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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION RICCO

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 17 MARCH 2016

AT 2.05PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes. This is Mr Fitzgerald, I take it?

MR LATHAM: It is Mr Fitzgerald Senior.

THE COMMISSIONER: And Mr Fitzgerald understands the limits of the section 38 order, Mr Latham?

MR LATHAM: He does, Commissioner.

10 THE COMMISSIONER: 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 THE COMMISSIONER: Do you wish to be sworn or affirmed, Mr Fitzgerald?

MR FITZGERALD: Sworn, please.

THE COMMISSIONER: Have the witness sworn, please.

MR THANGARAJ: Mr Fitzgerald, could you give the Commission your full name, please?---Peter Anthony Fitzgerald.

And when were you the General Manager at Botany Council?---From 1997 till 2011.

10 What role did you start in at Botany?---Ah, as a Director of Personnel and Outdoor Staff.

Right. And what councils had you been at before Botany?---None.

None. I want to start with some payments made to Ms Cullinane. Could we bring up volume 37, page 98 please, and while that's being done I can ask you a couple of ordinary questions.

20 If you had forgotten you'd be aware I assume now of some payments being made to Ms Cullinane in lieu of super?---Yes.

All right. And do you have page 98 in front of you?---Yes, I do.

All right. And that's your signature in about the middle of the page with the date 28 February, '97?---Correct.

And what does – is it “agreed and approved?”---Yes.

30 Okay. Now, the standard - - -?---Just before you go, before 1997 I acted as the Acting General Manager for a year before that.

Okay?---Okay.

All right. And do you remember what you were in February '97?---Oh, February '97 I was, I think Acting or – I don't know.

All right. All right. Well, this was a breakup of the salary package for Ms Cullinane. Look at those three lines with the numbers against them?

40 ---It appears to be, yes.

And you approved, or sorry, well, firstly you approved those three lines and the total payment that's there of \$1,747.83?---Yes.

And it said, “Superannuation as per memo of \$222.75.” If we could go to 97, please. Is that what you were referring to with respect to the memo?

---Um - - -

You'll see the number of 222.75 there?---Ah, yes, but I also would have relied on um, calculations that were done there.

All right. All right. Well, if we go back to 98, please. Did you approve of any ex gratia payment being made to Ms Cullinane over and above what's on that page, that is an annual ex gratia payment?---I um, the last time I was here was shown another document that um, in which I gave approval for her to have the same salary as another person.

10 Yeah. If we go back to 97 and you see that it has "Director of Operational Services." Is that what you're talking about or another, a different document?---I think a different document that was shown to me last time I was here.

All right. Was that a document that you had – all right, well, we'll find that. All right. Well, if we can go back to 98. Did you approve of a further, that is an additional payment to what's on this page, an additional ongoing ex gratia payment to Ms Cullinane in the order of tens of thousands of dollars per year?---Unless there's another document um, I, I don't know.

20

All right. Would – is there any legitimate reason why ex gratia payments that are ongoing would be paid to an individual through a creditors account as opposed to payroll?---Only – the – I don't know what you mean by ex gratia.

All right?---The superannuation payment - - -?

No, I'm not talking about superannuation?---Okay.

30 So ex gratia may be the wrong word. Was there an additional payment – I'm talking about additional payments. Was there any basis, any legitimate basis why additional payments, especially ongoing payments, would be made to an employee through the creditors' account as opposed to payroll? ---The only reason if they were then putting it into a separate superannuation account.

Right. Well, that would be, that would be a superannuation payment. Is that right?---Well, I really don't understand what the ex gratia means.

40 All right. Well, forget about ex gratia. If there was a superannuation payment on top of what you've just seen - - -?---Yes.

- - - that would go through payroll or be paid into a super fund, wouldn't it? ---Yes, but it could be paid through creditors' if it was – depending on the person's tax situation.

And what does that mean?---Well, my understanding of superannuation, it's 15 per cent on the way in, right, but I think there are some holidays – I don't know what other people do?

Right. But sorry, if Council was paying someone's – if Council was paying superannuation - - -?---Yes.

10 - - - that would either be deposited directly into a superannuation fund – well, that would be deposited directly into a superannuation fund, wouldn't it?---If the superannuation fund is nominated, yes.

Yeah. Well, you can't – if someone is receiving superannuation you can't put it into their normal everyday account, can you?---Well, that's, that's outside my understanding.

All right. Well, what are you saying, that you're entitled to access your superannuation payments immediately?---No, no, I'm not saying that at all.

20 No. All right?---No, what, what, what - - -

If Council is paying superannuation to an employee - - -?---Yes.

- - - where would it go?---Well, there are some deductions on the payroll that are pre-tax and some that are post-tax.

30 THE COMMISSIONER: Well, that doesn't answer the question. I mean, I think what Counsel Assisting is getting at is that payment of superannuation goes into a superannuation fund whether that be an industry fund or whether that be a nominated self-managed fund, but the point is it doesn't pass through the hands of the employee, it goes to the superannuation fund so that the employee doesn't access it before the appropriate retirement age. That's the point of the question?---And that's my understanding as well.

Right.

MR THANGARAJ: All right. So if Council was paying superannuation either as an employer contribution or as a nominated superannuation contribution that would go into a super fund?---It should do.

40 All right. Now I want you to assume that Ms Cullinane has received for about 20 years on average about \$40,000 per year outside payroll and through the creditors account system, all right. I want you to assume that, all right?---All right.

And also assume that those payments did not form part of the group certificate that Council prepared annually, all right. Now did you approve those payments to her?---I wouldn't have thought of that magnitude.

Well, I'll come to the magnitude in a moment maybe but are you saying that you might have approved an annual payment to her outside payroll, outside the group certificate but just was paid to her through the creditors account? ---Most likely not.

10 Well, how is it even – well, okay, let's go back a step. Would it have been appropriate or legitimate – I'll rephrase it. Would it have been legitimate for Council to pay an employee an annual payment outside payroll, outside the group certificate and through the creditors account?---I can't envisage when that should happen.

All right. If someone was receiving an annual payment – sorry, if the Deputy General Manager was receiving an annual payment that could only be approved by the General Manager. Is that right?---Yes.

Or Council I assume, the Councillors and the Mayor?---Yes.

20 But setting aside that, there's no suggestion of that here. So are these the two options. If that 800,000-odd dollars, it was either approved by you or it was not legitimate or is there a third option?---Um - - -

Are they – sorry, are they the two options, either you approved it or they were not legitimate. Is that right?---I don't even know if there are two. I don't know whether you can approve it.

30 Right. Well, I would have come to that but there is no basis is there for the General Manager to approve an employee receiving an annual payment outside payroll, outside the group certificate and through the creditors account. Do you agree with that?---Yes.

So if you approved it, and I'm not at the moment suggesting you did, but if you approved it, it would have been outside your authority – sorry I withdraw that. If you, if you said go ahead and do it to either Ms Cullinane or Ms Goodman – Mr Goodman, if you did that with respect to either of them it would have been outside your authority?---Yes.

And did you do it?---Not to the best of my knowledge.

40 All right. If an employee was receiving an additional payment that was not going through payroll is there any reason why it would not appear on the group certificate?---I don't know the answer to that.

All right. If it was a legitimate – let's assume for a moment that, that it was approved and it was legitimate. Let's just assume that, all right. And that these payments for 20 years were taking place at an average of 40,000. Let's just assume for a moment that was entirely legitimate, entirely within your authority. If that was the case, what documentation would be needed

to record these payments, significant payments to the Deputy General Manager?---I don't know.

All right. Well is this the minimum that would be required, written documentation signed by you to approve those payments?---Sorry, I may have misunderstood the previous question. I thought you said what external document would they get for it going through creditors?

No, no, it doesn't have to be, no, no?---No.

10

Let's assume that that was entirely legitimate. Let's assume that you approved a payment to Ms Cullinane for every year, outside payroll, all right. Let's just assume that you did that. Now if you did that, what documentation would be in Council records to – for transparency - - -? ---They would need, they would a written approval from me.

Right. And apart from written approval from you, would you expect there to be documents signed by the beneficiary, that is Ms Cullinane?

20 ---Well I would expect somebody would submit something to me and I would approve it.

Right. So whether it's the beneficiary or someone else, you would receive a request or an application which you would then either reject or approve and if you approved it, there would a signature of you approving it as there was on page 98?---Yes.

Right. All right. Did you receive any, yourself, did you receive supplementary superannuation?---Yes, I did.

30 Right. And that was what?---It was \$20,000.

All right. Your employment contract allowed you to sacrifice some salary and instead have that go into super?---Yes.

And you were allowed to determine how much that was?---Well, I did each year.

Yeah. And your contractor allowed you to choose how much?---Yeah.

40 I think you could've put all of it in super if you wanted to. You chose to put in 20,000 a year?---Yes.

All right. And there are records that show that you chose to put the 20,000 a year from your salary into superannuation?---Yes.

On top of that did you receive any supplementary superannuation?

---No. I thought, I thought that was the supplementary superannuation.

All right. So that, okay. So the supplementary superannuation is what you chose to put in additional to your employer contribution?---Yes.

That's what you mean by supplementary. All right. Was there a further top-up to that?---I wouldn't have thought so, I don't know, but I wouldn't have thought so.

10 All right. Did you ever receive top-ups for superannuation – all right. When you say you wouldn't think so, have you got records that would indicate whether you did or not?---I don't currently have those records.

All right. What basis - - -?---But - - -

Sorry?---But I did, I did receive some extra payments when there was a holiday for the employers contribution. So that employers contribution was then paid to me to go to super.

20 All right. And do you remember what years that was?---Ah, the mid 2000 somewhere, early 2000s.

Do you remember how long that holiday was for, the holiday contribution was for?---No, I don't. Maybe one or two years.

Okay. And were you given a cheque in lieu of that or deposited in lieu of that?---I, I, I can't recall. All I know is that there was some debate as to whether all of the staff should receive it or, or whether because I was the only contracted staff member, only those on contract where they'd reduce their total package by the amount of the employer contribution.

30 All right. Did you ever receive cash from Mr Goodman?---I may have but small amounts of cash for travelling allowance or sustenance or restitution, but certainly none that have been discussed in here.

All right. Well, he says that he gave you at one stage \$75,000 cash in lieu of an annual top-up that you were getting. Did you receive \$75,000 cash or some amount near that figure from Mr Goodman?---No.

40 What's the most you've ever received from Mr Goodman in one go?
---Oh, maybe five or \$600, you know.

All right. And he says that you were receiving an annual top-up of in the order of 68 to \$75,000 a year. I think he included in that travelling allowance and the 20,000 that you had sacrificed, so he's asserting about 30 to \$40,000 top-up on top, top-up outside payroll effectively. Did that happen?---Well, other than the holiday years it should have been 20 and 12.

And was there anything on top of that that you ever received as a top-up?
---Not that I can recall, but as I said, outside the holiday years.

All right. Now, have you heard of a company called Bloggs Consulting?
---No.

All right. Have you heard about that in the last couple of days?---Yes.

All right. So apart from the last week or so, had you heard of Bloggs Consulting?---No.

10 What about MB Consulting, had you heard of them?---No.

Right. Was there any consultant that was effectively on retainer for Council, that is, getting the same amount of money every month regardless what work they were doing?---Well, certainly not doing any work for me. There may have been in some of the external areas, I don't know.

All right. Now, Mr Goodman has given evidence which I'm sure you're aware of that you received, that he gave you \$8,000 a month in cash or cash cheques for many many years. Did that happen?---No.
20

Are you aware of – I'll withdraw that. He says also that you gave him some blank invoices to use as he saw fit when he needed to, well, do something improper that might involve invoicing. Did you give him any blank invoices?---No.

All right. I just want to play you this telephone call, 2-0-0-4.

30 **AUDIO RECORDING PLAYED** [2.28pm]

MR THANGARAJ: All right. Just if we can keep that last page up. Having followed that call, can you tell us what you meant by "she doesn't have to know"?---What I was saying there is that Lara was – they were talking about Lara and Lara had said, "That's between you and Peter", right. So that was between either payroll and me because I'd given the approval.

THE COMMISSIONER: Sorry, Lara said to you - - -?---No, no.
40 - - - that's between you and Peter?---No, sorry. I, I take that to read that from the previous page, right, that Mr Goodman was quoting Lara.

He was quoting Lara when he said what?---When he said, "I didn't know about it".

MR THANGARAJ: All right. Well, he's not quoting her when he says "it doesn't matter what she knew". So Ms Kirchner is not - - -?---Because

otherwise the next line, “That’s between you and Peter not me”, doesn’t ring true unless he was quoting Lara.

Well, unless he’s talking to her saying that’s between her and you?---Well, yes, or relaying a conversation - - -

Yeah?--- - - - he had with her.

Yeah?---Yeah, that’s as I read that.

10

All right. So whatever it is, the person who doesn’t need to know is Ms Kirchner isn’t it?---Well, yes, I think that’s correct.

All right. So when you say “but more importantly she doesn’t have to know”, what is it that you say Ms Kirchner does not have to know?---Well, she wouldn’t know what the employment arrangements were for the other 300 people in the organisation.

20

Okay. Well, that may well be right but you weren’t saying she doesn’t know, you were saying she doesn’t have to know. There’s a big – you appreciate the difference in those two, you understand – you just said well, she didn’t know these things. Well, that may be right but that’s not what you’re pointing out. You’re not saying she doesn’t know otherwise - - -? ---I’m just saying she doesn’t have to know because the payroll has been paying it, there must be a document that’s authorised it.

30

THE COMMISSIONER: But the context of the conversation is that Mr Goodman is bringing to your attention that this has become a matter of inquiry, it’s become a matter of inquiry from the General Manager and so he’s asking you what can you do to help me respond to this inquiry. That’s the context of the call?---He was asking me to write another letter.

Well, he’s asking you to help him because the General Manager has made this inquiry?---Correct.

Right.

40

MR THANGARAJ: So in that context why would there be anything that she doesn’t have to know, I mean, the point is he’s trying to explain everything he possibly can to the General Manager. If he’s doing that genuinely then he would be trying to assist her with the greatest detail as possible?---And I’m trying to explain to him that the documents will stand and give the evidence.

Well, I don’t think, with respect, you’re saying that Mr Fitzgerald because you’re saying that more importantly she doesn’t have to know. You’re not saying she knows it through some other means. You’re saying she doesn’t have to know, that is, what that really means is don’t tell her doesn’t it?

---No, I'm not saying that at all.

All right. So it can't be what you just said which is the documents speak for themselves because if the documents speak for themselves then she would know that. But what you're saying is more importantly she doesn't have to know?---No, no, no. He, he said – sorry, he – in his quotation at the top line he's quoting Lara as saying, right, "That's between you and Peter".

10 Well, if we go back you can't cut – with respect, I don't think you can cut the sentences in half because it starts off with, "I didn't know about it". That, that may well be him saying what Ms Kirchner had said but then the next sentence starts with, "It doesn't matter whether she knew or not". So the use the word "she" means – would you agree with this, the use of the word "she" means he can't be quoting Ms Kirchner with respect to that phrase. Do you agree with that?---Well, if you go back to the start of the sentence the "Oh have we" can only be attributable to Lara.

I accept that, I'm not talking about that?---Right.

20 The question is, where does the, where does the attribution to her finish? Now, it cannot be including the phrase, "It doesn't matter whether she knew," you agree that he can't be saying Ms Kirchner said anything about a she, because the only she involved is her?---(No Audible Reply)

THE COMMISSIONER: In other words, Mr Goodman is saying it doesn't matter whether Ms Kirchner knew or not, that's what's being put to you is the sense of the conversation.

30 THE WITNESS: Um, can we go to the next page?

MR THANGARAJ: Yeah?---Um, "That's between you and Peter, not me,"
- - -

Yeah?--- - - - can only be attributed to Lara.

Well, it could be – when you mean, you mean attributed in the sense that she said that's between Gary Goodman and you?---Yeah, I was, I, I, I took that phrase, that whole, that whole line from Goodman on was her quoting Lara.

40 Right. Well, he could not have been quoting her – looking at it now, he could not have been quoting her when she said she or referring to a female, right, because the other way to read this is, that's between Ms Kirchner and you, that is, if we go back to the previous page, the attribution of, "Oh have we, I didn't know about it," that's, I accept that the logical reading of it is that's Ms Kirchner and Mr Goodman's relaying what she said to you, but that doesn't mean that until he finishes talking it's in attribution to her, firstly, does it?---(No Audible Reply)

So, because the next bit he says is, “It doesn’t matter whether she knew or not.” Now, that’s clearly not Ms Kirchner talking, is it, that must be him, at least at the moment if we leave it to the phrase on the previous page, “It doesn’t matter whether she knew or not,” that’s not Mr Goodman attributing anything to Lara Kirchner?---It, it, it, it could be an insertion, yeah, I understand what you’re saying.

10 I beg your pardon?---It could be like an insertion in the quote.

Well, it’s a new sentence. Do you agree that that is not Mr Goodman saying, relaying a quote from Ms Kirchner, that is, “It doesn’t matter whether she knew?” Do you agree with that?---Um, I mean I can’t even recall, I can’t recall.

I’m not saying you would recall it, but we’re going through it carefully now?---Yeah.

20 But when it says, “It doesn’t matter whether she knew,” that’s Mr Goodman telling you something, it’s not Mr Goodman telling you something that he heard from Lara Kirchner?---I think that’s right, that he’s commenting on the, on, on the quotation.

All right. So it doesn’t matter whether she knew, and then we go over the page, “That’s between you and Peter, not me?”---Meaning not Lara.

I beg your pardon?---Meaning not Lara, the me, the me - - -

30 Well - - -?---The me in that one I read as Lara.

Well, there are two possibilities aren’t there. That’s either Mr Goodman mid-sentence going back to quoting Ms Kirchner, in which case you would be right, or he’s alternatively in the whole sentence just speaking directly and what he’s saying is, that’s between you, that is Ms Kirchner, and you, yourself, Mr Fitzgerald. They’re the options, they’re the possibilities? ---Well, it says, “That’s between you and Peter,” it can, if, the you can only be in my view Mr Goodman, ‘cause I, I, I took him as quoting.

40 Right. Well, even on the alternative option which is if Mr, if Ms, Mr Goodman was saying to her, that’s between her and you, that is also him changing mid-sentence, I agree with you, well, that’s also him changing mid-sentence, so either way there’s a change, but does that really affect what we’re talking about with respect to the next line, which is in the context of apparent detail being sought for a legitimate inquiry by General Manager, what is it that you did not want her to know, she doesn’t – sorry, sorry, what is it that you mean when you say, “She doesn’t have to know?” ---The, the, the documents will stand on their own.

Sorry, that she doesn't have to know that the documents would stand on their own?---No, no, no, no, I mean that, what - - -

THE COMMISSIONER: But she would know if the documents stood on their own?---Yes, yes.

So there's something that she would know on the face of the documents but there's something that is being, there's some suggestion of information being withheld from her by, by that phrase, "She doesn't have to know?"
10 ---See I would use that phrase to say, right, you can't expect her to know everything.

MR THANGARAJ: Right. Well why would you start off – if that was the case, why would it start off or be preceded by, "But more importantly?"
---She wouldn't have to know everything.

All right. Just going back to what you said earlier. You said you were shown a different document during the private examination. The two documents you were shown were the two documents I've taken you to?
20 ---Right.

We'll go back to volume 37, page 98, please. You see that document refers towards the top to J Maree?---Yes.

So when you said you saw a document before that had his name on it, that's the one you're talking about, at least the one you saw in this room?---Yeah. Okay.

I want to ask you about a car. When you retired did you buy a car from Council?---Yes, I did.
30

And was it the same type of car that Mr Goodman had?---Exactly the same.

Right. Did you – what was the policy with respect to the price you would have to pay for that car?---Well I, I had an agreement with the General Manager and the Mayor. That I would pay the higher, the higher of the two prices, either the written down value or the trade-in value.

Right?---And that's in writing.
40

All right. And who determined – what was the trade-in value and what was the written down value?---Well - - -

I'll withdraw that. Was the written down value simply a mechanical, worked out mechanically, depreciation off the purchase price every year or was it - - -?---That's what I understood it to be. But I mean I didn't do the calculations, I got all of that information off Mr Goodman who also gave me a slip to show that he had sold exactly the same car that was three

months older than mine, right, the one I purchased and it actually sold at auction within a month or two of when we were doing it for \$39,000.

Right. And is that – was that a Council car, his one?---Yes.

All right. So that will mean that – if what you're saying is correct, then there will be Council records which show his, was this a LandCruiser?
---It was a LandCruiser Sahara.

10 Okay. So there will be a Council record of his LandCruiser selling before, shortly before you bought your LandCruiser?---Yes.

Okay. Because I just want to raise this with you. He says not that he gave you a document which showed how much it had been sold for but a valuation, which of course would be a very different situation to what you're saying, wouldn't it?---Yes.

20 Okay. And if he gave you a valuation of his car and that was used to determine the purchase price you would pay then given the respective conditions, age of the cars, you agreed that would've been improper?
---Yeah. But I mean valuations are really, you can't compare.

Yeah. But there's a big - I think you've agreed with this. There's a big difference between a valuation being used from a car that is not comparable – well you agree that you couldn't use as a – you couldn't use as a valuation, a valuation of another car which was much older and in worse condition, do you agree with that?---But it wasn't much older.

30 Okay. Well, all right. Well let's talk about condition then. If there's a car that was – you can't use as a valuation as a car that you're going to purchase as a basis for the valuation, you can't use the valuation of a car unless it's of comparable quality and value?---Yes.

All right. If he gave you the valuation of a car – if he gave you the valuation for his car and that was significantly lower than the valuation of your car, it would've been improper to use that valuation. Do you agree with that?---But we didn't use a valuation.

40 All right. I'm not, let's forget about whether you did or not. I'm just going step by step. If, if what he said was what happened, that is, his valuation and his car was worth a lot less than yours. If those two things happened, it would've been improper to use that valuation. Do you agree with that?
---If that were the case.

Yeah, all right. All right. Were you aware of Ms Baccam having a Lexus bought for her by Council?---No.

All right. You understand that Mr Goodman attributes the authorisation, if I can use that word, for that purchase to have come from you?---Yes.

All right. And he also says that you instructed him to sell that car at some stage. Did you ever instruct him to sell a Lexus for Ms Baccam?---No.

All right. All right. Mr Goodman also raised the credit card use. Did you have a corporate credit card?---Yes, I did.

10 Did you have two MasterCard and a Diners Club card?---Correct.

Were they all Council cards?---Yes.

All right. And was – were those credit cards under your control or did you allow other people to use them?---Well, they were physically within, within my possession at all times.

All right?---Right. But I know that other payments were made on those cards.

20

And how do you know that?---Because I was told that. I was told that there was an incident where a number of the Councillors' telephones were cut off because the Telstra bills hadn't been paid and the excuse I got was that there was some problem in processing them or a cheque run didn't come and they said we're going to pay them on the card from now on.

Right. And did you know whether or not that happened?---I believe it did happen.

30 All right. I assume that – these are corporate credit cards. Council is paying for them. Is that right?---Yes.

Did you have an arrangement where any personal expenditure – or did you use them for personal expenditure at all, any of those cards?---I did within the limits of the allowances that I was allowed to use them.

Okay. In your employment contract?---Yes.

40 All right. So that would mean to check that you would have to go through the statements yourself to make sure that you were doing the right thing by Council as the General Manager?---Yes.

So you checked those every month?---I didn't check them every month but I certainly checked the last year that I was there.

Right. Why didn't you check them every month?---I was told that everything was okay so I never asked about the credit cards.

All right. What did you understand that you could use the credit cards for?
---My contract allowed expenditure for a fairly broad range of activities.

Yeah. All right. Well, we'll come to your contract in a moment then. If you wanted to, if you – were you allowed to use it for a private purpose if you reimbursed it, were you allowed to use the Council credit card for a private purpose if you then reimbursed them – the Council?---I don't know that that ever arose.

10 Okay. Did anyone ever acquit your credit cards?---I would have expected them to be acquitted every month.

All right?---And I was also told they were audited.

All right. Were you aware of any other use of the credit card apart from the example of the phone bills apart from your own use?---I am now.

All right? What are you - - -?---Because I, I had the opportunity to look at some of the older ones in the last few days.
20

Right. And what have you seen there?---Some staggering things.

All right. Well, like what?---Oh, there was expenditure that I had no idea it was being used for.

All right. So how was it that that was able to happen, do you know?---By the cards not being acquitted every month I'd imagine.

30 But you're the General Manager and you've got the responsibility of holding three corporate credit cards?---Yes.

Right. This is Council money being used to pay for these expenditures, right?---Yes.

You know that there are confined limits to the use of it, that is, legitimate Council business or pursuant to your employment contract?---Yes.

40 Surely corporate governance would dictate that every month you would carefully go through those credit card statements?---And that's been a requirement since 2011.

All right. Well, forget about whether that was a requirement or not. Surely as the General Manager you would have done that in any case as a matter of transparency and corporate governance?---I believed that, that other than the telephone bills I was the only person putting anything on there and I knew what I was putting on there.

Yeah. Well it may well be – well, you might say that with respect, Mr Fitzgerald, but that's not what I asked. Part of corporate governance, you are the responsible card holder with those three cards, aren't you?---Yes.

They had significant credit limits?---Yes.

10 And surely as the General Manager, if only to set an example to others, you would be required to, or you would think it appropriate, sorry, essential, that you would check those credit cards every month?---I just never put my mind to it.

All right. Well do you agree that as the General Manager who has the benefit of high credit limit credit cards, it was incumbent on you to check them every month but you failed to do so?---I don't agree with that.

All right. So how much were the limits on these cards?---I don't know.

20 Well doesn't that make it even more important that you checked to see that it's not being misused?---No, I don't think it made any difference.

See there are payments on there to Gas Motorsports, for example, which is Mr Goodman's business. Did you allow him to use it for his personal expenditures?---No.

Well how did that happen then?---I don't know when that happened.

30 But forget about when it happened, how did it happen?---Well obviously somebody who was in a position of trust, didn't have the card in their possession, but was able to quote the numbers off records they must've had.

Well Mr Fitzgerald, when we resume the inquiry, I'll take you through some of those credit card payments. Inquiries will be made between now and then as to who may have used and how those expenditures. All right. Now Mr Goodman's also given evidence that some of the statements for those credit cards went to a GPO Box in Sydney. Where were the statements going to your knowledge?---I don't know. But some, some of the statements that I've looked at in the last couple of days, some were going to Mascot and some were going to the city.

40 Yeah. And why were any of them going to the city?---Well, the city, we had two post office boxes.

No, I appreciate that. But you've got someone, you've got the MasterCard going to the local post office box, why would you have a corporate credit card that you are not checking every month, you say, why would you have that going to a remote location?---Well, that, that and normally as I understand or recall it, if there was confidential information, not just credit cards but any other legal documents or those that you didn't want to be seen

by all of the junior staff in the office who used to open all of the mail, then it would go to the, to the city box and then get cleared from time to time and be processed.

And who cleared the city box?---I don't know.

All right. Well, if it was confidential it would have to be people that were within - - -?---Yeah, sorry, yeah, yeah.

10 Well, so who cleared, who cleared the city box?---Well, well, it may have been Mr Goodman or one of his staff.

All right?---Right.

Well unless - - -?---Or it may have been a member of my staff from time to time.

All right. Unless the – well, okay. Then how would a credit card statement fall within the confidential section?---I don't know that it – well, I don't
20 know that I did.

Okay. Well, then that's not the explanation for why the - - -?---Except some of the expenditure and I know one went to Mascot, right, so, yeah, I don't know the answer to that.

No. But there is one obvious reason why one credit card is going to the normal GPO, sorry, the normal post office box and there's another credit card that is going to a remote location which is only accessed on a confidential basis. What's the legitimate explanation for why one credit
30 card is going to a remote location when the other two are going in-house?
---It was not a decision I made.

All right. Well you knew it was happening?---Well I was - - -

Sorry. Who made the decision if it wasn't you?---I don't - - -

These are your credit cards?---Yeah.

All right?---Right.

40 So who made the decision?---I don't know.

All right. But you knew about it?---Well - - -

You knew that's what was happening?---I, I knew that there was, there was a mailbox in the city, that's all I knew.

No. Well you also knew that one of the credit cards statements was going into the city, not to the other one, because you just told us?---But only when I looked at it just the other day, that's what I said to you.

All right. Well, you knew about that at the time, didn't you? Because your secretary was the one that was – your secretary was one of people clearing the city post office?---I don't know if it was ever my secretary.

All right. Well - - -

10

THE COMMISSIONER: The point is someone was traipsing into the city to collect the contents of this post office box?---Yes.

And bringing it all the way back out to Botany?---Yes.

MR THANGARAJ: Why wouldn't you just have two post office boxes at Botany, one accessible by a small group of people and one accessible by the rest?---I don't know.

20

But unless you wanted to deliberately have a remote location which facilitates poor corporate governance, why wouldn't you have two so that the same – so they're close to the office?---In my mind it wouldn't make any difference whether it was two at Mascot. It would be probably more efficient.

Well it does make a big difference. You've got one out of the reach of the people that can access the local box?---But, but you said if you had two boxes, one that some people could access and one some people or another it would be exactly a parallel system.

30

Well who knew about the one in the city?---I don't know.

Did you approve an alarm system to be installed at Ms Cullinane's house? ---I would have approved it but I don't know if I did.

Well, did you know that she had an expensive alarm system put in at her house?---Well, what I know is that Ms Cullinane come to see me on a number of occasions about being followed from work and followed from home, somebody sitting outside her house, and generally she believed entering her house while it was under construction.

40

Right?---All right.

That must've been very troubling for you?---It was. And to, to such an extent that I actually went to her house to, to have a look at it, because I'd never seen her house before, to see what the circumstances were. And I gave her some advice to – she said people are creeping up the back, parking out the, out the front, and observing me, following me.

THE COMMISSIONER: Sorry. Did you say this was while her house was under construction?---Reconstruction. I think it had been refurbished.

It was being renovated?---Renovated, yeah.

So there were builders who were accessing the site each day?---Yes.

10 Right?---Right. But she was telling me that there were people coming of a night.

MR THANGARAJ: Right?---So I gave her some advice that was to rake the builders' sand, which was in a narrow passageway where she thought the people were coming in and to see whether or not she was imagining things, to see whether there whether there were footsteps in there before the builders came the next day. Right. And she reported to me that, yes, there was.

20 All right. And she also told you, did she, that she saw people sitting out the front?---That's my recollection of what she told me.

Right. And that she, how did she know the people were following her from work, did she say that she observed someone following her from work?
---On more than one occasion she told me that.

All right. So she observed someone following her out of Council property and she saw the same person at her house?---That's what she told me.

30 All right. And that happened a couple of times?---Yes, more than one.

All right. So who called the police?---Not me.

Sorry?---Not me.

Well, surely you advised her to call the police?---No, I didn't.

40 You're the General Manager, your Deputy says someone is following her from work to her house, you set up countermeasures, she reports back to you that someone has broken into her house, and you're telling us that you gave her advice which did not include telling the police?---Well I just gave her advice - - -

Well yes or no, is that right?---I can't answer that question yes or no.

Well, you just said you didn't tell the police. You didn't tell her to ring the police?---Yeah. But you put other things in there that - - -

Right. All right. Well why didn't you tell the police, why didn't you tell her to ring the police, given the background of what you told us she told you?---Right. I don't know whether it's a police matter.

Beg your pardon?---I didn't know it was a police matter.

Stalking, breaking into a house, that's a Botany Bay Council matter, is it?
---She never said breaking into a house.

10 Well you just said that she said and an intruder went into her house, you set up a countermeasure - - -

MR LATHAM: No, no. That wasn't the evidence.

MR THANGARAJ: All right.

MR LATHAM: There's a difference between getting into the property and getting into the house.

20 THE COMMISSIONER: All right. Getting into the property, yes.

MR THANGARAJ: Right?--- And it was under, and it was under renovation so it was open at the rear.

But whether it's open or not, why did you set up the sand in the pathway?
---Well to find out if it was true.

Right. And then she reported back to you it was?---Yes.

30 Well, why wouldn't you tell the police?---I didn't see any - - -

Well, if any of this is true, surely the first thing you would do is say we need to contact the police – if any of this is true. Do you agree with that?---No.

No. Okay. So as a matter of Occupational Health and Safety, you as the General Manager are hearing this from the Deputy General Manager and you think it's not appropriate or there's no need for you to then ring the police, either to tell her to do it or you to do it yourself. Is that right?
---I made, I made the decision at the time on what I had in front of me.

40

Yes. And what you had in front of you was, she'd been followed home from work on more than one occasion, correct?---Yes.

She'd seen someone out the front of her house that she regarded as suspicious?---Yes.

You'd set up a countermeasure to see if someone in fact was coming into the property unauthorised, correct?---Yes.

And she reported back to you that there was unauthorised entry?---Yes.

Right. And you were so concerned that you installed, authorised a security system to be installed?---Um, I'm not sure if I approved the system but I would have approved it had I been asked.

All right. So notwithstanding all of that, who decided – did someone decide not to tell the police?---Well, it wasn't up to me.

10

Right. But don't you have a responsibility whether she thought of it herself, don't you have a responsibility as a General Manager of an organisation to at least report it to the Occupational Health and Safety Manager at work? Did you do that?---No, because it's not for me to tell other people how to lead their lives.

20

No, it's got nothing to do with telling someone how to live their life, Mr Fitzgerald, it's about welfare of your staff if this happened. Now, if this happened, the first thing you would have done is to tell the OH&S person that was responsible. Is that right?---(No Audible Reply)

You, you – she tells you that she's been stalked and someone's coming into her house. Is that right?---Well, I think, I think you're probably putting it - - -

Okay. She, we'll use your words. She said she'd been followed home from work a few times, right?---At least twice.

30

Right. At least twice. And someone's coming into her house?---Yeah.

And she expressed concern for her safety, did she?---Yes.

Right. And in those circumstances you're saying not only did you not tell that police, not only did you tell, not tell her to tell the police, you didn't even tell the OH&S person at your own office. Is that right?---I don't - - -

Is that right?---Yeah, I don't - - -

40

I'm talking about what you did or didn't do, not what she did?---Yeah.

You as the General Manager did not tell the OH&S officer. Is that right? ---Yes.

Did you make any record of this concern for safety that your Deputy General Manager had allegedly expressed to you?---Ah, no.

What authority did you have to authorise at that time a security system being installed at the Deputy General Manager's house?---Um, the Council has a policy.

Has a policy?---Council has a policy.

Right?---It relates to the security of servants. Right. And a number of people had - - -

10 Sorry, has a what – I missed it, I'm sorry?---Right. A Security of Servants Policy.

Right, yep?---All right. And forming part of the policy, and it preceded me by many years - - -

Yeah?--- - - - because a number of incidents had occurred in the Council prior to me going there.

20 Right?---All right. Where there were assaults, where there was paint thrown over people's houses, where there were ducks put in people's swimming pool and the policy was generated long before me being there.

Is that a written policy?---Yes.

Have you read the policy?---Yes.

Where was it kept?---It was kept with the rest of what was then known as the Corporate Plan.

30 Right. And where was that?---Well, there was many copies throughout the whole of Council.

Okay. And there would have been copies electronically then for people to access, were there, or just hard copies?---I, I, I would have thought not in those days, we're talking early 2000s here.

All right. Okay. Did the hard copies that were not on the system get transferred onto the system at any point?---I don't know.

40 All right.

THE COMMISSIONER: Was it part of the HR Policy subset?---It, there was, there was a whole, a whole folder, very, very similar to these sorts of folders, that was called the Corporate Plan.

Yes, but the Corporate Plan would have included an HR - - -?---Section.

Section?---It, it had all sorts - - -

Did it fit there or did it fit somewhere else?---In today's world it wouldn't be called a Corporate Plan, it would be, it would be called like an operational plan more than anything.

All right?---Right. So, and it was superseded by other documents that were generated at different times over the years.

10 MR THANGARAJ: All right. Did the Corporate Plan have an index?
---Can't recall.

Well, you're saying there were multiple - - -?---Oh, it would have but I can't recall so I can't say yes.

So, all right. Now, there's a policy that's in place now that allows, apparently that allows for \$2,000 to be spent on security for the Mayor or Councillors. Is that correct?---I don't know.

20 All right. What did the Security of Servants Policy permit you to do?---Um, as I've not seen it for more than a decade I would um, I, I would be guessing if I was to tell you what was in there, but I believed it gave me the authority to approve um, a reasonable alarm system or a security system.

All right. Now, corporate governance – and I'm sure you're not saying that documentation wasn't needed even 10 years ago or 15 years ago, documentation was required for these things, weren't they?---Yeah, and I would have expected that there would have been a whole quotation folder that would have said, you know, you could have this level, that level or that level?

30 Yeah?---Um, and I would expect that to all form part of – which, which would then become a purchase order which would then get paid for.

Yeah. And so what would have been required as a minimum was first a note of the concern expressed by that employee?---Well, that's why you would go and get the, you would go and get the quote.

40 Yeah. No, no, before you're getting to the quote stage you need, you need someone to record or make a complaint or make an application for funding under this policy, don't you?---Oh, I don't know it would go that formal.

All right. Well, it may not be that formal but at the very least it needs a note from you doesn't it, saying Lorraine's spoken to me, she's expressed this concern? You'd have to make a note about that, surely?---Oh, I would have actioned it through the administrative area, right, and just said we should, we should get, you know, some quotations for the supply of this equipment.

Right. But you're getting quotations without recording the basis of getting the quotation and then using Council funds?---Well, when you get, when you get the quotation you would then, you would then work the file up from there.

Okay. So you get the quotations, you get that going first?---Yep.

And then you work the file up by one, noting the concern expressed, and two, you signifying approval with a signature. Is that right?---Ah, yes.

10

And you would have to sign off on something which would therefore have to report what's alleged, you'd have to sign that before payment was made surely?---Yes.

Right. So if this was, if this was legitimate there will be Council records about this entire episode, won't there?---Well, there would be some records, yes.

20

THE COMMISSIONER: When you said the policy you believed authorised you to incur that expenditure, that's on the assumption that the risk to the employee is work-related?---Yes.

Did it, did it - - -?---Or arises out of their work.

Arises out of their work?---Yeah.

30

Was it ever discussed with Ms Cullinane that the, that the accessing of her property from the rear and the presence of people on the property at night may well have been related to the theft of building equipment or building items that were left behind by the people who were renovating the property, in other words that it was just, that it may well have been, I don't mean just, but it may well have been a product of petty theft in the circumstances of her renovation?---It, it could have been, but then I wouldn't have thought that person would follow you from Botany to [REDACTED]

40

No, no, no, that's, but that's a separate matter, I'm just talking about – see that assumes that the person who was following her from work was also the person who was accessing the property but there doesn't need to be a nexus between the two things, does there? One might have been people accessing the property for the purposes of petty theft and the other might have been a separate matter entirely. That's what I'm suggesting?---It's possible.

Right.

MR THANGARAJ: Given that she had made a complaint you say about being followed from work, it's clearly something that should have been reported to the OH&S officer, if it happened. You agree with that?

---Um, it certainly happened but whether, whether the conversation was at the complaint level or whether it was two colleagues speaking to each other I think is, is where you've got to set the standard in this.

Well, firstly, whether they were two colleagues or not doesn't make the slightest bit of difference with respect to the employer's responsibility to the health and safety of their workers, surely?---I think there's a question of degree.

10 I beg your pardon?---I think there's question of degree.

Why?---That's what I think.

But and the second thing is, whether it was an informal discussion or a complaint doesn't matter because it got escalated into a formal process where Council funds were used?---Correct.

20 So at that stage even if you didn't have it at the beginning, which I say you would have, but even if you didn't have it at that stage the time came before payment for you to report this to OH&S as a matter of obligation as the General Manager. Is that right?---Again I think it's a question of degree.

Well, Mr Fitzgerald, either none of these allegations were actually genuine or were not made to you or this explanation that --no, I withdraw that. Can you please tell us the basis on which you could say given the history given to you allegedly by Ms Cullinane how you could possibly say that the General Manager doesn't have an obligation to raise this with OH&S?

30 MR LATHAM: Well, I know this question has been asked about five times, Commissioner. There's not even evidence that there is an OH&S office.

40 THE COMMISSIONER: I don't know about an OH&S office but there was definitely a Human Resources section. Mr Fitzgerald, I would have thought even back in 2003 that there was a very real risk that in the event that Council didn't take seriously a complaint by an employee about being potentially harassed or assaulted by a member of the public because of the nature of their duties, there was a very real risk that in the event that something happened then employee could sue Council for failing to observe its duty of care towards the employee. Was that not a prospect?---Well, I at the time must have thought that having an alarm or having a security system would mitigate that but I mean I'm damned if I do and damned if I don't. If I don't do it and something happens to her, right - - -

We're not querying whether or not you were damned if you didn't install the alarm system or damned if you did. What we're querying is the lack of any documentation around the registration of that complaint for the purposes of OH&S or Human Resource issues and the approval that went with that so that it was clear on the face of the approval that it related to a recognised

and recorded incident. That's what we're querying?---All right. I mean I – because I think I said at the start I'm not sure if I did approve it but I would have approved it and I want to make that clear.

MR THANGARAJ: All right. How would an alarm system at her home help her if someone followed her from work and did something?---Well, the system – that's why I'm saying that you would get in the quotation whether there would be panic alarms, right. We had within the Council panic alarms that some of the outdoor staff would wear around their necks like a bracelet
10 so - - -

Well, that didn't happen?---Sorry?

There was no panic alarm given to Ms Cullinane, right?---Well, I don't know that because I - - -

I want you to assume that. I want you to assume - - -?---But I'd want to see the document that showed what was installed.

20 All right. Well - - -?---And what was approved and who approved it.

Well, Mr Fitzgerald, if this was all done improperly it would explain why there would not be any documents suggesting that X number of cameras were installed at Ms Cullinane's house. If it was done improperly that's exactly what would not exist so let's not worry about documents. I'm asking you to assume that Ms Cullinane did not ask for or was given a panic alarm that she could wear, okay. I want you to assume that. I just want you to assume that for a moment, all right?---But, but you can have a panic button inside on a pad somewhere on the wall. There's many ways you can
30 do this.

I'm not talking about the house?---Okay.

You said the alarm system would mitigate her risk. How would an alarm system at a property mitigate the risk of someone who's told you that they've been followed from work if the incident that then happens is between work and the house?---Oh, between work and the house, no, but
- - -

40 Well, if - - -?---But if, but if somebody were to enter the house which is - - -

Forget about the house, Mr Fitzgerald?---But that was what was put to me.

Okay?---The person was entering upon the property.

Okay. That's one thing that was put to you. You say it was also put to you that she was followed from work - - -?---Yes.

- - - on more than one occasion?---Yes.

So forget about the pad at the house, all right. If she's attacked between Council property and her house what possible mitigation would an alarm system have?---That's, that's just nothing that has ever crossed my mind because I'm - - -

10 Well, it must have crossed – well, with respect, it must have crossed your mind because she told you that she was followed home from work?---Yes, but if you're driving from Botany - - -

Yeah?--- - - - to [REDACTED] right, and cars are two cars apart and she's in a locked motor vehicle the risk of her being attacked in that motor vehicle I would say would be miniscule.

Right.

20 THE COMMISSIONER: Is that where she was living at the time, in [REDACTED] [REDACTED] Yes.

MR THANGARAJ: And what about getting from Council property to her car?---Her car was parked on Council property.

Right?---And there were armed rangers on that property.

All right. And what about if, if that's – all right. The armed rangers would stop anything and then - - -?---The arms have been taken off them by the way but they were armed.

30 And then so she parks the car at her house or on the street and then what? ---Will be into, well, she's in her house.

40 Well, no, she's got to get from the car to the house. She's seen an intruder out the front of the house. She's had someone come into her house – this is what's reported to you – and someone following from her, from work. All of these are potential dangers according to you that you've heard from her, right. How would the alarm system in the house mitigate any of that?---Are you – so what you're saying is that she, she – how would she get from the parked car in her house to into her front door before she could – and she would be attacked in that part of it as opposed to late at night by somebody coming into the back of the house?

Yeah, the risk – I mean all this is about risk isn't it?---Yeah, but let me tell – that's, that's – I gave that, that, that scenario of getting attacked from her garage to her front door.

Right?---I gave no thought to it.

All right. Did you approve a Lexus to be bought using Council funds for Ms Cullinane?---Not that I can recall.

What does that mean?---Well, I can't - - -

MR LATHAM: Well, exactly what he says.

Well, okay?---I can't recall doing it.

10 Was – she had a Council – how many Council cars was the Deputy General Manager entitled to?---Well, she, she had a Council car.

Yeah?---And I've seen what's been in the, the documents here recently.

All right. How many Council cars was the Deputy General Manager entitled to?---Well, it depends how she set it up.

20 THE COMMISSIONER: As part of her package?---Yes. And had it have been – I, I – and again I don't recall approving the Lexus but if it would have been discussed with me about approving the Lexus I would have advised her that if she needed a second car she should take it on a novated lease. That's what I would have advised her.

MR THANGARAJ: All right. Well, what circumstance allows Council to use Council funds to buy someone a Lexus?---Well, just buy them a car. I mean a Lexus is a car. It's - - -

30 All right?---Right. So to buy them a second car is that what you're asking the question? I don't understand the question.

Yeah. Well, you knew that she had a Council car?---Yes.

It wasn't a Lexus. You knew that?---Yes.

Did you authorise Council funds to be used to buy a second car which was a Lexus?---Not to the best of my recollection.

40 All right. Well, if you did what documentation would need to be in place for that?---As I said before I would have advised her - - -

Not what you advised her. If you authorised - - -?---I didn't advise her anything but had I advised her.

Yeah. All right. Well, if you had authorised Council funds to be spent to buy her a Lexus or a second car, forget about Lexus, a second car, what documentation would need to be in place before that payment was made? ---Well, you'd have to have a very good reason as to why you'd do it.

Yeah. But what documentation would be in place?---Well, there would be
- - -

This is why I'm asking, with respect, this is why I'm asking questions for
the third or fourth time?---There would be written approval.

Right?---A concurrence. There would be an invoice or a quotation and said
approved for purchase.

10 Right?---Or there would have been a purchase order issued or there would
have been, you know, something – some documentation.

All right. So what circumstance might have arisen where you could have – I
mean you've said not that you can recall. You understand that's an
equivocal answer?

MR LATHAM: Well, it's not equivocal.

20 THE COMMISSIONER: Well, all right.

MR THANGARAJ: All right.

30 THE COMMISSIONER: Can I just raise something else with you,
Mr Fitzgerald. Because we're talking around about 2007 I'm assuming – or
in that ballpark, did Council manage a fleet in the sense that if a vehicle was
part of an employee's package they in effect paid as part of that package
lease payments which were paid by Council for the purposes of that vehicle
being a Council vehicle or was it a situation where as part of the package the
Council actually agreed to buy a car in that person's name because the two
things are quite different aren't they?---Um - - -

You see, you see a car that's leased as part of a fleet and then, and then
given to an employee, even for private use, and the employee pays the lease
payments, that car's not in the name of the individual, it's in the name of the
institution that manages the fleet, it's in the name of Botany Bay Council,
isn't it?---Yes.

40 So that's – I'm just curious, what's the distinction here, because this appears
to be a car that was actually in Ms Cullinane's name. Do you understand
that?---I do.

Right?---Right.

So - - -?---Um, but I've not seen any documents that would indicate that
I've given approval.

No, no, no, but what I'm asking is, if it's in her name it's not therefore part
of a package in the sense that she was entitled to a vehicle which was part of

Botany Bay Council's fleet, it's a separate benefit or it's a different entitlement if you like?---Yes, and also if you take it on novated lease you finish in a similar way.

Right.

MR THANGARAJ: Did you approve – did you know that – I withdraw that. Did she come to you and say, or on the phone and say, look, instead of me getting this annual payment that I get, instead of getting that for this year, can Council buy me a car instead?---I don't recall that.

Well, is that possible, that she might have said that?---(No Audible Reply)

MR LATHAM: Well, sorry, my friend - - -

MR THANGARAJ: Is it possible that - - -

MR LATHAM: My friend should define what is the annual payment being talked about I think.

20

THE COMMISSIONER: The part of her package that was allocated for the purposes of leasing the vehicle, Mr Thangaraj, is that what you're saying?

MR THANGARAJ: No, no, separate to that.

THE COMMISSIONER: No, something else. All right.

MR THANGARAJ: I'm going to the evidence that Ms Cullinane's given. I asked you before, I pointed out to you before that Ms Cullinane received an average of \$40,000 outside payroll, outside her group certificate, every year for 20 years. Remember that?---Yes.

30

And you're aware of that evidence anyway, aren't you?---Well, I am now.

Yeah, and you're aware of that over the last few days?---Yes.

You're aware of the evidence – have you read her transcript?---Ah, not, not completely.

40 All right. So you've read some of her transcript?---Um, yeah, I think so. I read yesterday's last night.

All right?---So if it's in that, but it was late at night and I was tired.

All right. Well, forget about – so let's just, let's just assume for the moment we're using the label ex gratia payments, all right? I'm not suggesting for one moment that it was legitimate, but I'm saying let's use that term because it's been used in the transcript that recall you've read. All right?

---Yes.

Every year for about 20 years, an average of about \$40,000, Ms Cullinane was given an ex gratia payment by Council, all right. Now, you're aware of that from what you're reading and information - - -?---Yes.

- - -you've been given over the last few days?---Yes.

10 Right. Was there ever occasion that she came to you and said, look, instead of my ex gratia payment for this year, can Council use that money to buy me a car instead?---I can't recall that.

All right. Well, does that mean it's possible that that happened?---Um, anything's possible, I'm relying on memory and I'd much rather rely on documents.

All right. Well, part of the problem is, well - - -?---And I've been away for - I've been out of this for more than five years.

20 No, I understand that, but the only way that it would be possible is if you knew that she was getting these payments on the side. Do you understand what I'm saying?---Yeah, I understand what you're saying.

If she's saying don't worry about the payment for this year, pay it this way instead - - -?---Yeah.

30 - - - then you would have had to have known about the paying if you, if you said yes?---Yeah, but my, my knowledge of the payment were that she was paid superannuation, right, and that was to catch up because she, she missed one scheme, right, and that there was a payment we made to, to, to give her catch-up.

Could volume 37, page 98 be brought up, please.

THE COMMISSIONER: But your understanding in relation to that was that that payment was nonetheless going to her directly?---Um - - -

Is that right or not?---I understand it was going to her directly, right, I - - -

40 But you understood then that it was going to her directly is what I'm asking you?---At, at the time I hadn't put my mind to it.

Are you talking about what's on page 98 or were you talking about something different to that, when you say you understood we were paying her superannuation?---Yeah. A document that I recall had Mr Maree's salary and her salary side by side, right.

All right. That wasn't shown here. You've seen that somewhere else?

---But no, no. Well that's right. Because, because I was also asked to - by Ms Cullinane, just before I left to make sure that on her personal file, and her personal file was held in my office, right, there was two or three, there was my personal file and the Deputy's personal file and maybe the Director's, I can't recall the details of whose were there, and my secretary would then do the filing into, into those because they were away from the rest of the organisation. And she asked me to check that on her personal file because it was in my possession, there was a document that related to the superannuation payments and the document that I checked that was there and was there, was one that had Mr Maree, paid the same salary and it went line by line and then there was an amount which I presume it was derived from this document.

All right. Can the witness can be given Exhibit 75, please, R75. This is a bundle of documents tendered by your Council. Can I ask you to go to page - and when I go to page numbers, I'll be talking about the bottom right-hand corner. Page 19, please?---Yes. Okay, right, yeah, sorry.

It might help if you take the clip off and just - - -?---The clip's off. Yes.

All right. That's a page headed "Schedule F"?---Yes.

And if you go 1.3, "Supplementary superannuation". This was still superannuation though, wasn't it, it was just - - -?---Yes.

- - - superannuation that you've taken from your salary and had it go into super instead?---Right, yes. But it - as I - or it went into a separate super scheme other than the Local Government super scheme.

I'm not suggesting that it went into the same one but it went into a super scheme?---To a super scheme, yeah. And it's now (not transcribable) back in the Local Government super scheme.

All right. And if you go to page 25, please. That's a memo dated 3 February, 2000?---Yes.

And it has your salary and then in brackets the car allowance and in brackets the supplementary superannuation and in brackets the civic allowance? ---Yes.

Because they were coming off the salary?---Yes.

Is that right. So the \$20,000 that was your choice pursuant to paragraph 1.3, the contract which we went to in schedule F?---Yes.

Sorry, paragraph 1.3 of schedule F. All right. And then below that the figure of \$20,000.78 that was also a superannuation payment?---It was the Council's contribution.

Yeah. So none of this was cash and all of it was subject to the relevant tax?
---Well that's my understanding.

Yeah. And it was coming to you from the payroll supervisor, you see - - -?
---I don't know where it was coming from.

10 Sorry. No, sorry. It was from your Manager of Personnel to the payroll supervisor. That's all right?---But this, this, this memorandum is, yes.

Yeah. All right. If you go then to page 20, please?---20.

Paragraph 3, "Expenses and allowances"?---Yes.

The 3.1 and I'm asking you this because I'll be taking you to aspects of the credit card, but when it says "All reasonable expenses", well if you could just read 3.1 to yourself?---Yes.

20 All right. So you agree that not only do the expenses have to be reasonable but whatever they were they had to be in connection with your duties - - -?
---Yes.

- - - as the General Manager, it wasn't a discretionary fund for you to use as you, as you pleased?---Not 3.1, no.

Okay. Well, are you saying that there was part of your employment contract that allowed you to spend a certain amount of money as you saw fit - - -?
---Yes.

30 - - - completely unrelated to Council work?---Well, not necessarily unrelated to Council work but as I saw fit.

Yeah, but even when there were discretions for you as to how you spent the money it still had to be related to Council didn't it, there wasn't a provision that allowed you to spend money just as you wanted to otherwise that would just be income?

MR LATHAM: But some of these entries are income.

40 THE WITNESS: Well, I would have thought - - -

THE COMMISSIONER: Can we just stick to the present question. I think the present question - - -?---I think 3.5 on page 21 - - -

MR THANGARAJ: All right. Well, let's go to 3.5?---Yeah.

What do you say 3.5 allows you to do?---It allows me to spend an amount of money.

It says 20,000 annually?---Yes.

On what?---As I read it, in the second paragraph it says, “Council seeks to retain effective staff and an allowance of \$20,000 is to be available to the General Manager to use as he determines from time to time.”

10 All right. What about the rest of the paragraph?---“Council recognise the benefit of travel and study to help compare our city to others and derive the best outcomes for the city by introducing the best available.”

All right. So what’s the relevance of that second sentence of that paragraph?---I think it makes it clear that I could use it for travel.

Yeah. But when it says, “to help compare our city to – Council recognises the benefits of travel and study to help compare out city to others and derive the best outcomes for the city by introducing the best available” - - -?---Yes.

20 - - - do you understand that that means yes, you can spend it on travel and study as you see fit but it still has to be something that benefits you as the General Manager in your role with the Council?

THE COMMISSIONER: Such as conferences overseas or visits to sister cities or things of that nature?---Yes, but I don’t think it’s limited to that.

MR THANGARAJ: Well, whatever it is it’s not just a carte blanche for you to spend 20,000 a year on whatever you saw fit. You couldn’t use that \$20,000 to go and buy a boat that was to be used exclusively by yourself.
30 Do you agree with that?---Um - - -

Otherwise what would be the meaning of the second sentence of that paragraph?---Well, I think you’ve got to take in that it’s, that it’s, it’s a retention allowance for my long service and to make sure that I don’t go to another place.

40 All right. Well, what do you say 3.5 allows you to do, are you saying – well, I’ll put it this way. Are you saying that 3.5 allows you to spend \$20,000 a year in any way you see fit?---Within reason.

Well, what does that mean?

THE COMMISSIONER: But what does within reason mean? Can I just take up the example Counsel Assisting gave you. Do you say you could spend that money to purchase a boat for your private recreational use, is that what you say?---It would never enter my mind.

Well, no, but I mean we have to put parameters on this somehow and so that's one example. Would that clause allow you to do what's just been suggested in your view?---Well, I don't know what, what limits it would put on me but at every time you must act reasonably.

MR THANGARAJ: No, but acting reasonably can mean anything. It can mean as a, as a citizen of the State or it can mean as a General Manager. If you take – you've got a long-lost friend and you decide to go out to dinner together and that person has nothing to do with Council and you, you paid for that dinner, would that be something that could come within the \$20,000?---It's hypothetical. I don't want to deal with it.

Well, no, it's not hypothetical because I'm going to take you when we come back to your credit card - - -?---Yes.

- - - and I want to know whether you're going to say that \$20,000 of credit card expenditure every year comes from you having this entirely discretionary fund or not?---And I believe that's what it does.

20 Right. So when you said within reason what do you mean by that?---Oh, well, that's, that's for people to determine from time to time.

No, that's - - -

THE COMMISSIONER: Do you mean provided it doesn't exceed the \$20,000, is that what you mean by within reason? You see the term within reason either relates to the expenditure of an amount or it relates to the reasons for the expenditure. So when you say within reason do you mean that it's within reasonable limits as determined by the nexus with the Council –nexus between the expenditure and the Council or do you mean within reason in terms of the dollar amount that's spent?---I think the limit is on the dollar amount, the limit is not on, on how. But I mean it wouldn't cross my mind to buy a boat with it.

MR THANGARAJ: All right. Well did you ever just use your corporate credit card on the basis for entirely personal expenditure, that is nothing whatsoever to do with Council at all on the basis that you could do – you had an amount of money you could spend as you saw fit?---I can't, I can't recall. I'd have to look at the circumstances.

40 Well, what would the – what difference would the circumstances possibly make? We're talking about your entitlement?---Yes.

It has nothing to do with the circumstances?---(No Audible Reply)

I mean when I start taking you through some of these credit card expenditures which clearly have nothing to do with Council?---Yes.

Are you going to say that comes within 3.5?---Yes.

Right. So what didn't come within 3.5?---Well, I, I - - -

Well just give us one example of something that does not come within 3.5?
---Going to brothels.

All right. Well, why not?---Because I don't go to them.

10 Well that's, that's just – with respect Mr Fitzgerald, that's just an unresponsive answer. We're trying to work out – you're going to a legitimate brothel then according to you, you can use 3.5, you're not breaking the law?---Well, it's other – if people are unhappy with what I've done, it's for them to determine that.

No, no. We're asking you, I'm asking you what is that you say, your own contract allowed you to do? Surely you must've had an understanding of what your contract permitted you to do, given the amount of money you were spending on the credit card?---Well I believe that permits it.

20

Okay. What is not permitted under 3.5?---I, I can't give you, I can't give you that.

Well that means you say, that there are no limits to 3.5 except the \$20,000 annual threshold, is that right?---(No Audible Reply)

THE COMMISSIONER: And the proviso that the activity that he's spending the money on is legal.

30 MR THANGARAJ: Right.

THE COMMISSIONER: Is that the position?

MR THANGARAJ: Is that right?---It takes whether, whether a person's reasonable or not. But, you know, I mean but that's a matter for you to determine.

I'm sorry, to keep asking you this. But that's because you're answering. What do you mean by reasonable?---Well it's probably different to every –
40 reasonable is different to every person probably, right. But, but I rely on the lines there that says to spend as he sees fit from time to time.

Right. So therefore you're saying that 3.5 lets you do anything you want up to \$20,000 a year, that's legal, is that right?---That's my understanding.

All right. All right. Now finally, in the time that you – from the time that you started at Botany Bay Council what bank accounts have you had?---I have two credit union accounts.

Yeah. Who with?---One with Sydney Credit Union. Commissioner, do I have to put all of my personal – I'm happy to give you the details but - - -

THE COMMISSIONER: No. As long as you - - -?---I mean I've copped a bollocking in the press in the last few days for, for matters that have nothing to do with me.

10 You only have - - -?---And I - - -

- - - to nominate, you only have to nominate the bank and the branch and any other identifying information is suppressed from publication. I've made a general order in relation to any personal identifying information such as bank account numbers, telephone numbers and private addresses?---Right.

Which will also apply to you?---So there's Sydney Credit Union.

20 Right?---Right. And, and I've seen on the restricted site that you've got those, the Commonwealth Bank right - - -

I think you said two credit unions did you?---Yeah, two, two credit unions.

What's the other credit union?---The second, State Government Employees', SGE.

Right?---Right, credit union, and, and the Commonwealth Bank is the only accounts I have.

30 Right. Is that – are they the only accounts you've had in your name from the time you commenced at Botany Bay Council to today?---Um, I've had some loan accounts with St George Bank.

Right?---Right. In probably myself and my wife's name.

All right. Any other loans from any other institution?---Um, not that I can recall.

40 Have you ever deposited money into any other account, apart from paying bills et cetera, have you put money in accounts in a company – I'll withdraw that. Have you had any companies of which you're a shareholder or director?---No.

Right. Have you had any of your money deposited into another account apart from the accounts you've told us about?---What, someone else's name do you mean?

Yes, significant amounts of money. Not talking about \$100 here or a couple of hundred dollars there, have you deposited your money into any other accounts?---Not, not other than those ones I've told you.

Have you lent money, more than a couple of thousand dollars, to anyone?
---No.

All right. Did you ever borrow or lend money with Mr Goodman?---No.

- 10 Right. From the time you started at Botany Bay Council, apart from the corporate credit cards, did you have any credit cards that were personal?
---Um, the, the personal credit cards were linked to the credit unions.

Right?---That's the only place I have them.

So how many credit cards did you have, personal credit cards?
---Oh, well, they're either, what do you all it, EFTPOS cards or, that you can use as credit or - - -

- 20 Right. How many of those did you have?---Ah, I still have them. I have, I have one for State Government Employees' and one for um, Sydney, yeah, SGE and, State Government Employees' and Sydney Credit Union.

All right. Nothing further at this stage, Commissioner.

THE COMMISSIONER: Thank you.

Thank you, Mr Fitzgerald, you can step down.

- 30 **THE WITNESS STOOD DOWN** **[3.41pm]**

THE COMMISSIONER: In terms of the resumption of the inquiry, I know that there's quite a lot of material that's probably yet to be circulated and considered by the parties' legal representatives, could I suggest that that is a discussion that occurs between Counsel Assisting and respective legal representatives which would also have to take into account everyone's availability at a convenient time.

- 40 I'll fit in with, as best as I can with whatever that is and we will notify parties by email of the suggested resumption dates. Does that - - -

MR THANGARAJ: Ms Colquhoun is emailing all the representatives tonight about that.

THE COMMISSIONER: Thank you.

Nothing else at this stage?

Yes, thank you, I'll adjourn.

AT 3.42pm THE MATTER WAS ADJOURNED ACCORDINGLY
[3.42pm]