statement this idea of a dual reporting line and that's in relation to an investigator who has to report to a local council, who their local council area is assigned and also to the Acting
40 Coordinator. Is that correct?---Yes. But it, it's hard to put into the model of having a patrolling coordinator. A full time coordinator would have the time to liaise a lot more with councils and ensure that one particular direction is taken and a better reporting line. But if the time isn't allocated then it's very hard to, what's an example, so whilst I was at the New South Wales EPA I used to speak a lot with the Western Sydney RID squad officers individually because they'd call me, not for legal advice but just general advice because I was always interested and have been involved in a lot of illegal landfilling and dumping. I knew a lot of people that were in

the industry. So they'd call me individually and I remember Barry calling me up once and saying, look can you just come through me please because we're getting all of these different matters. So you need, I believe you'd need the same thing as that with the different councils. So if you had five or six or six councils calling in to say, calling the individual officers and say, hey I need you to get out there immediately and do this and the coordinator has already tasked them to do something else, you get a conflicting interest.

10 And do you know how that resolves if you're an investigator and you've been tasked by the coordinator and the council?---Yeah, you just try and get both done as quick as you can.

All right. And you keep referring to a patrolling officer. If I can get you to look at volume 1, page 70 again. And this is the document I took you to before?---Yep.

And you'll see there under RID Squad Coordinator there's a position of Senior Investigative Officer?---Yep.

20 Is that the person who is also, is that person also the patrolling officer?
---Yes. The senior investigator was also a patrolling officer.

A patrolling officer. So do you distinguish between a senior investigator and the patrolling officer or are they always the same person?---They effectively have the same roles, maybe one or two smaller extra responsibilities which was to do the rosters, look after the timesheets and as the senior they were required to provide that they're more knowledgeable.

30 Okay. In your role as Acting Coordinator did you ever attend management committee meetings?---No, I didn't. I missed – like there was one coming up but due to this and other matters it was pushed back to discuss other matters, so no I didn't attend one.

And did you see an agenda for the meeting that you missed?---Yes, we worked on a draft agenda but I changed, I didn't see the final agenda.

Okay. And when you say we you mean yourself and Ms Chalk?---No, mainly myself and then the administration officer that was there at the time.

40 Okay?---So she was on leave and I was adding things to the agenda. We have a template. And then it gets finalised and - - -

Okay. When you commenced in the role did you receive any training in relation to asbestos waste?---For RID squad?

For the RID squad?---No.

Could you identify any policies that were available on the files that you had access to in relation to the identification of asbestos?---Not off the top of my head, but I had been in this, I was asked to do the job because of my experience in the EPA and council and so it was, I had this knowledge and I'd discussed this with people anyway.

10 Okay. And in your opinion, the investigators that were under you, did they understand how to identify asbestos?---Yes, I would say they were all intelligent people. Not academics. So, like myself, I sit here and struggle to understand a lot of the terms that are going on. But in terms of practical elements, most of the guys in the RID Squad were experienced enough to understand most things about the construction industry.

Okay. And you mentioned before working with Mr Izzard when you worked for the EPA and he was employed by the Western Sydney RID Squad in a joint operation. Can you recall any discussions you had with Mr Izzard about asbestos waste in the context of those investigations?---No, I couldn't.

20 Would it surprise you if Mr Izzard did not know how to identify asbestos waste?---Yes, very much so.

In your statement, you mention some policies or processes that you thought might be a good idea for the Western Sydney RID Squad to adopt to improve compliance. Can you just outline what they are for the Commission?---I think in some respects I'm very grateful for the model that the EPA's got and what it taught me about the extra governance around having a unit head where all materials have to go through that person and be signed out. However, that also creates some issues where it's an extreme
30 bottleneck, where it makes it very hard for officers to continue on with an investigation, just to the sheer amount of documentation that's produced. So the things that I talked about were I put together a bit of a flow process diagram to be similar to the EPA but not quite as stringent. So any matters that would have anything to do with a large-scale incident, such as landfilling, et cetera, would have to be checked off by the coordinator. Matters that a check and balance would be done between the council officer, or the council committee member, and the coordinator would then at the end of each month go over the jobs as a cross-check, just some simple checks and balances. But, however, that takes extra resources and time, which
40 would mean that the officer couldn't meet all of their functions as a patrolling coordinator.

And I think you also suggested the implementation of a case management system. Is that correct?---Yes, that's correct.

So currently, as things stand now do you know if the Western RID Squad has a case management system?---No.

Does Penrith City Council have a case management system?---Yes, they've got a system called Proclaim, I think it is. Property & Rating.

And can you just explain to the Commission how Penrith City Council's case management system works?---Yeah. Firstly I looked up what CIRAM means, if you want to know what that, for the benefit of, ah, compliance investigation reporting management and - - -

10 Reporting and management, it must be.---Yeah. And that was, and that's a database that you can just buy from anyone.

Okay.---So the same as Property & Rating, it's very similar, in that it's actually an excellent system that Penrith's got, in that you load up your templates. So, for instance, your subpoenas would be a template in the system and you would click on the dropdown and you'd select one of the 40 templates that are in there, and it would come partially populated with everything that needs to be, and you add a few lines in. That system, called Property & Rating, is linked to the system that manages all of the land in the Penrith Council area. So addresses and everything are linked into that
20 system. Every time I go and do an inspection in the Penrith Council Area, I would first create a DC number in this system, which is development compliance. It would give it a number, DC, first one of the year, 0001. It would be linked to a particular property. And everything that I do, it generates a Word document that I would then populate with my information and evidence. You hit Save and it saves into an electronic document management system, into a format that I am unable to change.

And the person from the Western Sydney RID Squad was assigned to Penrith City Council, did they have access to that system?---No, it's a,
30 because of RID Squad is a satellite office as such, based in St Mary's and the property and rating system I've explained is fairly new to Penrith Council, I think it's only been in action for maybe a year, year and a half.

Do you know of any other Councils, member Councils of the Western Sydney RID Squad use a similar system?---Yes, but they haven't got that particular add-on to do that extra case management. I believe Blacktown Council uses a certain element of it but they don't - they haven't purchased and committed the resources to build that extra stage on and because of its link to all the properties in the Penrith area it's not something you could just
40 give to all the different LGAs.

No, I understand that but you could certainly give it to the one RID Investigator who was assigned to the Penrith area.---In the Penrith area - yes you could but generally if the another thing that I believe will come out of this is that you say you rotate officers - - -

Yes.---You rotate officers and then you've got to retrain every officer.

Yes. You would have heard evidence before about an incident that came into the CIRAM system and it wasn't the jurisdiction of the EPA so they then referred it on, can you explain if there's a similar dynamic in relation to the Penrith City Council's Proclaim system and whether or not they report an incident and then refer that on to the Western Sydney RID Squad, is there a process for that?---There wasn't previously a formal process, there is now, we've got a new template that's in Proclaim for an EPA referral but generally it could have been done by email or telephone call.

10 And you make a lot in your statement about this distinction between public and private land and in relation to public land, you say that, if it is public land - this is at paragraph 81 - and asbestos waste is identified you, Western Sydney RID Squad will contact Penrith Council to have the waste removed, is that correct?---Yes, this is similar to the OWT Waste scheme that Mr McElwain explained. It's one of the biggest sort of miscommunication between the EPA and Council is the difference between public and private and what each individual unit does. There isn't a standard procedure that says every Council must have a development control unit and this
20 development control unit has this set of responsibilities - depending on the size of the Council. Hawkesbury City Council's got, you know, may be ten, six or seven officers that all wear rangers uniforms yet they'll do development control, investigate on public and private land.

But where's that distinction between public and private land come from in your understanding?---Our Council units - the Council themselves so there's a couple of co-ordinator's at Penrith Council you've got a co-ordinator that looks after the rangers and then you've got a co-ordinator - we don't have one currently - but then you've got a team leader that looks after the development control officers. The development controls officers only deal
30 with private land and the rangers deal with public land.

That's as a matter of Penrith City Council but not as a matter of The Western Sydney RID Squad, I'm just trying to understand how that distinction effects what the Western Sydney RID Squad does?---That's the, generally most councils will look at or RID Squad officers as being officers that deal with public land not private land.

When you say generally look - where do you get that general observation from?---Just the agreements between the Councils and the RID Squads.

40 And would they be in writing?---I'm not sure if that particular thing is in writing but it's generally understood that the RID Squad will only deal 90 per cent as a figure I would say with public land not private.

Okay?---And if a matter is identified as being - it could be as much as a boundary line at the front of a property. If it's 10 metres inside the boundary then that matter would be referred to that council. And if it's on

the road side then it'd be the RID squad. It's just a way of helping delineate which – what sort of work is done otherwise you get too much confusion.

All right. I'm just flicking through your statement here. I'm trying to find a section where you say, and I might not need to find it if you know what I'm referring to. You say that Western Sydney RID squad officers also exercise some enforcement powers under the Environment Planning - - -?
---Assessment Act.

10 - - - Assessment Authority?---Yeah. They are delegated to.

Who provides that delegation?---It's part of the delegations that are signed off by the General Manager I believe. It's a standard delegation for each officer, whether it's a, it's like a blanket suite of delegations when you commence in a position and (not transcribable) for a local council could tell you more about how the delegations are worked out.

20 Yes, I understand that. But at paragraph 31, I found it – the reference now. It's your understanding that a Western Sydney RID squad officer could exercise the powers under the Local Government Act for enforcing illegal dumping for example?---That's, that's my belief, yes.

And also - - -?---Oh not for illegal dumping. The Local Government Act isn't particularly - - -

30 It's for waste removal or - - -?---Even so you wouldn't use any – under the LGA – sorry, you would, you could possibly look at getting wastes removed for the purposes of use an order under the Environment Planning Assessment Act.

Yes?---But you wouldn't to my knowledge, you wouldn't use that on public land.

Okay. All right. And you accept that Western Sydney RID squad officers wear a different uniform to normal rangers?---Yes, that's correct.

And notwithstanding they wear a different uniform they can still exercise the same powers – your understanding – as a normal city council officer?
---Yes, that's correct.

40 All right?---As long as they are delegated as such.

Sorry, I'm just trying to find – I just want to explore with you what you say happened in 2014 in relation to the Liverpool City Council and the Western Sydney RID squad. Now is it fair to say that in – your evidence is that the Western Sydney RID squad prior to 2014 didn't exercise much authority in the Liverpool City Council. A build up of complaints occurred and then the Western Sydney RID squad came in and started investigating. Is that how

you understand it?---Yeah, more around private land. The division between private and public, I do recall speaking to Barry Ryan and a number of the officers about these, excuse me, joint operations that we were doing and Barry was very proactive in increasing the scope of the work that the Western Sydney Regional Legal Dumping Squad was doing. And that's when we started doing some of these joint surveillance campaigns. So we were identifying – whereas previously they may have done surveillance operations to observe a council park or do a proactive drive to – on a littering campaign et cetera, the decision was made to do some joint
10 campaigns where we'd follow tipper trucks that were loaded of material heading out into areas where we knew that there would be no landfills.

Right?---So we would have, you know, five or six cars, five or six RID squad officers, maybe four or five EPA officers and we'd - - -

And was Mr Izzard involved in those operations?---Yes, on occasions.

All right. And at that time did Mr Izzard have authority over the Liverpool City Council area?---I couldn't - - -
20

Was that his – you don't know?---I couldn't say exactly. But I mean that could be looked at if he was, was allocated the area in that time.

Okay. And are you aware that Liverpool City Council later, well later took control of the enforcement of illegal dumping in relation to private land away from the Western Sydney RID Squad?---Well it was unclear to me as I wasn't directly involved with Council and RID Squad. I do remember having conversations with Barry Ryan to discuss for some reason Liverpool Council were taking back the investigations.
30

But you were just unsure whether or not that happened or - - -?---No, I do remember it occurring but I wasn't told why.

And this was after the time in your statement at paragraph 36, when you talk about the Western Sydney RID Squad being more involved in Liverpool City Council?---Yes.

Right. Just a general question about the use of cameras by the Western Sydney RID Squad. When you were Acting Coordinator of the Western Sydney RID Squad did you come across any policies or procedures in
40 relation to the use of cameras?---I believe there was a policy for the use of surveillance cameras. That was I believe referred to me by Barry Ryan as something that had been put together. The EPA also had one. I didn't have the opportunity to review it in detail while I was there.

All right. And to your knowledge were cameras used extensively by the Western Sydney RID Squad in their investigation enforcement?---It depends on the officer and the Local Government area and what the particular needs

were. So there was a lot recently in the Blacktown area in industrial zones where the cameras can be set up in places that will capture the images you're after. The cameras that we use are very simple motion, detect a motion activated with an SD card so they're not real cutting edge.

Okay. All right. Commissioner, they're all the questions I have for this witness.

10 ASSISTANT COMMISSIONER: Yes. Is there any cross examination of Mr Reece? Mr Patterson?

MR PATTERSON: Thank you, Commissioner. Mr Reece, I think you said earlier that whilst you were with the EPA the Western Sydney RID Squad was the most successful, is that correct?---I don't think I said most success, can you just – a bit more like in what, in what period or what type of activity?

20 Well without access to the transcript that's a little difficult. But I made a note that you used the word most successful in relation to Western Sydney RID?---Okay. So if I was to say that it was – we had some successful operations in identifying and following trucks.

You made mention of a Mrs Kerry Hyatt. Are you able to, sorry, thank you. Are you aware of Mrs Kerry Hyatt?---I am, yes.

And are you able to say what her function is?---I believe she works at Penrith City Council in the records management area.

30 And did she conduct a review of the reporting and storage of data systems? ---I believe she did, yes.

And that was specifically in relation to the RID reporting procedures?--- Yes.

Thank you. And so to the best of your knowledge, did Penrith City Council identify the reporting and storage of RID data as an issue?---Yes.

40 Now I just want to take you to your statement that was given earlier in May of this year, paragraph 46, page 219 of volume 15. Could that be put up? Whilst that's happening this is in relation to the property 100 Martin Road, Badgerys Creek. You say in paragraph 45 that you were able to locate records relating to this property on the RID operations drive and then you give the reference number. And in paragraph 46, do you see that?---Yes.

You say that located in this folder are subfolders containing photographs of landfilling incident. Also located in the folder are some asbestos samples. There are no statutory notices or file notes. Are you aware if that property

was referred to Liverpool Council for investigation?---No, I'm not aware, sorry.

So you're not aware of any issue about an illegal business being conducted at that location?---No, I'm not.

10 All right. Thank you. If I could take you to paragraph 51 of the same statement concerning the property Bandon Road, Riverstone/Vineyards. You say you were unable to locate records relating to this property on the operations drive. Are you familiar with an address 81 Riverstone Road, otherwise known as Roadmaster?---No.

So if I was to put to you that that property is one and the same as Bandon Road, Riverstone you wouldn't be aware?---No, sorry.

If I was to put that there may be documents on the operations drive under that heading or identification you wouldn't be aware?---No.

20 All right. Now, you've said that you worked with Mr Izzard on joint operations. In your experience of working with Mr Izzard were there any issues that came to your notice?---In relation - - -

In relation to his methods of investigation.---Is this personal opinion, is it - - -

No. Whether to your knowledge were any complaints made to you?---I was aware of a comment that was made about being inappropriate.

30 Inappropriate in relation to method of investigation or in relation to something entirely different?---Something entirely different.

Not relevant to this inquiry?---(No Audible Reply)

Thank you. So no complaints were ever made to you by any persons?---No.

No suggestion was ever made to you that Mr Izzard had solicited a bribe?---No.

40 No. Nor any suggestion that he had accepted money?---No.

No. Thank you. No further questions.

ASSISTANT COMMISSIONER: Yes, Mr Fraser.

MR FRASER: Thank you, Commissioner. Mr Reece, correct me if I am wrong but are you on leave without pay from the EPA at the moment?---Yes.

And could you be called back to the EPA at any time?---It's not, not clear. I've got a signed form that allows me for a particular period so if they asked me to come back for a particular reason and there was a particular need I would go back but I don't believe they could force me to go back.

All right. And there's been no such request made as yet?---No. See how we go.

10 All right. Now, in respect of the delegation to individual officers of the Western RIDS, each officer only held one delegation from a single Council at any one time. Is that right?---To my knowledge the delegations are linked to the position of being a RID Squad officer and then there's a signed agreement that the particular general managers all signed that made the delegated position where each officer had the same delegation which was a suite of delegations under those particular Acts.

20 So if I can put it back to you so I make sure I understand, each Council gave a delegation to a category of person called a RID Squad officer, effectively?---Yes, I believe so. But I'd best take advice from the legal counsel of Penrith.

There'd be documents that can demonstrate that?---Yeah.

Each officer, though, in practical operations, only operated in one area at a time, one Council area at a time. Is that right?---No, officers could go together to different areas. You had an allocated area but if a person was on leave, you may have an extended leave period so people are covering different areas.

30 But generally one officer was allocated to a particular Council area?---Yes.

Right. With the usual kind of exceptions you've just mentioned?---Yeah.

40 Okay. I beg your pardon, monitor. In your 19 July, 2016 statement, in volume 20, at paragraph 9, page 261, you make reference to the structure of the RID Squad allowed the appointment of officers who specialise in policing illegal dumping. This improves policing, since these matters can be complex. In your observation, having regard to your experience in various organisations, was that in fact the case in practice while you were there for two and a half months?---Yes.

And what's the nature of the specialised knowledge to which you refer?---It's compliance work, as we do, and in particular RID Squad officers requires that you be okay with a lot of face-to-face interactions with rather unfriendly people. You've got to be prepared to, much like a policeman, act quickly and think appropriately quite quickly. Not all skill sets certainly apply to that. Often you can be put into a reasonably, not a dangerous

situation, but you have to be prepared to deal with conflict and placate people.

10 Is that one of the reasons that you draw an important distinction in practice between investigating public land and private land?---Yes and no. I believe I make it in my statement there, where an illegal dumping matter can be much easier to deal with in that it's a smaller amount of waste, it costs a lot less to clean up, whereas an illegal landfilling matter on a private property can go into the millions. And people will defend those matters vehemently and come up against people such as yourself in a court of law and have it thrown out on technicalities. And therefore the people preparing that evidence have to be a lot more learned.

20 And is that a factor with private land, you're going to encounter potential witnesses or defendants in such proceedings?---Yes and no. You will. However, the people tend to initially allow for the material to come onto their property and, you know, aren't great witnesses, and it's a very complex nature to deal with illegal landfilling matters. Whereas the illegal dumping that occurs on private land, generally if a person gets caught, you give them the opportunity to give an admission and clean it up, and they will because it's a smaller matter that they can see be given and fixed quite easily.

30 I guess if I draw your attention to paragraph 15 on page 283, "I do not believe it should be the role of RIDS to deal with illegal landfilling matters on private property, as they are not resourced to do these investigations and do not have the skill under the EPA Act. Put aside the EPA Act skills, what's the resources that you're referring to there? Why aren't they resourced to deal with that?---Resourcing in that, it would need more, I believe more officers and more time to do these investigations and have the different databases to be able to look up all the zoning, previous development applications that have been permitted on bits of land and accessed each Councils property and rating each Council's got a different version of property and rating that they use. There's many different types so you'd have to train each officer to use seven systems whereas I've been at Penrith Council now for eight months and I'm struggling to learn that one system to its full use, so.

So you're an advocate of one electronic system for - - -?---State wide?

40 No, well just start with just one RID Squad dealing with a number of councils, some sort of single system would be - - -?---I'd be an advocate for a case management system with one RID Squad that liaised really well with the EPA that would have dedicated officers and a helicopter and a submarine and we'd be away.

But because the Penrith Council electronic system is property based, it couldn't be used to co-ordinate all of the Councils being serviced by the RID Squad?---It could with some modification but it would be very hard.

All right. And do I understand correctly that in your two and a half months because of the circumstances or whatever, there didn't happen to be a management committee meeting of the Western RID Squad?---That's correct.

Were you present I was asking Mr McElwain about some of the mechanisms and controls that the EPA has in terms of two officers and various other mechanisms that were in place for the EPA Investigations?
10 ---No, I - - -

Not to worry, thank you. Thank you Commissioner.

ASSISTANT COMMISSIONER: Thank you. Mr Rushton, anything?

MR RUSHTON: No.

ASSISTANT COMMISSIONER: Any other questions? No.

20 MR PATTERSON: Commissioner, just by your leave I do have two further questions if I may.

ASSISTANT COMMISSIONER: Yes, certainly.

MR PATTERSON: Mr Reece, I should have explained that I represent Mr Izzard. During the time that you were with the EPA do you recall any occasions when Mr Izzard contacted you about operational matters?---I, I have spoken to Mr Izzard on occasions about operations but I couldn't recall exactly which ones but I had contact with all RID Squad officers.
30

But you don't recall whether he initiated the contact or you did?---I couldn't tell you about specifics but I have - I do recall having received calls from Mr Izzard and the other RID Squad officers.

And similarly, to you recall occasions when you contacted him?---Yes.

Thank you.

40 ASSISTANT COMMISSIONER: Yes, anything arising?

MR MACK: Just one final question, Commissioner. If you received a phone call from a source in relation to illegal dumping that was happening in your area either with the EPA or as acting co-ordinator, what would be your practice in relation to documenting that phone call?---Depending on which organisation I worked for. Which one would you like to pick?

Well, if it was at the EPA first of all and - - -?---Okay.

- - - then if somebody rang you as - - -?---Work through them. Okay. So if I was at the EPA and I received a telephone call from someone at the RID Squad, generally they wouldn't so much as refer a matter to me, they would call and ask if I was aware of a particular individual or truck or registration or company. So I'd receive that. They'd call me. I'd generally take down a file note or send an email to my unit head to say, you know, I've just been given information or I'd go around and see Chris McElwain and say hey, I've got this information.

10

And that's in relation to somebody from the Western Sydney RID Squad calling you. What if it was a member of the public and you're at the EPA, what would - - -?---It's unusual for a member of the public to be able to get - be put through directly to me as an investigator. Very much similar it'd be - a member of the public wouldn't directly get through to your investigators to report a matter.

Okay. And does that hold for the Western Sydney RID Squad as well?---No. Western Sydney RID Squad are a bit more at the coalface. They're a bit closer to the community. The Western RID Squad's number is quite available on their website or just ringing Penrith Council and you can get put through to the general phone number and one of the officers would be allocated that day to take those calls if the admin officer wasn't in.

20

That's a general number isn't it?---Yes. Not the one - - -

And not a personal mobile number of an investigator?---No. All the, yeah, so the general number would be diverted to an officer's number as well.

30 All right?---And that's not the 131555 number.

And if an investigator was to take one of those calls are there reported procedures in place for those - - -?---There may be. I'm not totally aware of a strict documented procedure that you write down and - - -

And if you received a phone call from a member of the public - - -?---Yep.

- - - in relation to an incident and you were working for the Western Sydney RID squad what would you do?---I'd write it down on a piece of paper, take as much details as I can, do a search on our, on maybe RID online first and then the operations database to see if we've already got an existing complaint running. Otherwise the way it works in RID at the moment is that you take the details and you'd either email it to the, the person whose zone it is - - -

40

Right?--- - - - or you'd just go over and see them and give them the piece of paper and say, hey this complaint's come in can you create a RID online and follow this up.

All right. Thank you.

ASSISTANT COMMISSIONER: Yes, thank you.

MR FRASER: Commissioner, just something arising if I might, Commissioner?

ASSISTANT COMMISSIONER: Yes.

10

MR FRASER: You said that the number that's called at the council I presume might be the council's general number someone rings in at?---47327777.

Goodo. Not - - -:?—131555?

20

131555. Where you're referred from the council what number do you get referred to?---It depends if you want, if I was to ring Penrith Council now and ask to speak to, report an illegal dumping matter they'd put you through to the RID squad number.

Is that 1315t55?---No. That'd be a 47 or an 029 number because that's the RID squad number.

And that would go into the St Marys office?---Yes.

Okay. Thank you.

30

ASSISTANT COMMISSIONER: Is there any reason we can't excuse Mr Reece. I gather he's taken up residence in Penrith and doesn't want to come back to Sydney?---Oh there's a lot of Penrith people here.

Anyone got a problem about him being excused?

MR MACK: No Commissioner.

ASSISTANT COMMISSIONER: Well thank you for coming. You're excused?---Thank you.

40

<THE WITNESS EXCUSED

[4.05pm]

AT 4.05pm THE MATTER WAS ADJOURNED ACCORDINGLY

[4.05PM]