

SELECT COMMITTEE INTO LOCAL GOVERNMENT

INQUIRY INTO LOCAL GOVERNMENT



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 21 OCTOBER 2019**

SESSION ONE

Members

**Hon Simon O'Brien (Chairman)
Hon Laurie Graham (Deputy Chairman)
Hon Diane Evers
Hon Martin Aldridge
Hon Charles Smith**

Hearing commenced at 1.31 pm

Mrs EMMA POWER

Legal Member, Local Government Standards Panel, sworn and examined:

Mr PAUL KELLY

Member, Local Government Standards Panel, sworn and examined:

The CHAIRMAN: On behalf of the committee, I would like to welcome you to this hearing. Today's hearing is being broadcast. I will now ask each of our witnesses to take the oath or affirmation, please.

[Witnesses took the oath.]

The CHAIRMAN: You have both signed a document entitled "Information for Witnesses". Have you read and understood that document?

The WITNESSES: Yes.

The CHAIRMAN: These proceedings, as well as being broadcast, are also being recorded by Hansard. The broadcast will also be available for viewing online after the hearing. I would ask if you would please advise us if you object to the broadcast being made available in this way. A transcript of your evidence will be provided to you. To assist the committee and Hansard, if you could, please quote the full title of any document that you might refer to during the course of the hearing so that we have it for the record. I remind you that the transcript will be made public. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in private session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Also, by way of introduction, it is unfortunate that Mick Connolly, the presiding member, is not able to join us today. I understand there has been a medical requirement that he be elsewhere. That is unfortunate, but thank you Mrs Power and Mr Kelly for being here. If you could pass on to your colleague Mr Connolly our best wishes for a speedy recovery. No doubt he will read the transcript with interest. Who knows?—he might have some observations that he might want to offer in due course. Again, thanks for being here. Can I ask each of you know if you would like to make an opening statement to this inquiry?

Mrs POWER: No, I do not think so.

The CHAIRMAN: We have a number of questions that we would like to ask. We would appreciate the benefit of your advice. We have received a number of submissions to our inquiry that focus on the complaints and standards panel process. Several submissions have criticised the length of time it takes for the panel to process complaints. What are the factors that affect how quickly the panel can deal with a complaint?

Mr KELLY: There are a significant number. Firstly, the process that has been adopted by the department and is, in part, a legislative requirement in terms of procedural fairness and the like to people impacted by the lodgement of the complaint, requires an administrative process which occurs before the panel actually ever sees the complaint. That does take some time. That is an

administrative process that the panel does not have control over. It is within the department. That can take considerable time because sometimes the complainant chooses not to respond to requests for information from the department. Sometimes the department want transcripts if there are transcripts—or recordings and the like. A lot of the administrative process has a significant impact on the timeliness of dealing with the complaint. I think it would be fair to say, and I would be interested in Emma's comment, but very seldom does the panel actually receive an agenda with all of the information in it and we do not deal with the complaint on that day—we might defer it to get some additional information or whatever. That happens occasionally, but not very often.

A decision is made. If the complaint is upheld, then there is another series of procedural fairness processes that kick in in terms of advising the affected party and then giving them the opportunity to respond in respect to the type of sanction that may or may not be applied. Obviously, if the complaint is dismissed, the process is truncated somewhat and is a lot shorter. That is a very thumbnail sketch.

The other thing that impacts, I have to say, in my experience, is when there are panel members that either resign or there are appointments that are needed to be made to the panel. The process for appointment often means that the panel may be suspended—it cannot meet for that period of time so there is a significant backlog that has built up. When I first joined the panel at my very first meeting I think the backlog was about 60 complaints. From day one, from my point of view as a panel member, I was six or nine months behind the eight ball before I was able to get up to speed. We have dealt with in some ways by having deputy members and, effectively, for the last 12 months we have been running two panel hearings a month. We have managed to reduce the time period quite significantly and I think in the currently available 2018–19 annual report, I think the number of days is about 135 days, which is the quickest over the past five years. We have done our damndest to deal parsimoniously with complaints as we receive them, but there are a number of administrative processes that need to be followed and, unfortunately, they do impact on the timeliness of the consideration.

[1.40 pm]

The CHAIRMAN: What sort of administrative support do you get from the department? Is it enough?

Mr KELLY: Personally, I think it is. At the beginning of the meeting we see the complaints that have been lodged and what is happening behind the scenes in terms of what complaints are likely to be considered. Also, it is important for any declarations of interest to be given in relation to those so that the meetings can be structured in a way such that if you have a conflict, you are not considering those matters. The support, I think, is pretty good. We get the agenda probably almost a week ahead of the meeting. I have to say there is an enormous amount of reading. The workload as a panel member is significant. I am sure we will get to the nature and form of complaints and how that might be improved and streamlined as a panel member, because you spend many, many hours poring over emails and written documents. Everything is in written form that is submitted to the panel for consideration. It is electronic now, but going back 12 months you received pretty much a lever-arch folder. It is not uncommon to have 800 or 900 pages to deal with.

Mrs POWER: Each month—and that is actually twice a month.

Mr KELLY: And that is deadly serious.

The CHAIRMAN: That is an extraordinary amount, is it not?

Hon CHARLES SMITH: Mr Kelly, you just mentioned that you always have an agenda for meetings. Can you just over go over again or explain how the papers for the panel's consideration are prepared

and circulated to members? Can you give us some info on how many complaints are usually dealt with per meeting and how long those meetings generally go for?

Mr KELLY: The number of complaints is probably—I would be happy for Emma to comment—I would say six to eight.

Mrs POWER: Six to 10.

Mr KELLY: Six to eight, or six to 10.

Mrs POWER: Sometimes there are multiple matters in one thing, so it might be 13, but there is a grouping of six that are essentially the same facts. I would say six through to 10 substantive matters.

The CHAIRMAN: Is that where you get a situation where a single incident at a public meeting might generate six complaints or several complaints?

Mr KELLY: It is more often the case—I want to get to this point, but I am happy to postpone the discussion of it—the way the form is constructed, it is very easy for somebody to go down and just tick every box and lodge a complaint.

Mrs POWER: With no basis.

Mr KELLY: And then bundle 60, 70 or 80 pages of minutes, the code of conduct, Facebook posts, press clippings, whatever and bundle it all up and lodge it. The challenge for the panel members is to then try to unpick that and work out which bits relate to which complaint—the breach of which rule. That is a massive job. You spend a lot of time doing that.

The CHAIRMAN: That is where the 800 pages worth of notes can come from.

Mr KELLY: Yes. You basically have to piece the complaint together yourself.

The CHAIRMAN: Okay. We will come back to those things that you have just alluded to.

Hon CHARLES SMITH: Can you advise who creates the agendas and all that kind of stuff before the meetings start?

Mr KELLY: It is created by the department, and that is based on whether the complaint has been fully documented and is ready to go to the panel for consideration so that all the information that is needed, at least in the view of the department, for the consideration of the panel —

Hon CHARLES SMITH: Who would do that within the department?

Mrs POWER: It is done internally.

Mr KELLY: It is Mick's area.

Mrs POWER: Mick and Donna both sign off on it.

Mr KELLY: I mean, we do not know.

Mrs POWER: We typically get a short summary on the front saying what regulations are —

Mr KELLY: There is a branch within the department that deals with it. It will be the compliance area, I presume.

Hon DIANE EVERS: I just want to clarify. I believe I heard you say that when you get these papers and you read through them, you come to that meeting and your decision is pretty much from a week before when you first read through it and then you make a decision in one day, or do you send it back for more information? What is the usual —

Mrs POWER: It depends on the matter. Normally the department has already chased up the things that they think we will need. So, if it is in relation to what was said at a council meeting, they may well chase up the transcript for us. More and more often, they are conveniently available online for

us to listen to, so the department will have done 90 per cent of that. I think, in the last 12 months we have had one where we have requested further information, and I suppose, by the time we get to it, we have done the reading. Then we meet, and we go through the facts of that particular issue, then we have a round talk about what we think and whether the elements of that particular breach have been met. Sometimes we disagree, sometimes we agree—for the most part we agree. The requirements to meet the breach are fairly straightforward. I am the legal member, so I do the writing of the decision, so I take notes at the time. The minutes of the meeting are reflective of what our decisions are, and then I go and write up, based on that. It goes back to the panel members for checking, and they decide whether I have said what we have discussed; and, if so, then it is sent out.

Mr KELLY: We do that out of session, so that we do not have to wait for another meeting to sign off on those minutes.

Hon DIANE EVERS: Good. And so the days—you know, the 130 days or whatever—just imagine if the backlog was not there, and new complaints are coming in. Would it still take three months or so to get the information together to give to you?

Mrs POWER: Essentially, yes.

Mr KELLY: In my experience, yes. I have been on the panel the longest, and in my experience, absolutely—yes. There is almost a three-month period where—some people do not respond, so in terms of giving procedural fairness, the department will write to them again, and say “Look, we notice you haven’t responded”, or somebody will write back and say, “Oh look, I’m going overseas next week, can I have an extension of three weeks?” You have got to appreciate that there is an element of conflict. There is an adversary aspect to what is going on, so there are all sorts of antics that may or may not be employed.

The CHAIRMAN: Is most of your contemplation based on written statements?

Mr KELLY: Yes.

The CHAIRMAN: Do you ever hold hearings, or get people in?

Mrs POWER: No.

Mr KELLY: I have once.

Mrs POWER: I have not.

Mr KELLY: It was more about—that was to do with the sanction.

Hon CHARLES SMITH: How are decisions actually made? Is it a simple show of hands, like a majority, who agree that a breach has occurred?

Mr KELLY: Well, we do not put up our hands. It is essentially a consensus, but on a number of occasions—it is quite rare, but generally there is a consensus of all three members. I have dissented on a couple of occasions that I can remember.

The CHAIRMAN: We have heard that sometimes it takes up to 15 months for some matters to be finalised. You have indicated that, because there is a process to go through, that adds up to three months. What is the typical experience?

Mrs POWER: Possibly that was when there was a huge backlog. I have been the legal member for approximately a year, and when I started, there were at least 50 in backlog. The panel has made it their business to get up to date, holding two meetings a month. From our point of view, we do the reading a week before we hear the matters. We do the writing within the month before the next meeting. I would do a monthly meeting, and then the deputy legal member does the other one in the month. Now we have caught up to the extent that we are dealing with matters that have been

put in in July and August, now, so we are substantially up to date with matters. We have been doing, as Paul said, about 10 matters at a time to get over that issue, because it has been realised to be a matter.

The CHAIRMAN: Thanks for clarifying that. That is helpful to know. You have used the term “hearing”. Is it more the case that a hearing in this sense means a coming together of the panel to consult and consider?

Mrs POWER: Sorry. Yes, I do mean a meeting.

The CHAIRMAN: Right—I understand. You have indicated that you normally do not have witnesses, except in getting written statements. That is how you obtain your evidence.

[1.50 pm]

Mrs POWER: For the most part the complainant puts in what they feel is relevant to us, and then when the respondent is offered the opportunity to respond, for the most part they address exactly what it is that the complainant has made comment about—not all the time, I can stress, but we take it on what is written.

The CHAIRMAN: Just looking at the annual report, and the league table there showing the numbers of complaints. We have seen in the last few years there has been quite an increase in absolute terms in the numbers of complaints.

Mr KELLY: I think you need to appreciate—I have looked at exactly the same annual report; in fact I signed off on it—55 per cent of those came from four councils.

The CHAIRMAN: That is interesting. I have raised the subject. You have obviously thought about this a lot, Mr Kelly. Can you tell us what your thoughts are?

Mr KELLY: One of my concerns is that—I have made this very clear to the department on a number of occasions—when you sit on the panel, it becomes quite apparent that there is the elements of some dysfunction occurring in a particular council, when you see the number of complaints that come in. I have described it a bit like dealing with juvenile justice, or whatever. If you do not get in early and do some preventive work within that council, the complaints are likely to continue, and continue to escalate, because we often find that there are almost counterclaims; there is a counter-complaint, and once you raise that sensitivity within a council, then it is highly likely that the number of complaints will continue. You only need to look at those four councils—you can pretty much guess who they are, from your own information and the media. It is not surprising, for example, that Melville is the highest, and that has significantly impacted on the number of complaints, and that is what has really contributed in the previous 12 months to the significant increase.

Hon DIANE EVERS: So what is your suggestion, then? You say get in early, but you know this process takes three to four months minimum.

Mr KELLY: My suggestion to the department is that they need to work with that council and that administration to try to deal with the emerging issues. It is just a treadmill.

The CHAIRMAN: Who makes the complaints? What are the sources of the complaints? Is there a general rule?

Mrs POWER: No, there is a table in the —

Hon DIANE EVERS: There is, and it looks like there was a significant jump in public submissions from just two years ago to last year.

Mrs POWER: I would say that social media is a big driver in that.

The CHAIRMAN: How so?

Mrs POWER: I think, when councillors are sitting that night and they read something that the public has—when the keyboard warriors have got onto a case, perhaps sometimes they press enter before they had thought about it properly. It is a very easy way to respond without thinking about what the consequences may be for that response.

The CHAIRMAN: What tends to happen if councillors fall into that trap? Can you explain a bit more?

Mrs POWER: I think they tend to hit back at the person who has made some kind of allegation against them. Perhaps a good example is Melville. They have got a community board that there is a lot of chat on, and they are prone to make allegations such as, “This site is unsafe; I will tell people that so-and-so has not done the right thing here”, identifying members of the public perhaps who they feel have done the wrong thing.

Mr KELLY: I think it would be fair to say also—I am a fairly long-term elected member—that some elected members forget that they are actually councillors outside of the council chamber. They get on social media and they probably say things that they may or may not say within the confines of the council. They sometimes do not appreciate that the rules of conduct apply both inside and outside of the council chamber. It is not simply a code of conduct and the rules of conduct in the council; it is actually everything you do. I have heard people say, “But I put that on my private Facebook page.” There is no private Facebook page when you are a councillor. It does not matter whether you have got a council Facebook page or a private Facebook page. Your private Facebook page has public access, and you are a councillor.

The CHAIRMAN: If we look at 65 public complaints received in 2018–19 —

Mr KELLY: Sorry, which page are you looking at?

The CHAIRMAN: It is on page 8 of the annual report. What can you tell us about those 65? Are they submitted by all sorts of people from all over the state, or have you got a few that are perhaps multiple complainants?

Mr KELLY: I think we would probably both agree where most of those have come from.

Mrs POWER: There is a real mixture. There are multiple complainants, and there are people who are repeat complainants, often about the same councillor who they feel is not doing the right thing by them, or that they fundamentally disagree with their politics, but then there are also people who maybe attend meetings and feel someone has done the wrong thing. What do you say, Paul? I think there is a good mix.

Hon LAURIE GRAHAM: What percentage would come from those four dysfunctional councils?

Mr KELLY: We could interrogate the data and find that out. It is not in the annual report, but off the top of my head I would say quite a few. Wherever you have got a ratepayer group that is at loggerheads with the council, then you tend to get a large number of public complaints. It will be about the way the meeting was conducted, or “I didn’t think I got a fair hearing”. I think it is also important in the context of the annual report to look at how many complaints were upheld, compared with how many were dismissed. Just focusing on the number of complaints, you actually get a distorted view about the veracity of some of those complaints.

The CHAIRMAN: Since you have raised that matter, would you like to comment on it now—about how the complaints are finalised?

Mr KELLY: I think there was only about 25 per cent, from memory, that the breaches were upheld. I think it was probably three or four years ago when the legislation was changed to allow the panel to dismiss and find complaints unjustified, vexatious, and the like. We actually thought that that would make life easier for us because we will not have to—if we go back to my comments about the

administrative process early on in the proceedings—that would be able to be streamlined, because those vexatious complaints could be identified early on and it would be a pretty simple decision for the panel. Unfortunately, that has not turned out to be the case, and we actually have to give due consideration to the same extent to those ones as ones that are substantiated at the end of the day. We thought we were going to be able to streamline the system, but in fact it has made very little change. We still have to go through the full process, and that is based on SSO advice and outcomes from SAT.

Mrs POWER: I would say that there is only a minimal amount of time saved in writing the decision, and that is all. Otherwise, all the rest of the processes have to be complied with.

Mr KELLY: I think there was about 14 per cent that we refused to deal with, and 40 per cent were no breach.

The CHAIRMAN: We will come back to some of that, but Hon Diane Evers has a question.

Hon DIANE EVERS: My question is more about the ones that are substantiated, or there is some reason for them. My concern, having been in local government before, is that the third party appeal right has been taken away, and so people are at a loss. They are not happy with what the council is doing, and they are trying to figure out some way to call attention to it, and say, “This isn’t right”. When they come to you with a kind of a minor thing to do with a bigger issue, how much time are you able to give those, and would you ever refer them on to the SAT? What can people do?

[2.00 pm]

Mrs POWER: We are stuck within the confines of the act, so we can consider only minor breaches. We must reach the elements of those breaches. Be assured that with every complaint that comes to us, we are reading all of the material for it. There is nothing that we just read the first page and go, “Oh, that’s nothing.” We do have to read the material to make the decision of whether it is misconceived or frivolous or any other reason.

Mr KELLY: It might also be that buried in the 100 pages of that complaint, there is one paragraph somewhere which is the difference between substantiating or not substantiating.

Mrs POWER: To be fair, there are times when we look at the conduct of councillors and we have considered that it does not perhaps sit right, but we simply cannot make a breach finding on it based upon the elements that we are required to meet to make a breach finding.

Mr KELLY: The classic would be the he-said, she-said. For example, there is a report in the local newspaper and a councillor is quoted as saying something. A complaint comes in because somebody is aggrieved by the comment. We go back to the elected member and they say, “I was misquoted”. It is a he-said, she-said.

Hon DIANE EVERS: Can you ever carry on or pass on that information to another body?

Mr KELLY: No.

Hon DIANE EVERS: So it ends there.

Hon LAURIE GRAHAM: Do you ever receive a breach that has been referred to you that you then say, “No, this is not appropriate; it should be dealt with by SAT”—in other words, it is a “minor” major—or is the department sorting those out pretty well?

Mrs POWER: The department sorts them out fairly well. We have had one —

Mr KELLY: We have referred one to the CCC.

Mrs POWER: I was not there for that one. There was one that we had moderately recently where it would have been a major breach if it had been a breach, but it did not fall under our jurisdiction.

For the remainder, otherwise, it is very much sorted out in the agenda papers and the cover pages as to where it should be going.

Hon CHARLES SMITH: Could you just advise me whether the standards panel member from the department is also a voting member?

Mr KELLY: Yes. In fact, they chair the panel.

Hon CHARLES SMITH: Right. Do they also contribute towards the consideration of the complaint?

Mr KELLY: Yes.

Hon CHARLES SMITH: They are involved in the whole process?

Mrs POWER: Yes, absolutely.

Mr KELLY: I am pretty sure that Mick, as executive director, manages the administration of a complaint before it comes to the panel. You would need to verify that with Mick, but I am pretty sure that is the case.

The CHAIRMAN: One theme that has come through to us in a number of ways—as members, we have received it anecdotally through announcements made in local papers or part of the social media aspect that you referred to earlier, and certainly it has been in some submissions we have received—is that one of the downsides of the system is that some people choose to weaponise it. They lodge complaints that will have all sorts of effects, one can imagine. Councillor Kelly, you are an elected member. When a councillor has a complaint lodged against them, it can be hanging over their heads for at least a few months, in which time if the person making the complaint is not properly motivated, they will be making all these announcements, again on social media, saying, “This councillor has three complaints with the standards panel still to be resolved. They’re a terrible person. There’s an election on this Saturday.” You know those sorts of problems. Do you see much of that?

Mr KELLY: Well, they are forbidden from doing that, of course. There is a period before the election that you cannot go public with complaints.

The CHAIRMAN: There has just been an amendment to the act, too; perhaps you might comment on that in a moment. Has it been a feature, though, that people have been using the system?

Mrs POWER: It is occasionally, particularly with an aggrieved member of the public. However, we have seen transcripts where it is used in council meetings against various councillors. I would say on that note that I was pleased to see the new confidentiality provisions in relation to complaints until they are finalised. I think that is a positive step. I think members of the public think they are immune from any, I guess, response from anyone—that they can say what they like. They are already quite often publicly and loudly alleging many, many things that councillors have done.

The CHAIRMAN: That is a very good point. Is there any protection for councillors against that sort of victimisation?

Mrs POWER: I do not believe so.

Mr KELLY: No.

Mrs POWER: Not unless they are going to be taking defamation action.

Mr KELLY: Not unless they take civil action.

The CHAIRMAN: Which is sometimes a bit too hard. On the subject of the origin of complaints, we were just talking about complaints from the public, but I see that a number of them come from CEOs. In looking at the available data, we see that there are a whole lot of CEOs who never lodge a

complaint, but some are conspicuous by lodging several. The suggestion has been raised in submissions to our inquiry that CEOs are sometimes perhaps using it to victimise a councillor that they disagree with. Have you seen any evidence of that?

Mrs POWER: Absolutely, yes.

The CHAIRMAN: Could you elucidate a bit?

Mrs POWER: Yes. We have seen several where a CEO may lodge a number of complaints, either across a series of councillors or on a particular councillor. They are often unsubstantiated and no-breach situations. That is not all the time. In one particular case, it was an outgoing CEO, so I suppose there were some political problems there. Absolutely, it can be used by anyone as a weapon against councillors, who, as you say, have this hanging over their heads for several months.

The CHAIRMAN: I find it extraordinary that a chief executive would behave in that sort of manner. What sort of level of CEO are we talking about? Are we talking about some of the bigger councils or perhaps very small ones?

Mr KELLY: Possibly. There is one that I think has probably argued that it is an occupational health and safety issue—that the abuse that is received in a council meeting or the adverse reflection that is applied to employees is such that it becomes an occupational health and safety issue and they therefore lodge a complaint. There have been other CEOs who have dealt with similar circumstances where they have referred it to WorkSafe as a work safety issue rather than used the complaints procedure.

The CHAIRMAN: Is it not the case that CEOs, if they are the complaints officer or the de facto complaints officer because there is not one, are actually obliged, if a minor misconduct is noted, to lodge a complaint? Is that the case?

Mr KELLY: They are a postbox, effectively. They do not adjudicate as to whether they should or should not, and they should not be counselling the complainant that they should or should not.

The CHAIRMAN: And yet a whole lot of CEOs who are complaints officers do not lodge complaints. Surely there must be incidents that happen at every council, one would think, where people get a bit hot under the collar and exchange harsh words.

Mr KELLY: The complaints officer is the administrative person, though; they are not the apex of whether there is a complaint or whether there is substance or no substance. They are simply providing an administrative process. It can be staff members, it can be members of the public, it can be other elected members that can lodge it, but that is simply the process of lodging that goes through the CEO. Not all CEOs are complaints officers. I understand that some councils have appointed other staff members as complaints officers. Some councils might get an independent review of the complaint before they actually process it. The panel has had occasion to receive complaints from a complaints officer, and an independent review of the complaint has been provided with the complaint to the department.

[2.10 pm]

Mrs POWER: And there are occasions where the CEO is probably a very appropriate person to make a complaint—for instance, in cases involving administration or perhaps not complying with standing orders and things like that, where the CEO is uniquely placed to understand where a breach has occurred in those instances.

The CHAIRMAN: What sort of example are you alluding to—a councillor going direct to staff and directing them?

Mrs POWER: Yes, that can be one. Or perhaps meeting with a third party in the community and coming to a commercial arrangement with them on behalf of the council, so involving themselves inappropriately there.

Mr KELLY: There was one a number of years ago where an elected member went to hand out some equipment. He thought the CEO was not being supportive of the community, so he chose to take it upon himself to make the council equipment available to the community, thus performing the function of the administration. Bang.

The CHAIRMAN: That is interesting. There are a lot of stories across 139 local governments!

Mrs POWER: Yes.

The CHAIRMAN: It occurs not only to us but also a lot of people who made submissions that it is a bit awkward, though, if you have a council body that has to deal with their employee, the CEO, and quite often the CEO is the one lodging complaints and, in fact, in some cases is the author of those complaints. That must lead to some interesting environments, certainly in several councils. Have you noticed anything like that that you could comment on?

Mr KELLY: I am trying to recollect. Putting aside the performing of the role of the administration, if you discount that from the range of complaints, there would not be that many that come from actual CEOs. The CEOs would be involved in performing the role of the administration, but they may not be—it could be the executive manager or the director of the planning division; it is not necessarily the CEO.

The CHAIRMAN: If a CEO is just performing that postbox function—I think that was how you referred to it—they can deal with the councillor in question by just saying, “We’ve received this. My hands are tied. I have to on-forward it; I’m letting you know.” That would not destroy working relationships. But if we discount all those postbox ones out of the 29 complaints from CEOs, according to your annual report, would that simply leave one or two CEOs that are basically in a hostile environment?

Mr KELLY: Yes, I think so, in my view. You would need to interrogate the data to actually verify that. My feeling would be that that would be the case. It would be something to ask the department.

The CHAIRMAN: I think it would be helpful to do that exercise, which I think is a fairly straightforward one. We will make a note to ask that of the department. It might give Mr Connolly something to do when he hopefully returns safe and sound. The question I think is: could we ask for a breakdown of the outcomes for those councils of their complaints and who the author was of each of those complaints? That might tell us some interesting things, particularly for those four or five major complaint sources. That might help illustrate it.

Mrs POWER: It would probably be quite useful and interesting for the committee to source some of the no breach decisions, which of course are not published. They are quite often quite telling in relation to complaints made that are of a nature when they should not have been made.

The CHAIRMAN: Again, we might seek supplementary information along those lines. Thank you for that.

Hon LAURIE GRAHAM: We talked about recorded meetings a second ago in relation to the need to go back and get more information. I was a reasonably long-serving councillor in the past and I have been on councils where we have opted on both occasions to cease recording meetings. In this situation, are you much better placed to come to a judgement when the matter happens at a council meeting when they are recorded?

Mr KELLY: Absolutely. I have certainly made that know to the minister.

Mrs POWER: Absolutely.

Hon LAURIE GRAHAM: Should there perhaps be a recommendation along those lines.

Mr KELLY: Absolutely. I would fully support that. That is something we have had a number of meetings with the minister on. Certainly that is one of the things that I have said to the current and previous ministers, I have to say. It should be compulsory that they are recorded. If you want the standards panel to operate properly, we have to ensure the veracity of the information that is given to us. Unfortunately, you cannot get that from just the minutes of the meeting, as some of you would appreciate, having been councillors. The minutes really just record the decision. A lot of what is involved in the complaints is the behaviour of the councillors at the actual meeting and things that are said between councillors.

Mrs POWER: And the tone.

Mr KELLY: We have had complaints about people shuffling papers. How do you deal with a complaint about shuffling paper and disturbing the meeting?

Mrs POWER: Or making aggressive eye contact.

Mr KELLY: Then that flows on to the codes of conduct of each council. You only need to look at some councils and their code of conduct is now 30 pages long because you are not allowed to cough and you are not allowed to do whatever. Another good initiative is to get some kind of standardisation across a code of conduct for all councillors.

The CHAIRMAN: A model code of conduct, as has been mooted.

Mr KELLY: Absolutely.

The CHAIRMAN: I do not know why someone dreamed up the idea that every local government has to have their own code of conduct.

Mr KELLY: Then you sit as a panel member and you have 135 different codes of conduct you are supposed to —

Mrs POWER: And we have to go hunting through every one.

Mr KELLY: It is a bit like the development industry dealing with 130 town planning schemes. I have some sympathy for them.

The CHAIRMAN: I have a note that we certainly would like to follow up about the circumstances of your “no breach and refuse to deal” situations. That might help us a lot in our inquiries. I am just wondering, are people a bit too sensitive sometimes, generally?

Mrs POWER: Very much so.

The CHAIRMAN: And easily take offence?

Mrs POWER: Yes, absolutely.

The CHAIRMAN: What do we do about that, because it is taking up a lot of your time and it is mucking around councillors who probably need to get on with doing their work?

Mr KELLY: I think it is also the case that you must choose your language carefully. You can make reference to a document not quite being up to standard and you can do it in a number of different ways. You can say, “Obviously the director does not know what he’s talking about because this is a load of rubbish and so on and so forth”, or you can say, “I think there’re some gaps in this report and it would be appreciated if we could defer this item and come back”. It is a case of how you do it. A lot of elected members talk to me because I am on the panel and I have been an elected member for 20 years, and I say, “It’s not prohibiting any reference or any suggestion of criticism; it

is simply how you go about doing it. If you want to cut loose and tear shreds off the administration, do not be surprised if there is a complaint. But if you do it in a reasonable fashion and you identify where you think the gaps are and you would appreciate some additional information in this area or that, or a second opinion, or some professional advice, or whatever, then that is fine. It's not a problem."

The CHAIRMAN: Hon Diane Evers has a question and we will come to that in a moment. Just before we move off this point, is it possible, do you think, for a lot of these matters to be resolved before they have to come to you and perhaps what is needed is a presiding member to jump on that sort of behaviour and ask the member to withdraw?

Mr KELLY: Absolutely.

The CHAIRMAN: Does that happen? Should it happen?

Mr KELLY: We had an election last Saturday and you have a bunch of new mayors, some of them popularly elected, so they are not from within the council, and some of them have never run a meeting in their life. All of a sudden they are confronted with all the constraints of local government—code of conduct, procedural fairness and all the rest of it—and they launch into their first meeting. There are some skill deficits out there, to be honest.

[2.20 pm]

The CHAIRMAN: It just occurs to me that if you could deal with some of these things on the spot before they get blown up and, it would be better for all concerned.

Mrs POWER: I think in a lot of cases when it has been internal, there has been discussions and talks between the parties already. I know there is the new ability to have mediation, although we have only just gotten into when that was in force for our complaints. Often we are dealing with people who are at absolute loggerheads and they want what they perceive to be an independent party to deal with it. I suppose the standards panel is in some ways seen as independent and in some it is not. I think we are not particularly exposed. It would be better for councillors and the public to know what we do a little more. I am sure there are instances where things could be resolved certainly before they get to us, but there are other cases where parties will feel that the city or town already has a view on it and therefore they are not going to get a fair hearing.

The CHAIRMAN: I think quite probably in dozens and dozens of councils that does happen, and that is why you do not see any complaints from them.

Hon DIANE EVERS: Following on from the same idea, I want to look at the ones where you have found that there is a breach, and I understand it is a minor breach. Again, with regulation 7 saying securing personal advantage or disadvantage in others.

Mr KELLY: That is the big one.

Hon DIANE EVERS: It is; that is a majority of them.

Mr KELLY: It is almost 50 per cent.

Hon DIANE EVERS: How big do those things get? How important? I guess tell me why we need the standards panel to work with those ones and what can be done from that, because I agree with what you are saying; a lot of these would be nice to nip in the bud back at the council with mediation or whatever. How big has a minor breach become?

Mrs POWER: For advantage and disadvantage, I will say there is not very much in the way of advantage; generally, we are looking at a disadvantage. Normally it is when one somebody feels denigrated or humiliated in public—something has been said to them or about them, about their

personal characteristics or perhaps their competence. That is the majority of what we are dealing with. It is a difficult line for us to pick when something is genuinely perhaps denigrating of someone. You may have seen a fairly recent SAT decision where we were not agreed with as to what we thought was denigrating—SAT did not agree. It is a difficult thing for us to decide all the time, what is the objective position of whether someone intends to damage someone, which is what the test is. The test is not whether there is an advantage, but the intent to disadvantage or the intent to advantage, which is why we also have a lot of no breaches on that, because there is not always an intent to cause a detriment to someone, even if perhaps a detriment has occurred.

Hon DIANE EVERS: Given your experience in this, what is the way to deal with these cases—the ones where there is detriment to somebody personally? Is there a better way to do it, or is this system the best we have come up with?

Mrs POWER: I would say personally, not speaking necessarily on behalf of the panel, that often what the aggrieved party is looking for is an apology. I know that is one of our sanctions, of course, but perhaps this is an apology that can take place before it gets to the point that it is at the standards panel, especially when it is between the public and councillor or between two councillors. A simple apology goes a long way to soothing people's feelings.

Hon DIANE EVERS: It is a big process to get around to an apology, is it not?

Mr KELLY: Yes.

Mrs POWER: But people do feel genuinely aggrieved and I think people feel that they have not been heard and that leads to problems.

Mr KELLY: You are quite right. I have known of circumstances where council meetings have been adjourned and maybe the deputy mayor or somebody has gone up to the councillor and said, "Look, do you want to consider giving an apology?" There are processes that can be employed to short-circuit some of those problems, but, again, often in the heat of the moment, they say, "No, I'm not going to apologise." It is over the passage of time when things settle down that maybe they are more prepared.

Hon DIANE EVERS: Following on from that then on transparency. A number of people brought up the issue that they do not feel that that the panel is transparent enough. When you are dealing with personal matters, I guess I can understand it, but what would you say to that? Is there a way you could be more transparent or do you just have to say, "No. What we do is right."

Mrs POWER: I think when we are discussing matters, of course, that has to be a private contemplation, just like any.

Mr KELLY: We are prohibited from it.

Mrs POWER: In respect to the actual decisions, we get comments of, "It's too long and we don't understand it." Then you get the other side of, "We don't know what your reasons were." I suppose from that point of view we are trying to be as transparent as we can in the way we have thought about the matter. Each element is set out and this is why each element is met or this is why this element is not met, and to try to put it into plain language so that people do understand it. But also want to give that respondent the opportunity, if they want to, to refer it to SAT and have enough in there that SAT can see what we have discussed and what we have thought about and that we have thought about everything that we have been given.

Mr KELLY: It probably relates to some of my comments earlier where it is probably more often the case that not that we have to try to sift through and try to find the reasons to substantiate or that it is not substantiated. It is not a case of having to tick the box of breaching a particular rule and

then giving three pages of evidence. It is a case of ticking a box and dumping a whole lot of stuff in there that gives me the feeling that this has been breached.

Mrs POWER: “I am aggrieved. Here is everything I am aggrieved about. Now, panel go and find the breach.”

Hon DIANE EVERS: If you could bring them both in and have the two parties in a mediated situation —

Mr KELLY: Unfortunately, the act does not provide for us to mediate. But there may be a process that could do that before the panel or in place of the panel.

The CHAIRMAN: You just referred to it, did you not, when you said that sometimes during a break the mayor might take someone aside and say, “Listen, do you want to sort this out before it goes too far?” So that is happening. I agree with you; I imagine that is happening a lot and stops you having a lot of unnecessary complaints. Is there some other process perhaps that we could have?

Mr KELLY: I think the association, WALGA, has put in place some sort of peer assistance to help councillors or go to councils where there are difficulties and provide advice and so on and so forth, whereas I think the department’s role is more of a compliance role. That is perhaps the criticism that I have made before. I liken it to children’s protection where the department is there to help. The council is having some problems, so it goes to help. They sit and listen to the council meetings, they see some more dysfunction, they find out some more and then they suspend the council. They have this double role of being there to provide support, but also there to provide advice to the minister about possible suspension. That is a very confusing role. They should be one or the other. They should have a compliance role and let somebody else do the support and the advice, and stick to the compliance role. When there is an amalgam of the two, is the CEO going to ring up the department and say, “Can you come out here and observe what is going on because I need a bit of help and guidance? Can you perhaps have a conversation with the mayor and myself about how to conduct meetings better and so on and so forth?” “Well, I do not know. Do I want you in my council chamber? I am not so sure because if you see what is going on then —

Mrs POWER: — we might be in trouble.”

[2.30 pm]

Mr KELLY: There is a real issue, I think, in having that dual role for the department.

Hon LAURIE GRAHAM: Is that not one of the problems, though? When the department comes out, it is very obvious, because the dysfunction is out there in the community being relayed back. When they come out they try to play both those roles, when they should just come as the compliance officer and report, and make it very obvious to everyone.

Mr KELLY: I absolutely agree, Laurie.

Hon MARTIN ALDRIDGE: Can I ask some requests about SAT? It has been mentioned a few times. In your annual report on page 13 it talks about 15 complaints being appealed to SAT in 2018–19 and 13 of those are yet to be heard. Do you have some data from previous years in terms of the number of appeals to SAT that are upheld?

Mr KELLY: Not off hand, but if you thought our process was long and protracted, then I suggest you go and have a look at some of the SAT time frames. Even we get frustrated wanting to know what the outcome is. The important point about the appeals to the State Administrative Tribunal is the de novo appeals. Do not get confused; they are not just reviewing the same information that we were given. They do not have to trawl through all the stuff that we had to trawl through. It is a

de novo application. You can go to SAT and you can provide additional information that the panel never saw.

Mrs POWER: And they do.

Mr KELLY: And they do. They are also under oath and they can bring in witnesses and so on. It is a completely different circumstance; a completely different legislative framework. To say that 30 per cent of the panel's decisions were overturned by SAT is a misnomer, because it is a completely different environment.

Hon MARTIN ALDRIDGE: Does the panel defend its decisions at SAT?

Mr KELLY: SSO appear on our behalf, but they do not —

Mrs POWER: They do not defend as such; they take a position.

Hon MARTIN ALDRIDGE: And that is in all cases?

Mrs POWER: Yes.

Hon MARTIN ALDRIDGE: You do not get involved in any appeals at all?

Mrs POWER: No, and they do not come to us to reference why the decisions were made or anything like that.

Hon MARTIN ALDRIDGE: With respect to recurrent minor breaches, I understand there are provisions to refer recurrent minor breaches directly to the tribunal. How often does that happen?

Mrs POWER: Recurrent to the tribunal or to the CEO?

Mr KELLY: To the CEO, you mean?

Hon MARTIN ALDRIDGE: I was just looking at your regs earlier; I thought it was to refer them to the tribunal.

Mr KELLY: I think it is the CEO that has the discretion to the tribunal.

Mrs POWER: Then it is to the CEO who has the discretion above us.

Hon DIANE EVERS: The CEO of the department?

Mr KELLY: The department, yes.

Hon MARTIN ALDRIDGE: The CEO has that power, not the panel?

Mr KELLY: No.

Hon MARTIN ALDRIDGE: If the CEO was to exercise that power, then the panel would not receive the complaint. Is that how it would work?

Mr KELLY: We can refer to the CEO, for his or her consideration —

Mrs POWER: On recurrent breaches—and yes, we do do that. The issue with that is that with the time frame for recurrent breaches, we must have had all the information, made our decision, had it go back to them for consideration on what the sanction should be and what our sanction does before we can consider that it is recurrent on another occasion.

Mr KELLY: Yes, three at the same time.

Mrs POWER: If it is a cluster of behaviour that is perhaps based upon one series of conduct, we have trouble referring to that as recurrent, what really is of a nature that is recurrent.

Mr KELLY: Or if there are three different breaches at the same meeting, for example. That is not three occurrences.

Hon MARTIN ALDRIDGE: Yes, okay. At the start of the hearing you mentioned the pressure on panel members. Although we have seen an average over the five years, the last financial year was actually the shortest amount of time from complaint to decision. You talked about the 800 to 900 pages in the lever arch file, two meetings per month and the pressure that is placed on panel members. Does the model of the panel or the construct of the panel need to change accordingly? I just looked at your annual report, and the remuneration, and I think your expectation that you have described to the committee today. Is that still fit for purpose?

Mr KELLY: You would have observed my significant remuneration!

Mrs POWER: It is only the legal member who will be remunerated and it is based upon—are you familiar with how the remuneration works?

Hon MARTIN ALDRIDGE: No, tell us.

Mrs POWER: It is \$240 per hour of writing, to a maximum of \$900 per matter. Matters may well be grouped, so that is \$900 per that group. That is 3.75 hours maximum to spend on a matter. That is fine when you have got a refuse to deal and it might take an hour and a half. The majority of simple breach ones would take about three hours. I have spent up to 21 hours on drafting a decision that has been over 30 pages long, because there are just so many allegations of breach in one matter. From a personal point of view, if you are going to get a legal member in, the only legal members you are going to get who are able to volunteer for this sort of decision are people who have their own business. There is no way someone working in a firm who has got billable hours to meet could possibly financially do it. I enjoy the work. I think it is interesting and I like it, but it is not the kind of remuneration that a usual legal practitioner would expect to get for the amount of work that is done.

Hon CHARLES SMITH: Is this your primary or secondary income?

Mrs POWER: This is my secondary income. I have my own business and I am also on the Liquor Commission and the racing and gaming appeals tribunal.

Hon MARTIN ALDRIDGE: Mr Kelly, you do not get any remuneration as a panel member?

Mr KELLY: I am actually the executive director of the Economic Regulation Authority, so I am a public servant, even though the authority is appointed by government as an independent authority. As a result, I do not get any remuneration.

Hon MARTIN ALDRIDGE: Ordinarily, if that was not the case, you would be entitled remuneration as directed by the Public Sector Commissioner?

Mrs POWER: For attending the meeting only, not for reading time.

Hon MARTIN ALDRIDGE: That fee structure, as I understand it, is then reflected back to the individual councils in terms of —

Mr KELLY: Recouping.

Hon MARTIN ALDRIDGE: Yes, in terms of recoupment. Those type of arrangements would obviously be making it more cost effective for some councils because you are —

Mr KELLY: I am free.

Hon MARTIN ALDRIDGE: Basically.

Mrs POWER: He is very good value.

Hon DIANE EVERS: Assuming you are not on this endlessly—there will be a time you are not—will that then come in place? Because I noticed in the previous year there was a councillor who was paid

something, but only for that attendance, which means it is a pretty big commitment for a councillor to take on. Would it be expected that possibly your successor as the chair of the ERA or somebody else that is doing a somewhat associated job would take this role?

Mr KELLY: I think it would be fair to say my circumstances are quite unusual. It would only be if you are a public servant and an elected member that you would be in the same circumstance as me. It is highly unusual for somebody in the senior executive service to be an elected member, to be honest.

Hon LAURIE GRAHAM: We were discussing how quickly the time is for someone to get on—switchboard warriors—and lodge the complaints. In that act, I see it has come down from two years to six months to lodge. Do you get any at all that are lodged after, say, three months? Or are they lodged pretty well within a very quick time frame?

Mrs POWER: It is varied. We are only now just where the time frame has changed to allow it to be six months. Up to that we have had ones maybe—I think the oldest I have done is maybe 13 or 14 months.

Mr KELLY: Twelve months, yes.

Hon LAURIE GRAHAM: Were they in relation to recurring things that had happened, or were they in relation more to where someone subsequently noticed something happened before that had earlier then been reported?

Mrs POWER: Yes, a bit of both. It is so circumstance-driven that it is difficult to —

Mr KELLY: Again, that data would be available from the department. In fact, if I had my file with me, I could scan through and tell you, because we have a spreadsheet at every meeting which has all the complaints, when they are lodged, which council, who lodged the complaint and who the complaint was lodged against. All that data is available.

Hon LAURIE GRAHAM: I see six months is an extraordinarily long time, unless it is at the time the person became aware that something happened previously.

[2.40 pm]

Mrs POWER: I would not say it is an extraordinarily long time. Most of them are —

Mr KELLY: Again, you have got to think of the process. First of all, I have got to feel aggrieved and I have got to think about it and then I have to write it down, then I have to lodge it and take it to the CEO or the complaints officer and find out how to do it. There is a period of time. Those that have done it before are probably able to do it relatively quickly if they feel the urge to do so. But if you were doing it for the first time, it would probably take you a month before you figured out what to do.

Mrs POWER: Especially as the form is not, I would say, particularly effective in leading people for what they should be doing and what they should be complaining about. We have discussed this as a panel and with the minister as to the efficacy of the minor breach form.

Mr KELLY: Something that I would encourage the panel to look at is the process for application, because it is an approved form, so you have got to lodge with the approved form. You cannot just send in an email with information attached.

The CHAIRMAN: Have you raised this with the minister and/or the department?

The WITNESSES: Yes.

The CHAIRMAN: What was their response?

Mrs POWER: “We’ll think about it”, and, “How much is it going to cost?”

Mr KELLY: I have raised it with the association, I have raised it with the department and I have raised it with the minister.

The CHAIRMAN: We might find out what they have got to say about it.

Mrs POWER: There is a lot of scope to make things easier for both complainants and the panel by tightening up that form significantly and for the benefits of transparency, of making people aware just what is required for a minor breach to be found.

Mr KELLY: I think it would help everybody. It would help the complainant because it means that they have to focus on what the essential element of the complaint is, which is going to draw their attention to having to demonstrate the breach or not. It is going to help the panel, because it hopefully will reduce the quantity of information that is randomly dumped to us. It also, I think, helps the other party because it means that I am not responding to a whole lot of my Facebook posts and, you know, “What the hell is this person on about just dumping all of this stuff? I can’t figure out what they’re really complaining about in relation to my behaviour.” I think it is a win for all three parties, really.

Hon DIANE EVERS: I understand there was a review of the system of the panel process in 2010–11 and some of those committee findings came out. I am just wondering, is there any ongoing process to carry on from that review? Are there any changes to the panel system that you know of?

Mrs POWER: It is before my time, so I am not aware.

Mr KELLY: Unfortunately, it is not before mine! Personally, I found that review quite exhausting and quite cumbersome. I would have preferred a much more focused review of what the problems are and what some solutions might be. If you look at that document, it is actually all-encompassing, and there are a lot of words in there. To the best of my knowledge, the department has not formally undertaken another review since then. We have had two meetings with the minister directly, and one of those was at his initiative. He is very keen to hear what our thinking is and I think he, perhaps, has some ideas that might be part of the act review that will continue. But, it is a case of whether you massage and amend what you have got or whether you consider looking at a completely new system. There is a bit of chatter around about that maybe we could have a commissioner for local government or whatever, and that could perform similar sorts of roles or whatever.

It is a case of whether you modify what you have got to try to improve it, maybe in the short term or whether you continue in the present manner but look for a different approach altogether. The genesis of this, I think, came from one of the other states, if I remember correctly, and it was an attempt to deal with the transgressions of elected members. It has been operating for quite some time now. I mean, Carol Adams was my predecessor on the panel and I think Carol was there for about five years, so it has been operating with not significant change for a number of years now.

The CHAIRMAN: We are making good time, but I have got some questions. One of these is a bit of an odd one. I do not know if you might need to take it on notice.

Mr KELLY: Well, my parking meter has expired!

The CHAIRMAN: I know a bloke at the City of Perth!

Mr KELLY: Good on you! So do I!

The CHAIRMAN: He is probably the only one left at the moment, and that is the librarian!

Under section 5.124 of the Local Government Act, a provision with which I am sure we are all familiar, there is an offence of giving false or misleading information in relation to a complaint. Are you aware of anyone ever being prosecuted under that?

Mrs POWER: No.

Mr KELLY: No.

Mrs POWER: It is very difficult for us to tell on written alone what might be false or misleading. It would require significant investigation, which we are simply not equipped to do.

Mr KELLY: And remember none of this is given up; none of the information that is given to us is by way of affidavit or sworn in, so you just take it at face value and that is why we always get a problem when somebody says, “Well, no I didn’t say that”, which relates to your question, Laurie, about transcripts of meetings. But we have had circumstances where people have used other councillors and said, “Look, my other councillor has provided support for my complaint” in the sense that “I understand that councillor so and so did say this.” So we have had collaborating evidence in that form, but it would be useful to hear the transcript. The other thing about the transcript, if I might say, you actually get a sense of what is happening in the meeting as well, as opposed to the vanilla written word. Often—I should not say often—sometimes the complaints are about the nature and form of the way somebody said something; you know, “He said it in a very aggressive manner” or “He shouted at me” or whatever. You do not know whether that is right or wrong. The only way to check the veracity of that kind of allegation is to listen to the transcript. It does give you a sense of what is happening in the meeting as well and what may have precipitated the circumstance, which is valuable information for the panel, or at least for me as a panel member.

The CHAIRMAN: Thanks for that. You recall that earlier this year, there were some amendments made to the Local Government Act, which allowed the panel to request parties attend mediation, gave you the power to order a councillor to pay costs following a finding of minor breach and extended the confidentiality regime for minor breach proceedings, which we have already touched on. Is it too early yet or can you provide us with some benefit of experience?

Mrs POWER: We are too early yet. We have only just started in this month’s decision-making. These are the first ones that have occurred after the act was enforced.

The CHAIRMAN: I think you are pleased about the confidentiality regime that we referred to earlier. Is the power to order a councillor to pay costs something that you are approaching with trepidation or enthusiasm?

Mrs POWER: I think that that could be a very powerful weapon in the standards panel’s arsenal, because we are often seen as simply a slap on the wrist, and really, when it comes down to money, that is where the hurt lies, so to speak. It is hard to know —

Mr KELLY: It is probably a policy position for the government and the department rather than for the panel. I am a bit agnostic about it. It is not for me as a panel member to decide whether that is a good thing or a bad thing.

Hon DIANE EVERS: You need to apply it.

Mrs POWER: Yes, we have not had to make the decision yet.

Hon CHARLES SMITH: Do you think that is going to inhibit speech within council, with people thinking, “Oh, I can’t say, I might get fined now”? Do you think that is going to be inhibitive?

Mr KELLY: I would not have thought so.

Mrs POWER: It is likely to mean we get appealed more.

Mr KELLY: I would hope that it makes them think about how they might actually say what they are intending to say, which goes back to one of my earlier points —

Mrs POWER: They should be thinking about it, in any event.

[2.50 pm]

Mr KELLY: It is not a case of not being able to criticise, it is a case of what you say. I mean, if you are polite and reasonable about what you say, then you are not going to get into trouble.

Hon CHARLES SMITH: So we are just policing good manners.

Mr KELLY: Well, in some respects, yes.

Mrs POWER: A lot of it is.

Mr KELLY: Yes, absolutely.

The CHAIRMAN: What about members of the public being required to pay costs if they have made a vexatious complaint?

Mrs POWER: I can say that in the last—since I have been a member, we have had one finding of vexatious, which was actually not in this report; it has been since then. To be fair, the majority of the public we find they are misconceived; they simply have not understood the way in which the act works. They are genuinely aggrieved in and of themselves and they are upset with how they have been treated, but that does not mean that it is a minor breach matter. I suspect for recurring vexatious people, maybe it would be a good thing. However, I am not sure how common that would actually be.

The CHAIRMAN: We have asked for a breakdown of some of those figures in a discussion earlier so we will look out for that with interest.

Mrs POWER: I have one more comment on that.

The CHAIRMAN: Please.

Mrs POWER: The complainant has no ability to appeal; only the respondent can, and if the complainant is looking at having to pay, then they would need to have some kind of natural justice to be able to refute the finding that we have made if it is looking like it will cost them money, I think.

Hon DIANE EVERS: So what you just said there, is it the complainant that would be charged with the cost or the respondent or both?

Mrs POWER: The question was whether a vexatious complainant might be.

Hon CHARLES SMITH: Does anybody on the panel have any active relationships with WALGA? For example, does anybody sit on the committee of WALGA?

Mr KELLY: Yes, I am on the state council. I am probably the one that declares the interest most occasions at the panel meeting.

Hon CHARLES SMITH: Just confirming, with my knowledge, the minister asked WALGA for a list of candidates to sit on the panel—is that how it works?

Mr KELLY: Yes. The minister, through the department, invites WALGA to nominate. WALGA has its own committee appointment process. Some of them go to state council for endorsement, the list; most others are actually delegated to the selection panel itself to try to streamline the process, because otherwise you have to wait about three months for the committee recommendations to go to the state council. I think the WAPC, for example, goes to state council, the LGIS one—there are about four or five that go to state council for endorsement.

Hon LAURIE GRAHAM: The closed doors issue, has that ever arisen in the sense of complaints behind closed doors where the doors are closed and the council has decided—as a councillor, I have

always found that is the most aggressive time, when you can clearly put your point of view to someone else about a matter. I would not have thought it is an issue that you most probably receive too many complaints on.

Mr KELLY: Actually, it is very rare, I think.

Mrs POWER: For closed doors issues, it is mostly about breach of confidentiality.

Hon LAURIE GRAHAM: Yes, and I understand that.

Mr KELLY: It is not uncommon to go behind closed doors and suspend standing orders as well, so some of the rules of debate.

Hon LAURIE GRAHAM: It would only be the people going outside and chatting about what happened behind closed doors that causes the problem.

Mr KELLY: Yes.

The CHAIRMAN: One of the submissions we received said this in part —

Mr KELLY: This is the only that was one complimentary about us, was it!

Mrs POWER: Most complimentary probably!

The CHAIRMAN: I think it reserves its opinion on the panel, you will be glad to know. However, it states, and I am quoting —

CEOs are able to make complaints, supply the supporting information for them and access funds for appeals, whereas elected members against whom the CEO complains have no such rights or powers nor does any member of the public.

Can you comment on what you have seen from that claim? Is it a fair claim or is it about one isolated council?

Mrs POWER: I think councillors are put under a lot of pressure when they have a complaint made against them. They have to respond to it themselves. Occasionally, we have a councillor who is assisted by legal counsel—very, very occasionally.

The CHAIRMAN: How would they be assisted?

Mrs POWER: They might have a letter written on their behalf or clearly have been helped in their response.

Mr KELLY: Their responses are obviously written by someone with legal training.

Mrs POWER: And I think that is quite a lot of expense, especially seeing as that person is going to have to do all the reading and come to a decision themselves. Yes, it is fair to say that when you are accused of misconduct or a minor breach, I should say, and that is not actually the case, you still have significant time and monetary investment in the process.

The CHAIRMAN: Whereas from a CEO's point of view, they have got all the resources of council, have they not, to bring to bear?

Mrs POWER: Well, it is their job really, is it not?

The CHAIRMAN: Yes.

Hon DIANE EVERS: The CEO, though, is not a matter that you would be looking into; this is just for elected members. So that is if the CEO is the one making the complaint, I suppose.

Mr KELLY: I was just going to clarify. I am assuming that you are only talking about when the actual CEO is lodging the complaint themselves rather than performing the role of the complaints officer.

The CHAIRMAN: That clearly was the tone of the submission and it relates specifically to one CEO, I imagine.

Mr KELLY: It would be useful to look at last year's data and sift that out. My impression is that it is not widespread. It may be one CEO or a couple of CEOs.

Hon CHARLES SMITH: Would you say that the majority of complaints are actually put through by CEOs?

Mr KELLY: No, no—definitely not.

Hon CHARLES SMITH: Are they of a generally higher quality complaint than councillors?

Mrs POWER: No.

Mr KELLY: No. We have had one notable one that we dismissed —

Mrs POWER: Yes, in fact several that just simply —

Mr KELLY: — who is now performing a different role somewhere else.

Mrs POWER: With apparently no understanding of the act and what is required to have a minor breach.

Hon DIANE EVERS: If a councillor has a complaint against a CEO, though, they go through other processes —

Mrs POWER: That is a different process.

Mr KELLY: That is not us.

Hon DIANE EVERS: — which is an employer–employee relationship and that is it.

The CHAIRMAN: I think that has probably brought us to the end of our questions for today. We have got through a great detail of material, so thank you very much for that. There are several questions we have asked to be taken on notice, but I think they can probably be referred, and they will be referred, by us to the secretariat in the department which assists you, rather than ask you to convey them. I have some closing remarks to make here as well. But before I do that, I would like to convey for my colleagues and I, our appreciation for your willingness to attend today. Thank you very much indeed. We can end the broadcast now.

To wrap up, a transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate those corrections on the transcript. Errors of fact or substance must be corrected in a more formal letter to the committee, of course. When you receive your transcript of evidence, the committee also advises you when to provide your answers to questions taken on notice. I think in most cases that will be through communication with others. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration; in fact, we welcome it. Perhaps you can do so when you return your corrected transcript. And, of course, I am sure in due course Michael Connolly will be wanting to read what has gone on today and he might have some other things to add as well so we might get to meet him in due course. But for now, once again, thank you very, very much. You have assisted us. We appreciate the work that you are doing and, in particular, coming in here, pro bono, to help us with ours. I bid you good day. Thanks again.

Mrs POWER: Thank you.

Mr KELLY: Thank you, and I wish you well for the remainder of the inquiry.

Hearing concluded at 3.00 pm
