

## OPENING

These examinations concern possible serious misconduct in the performance of the regional local government at the Shire of Halls Creek.

In recent history Commission investigations into local government have concerned allegations of misconduct of elected members or serious misconduct by certain Shire officers. These examinations will focus on allegations of serious misconduct by both Shire officers and elected members.

The commonality between all Commission local government investigations is weakness in governance leading to abuse of power.

A well functioning local government requires mutual accountability and governance from both the elected members and Shire officers. Councils that operate well and govern to a level that meets community expectations promote transparency, integrity and accountability in their decision making.

The elected members as Council represent the interests of the ratepayers and are accountable to the community for ensuring local government is efficient and effective to meet the needs of present and future generations of the Shire. The Council must ensure the CEO is as accountable in the management of Shire resources as any other Shire employee.

The obligations of elected members and the CEO are detailed in the *Local Government Act 1995 (WA)*. These examinations will test where those obligations may have fallen short in the administration of business in the Shire of Halls Creek.

The Council is responsible for the performance of the local government functions. It does this by overseeing how the Shire officers allocate finances and resources. It also does this by determining the policies of local government. The Shire President plays a key role in providing leadership and guidance to the community. The Shire President will liaise with the CEO in order to do this.

The Shire of Halls Creek is both large and remote, occupying over 140,000 square kilometres of the Kimberley. The town of Halls Creek is a busy service town for local Aboriginal communities, pastoralists and travellers exploring northern Western Australia.

Halls Creek town has only 1500 residents and the local ratepayers pay the most expensive council rates in regional Western Australia.

The town of Halls Creek is the home base for the Shire management. The Shire is managed by the President and a Council of six elected members. Elected members are advised, assisted and informed by the Shire Chief Executive Officer and his staff.

The role of the Shire CEO is to provide a framework for the administration and financial management of the local government. However ultimately the community expects their elected members to make the decisions as to how to wisely use ratepayer's funds for the benefit of all.

The CEO's role is one of advisor to Council. The CEO must provide the information necessary for Council to make informed decisions. The CEO may make recommendations to Council but the CEO's role is not to direct Council to act in a particular way.

One of Council's important decisions is the employment of the CEO. The total amount a CEO can be paid is determined by the Salaries and Allowances Tribunal but the terms of the individual contract is determined by negotiation between Council and the CEO. The Commission will be asking questions about the employment contract of the Shire of Halls Creek CEO, Mr Roger Kerr-Newell.

The Commission investigation is exploring the possibility there has been a lack of governance by the Council over the performance of Mr Kerr-Newell and other local government officers. During these examinations the Commission wishes to explore allegations that the CEO has mislead Council, has not been accountable for his time and Shire resources and has abused his position for personal benefit.

In particular there have been identified possible serious irregularities in the recruitment of executive staff, the remuneration levels of executive staff including the CEO and the award of tenders for the procurement of major Shire assets.

One of the functions of a CEO is to ensure that advice and information is available to the council so that informed decisions can be made. The Commission will hear evidence during the examinations that may suggest that Council were not always well informed as to the activities of the CEO and the whereabouts of the CEO during ordinary business hours.

Another function of the CEO is to be responsible for the employment of Shire employees. This involves following principles of merit and equity in selecting and promoting employees. There are questions to be asked concerning the process of employment of some Shire Executive officers.

A CEO is responsible for ensuring the local government has proper record keeping practices in place to support important decisions made by Council and the Shire. A CEO is responsible for ensuring the Shire has clear policies guiding the management activities of Shire officers. The Commission examination will be exploring these issues.

A CEO is expected to have a clear understanding of his obligations as an employer and financial manager. In particular, a CEO must identify and manage potential conflicts of interest. If these obligations were deliberately avoided it could amount to an abuse of office.

When procuring major purchases for the Shire the Council is required to approve and oversee a fair and transparent tender process. The compliance standards that apply to the procurement of goods and services are for the purpose of ensuring clarity as to exactly what is to be purchased, set clear deadlines for the provision of the goods and to ensure the Shire receives the best possible value for money.

The tender process itself is very important. Important because the process is part of compliance and regulatory requirements for government organisations. But also because the process itself ensures a competitive marketplace. The Commission is investigating the possibility that the Shire officers deviated from the required public tender process when they arranged the purchase of six new vehicles. The new vehicles were for the Shire Executive officers and were purchased from Halls Creek Toyota in 2017.

The policies that govern public expenditure emphasise the need for proper planning before a tender is launched. In that way the true cost of a purchase is discovered. For tenders this size Council must be given the opportunity to vote on whether to make the acquisition, determine the criteria against which the tender is to be judged and approve the total expenditure. This should occur before the tender is put to the market.

The Commission has concerns that the tender process entered into for the acquisition of six Shire vehicles may not have been competitive. The Commission will explore the possibility that the tender was 'fixed' because one bidder had an advantage.

In a regional community such as Halls Creek there is no room for any public officer to take resources for granted or to act with a sense of entitlement when accessing those resources.

These examinations will be concerned with some major themes of responsible conduct expected of public officers:

- the disclosure and management of conflicts of interest;
- the misuse of leave entitlements; and
- the mismanagement of procurement processes.

The community has a right to expect that public officers at all levels perform their duties in a fair and unbiased way, and that the decisions they make are not affected by self interest, private affiliations, or the likelihood that they will financially gain. The perception that a conflict of interest has influenced an outcome can undermine public confidence in the integrity of the organisation and the individual.

Unresolved or badly managed conflicts of interest can actually lead to corruption or abuse of public office. Factors that can put a public officer at risk of a conflict of interest include secondary employment commitments and significant relationships with staff. Concealment of a conflict of interest is not a management strategy.

These public examinations will provide the ratepayers and residents of Halls Creek with an opportunity to hear about decisions and behaviour of some officers of the Shire who are entrusted to manage their funds and Shire business.

The Commission has determined that it is important to hold the examinations of the two public officers in public. The issues involved are capable of having an impact on public confidence in decision-making and good governance in the Shire of Halls Creek. Public hearings will enable government bodies to take action as they see fit and in an expeditious way.

The examination hearings are only a part, though an important part, of a continuing investigation into the Shire of Halls Creek. The question might be asked as to whether it is fair to conduct only part of an investigation in public. That is a matter that has received consideration. The matters to be raised will be those where there is a reasonable basis to suspect serious misconduct may have occurred. It is not intended to air allegations that have no substantiation.

The conduct being investigated involves both public and non-public officers however the examinations open to the public will involve only the two public officers. This is in line with the Commission's jurisdiction.

It is important to have a clear understanding of the type of misconduct that can be the subject of Commission investigations. It must be serious misconduct which has a specific meaning for these purposes. Serious misconduct is defined in section 4 of the *Corruption, Crime and Misconduct Act 2003*. It provides that serious misconduct occurs if a public officer acts corruptly, corruptly takes advantage of his position to gain a benefit for himself or another, or commits an offence in the course of public office.

The jurisdiction of the Commission is not confined to matters that constitute criminal offences. The conduct of public officers while they are 'on the job' is the focus of Commission investigations such as this.

The first witness to be called is the CEO, Mr Roger Kerr-Newell.