

MAGNUSPUB02616DOC
11/06/2010

MAGNUS
pp 02616-02647

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION MAGNUS

Reference: Operation E09/0560

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 11 JUNE 2010

AT 10.05AM

Any person without 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.

ASSISTANT COMMISSIONER: Thank you. Please be seated.

MS RONALDS: I call Mr Paul Chapman.

ASSISTANT COMMISSIONER: Yes, Mr Chapman. Prior to taking your evidence you're required to take an oath or make an affirmation. Do you have a preference?

10 MR CHAPMAN: The oath, please.

<PAUL ROBERT CHAPMAN, sworn [10.05am]

MS RONALDS: Will you tell the Commission your full name?---Paul Robert Chapman.

And your business address?---5 O'Keefe Avenue, Nowra.

20 And your occupation?---Director of Legal Policy and Special Programmes with the Division of Local Government, Department of Premier and Cabinet.

And how long have you worked for what was the old Department of Local Government and the now Division?---Well, I've been in my current position for about nine years.

30 So you have extensive experience about these matters and that's why we've asked you to come and - - -?---About local government matters in general.

Yes. Now, there's a range of issues I want to explore with you about, essentially about a relationship between the department, as it was, the division and local councils and the degree of autonomy and authority that seems to move between the two. But before I move to those specific areas, I'd just like to ask you some questions about a meeting that was held, that you attended with Mr Woodward, with members of, now I'll ask you only to look at documents that I show you, if you don't mind, Mr Chapman. Unless there's something you need to look at. If you could just shut your folder up. And if you need anything specific just ask me, because otherwise you're referring to things I don't, we don't know, and it makes it very difficult. 40 Can, just show him 197. You attended a meeting with Mr Woodward who was then Director General of the department and - - -?---Acting Director General, I believe.

Was he? Right. In 2009, with representatives from Burwood Council. Do you recall that meeting?---Yes.

And I'll just show you this document and you'll see there's some handwritten page numbers down the bottom. And if I could ask you to turn to page 12. It sets out the meeting was to be attended by, sorry, yes, Ross Woodward, Acting Director General, Department of Local Government, yourself, David Baird, who was partner then of Maddocks Law Firm, representing the Council, Lesley Furneaux-Cook, who was the Mayor, Les Hullick and Ian Dencker, who were both members of the Executive. Now, and you recall attending that meeting?---Yes.

- 10 What was your understanding before you attended the meeting of the purpose of the meeting?---I was advised that the purpose of the meeting was to provide an update on an ICAC investigation.

And when you went to the meeting, if I could ask you to turn to the next page, Mr Romano was there?---Correct.

Were you expecting Mr Romano to be there?---I was provided a list of the attendees that were expected.

- 20 Ah hmm?---And Mr Romano, I don't recall was on the list that I was provided.

Right. But he attended only for a brief time?---Correct.

And handed this note or statement to you or to Mr Woodward?---Correct.

And you read it while he was there?---Briefly.

- 30 And did you or Mr Woodward put any questions to him about the content of it, the statement?---Not that I recall.

Or specifically any questions about the allegations that by then had been aired over some time in the Sydney Morning Herald?---No.

And he then left as I understand it?---Correct.

- 40 And then there was a discussion with the rest of the people there. Did you understand the purpose of the meeting was to provide advice to those who were there?---Not directly, no.

And why wouldn't that not be?---My understanding and having come into that meeting with absolutely no background to the matter, was simply that the Council representatives would provide the division with a update or information on an investigation.

You'd seen the or you were aware of the articles in the Sydney Morning Herald?---Well, as I'm not responsible for investigative matters in the division, I just can't recall.

Well, it's not often is it that local councils get themselves on the front page with allegations of serious misconduct by the General Manager?---We receive in the department, in the division much media about local councils, so I may have been generally aware of it, but I was attending just to accompany Mr Woodward and to receive the update from the Council.

And in terms of at a more general level providing advice to Councils is that on your understanding part of the role of the division?---Yes.

10

And what sort of advice do you say that the division provides to Councils?
---Sorry, provided to - - -

What sort of advice to Councils?---On an entire range of policy and administrative matters to do with local government, guidelines, codes, the like but we do not have a role in providing Councils with formal legal advice.

20

No, but with policy advice about approaches they should take or policies they should put in place?---By way of guidance and assistance only but because of the nature of Councils as independent bodies, politic we provide the general advice and guidance. It's up to the Councils themselves to make decisions for themselves.

So there's no power, is that correct, for the division to direct Councils to adopt particular policies?---That's correct.

30

So if when, for example, you issue the model Code of Conduct for example you hope by leadership and encouragement do you that Councils will adopt that document?---That's an interesting example because it comes with the force of law, section 440 of the Local Government Act requires a Council to adopt a model Code of Conduct. We provide a model to all local Councils of which there are 152 in New South Wales and it is up to the Councils to either adopt that model or vary that model provided the variations that they provide are not inconsistent with the model code.

40

And do you then perform a monitoring role in relation to the code by reviewing Council, seeing whether they have followed their statutory obligations or met their statutory obligations?---Informally, yes.

Informally?---Pardon?

Only informally?---Correct.

So there's no formal mechanism within the division to say, do a two or three yearly review of the model Code of Conduct to see who's adopted it and who's varied it?---No.

And no mechanism to report to the minister on such an outcome?---No.

And no mechanism to report to Parliament on such a review?---No. What we do, however, do is when we receive allegations or queries we very often make preliminary inquiries of local Councils and during that process we will confirm that a model code is in place and check on the language of that code and I think I would be confident in saying that since the model code provisions came in in I think 1993 all Councils in New South Wales would have a Code of Conduct in place.

10

And has there ever been consideration of providing a broader power within the division to regulate Councils in terms of other issues other than the Code of Conduct for other policies?---Well, there are a number of broad powers already dotted throughout the Local Government Act and through other legislation to which Councils are required to comply or to have regard to. The division also issues practice notes, guidelines, circulars and Councils are required or encouraged to follow those.

20

Well, I guess it's the required/encouraged to apply those issue that I'm trying to focus on. In terms of employment issues it seems that while there are through the Department a Premier's Guidelines under the Public Sector Management Act and other issues concerning a wide range of employment matters for public servants, New South Wales public servants, there doesn't seem any mechanism to apply similar standards across local Councils. Is that correct in your view?---That is the framework of the Local Government Act and that has its roots from the autonomy and independence of local government which is the third tier of government within New South Wales. There are minimal employment provisions that can, however be found in the Local Government Act and increasingly there's other legislation from the Fair Work Act through, through to the, you know, industrial state awards and things like that that apply to local government.

30

I suppose what I'm seeking to address is this, that the New South Wales public servants or public sector employees have a clear set of employment standards if I could call them that loosely, and there's nothing similar in local government?---What we have recently introduced as an initiative has been the standard contract of employment for both general managers and senior staff of councils to address some of the issues and inconsistencies that have arisen between councils and they are required when they're renewing their contracts or employing a new person to adopt the contracts.

40

And that's, they're required under the Act, under the Local Government Act to do that?---Correct and it also specifies, you know, remuneration and roles and things like that. Of course, the Local Government Act sets out what is the role of general manager and senior staff.

Yes. I'm just looking at it more broadly than just the general manager and I'll return to the general manager's function in a moment but in terms of,

could the witness be shown Exhibit 273. You're aware of the Premier's memorandum on suspension of employees, public sector employees?---Not directly.

You're not?---No.

It applies to all public servants and decisions made, do you not make employment decisions in relation to the staff of the division?---No.

10 That's not part of your responsibility?---No.

So you're not an employment lawyer at all?---Not at all.

This is a re-issue of a very old memorandum. Have you seen that before?
---I may have been shown it at some point. I don't recall.

Has there ever been any consideration within the division of issuing a document such as this, that is when local councils can or should suspend staff?---Could, could you be more precise as to your meaning of staff. Do
20 you mean general managers or senior staff or all (not transcribable).

No, I meant all staff, all staff?---Not that I recall, no.

Because one of the issues in this inquiry has been the suspension of staff and one of the issues is whether that was an act of reprisal or not but in terms of any guidance available to the executives or the management team making those decisions, and it will be probably at the end of the day, some of us at the bar table will have different views about it, but there doesn't seem to have been any guidance other than the person, one of the persons
30 involved relied on the award but this memorandum, which has been around for a long, since 1994, you see it's signed by John Fahey as premier, has set the standard within the New South Wales public sector for suspension and that's been a standard that's been relied on for a long time, there doesn't seem to have been, certainly to the knowledge of the people in Burwood, any similar standard suggested for or able to be relied on as a result?---No, I'd agree with that. There hasn't been anything issued by our division or its predecessor. Industrial relations in New South Wales is handled by a separate government department so I can't speak for what, you know, they do and, and they look after the, their end of the Local Government State
40 Award. I wouldn't know how this sort of document would intersect with the application of a state award for example.

Yes. No, I'm really looking at what the division does in terms of providing advice and guidance to councils?---Generally we don't have a day to day role in employment matters. However, I'd be pleased to say that we'd be able to, you know, look at this and perhaps make a recommendation to the minister.

You're aware of the Premier's Handbook that's got, covers a number of matters about employment issues and how you go about investigations and discipline matters, et cetera?---Generally, yes.

There's no similar document in operation from the division, is there?---No.

And has anything as broad as that been looked at to provide guidance to councils?---No, because again it's not been seen as a role of the division of local government to get into those types of employment matters.

10

Because it does seem that there is a lack of standard approach across councils. I mean we've only been focusing, as you know, in depth on once council, but if one takes a broader view and takes account of, you know, more general knowledge, there doesn't seem to be any consistency of approach in those employment related matters. And is that an issue that the division has considered before?---No, not in detail. Although, you know, some issues have come to the departments attention, the divisions attention from time to time as we've conducted investigations, public inquiries promoting better practice reviews, or just informal visits to councils.

20

And in terms of making circulars or policies binding on councils, that doesn't happen does it?---No. But codes and some guidelines can be made binding through the legislation.

Right. But in terms of the employment issues that I'm looking at, well, I'm seeking to explore with you, that hasn't to date been an issue that's been looked at in terms of trying to provide similar standards to the New South Wales public sector?---Correct.

30

And what I'm suggesting is that given it's all public money, whether it's local government money or New South Wales public sector money paying people who are employees of either councils or the New South Wales public sector, isn't by 2010 the distinction between the two now a bit blurred? That is maintaining that separateness?---I see what you think, that is a, one, one piece of advice that we would give the minister if we were looking at, you know, going forward with this sort of proposal. But I can't commit either the division or the minister to proceeding with something.

40

Well, you understand this Commission has a broader role than just investigating, that they also have a corruption prevention role and it's really in that role - - -?---Yes.

- - - that we've asked you to come and assist us today?---And if the Commission were to make such a recommendation, I'm sure I can undertake on behalf of the division that we would examine it closely.

Now in terms of, I understand there are better practice reviews that are conducted from time to time - - -?---Correct.

- - - of councils. They're random?---No.

Or do they arise if - - -?---There was a, you know, a programme of them and unfortunately Graeme Gibbs is not here today to discuss the detail of those. But I'll try my best to answer your questions. It is a programme, it's sort of like a health checklist, which is conducted of a council. And, of the 152 councils in New South Wales the division endeavours to get around the state and conduct one at least every five years. But of course, some councils, you
10 know, may be identified as requiring priority.

Is it correct that the issues that were identified by this Commission in relation to Wollongong Council, would not have been identified if a better practice review had been conducted?---That's correct.

And would it be correct that the issues that have been identified, though not quite as clearly yet, but some of the issues identified in this inquiry wouldn't of been revealed by a better practice review would they?---Sorry, could we go back to your previous question? I may have misheard you, in the context
20 of Wollongong Council.

If the better practice review had been conducted before the public inquiry by this Commission into Wollongong Council, the issues revealed in, in the public inquiry and the subsequent report on Wollongong Council from this Commission wouldn't of been revealed in a better practice review would they?---Look, I'm, I'm struggling to recall now. My understanding was that perhaps promoting a better practice review had been held into Wollongong.

I think that might be right. And I think it had passed?---Mmm.
30

And are you aware of when, if there has been the last better practice review was done at Burwood?---My understanding is that one hadn't been done, but the Council had asked for one to be done. And the department was endeavouring to include it, include it in its programme.

And now in terms of auditing or random audits of the finances of councils and expenditures, that's not part of the better practice review is it?---Look, I'm not aware of the details of the promoting better practice reviews. I'd be happy to take, you know, questions along this line on notice and provide the
40 Commission with a written response within a short period. We do provide a detailed checklist - - -

Ah hmm?---to the Council to complete and that information presumably would, you know, come forward very quickly.

Were you aware of the role of independent auditors who sit outside the council or, a private sector organisation, for example, or some public boards have an independent auditor who isn't part of the management of the

organisation, but has an independent audit function, there's no such role within the division is there?---You're referring to external auditors?

Yes?---No.

10 And has there ever been any consideration to creating that sort of independent audit role to do random in-depth audit investigations of councils?---Not to my knowledge. The old local government act, 1919, was very prescriptive around a lot of auditing and, and financial control and things like that. And the philosophy of the current act was to strip away a lot of unnecessary red tape and control and acknowledging that councils are autonomous, simply to require standards of external auditing, guidance is provided by the department as to what must be included in auditing statements and councils annual reports. And that's where the external auditor comes in, I believe. The General Manger of a council is also responsible under the legislation to provide the elected council with quarterly reports, but he may do that more frequently.

20 In terms of financial expenditure, sorry, let me, I'll withdraw that. I'll go back a step. The division between, functions and duties between the elected council and the general manager and those under him or her, how do you describe that split, between the functions and powers of the elected council and the function and powers of the general manager and those who sail with him or her?---Well, I can give you a lawyers answer and say that their functions and duties are outlined in the local government act, around section 232 and the like.

30 You see one of the issues that has arisen in this inquiry very starkly is that the general manager says something's operational, in answer to questions raised by councillors, and that's the end of the matter. That is the councillors seem to have nowhere to go once the general manager says an issue is operational?---There is a certain tension within the legislation perhaps between whether the policy making functions of the elected council on the one hand and what are the operational or day to day functions of the general manager on the other. But the vast majority of councils throughout the state have been shown to be able to sort those issues through and work co-operatively together at the elected and the staffing level. On occasion the division has provided advice and guidance to councils however, no matters of what's been believed to be important matters. One such example was
40 recently industrial relations and a circular was issued clearly advising that policy making on an industrial relations matter was probably a function for the elected representatives of the council and it was for the general manager to implement that policy.

Right. Because the, the council is the formal, the employer of the general manager. But the notion of control of ones employer, ones employee, as I understood in employment law terms, seems difficult to exercise when you have elected councillors and no one else to supervise or monitor the

performance of the general manager on a day to day basis.---Well, it is the responsibility under the legislation and through what our division publishes, that they will performance monitor the general manager once he's got a contract in place. And the division has provided over the years documentation to assist councils to perform that role. We conducted counsellor training sessions around November, 2009 to reinforce that to the elected representatives. The, some of those documents are currently being reviewed by the division to, and they will be reissued to councils and councillors, because it is a very important process. They are, as you say, the
10 employers of the general manager. And within that contract, he has obligations to his employer and the elected councillors, particularly the Mayor, shouldn't shy away from the responsibility of conducting regular performance reviews and if they don't wish to directly do it themselves, there are other avenues, including through the Local Government Shires Associations of New South Wales or to bring in external consultants to assist them to perform that important function.

And to be fair to Burwood they did have someone who was external who not only provided the performance review but did a number of other
20 functions in the Council and one would suggest there was potentially a conflict of interest but leaving that aside the General Manager himself, however, seems in this instance to have organised his own performance reviews. That wouldn't be appropriate would it?---No.

And you wouldn't suggest that that was a best practice?---No. And I say again that there's a Code of Conduct in place and the General Manager is bound by that Code of Conduct.

But if you have a General Manager who deliberately sets on a course of
30 conduct that is in breach of the Code of Conduct and also sets about setting in place mechanisms to ensure that that's not disclosed to those who employ him or her, in terms of a system of checks and balances it appears that the General Manager really has all the power to be able to achieve that outcome. Would that be correct?---No, I don't necessarily agree with that.

Well, what do you say are the checks and balances?---There's the role of the division, there's the role of the Ombudsman, there's the role of the ICAC as demonstrated today, there's the role of the police if there are criminal
40 allegations to be made, there's the Local Government Shires Associations of New South Wales, the General Manager has his own associations, Local Government Manager's Association to turn to. We all know that Councils are free to obtain their own legal advice. There's a lot of mechanisms available to sort through issues.

One of the issues that has been starkly revealed in this inquiry is financial expenditure and that is that the General Manager and you can take it that he would disagree with this interpretation but his use of Council funds could best be described as profligate on his personal expenses so that - and I'll

take you to government policy in a moment but in terms of what the standard for the expenditure by General Managers on particular issues there is a out of pocket expenses policy issued by the former Premier Mr Rees last year but I've not been able to locate any similar policy of guideline in relation to local Councils, and I'll just show you the one I'm referring to. Do you recall the premier issuing this before Christmas last year?---I think this is an annual event.

10 Yes. And if I could take you over the page you see it says expenses relating to chief executive and senior executive officers and seeks to set a standard. And see about halfway down the page it starts at, "Out of pocket expenses incurred by office to be acceptable as a charge against official funds the following apply. Working meals are not to be a regular", see the second one?---Yes.

20 Sorry, the first one must be a direct business relationship. The second is, "Working meals are not to be regularly occurrences and normally have relatively low charges per head and involve participation by persons from outside the organisation or very rarely with senior officers from across the organisation." Now, when one goes through Mr Romano's expenses one sees that he regularly claimed for coffee and meals if he had a coffee with any member of his senior staff or indeed anyone in fact I don't think he paid personally for a cup of coffee in the course of his employment, and meals as well as expensive restaurants. Now, we'll return to the expensive restaurants in a moment but just the normal, what would fall within this category of working meals with senior staff there is a significant expenditure of funds within the overall scheme of things, not huge but a regular expenditure of funds by the General Manager on areas that clearly fall within the you can't do it if you're a New South Wales public servant.

30 Now, is there anything similar or any sort of standard available for local government to look at and what they should or shouldn't do?---While I think, while I think that the division would have a similar expectation that all General Managers and senior staff would comply with the spirit if not the letter of this document I'm not aware of any state government issued document to Councils similar to this but that's not to say that the local Council shouldn't have a policy of its own in place and of the 152 Councils in New South Wales I can't say whether they have a similar policy in place but it would be responsible employment practice to do so.

40 But it wouldn't be as a policy decision in your division to say the premier issues this, you send it automatically out to all Councils saying this has just been issued for New South Wales public sector employees and we think, you know, this is the latest standard, we think you should review your policy to make sure you comply?---We would certainly consider doing so as a guideline if we were to mandate it with greater force that may be a little more difficult, we'd have to consider our legislative and other options but we could - - -

No, I'm just interested - - -?---If the Commission were to make a recommendation yes, we would certainly consider going down that path.

I think for convenience I should tender that document.

ASSISTANT COMMISSIONER: Yes. That policy about out of pocket expenses will be Exhibit 321.

10 **#EXHIBIT 321 - POLICY RE OUT OF POCKET EXPENSES AND CHRISTMAS SEASON PARTIES**

MS RONALDS: And while we're on expenses the expenses show that the General Manager also engaged in fairly regular taking his lawyers, the staff from the investigations firm he used for surveillance to expensive restaurants or expensive meals. That also seems to fall outside the terms of that policy but again there's no standard set through the division on what could or couldn't be expected of expenditure. Is that correct?---Well, that
20 policy at the present time does not apply to local government.

But there's - - -?---I don't whether Burwood Council had a policy in place.

There are guidelines for the payment of expenses and the provision of facilities for mayors and councillors - - -?---Section 252 of the Local Government Act.

- - - that's been issued but nothing similar for the General Manager. That's correct isn't it?---Correct. Again because it comes back to the employer,
30 employee relationship and the policy which I outlined previously that when the Act was drafted in 1992/93 it was about reduction of unnecessary red tape.

But you'd agree that individual Councils don't have the same resources as the Department of Premier in terms of addressing issues - - -?---I don't necessarily agree with that.

So you don't agree?---Not necessarily.

40 Thank you. In terms of then reporting to between the General Manager and the Council it appears that at least at Burwood there was no mechanism for reporting these sorts of expenditures, that that is the expenses expenditure. Would you have expected that General Managers would report on such matters in their reports to Council?---Now I'm a little out of my depth, I would've preferred Graeme Gibbs to have been here to answer this line of question.

Well, perhaps we can identify the ones and - - -?---Yes, I'm happy to answer them in writing.

Right. And, yes, I'm sorry we didn't, we weren't able to put in one yesterday. In terms of the overall budget presented from the General Manager to the Council, the whole budget, I don't just mean the General Manager's expenditure, it seems that, well, at least at Burwood, that a very broad brush budget is put before the Council and then the fine details are deemed to be operational matters in how the money's actually spent under, under line items it's gone to the local, to the Council are then determined by the General Manager and those within his management team, that's the model, as you understand it, is that correct?---No. Look, I have no direct knowledge of this. Again, I'd have to defer to Graeme Gibbs.

And in terms of policies in relation to performance management of underperforming general managers, there's no general policy on that area either, is there?---Well, I have - - -

To provide advice?--- - - - outlined the standard contract, I've outlined the guidance the department over the years has provided around performance management and the expectation that it will be regularly be conducted and I've referred to other resources and tools and organisations that can be utilised in that regard.

And it seems one of the tensions is that the general manager filters all the information that goes to the council so if you've got a general manager who is engaged in any form of misconduct then of course he filters out any of the information that may reveal his misconduct that goes to the council?---Well, the philosophy is that councillors are not to be involved in the minutia of running council. They're employment hopefully talented and knowledgeable and experienced staff to perform those functions. The councillors are there to provide the overarching policy and approve of the more significant applications and the like that come before them and that's it at the end of the day.

And the focus seems to have been historically on ensuring that councillors don't get involved in planning decisions within the staff planning, you know, for property developments, that seems to have been - - -?---If, if we're referring to the exercise of influence or undue influence there are specific offences in the Local Government Act and perhaps the Environmental Planning, Planning and Assessment Act which make it an offence to exercise undue influence on the staff of councils and in, this is why councillors again should be involved in the day to day administration of the council.

But what I'm suggesting to you is historically the focus has been on ensuring that elected councillors don't interfere in those sort of planning decisions and that has affected the way the relationships have developed

over all, that is, the focus has been on ensuring that doesn't happen?---No, I, I, the way you're describing it sounds as though it almost excludes councillors from planning decisions. My knowledge of the planning system, which is not great because I'm not part of the Department of Planning, but ultimately planning decisions are the responsibility of the councillors and unless they've chosen to delegate routine ones to the general manager so councillors should be kept at the ready until the formal recommendation and everything comes before them. They shouldn't be, you know, down trying to influence the staff.

10

Well, it's an offence to do so, isn't it?---Well, there's a difference between influence and undue influence.

One of the issues that has arisen in this inquiry is when there's a mayoralty for one year, that is, there's a revolving door as a power-sharing arrangement so that you have a mayor in for one year only and it seems to be that that gives rise to difficulties because barely have they learnt the job then they're out again, has there ever been any consideration of whether there should be some sort of minimum term for a mayor?---The Local Government Act provides two mechanisms and that is the one you've described, which is election of the mayor by the councillor, the other mechanism is a properly elected mayor which is, naturally enough, where the mayor is elected by the electors and he holds for the four year term, fixed term of the council. It is a vexed issue as to which method is the better. I, I can perhaps reflect from past experience that, you know, there have been circumstances when a properly elected mayor hasn't been the best choice for a particular community and, and the Act sets out the mechanisms by which the choice of method of election of the mayor can be activated through the holding of a constitutional referendum.

20
30

And in terms of expenses again, there's been a whole issue about motor vehicles in this inquiry that you might have heard some of yesterday and one of the issues is that the General Manager has authorised the purchase of his own cars. Now, there's a issue about purchasing rather than leasing and the expenditure of capital to go on a object for the General Manager's essentially professional and personal use, that's one issue. There's no guidance about purchase or lease et cetera that's been provided, is there? ---The matter of motor vehicles is something the division has not previously given any guidance on unless particular instances, complaints, allegations come to the division's attention in which case we will make preliminary inquiries and perhaps provide guidance, advice, recommendations. That is in the context again of the standard contract. We, our expectation is the total level of remuneration including provision of cars and I don't understand the intricacies of FBT and all of that, unfortunately, again Graeme's not here but our expectation is that all features of remuneration will be seen transparently within that standard contract.

40

And in Mr Romano's contract there was no reference at all to purchase of a vehicle outright by the Council?---I'm not clear as to whether he was on an old contract which was yet to expire or whether he had signed the standard contract issued by the division.

The last contract was entered into in July 2007?---Yes. I'd have to take that one on notice.

10 If I could show you this document and this is just so that we've got the document tendered you understand, this is the Government Agencies Motor Vehicle Policy. Do you see that? I'm not sure if you're familiar with this but it sets out - - -?---No, I'm not (not transcribable).

- - - certain matters such as cars can only be Australian, no car over the luxury tax level and then it sets out the options one can have, excludes a sunroof and various other options that Mr Romano had, there's no general guideline given by the division for local councils in relation to motor vehicles consistent with the policy, is there?---Not that I'm aware of.

20 If I could tender that policy.

ASSISTANT COMMISSIONER: Yes. The motor vehicle policy will be Exhibit 322.

#EXHIBIT 322 - MOTOR VEHICLE POLICY FOR NEW SOUTH WALES GOVERNMENT AGENCIES

30 MS RONALDS: Again, would this be the sort of guideline or setting a standard that you would anticipate that councils would look to to set their own policies?---Again, without having much detail in this area I would simply add that councils should have policies in place which are responsible and appropriate having regard to the use of limited ratepayers' funds. The general manager shouldn't be excluded from that policy or philosophy. If councils require additional guidance in this area because they're not already plugging into state fleet requirements or something like that then we can have a look to see whether that's the sort of thing we recommend to the minister.

40

Right. And in terms of investigations, sorry, I'll withdraw that. In terms of assistance to a mayor when they receive a protected disclosure against a general manager that comes within the Protected Disclosure Act, in terms of the training that's been provided to councillors and mayors, has that been an issue that's previously been traversed?---(NO AUDIBLE REPLY)

If you don't know just - - -?---No, I haven't, I haven't got that detail.

Right?---They, they would have been made aware in general terms of the existence of the protected disclosures legislation but that's all.

I mean, one of the issues that's come out is that the staff themselves including the management team seem remarkably at Burwood to have a lack of knowledge and understanding of how protected disclosure legislation works generally. There's seems to be little understanding across the management team including the General Manager. Has there ever been a particular focus on providing information and assistance to local Councils from the division on that issue?---In our councillor training where
10 councillors and perhaps General Managers attended they would've been told of these tools and resources available to them however at the end of the day it's the responsibility of a good executive such as a General Manager to provide training to get the appropriate policies in place to provide for a corruption-resistant and efficient organisation.

Because one of the clear indicators of a corruption-resistant organisation to use your words is to have an effective disclosure policy so that - I loath the term whistleblower but if there is someone who wishes to make, raise a very
20 serious grievance against the General Manager then they need safe and secure mechanisms to do so. Would you agree?---Yeah, yeah.

And that - - -?---In fact the Whistleblower's Act is currently under review I believe to strengthen it further.

And all the policies in the world don't work if there's no willingness of course or knowledge to back it up and what appears to have happened in one serious incident in this investigation is that the policies were there but they simply weren't known about and weren't followed and of course I
30 realise it's impossible to make everybody follow a policy but in terms of focussing on that as an issue that doesn't seem to have been a particular issue focussed on by the division. Is that correct?---Again I'd have to say Graeme could answer that question better because it comes out of his division's are, we can provide you with a written response if you wish.

Thank you?---But again I repeat it's the responsibility of the General Manager who in turn is responsible to the elected councillors and the mayor and policies should be in place to ensure these things are done.

40 In terms of section 55 and compliance with the terms of section 55 - - -?
---This - - -

The Local Government Act, sorry, that is the tender process for services over 150k. What monitoring, if any, does the division do of compliance with that provision?---We don't monitor the minutia of Council's operations, they're tendering all the time, 152 Councils, however we do analyse and respond to complaints that we may receive. We have also been proactive in amending the legislation on a number of occasions to approve

of bulk tendering organisations which gives Councils the ability to, rather than have to do individual tenders to go through bulk tendering arrangements and we are involved through the various legal arrangements in approving and monitoring those organisation's performances. We've also recently issued tendering guidelines to Councils and the expectation is that they will follow those and if they don't then, you know, we will comment in the context of the guidance and standards provided in those.

10 In terms of establishing panels to meet the section 55 requirement - - -?
---Sorry, what type of panel?

Well, say a panel for lawyers or architects or engineers so that the Council sets up a panel of people who are predetermined, a bit like the other list but more local level. I've seen panels operate in the public sector where say there's six people on the panel of lawyers say and if a legal issue comes up it goes to one and then the next one goes to two and the next one goes to three and the next one goes to four because they're all pre-selected as being able to perform that particular sort of work. Is that your understanding of how panels should work?---I have no knowledge.
20

You don't know anything about that?---No.

Would Mr Gibbs be able to assist us on that issue?---No.

So is there anyone within the division who has any expertise or knowledge about assisting Councils in setting up panels to meet the requirement of section 55?---No. However I would add that the responsibility of tendering and the like lies with the Department of Commerce as well.

30 I'm aware of that, I'm just exploring what he division does?---Yeah. I, I, I'm not aware either of the number of Councils within New South Wales that have established panels. Burwood seems to be one.

Well, they may have established one - - -?---Particularly, they seem particularly adept at requiring legal advice.

40 Yes. And in terms of monitoring areas like legal expenditure on legal advice a substantial amount of Burwood funds was spend on legal advice over the last five years is there any sort of review of individual areas of expenditure across Councils?---Yes. Yes. That figure is required by the tendering regulations to be reported in their, in the Council's annual reports and we review in the division Council's annual reports and any extraordinary items or fluctuations would, you know, come to our attention.

And is there a table then compiled so that if you could say of the 152 Councils this is the legal expenditure on legal advice across all Councils?
---I'm not aware, I doubt it.

Just as a comparator so that you could see whether fitted in or one - - -?
---Well, there's also an explanation in there as to, at least in general terms, what that legal expenditure attaches to so if it was a particularly busy period for defending planning appeals for instance that wouldn't be perhaps an extraordinary item which would come to attention.

Or funding lawyers to come to an ICAC inquiry. Can you just excuse me a minute. I understand Mr Leggat has some questions and then maybe I'll have more when he's completed.

10

MR LEGGAT: Good morning, Mr Chapman, my name's Leggat, I'm appearing for the Council. You made an observation to the effect that the 1993 Act adopted a different philosophy to that which was in place on the 1919 Act. You described the difference in your opinion as being one of introducing an autonomy touchstone. Would you speak a little bit more about that?---Our Local Government Act 1919 basically said that if you can't find an authority to do something in the Act you can't do it. It, it basically was reversed in 1993 to say Councils have a broad range of service and regulatory functions and subject to any limitations which you might find
20 in the Act itself or, or in regulation but then building on that there's also guidelines, circulars and practice notes issued by the division. So to use a hackneyed phrase I suppose it's let the managers manage but simply also let the councillors sort of have broader responsibilities and roles and the difference of course between 1919 and 1993 was that they had in practice far greater responsibilities, some 94 Acts of parliament touch upon the functions of local government and yeah, it's a very complex area. The, the, the community expectations between the beginning of that century and the end of that century had changed remarkably and there was too much
30 restriction, too much red tape unnecessarily so around the operations of local Councils and the expectations that the state government could closely monitor all of the activities of local governments was unrealistic. They used to count the petty cash when they went out to do a, to do an investigation or an audit, thankfully we're not involved in those procedures nowadays.

30

It's been suggested sometimes that the 1993 Act sought to introduce a governance model that was a bit more akin to that which exists in the corporate sector, that is there's a board of directors which decides on policy and then a CEO has the day to day management and the CEO's remuneration is often dependant on how the day to day management works.
40 Is that an understanding - - -?---Well, the Act is deliberate in that it does not call the general manager a CEO. It's an endeavour to maintain a balance of authority, perhaps, you could call it, between the councillors as the governing body and the senior management. And I recall that these concepts were very carefully worked over by all of the major parties during the consultation phases on the development of the 1993 Act.

Yes. It's interesting isn't it, the councils in New South Wales are competing with each other for general managers aren't they? That is that the position

of a general manager is one which a council is seeking to get the best general manager that it can afford out of a pool of potential general managers?---I can't see that that's any different to any other recruiting process where there's going to be a limited number within a pool at any given time.

10 Yes. And a consequence of, of the limited number of potential general managers (not transcribable) is that matters like remuneration packages are something which is reasonably competitive between councils isn't it?---I think your previous question you assumed that a council can only appoint a previous general manager or the like. And one of the changes between the old and the current legislation was to free some of that up so that you didn't have to have a shire's, a shire clerk certificate or a town clerk certificate or any of those. If you can find a, a good person outside of local government who can step in and get up to speed and run the council, terrific.

20 Yes. But it's interesting you raised that. I'm just reflecting on the idea that it would be appropriate to fetter the councils ability to provide a remuneration package which included a European motor vehicle in order to induce people to take on, to perhaps come out of private practice and go into, into the local government area. There's likely in your opinion to be a practical problem isn't there in obtaining good calibre people if councils hands are tied as to the type of ingredients council can put in the remuneration package?---Well, that has been the current view. However, I'm aware that, I think it's the Local Government Shires Associations will provide guidance at recruitment time if they're requested, about what remuneration is being paid to other councils within similar band with. So, but, yes, it's, it's market forces.

30 Well, it's not going forces though if, if the car package is, is fixed at a, at a particular motor vehicle or capped at a luxury tax will it? That will circumvent the, the operation of the market forces to a degree won't it?---I hear where you're going with this and, and if we're going to look at this, that is, you know, one of the propositions that we would have to consider, because you're basically saying that it could stifle recruitment.

Yes?---And that would mean we'd have be careful not to do that.

40 Indeed. Yes?---But at the same time we have to be - - -

ASSISTANT COMMISSIONER: Well, the same could be said of senior state public servant positions couldn't it?---Yes.

That you're not going to attract good people unless they can be given an European car. Would you suggest that's the case?---I think we're more concerned that the total remuneration package is, is transparent to the community and, and the ratepayers.

But in general would you see any problem of finding the same standards of salary packages that apply to senior state positions with local government positions?---In theory no, bearing in mind, as we've observed, the, the philosophy was to bring local government closer to the structure of state government.

10 And I guess the proposition only works if you accept that there is a genuine shortage of people who'd be good general managers for councils which, I don't know that any of us have any real evidence about that at this stage?
---We certainly don't gather evidence, because we're not in the, involved in recruitment whatsoever. There is certainly acknowledged difficulties in recruiting and retaining good staff in other particular professional areas, such as building surveyors, planners and the like. But I've never heard it of general managers. But again, I don't work in the area.

MR LEGGAT: It was suggested to you that it might be appropriate to consider the allocation of work to lawyers on panels on a sequential basis rather than relying on market forces. Can I suggest to you that, that the philosophy behind the 1993 Act is to take a less prescriptive approach to
20 matters like that very matter, that is that merely because you have six lawyers and the number three lawyer is up for the next ICAC investigation, if that law firm has no experience it would be inappropriate for a matter to be allocated simply because of the, the sequence, not taking into account performance or the expertise of the law firm wouldn't it?---I think in this area there'd need to be compelling reasons as to why we would recommend to the minister that we were getting to this level of control.

30 And the reason for that I suggest is that that would be antithetical to the touchstone of the 1993 Act. That seems to be right doesn't it?---It's a bit of a long bow, but yes.

All right. Now I was looking in vain in the Act for the provision about guidelines. There is a section in the Act which requires guidelines to be taken into account?---Section 23A.

23A. Thank you very much. Yes. So, let me just - - -?---That's called those mandatory guidelines. But then we have non-mandatory guidelines.

40 In fact, 23A was inserted after the Act came into existence in 1993, wasn't it and my understanding of the effect of 23A is that the Director General may from time to time prepare guidelines and when those guidelines have been issued pursuant to section 23A a council must take those guidelines into consideration before exercising any of its functions. That's right, isn't it?---You've read the section?

Yes, and that's - - -?---And I agree with your reading.

Thank you, thank you. So it's, it's open to the department and the Director General, isn't it, to take a more prescriptive approach if it, if it shows by dint of, of the amended section 23 - - -?---Yes.

- - - now in section 23A?---Yes.

10 ASSISTANT COMMISSIONER: Is there any limit on the areas in respect of which you can issue mandatory guidelines or is that up to the division?
---The, the division recommends to the minister whether they should be made mandatory or not.

So notionally it could cover any aspect of local government operation if you wanted to make a mandatory guideline?---(NO AUDIBLE REPLY)

I mean is anything off limits that you're not (not transcribable)?---No, I think that we would prefer to reserve the more significant matters to section 23A.

20 That policy?---Correct.

And what you consider to be the more significant matters?---I think only three or four documents have been made mandatory under section 23A and I just can't recall those at the moment I should - - -

MR LEGGAT: Section 508A is one, isn't it, the special rate variation?
---Not my expertise but I'll accept that.

30 ASSISTANT COMMISSIONER: But the Act doesn't impose any limitations on the - - -?---Correct.

- - - types of matter - - -?---Correct.

- - - in respect of which you can issue them?---Correct.

MR LEGGAT: And that, that arises because of the use of the expression, "any function" in section 23A(1), doesn't it?---Correct, within the meaning of the Local Government Act.

40 Indeed?---Yeah.

Because the, the word "function" has a, has a defined meaning in various parts of the Local Government Act, doesn't it, when it talks about - - -?
---Yes, regularly functions, service functions and the like.

Indeed. But it would be correct to say, wouldn't it, that any, anything that a local council can do can be the subject of a Director General's guideline under section 23A?---That's the theory but not the practice.

Yes. Now, a problem's been identified during the hearing concerning the creation of fictitious accounts by a surveillance company and the surveillance company representative has given evidence that it's necessary to issue fictitious accounts in order to keep the covert nature of the operation intact. Is that a matter which is likely to be of concern to the, the division, a practice which appears from evidence to occur in, in local government in relation to the creation of fictitious accounts?---I'm sorry, but I've got no knowledge of the, of accounting or the appropriateness of the practice given the extraordinary circumstances of, you know, the general nature of surveillance. It may be justified in some circumstances, it may not be justified in others. I, I don't wish to say anything further on that.

Would the division likely consider that that topic is, is one which falls into the micromanagement of council side of things and the division would not look at it or would the division take over?---Well, prior to this, prior to this inquiry I would have given you a resounding yes but we'll consider what the Commission recommends.

All right. But consistent with other answers you've given, you would suggest it'd be appropriate at a council level for a council to implement best practice by addressing a topic like that, would you?---At the very least.

All right. Thank you. There's been some evidence about the, the usefulness to the Mayor of having regular meetings with the General Manager. There's also evidence that this particular General Manager refused to have regular fortnightly meetings with the Mayor on one view because the Mayor was not on good terms anymore with the General Manager. The, would the division consider it appropriate to, to require the General Manager's standard contract to include a provision in relation to regular fortnightly or regular meetings with, with the Mayor or is that too much of a micromanagement topic?---Again, prior to this Commission inquiry I would have said that that was a matter of micromanagement and it should be a matter left between the employer and the employee but again, if the Commission comes out with overwhelming reasons as to why we should amend the standard contract, we will consider it.

If a council in the future included a provision like that in its standard form contract, that is, the Mayor must meet not less than every 14 days with the, the General Manager, I presume that the division would not consider such a provision to be inconsistent with any provision in the, in the standard form contract?---I'd have to refresh my memory of the terms of the standard contract but I can't see why we would have any objection to its inclusion or any other, you know, common sense management matters which the parties are agreeable upon.

As, as you've pointed out, section 232 or thereabouts of the Local Government Act requires the General Manager to have the day to day management role of the Council but what I'm hearing from you is that the

division's likely approach to, to the meaning of that provision is that it wouldn't be breached by a provision requiring the General Manager to meet on a regular basis. That wouldn't be infringing the, the provision of the Local Government Act about the day to day management, is that not a (not transcribable)?---No, not at all and I think it, it goes to the broader matters of performance management and we are at the present time, I may have mentioned previously, revising our practice note on performance management of general managers and if we're also looking to amend the standard contract we would, you know, take some of that on board.

10

I want to turn to, to secondary employment. There's been some evidence before the Commission that secondary employment has created a bit of a problem for Burwood Council because on one view of the evidence certain Council workers were working on the General Manager's, on property in which the General Manager had an interest during work hours. Now, that's obviously not a secondary employment issue, is it, if the work is being done during work hours but it's, does the division have a view as to whether it's appropriate to allow secondary employment in Local Governbme3nt in New South Wales?---Well, the Act requires that any employee including the general manager must get specific approval to perform private work. It doesn't exactly refer to it as secondary employment, it refers to it as performing private work. So perhaps a good management tool would be that they have a register in place which records specific approvals by past and current general managers. They should perhaps have a practice in place where approvals are reviewed regularly to make sure that they are still appropriate.

20

They should perhaps have a practice in place where approvals are reviewed regularly to make sure that they are still appropriate, perhaps by councillors do you think?---No, no.

30

No?---It is clearly a, with the exception of the general manager, any private work, you know, for, for which a senior officer or an employee of a council seeks approval to perform would be a matter for their supervisors or perhaps the general manager, him or herself. If the general manager wishes to engage in private work that's something that should be dealt with the by council, as the employer. And there should be, if necessary, certain lines of authority to make sure that there are no conflicts of interest arising. Otherwise the code of conduct of the council will come into play. And that's undesirable.

40

It's your view is it that that would occur at the council level by way of, of policies of the council rather than something to be considered by the division?---Well, I think the Act is quite clear. It's just a matter of implementing it. And because it's a staffing matter it's implemented by the general manager or by the council if it relates to the general manager's work.

All right. The - - -?---I don't think it's extremely complex.

The Act in section 335 gives the general manager the power to appoint staff and to dismiss staff. Now that's right isn't it?---I think so, yes.

Yes. Historically, has that created problems for councillors in keeping an eye on, on how the general manager is running things, giving that extent of power to the general manager?---Look, I don't have a lot of knowledge in this area. But essentially I think the vast majority of councillors
10 acknowledge and respect the fact that the general manager is responsible for the employment and hiring and firing of staff. But, because the councillors interact often with the directors and other senior staff at the council, there is provision in the legislation which requires the general manager to consult with the council before he makes certain staffing decisions. So again, that was a position which was developed and, and negotiated during 1992/'93 to strike an appropriate balance around this very area that you're referring to.

Section 67 of the Act enables the council to perform work on, on private land. You're aware of the provision of that, to that effect?---Oh, in general
20 terms. I'd have to refresh my memory.

Yes. So for example a, a general manager could employ theoretically council to do work on a block of home units that the general manager might have an interest in, has that provision, section 67 created problems historically for local government?---No. But the example you've provided me, I, I'm sure was not envisaged when the section was drafted. What it is about, it's about being able to keep on mowing down the park even though the council boundary may run half way through the park. It's, it's about
30 being able to go in and take the graffiti off the wall on somebody's private property either within your council area or the adjoining council area. It's about being able to get into major infrastructure projects by the sharing of council infrastructure and resources across council boundaries so that we don't, so that we no longer have, you know, fiefdoms.

One of the extensive powers that the local government Act's given to, to the general manager is in section 343 of the Local Government Act, which permits the general manager to direct the public officer in a particular manner in relation to legal proceedings. Let me just turn that up. Would you have a copy of it there Mr Chapman, of the Local Government Act?
40 343. Part 3 of chapter 11. The general manager is to designate a member of the staff as the public officer and then 343(1) public officer may represent the council in any legal or other proceeding, 343 sub-section 2, the public officer is subject to the direction of the general manager. Has, has that provision created problems historically as far as you're aware?---No. No. But the, the philosophy of that section is to say that there'll somebody who has sufficient authority to remove a lot of functions away from the general manager so that there would be greater access by the public to council by gaining access to documents and, and the like. So that those sort of

decisions on the minutiae of council's day to day activities didn't have to wait for the decision of the general manager. Just give a public face for the council.

10 There's been evidence in the Commission of practical problems for the councillors in, in determining how to continue the effective and functional running of the council in circumstances where serious allegations have been made about the general manager. And the way the issue has arisen in, in this Commission is that there was a process of reform of the, of the depot, the works depot and council wanted to get on with the depot reform but was very aware of provisions like section 20 of the Protected Disclosures Act, the detrimental actions substantially and reprisal and provisions like section 93 and 94 of the ICAC Act in terms of disadvantaging people and employment. I note that there is power in the Local Government Act in sections 429 and 430, and perhaps if I might take you to those, which permits, well it would appear to permit the Director General to step in and carry out an investigation requiring matters such as the giving of evidence under oath, et cetera. And then the issuing of, of directions, consequent upon the investigation by the Director General, would the division look 20 favourably upon a request from a council pursuant to chapter 13, part 5 of the Local Government Act to provide some sort of, what might be called interim relief where there is an ICAC investigation, but a public inquiry hasn't been announced?---It would be extraordinary. And the divisions investigative team would need to consult with ICAC before it contemplated, because I suppose the theory goes that you don't wish to be conducting multiple investigations. And if ICAC has taken such a step then why would the division then announce its own investigation under section 430. And there's no, well, I'm not sure of the background to your question, so, it's all very theoretical to me, I'm sorry.

30 No, look, I apologise as well, it's just - - -?---I don't wish you to give me the entire background.

40 No, indeed. Without being any way critical of anyone because I don't intend to I'm just dealing with some facts as I understand them. There was an allegation made around about February of 2009 and it was in about February of 2010 that the actual inquiry was announced and there was from Council's perspective a period of hiatus of about 12 months in which it was, without perhaps overstating the matter, very concerned about whether it could do anything in terms of dismissing staff or taking any action at all against staff that might possibly be characterised as being detrimental actions substantially in reprisal?---If I could interrupt you. I'm not here to comment on the detail of this particular investigation, my role here is to give an overview of the legislation and try to assist the Commission as best as I may. I don't have a detailed knowledge of the history or the evidence of this particular inquiry.

Thank you. Do I understand from your earlier answer that the powers under part 5 of chapter 13 are powers that the division probably would not ever seek of lending in aid to a Council whilst ever there was an allegation that had been made to the ICAC?---No, I said it would be extraordinary but if we were requested to do so we would consider that and we would consult with ICAC and any other involved parties before we made our decision.

Let me move on?---It hasn't arisen previously to my knowledge.

- 10 Thank you. Section 428 of the Local Government Act requires Council in an annual report to identify the amount of its legal spend and you've referred to that in your evidence. It doesn't however seem to require an identification of particulars, by that I mean it doesn't appear to require a Council to identify which specific legal firms have been paid particular amounts. Is that a matter which the division might think is appropriate or is that too much of a micromanagement?---There are provisions also included in the Local Government General Regulation around the additional detail to be included in the Council's annual report, those provisions and what we're looking at here now in section 429, 428 have been amended recently as part
20 of the integrated planning and reporting program. I'd need to see a consolidated version of all of the legislation before I could get into, you know, the detail of your question, I'm sorry.

All right?---I'm sure the legislation speaks for itself and I don't need to interpret it for you.

- Division 3 of chapter 13 deals with auditors and sets out for how long an auditor can hold office and the circumstance in which the auditor is eligible for re-election, reappointment. Has the division given consideration
30 whether it would be appropriate to have a similar provision in relation to legal advice?---I'm not familiar with the section referring to audit that you've taken me to because I'm not on the financial side of things, that's Mr Gibbs but I think I would be safe in answering your question to say no.

- Section 442 provides a definition of what is a pecuniary interest. Has the division given any consideration to providing a similar approach to the expression conflict of interest, that is, setting out a definition as to what a conflict of interest is in the same way that pecuniary interest is the subject of a statutory analysis?---There is extensive discussion and meaning given to
40 what constitutes a conflict of interest in the documents issued by the division which supports section 440. There is the Code itself and there is an extensive manual of guidelines which support that then there's also been the councillor training which Burwood Council councillors attended during November 2009. There's also been occasional circulars which have issued to all Councils on this topic as well as current events or issues that have arisen.

I understand from your answer that the division's present view is that there's sufficient guidance that's then provided by the division, there was much need - - -?---(not transcribable) that the Code of Conduct and necessarily supporting documents if necessary are currently under review but many of our documents and Codes, you know, go through, you know, biannual or whatever review so if there's any improvements to our documents that the Commission recommends be considered they'll certainly be considered.

10 Thank you, Mr Chapman. Thank you.

ASSISTANT COMMISSIONER: Thank you, Mr Leggat. Yes, Mr Eurell.

MR EURELL: I have a few questions at whatever time that this is convenient.

ASSISTANT COMMISSIONER: Yes. Is this the only witness this morning? Should we go through or - - -

20 MS RONALDS: Keep going.

ASSISTANT COMMISSIONER: Yes, we'll keep going.

MR EURELL: Thank you. Mr Chapman, I represent Mr Hullick who is the Director of Executive Services at Burwood Council and was an Acting General Manager at various points in time assigned to deal with some of the issues that have been examined by this Commission. Can you just by way of background to some of the more pointed questions that I would like to take you to can you explain what the role of the division of local
30 government within the Department of Premier and Cabinet is supposed to be doing for local government and indeed ratepayers?---How long have you got?

Perhaps you can give us the succinct version, generally speaking, what is the purpose and function of the division?---To provide advice and recommendations to the Minister for Local Government, which in turn is the State Government, on policy law and procedure around the administration of local, of the system of local government within New South Wales, to also administer the Local Government Act and a number of other acts which we
40 have responsibility for, to ensure the system of local government is administered efficiently throughout New South Wales, to consistently work on matters to build capacity within local government around integrated planning and reporting, structural reform of local government and another facet of our work is also corruption resistant and examining allegations and conducting preliminary inquiries, investigations, monitoring Code of Conduct complaints, prosecuting alleged breaches of pecuniary interest, prosecuting alleged breaches of misbehaviour where councils have come to us with allegations and the like.

These are all functions of the Division of Local Government - - -?
---Correct.

- - - in the Department of Premier and Cabinet?---Correct.

How many staff are there within the division?---60.

60 staff?---Approximately.

10 And you gave some evidence a bit earlier to senior counsel assisting this Commission that it is the responsibility, these were your words, it's the responsibility of a good executive to create a corruption resistant organisation. Do you accept that that's an inadequate approach to ensuring that local government is resistant to forms of corruption and specifically an inadequate approach to preventing corruption at the level of the Executive and the General Manager specifically?---Sorry, I, I can barely hear you. Could you repeat your question?

20 The question I'm asking you is that, it's surrounds your earlier evidence that it is the responsibility of a good Executive to put corruption resistant measures in place or to create a corruption resistant organisation?---Yes.

In circumstances where the corruption may involve members of the Executive or the General Manager or where there is an allegation that there is corruption at that level, simply leaving it to the Executive to put a corruption, to create a corruption-resistant organisation is plainly inadequate, isn't it?---Where the division receives information about allegations of illegality or maladministration they will be examined, depending on their nature they will either be dealt with by the division or referred to the ICAC or to the Ombudsman or even on occasion to the police.

30 On that point, are you aware of when the division became aware of the allegations at Burwood Council?---No, I don't - - -

Why is that?---Because I'm not the director for that division.

40 What division do you speak of?---Performance management and compliance which the responsible officer is Graeme Gibbs. He's unable to give evidence today. He was here all yesterday and wasn't called.

So you wouldn't deal with specific allegations of corruption you're indicating?---Correct.

Your function is more to deal with - - -?---Legal and policy.

Yes. So on that point can you indicate whether or not there are any guidelines that have been issued by the division pursuant to section 23A in

relation to dealing with corruption allegations that might involve an Executive or General Manager?---Not specifically because I think I can speak on behalf of the investigative division to say that matters of corruption are more appropriately addressed by the ICAC and to some extent the Ombudsman.

You speak of investigation of those matters, is that what you're saying, that it's more appropriate that the ICAC investigate - - -?---They have the specific corruption prevention role - - -

10

Yes?--- - - - as I think the Ombudsman has a prevention role. We have a prevention role but within our resources.

Mr Leggat, the senior counsel who appeared, is here for the Council, he's just asked you some questions, asked you about interim measures and any assistance that the division did or could have given to the Council during the period in which Commission was investigating the Council and during which it continued to have an obligation to discharge its functions as a Council, what measures, I withdraw that, what policy or procedure currently exists to aid circumstances where there is an investigation ongoing by this Commission or the Ombudsman, that involves either the executive or a general manager to ensure that the Council can continue to discharge its functions?---I don't think you need a policy or a practice in place to say that if the ICAC picked up the phone to the division or if the Council were to pick up the phone to the division that we would not consider the issues.

20

That's, I appreciate that but the question I'm asking you is what policy or procedure currently exists for dealing with that circumstance and what, what is behind my question is that my client, Mr Hullick, was required to step in as an Acting General Manager to deal with the continuing performance of the Council's functions whilst the incumbent General Manager, Mr Romano, was being investigated by this Commission. What I would like to know is what policies or procedures, what documentation of any kind has been published by the Division of Local Government within the Premier and Cabinet that might have assisted him discharge that function on the interim basis? Is there anything?---Not that I'm aware of.

30

You would agree, wouldn't you, that it would be important in the circumstances that I've just outlined for you to have something that tells an acting general manager how to go about dealing with conflicts of interest that might arise?---Again, as an experienced council officer Mr, or your client, if he needed assistance, would have been able to have made inquiries of the ICAC or this division, our division. I don't think it requires formal policies and the like to be developed around something which happens on the rarest of occasions.

40

You don't think it's important to have some kind of protocol in place that tells a person who has stepped in to manage the functions of a council

during a corruption investigation that involves allegations of corruption at the highest level about who to contact and what steps should be taken to deal with conflicts of interest?---I think every, I think every - - -

(not transcribable)?---I think every situation would be different and would revolve on its individual facts and whilst I hear what you're suggesting and we could examine it further, I am not in a position to commit the division to producing documents or policies on this matter at this point in time.

10 Are you head of this division?---No.

Who is the head of this division?---Ross Woodward, the Chief Executive.

He would be the person who would be in a position to indicate that those sorts of protocols could and should be drafted?---Yes.

You indicated to Mr Leggat that you thought it would be extraordinary for the division to use the Chapter 12 Part 5 provisions on an interim basis.
20 Why do you say that it ought to be extraordinary?---Extraordinary in the sense that, in referring to my previous answer, that these circumstances to my knowledge only arise in the most seldom cases.

But don't you see it as an important function of the division to be prepared for those exigencies?---There are a 152 councils in New South Wales and - - -

Isn't that what highlights the need for these protocols to be in place for those sorts of exigent circumstances, I mean there are a 152 councils - - -?
---Well, look, I'm not satisfied that there is a need. I haven't been provided
30 today with any evidence or substantiation as to the need but if, if you can show - - -

Have you been following the transcripts of this Commission's hearings?---No.

Are you seized of the background information that's highlighted - - -?---No.

- - - what, how dysfunctional Burwood Council became during the period in which Mr Romano was required to step down and other persons were
40 charged with obligations of stepping in as the Acting General Manager?
---No, my role here today is not to get into the detail of this Commission inquiry.

Can you tell us whether or not there was any liaison between this Commission and the division of local government or the Department of Local Government during that 12 month period between when the

allegations were first raised and when hearings were conducted by this Commission?---I'm not aware of any and it is not my role in that regard, had Graeme Gibbs been here today he may have been able to answer more fully your question.

Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Eurell.

10 MR NEIL: Can I just ask one question, I'm sorry. If you assume for a moment, Mr Chapman, that the situation arose where a mayor received a protected disclosure about the General Manager and felt he couldn't tell the General Manager these matters or the details of them and if different persons, two of them I think were appointed as Acting General Managers for different purposes and if the ICAC was conducting an investigation and if a person such as my client a solicitor for Mr Baird found himself in a position of trying to advise a number of persons as how to keep conflicts of interest managed and to the extent of even asking the General Manager to
20 leave the room when various meetings were occurring in that extraordinary situation could there be someone at the division or at the performance and management and compliance division to whom resort could be had to put the problem before them and ask if they could perhaps seize the nettle and try and work out a way in which the overall problem taking into account everybody's interests in particular, the ICAC's interest, the Council's interest, the public interest that the matter at least on an interim basis could be managed without people worrying on a daily basis as to whether they were compounding any conflicts of interest?---I'm not personally aware whether there was any contact with the division by the Council or by the
30 mayor on those matters.

What I'm asking is in an extraordinary situation is there someone or some officer at the department to whom the Council could go, the mayor can go - - -?---Yes.

- - - not just for a meeting, but to put the problem before them and ask for some pro-active assistance to resolve the immediate division of functions and, and trying to ensure as best as possible that people don't continue in conflicting situations?---The chief executive is available to take inquiries. The manager of our investigations and review branch is available to take
40 inquiries, as similarly is Mr Gibbs, the director of that area. And perhaps there was contact made or, or not. I'm not aware.

Can such a person be pro-active in the sense of having the capacity to the ICAC, talk to the Mayor and others, bearing in mind all the relevant provisions of the legislation to try and see if some way can be worked out to progress the matter without breaching any laws, but also enabling the parties concerned to avoid any continuing conflicts of interest?---I think you're

asking me a theoretical question, therefore I can only give you a theoretical answer, which is, yes, the division is pro-active in assisting councils.

All right. Thank you.

ASSISTANT COMMISSIONER: Yes.

10 MS RONALDS: One, just a follow on. In relation to steering local government towards state government policies that might be relevant that we were looking at earlier, there isn't any formal division policy on that is there?---No.

Is it said informally at conferences or training sessions that you've referred to earlier?---Sorry, about the content of specific policies do you mean or just the policy of adopting state policies?

20 Yes. The policy of adopting state, state government policies that apply to - - -?---It's, it's said informally and if there was a, if there was an absence of policy, you know, you're often looking for authority or good practice and if you can't find it in an ICAC document or an Ombudsman document, you'll look at state government or you may even look interstate. You know, you'll shop around for the best resource.

I have nothing further.

ASSISTANT COMMISSIONER: Thank you. All right. So Mr Chapman may be excused?

30 MS RONALDS: Yes.

ASSISTANT COMMISSIONER: Thank you for your attendance. You are now excused from further attendance

MS RONALDS: He wasn't here on a summons, he was here - - -

ASSISTANT COMMISSIONER: All right. Well, I didn't need to excuse him. All right. Well, we'll be resuming at 2 o'clock. Thank you.

40 LUNCHEON ADJOURNMENT [11.55am]