

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION  
AND FINANCE**

**LOCAL GOVERNMENT ACT 1995**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
ON MONDAY, 27 OCTOBER 2003**

**SESSION 1**

**Members**

**Hon Barry House (Chairman  
Hon Ed Dermer (Deputy Chairman)  
Hon Murray Criddle  
Hon John Fischer  
Hon Dee Margetts  
Hon Ken Travers  
Hon Sue Ellery**

[9.45 am]

**TURKINGTON, MR JOHN**  
**Former Acting Chief Executive Officer of City of Joondalup**

**The CHAIRMAN:** You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

**Mr Turkington:** Yes, I have.

**The CHAIRMAN:** These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record and please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them.

I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Just before inviting your opening comments, I inform you that this is a subcommittee of the full committee. Three other members are unable to be here today, but it is a fully constituted subcommittee of the committee. Would you like to make an opening statement to the committee?

**Mr Turkington:** Thank you very much, Mr Chairman. I am a ratepayer of the City of Joondalup. I am a qualified certified practising accountant and have been a member of the CPA for 31 years. I am a qualified chartered secretary with a 27-year membership. I am a qualified municipal clerk and treasurer and have been a member of Local Government Managers Australia since about 1980. I have received various academic awards for the studies I have undertaken. I have been employed in local government since 1976. I was the treasurer director of resource management at the former City of Wanneroo from October 1986 until the city was abolished on 1 July 1988 and two new local governments were created: the City of Joondalup and the Shire of Wanneroo. I was the director of resource management of the City of Joondalup until my resignation on 5 July 2002. My contract of employment was due to expire on 4 January 2004. I was appointed the acting CEO of the City Joondalup from 5 September 2001 until 21 October 2001 during the period when Mr Denis Smith was preparing to come to Western Australia.

My submission will focus on events and happenings at the City of Joondalup during three distinct periods of time: firstly, the period prior to 5 September 2001; secondly, from 5 September 2001 to 21 October 2001; and, thirdly, subsequent to 22 October. I will then address and make comment on the terms of reference.

The committee has my submission. I propose merely to highlight the areas that are shaded throughout the document rather than go into all the detail. The shaded areas are the summary of each of those areas. Given time, I will then discuss the terms of reference and make comments on them.

The main feature of the period prior to 5 September was that a new council was elected on 11 December 1999, two-thirds of which had no previous local government experience. Mr Delahaunty was the CEO. The relationship between councillors deteriorated over a 12-month period to a point at which there was mistrust and factions were created. This spilled over into mistrust between

sections of the council and the administration and there was constant infighting. The CEO's contract renewal process was at the centre of that conflict.

Despite the conflict, in November 2000 the city was successful in obtaining the local government leadership in best practice award. Certain staff were the target of criticism from the mayor, particularly those who were aligned to or appointed by Mr Lindsay Delahaunty. The mayor referred to them as "Delahaunty's generals" or "the purple circle". Following the breakdown of the CEO's contract renewal negotiations, the city appointed a recruiting agent, Warren Reynolds, from Management Recruiters Australia to source suitable applicants for the position of CEO. On legal advice, the city did not publicly advertise the vacancy, although the local government department advised that it is considered best practice and good government process to do so. The only staff member involved in the process was the human resources manager, Mark Loader. Mr Loader had only 12 to 15 months experience in local government, all of which was at the City of Joondalup. He was uncomfortable with some aspects of his dealings with the mayor and councillors. He made that known to his superiors.

Interviews for the position were undertaken on Saturday, 11 August 2001. An ex-colleague of mine - an experienced local government CEO - was interviewed and he later told me that the mayor had to leave early from the interview. My former colleague thought that that was inappropriate.

[9.50 am]

At its 28 August 2001 meeting, council appointed candidate A to the position of CEO of the city. I refer to page 6 regarding the period 5 September to 21 October 2001. The main features of this were: as acting CEO, I was advised on 5 September 2001 that candidate A was Denis Smith, CEO of Warringah Council in New South Wales and that he would commence on 22 October 2001. The official announcement was to be made at the 11 September council meeting. The mayor told me that Denis Smith was a planner, but no mention was made of other qualifications. About the middle of the month I received a phone call from my ex-work colleague asking what was happening about the CEO appointment, as he had not heard from the recruitment agency. I advised that Denis Smith had been appointed. He was surprised and suggested that I check out the Warringah Council and *Manly Daily* web sites as that council was in turmoil and had a massive operating deficit, and the auditors had concerns. In mid to late September 2001, as there had been considerable bad press about Denis Smith and Warringah, I spoke to the Joondalup City Council's media relations officer, Laurie Brennan, seeking strategies to provide positive stories. I also questioned Mark Loader on his knowledge of allegations regarding Denis Smith and the Warringah Council. He was not aware of the details and the Internet downloads I had in my possession. My recollection is that Denis Smith's employment contract, which I had never seen before, came to me signed by Denis Smith and Mayor Bombak. Having no prior knowledge of the contents, I questioned both Mark Loader and the mayor. Both advised me that it was prepared by solicitors, Freehills, and was in accordance with discussions at council and committee and with the solicitors.

A point of clarification is that several councillors stated in their submission that they had received a copy of the draft agreement from the acting CEO. In my view they were mistaken. I did not take over the acting role until 5 September. Denis Smith had already signed a final copy of the agreement, as I understand it, on 3 September of that year and had resigned from Warringah Council on 31 August.

Denis Smith visited the City of Joondalup a couple of times prior to commencement as CEO. On one occasion, he met councillors at a luncheon where he answered questions about the bad press articles. He assured councillors that the issues with Michael Knight stemmed from Smith terminating Knight's services because Knight was organising his parliamentary election campaign from the office using local government resources.

I refer to page 10 regarding the period 22 October. The details are summarised as follows: Denis Smith commenced as CEO on 22 October. Prior to his appointment two significant developments

had occurred within the city. A number of senior staff had resigned just prior to his arrival; namely, the director of community development, Chris Hall, who resigned on 8 October; the manager of recreation services, who had resigned and departed; the manager of marketing, who had resigned on 18 October; and the manager of contracts, who had been in discussions with the previous CEO regarding his contract, which was to expire in mid 2002. The other significant development was the outsourcing of the major welfare and recreation functions. Both of these - the senior staff and the outsourcing issues - facilitated a restructure of the organisation. The city's administration was ready-made for a restructure. There had been an exodus of senior staff from the city since Mr Smith's appointment: Ray Fischer, the manager of strategic planning; James Kirton, the manager of organisation and development; and Daryl Butcher, a planning manager.

My working relationship with Denis Smith had deteriorated to such a degree that I resigned on 10 May 2002. Since 1 December 2001, the city has spent approximately \$100 000 with the recruitment agency MRA, which headhunted Denis Smith.

I refer to page 11. Claims that Denis Smith has saved the city \$700 000 per annum through the restructure appear to be unfounded as the financial statements and budgets do not reflect that. To support that, see appendix No 1. I will not go into the details on that unless the council and committee require it.

**The CHAIRMAN:** Is that appendix headed "Purported Savings at City of Joondalup Due to Organisational Restructure 2002"?

**Mr Turkington:** That is correct, yes. That pretty much encompasses the comments I made in my submission. The comments on the terms of reference are on pages 13 and 14. I will be guided by you as to whether you wish to hear those or whether you want to pick them up later.

**The CHAIRMAN:** Proceed and we will ask some questions.

**Mr Turkington:** I refer to whether amendments to the Local Government Act 1995 should be recommended. The first point seeks clarification of the power and processes of a local government to appoint a CEO. The Joondalup experience has illustrated that it could be useful to strengthen the requirements and clarify the power and processes when appointing a CEO.

10.00 am]Local governments are to be open, accountable and transparent. To demonstrate this, it is my view that all CEO positions, given that they are now on contract, should be advertised and the remuneration package quoted.

The second term of reference is to allow for regulations that establish matters that must be considered in relation to each applicant for appointment. Given that there is a range of local governments, from small to large, and that not all have human resource managers or relevant resources, some broad guidelines, not necessarily enshrined in legislation or regulations, would be helpful. This could be developed as a joint project through the Department of Local Government and Regional Development, Local Government Managers Australia and the Western Australian Local Government Association.

The third term of reference is to allow for regulations which establish minimum qualifications or experience required by any person for appointment, and the standard of proof that must be met by an applicant who claims such qualifications or experience. The Local Government Act 1995 is written under the theme of "general competence powers". This was a deliberate attempt to improve from the ultra vires style of the 1960s Local Government Act. To consider reverting would, in my view, be a retrograde step. Again, a well-developed set of guidelines may be of assistance. Undoubtedly, the size of a local government will determine the qualifications and experience that is necessary.

The fourth term of reference is to permit individual councillors to verify the accuracy of any information provided during the selection process. This may prove to be clumsy and jeopardise the confidentiality of applicants. This should be a basic fundamental undertaken by the HR manager,

recruitment agency or any person undertaking the recruiting process, regardless of the level of the position.

The fifth term of reference is to provide for transparency in the terms, conditions and contracts of employment for chief executive officers, with a greater emphasis on accountability and transparency. I agree that this ideal should be pursued.

The final term of reference is to give proper affect to any recommendations arising from the inquiry, including whether they are adequate powers of redress. I must admit that I struggled a little with this. I presume it refers to part 8 of the Local Government Act. My understanding is that it seems quite adequate as it is. However, I am unsure of the intent of the question, so I decline to make comment. I thank the committee of inquiry for the opportunity to make this submission. I am open to any questions.

**The CHAIRMAN:** I will ask a couple of questions on behalf of the committee and then individual members will have some questions. Some of the questions I will ask are ones that you have already covered in part, and you may like to elaborate on them. We ask them to try to get as much information as we can. What was the process undertaken in negotiating and finalising Mr Smith's remuneration package and contract of employment? There are a couple of parts to this question. Who was involved in those negotiations? Did the council or any committee view and/or approve the contract prior to it being signed?

**Mr Turkington:** As you may recall, I did not jump into the chair until 5 September. My understanding was that candidate A had already been appointed by council on 28 August, so I am not privy to all the information. The only person who was involved from the start was Mark Loader. He undertook negotiations, as I understand it, with not only the committee but also the council and the recruitment agency. He had carriage of the task. It was not until the person had been appointed and the contract signed that I saw the contract at all. As I mentioned earlier, the comments made in the transcripts that I have read from other councillors was that it was done in consultation with the CEO. I can assure you, Mr Chairman, that there was no discussion with me in relation to that.

**The CHAIRMAN:** Okay. At the time of the contract negotiations, were you aware of the significant number of New South Wales media reports of a controversial nature concerning Mr Smith from the mid 1980s to 2001?

**Mr Turkington:** As I mentioned earlier, a friend of mine - an ex work colleague and school buddy from many years ago - was an applicant. He called me around the middle of September and alerted me to some press articles and also suggested that I view *The Manly Daily* to source some information regarding Denis Smith and also the Warringah council. So, yes, I was aware of it, but not until mid September.

**The CHAIRMAN:** How have the events at the City of Joondalup over the past two years impacted on the work of the council?

**Mr Turkington:** I am not party to the workings of the council nor to the administration of the city, as I left before July 2002. I am not privy to what is occurring. Certainly, I attend and show interest in council meetings. I attend when I can and I must admit, if I can use the word "disgrace", that that is the way I see the meeting processes. If that is any reflection on what is happening behind the scenes, I suggest that the city is in turmoil. That is my view.

**The CHAIRMAN:** Are you still employed in local government?

**Mr Turkington:** At the moment I am employed in a temporary capacity at the City of Stirling as Principal Finance Officer. My contract expires on 31 December this year.

**The CHAIRMAN:** Thank you.

**Hon ED DERMER:** You referred to the proceedings at the City of Joondalup council meetings as a disgrace. What aspects do you find most disturbing?

**Mr Turkington:** The interjections from the floor are not conducive to good local government. The number of times the meeting has to be adjourned for serious disorder is increasing. There seems to be infighting and bickering amongst the councillors themselves, which is not, as I have mentioned, conducive to good local government.

**Hon ED DERMER:** You referred to the departure of senior officers of the permanent staff of the City of Joondalup. Do you have any knowledge of any common reason for those senior officers deciding to leave? There may not be a common reason; they may have decided to leave for individual reasons. However, do you have any knowledge of any possible common reason that may exist?

**Mr Turkington:** The two people whom I currently class as work colleagues - they are also working at the City of Stirling - are Ray Fischer and James Kirton. It might be considered that the three of us might be called "the three stooges" by some. I understand that that term was used some time ago. Both those people did not leave of their own volition. Ray Fischer was asked to resign by the CEO. I am not privy to the reasons that sat behind that. James Kirton was the manager of organisational development. He was not asked to resign. From what I can gather, he was fired. He was given some recompense as a consequence.

[10.10 am]

**Hon ED DERMER:** Do you have any understanding of the reason for that?

**Mr Turkington:** No, I am not totally sure. I might have my own views, but I do not believe they have real substance. There may be a common denominator there, but I would rather not say.

**Hon ED DERMER:** I understand that.

**Hon JOHN FISCHER:** I will take another tack and look at improving some of this legislation. I refer to your comments on the terms of reference. Under section 4, headed "permit individual councillors to verify the accuracy of any information provided during a selection process", you indicate that you are not in favour of that, because you think it would be clumsy and jeopardise the confidentiality of applicants. However, under section 5, headed "provide for transparency in the terms, conditions and contract of employment for CEOs" your comment is that the ideal of a greater emphasis on accountability and transparency should be pursued. That seems to be a contradiction of what you are recommending. I would like you to expand on that. For someone who is being paid \$230 000 a year by the ratepayers - which is probably equivalent to what is paid to the Premier, who comes under the constant scrutiny of the press and virtually everyone else in the State - why, as you indicate in your comments on section 4 of the terms of reference, do you consider that such a person should be protected from his own ratepayers?

**Mr Turkington:** My understanding here is that if we - local government, the corporate "we" - allowed councillors to verify the accuracy of information willy-nilly, undoubtedly there would be an issue of confidentiality there. For sure, they can do some checking, but it should not be totally out in the open. If you did that, as I mentioned, the confidentiality of applicants would be jeopardised. It is purely a basic fundamental, as I see it, that should be undertaken by the HR people and also any agency, arm or organisation that might be involved in the recruiting process. It is such a fundamental that I am just surprised that the city never undertook those relevant checks and balances, when it did the recruiting of Mr Smith. From all press statements, I am told that that was not undertaken. It is such a fundamental.

**Hon JOHN FISCHER:** One of the basic problems that seems to have arisen here is that some councillors have told us that they have viewed documents on the CEO, while others have told us that they have not. Obviously there is a huge discrepancy within the council itself as to who believes they have had any information, and who believes they were excluded. Just in terms of

improving legislation, under section 5, where you say “provide for transparency in conditions and contracts”, how would you suggest this be done if you do not let the people elected by the ratepayers have a look at who they employ? It sounds to me like it is a bit of an old boys’ club here, whose members believe they have the right to employ someone regardless that the people who have been elected to run the process seem to have been excluded.

**Mr Turkington:** It is the duty of the council to ensure, when it appoints somebody, that it has done all the necessary checks and balances to ensure that the person appointed is squeaky clean. How it goes about that process is its prerogative as a council body. If it employs the HR manager, surely the HR manager and a recruiter should be doing that on behalf of the organisation. On the point you make about some councillors seeing qualifications and others not seeing them, my understanding is that that was done subsequent to the appointment. Those things should be done prior to the appointment, and to me it is like any interview process - those credentials are shown up front. Even the gardener with his rake, for instance, should show qualifications. The same goes for staff higher up. We do the checks and balances and make sure that those things are done prior to, not after, the appointment. If it requires councillors to get involved at that level, as Joondalup did in appointing a recruitment agency together with the HR manager, you would think those balances should have been undertaken.

**Hon JOHN FISCHER:** I do not think the comparison with the gardener really counts. I happen to agree with a lot of what you just said, but I think with the chief executive officer on \$230 000 a year, council should have been able to view the qualifications he claimed. As I said, if you compare that with the Premier of this State, he certainly comes under more scrutiny than someone who has been elected under the process that took place in Joondalup.

**The CHAIRMAN:** That is a comment, rather than a question.

**Mr Turkington:** I accede to that. There is no doubt that council, to a person, should have satisfied itself that those checks and balances were undertaken. Maybe I was flippant when I mentioned the gardener with his rake, but I am just saying that, in a range from the small to the large local governments, there should be some checks and balances undertaken prior to appointment, and that goes for all staff.

**Hon KEN TRAVERS:** I want to go back to some comments you made earlier about the finalisation of the CEO’s contract. I want to confirm that I correctly understood that you did not see a copy of the CEO’s contract prior to it being signed by the mayor and the new CEO. Is that correct?

**Mr Turkington:** That is my recollection, yes. Documents and press articles have indicated that Denis Smith resigned from the City of Warringah on 31 August 2001. His contract was in the mail back to the City of Joondalup, as I understand it, on 3 September. I took up the appointment on 5 September 2001.

**Hon KEN TRAVERS:** The council decision of 28 August, as I understood it, appointed the candidate on a remuneration package, the total of which was to be \$225 000, and authorised the mayor, the deputy mayor and yourself to finalise the contract documentation. To the best of my knowledge, that appears to be the only motion ever authorising the contract. Firstly, are you aware of that motion, and secondly, was there any other motion that formally authorised the finalisation of the contract between the council and the new CEO?

**Mr Turkington:** Yes, I am aware of the resolution of 28 August, which said that the mayor, the deputy mayor and John Turkington, director of resource management, be authorised to finalise the contract documentation. I am aware of that. I am not aware of any resolution of the city other than that one relating to the contract documentation and finalisation. In saying that, it really focuses in on the word “finalise”. As I mentioned earlier, John Turkington and others were not privy to the committee workings or the council workings in relation to the appointment of the new CEO.

[10.20 am]

That was done with Mark Loader. He was the only staff member associated with that. I can recall some problems that Mark Loader had with the process, and he did converse with Lindsay Delahaunty from time to time relating to some of the processes and some of the workings behind that. Personally, I was not involved. As I said, I was not acting CEO until 5 September of that year.

**Hon KEN TRAVERS:** I understand that. Anyone reading the minutes would assume reading that motion - I suspect it is the case from the evidence from some of the councillors - that they were of the view that the committee of yourself and the mayor and deputy mayor would sit down and go through the contract before it was signed off. You tell us it never happened. Is that correct?

**Mr Turkington:** Through you, Mr Chairman, it did not occur, as I recollect.

**Hon KEN TRAVERS:** Did you ever raise that with anyone at the time? It seems extraordinary that if you were appointed to sign off on it, you were not involved. Did you raise that as a concern with anyone at the time?

**Mr Turkington:** As I mentioned in my paper, Mr Chairman, when I got the contract, I was concerned. I put it aside for a day and said I will come back to it. I read it. I ticked off the contract to make sure that all those resolutions of 28 August were actually in the contract. The only concern I had with that was that second resolution that required this finalisation. I certainly was not involved in any committee discussions with the deputy mayor or the mayor in relation to the finalisation of the contract documentation. I have read the transcripts of other councillors saying they took advice from the acting CEO. There was no discussion, Mr Chairman, between myself and those councillors in relation to this matter.

**Hon KEN TRAVERS:** Did you raise any concerns at the time? According to our information, you were appointed to be a party to the finalisation. You are telling us you were not party. It struck me that a senior officer would raise concerns about something like that.

**Mr Turkington:** Through you, Mr Chairman, as I mentioned, I was not party to any discussions in relation to the contract. The contract had been signed by the time I got it. I raised concern with Mark Loader. I said, "Look, I've not been party to any of the discussions of the committee involvement in relation to this. I have a contract to sign." I discussed it with the then mayor. He said that that contract actually detailed all the workings and wishes and wants of both parties and reflects what is the committee's decision in relation to it. No, I had no further involvement with that, apart from signing the contract off and ensuring that it was put before the council to be executed. From memory, that was done on 23 October 2001, which was Denis Smith's first council meeting.

**Hon KEN TRAVERS:** I want to clarify. Is it your view that it fully represents that contract? I ask that because my understanding of the contract is that the \$225 000 relates to the salary, superannuation and the motor vehicle, and the terminology used was the "total annual remuneration package". However, the signed contract includes a range of other benefits that would be part of your remuneration package normally, I would have thought, over and above the \$225 000.

**Mr Turkington:** Yes, I understand the question. Through you, Mr Chairman, the situation, as I recall, was that the contract, like many other contracts, has things like computers, telephones and other matters that I might call tools of trade -

**Hon KEN TRAVERS:** Travel?

**Mr Turkington:** Travel. All sorts of things are generally over and above the remuneration package quoted. The remuneration package in these sorts of contracts, in my understanding, is salary, superannuation and motor vehicle expenses, which includes fringe benefits tax. Some local governments do not include that - others do. That is my understanding.



**Hon KEN TRAVERS:** In your written submission, you made reference to lawyers who were not the preferred -

**Mr Turkington:** Through you, Mr Chairman, I think I understand what is being asked here.

**The CHAIRMAN:** You will answer it before it is even asked.

**Hon KEN TRAVERS:** If you can do that, well done!

**Mr Turkington:** It is in relation to Freehills solicitors. My understanding is that a firm of solicitors were not on the council's preferred list. The mayor of the day, as I understood it, appointed Freehills to undertake some negotiation with the previous CEO and to get advice in relation to the CEO. Again, my understanding of his doing so was simply because he wanted independent advice. That is my understanding. Whether that is correct or not, I am not sure. Again, the city pursued that firm of solicitors when negotiating and formulating the contract with Denis Smith.

**Hon KEN TRAVERS:** If you can explain to us, I understand the concept of panel contracts, but is that how you operated at the council? Did it go out to tender? What process was there for choosing preferred legal advisers?

**Mr Turkington:** Through you, Mr Chairman, we went to tender for the provision of legal services. There was a panel and the panel was based - there might have been four or five or six legal firms from which the staff could choose depending on the type of advice required. For instance, Dennis McLeod was considered to be the guru in town planning, and he generally was sourced to undertake those town planning matters. John Woodhouse, for instance, was pretty much the general solicitor with whom the city dealt for contracts and the like. There was a panel of others. It is not my understanding that Freehills was on that panel.

**Hon KEN TRAVERS:** How does a person use someone who is not on the panel? If the council had gone through a tender process, how did a mayor, or anyone else for that matter, undertake that process? Is that normal procedures?

**Mr Turkington:** Through you, Mr Chairman, I think the answer to that question is no, it is not normal procedure. Again, the mayor, as I understood it, engaged Freehills to get some independent advice when negotiations were happening with Lindsay Delahaunty. My understanding is that he did not want to use the council solicitors for reasons of which I am not aware.

**Hon KEN TRAVERS:** He had a panel to choose from, so he did not have to go to one company?

**Mr Turkington:** They were all council-type solicitors. I understand he went outside that - Scott Ellis is the fellow's name from Freehills. Why, I cannot comment.

**Hon KEN TRAVERS:** How do you set the fees et cetera? I assume part of the panel contract is a set schedule of fees.

**Mr Turkington:** Through you, Mr Chairman, the fees are structured as such. I am not aware how they were done for Freehill's Scott Ellis.

**Hon KEN TRAVERS:** Are you saying that even though the council has gone through a process, the mayor can decide to choose someone outside that process? My understanding is that that could not occur in the State Government if a panel contract is issued; that is, a formal process would be needed to go beyond that and choose someone else.

[10.30 am]

**Mr Turkington:** There was no formal process to do that, as I am aware. I could be corrected on that. I am sure there was no process put in place to do that. Then again, I was not close to that side of the council business and there could have been a process that was put in place to undertake the appointment of Freehills. I was not privy as a director in charge generally of the finances of the city to make comment.

**Hon KEN TRAVERS:** Does a mayor have that sort of authority to incur expenses on behalf of the city without at least talking to the city treasurer or the head of finance?

**Mr Turkington:** My understanding is no, but I am not privy to discussions that may have been undertaken between the mayor and the CEO of the day when it came to the appointment of Freehills. As I mentioned before, my understanding is that Freehills were not on the panel. I could be corrected on that.

**Hon KEN TRAVERS:** Is it your general understanding that the salaries of senior staff in local governments tend to be linked to the salary of the CEO? Is there a relationship between them generally?

**Mr Turkington:** Some years ago that was certainly the arrangement under the 1960 Act. It prescribed what city treasurers were paid as a percentage - it may have been 80 per cent of the then town or shire clerk. Generally, the position now is that the position description is sized and priced by an external body that has experience in relation to that. I did not believe there is a direct correlation between the salary paid for directors and that payable to the CEO, for instance.

**Hon KEN TRAVERS:** There is a body that they normally get advice from?

**Mr Turkington:** There is a body: Mercer Cullen Egan Dell was the organisation. I think you will find now that the organisation is Cullen Egan Dell. Mercer has withdrawn. Those people size jobs and price them for an organisation if it is a new position.

**Hon KEN TRAVERS:** They do that for the CEO as well?

**Mr Turkington:** They do that for the CEO.

**The CHAIRMAN:** You resigned in July 2002 from the City of Joondalup. Were the reasons for the resignation solely connected with the events surrounding the confidence in the CEO or were there other reasons? Did you leave with a redundancy from the City of Joondalup?

**Mr Turkington:** I have a confidentiality agreement, which states that I am not allowed to divulge those things except by law. I will be guided by you whether this is considered to be law. If it is, I will proceed.

**The CHAIRMAN:** I will seek some advice from a lawyer.

We are covered by parliamentary privilege so no action can be taken against you as a result of anything said here. Alternatively, you do have the option to request a private hearing if you wish to go that way.

**Mr Turkington:** I ask advice again of the chair. If you were in my situation, would you do it in camera or now?

**Hon KEN TRAVERS:** That was the best hospital pass I have seen in a committee for a long time!

**The CHAIRMAN:** I am happy to leave it to your discretion.

**Mr Turkington:** I am open to saying it now provided someone does not take advantage of the scenario and sue me.

**Hon KEN TRAVERS:** What you say here, you can say here, but once you leave here, you cannot repeat what you said here.

**Mr Turkington:** I understand.

Denis Smith came to me with a letter dated 15 April when he made allegations of what was considered serious misconduct. Those allegations were six in number, one of which said that I had breached the code of conduct and the equal opportunity policy by calling some members of staff to their faces "useless", "the goon squad", "Linda Lovelace", "brain dead" and "dead above the shoulders". The second was that I made derogatory comments to some of my staff: that they worked in "Hen City" and said "who wears the trousers in your house?" or words to that effect.

Also that I swore at a meeting, bullied staff and rode them. It was alleged that I rode some staff with relentless and unnecessary pressure; that I intimidated some staff and that I did not afford some staff natural justice. I responded to that through a solicitor and Denis Smith and I discussed the various issues. I believe that my response to those allegations was more than adequate. Denis Smith believes that I did not answer the questions. He said to me at the time that he sought legal advice. The legal advice was along the lines that I did not answer questions as stated. He made comments -

If, after reviewing your response and as a result of continuing investigations, I form a view that your actions constitute serious misconduct, I will be obliged to recommend to Council that your contract of employment be terminated.

After discussions with Denis Smith I talked to him about my particular response. I quote -

It would appear, given recent events, that the working relationship between myself and the City has deteriorated to a point where I believe my continued employment is now unworkable and not in the best interests of the general community. That being the case in the interests of the City and the Joondalup community I am prepared to sever my employment contract provided that:-

- the accusations do not “hang in the air” unanswered
- a suitable severance package is negotiated given that I have twenty months remaining on my contract.

I can assure Mr Chairman and members that the severance package given was nowhere near the 20 months pay. I say to you that the offer was three months - plus I was paid out my annual and long service leave entitlements. I was paid out for times when I acted as CEO when Lindsay Delahaunty was CEO but never claimed. I was paid that as, obviously, Denis Smith and others did not want anything hanging over them should I make a claim. I believe there was an extra three weeks, which was the leave I took to respond to these allegations. Denis Smith was constantly on the telephone harassing me with comments relating to when I would get back to him relating to various matters. I was on holidays, as I mentioned, and he constantly left phone messages at my home address relating to my decision as to what I was doing. There is no doubt that he wanted me to resign. I spoke to my wife about the issues and she said that life was too short to drink bad wine. I agreed with her. The fact that we had been through royal commissions and worked pretty hard for the city over a period of 15 years, I made the decision to resign.

[10.40 am]

**The CHAIRMAN:** You are still a ratepayer of the City of Joondalup and you are still a keen observer of events. Do you think the City of Joondalup is dysfunctional?

**Mr Turkington:** I would suggest it is dysfunctional with the way it is working at the moment. It has its good and its bad times. When it is bad, it is really bad. As an observer with some knowledge of local government having worked in it since 1976, there is no doubt that the city as it is at the moment is worse than it was when the former City of Wanneroo was sacked, or disbanded.

**The CHAIRMAN:** With your extensive background experience in local government, do you consider that many of these issues arise in local governments in which there are elected mayors and separately elected councillors with each claiming some degree of mandate over issues?

**Mr Turkington:** I presume you mean popularly elected mayors by the people rather than selected and elected by the council as a body. There are two schools of thought on that. I do not want to pursue that at this point. However, from a personal point of view, either should work. The popularly elected mayor does, at times, as you say, have a mandate but it should not matter in terms of the legislation. Whatever the mode chosen to elect the mayor, there are certain rules. The Local Government Act outlines the role of the mayor and the role of the chief executive officer and they

are quite distinct. It does not necessarily require that one be elected by the council itself or by the public at large. It should not matter.

**The CHAIRMAN:** Where there is a clear impasse over an issue or a personality situation, do you have any suggestions that this committee might consider when making some recommendations to resolve that sort of situation?

**Mr Turkington:** I understand what you are saying. The problem is not unique to Western Australia. It happens in local government throughout the nation and, I suggest, the world. There will be times when the mayor cannot work with the CEO and vice versa. I do not think there is a panacea for those ills but, somehow, they both have to get on. They both have jobs to undertake and there is no doubt that the more harmonious the working relationship, the better the organisation. However, I do not have the panacea for that.

**The CHAIRMAN:** Do you believe that the Department of Local Government and Regional Development could have or should have involved itself in a more proactive way with the situation at the City of Joondalup?

**Mr Turkington:** I am not connected with the organisation now but I understand that the department has moved late. It has a panel that is now considering the way in which the council and the staff work. In my view, it should have moved much sooner. The provisions under part 8 of the Local Government Act permit it to move in and assist wherever necessary. In short, to answer the question is yes, they should have moved earlier.

**Hon KEN TRAVERS:** Is it easy to compare one local government with another in terms of its taxing? Is that an easy process?

**Mr Turkington:** I do not understand your use of the word "taxing".

**Hon KEN TRAVERS:** In terms of rating, who is the lowest to the highest taxing -

**Mr Turkington:** Okay, do you mean the comparison of local governments from a rating point view?

**Hon KEN TRAVERS:** Yes.

**Mr Turkington:** It is difficult because, as you well know, there is a rate in the dollar and the valuation depends on that. It works like a fulcrum; if the values are high, the rate in the dollar is low, and if the values are low, the rate in the dollar is high because you need to generate so much money. The rate reflects what a local government is doing by way of development, redevelopment and the works program it currently has. It is a difficult process to say where the lowest taxing local government is in Australia or Western Australia because of those valuations. Values on the coast are greater than the values inland. There is no science behind that - you do not need to be a Rhodes scholar to work that out.

**Hon KEN TRAVERS:** In a sense, could a local government defer some of its taxing by taking out borrowings. If it were to borrow rather than using recurrent expenditure, would that skew things? Would you need to consider those sorts of issues?

**Mr Turkington:** Yes, most certainly, that is an option. Local governments do consider those matters. I recall when I first went to the former City of Wanneroo that 25c in each rate dollar was paid to the bank manager to service the loan. He was the only fellow who had a smile on his face. That loan borrowing option is available for local governments if they wish to reduce the rate in the dollar. However, it is like anything - there is no such thing as a free lunch. Those funds must be paid back one day.

**Hon KEN TRAVERS:** How would you rank the City of Joondalup in terms of its taxing at the moment?

**Mr Turkington:** Again, not being privy to what is currently the scenario at Joondalup, albeit I get two rate notices each year, they always were in the ballpark of being somewhere in the mix. We used to pride ourselves on ensuring that we drove down rates by way of additional revenue sources such as grants and other methods of raising revenues through interest on investments and things like that. We always used to pride ourselves on being up there. Generally, the city was pretty comfortable with its rate levels.

**Hon KEN TRAVERS:** But would it be one of the lowest taxing local governments or is it just in the middle from the way you were talking?

**Mr Turkington:** I am not familiar with its position. I think it was somewhere down towards the lowest but I cannot recall.

**Hon KEN TRAVERS:** From your experience, which way do you think it is trending at the moment?

**Mr Turkington:** The City of Joondalup's rate base?

**Hon KEN TRAVERS:** How is it trending in terms of its taxing levels?

**Mr Turkington:** I do not follow it all that closely and I do not look at its rate in the dollar compared with other local governments. However, I suggest that it is in the ballpark.

**Hon ED DERMER:** Earlier you shared with us the stated reasons by the CEO as to why he had concerns with your work. I am aware of your earlier comments and want you to confirm explicitly, in your view, if any of those stated reasons have substance?

**Mr Turkington:** The advice that I got from an eminent lawyer in Perth was absolutely no. He said to me, "How much money do you want?" I said, "Look, I am not in this game to screw people. I just want a fair shake of the sauce bottle. I will make the decision of whether I retire" - sorry, I have retired but I have been called back - "or not. Just tell me whether the stated reasons actually constitute serious misconduct." My legal advice said that it did not and there was no shadow of doubt about that. I mentioned that to Denis Smith and I said, "These particular allegations, even if proven, do not constitute the serious misconduct as you mentioned."

[10.50 am]

A letter in response to those accusations says that the accusations against me are merely tensions in the workplace and are reflective of an insensitive management style. They do not, even if proven, constitute a serious misconduct of the type required for termination by the employer. Since some of the allegations are subjective, taken out of context or untrue, the City would be wrong to adopt the onus of demonstrating that my employment should be terminated for serious misconduct.

**Hon ED DERMER:** Clearly, you do not believe that that was the real reason for terminating your employment. What do you believe was Mr Smith's real reason for wanting your employment terminated?

**Mr Turkington:** I have my own ideas about that. I suggest that it was linked towards Lindsay Delahaunty. I believe Denis Smith got to know through various sources - I will not mention who they are - that I had information such as I have here -

**Hon ED DERMER:** Can you identify those?

**Mr Turkington:** They are press cuttings regarding Warringah. I believe that Denis Smith thought that I knew too much about his background. Again, that is just my view.

**Hon JOHN FISCHER:** In the beginning of your submission you noted that two-thirds of the councillors had no previous local government experience and that the situation within the council deteriorated over the next 12 months to a point at which there were mistrust factions formed. Because of that distrust and because of the factions that had developed, do you believe there would have been problems regarding the appointment of a new CEO regardless of who was selected

because of the problems within the council? Do you think it would be beneficial to legislate for situations in which two-thirds or a set number or percentage of councillors did not have enough experience so that an outside authority such as the Western Australian Local Government Association oversees the operations of the council for a specified period?

**Mr Turkington:** I will answer the second question first. An independent body such as WALGA could provide some benefits to local governments. I am familiar with a service that WALGA is currently undertaking, which I understand is called “local government workplace solutions”. That could benefit not only those local governments in which there is conflict but also those that do not have the necessary wherewithal or the expertise to undertake the task themselves. Small local governments in the bush, for instance, must be struggling to appoint not only CEOs but also other staff.

**Hon JOHN FISCHER:** I was referring not to small country shires but to large ones. You have virtually said in your submission, and it has been apparent throughout these hearings, that the council has been unable to undertake its duties in a beneficial manner. I am inclined to think that the bigger the council, the bigger the trouble. I was not talking about the country councils.

**Mr Turkington:** I accept some of that. There is no doubt that the scenario that happened at Joondalup epitomises what the member said. Two-thirds of the councillors have had no local government experience. Hypothetically, nine of the 15 councillors have not had previous local government experience. Lindsay Delahaunty undertook a massive induction program, having experienced a similar situation when the former City of Perth was split. At that time, Lindsay said that the councillors must be helped because they were brand new to the business and did not understand what was involved. We worked with the councillors on induction programs on Saturdays to bring them up to speed and Lindsay brought in some external speakers to talk to the councillors. Both the experienced and inexperienced councillors benefited from that. However, it is like anything; when new people are employed, leadership is needed from the top. The necessary programs must be put in place to permit councillors, staff or whoever to be brought up to speed quickly. The business does not stop because new councillors or staff have been employed. Training programs are needed so that the councillors and staff can attend.

**Hon JOHN FISCHER:** Do you believe there would have been problems regarding the appointment of the CEO regardless of who it was because of the division that is so obvious within the council?

**Mr Turkington:** The appointment of the CEO occurred a couple of years after the new council was appointed. I think the council was appointed in December 1999 and the recruiting process commenced in February 2001. The recruitment process progressed until the appointment was made in August 2001. It occurred roughly after a couple of years. If my memory is correct, the council changed during that time. I think it changed in May 2001. Some of the councillors did not seek re-election and others were beaten in the election process. There were some “green members” of the council who had had no previous experience. It is difficult to answer whether I believe that there would have been problems appointing the CEO regardless of who it was. This does not answer the member’s question, but I would say maybe. I do not know.

**The CHAIRMAN:** We have covered a lot of ground. Is there anything in conclusion you would like to say to the committee?

**Mr Turkington:** My comments have been wide ranging. Certainly they have been more wide ranging than I thought they would be when I got out of bed this morning, especially with regard to my termination and resignation from the City. I think I have covered all I wanted to say.