SELECT COMMITTEE OF THE
LEGISLATIVE COUNCIL
ON THE
URBAN AND REGIONAL LAND CORPORATION
MANAGING DIRECTOR

REPORT

September 2002

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SELECT COMMITTEE ON THE
URBAN AND REGIONAL LAND CORPORATION
MANAGING DIRECTOR

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Member for Western Province

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TERMS OF REFERENCE

On Wednesday 5 December 2001 the Legislative Council adopted the following Resolution:

(a) That a Select Committee of five members be appointed to enquire into and report upon any matters relating to the selection, appointment and resignation of Mr. Jim Reeves as Managing Director of the Urban and Regional Land Corporation, together with any involvement of external agencies and consultants.

(b) That the Committee shall consist of two members nominated by the Leader of the Government, two members nominated by the Leader of the Opposition and one member nominated by the Leader of the National Party.

(c) That the members shall be appointed by lodgement of the names with the President by the Leaders no later than 4.00 p.m. on Thursday, 6 December 2001.

(d) That the first meeting of the Committee shall be held at 10.30 a.m. on Friday, 7 December 2001.

(e) That the Committee may proceed to the despatch of business notwithstanding that all members have not been appointed and notwithstanding any vacancy.

(f) That the Committee shall elect a Deputy Chairman to act as Chairman at any time when the Chairman is not present at a meeting of the Committee.

(g) That three members of the Committee shall constitute a quorum.

(h) That the Committee may send for persons, papers and records.

(i) That the Committee may authorise the publication of any evidence taken by it in public and any documents presented to it.

(j) That reports of the Committee may be presented to the Council from time to time and that the Committee present its final report to the Council on or before 31 May 2002.

(k) That the presentation of a report or an interim report of the Committee shall not be deemed to terminate the Committee’s appointment, powers or functions.

(l) That the Committee shall, unless it otherwise resolves, take all evidence in public and may otherwise sit in public at anytime if it so decides.
(m) That the foregoing provisions of this resolution, so far as they are inconsistent with the Standing Orders and practice of the Council, shall have effect notwithstanding anything contained in the Standing Orders.

**AMENDED TERMS OF REFERENCE**

On Tuesday, 19 March 2002, the following addition to the Resolution was agreed to by the Legislative Council:

(n) The Committee shall include with any of its reports to the Council, minority reports submitted to it by a member or members of the Committee.

On Wednesday, 29 May 2002, the following Resolution was agreed to by the Legislative Council:

That paragraph (j) of the Resolution of the Council of 5 December 2001 appointing the Select Committee on the Urban and Regional Land Corporation Managing Director be amended so as to now require the Committee to present its final report to the Council on or before 30 September 2002.
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## 1 INTRODUCTION

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It gives me great pleasure to present the Final Report of the Select Committee on the Urban and Regional Land Corporation Managing Director.

Select Committee Inquiries are, by their very nature, challenging. In this case the Legislative Council charged five of its Members with the responsibility of inquiring into the selection, appointment and resignation of Mr Jim Reeves as Managing Director of the Urban and Regional Land Corporation. Despite Government actions designed to thwart the conduct of the inquiry, I can report that the Committee's investigation was exhaustive, it methods scrupulous and its findings objective. I wish to take this opportunity to thank all my Committee colleagues, irrespective of political persuasion, for the manner in which they participated in what proved to be a difficult and complex inquiry.

The effect of the many political obstacles thrown in the way of the Committee has been one of delay rather than defeat. In particular I draw attention to the actions of Government Ministers who, since the commencement of the Inquiry, have sought to hinder the Committee and obscure the reality of what happened. Instances of interference, obstruction and contrivance may be found in —

- the conduct of the Honourable S P Bracks, MP, Premier of Victoria, presiding over a vote in the Legislative Assembly to refuse leave for himself, the Honourable J W Thwaites, MP, Deputy Premier and former Minister for Planning, and the Honourable J M Brumby, Treasurer, to appear before the Committee, contrary to his initial public statement that he would co-operate fully with any inquiry;

- the intervention of the Honourable R J Hulls, MP, Attorney-General, in the affairs of the Committee without invitation in order to delay or prevent legitimately-requested documents and witnesses from being presented to the Committee;
• the refusal of Ministerial advisers, on the instruction of the Attorney-General, to appear before the Committee in public hearings in breach of summons; and

• the intervention, at the instigation of the Bracks Government, of the Honourable Alex Andrianopoulos, MP, Speaker of the Legislative Assembly, in the affairs of the Committee.

These systematic attempts to prevent the Committee from fulfilling its legal obligations not only have proved to be unsuccessful but also have demonstrated the lengths to which the Bracks Government was prepared to go in order to conceal the events which led to Mr Reeves being offered the position of Urban and Regional Lands Corporation Managing Director.

Despite such interference, based on the evidence received by the Committee it is reasonable to conclude that Mr Thwaites, either on his own behalf, or on behalf of the Premier, sought to arrange for Mr Reeves to be appointed as Managing Director of the Urban and Regional Land Corporation. The Committee has further concluded that Professor Lyndsay Neilson, Secretary of the Department of Infrastructure, was the public servant responsible for ensuring that Mr Reeves would be so appointed. In conjunction with Mr Terry Moran, Secretary of the Department of Premier and Cabinet, Professor Neilson contrived to overthrow the recommendation of a legitimately constituted job selection panel in order to ensure the appointment of the Government's "preferred candidate". The carefully and cleverly constructed arguments put by Professor Neilson and Mr Moran, and the Government's persistent interference in the Committee's inquiry, failed to conceal this contrivance. The Government was caught out providing a "job for a mate".

Neil Lucas
Chairman, Select Committee on the URLC Managing Director
16 September 2002
EXECUTIVE SUMMARY

1 BACKGROUND

The Select Committee on the Urban and Regional Land Corporation Managing Director was established in response to allegations made in the Parliament of Victoria concerning the appointment of Mr J ("Jim") E Reeves as Managing Director of the Urban and Regional Land Corporation (URLC). The Committee was asked to inquire into any matters relating to the selection, appointment and resignation of Mr Jim Reeves as Managing Director of the URLC, together with the involvement of any external agencies and consultants.

The Committee sought information from private and public sector agencies and individuals relevant to its Inquiry. A number of respondents sought confidentiality assurances pending the provision of information. The Committee unanimously agreed to provide those assurances with the result that a significant amount of relevant material was provided. Certain information sought from the Government and its departments was withheld, however, on the instruction of the Honourable R J Hulls, MP, Attorney General, and the Honourable R G Cameron, MP, Acting Attorney General. In addition, the Attorney General instructed ministerial advisers, summoned by the Committee to appear before it in public hearing, not to attend. On 20 March 2002 the Committee reported to the Legislative Council that these interventions represented direct interference by the Bracks Government in the affairs of one House of the Parliament of Victoria (Interim Report No. 1).

The Committee also sought the assistance of Mr Reeves, a resident of Queensland, with its Inquiry; Mr Reeves did not respond to
correspondence sent to him by the Committee. The Committee further sought the assistance of the Honourable S P Bracks MP, Premier, the Honourable J W Thwaites MP, Deputy Premier, and the Honourable J R Brumby, Treasurer. In accordance with Standing Order 226, the Legislative Council therefore sent a message to the Legislative Assembly requesting that leave be granted for the three members to appear before the Committee. Despite the Premier's public statement that he would co-operate fully with an Inquiry, leave was refused.

In April 2002, the Committee was engaged in discussions with the Telstra Corporation on the possibility of obtaining telephone records relevant to its Inquiry. Unbeknown to the Committee, and at the instigation of the Treasurer, the Honourable Alex Andrianopoulos, MP, Speaker of the Legislative Assembly, wrote to the Telstra Corporation disputing the Committee's power to summons relevant telephone records. The Committee reported to the Legislative Council on 16 May 2002 that the Speaker's uninvited intervention in the affairs of a Select Committee of the Legislative Council represented significant and unprecedented interference in the affairs of one House of the Parliament of Victoria by the Presiding Officer of the other House (Interim Report No 2).

2 POSITION VACANCY

The URLC is a state-owned Government Business Enterprise responsible for various functions relating to urban and regional development. Founded as the Urban Land Council in 1975, the agency was transformed into the Urban Land Authority in 1980 and into the Urban Land Corporation in 1997. On 1 July 2001, a change of Government policy placing greater emphasis on regionalism, and on infrastructural and spatial integrations,
saw the ULC renamed the Urban and Regional Land Corporation (URLC).

The URLC Board determines strategic direction. The Managing Director is responsible for achieving performance standards set by the Board, and for the daily conduct of the organisation. Between 1 July 1997 and 5 February 1998, Mr Desmond Glynn held the position of Chief Executive Officer, and from 6 February 1998 until 30 June 2001, the position of Managing Director.

Mr Glynn chose neither to seek a renewal of his contract nor to be a candidate for the position which fell vacant from 1 July 2001. Although the Committee heard evidence that matters of remuneration and Board support influenced Mr Glynn in this decision, he advised the Committee that he did not seek reappointment because by May 2001 it was known that the Government "wanted to put in their own man". It was, in Mr Glynn's words, "a done deal".

On 9 April 2001, the Honourable J W Thwaites, MP, the then-Minister for Planning, and Professor Lyndsay Neilson, Secretary of the Department of Infrastructure, discussed the impending vacancy. Professor Neilson suggested that Mr Reeves, an urban planner employed by the City of Brisbane, be considered a potential candidate for interview; Professor Neilson had known Mr Reeves professionally since 1990. Minister Thwaites, who had met Mr Reeves during a ministerial inspection in Brisbane on 6 and 7 November 2000, concurred.

As well as an urban planning background, Mr Reeves had strong ALP credentials and was a long-standing friend of the Premier; Mr Reeves had assisted Mr Bracks' in campaigns to enter State Parliament, Mr Bracks had served as campaign manager for Reeves' elections to the Ballarat City
Council, their families holidayed together and in May 2001 Mrs Bracks attended Mr Reeves' wedding in Ballarat. Mr Reeves had also assisted in the transition to government following the election of the Bracks' Government in November 1999 and his name had been discussed as a prospective candidate for the position of Head of Cabinet Office. Just five days after the 9 April meeting, the Brisbane *Courier Mail* published an article indicating that Mr Reeves had accepted a new position with the Victorian Government. While the source of the article is unknown, the Committee notes the coincidence in timing between a private meeting of the Minister for Planning and Secretary of the Department of Infrastructure, and the public comment that appeared in the *Courier Mail*.

On 11 May 2001, Minister Thwaites met with Mr Reeves and advised him that his name was being put forward for the position of URLC Managing Director. Professor Neilson then advised URLC Board Chairman, Mr Marek Petrovs, that Mr Reeves was the Government's "preferred candidate for interview" and recommended that his name be added to any candidate list. Mr Reeves, therefore, was identified by the Government as a preferred candidate for the position of Managing Director of the URLC, prior to any formal process of candidate identification or assessment.

Use of the term "preferred" led to considerable confusion that at minimum exerted pressure on the Board. Professor Neilson further recommended that he (Neilson) become a member of any interview panel. The Committee notes that the selection process developed by the Board, including a position specification, had been approved by Professor Neilson and Minister Thwaites.
3 FIRST INTERVIEWS

The URLC Board appointed a Selection Sub Committee comprising Board members Ms Angie Dickschen, who was appointed Selection Sub Committee chair, and Mr Frank Davis. Professor Neilson then joined the Selection Sub Committee to form a separate Interview Panel.

On 11 May 2002, Ms Dickschen engaged the executive search agency Heidrick and Struggles to "assist in the search to fill the position of Managing Director of the Corporation". The Committee notes that although all participants in the process sought to identify a new "Managing Director", it was in fact the Board's duty first to fill the vacant position of Chief Executive Officer; appointment to the Board required later Governor in Council approval. It was widely understood, however, that whoever was appointed as Chief Executive Officer would become Managing Director.

By 7 June 2001, Heidrick and Struggles had identified six potential candidates for interview for the vacant position; Mr Reeves' name was included on the list. Interviews were held on 13 and 15 June 2001, with an additional interview of URLC internal candidate, Mr Bryce Moore, being conducted by Professor Neilson on 19 June 2001. Informal discussion between members of the Interview Panel concluded that Mr Mark Henesey-Smith was the strongest candidate. The Selection Sub-Committee concluded that Mr Henesey-Smith was their recommended candidate. The Committee notes that the Selection Sub Committee did not consider Mr Reeves to be in the top three candidates.

On 20 June 2001, at Ms Dickschen's request, Heidrick and Struggles prepared Candidate Summary Notes to assist the Selection Sub-Committee. Using these notes, the Selection Sub-Committee prepared a
Paper for presentation to the Board identifying Mr Henesey-Smith as having the experience necessary to fill the position of Managing Director of the URLC.

The Board Paper prepared by the Selection Sub Committee identified and discussed the top three candidates by name, one of whom was Mr Henesey-Smith. A fourth summary, headed "Other Candidate", was included. This summary referred to Mr Reeves and emphasised his inexperience in certain facets of urban management and the fact of his "political connections". While the Committee notes the use of the term "Other Candidate", the reference indicates that the pressure exerted on the Selection Sub Committee by the Executive was such that the Selection Sub Committee felt compelled to anticipate possible criticism for its non-selection of Mr Reeves. The Board Paper was considered by the Selection Sub Committee to be a summary rather than exhaustive document; Board members were already well-informed on the background of the candidates. Following discussion, the Board confirmed the Selection Sub Committee's finding that Mr Henesey-Smith be proposed to the Government as the next Managing Director of the URLC.

As the Board was of the view that Professor Neilson was a member of the Interview Panel but not a member of the Selection Sub-Committee charged with recommending a prospective Managing Director to the Board, neither the Candidate Summary Notes nor the Board Paper were sent to Professor Neilson for comment. For his part, Professor Neilson was of the view that as a member of the Interview Panel he should have participated more fully in the decision to recommend Mr Henesey-Smith to the Board. The Selection Sub-Committee considered that informal discussions between the Interview Panel members, including Professor Neilson, confirmed Mr Henesey-Smith's suitability, a conclusion confirmed by a Heidrick and Struggles' representative who was present at
the interviews as an observer. This assumption of agreement was a significant contributing factor to the problems that later characterised the appointment of Mr Reeves.

Professor Neilson also maintained that the Board did not comprehend the import of the changes to URLC strategic focus contained in the *Urban Land Corporation (Amendment) Act 2001*. The Board strongly denied this assertion and this was supported by the fact that the Job Specification and Corporate Plan prepared by the URLC, each of which had been approved by Minister Thwaites and Professor Neilson, incorporated the change in focus. Nevertheless, on 27 June 2001, Professor Neilson briefed the Board on the new strategic direction. His briefing immediately preceded Board consideration of the Selection Sub Committee's Report. At no stage was Professor Neilson advised that this was the next agenda item, thereby confirming the breakdown in communication between the Board and the Selection Sub Committee, and Professor Neilson.

On 4 July 2001, Ms Dickschen (at the time acting Chair of the URLC Board) wrote to the Treasurer and Minister for Planning advising them of the Board's choice. This was a legal requirement under s6 (1) of the *Urban and Regional Land Corporation Act 1997* (the Act), which obliged the Board to "consult" with the respective ministers on such an appointment. The Board assumed the ministers would respond in due course and believed on the basis of earlier approval of the selection process by both Minister Thwaites and Professor Neilson, that the presence of Professor Neilson on the Interview Panel and the advice sent to the Ministers constituted "consultation" as required by the Act.
4 SECOND INTERVIEWS

Professor Neilson took the view that the Board's 4 July 2001 letter did not satisfy the legislative requirement to consult; rather it presented “a fait accompli”. He was also aggrieved that as a member of the Interview Panel he had neither seen the report to the Board nor been consulted on its recommendation.

Professor Neilson's interpretation does not accord with that of other participants who indicated that he had expressed no dissatisfaction with the process at the time of his involvement, and had informally agreed with the choice of Mr Henesey-Smith. The Committee further notes that Professor Neilson was subsequently critical of the Board for recommending a prospective "Managing Director", rather than a "Chief Executive Officer" but at no stage during the preparation and conduct of the first round of interviews raised this as a matter of concern. Indeed, the job specification as earlier approved by both Professor Neilson and Minister Thwaites employed the term “Managing Director.” Following receipt of the Board’s letter, Professor Neilson discussed the matter with Mr Petrovs, arranged a meeting with him, and sought a copy of the "draft interview report". Department of Treasury and Finance officials responded to the URLC Board advising that the Treasurer, following consultations with the Minister for Planning, would respond in due course.

On 19 July 2001, Professor Neilson met with URLC Board Chairman Petrovs. Professor Neilson advised that he wished to amend the Candidate Summary Notes (in favour of Mr Reeves) with which he had been supplied; he felt the Summary Notes understated Mr Reeves' capabilities. Professor Neilson appears to have assumed that the Selection Sub-Committee Candidate Summary Notes prepared by Heidrick and Struggles had been presented to the Board, which they had not. The Committee
notes that at no stage did Professor Neilson see a copy of the Selection Sub-Committee's Board Paper upon which the Board had based its decision. Professor Neilson further advised that he did not consider the Board's 4 July 2001 letter to be "consultation". On 30 July 2001, following Professor Neilson's recommendation, Chairman Petrovs wrote again to the two relevant ministers, this time including much fuller information on all candidates and material in support of the selection of Mr Henesey-Smith. On considering the two letters now received by the Treasury, and having become aware that Minister Thwaites was involved in the selection process and might be favouring candidate Reeves, Treasury and Finance officials prepared advice for the Treasurer that counselled against the appointment of Mr Reeves due to his financial inexperience. This memorandum was sent to the Treasurer's Chief of Staff.

On 20 July 2001, the day after Professor Neilson met with Mr Petrovs to discuss modifying the Candidate Summary Notes and raising questions about "consultation", he met with Mr Terry Moran, Secretary, Department of Premier and Cabinet, where he expressed misgivings about the selection process. The two secretaries decided to conduct a second round of interviews in order that they could provide advice on the appointment to the ministers. The Interview Panel would comprise secretaries Moran and Neilson, and Acting Secretary of the Department of Treasury and Finance, Mr Grant Hehir. Given the importance of the appointment, the Committee is surprised that the secretaries elected to interview candidates Henesey-Smith, Reeves and Moore, rather than all six candidates interviewed in the URLC selection process.

On 25 July 2001, Ms Dickschen instructed Heidrick and Struggles to "close out" Mr Reeves as a prospective candidate. Mr Reeves was so informed on 29 July 2001. The next day, Mr Reeves contacted both
Professor Neilson's and Minister Thwaites' offices. Professor Neilson, who told the Committee that he did not speak with Mr Reeves, in turn contacted Mr Petrovs to ascertain the reasons for the "close out". As Professor Neilson evidently did not speak to Mr Reeves, the exact source of Professor Neilson's information that Mr Reeves' telephone call concerned his "close out" remains unknown. The Committee finds it totally unacceptable that any candidate should enjoy the level of access extended to Candidate Reeves by the Minister responsible for appointing the URLC Managing Director, and a senior member of the Interview Panel.

The Committee further notes that no attempt was made to respond to the Board's much fuller and complete letter of 30 July 2001 proposing Mr Henesey-Smith for the vacant position. The secretaries' decision was made without consultation with the URLC Board, without regard for Board autonomy, and without concern for the integrity of Board-Executive interactions.

 Witnesses appearing before the Committee confirmed that second round interviews of this nature were unorthodox. Minister Thwaites nevertheless approved the second round of interviews with the proviso that Board Chairman Petrovs be present. Interviews were scheduled for 17 August 2001. Mr Petrovs delivered a formal letter of protest on behalf of the Board and advised that he would be an observer rather than a participant in the interviews. Despite extensive criticism by Professor Neilson of the selection criteria used in the first interviews and, citing this as (part) justification for the second round of interviews, the Committee notes that the second panel apparently relied on exactly the same documentation, albeit used with a different emphasis, as was used in the first interviews.
This second interview panel found that Mr Reeves was best suited to the position. Mr Petrovs, in his position as observer, concluded that the interviews did nothing to undermine the URLC Board's selection of Mr Henesey-Smith as the best candidate. Indeed, he emailed a colleague to suggest Mr Reeves would need a “24 hour a day nursemaid” to do the job.

Mr Hehir expressed concerns over Mr Reeves' lack of commercial experience. These concerns were taken so seriously that the Government set about amending the management structure of the URLC to cater for Mr Reeves' financial inexperience. It was agreed that a “chief operating officer” be appointed to provide the financial expertise that Mr Reeves lacked. Indeed, the management structure amendment ultimately “suggested” by Minister Thwaites included the upgrading of not one but two particular positions. The Committee notes this represents a considerable managerial concession designed to facilitate the appointment of the Government's preferred candidate. The Committee further notes that this re-configuration of the management structure was devised by the secretaries, and endorsed by Minister Thwaites, without any consultation with the Board, or discussion regarding costs.

Referee checks were conducted on candidates Henesey-Smith and Reeves (it was assumed that candidate Moore was better suited to the position of chief operating officer). Significantly, Professor Neilson undertook to personally speak with Mr Reeves’ referees, while directing that the Department of Infrastructure's Director of Human Resources would speak with Mr Henesey-Smith's referees. The Committee observes that Professor Neilson therefore proposed Mr Reeves name for candidature, re-wrote the Candidate Summary Notes with a view to improving Mr Reeves' prospects, intervened in the consultation process, organised a second round of interviews, personally followed up on Mr Reeves' referees and supervised the reporting process which named Mr Reeves the
“outstanding candidate”, thereby severely qualifying any claims of a transparent, merit-based appointment.

5 APPPOINTMENT AND RESIGNATION

On 18 September 2001, Minister Thwaites advised Mr Petrovs that he did not support the appointment of Mr Henesey-Smith and, based on the advice of the three departmental secretaries, proposed instead that the Board consider Mr Reeves for appointment. Believing it now had no choice, the Board accepted the suggestion on 26 September 2001.

On 16 October 2001, Mr Reeves accepted the terms and conditions of appointment. The same day, and before URLC personnel had been formally advised by the Board of the impending appointment, the City of Brisbane Lord Mayor, Mr Jim Soorley, released a Media Statement to that effect that Mr Reeves had been appointed to "one of the top jobs in Victoria". Three days later, Board Chairman Petrovs advised URLC personnel of the impending appointment, which would commence on 14 January 2002. On 29 October 2001, Ms Dickschen resigned from the Board of the URLC.

On 16 November 2001, the same day as the City of Brisbane media release, commentary began to mount in the media concerning the appointment of a friend of the Premier as Managing Director of the URLC. Parliamentary and media scrutiny intensified. On 28 November 2001, Mr Reeves withdrew from the position.
6 CONCLUSIONS

The Committee finds that the appointment of Mr Jim Reeves as Managing Director of the URLC was a result of direct Executive interference in the identification, selection and appointment processes. Specifically, the Committee finds that Minister Thwaites and Professor Neilson interfered in processes associated with the appointment of a Managing Director to the URLC, and so compromised the autonomy and perceived competence of the URLC Board. The Committee finds the Board’s initial executive search process to have been thorough and professional, and that the focus of later Executive discontent with the URLC selection process was not the quality of the URLC’s recommended candidate — Mr Henesey-Smith — but rather the quality of the Board Report: at no stage were Mr Henesey-Smith's credentials questioned.

The Committee carefully considered each argument offered to justify the conduct of the second round of interviews, and has dismissed each in turn on the evidence provided. The Committee finds it relevant that to the extent these arguments were based on criticisms of the "first round process" the critics were themselves involved in the design and conduct of that process. The Committee finds it even more relevant that these criticisms were only registered after the Board's recommended appointee was named.

It is against this background that the Committee concludes the only fault with the initial process to be that it did not select the Government's preferred candidate, and that the entire strategy of the carefully managed second round of interviews became a contrivance to justify the selection of Mr Reeves. The Government's preparedness to compromise the Board's autonomy, even to the point of devising a substantial change to the management structure to accommodate the acknowledged shortcomings of
candidate Reeves, makes a mockery of any claims that the selection was merit-based.

The Committee notes that no appointment has been made to the position of URLC Managing Director at the date of reporting, and concludes that the embarrassment suffered by individual candidates and the damage caused to the URLC’s reputation and operation, can be fairly traced to Minister Thwaites’ decision to authorise a supplementary process designed and structured to justify the appointment of his preferred candidate.

Difficulties associated with the mandated term "consultation" could be avoided if the term either was defined within the legislation or was the subject of an obligatory pre-process meeting of relevant stakeholders; the Committee so recommends to this effect. The Committee further recommends that whenever a vacancy to a senior Government position arises, selection policies and selection processes are agreed from the outset, and formally documented. The Committee concludes that as a matter of both principle and practice, members of the Executive should stand apart from selection panels charged with the task of identifying prospective candidates for appointment, even in those cases that require ministerial endorsement. No clearer illustration of the accuracy of this observation can be found than in the circumstances surrounding the selection, appointment and resignation of Mr Jim Reeves as Managing Director of the URLC.
FINDINGS OF THE COMMITTEE

FINDING 1
The Committee finds that in April 2001, prior to any formal process of candidate identification or assessment, the name of Mr Jim Reeves was identified by the Government as a preferred candidate for the position of Managing Director of the URLC.

FINDING 2
The Committee finds that the format and content of the Selection Sub-Committee Board Paper left the Board vulnerable to criticism of its selection process and compromised the recommendation of the Sub-Committee to the extent that those who were opposed to that recommendation were later able to mount an argument in respect of process as distinct from outcome.

FINDING 3
The Committee finds that the failure to specify Professor Neilson’s role and responsibilities in his attendance at candidate interviews, contributed to the confusion surrounding the appointment of the URLC Managing Director.

FINDING 4
Contrary to the views of Professor Neilson, the Committee finds that the URLC Board had adopted the change in policy and emphasis sought by the Government.

FINDING 5
The Committee finds it unreasonable for Professor Neilson to criticise the URLC’s use of the term "Managing Director", as he did in his evidence to this Inquiry, when he not only saw but formally approved documents from the outset which used this terminology.
FINDING 6
The Committee finds that the failure of the Selection Sub-Committee to advise Professor Neilson (even if informally) of its decision to recommend Mr Henesey-Smith to the ULC Board, and the failure of the ULC Board in turn to advise him of its 27 June 2001 decision, represents a discourtesy to Professor Neilson.

FINDING 7
The Committee concurs with the view of the Chairman and URLC Board members and finds the process they had undertaken to that point, comprising:
- prior consultation between the Chairman and Minister Thwaites;
- consultation between the Chairman and Professor Neilson;
- general agreement as to the Board’s search process;
- Professor Neilson’s approval of the position specification; and
- Professor Neilson’s participation on the first interview panel — coupled with the two 4 July 2001 letters (one to Minister Brumby, one to Minister Thwaites), constituted consultation under Clause 6, Schedule 1 of the Urban and Regional Land Corporation Act 1997.

FINDING 8
The Committee finds that Professor Neilson erred in allowing the initial process to proceed without correcting the terminology of the position specification.

FINDING 9
The Committee finds that the lack of a defined consultative process allowed the Government to utilize the ambiguity of the legislation to undermine the URLC’s selection process.

FINDING 10
The Committee finds that the integrity of the consultative process between the URLC and the relevant Ministers was compromised by the accessibility of, and
Findings of the Committee

familiarity between, candidate Reeves, Professor Neilson and Minister Thwaites, as exemplified in the telephone calls placed by Candidate Reeves to Minister Thwaites and Secretary Neilson.

FINDING 11
The Committee finds that, in intervening to commence a separate interview process, departmental secretaries Neilson and Moran inappropriately undermined the consultation process which was underway between the Board, the Minister and the Treasurer.

FINDING 12
The Committee finds that given the disapproval levelled at the Board’s selection process, the Secretaries’ decision to initiate a further round of interviews was astonishing, particularly given the Board’s assessment criteria were again employed. The Committee further finds that in choosing to select such a limited number of candidates without any clear guidelines, any opportunity to establish a process that would withstand scrutiny was lost.

FINDING 13
The Committee notes that in his advice to Minister Thwaites Professor Neilson undertook to seek agreement with the Board as to selection criteria but failed to do so. The Committee, however, finds that in authorising a second round of interviews, the direct approach of a limited number of candidates and the selection of those candidates on arbitrary criteria, Minister Thwaites tacitly allowed senior public servants to engage in a process that was simply designed to justify the appointment of a pre-ordained candidate.

FINDING 14
The Committee finds that Professor Neilson’s response to Mr Hehir’s suggested amendment to the interview report further indicates that the supplementary round of interviews was conducted to justify the appointment of the government’s
preferred candidate. Despite obvious deficiencies in Reeves’ suitability for the position, indeed, the same deficiencies that invalidated his selection in the first interview, Professor Neilson, Mr Moran and Mr Hehir continued to make allowances to facilitate the appointment.

**FINDING 15**
The Committee finds that, despite s.6 of the *Urban and Regional Land Corporation Act 1997*, requiring that the Treasurer and Minister for Planning jointly consult on the URLC appointment, the Minister for Planning and the Secretary, Department of Infrastructure, assumed control of the process to the extent that the Treasurer's role was minimised. The Committee further finds that the Treasurer, in failing to take a more pro-active role in the appointment process, did not meet his obligations under the Act.

**FINDING 16**
The Committee finds that the decision to amend the URLC management structure to accommodate Mr Reeves’ lack of commercial experience, and the absence of transparency in the reference checking process, further undermine the claim that the supplementary selection process was held to provide advice to Ministers based on merit.

**FINDING 17**
The Committee finds that the Deputy Premier, and then-Minister for Planning, the Honourable John Thwaites MP, in conjunction with the Secretary of the Department of Infrastructure, Professor Lyndsay Neilson, directly interfered in the process of selecting a Managing Director of the URLC by identifying, promoting, choosing and appointing a favoured candidate, Mr Jim Reeves, to the position.
FINDING 18
The Committee finds that then-Minister for Planning and the Secretary of the Department of Infrastructure compromised the autonomy of the URLC Board by intervening in the appointment of the URLC Managing Director. In particular the Minister and the Secretary failed to engage in dialogue with the Board when they deemed that the Board's recommended candidate was unacceptable.

FINDING 19
The Committee finds that selection of the URLC's recommended candidate was compromised not by the inappropriateness of its selection, but by a Board Report that lacked comparative analysis and persuasive justification such that the artificial focus of Executive discontent could become the quality of the Board Report rather than the quality of the recommended candidate.

FINDING 20
The Committee finds that the embarrassment suffered by individual candidates and the damage caused to the URLC's reputation can be fairly traced to Minister Thwaites' decision to abort the original selection process by authorising a supplementary process designed and structured to justify the appointment of his preferred candidate.

FINDING 21
The Committee finds that Government policy was breached in that the terms and conditions of the positions offered to Mr Jim Reeves were not cleared with the Government Sector Executive Remuneration Panel.
RECOMMENDATIONS OF THE COMMITTEE

RECOMMENDATION 1
The Committee recommends that in circumstances where appointments to senior Government positions are predicated on some form of defined consultative process, that such consultation:
(1) Be specified in the relevant statute;
OR
(2) Be the subject of an obligatory pre-process meeting of all relevant stakeholders in order to devise an agreed understanding of what constitutes “consultation”.

RECOMMENDATION 2
The Committee recommends that whenever a vacancy to a senior Government position arises, selection policies and a selection process are from the outset agreed upon by the relevant stakeholders and formally documented.
CHAPTER ONE
INTRODUCTION

1.1 SELECT COMMITTEE ON THE URBAN AND REGIONAL LAND CORPORATION MANAGING DIRECTOR

The Report of the Select Committee of the Legislative Council on the Urban and Regional Land Corporation Managing Director is tabled in the Legislative Council pursuant to the Resolution agreed to by the Legislative Council on 5 December 2001, as amended by Resolutions agreed to by the Legislative Council on 19 March 2002 and 29 May 2002.

1.2 TERMS OF REFERENCE

The Select Committee on the Urban and Regional Land Corporation Managing Director was established in response to allegations made in the Parliament of Victoria about the appointment of Mr J E (“Jim”) Reeves as Managing Director of the Urban and Regional Land Corporation.

On Wednesday 5 December 2001 the Legislative Council adopted the following Resolution:

(n) That a Select Committee of five members be appointed to enquire into and report upon any matters relating to the selection, appointment and resignation of Mr. Jim Reeves as Managing Director of the Urban and
Regional Land Corporation, together with any involvement of external agencies and consultants.

(o) That the Committee shall consist of two members nominated by the Leader of the Government, two members nominated by the Leader of the Opposition and one member nominated by the Leader of the National Party.

(p) That the members shall be appointed by lodgement of the names with the President by the Leaders no later than 4.00 p.m. on Thursday, 6 December 2001.

(q) That the first meeting of the Committee shall be held at 10.30 a.m. on Friday, 7 December 2001.

(r) That the Committee may proceed to the despatch of business notwithstanding that all members have not been appointed and notwithstanding any vacancy.

(s) That the Committee shall elect a Deputy Chairman to act as Chairman at any time when the Chairman is not present at a meeting of the Committee.

(t) That three members of the Committee shall constitute a quorum.

(u) That the Committee may send for persons, papers and records.

(v) That the Committee may authorise the publication of any evidence taken by it in public and any documents presented to it.

(w) That reports of the Committee may be presented to the Council from time to time and that the Committee present its final report to the Council on or before 31 May 2002.

(x) That the presentation of a report or an interim report of the Committee shall not be deemed to terminate the Committee’s appointment, powers or functions.

(y) That the Committee shall, unless it otherwise resolves, take all evidence in public and may otherwise sit in public at anytime if it so decides.

(z) That the foregoing provisions of this resolution, so far as they are inconsistent with the Standing Orders and practice of the Council, shall have effect notwithstanding anything contained in the Standing Orders¹.

On Tuesday, 19 March 2002, the following addition to the Resolution was agreed to by the Legislative Council:

(o) The Committee shall include with any of its reports to the Council, minority reports submitted to it by a member or members of the Committee².
On Wednesday, 29 May 2002, the following Resolution was agreed to by the Legislative Council:

That paragraph (j) of the Resolution of the Council of 5 December 2001 appointing the Select Committee on the Urban and Regional Land Corporation Managing Director be amended so as to now require the Committee to present its final report to the Council on or before 30 September 2002.

1.2.1 Membership
On 6 December 2001, pursuant to paragraph (c) of the Resolution, the Leader of the Government, the Honourable M M Gould, MLC, lodged with the President the names of the Honourables G W Jennings, MLC, and T C Theophanous, MLC, for appointment to the Committee. The Leader of the Opposition, the Honourable W Forwood, MLC, lodged the names of the Honourables N B Lucas, MLC, and G K Rich-Phillips, MLC. The Leader of the National Party, the Honourable P R Hall, MLC, lodged the name of the Honourable R M Hallam, MLC.

Pursuant to paragraph (d) of the Resolution, the Committee held its first meeting on Friday, 7 December 2001. At that meeting the Honourable N B Lucas, MLC, was elected Chairman and the Honourable R M Hallam, MLC, was elected Deputy Chairman.

1.2.2 Committee Meetings
Between Friday, 7 December 2001 and Monday 16 September 2002, the Committee held 21 meetings, eight of which were public hearings.

1.3 CONDUCT OF THE INQUIRY
1.3.1 Documentary Evidence

On 12 and 13 December 2001, the Committee wrote to a number of individuals, Government agencies and private organisations inviting them to provide information and documents relevant to the Terms of Reference (Appendix A). The Committee sought this information by 18 January 2002.

1.3.2 Confidentiality Concerns

In reply to the Committee’s initial request for information, several individuals and organisations sought assurances that any personal information supplied to the Committee would be treated confidentially (Appendix B).

As a consequence on Tuesday, 29 January 2002, the Committee resolved —

That, this Committee, in accordance with Item (i) of its Terms of Reference (2001), Standing Order No. 207 of the Standing Orders of the Legislative Council (1992), and Sections 7.11, 8.1.1 and 8.1.2 of the Parliament of Victoria Parliamentary Committee Procedures Manual (2001), affirms that all documentation including private and personal documentation, unless presented as a public document at a public hearing to the Committee, provided to it in the course of its Inquiry into the Urban and Regional Land Corporation Managing Director will be treated as confidential and, except by resolution to the contrary (which applies the proposed disclosures on an equitable basis), will neither be disclosed nor in any other way made public.

The Committee further resolved —

That personal and private information relating to candidates be deemed confidential unless disclosure is agreed to by the candidates.

On 31 January 2002, the Committee wrote to those individuals and organisations that had sought confidentiality assurances informing them of the Committee’s resolution and again requesting the information.
In response to these confidentiality assurances, certain individuals and one organisation made information available to the Committee.

1.3.3 Amalgamated Responses

In response to the separate requests for information the Committee received two amalgamated submissions. The first, hereafter referred to as the "Public Service Response", contained material from Mr T F Moran, Secretary, Department of Premier and Cabinet, on behalf of the Department of Premier and Cabinet; Mr I Little, Secretary, Department of Treasury and Finance; Mr G Hehir, Deputy Secretary, Department of Treasury and Finance; Professor L Neilson, Secretary, Department of Infrastructure; senior officers of the departments of Premier and Cabinet, and Treasury and Finance.

The second, hereafter referred to as the "Ministerial Response", contained material from the Honourable S P Bracks, MP, Premier; the Honourable J R Brumby, MP, Treasurer; the Honourable J W Thwaites, MP, Minister for Planning; the Honourable J M Madden, MLC, Minister Assisting the Minister for Planning; the Honourable G W Jennings, MLC, Cabinet Secretary; relevant parliamentary secretaries; and ministerial offices.

1.3.4 Intervention of the Attorney General

On 24 December 2001, the Committee received a letter from the Attorney General, the Honourable R J Hulls, MP, raising concerns about the nature of the documents sought by the Committee from a number of public servants and others outside Government. On 16 January 2002, the Acting Attorney General, the Honourable R G Cameron, MP, wrote to the Committee stating that many of the documents sought by the Committee from public servants and others contained personal and sensitive information. The Acting Attorney General suggested discussions be held
between the Committee and the Attorney General about maintaining the confidentiality of these documents. The Committee notes that at no time did it invite or request such correspondence from the Attorney General.

On 31 January 2002, the Committee wrote both to the Secretary of the Department of Premier and Cabinet, and the Acting Attorney General informing them of the Committee’s confidentiality resolutions (see 1.3.2). On 8 February 2002, the Attorney General wrote to the Committee maintaining his insistence that a meeting between himself and the Committee be held in order to pave the way for the release of all the relevant documents.

On 12 February 2002, the Committee issued a summons for the documents. All outstanding "Public Service Response" material was received by 13 February 2002, 26 days after the due date originally set by the Committee for the receipt of information and documents. Mr T F Moran, the Secretary of the Department of Premier and Cabinet, provided the documents on behalf of himself, the Secretary of the Department of Treasury and Finance, and the Secretary of the Department of Infrastructure. Mr Moran reiterated to the Committee that he had ongoing concerns about releasing such information.

As with the "Public Service Response", the Committee issued two invitations to the Office of the Premier (12 December 2001; 31 January 2002) to provide documents relevant to the Terms of Reference. In response to its initial request, the Committee received correspondence from both the Acting Premier, and the Acting Attorney General, expressing concern about the confidential nature of the information sought.
On 31 January 2002, the Committee wrote to the Premier, as the contact for the “Ministerial Response”, to convey the terms of its confidentiality resolution and again to invite the relevant individuals and offices to provide the requested information. On 8 February 2002, as discussed above in relation to the “Public Service Response”, the Attorney General replied that certain documents would still be withheld until the Committee agreed to meet with the Attorney General. The Committee again notes that at no time did it invite or request such correspondence from the Attorney General.

On 12 February 2002, the Committee summoned the outstanding documents from the Honourable S P Bracks, MP, Premier, the Honourable J M Brumby, MP, Treasurer, and the Honourable J W Thwaites, Minister for Planning. Cabinet documents and documents already provided were specifically excluded from the summons.

In response to the Committee's summons of 12 February 2002 to the Premier, Treasurer, and Minister for Planning, the Attorney General wrote to the Committee on 12 February 2002 stating that he had received legal advice that the Committee lacked the power to summon a member of the Legislative Assembly, including a Minister, to produce documents.

This assertion is disputed by the Committee. Under Standing Order No. 198, the Legislative Council can give a Select Committee power to send for persons, papers and records. The only qualification to this power (in relation to Assembly Members) is Standing Order No. 226. As the Standing Orders remain silent in relation to the production of documents, the Committee believes this power is not qualified in a similar way to compelling attendance. In the absence of any legislative provisions exempting the application of this power to Ministers or Members of the Legislative Assembly, the Committee believes that the express power
given in the Standing Orders allows authorised Select Committees of the Legislative Council to summon documents from Ministers of the Legislative Assembly\(^4\).

The outstanding documents sought by summonses issued to the Premier, Treasurer, and Minister for Planning have never been provided to the Committee (Appendix C).

The intervention of the Attorney General was reported to the Legislative Council on 20 March 2002\(^5\).

1.3.5 Other Documents Not Provided
Mr J E ("Jim") Reeves, a resident of Queensland, did not respond to the Committee's invitations to provide information and documents. On 12 February 2002, the Committee issued a summons for such documents and advised Mr Reeves that although the jurisdiction of the summons is restricted to the State of Victoria, he may wish to seek legal advice concerning the application of the summons should he visit Victoria.

1.3.6 Public Hearings
Between 20 February 2002 and 13 June 2002, the Committee held eight public hearings at which it took evidence from 19 witnesses (Appendix D)\(^6\). One witness, Professor Lyndsay Neilson, Secretary, Department of Infrastructure, was interviewed three times. Mr Marek Petrovs, Chairman, Urban and Regional Land Corporation, was interviewed twice.

1.3.7 Ministers
The Committee resolved to invite the Premier, the then-Minister for Planning\(^7\) and the Treasurer to give evidence in relation to the Committee’s Inquiry. Standing Order 226 requires that for a Member of the Legislative Assembly to attend to give evidence to a Legislative
Council Committee, a Message must be sent from the Legislative Council to the Legislative Assembly requesting that leave be given to the Member.

The Committee wrote to the Leader of the Government, the Hon M M Gould, MLC, the Leader of the Opposition, the Hon W Forwood, MLC, and the Leader of the National Party, the Hon P R Hall, MLC, seeking assistance in this matter. On 19 March 2002, the Hon W Forwood, MLC, advised the Committee that, having consulted with the Leader of the Government and the Leader of the National Party, he would assist the Committee as requested.

On 19 March 2002, the Hon W Forwood, MLC, gave notice of the following motion —

That this House requests the Legislative Assembly to grant leave to the Honourable S P Bracks MP, Premier of Victoria, the Honourable J W Thwaites MP, Deputy Premier of Victoria and Minister for Health, and the Honourable J M Brumby MP, Treasurer, to appear before the Select Committee of the Legislative Council on the Urban and Regional Land Corporation Managing Director to give evidence and answer questions in relation to the Committee's terms of reference.

The following day, the Legislative Council debated the motion which, following a division, was agreed to. A Message was consequently delivered to the Assembly. After debate in the Assembly, a Message was sent to the Council advising that the Assembly refused leave on the motion of the Attorney General and carried on a division by the Government and three Independent Members.

1.3.8 Ministerial Advisers

On 25 February 2002, the Committee summoned five ministerial advisers to appear before the Committee at public hearings scheduled for 6 and 15
March 2002. The Committee subsequently received a letter from the Attorney General advising that he had received legal advice from Mr P Hanks QC and Mr A Thomas of counsel that it was beyond the power of the Committee to summons advisors to Ministers who are members of the Legislative Assembly; therefore, he had instructed these witnesses not to appear.

The Committee disputes the Attorney General’s assertion. The Committee argues that in Victoria the basis of any committee’s power to summons witnesses is found in section 19 of the Constitution Act 1975\textsuperscript{11}. The section confers on each House the power to legislate with respect to its own privileges, immunities and powers. This power is extended to committees by the Standing Orders or any Act of Parliament or resolution of the House or Houses appointing a committee. Part (h) of the Resolution of the Council specifically gives the Committee the power to send for persons, papers and records.

As well as giving committees the power to call for persons, papers and records, the Standing Orders also contain provisions designed to enable committees to enforce that power\textsuperscript{12}. It is clear that a committee, save for the very specific exceptions outlined by the Standing Orders, has an unqualified power to require the attendance of any person in Victoria. Furthermore, it has the ability to enforce such a power by the issue of a summons. The Committee therefore has the power to summons ministerial staff as no basis for their exemption can be found in law.

On 7 March 2002, the Committee advised four of the ministerial staff that they were in breach of summons and explained the potential consequences for being in breach of summons (the Committee was not notified about the non-appearance of the fifth ministerial adviser until 8 March 2002; advice was sent to this person on 18 March 2002)\textsuperscript{13}. The Committee urged the
ministerial staff to reconsider their decision. The Attorney General wrote to the Committee on 15 March 2002, confirming that in accordance with his advice the witnesses would not be appearing. The Committee did not persist with its attempt to require ministerial staff to attend.

1.3.9 Ms Debbie Cozart

On 12 February 2002, the Committee summoned Ms Debbie Cozart, former Principal Consultant of Heidrick and Struggles, executive search consultants, to appear before the Committee in a public hearing scheduled for 20 February 2002. The Committee unsuccessfully sought to contact Ms Cozart and believes that she no longer resides in Australia.

1.3.10 Acknowledgement

The Committee wishes to record its thanks to the organisations and individuals in both the public and private sector who provided information and who appeared before the Committee at public hearings.

1.4 FIRST INTERIM REPORT

On 20 March 2002 the Chairman tabled the Committee’s First Interim Report. The First Interim Report reported to the Legislative Council certain matters that had arisen during the course of the inquiry. The Committee reported to the Legislative Council that delays in the provision of information, the placement of conditions on the release of information, the breach of summonses by Ministers and ministerial staff, the failure to provide the Committee with any tangible "legal advice" in support of the many assertions made in the correspondence of the Attorney General, represented direct interference by the Bracks Government in the affairs of one House of the Parliament of Victoria.
Following the tabling of the *First Interim Report*, the Honourable N B Lucas, MLC, moved, that the Council take note of the Report and debate ensued\(^{14}\).

### 1.5 SECOND INTERIM REPORT

On 16 May 2002 the Chairman tabled the Committee’s *Second Interim Report*\(^{15}\). The Committee reported to the Legislative Council that on 11 April 2002 it had issued summonses to the Telstra Corporation for records of incoming and outgoing telephone calls between the Department of Premier and Cabinet, the Department of Treasury and Finance, and the Department of Infrastructure, and the City of Brisbane, and Mr Reeves, between 1 October 2000 and 31 December 2001. The Committee also summoned records of incoming and outgoing telephone calls between the Office of the Premier, the Office of the Treasurer, and the Office of the Minister for Planning, and the City of Brisbane, and Mr Reeves, between 1 October 2000 and 31 December 2001. The Committee reported that on 2 May 2002, the Honourable Alex Andrianopoulos, MP, Speaker of the Legislative Assembly, wrote to Telstra challenging the validity of the Committee's summons to produce records and requesting that Telstra stay its response to the summons pending clarification. Mr Andrianopoulos did not communicate his concerns to the Select Committee.

The Committee reported to the Legislative Council that the Speaker's uninvited intervention in the affairs of a Select Committee of the Legislative Council represented significant and unprecedented interference in the affairs of one House of the Parliament of Victoria by the Presiding Officer of the other House. A Minority Report was prepared and submitted by the Honourables G W Jennings, MLC, and T C Theophanous, MLC, which dissented from this view.
Following the tabling of the *Second Interim Report*, the Honourable N B Lucas, MLC, moved, that the Council take note of the Report and debate ensued\(^{16}\).
CHAPTER TWO
POSITION VACANCY

2.1 INTRODUCTION

In Term of Reference (a), the Committee is asked to enquire into

any matters relating to the selection, appointment and resignation of Mr Jim Reeves as Managing Director of the Urban and Regional Land Corporation, together with any involvement of external agencies and consultants.

In addressing Term of Reference (a), the Committee turns first to the matter of selection and, specifically, to those circumstances that in June 2001 saw interviews held for the position of Managing Director of the URLC.

2.2 THE URBAN AND REGIONAL LAND CORPORATION

2.2.1 Background

The Urban and Regional Land Corporation (URLC) is a State-owned Government Business Enterprise charged with undertaking various functions relating to urban and regional development. These include the:

- acquisition of land in metropolitan and regional areas for developmental purposes;
• development of land;
• promotion of a competitive environment through the development of land for residential and related purposes;
• promotion of urban and community design and development excellence;
• improvement of land affordability in Victoria; and
• the provision of consultancy services.

The origins of the URLC lie in the 1975 creation of the non-statutory Urban Land Council, responsible for providing "at minimum cost" an "adequate supply of fully serviced allotments" at appropriate sites throughout Victoria. This body was replaced in 1980 by the Urban Land Authority (ULA) subject to the provisions of the Urban Land Authority Act 1979. As well as residential land development, the ULA contributed to urban planning policy and to State projects.

The Urban Land Corporation Act 1997 saw the ULA replaced by the Urban Land Corporation (ULC). As a competitively-neutral, statutory authority the ULC provided services to both public and private sector entities that enhanced the value of land for development. The ULC continued to develop land and offer consultancy services in relation to land development.

On 1 July 2001, a new legislative framework for the ULC was established. The Urban and Regional Land Corporation (Amendment) Act 2001 reflected the Labor Government’s perspective that the corporation needed a wider focus and that its involvement in urban and regional centres should be enlarged. The Government felt that in urban or regional contexts the ULC’s previous legislated functions did not facilitate integrated development which combined residential and non-residential elements. This strategic shift, with its greater emphasis on regionalism and on
infrastructure integration was reflected in a change of title which from 1 July 2001 saw the ULC renamed the Urban and Regional Land Corporation (URLC).

In 2000-2001, the ULC achieved an after-tax profit $19.1 million through the sale of 1,898 residential allotments and through other developmental initiatives. On 30 June 2001, the ULC had 62 full time equivalent staff members.

The URLC Board, in conjunction with the Managing Director, determines strategic direction. The Managing Director is responsible for achieving performance targets set by the Board, and also manages the general operation and business development strategies of the Corporation. Appointment to the Board requires Cabinet and Governor-in-Council ratification. Standard practice where a vacancy occurs is therefore to fill the position of Chief Executive Officer after which the incumbent may be appointed to the Board of Directors.18

2.3 MANAGING DIRECTOR VACANCY

Mr Desmond Glynn served as Chief Executive Officer of the ULC from 1 July 1997 until 5 February 1998, at which time he was appointed Managing Director. He remained in this position until 30 June 2000. Following discussions with Board Chairman, Mr Marek Petrovs, Mr Glynn negotiated a one year extension to his contract. Accordingly, Mr Glynn continued to serve as Managing Director from 1 July 2000 to 30 June 2001. Mr Glynn chose neither to seek a renewal of his contract nor to be a candidate for the position that fell vacant on 1 July 2001. Three explanations have been offered to the Committee for Mr Glynn's decision not to seek reappointment.
2.3.1 Executive Remuneration

First, between August and October 2000 attempts were made by the Board to secure a salary increase for the position of Managing Director. These proved unsuccessful. The Government Sector Executive Remuneration Panel (GSERP) did not support attempts to increase Mr Glynn's salary from $220,000 per annum to $263,000 per annum\(^19\). Mr Marek Petrovs, Chairman of the URLC Board, advised the Committee that in his estimation and irrespective of who filled the position, the remuneration level for the URLC Managing Director was inadequate\(^20\). During public hearings it was implied that the failure to obtain an increase in salary level was one factor that persuaded Mr Glynn not to seek a renewal of his contract.

2.3.2 Board Support

Second, Mr Glynn was aware that he did not enjoy Board support for reappointment. Following discussions with Mr Petrovs in mid-2000, and given the developmental stage of a number of Corporation projects with which he was closely involved, Mr Glynn decided to accept a contract extension of 12 months\(^21\).

In May 2001, Mr Petrovs advised Mr Glynn that the Board was not going to, for lots of reasons, automatically nominate him for reappointment, but I was hoping that he would consider himself as a candidate.\(^22\)

Mr Petrovs informed the Committee that "there was a view at board level, and it was my view, that it was time for a change"\(^23\). Board Member Mr Frank Davis concurred:
I think there was a growing view — I was starting to form a view that we might have needed a bit of fresh blood at the top and that we should at least look at other candidates rather than just seek to rubber-stamp him.

... he was not able to build the bridges with the new government that he had been able to build with the old one, and ... we needed somebody who could do that a little better. But it was more just a style rather than anything else. He was a very good servant of the organisation and did very well.24

Under these circumstances Mr Glynn could not anticipate full support at Board level for either a further extension or a new contract.

2.3.3 Allegation of a "Done Deal"

Third, Mr Glynn advised the Committee that

I did not seek re-election because it was already known way back in May [2001] that the government wanted to put in their own man. Everyone knew it was a done deal and the whole recruitment process was a sham.25

Mr Glynn reported to the Committee that this information "was quite common within the ULC at that time".26 He further stated that

I found myself in a situation where I really couldn't continue, where your own staff are coming to you and saying 'Well, Des, what are you going to do; your term is up on 30 June'.27

Mr Glynn advised the Committee that "at the end of April" 2001 he heard that Mr Jim Reeves, a long-standing friend of the Honourable S P Bracks, MP, Premier of Victoria, and Chief of Staff to the Lord Mayor of Brisbane, had been offered the position of Managing Director. Mr Glynn added that he had been given this information by Mr Bryce Moore, General Manager — Development, of the ULC. On the basis of this information, Mr Glynn met with Mr Petrovs on 17 May 2001 and told him...
Chapter 2

of his decision "not to seek reappointment, full stop and I said 'Look, if Mr Bracks wants to appoint his own person, well that's his decision, but I choose to go and do something else." 28

On the basis of this information, Mr Glynn on 17 and 18 May 2001 advised three directors and some 60 ULC personnel attending a staff conference in Ballarat that he would not be seeking reappointment to the position of Managing Director.

Mr Glynn further advised the Committee that he understood that Mr Reeves "was flown down from Brisbane" and met with Mr Petrovs. This, he thought, may have occurred in mid-June 2001.

Two aspects of Mr Glynn's explanation have been contested. Mr Moore (a short-listed candidate to replace Mr Glynn as Chief Executive Officer) advised the Committee that he "had no conversation with Mr Glynn in respect of there being a done deal prior to his announcing his decision to not seek reappointment — none" 29. Mr Moore continued —

I have not told Mr Glynn of any rumour that the Premier was seeking to appoint Mr Jim Reeves to the position. I had no knowledge of the name of Jim Reeves until some time very much later, certainly post Mr Glynn's announcement of his intention not to seek reappointment. 30

Mr Petrovs equally denies having met with Mr Reeves in June 2001. Mr Petrovs advised the Committee that he had neither "met him nor spoken to him at that time" 31.

While the Committee notes that Mr Glynn's recollection of these two episodes is challenged, it acknowledges the difficult position in which Mr
Glynn was placed by such a rumour and notes such hearsay as another reason that contributed to Mr Glynn's reluctance to seek reappointment.

### 2.3.4 Mr Glynn's Departure

The reasons for Mr Glynn's departure from the Corporation are only relevant to this Inquiry for two reasons. First, the position of Managing Director fell vacant from 1 July 2001.

Second, irrespective of the detailed accuracy of the recollections of ULC representatives Glynn, Petrovs and Moore, none dispute the fact that in April and May 2001 the name of Mr Reeves was being circulated as a prospective Managing Director of the URLC.

### 2.4 THE FIRST CANDIDATE

On 9 April 2001, the Hon John Thwaites, MP, Minister for Planning, met with Professor Lyndsay Neilson, Secretary of the Department of Infrastructure. They discussed the impending vacancy in the ULC and possible candidates for interview. Professor Neilson informed the committee that he suggested that Mr Reeves' name be considered as a potential candidate for interview. Professor Neilson had known Mr Reeves professionally since 1990, was familiar with a number of urban and regional development projects upon which he had worked, was aware of his initiatives with the City of Brisbane Urban Renewal Taskforce, and considered him to be a worthwhile candidate for interview.\(^{32}\)

#### 2.4.1 Connections

Minister Thwaites also knew Mr Reeves. On 6 and 7 November 2000, Minister Thwaites, accompanied by Mr Paul Jerome, Executive Director, Planning, Heritage and Building Division, of the Department of Infrastructure, and ministerial advisers Ms Maria Marshall and Ms Sandra
McKay, had visited Brisbane to examine urban projects being undertaken by the City of Brisbane. They were met at Brisbane Airport by Mr Reeves, in his capacity as Chief of Staff to the Lord Mayor of Brisbane, who accompanied and dined with the visitors throughout the two-day inspection. Mr Jerome gave the following description of the visit to the Committee:

We arrived at Brisbane airport on the afternoon of 6 November and were met by Jim Reeves, who was at the time the Lord Mayor’s chief of staff. We were driven from the airport to the Lord Mayor’s office, where we talked with Lord Mayor Soorley about the council’s ambitions and achievements in Brisbane. In the mid-afternoon we visited the council’s Urban Renewal Taskforce office in Fortitude Valley. Mr Trevor Reddcliff, the task force chairman, briefed Minister Thwaites on the task force activities. In that evening we had dinner with Lord Mayor Soorley, Jim Reeves and several of Lord Mayor Soorley’s advisers. The next morning, which in Melbourne was Melbourne Cup Day but not so in Brisbane, we drove to several urban renewal areas. To the best of my recollection, these included the Teneriffe, Southbank, Newstead and New Farm areas of inner Brisbane. We were then briefed on a council initiative known as the suburban centre improvement program, acronym SCIPS, and visited several SCIPS projects at Stones Corner, Mount Gravatt and Oxford Street. After watching the Melbourne Cup at one of the SCIPS projects, we rode a Citycat on the Brisbane River to view the pedestrian walks along the river banks, and subsequently I returned to Melbourne separately from Minister Thwaites and his party.  

In December 2001 it was reported that during the visit Mr Thwaites remarked that "he would like to get him [Reeves] into Victoria to use his skills" and that "I was really impressed with his understanding of policy and how you could change a policy to get better urban planning. So I've wanted to get this person".
Professor Neilson, however, denied that the trip to Brisbane had significance in the specific decision to put forward Mr Reeves for the position as Managing Director of the URLC.

Reeves didn’t turn up on my horizon out of the minister visiting Brisbane as an applicant for this particular position. That was back in November. We weren’t even sure there would be a CEO position being advertised. We weren’t even sure, until the legislation had passed, that there would be new directions. So, I mean, the fact that the minister happened to have met with Reeves in Brisbane was not a matter that I considered at all relevant.\textsuperscript{35}

Mr Reeves had "strong ALP credentials"\textsuperscript{36}, not least being his long-standing friendship with the Premier. A former mayor of the City of Ballarat, Mr Reeves had assisted Mr Bracks' then-unsuccessful campaigns to enter State Parliament, while Mr Bracks had served as campaign manager for Mr Reeves' elections to the Ballarat City Council. The families holidayed together early in 2001 and in May 2001 Mrs Bracks attended Mr Reeves' wedding in Ballarat. Mr Reeves had assisted in the transition to government following the election of the Bracks' Government in November 1999. His name had also been discussed as a candidate for the position of Head of Cabinet Office. The Secretary of the Department of Premier and Cabinet, Mr Moran, told the Committee:

That position was advertised. As is usual, a significant number of people applied, and I am told that James Reeves — Jim Reeves — was one of them. Nothing was done about that field of candidates because I think the advertising of the position probably coincided with a decision on the part of the former secretary of DPC to leave, thus my appointment.

Upon my arrival I was, inevitably, given lots of stuff, but I was given two things that are relevant. One, a report on the structure of the department prepared by Mr Blacher at the request of Bill Scales, which prior to my arrival had been considered by the Premier . . . Secondly, I was presented with a list of applicants for the head of cabinet office position, which as a result of
Mr Blacher’s review changed as to its scope of responsibilities. It certainly changed as to its scope of responsibilities because of what I did in the department.

At that stage Jim Reeves was not on the list, because as I found out later he had withdrawn his application.  

Minister Thwaites supported Professor Neilson's recommendation that Mr Reeves' name be added to any list of candidates being considered for the vacant position. Indeed, the Committee notes that in later public statements, Minister Thwaites claimed that it was he who had initiated the recommendation. The Committee further notes that this made Mr Reeves the first candidate proposed for the impending vacancy and that this was well before the formal recruitment process was commenced.

### 2.4.2 Brisbane Courier-Mail

In the Brisbane *Courier Mail* on 14 April 2001, just five days after the meeting between Minister Thwaites and Professor Neilson, journalist Matthew Franklin discussed the political ambitions of the Lord Mayor of Brisbane, Mr Jim Soorley. Possible replacements for Mr Soorley were considered:

...another possible contender is Jim Reeves — Soorley's right-hand man in City Hall and a former mayor of Ballarat. Reeves is widely respected in City Hall circles as an A-grade fix-it man, whose skills are a significant reason for Soorley's political and administrative success. Reeves refused to discuss his plans with The Courier-Mail or to comment on claims that he has ruled himself out of the race by accepting a new job with the Victorian Government of his close friend Steve Bracks.

The Committee notes the coincidence in timing between the Thwaites-Neilson meeting (9 April 2002) and the appearance of this paragraph (14 April 2002). This could suggest that at least some form of information
had been disseminated following the meeting and that it had, even if inadvertently, been communicated in some way to Brisbane.

2.4.3 "Preferred" Candidate

On 11 May 2001, Minister Thwaites met with Mr Reeves, who was visiting Victoria, and advised him that his name was being proposed by the Government for consideration by interview for the position of Managing Director of the URLC. The Committee observes that while the refusal of the Legislative Assembly to grant leave for Minister Thwaites to appear before the Committee prevents categorical conclusions, the Committee must assume that no other prospective candidates were advised by a Crown Minister that their names were being "put forward" for consideration for a senior appointment.

Four days later, Professor Neilson met with Board Chairman Petrovs and suggested that Mr Reeves' name be added to any list of potential candidates being prepared by the ULC for the vacant position. At that meeting Mr Petrovs reported that —

Certainly Government's candidate was mentioned, whether the word "preferred" was used or not, but I got the clear impression that it was somebody the government would like to be considered quite seriously.  

When asked by the Committee “Who was it that first advised you that the government had a candidate that it would wish to be considered?” Mr Petrovs responded

Mr PETROVS — I am pretty certain it was Professor Neilson. I thought initially it may have been the minister but it wasn’t, it was Professor Neilson.

The CHAIRMAN — What was the discussion? What were the sort of words he used at that time?
Mr PETROVS — Gosh, I can’t remember exactly. He stated that the government had a candidate they wanted to be considered for the position. I do not think Jim Reeves’s name was mentioned straight off; probably during the course of the conversation he identified Jim Reeves and then Professor Neilson gave me an outline of Jim Reeves’s background and capabilities.

The CHAIRMAN — Did you get the impression from him or did he actually tell you that it was his idea? Was it the minister’s idea or the Premier’s idea?

Mr PETROVS — To have Jim Reeves considered as a candidate?

The CHAIRMAN — Yes.

Mr PETROVS — No, he made no mention of that.

The CHAIRMAN — He indicated that it was the government?

Mr PETROVS — That is the way it was put to me.41

In an interview following the conclusion of the process, the Premier stated . . . I think the Planning Minister made it very clear, that we would have liked him in that job: he, he wanted him in that job. He recommended, ah, him for the position, but in recommending him for the position, he also stated there should be a competitive process.42

The Committee considers that use of the word "preferred" has contributed to the ambiguity surrounding the nature of the Thwaites-Neilson recommendation. The Minister and departmental Secretary are adamant that Mr Reeves was the Government-preferred candidate in the sense of his name being added to a list of prospective interviewees, and that once on the list he had to be considered solely on merit. Minister Thwaites later reported that "I subsequently spoke to him [Reeves] and said that I'd recommended his name and that he should apply, but I also said to him that he would have to be the best"43.

In a doorstop interview on 27 November 2001, Minister Thwaites gave the following responses to questions about how Mr Reeves came to be put forward as a candidate.
Q) When did you tell Steve Bracks that Jim Reeves was your candidate for the job?
A) Around the middle of the year, sometime in May this year.

** * * * *

Q) Did Jim Reeves apply for it or did the Govt go to Jim Reeves and ask whether he wants to apply for the job.
A) I believe there was an ad in the paper (interjection), but no I don’t know the basis on which he applied. But the position was that the CEO’s position expired in June, it was well known throughout the development industry that this position was going to be up for grabs.44

Professor Neilson stated that

I didn’t believe he was Minister Thwaites’s preferred candidate. I had nothing in front of me to say he was a preferred candidate of any kind. He was a name to be put forward and considered through an interview process. I do not know where the notion that he was the preferred candidate came from.45

Neilson went on to state that “From my point of view Reeves was a preferred candidate for interview" and

Reeves' is a name being added to the list by me, yes, I am the head of the department, and if you want to take that as an indication his is the government's candidate, fine.46

ULC Board members acknowledged that the Government had every right to identify a candidate or candidates for consideration for the impending vacant position47. The Committee concurs with this view. Difficulties arise, however, from use of the word "preferred". The Committee considers that the inevitable, even unavoidable, prominence given to a candidate who is referred for consideration with the full weight of the Minister and Secretary of the Department of Infrastructure behind him, suggests that the term "preferred" can also be treated as a synonym for "recommended". In that sense, and irrespective of the more restricted
meaning placed on the term by Professor Neilson, the Committee is of the view that the very suggestion of Mr Reeves' name as the Government's "preferred candidate" exerted pressure on the Board.

2.4.4 Hearsay

In April and May 2001, rumours were rife within the ULC that Mr Reeves would be appointed to the vacant position. In some cases the source of the offer was attributed to the Premier, in others to Mr Thwaites:

The CHAIRMAN — We had evidence yesterday regarding what we were given to believe was the message going around the industry that the Premier had offered the job at URLC to Mr Reeves. Did you hear those rumours going around?

Mr PETROVS — Yes.

The CHAIRMAN — That Mr Bracks had offered the job to Mr Reeves?

Mr PETROVS — Rumours of a kind, of that kind, yes, that either he had a preferred — he was a preferred — candidate, using the word ‘preferred’ in this instance, or indeed had been offered the job. And that was spoken of quite openly within the URLC, outside the URLC. It was a topic of conversation.

The CHAIRMAN — So when did you first hear that rumour?

Mr PETROVS — Before May — probably March, April.

The CHAIRMAN — March, April?

Witness nods.

The CHAIRMAN — Would you believe that all of the senior people at URLC were aware of that rumour?

Mr PETROVS — Well I had people coming to me from within the URLC saying that they had heard those rumours.48

Nor were the rumours confined to the offices of the ULC. Board Chairman Petrovs reported —
There had been discussions about rumours rife throughout the industry, throughout the Corporation, throughout the Government, about the Government having a preferred candidate...\(^49\)

On 22 May 2001, for example, Mr Moore met with Brisbane-based Mr Brent Halley, Chief Executive Officer of BMD Constructions. Mr Moore:

Mr \textbf{MOORE} — On 22 May I was having some discussions with some construction contractors and developers. They asked me, ‘What is new at the Urban and Regional Land Corporation?’ ‘Well, Des Glynn is not seeking reappointment to his position’. One of those people then said to me — he was from Brisbane — ‘I wonder if that has got something to do with a senior person from Brisbane being reported to come down to Melbourne to a government position’. That person made no reference to the name of the person, nor did he name the Urban and Regional Land Corporation in that discussion. In fact, on querying the name of the person concerned he said to me, ‘It is not really appropriate for me to say, but what I will do, I will put this person’s name in an envelope and give it to so-and-so, who is based down here in Melbourne. At the conclusion of the process he can tell you who it is’. That was the first inkling of anything I had heard, and I did not really, as I said, connect it with the position of managing director of the Urban and Regional Land Corporation.

Mr \textbf{HALLAM} — So what was the process that he was referring to, would you say? You said ‘at the end of the process’. What was that process?

Mr \textbf{MOORE} — When a person was appointed.

Mr \textbf{HALLAM} — To the position of chief executive — —

Mr \textbf{MOORE} — Yes.

Mr \textbf{HALLAM} — Of the Urban and Regional Land Corporation?

Mr \textbf{MOORE} — Yes.

* * * *

Mr \textbf{HALLAM} — Have you seen his suggestion? Was it accurate?

Mr \textbf{MOORE} — The person who was given the envelope has since said to me that it was accurate, but I have not seen the piece of paper.

Mr \textbf{HALLAM} — Thank you. But you have been told that it was accurate?
Mr MOORE — Yes.

Mr HALLAM — So there were some in the know on 22 May as to who the government’s preferred candidate was?

Mr MOORE — Well I don’t know that, but I suppose by implication, yes.

Mr HALLAM — Working backwards.

Mr MOORE — Yes.50

The Committee notes the evidence of Board members Petrovs and Davis, and URLC officer Moore, that they were unaware of the Courier-Mail article. The Committee is not unmindful of the possibility that the source of the “name in the envelope” was the Brisbane Courier-Mail article, nor of the fact that office discussion within the ULC was likewise a consequence of the published report.

What is incontrovertible, however, is that it is only after Minister Thwaites and Professor Neilson met that the name of Mr Reeves enters the public domain as a potential candidate for the position of Chief Executive Officer and, eventually, Managing Director. Whatever the source, and whether intended or inadvertent, the fact remains that from April 2001 Mr Reeves became known as the "Government-preferred" candidate for a vacancy that was certainly known to be impending but for which no formal recruitment process had yet begun.
FINDING 1

The Committee finds that in April 2001, prior to any formal process of candidate identification or assessment, the name of Mr Jim Reeves was identified by the Government as a preferred candidate for the position of Managing Director of the URLC.
CHAPTER THREE
FIRST INTERVIEWS

3.1 INTRODUCTION

Further to Term of Reference (a), the Committee turns to the processes involved in the identification and short-listing of candidates for the position of Managing Director of the URLC, the conduct of the first round of interviews, and the selection of a URLC-preferred candidate for appointment.

3.2 SELECTION COMMITTEES

As noted in 2.4.3, in early May 2001, Professor Neilson met with Mr Petrovs to discuss the appointment of the new Managing Director. Three outcomes relevant to this Inquiry resulted from this meeting.

First and as previously noted, Professor Neilson recommended that Mr Reeves' name be added to any list of prospective candidates. Mr Petrovs agreed. His responsibility, as he explained to the Committee, was to assist in the identification of the best list of candidates for interview.

Second, Mr Petrovs advised the Committee that Professor Neilson suggested that he [Neilson] “be in attendance at the interviews. I saw no reason why he shouldn’t be there. I conferred with my board and they in
Chapter 3

turn thought it was probably a good idea”52. Mr Petrovs further advised the Committee that the Board “saw some benefit in Professor Neilson being there because if necessary he could have articulated the policies, particularly of urban renewal, that the Government wanted implemented”53.

Third, according to Mr Petrovs, at this meeting, as well as other related meetings held around the same time with both Minister Thwaites and Professor Neilson54, the URLC’s potential selection process was discussed and then approved by the Minister.

Mr PETROVS — My recollection is that I met with the minister first. I advised Lyndsay Neilson that I intended to meet with the minister because apart from a brief meeting once the new government came into play I had only met him on the one occasion just as an introductory matter and then later met with the minister to advise him that we now had to seek a new managing director/CEO for the URLC. I met with the minister, just the two of us, and we discussed the potential process or the process that I thought we should adopt, and it was essentially to go to the market in some limited form.

The CHAIRMAN — After that, you discussed the process with Professor Neilson?

Mr PETROVS — I then had a meeting soon after with Professor Neilson.

The CHAIRMAN — And discussed the process?

Mr PETROVS — And outlined the process that I had discussed with the minister previously.

The CHAIRMAN — Did either the minister or Professor Neilson give you cause to believe that they had any problem with the process that you were going to follow?

Mr PETROVS — Not at all.

The CHAIRMAN — They were happy with it?

Mr PETROVS — Yes.

The CHAIRMAN — With how you described it to them?

Mr PETROVS — Yes.
The CHAIRMAN — Did you discuss the job specification with either of them or both of them?

Mr PETROVS — It was agreed that we would prepare — that is, the board and management would prepare — a job description and that would be forwarded to Professor Neilson for comment.

The CHAIRMAN — Was that done?

Mr PETROVS — Yes.

The CHAIRMAN — And comment was made?

Mr PETROVS — There were some changes — I cannot recall now; it is nearly a year ago.

The CHAIRMAN — Generally, it was ticked off and there may have been some minor changes?

Mr PETROVS — Yes, and we would not have proceeded without approval.55

The process the ULC planned to undertake was understood by the ULC to have met the Government’s requirements. Despite the criticism that was levelled sometime later, the ULC quite understandably believed that it had been given approval for its proposed process. This understanding was based on the premise that agreement had been reached between the Government and the ULC as to the membership of the Interview Panel and the new responsibilities of the URLC. The Committee has not received any material that indicates at this stage anyone conveyed that they were unhappy with the ULC’s chosen selection methods or that the plans lacked comprehension about the amendments to the ULC charter. Moreover, Mr Petrovs told the Committee that Professor Neilson, who was later highly critical of the selection criteria used by the ULC, had formally approved the position specification — the document from which the selection criteria were drawn.

The CHAIRMAN — Did those changes that Professor Neilson made to the specification take into account the new directions for the board that the government was so keen on?

Mr PETROVS — Yes.
The CHAIRMAN — So the specification under which the first interviews were held had a specification of duties which were approved by and discussed with Professor Neilson at an initial meeting, then sent to him, slightly amended, and ticked off and approved?

Mr PETROVS — Correct.

The CHAIRMAN — The criteria under which the first interviews were held — and we have a matrix from Heidrick and Struggles which showed seven or eight criteria — that was prepared by Heidrick and Struggles, based on the job specification, was it?

Mr PETROVS — That’s correct.\(^56\)

While Professor Neilson later gave evidence that he saw the URLC’s selection process as inadequate, based primarily on his belief that the URLC did not fully consider or comprehend the scope of the legislative amendments to the role of the Corporation, the Board of the URLC asserts that the process it undertook had been approved by Professor Neilson from the outset.

### 3.2.1 Selection Sub-Committee

Early in May 2001 the Board appointed a Selection Sub-Committee responsible for overseeing the selection process and for identifying for Board consideration a candidate suitable for appointment as Managing Director of the URLC. The Selection Sub-Committee comprised Board Deputy Chair Ms Angie Dickschen and Board Member Mr Frank Davis. Ms Dickschen was appointed chair of the Selection Sub-Committee.

### 3.2.2 Interview Panel

Professor Neilson joined with Selection Sub-Committee members Dickschen and Davis to form an Interview Panel that would assess candidates for the position of Chief Executive Officer.
3.3 HEIDRICK & STRUGGLES

3.3.1 Engagement
On 10 May 2001 the ULC provided a copy to Ms Dickschen of a Position and Person Specification for the Role of Managing Director of the URLC\textsuperscript{57}; the Committee notes that this document, including a Role Description and Person Specification, and using the term “Managing Director”, had been approved by Professor Neilson. On 11 May 2001, on the recommendation of Board Chairman Petrovs\textsuperscript{58}, Ms Dickschen wrote to Heidrick and Struggles, an executive search agency. She wished to engage the agency “to assist in the search to fill the position of Managing Director of the Corporation”\textsuperscript{59}. Ms Dickschen included in her letter a list of eight names identified by the ULC Board as potential candidates for interview; this list included the names of Mr Reeves and Mr Moore. These names were to be added to any list of candidates that Heidrick and Struggles might independently compile.

3.3.2 Chief Executive Officer or Managing Director?
The Committee wishes to observe that from this point, some confusion about the nature of the vacant position arises. Schedule 1 of the Act states:

\textit{3. Appointment of directors}

(1) The chairperson, deputy chairperson and other directors of URLC shall be appointed by the Governor in Council.

* * * * *

\textit{6. Chief executive officer and other staff}

(1) The board of URLC, after consultation with the Minister and the Treasurer, may appoint a person as the chief executive officer of URLC.

(2) The chief executive officer of URLC holds office on a full-time basis and on such terms and conditions as are determined by the board, after consultation with the Minister and the Treasurer, and specified in the instrument of appointment.
(3) The board, after consultation with the Minister and the Treasurer, may remove the chief executive officer of URLC from office.

(4) The chief executive officer of URLC may be a director of URLC but may not be the chairperson or deputy chairperson.

As stated in 2.2.1, standard practice is to fill the vacancy of CEO, after which the incumbent may be appointed to the Board of Directors. Mr Glynn (as stated in 2.3) served as CEO from 1 July 1997 until he was appointed Managing Director on 5 February 1998. In seeking to fill the vacancy following Mr Glynn’s departure on 30 June 2001, however, the Board from the outset of the recruitment process used the term “Managing Director”. On 17 May 2001, in confirming the search consultants’ appointment to undertake the brief, Ms Dickschen signed off on the statement “I confirm my instructions to Heidrick and Struggles to proceed with the assignment for the Managing Director on the basis and conditions set out in their letter dated 15 May 2001”.

Board member Lennie told the Committee that

It was understood from the start that we were appointing a managing director — that is, that the person who was going to be selected would, in fact, subsequently be appointed or recommended to the Governor in Council for appointment as a director. There are no criteria laid down in the Act for selection of a director, and the discretion in relation to that, I would imagine, is very wide.

Professor Neilson was later highly critical of the Board’s “presumption” that the new CEO would be appointed to the Board. This will be discussed in more detail at 4.2.3. The Committee raises these issues for two reasons: one is to clarify the frequent use of the term “Managing Director” in relation to the vacant position, when the term “CEO” may have been more appropriate; and second, to illustrate that from the outset, there was at least implicit agreement on the nature of the appointment.
3.3.3 Candidate Screening

On 15 May 2001 Heidrick and Struggles formally accepted the brief\textsuperscript{62} with carriage of the task being assumed by search consultants Ms Debbie Cozart, a Principal with the company, and Senior Associate, Mr Rohan Carr. The Committee was advised that the Heidrick and Struggles search procedure — identifying, excluding and short-listing potential interviewees — was informed by knowledge of the impending changes in policy direction that would come into effect from 1 July 2001\textsuperscript{63}; this information was supplied by the Board. On the same day that Heidrick and Struggles formally accepted the job, a Preliminary Research Report had been compiled which identified 24 individuals for consideration, including the eight provided by the ULC.

On 1 June 2001 a Progress Report was provided to the Selection Sub-Committee which listed 34 names that were being considered. Fifteen individuals were deemed either unavailable or inappropriate, 15 were judged "not suitable by the client", and four were assessed as appropriate for interview. Among the four were included the names of Mr Reeves and Mr Moore.

A Revised Progress Report was prepared and also dated 1 June 2001. In this document 11 individuals were deemed unavailable/inappropriate, 15 were rejected by the client, and five were assessed as appropriate for consideration again including Mr Reeves and Mr Moore.

Further screening interviews, including telephone interviews, were concluded by 7 June 2001. Heidrick and Struggles recommended the addition of one further candidate, Mr Mark Henesey-Smith, to the list of prospective interviewees for a total of six potential interviewees.
3.3.4 Interview Preparation
Heidrick and Struggles prepared documentation to support the Interview Panel which on 8 June 2001 was sent to Ms Dickschen and Mr Davis, and on 12 June 2001 to Professor Neilson. Interviews were arranged for 13 and 15 June 2001. The Selection Sub-Committee deemed that five of the six candidates were to be interviewed – four on 13 June and one on 15 June 2001. The Selection Sub Committee considered that it was not necessary to interview Mr Moore, who was well known to Ms Dickschen and Mr Davis. The Committee emphasises that Heidrick and Struggles was not responsible for selecting the best candidate. Its task was to undertake a search process that would ultimately lead to a short-list of interviewees. Mr Carr informed the Committee that "We advise the client; the client makes the ultimate decision". As far as Heidrick and Struggles was concerned, they had conducted a "successful search". Board members agreed and the Committee was repeatedly told that the short-list comprised six high-quality candidates.

3.4 INTERVIEWS

3.4.1 Interview Process
Interviews with the five candidates took place on 13 and 15 June 2001. Ms Cozart of Heidrick and Struggles was overseas with the result that Mr Carr attended, but did not participate in, the interviews. As Professor Neilson did not know Mr Moore, he asked to interview him. This occurred on 19 June 2001. Professor Neilson and Mr Davis conducted the interview; Ms Dickschen and Mr Carr did not attend.
The Committee emphasises that up to this point, all participants — the Board, the Selection Sub-Committee, Professor Neilson, and Heidrick and Struggles — indicated that they were satisfied with the process. The search process undertaken by Heidrick and Struggles, the documentation supplied to assist the Interview Panel, and the candidate interviews were all prepared and conducted professionally. Mr Carr of Heidrick and Struggles advised the Committee that

There is no doubt that at no time did Professor Neilson speak to me or anybody in Heidrick and Struggles' office to convey anything else other than his complete satisfaction of how the process was being undertaken.66

Indeed, Professor Neilson advised the Committee "There was nothing flawed about the interview process as such"67.

3.4.2 Informal Discussions

The Committee was advised that informal discussions between the Panel members after the various interviews indicated that of the six candidates interviewed, Mr Mark Henesy-Smith was "strongest". Mr Carr advised the Committee that

The view of the group of individuals, including Professor Neilson, was that certainly Mr Henesey-Smith was the strongest of all the candidates.68

Mr Davis said

It was my own impression from discussions after the interviews that he [Professor Neilson] knew what the board was going to recommend — he did know that — and he tacitly supported it69.
At a meeting with Minister Thwaites held on 3 December 2001, Mr Davis said "Our impression was that Lyndsay didn't disagree with what we were putting up".

These informal observations led the Selection Sub-Committee to conclude that there was unanimity among the Interview Panel members, confirmed by Mr Carr, that Mr Henesey-Smith was the strongest candidate.

### 3.4.3 Candidate Summary Notes

On 20 June 2001 in response to a request from Ms Dickschen, Heidrick and Struggles prepared Candidate Summary Notes. It is assumed that these notes were designed to assist the Selection Sub-Committee in preparing a paper for Board consideration. The Candidate Summary Notes prepared by Ms Cozart did not in themselves constitute the Board paper. Three aspects of these notes are of interest to the Committee.

First, the Candidate Summary Notes were written not by Mr Carr, who attended five of the six interviews, but by Ms Cozart, who was overseas during the interview period. The Summary Notes appear to have been based on a set of hand-written notes presumed to have been supplied either by Ms Dickschen or Mr Carr; it is also assumed that Mr Carr provided verbal input into the Summary Notes.

Second, the Candidate Summary Notes make reference only to four of the six candidates who were interviewed. Mr Henesey-Smith and Mr Reeves were two of the four included.

Finally, the Candidate Summary Notes document is discursive rather than analytical. A summary paragraph is written on each of the four candidates considered. There is no attempt to measure interview responses against key selection criteria or position descriptions, no attempt to detail
strengths and weaknesses, and no attempt to distinguish between interview responses and broader conclusions formed during the search process.

Given the professional appraisals of candidates compiled by Heidrick and Struggles in the course of its search procedure, the characteristics described above confirm the Committee's view that the Candidate Summary Notes were never designed to be anything other than notes to assist the Selection Sub-Committee. In fact, Heidrick and Struggles had provided to the selection panel research documentation on each of the candidates which listed strengths and weaknesses to specifications. So, far from being definitive, the Candidate Summary Notes were available to be used in whatever way the Selection Committee saw fit.

3.4.4 ULC Board Paper

Using Ms Cozart's Candidate Summary Notes, Selection Sub-Committee Chair Dickschen drafted a paper for submission to, and consideration by, the Board. An initial draft of this document was provided to Mr Davis who, having made minimal corrections, returned the draft to Ms Dickschen.

In essence, the Board Paper identified three candidates by name — one of whom was Mr Henesey-Smith — as having the attributes necessary to serve as Managing Director of the URLC. As a result of narrowing "the choice down to three candidates", none of the remaining candidates were named.

In the case of the three named candidates, the notes either exactly or virtually duplicated the comments found in the Cozart Candidate Summary Notes. In the case of candidate Reeves, the heading "Jim Reeves" was replaced by the term "Other Candidate". This entry, while based on the Cozart Summary Notes, was reworked to emphasise Mr
Reeves' inexperience in certain facets of urban management. Concerns about being regarded as a "political appointment" were also raised. The remaining two candidates were not mentioned.

This report was used by the Selection Sub-Committee — Dickschen and Davis — to support its recommendation of Mr Mark Henesey-Smith as its preferred candidate for consideration by the Board.

The Committee notes that prior to the presentation of the Board Paper on 27 June 2001, extensive discussion had occurred between Board members on the relative merits of all the interviewed candidates. Mr Petrovs, for example, indicated that the Board had "already been privy to details on strengths and weaknesses of every candidate, and it was basically a summary that went to the Board that day". Mr Petrovs further indicated that both formal and informal discussions on the various candidates had taken place. Ms Dickschen considered that it was the Selection Sub-Committee's duty to assess significant amounts of material for Board consideration. Board members indicated to the Committee that extensive discussion had occurred between Board members on the relative merits of all the interviewed candidates. Board members thus regarded the Board Paper as final summary rather than a first and detailed exposition — and this was understood to be the case by all Board members.

The Committee further notes that the Board Paper was not the only source of information about candidates available to the Board members during the Board meeting. Mr Reilly, for example, “asked for some CVs to be presented which were not with the original papers, they were presented very quickly.”

One aspect of the Board Paper, however, has drawn the attention of the Committee. Although not in the top three preferred candidates, Ms
Dickschen felt compelled to make specific reference to Mr Reeves as the "Other Candidate". She advised the Committee that this was necessary "because the name had been put forward as a potential political appointment. I thought there would be questions as to why we had not appointed him . . . "77. Mr Davis concurred: "He was a different sort of candidate"78. The Committee, while acknowledging the discourtesy to Mr Reeves implied both in being singled out and in the use of the heading "Other Candidate", is equally of the view that such a reference reveals something of the pressure under which ULC Board members felt themselves placed by Mr Reeves' candidature. Although not in the Selection Sub-Committee’s three top candidates, it felt compelled to anticipate criticism of its failure to recommend Mr Reeves.

The Committee equally acknowledges that such treatment may be perceived as not dealing with Mr Reeves' application seriously, or to regard Mr Reeves as a "hostile" candidate unwanted by the Selection Sub-Committee and, by extension, the Board. Professor Neilson certainly felt that the Board Paper betrayed a level of prejudice against Reeves:

The evidence of bias against Reeves appears basically in the report prepared for the board by Angie Dickschen and Frank Davis, this is clearly biased.79

Professor Neilson went on to state that

Firstly, I think that to make direct reference to a candidate in political terms as that paper did is very inconsistent with public service rules and practices. Those practices and rules apply to an agency of government such as the URLC. It is clearly inappropriate and discriminatory to use a person’s political affiliation or alleged political affiliation or standing as a reason for excluding them from an appointment. Secondly, I think the form of that was extremely unprofessional in that we have a number of candidates named and another candidate simply titled ‘other candidate’. I have never seen anything so unprofessional in my life — it is just not something that you would do. The third part of it is it did not fully
report the Cozart notes on Reeves with or without my amendments; it reflected only the negative comments on Reeves [this latter point is considered below].

Whatever the explanation, the Committee considers that this difficulty could readily have been avoided had Mr Reeves' name been proposed by the ULC, or by Heidrick and Struggles, or even by the Departmental Secretary independently of the Minister, or had the Board Paper, having identified the three best candidates, not included a paragraph entitled "Other Candidate".

The Committee observes that during the selection and appointment processes, no criticism was levelled at the Board Paper. Only after the commencement of this Inquiry was the Paper subject to criticism. This turned on the absence of any comprehensive analysis of the short-listed candidates, and on the lack of any statement assessing how well the candidates met the roles, responsibilities and expectations of the position statement. Further it has been suggested that the Board Paper was biased against Mr Reeves, in that it highlighted negative characteristics, and in favour of Mr Henesey-Smith, in that it emphasised positive characteristics.

The Committee notes that this well-after-the-event, "benefit of hindsight" discussion of the so-called "flawed" or "erroneous" URLC Board selection process has centred on the perceived flaws in the Selection Subcommittee's Board Paper rather than on the suitability of Mr Henesey-Smith for the position of Managing Director. The Committee is of the view that had a more complete and therefore defensible analysis of strengths and weaknesses been presented to the Board, much of this later controversy might have been dissipated if not eliminated. In sum, the very nature of the Board Paper compromised the recommendation of Mr
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Henesey-Smith in part due to criticism not of his abilities, but of the Report's presentation, structure and technical facility.

**FINDING 2**

The Committee finds that the format and content of the Selection Sub-Committee Board Paper left the Board vulnerable to criticism of its selection process and compromised the recommendation of the Sub-Committee to the extent that those who were opposed to that recommendation were later able to mount an argument in respect of process as distinct from outcome.

### 3.5 INTERVIEW PANEL DIFFERENCES

Neither the Candidate Summary Notes nor the Board Paper were sent to Professor Neilson for comment. This in turn indicates a difference of understanding between the Selection Sub-Committee and Professor Neilson in respect of the latter’s role.
3.5.1 Board understanding of Professor Neilson’s role

The Selection Sub-Committee was distinctly of the view that Professor Neilson, while attending the candidate interviews, was not involved in the actual choice of candidate. This, they maintained, was the responsibility of the Selection Sub-Committee. Board Member Mr Owen Lennie was of the view that Professor Neilson was an "observer". Mr Davis informed the Committee that Professor Neilson "was not a member of the selection committee; he was an observer. He was invited to be there, but he was not a member". Board members advised the Committee that Professor Neilson’s presence at the interviews was to assist the Board in presenting a preferred candidate for ministerial approval. His presence was also regarded as constituting the first step of the mandated consultation process. It was, the Committee was told, a means of ensuring that Professor Neilson was aware of the selection process and of the choice made. Mr Lennie stated

The board was quite clear that Mr Neilson's presence there was so that he could competently advise the Minister later on in the process about the process that was going on. So we were quite clear about why Professor Neilson was there and what his role was.

Mr Davis advised the Committee that —

He was invited so he would be aware of the candidates personally and that when the recommendation came forward he would be that much more fully informed.

Otherwise, continued Mr Davis, Professor Neilson had "no status". Mr Carr of Heidrick and Struggles advised the Committee that Professor Neilson
wasn't part of the two-person board selection committee; he was a third person, whom our client asked us, or instructed, who would be present at the interviews.\(^{86}\)

### 3.5.2 Professor Neilson’s understanding of his role

Professor Neilson for his part maintained that he was always a full member, and not merely an observer, of the Interview Panel. Professor Neilson fully acknowledged that it was the responsibility of the Selection Sub-Committee, not the Interview Panel, to make a recommendation to the Board. From his perspective he anticipated that the Interview Panel would meet and discuss the candidates, make a decision, and agree on an Interview Report. Professor Neilson:

> The process became flawed when we had concluded the interviews and there was no further discussion between the interview panel of the candidates. We had interviewed them, but we did not meet to sit down and discuss them.\(^{87}\)

Professor Neilson argues that later interpretations by Board members of his role were a "contrivance\(^{88}\) and an "artifice, if you like, to explain why I had been left out of the final round of decision-making processes that followed the interviews\(^{89}\). It was a process characterised, said Professor Neilson, by an "absence of collegiality\(^{90}\).

The Committee considers that this difference of opinion concerning the role of Professor Neilson — observer versus participant status — signifies a failure in communication between the Board and the Secretary of the Department of Infrastructure, and, more particularly, between Selection Sub-Committee members Dickschen and Davis and Interview Panel member Neilson. An agreed understanding of the respective roles and responsibilities of the Selection Sub-Committee and the Interview Panel may well have alleviated difficulties associated with the selection of the URLC Chief Executive Officer.
FINDING 3

The Committee finds that the failure to specify Professor Neilson’s role and responsibilities in his attendance at candidate interviews, contributed to the confusion surrounding the appointment of the URLC Managing Director.

3.6 BOARD CONSIDERATION

On 27 June 2001 the URLC Board met. Two aspects of this meeting are relevant to this Inquiry.

3.6.1 Changes in URLC Strategic Policy

First, during the course of the interviews, Professor Neilson formed the opinion that Selection Sub-Committee members, and by extension the Board, had not fully grasped the purpose of the amendments made to the new enabling Act. Indeed, during the interviews Professor Neilson discussed the impending changes with each of the candidates in order to provide appropriate context to the candidates. He was particularly concerned that the changes to the legislation were being considered by Board members as "a change of name only".

Based on his disquiet, Professor Neilson offered to give a Powerpoint presentation to the Board in which he outlined the impending changes. This presentation took place at the Board meeting on 27 June 2001. It lasted for approximately 20 minutes. Board members did not ask any questions, which surprised Professor Neilson.
The CHAIRMAN — On 27 June you attended a board meeting — —

Prof. NEILSON — Yes.

The CHAIRMAN — Of the URLC, at which you provided a summary to the board of new directions, a Powerpoint presentation, and had a big discussion with the board on that occasion regarding the new directions of the corporation?

Prof. NEILSON — I would have called it not so much a summary as a bit of an exposition of the kind that I was giving you before — an explanation of what could be done within the framework of the legislation.

The CHAIRMAN — How long did that go for?

Prof. NEILSON — I don’t recall — maybe 20 minutes or so. And we had not a terribly long or in-depth discussion with the board. It was fairly brief, actually. It surprised me a bit.91

This response may well have been because Board members were, as advised by Chairman Petrovs

Quite clear about the changes to the legislation. In our opinion the changes to the legislation were not that significant. They were important, but they were issues we were already addressing in some form or another92.

These assertions identify a further difference between the Board and Professor Neilson. The Committee heard evidence that the Board was alert to proposed changes of urban development emphasis before the 1999 general election and that once the Bracks Government was sworn in, it had already revised its Corporate Plan to reflect the anticipated change of policy direction. Subsequent Annual Reports, the Corporate Plan of the Board, and the range of projects initiated by the Board appear to indicate that the ULC was changing its emphasis in line with the policy direction indicated in Government policy statements.
In the “Chairman’s Report” of the ULC's *Annual Report for 2000*, Mr Petrovs wrote

At the present time we are again moving to reform our activities and have structured our Business Development Group to enable a strengthening of our focus on affordable housing, urban renewal and regional development activities.\(^93\)

The URLC *Corporate Plan* for 2001/02 — 2003/04 (a copy of which must be given to the Minister and the Treasurer by 31 May in each year\(^94\)) clearly indicates that the Corporation had included the new charter in its planning. In the foreword to the Plan Mr Petrovs states

The Plan presents a refocusing of the activities of the Corporation consistent with Government policy and its new legislative framework proclaimed on 1 July 2001. It responds to the four pillars of Governing Victoria, the key policies for infrastructure and its objective are aligned with the Department of Infrastructure contribution to government outcomes, particularly for liveable communities, regional development, travel, mobility and access and infrastructure delivery and management.\(^95\)

The Plan goes on to include the following:

This plan presents strategies to be pursued by the URLC. The functions of the Urban Land Corporation were to develop land for residential and related purposes and to provide consultancy services in respect of development of land. The URLC has a broader charter reflecting the Bracks government rationale for involvement in the urban land market. The expanded charter includes promotion of best practice in urban and community design and development having regard to transport links and services, innovations in sustainable development and contributions to improvements in housing affordability.\(^96\)

The *Corporate Plan’s* “Overview” section also includes statements about regional activities which the Corporation had already begun undertaking:
The Corporation has expanded its activities into the regional areas of the State with an emphasis on redevelopment, renewal, resolution of problems with difficult sites and project facilitation. The Corporation does not see itself as a substitute for activity by the private sector in the regions and will seek project roles that facilitate further activity by local industry participants that will support local economies.\textsuperscript{97}

The Committee considers that the URLC was already engaging in the type of projects that Professor Neilson argues they did not understand they should be moving into. The Committee notes that as the Minister for Planning and the Treasurer are required to sign off on the Corporate Plan, any dissatisfaction with the URLC’s perspective and planning in relation to its broader charter should have been highlighted at that stage. As Mr Lennie told the Committee:

If there were policy differences that would have been evident, surely, in the corporate planning process and there would have been substantial disagreement between Treasury, Department of Infrastructure and the officers of the URLC in preparing the plan. That was not the case.\textsuperscript{98}

As noted by the Chairman of the Committee, the corporate planning process under the Act has “quite a deal of direction, I suppose, (a) to consult, and (b) specifically provides guidelines as to what should happen\textsuperscript{99}”. The Committee notes that, given the detailed process required by the Act for the consideration of the corporate plan, any areas of the URLC charter that were not understood by the Board should have become apparent. No evidence has been submitted to the Committee that indicates such a misunderstanding or lack of knowledge was evident to the Government at this time.
Mr Davis told the Committee that any suggestion that the Board was not aware of the new Government’s policies for the Corporation was incorrect:

**Mr HALLAM** — We have been told, Mr Davis, that the URLC had undertaken new responsibilities and new directions and that that was a reasonable explanation as to why the board got the selection process wrong. Is that a fair summation? Is that a fair assessment?

**Mr DAVIS** — No, I do not believe it is. Clearly the URLC was taking a different direction after the election of the government and, in fact, well before it was installed we had revisited our strategic plan, in the light of their policy statements leading up to the election, and rewritten it and had started to focus our attention on matters that were of concern to the new government.

**Mr THEOPHANOUS** — You thought we would win, did you?

**Mr DAVIS** — We’re prepared for anybody. No, I did not mean that; I mean after the election and before the installation of the government, most of that next week or before we had seen anybody, anyway. We obviously were not that high on people’s priorities in their new role. So we have started to move in that direction. I believe our strategic plan amply addresses the government’s concerns in all the areas they raise — urban renewal, environmental concerns, regional development and all of those issues we had already moved to address — and our corporate plan was submitted and adopted without any change except for a few, in my view, very minor editorial changes, and that is a question of fact. Those before and after documents are there, and any suggestion that we were not already addressing those issues is wrong.100

Mr Davis’ comments reinforce the view expressed by all the URLC Board members: that not only was the URLC aware of and indeed enforcing the Government’s new policy direction (a position that is clearly supported by all the Corporation’s planning and reporting documentation), but that in fact, many of these policies had already been anticipated and introduced prior to the change in the legislation.

Mr Davis later advised Minister Thwaites that
The reason Angie Dickschen and I didn't tell candidates about government's new role for the URLC was because Lyndsay was doing it so much better.  

It is not the Committee's intention to debate the merits of the positions adopted by the Board or Professor Neilson on this matter. What is of relevance to the Committee's deliberations is that the Board considered that it had anticipated the changes included in the amending legislation, while Professor Neilson maintained and insisted that it had not. The Board, through the Selection Sub-Committee, considered that it had provided information relevant to the policy changes to Heidrick and Struggles; although he had approved the contents of the job specification used for the recruitment, Professor Neilson maintained this change was not adequately reflected in the interview process. The Board believed that many of the changes focussed on "urban renewal", a "passion" of Professor Neilson; Professor Neilson saw the changes focussing on urban renewal, regional development and housing affordability and environmental best-practice community design both in metropolitan and non-metropolitan locations. In this difference of perspective lay another factor that contributed to the problems associated with the matter of the Managing Director's appointment. Suffice it here to note the difference of understanding that prompted Professor Neilson's presentation to the Board of 27 June 2001.
Chapter 3

**FINDING 4**

Contrary to the views of Professor Neilson, the Committee finds that the URLC Board had adopted the change in policy and emphasis sought by the Government.

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**FINDING 5**

The Committee finds it unreasonable for Professor Neilson to criticise the URLC’s use of the term "Managing Director", as he did in his evidence to this Inquiry, when he not only saw but formally approved documents from the outset which used this terminology.

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**3.6.2 Consideration of the Board Paper**

Second, following the presentation to the Board, Professor Neilson withdrew from the meeting. The rift — real or otherwise — between Professor Neilson and the Selection Sub-Committee is now made apparent. At no stage during his presentation to the Board was Professor Neilson advised that the interview process in which he had participated was to be the subject of Board discussion later at the same Board meeting. He told the Committee

At the time of the meeting I was aware that the corporation’s board meeting was also to be held on 27 June 2001. However, I was not aware that Frank Davis and Angie Dickschen had prepared a paper for the corporation’s board meeting on 27 June 2001 which recommended that the board offer the position of managing director, as distinct from CEO, to candidate A. The existence of
this paper was not revealed to me and to the ministers until receipt of Mr Petrovs’s letter of 17 August 2001.\textsuperscript{102}

Professor Neilson, when he later discovered the decision had occurred at this meeting reported himself to be "astonished".

The Board considered the Selection Sub-Committee paper. Discussion at this meeting has been variously described as "full and frank", "heated", and "vigorous". Mr Reilly told the Committee that

There was fairly heated debate at the board. There was presentation of documentation from the subcommittee and from the headhunters. There were various views as to who could possibly be appointed to the position, and I think at this point of time it is well worth recording that there had been heated debate in earlier discussions as to what we should be doing as far as an appointment was concerned.\textsuperscript{103}

The Board accepted the Selection Sub-Committee's recommendation and Mr Henesey-Smith was chosen as the URC's proposed new Chief Executive Officer.

On 30 June 2001, Mr Des Glynn ceased being Managing Director of the Urban Land Corporation. On 30 July 2001 Heidrick and Struggles prepared a Supplementary Appraisal of Mr Henesey-Smith.
FINDING 6

The Committee finds that the failure of the Selection Subcommittee to advise Professor Neilson (even if informally) of its decision to recommend Mr Henesey-Smith to the ULC Board, and the failure of the ULC Board in turn to advise him of its 27 June 2001 decision, represents a discourtesy to Professor Neilson.

3.7 THE BOARD PROPOSES TO APPOINT MR HENESEY-SMITH

Clause 6 (1) of Schedule 1 of the Urban and Regional Land Corporation Act 1997 states:

The Board of URLC, after consultation with the Minister [for Planning] and the Treasurer, may appoint a person as the chief executive officer of URLC.

Accordingly, on 4 July 2001, Ms Dickschen, in her capacity of Acting Chair of the Board during an absence of Mr Petrovs who was overseas, wrote to the Minister for Planning and the Treasurer advising them of the Board's recommendation for appointment. Ms Dickschen wrote —

As you will be aware the contract of Des Glynn as Chief Executive Officer and appointment as managing director expired on the 30 June 2001. Des Glynn has indicated that he does not wish to seek reappointment. It is important for the continued efficient running of the corporation that his replacement be appointed as soon as possible.
The Board of the URLC engaged Heidrick & Struggles, executive search consultants, to assist in the process of conducting a search for the best candidate to fill the position. Heidrick & Struggles were given some names of possible candidates and asked to conduct a limited search, without advertising.

A sub-committee of the Board interviewed and reviewed each of the short listed candidates. At the meeting of the Board on 27 June 2001 the matter was considered.

Pursuant to Clause 6 of Schedule 1 to the Urban and Regional Land Corporation Act, the Board proposes to appoint Mark Henesey-Smith, subject to final reference checks, as Chief Executive Officer. A copy of his Curriculum Vitae is attached. The terms of appointment will be for a period of 3 years commencing on a date to be agreed . . .

Clause 3 of the Schedule to the Act makes it clear that appointments to the Board are to be made by the Governor in Council. It is the understanding of the Board that the Chief Executive Officer is to be appointed to the Board.

As already indicated it is important for the appointment to be made as expeditiously as possible and the Board would be happy to discuss the matter further at your earliest convenience.104

As indicated, a copy of Mr Henesey-Smith's curriculum vitae accompanied this letter.

Board Member Davis considered that this letter "opened the batting" in the obligatory process of consultation and that the Board expected a response. Board Member Lennie believed that it was the Board's duty to make a decision and advise the Ministers. As far as the Board was concerned, it was consulting with the Ministers.

To all intents and purposes the Board considered that it had done everything required under the Act. It had undertaken a selection process,
come to a decision and accordingly advised the Ministers of its preferred candidate. From the Board's perspective the process of consultation had begun. With the letter of 4 July 2001, the first stage of the selection process was concluded. The Board now awaited a response from the Minister Thwaites and Treasurer Brumby.
CHAPTER FOUR
SECOND INTERVIEWS

4.1 INTRODUCTION

In continuing to address the matter of selection, referred to the Committee in Term of Reference (a), the Committee now examines the circumstances that in August 2001 saw the Secretary of the Department of Premier and Cabinet, the Secretary of the Department of Infrastructure and the Acting Secretary of the Department of Treasury and Finance conduct a further interview process.

4.2 A PROPOSED APPOINTMENT

4.2.1 “Opening the batting”

As indicated in 3.7, on 4 July 2001, the Deputy Chair of the URLC Board, Ms Angie Dickschen, wrote to the Minister for Planning and to the Treasurer advising of the Board’s recommendation of Mr Henesey-Smith as the URLC Managing Director.

The evidence presented to the Committee demonstrates that the URLC Board strongly believed this letter, in conjunction with Professor Neilson’s attendance at the interviews, constituted “consultation” as set out in the Act. Ms Dickschen told the Committee that
I saw that consultation was taking place in two ways. Firstly, Lyndsay Neilson was at all of the interviews and so had knowledge; secondly, that letter was to indicate the board’s preference and who they would propose to appoint, but it was meant to be the commencement of further consultation, if necessary.105

The other member of the Board’s selection sub-committee, Mr Davis, also saw the letter as a trigger for consultation:

The letter... advised that the board proposed an appointment. Further on in that letter it actually goes on to say that we were anxious to finalise the matter and sought discussion, and that if they wished to discuss the matter with us we would be happy to do that at their earliest convenience. I do not know how you could view that otherwise, other than inviting consultation... When we finally met with the minister he raised this issue of consultation, and I said to him, ‘Well when you consult, somebody has to open the batting’.106

Mr Petrovs reiterated the view that the letter from the Board fulfilled the requirements of the Act:

... all we were doing was putting forward our— the board’s— recommendation to the minister for his consideration. He was perfectly entitled to reject our recommended appointee, if you like, and that, in our opinion, constituted consultation.107

Mr Davis also noted that the Board expected that the Government would respond and engage in discussion about the suggestion:

And we had every expectation that a response would come back, particularly also when we had invited the head of the Department of Infrastructure to sit in on the selection process. That was his role. He was not part of the selection committee; he was there by invitation to be part of it — to review it and to discuss it with us. I guess if he had not been there we might have been more fulsome in our letter back... 108
FINDING 7

The Committee concurs with the view of the Chairman and the URLC Board members and finds the process they had undertaken to that point, comprising:

- prior consultation between the Chairman and Minister Thwaites;
- consultation between the Chairman and Professor Neilson;
- general agreement as to the Board’s search process;
- Professor Neilson’s approval of the position specification; and
- Professor Neilson’s participation on the first interview panel.

Coupled with the two 4 July 2001 letters (one to Minister Brumby, one to Minister Thwaites), constituted consultation under Clause 6, Schedule 1 of the Urban and Regional Land Corporation Act 1997.

4.2.2 Department of Infrastructure Reaction

In his evidence to the Committee, Mr Paul Jerome, Executive Director Planning, Heritage and Building Division, Department of Infrastructure stated that a copy of Ms Dickschen’s letter conveying the Board’s recommendation was received in his office at the Department of Infrastructure on 5 July 2002. He advised that the first time I learnt of the corporation’s appointment process was when I read a letter dated 4 July 2001 from Angie Dickschen . . . To the best of my
recollection, I was not aware that an interview panel had been convened until I read the 4 July letter. Furthermore, I had no knowledge of the process that had preceded the 4 July letter. I was concerned that the letter did not constitute consultation as required under the URLC Act.\(^{109}\)

Consequently, Mr Jerome went on to say, he “made sure the 4 July letter was sent on to both Professor Neilson and Minister Thwaites.” The Committee notes that Mr Jerome was evidently unaware that the Secretary of his Department, in conjunction with the Minister, had met with the URLC to discuss the impending vacancy and recruitment process, signed off on the job description, contributed to the list of candidates, suggested himself as an interview panel member and participated in interviews over three days. The Committee was surprised at Mr Jerome's evidence, particularly given his senior position with the Department and his particular responsibilities.

The Committee concludes that either Professor Neilson did not advise Mr Jerome of his (Neilson's) involvement in the URLC appointment process, or alternatively that Mr Jerome failed to acquaint himself with significant developments occurring within an organisation for which he was directly responsible to his head of department and Minister. The Committee seeks no comfort from either explanation.

**4.2.3 Professor Neilson’s Reaction**

Professor Neilson read Ms Dickschen’s letter to Minister Thwaites in “early July 2001” \(^{110}\). He likewise felt that the letter did not satisfy his interpretation of the legislative requirements:

I took the view that by offering only one name and providing no information on the general field of candidates that the letter did not constitute consultation as is required under the URLC Act. I also took the view that the letter presumed that the CEO would automatically be appointed to the board whereas board
appointments are a matter for cabinet and not for the board. It did not provide any information about the various candidates and presented the minister with a fait accompli. I was also concerned that as a member of the interview panel I had not seen an interview report and had not been consulted about a recommendation.\textsuperscript{111}

Professor Neilson told the Committee that he rang Mr Petrovs to arrange a meeting to discuss these concerns with the Board members. He also sought a copy of the “draft interview report\textsuperscript{112}”.

The Committee notes that Professor Neilson’s concern with the letter does not accord with accounts of his involvement throughout the interview process. As already noted, the Board members involved in the search process reported that they had met with Professor Neilson several times and he had not expressed any dissatisfaction with the process.

Mr Carr of Heidrick and Struggles recalled that Professor Neilson had not expressed any dissatisfaction about the process and had agreed with Ms Dickschen and Mr Davis that Mr Henesey-Smith was the strongest candidate:

\textbf{Mr CARR} — Certainly part of the process in order to keep a candidate warm, and particularly a strong candidate who the search committee, Angie Dickschen, Professor Neilson and Frank Davis, had agreed was the strongest candidate, we didn't want him running away to take another job, so we obviously wanted to suggest to him that he was a very strong candidate.

\textbf{The CHAIRMAN} — You just made a statement that Professor Neilson agreed that Mr Henesey-Smith was the strongest candidate.

\textbf{Mr CARR} — In the discussions and interviews we had where Mr Neilson was present, he certainly agreed that he was the strongest candidate.\textsuperscript{113}
Mr Carr, when asked to respond to Mr Hallam’s contention “that we have evidence that Professor Neilson was subsequently scathing in his criticism of the process\textsuperscript{114\textdegree}”, went on to say:

There is no doubt that at no time did Professor Neilson speak to me or anybody in Heidrick and Struggles' office to convey anything else other than his complete satisfaction of how the process was being undertaken. Mind you, certainly he was not our primary source of contact. That was Angie Dickschen, being the chairperson of the selection committee, but that comes as absolute news, and I am quite shocked, because that has never been conveyed to me, and it certainly would run against the line that I have had from the other people on the selection committee.\textsuperscript{115}

The Committee notes that Professor Neilson, in his evidence to the Committee, was also critical of the Board’s “presumption” in seeking to recruit for the position of Managing Director, rather than CEO:

Ministers are to be consulted on the appointment of the CEO, but it is cabinet that makes the appointment to the board. Ministers have to take to cabinet matters with which they are satisfied. They have to be prepared and able to present to their colleagues in cabinet a reasonable proposition about who might be a member of the board. The board cannot just simply assume that because they are putting up a name that that person will automatically be acceptable to ministers as a director.\textsuperscript{116}

The Committee finds that while Professor Neilson may be leveling a valid criticism at the Board, given the Act sets out a clear requirement that the Governor-in-Council make appointments to the Board, he did not raise these concerns during the recruitment and initial interview processes, to which he was privy, and during which time it seems apparent to the Committee that both the Board and Heidrick and Struggles were using the term "Managing Director". The Committee also notes Professor Neilson’s evidence that receipt of the letter was the first occasion that he was aware
that a Selection Committee Report had been finalised and adopted by the Board.

FINDING 8

The Committee finds that Professor Neilson erred in allowing the initial process to proceed without correcting the terminology of the position specification.

4.2.4 Department of Treasury and Finance Reaction

At the Department of Treasury and Finance, Mr Geoffrey Tabe, Manager, Governance, and Mr Alan Hawkes, Director, Commercial Management, both read Ms Dickschen’s letter addressed to the Treasurer around 10 July 2001. Mr Tabe subsequently drafted a letter from Mr Hawkes to Ms Dickschen stating that the Treasurer would consider this matter in consultation with the Minister for Planning and that the Board would be advised of the outcome of these deliberations as soon as possible.\textsuperscript{117}

Mr Hawkes and Mr Tabe advised the Committee that they embarked on a process of ensuring the Treasurer was appropriately briefed about DTF’s position in relation to the appointment.

The Committee notes that Mr Hehir, the Acting Secretary of DTF, was later to sign a document (drafted by Neilson) that stated the first process did not constitute consultation.\textsuperscript{118}
4.2.5 Consultation

The Committee believes that the different interpretations of the word “consultation” by the Board and the Government departments had a fundamental impact on the way the appointment of the CEO was managed. A lack of communication about what “consultation” might be appropriately held to mean in these circumstances resulted in vastly differing expectations of those involved in the appointment. From the outset the stakeholders did not document consensus about what needed to take place. This had the effect of undermining the entire selection process; as the different perceptions about what constituted “consultation” under the Act reveals, those conducting the selection process had a different understanding of what needed to take place and what their roles in the decision-making process were.

FINDING 9

The Committee finds that the lack of a defined consultative process allowed the Government to utilize the ambiguity of the legislation to undermine the URLC’s selection process.
RECOMMENDATION 1

The Committee recommends that in circumstances where appointments to senior Government positions are predicated on some form of defined consultative process, that such consultation:

(1) Be specified in the relevant statute;

OR

(2) Be the subject of an obligatory pre-process meeting of relevant stakeholders in order to devise an agreed understanding of what constitutes "consultation".

4.3 ACTIONS TRIGGERED BY THE URLC LETTER

4.3.1 Professor Neilson

On 19 July 2001 Professor Neilson, accompanied by Mr Jerome, met with Mr Petrovs, Ms Dickschen and Mr Davis. It was at this meeting that he received for the first time the candidate Summary Notes prepared by Ms Cozart of Heidrick and Struggles on 20 June 2001.

According to Professor Neilson, he told the Board members that the notes were incomplete, as they

...did not cover all the candidates, failed to provide sufficient background context and did not fairly represent Reeves’s performance at interview.\textsuperscript{119}

Professor Neilson further observed that
I mean, for the chairman of the board to accept on the records of the board a paper of that kind I thought was extremely unprofessional. I thought that the paper demonstrated, you know, quite possibly bias, certainly well outside anything permissible in a public service environment.\textsuperscript{120}

The Committee notes that at the meeting with the Board members, Professor Neilson was given a copy of Ms Cozart’s Candidate Summary Notes, but not the paper that Ms Dickschen presented to the Board meeting.

Professor Neilson told the Board members that he would send some suggested changes to the Candidate Summary Notes to Mr Carr at Heidrick and Struggles. As previously noted, the Committee considers that the Notes prepared by Ms Cozart were intended only as an aide memoire for Ms Dickschen’s paper and were not intended to be a formal document in themselves. In reference to his suggested amendments to the paper, Professor Neilson stated

\begin{quote}
The Cozart paper I thought wasn’t a fair representation of Reeves in terms of a report on discussions of the interviews, and the changes that I made reflect that. I didn’t, as I said last time, try to turn Reeves into a paragon or anything else, I simply corrected some grammar and made some changes which I thought were fair to make and the other members of the panel did not dispute those changes.\textsuperscript{121}
\end{quote}

The Committee notes that apparently Professor Neilson was satisfied with the accounts of the other candidates; it was only Reeves he felt was being misrepresented.

Professor Neilson recalled that he went on to say that the 4 July 2001 letter did not constitute consultation under the Act. He recalled that the Board members defended the process, with Ms Dickschen in particular stating that the requirements of the Act had been met\textsuperscript{122}.\textsuperscript{122}
Professor Neilson also believed that, at this meeting, the Board members defended the omission to provide him with documents relating to the panel’s deliberations, on the basis that Professor Neilson had been an observer, not a member of the interview panel. As noted in 3.5.2, Professor Neilson told the Committee that he did not recall any previous suggestion that he was not a member of the panel.

Professor Neilson then recommended that to involve the minister in the consultation process, a further letter should be sent from the Board to the ministers, with details about all the candidates that were interviewed. Neilson recalled that after leaving the meeting, he reviewed Heidrick and Struggles’ “draft interview report” (the Cozart Candidate Summary Notes) and suggested several changes to the summary of Mr Reeves’s interview which he sent to Mr Carr of Heidrick and Struggles\(^\text{123}\). The changes included the deletion of some text, as well as the addition of the phrase:

\[\text{His role has been to work with government and the private sector to facilitate development, rather than direct project delivery.}\]

Professor Neilson told the Committee that he believed the suggested changes were circulated to other members of the panel and that the other panel members did not oppose his suggestions\(^\text{125}\).

On 30 July 2001, Mr Petrovs sent a letter to the Minister for Planning and the Treasurer. This letter included copies of all the candidate interviews and assessment reports originally compiled by Heidrick and Struggles, and later amended by Professor Neilson. The letter stated:

\[\text{I refer to previous correspondence regarding the appointment of a new Chief Executive Officer (CEO) for the Urban and Regional Land Corporation (URLC).}\]
I was overseas at the time that you would have been notified of the Board’s recommendation for this position. I am aware that both you and the Minister for Planning need to be consulted in accordance with Clause 6 of Schedule 1 to the Urban and Regional Land Corporation Act 1997 (the Act) prior to the Board appointing the new CEO.

Attached is a copy of the interview and assessment report prepared by the consulting firm, Heidrick and Struggles, appointed to assist the Board in the process of selecting the new Chief Executive Officer.

The selection panel interviewed five candidates from a very strong field. Some of them we believe possess the qualifications and experience to fulfil the role of CEO. The Board’s nominated candidate was considered to be the most appropriate for the task and was put forward for your consideration as part of the consultation process.

* * * *

The CEO of the ULC was a member of the Board and we understand that the incoming CEO of the URLC will also be appointed to the Board. We are keen to have this position filled as soon as possible. With your concurrence I will make arrangements to present the necessary documentation to you for endorsement prior to submission to the Governor in Council for approval as soon as the nomination of the CEO is finalised.

Following our meeting I will make the necessary arrangements to prepare the instrument of appointment of the CEO for the Board’s approval.126

The Committee notes that the Board did not provide documentation about the other candidates as it was formally recommending a candidate for appointment. It was not, therefore, necessary to provide documentation about unsuccessful candidates. The Committee further notes, however, that the Board members indicated that any requests for information about the other candidates would have been quickly and willingly provided.
While the Board may have chosen to present a more detailed summary of the search process it had undertaken, it is clear to the Committee that the Board members strongly believed that their actions had faithfully fulfilled the requirements of the Act.

It is also clear that Professor Neilson went out of his way to subsequently amend the candidate notes to more positively reflect on the candidate he and the Government were known to be endorsing. The Committee believes that this further undermined any notion that a transparent, merit-based selection process was being undertaken.

4.3.2 Department of Treasury and Finance

In his evidence to the Committee, Mr Hawkes stated he discussed the letters of 4 July 2001 and 30 July 2001 with Mr Tabe. He also told Mr Tabe that he had become aware “that the Minister for Planning was involved in the appointment process and might be supporting James Reeves”127. After acknowledging Mr Petrovs’ letter on behalf of the Treasurer, Mr Hawkes asked Mr Tabe to prepare advice for the Treasurer about the URLC appointment. The advice, which took the form of a memorandum to the Treasurer’s Chief of Staff, Mr Craig Cook, expressed concerns about the possible appointment of Mr Reeves. The memorandum stated

Mr Reeves is not the URLC Board’s preferred candidate. The interview and assessment report, prepared by the executive search consultants engaged by the Board to assist in the selection process, gives rise to concerns in relation to the suitability of Mr Reeves for the position. In particular, the report notes that Mr Reeves

- does not have first hand operational experience;
- has not been responsible for profit and loss, and “this was evident from his responses to financially oriented questions during interviews”;

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• had some difficulty demonstrating the relevance of his experience for the role compared with other candidates; and
• gave responses to specific questions which tended to be general and hence lacked depth.

* * * *

On the basis of the available information and given the clear view of the URLC Board on its recommended candidate, it would not be possible for CD Governance to support a recommendation to appoint Mr James Reeves to the position of Chief Executive Officer and Managing Director of this business.128

Mr Hawkes told the Committee

In signing the memorandum, Geoff and I were cognisant of the statutory requirement under section 6(2) of the URLC Act for the functions of the corporation to be carried out on a commercial basis. As we stated in the memorandum, the corporation is a substantial business which is expected to make sizeable dividend and tax equivalent payments to the consolidated fund each year. In the memorandum we relayed the view that Mr Reeves lacked experience in a profit and loss environment to support his appointment as chief executive officer. We expected that the Treasurer and the Minister for Planning would receive advice about these matters from other persons or bodies, including the Department of Infrastructure.129

The Act, in specifying that the Treasurer be consulted prior to any CEO appointment, sets out commercial financial management skills as an important selection consideration, and the DTF officers sought to draw attention to this consideration. Indeed, the DTF officers highlighted deficiencies in Mr Reeves’ background that were subsequently drawn out by the Acting Secretary of DTF in the second round interviews. The queries voiced by the DTF officers indicate that Mr Reeves had little experience to prepare him for a position that involved overseeing a Government business enterprise required by statute to operate on a commercial basis.
The Committee notes that the memorandum was sent to the Treasurer’s Chief of Staff rather than direct to the Treasurer. Mr Moran, in his evidence to the Committee, criticised this procedure and suggested “if Mr Hawkes and Mr Tabe were in my department and had done this they would have been firmly counselled”\textsuperscript{130}.

### 4.4 REEVES “CLOSED OUT”

The URLC Board at this time had received no direction from the Ministers in response to their proposal. However, the file notes of Heidrick and Struggles indicate that on 25 July 2001 Ms Dickschen instructed them to “close out” (a human resources term for informing a candidate that they are no longer being considered\textsuperscript{131}) Mr Reeves. The note further records that on 29 July Heidrick and Struggles told Mr Reeves that the URLC was not proceeding further. While Ms Dickschen told the Committee that she believed she had discussed this with the chairman\textsuperscript{132}, the file notes also states that on 31 July Mr Petrovs spoke to Heidrick and Struggles and queried “As to why we were told no to Reeves.”

Mr Petrovs told the Committee that he had called Heidrick and Struggles in response to a telephone call he had had from Professor Neilson:

My recollection is that I received a phone call from Lyndsay Neilson some time after that date — I think the 25th, I can’t recall the date — advising me that he had received notice from Jim Reeves that he had been advised that he was no longer a candidate, which surprised me. I consequently rang Heidrick and Struggles and was advised that he had been told by Angie Dickschen that no discussions were to take place with any candidate, simply because a decision had not been made. So whether Angie’s conversation with Rohan Carr focused on one candidate or all of them I do not know. I do not know.\textsuperscript{133}
Professor Neilson, however, denies that he spoke to Mr Reeves about the “close out”.

Mr HALLAM — Professor Neilson, at page 323 of the transcript we were canvassing the circumstances surrounding the message that came to you from candidate Reeves in respect of the advice that he had received that he had been closed out . . . I am still intrigued as to why candidate Reeves contacted you, but I am seeking some detail in respect of the circumstances surrounding that message. Can I ask you, first of all, what form the message came in from candidate Reeves?

Prof. NEILSON — Well, I don’t recall what form. As you see from my evidence previously, I was given a message — and I am not quite sure by whom or how — some time during the day that there had been this call from Reeves and that he had been concerned that he had been closed out.

* * * *

Prof. NEILSON — No, I don’t. As I said last time, I don’t recall who actually gave me the message. What I do recall is that I did not actually have a conversation about it with Reeves. What I did was speak to Marek Petrovs. 134

While Professor Neilson could not recall having spoken directly with Mr Reeves on this occasion, he did assert that he “got a message from Reeves by phone to my office somewhere, raising the issue”135. Professor Neilson offered the following explanation to the Committee as to why Mr Reeves would attempt to contact him in these circumstances:

Mr HALLAM — Given you have now acknowledged there was a message received from Reeves on the basis that he had been closed out, do you find it strange that he should ring you rather than a representative of the search consultant or the board?

Prof. NEILSON — Not necessarily, because he could have tried to ring Petrovs, I don’t know. He could have tried to ring the other members of the panel. I don’t know who he sought to call. But I was there at the interviews. I was also, if you like, advising the Minister for Planning, so I am obviously a person he could contact and ask what was going on. I did not know that this
was going on so I spoke to Petrovs to ask him what was going on. I do not think it is improbable or unusual that he might have called me.\textsuperscript{136}

Professor Neilson’s observations about the events of the ‘close-out’ offer a telling example of the complete lack of mutual understanding and communication by those involved in the decision-making process. Professor Neilson told the Committee

On 25 July, less than a week after this, Angie Dickschen, according to the transcripts here — in Rohan Carr’s evidence — has gone and told Heidrick and Struggles to close out all the other candidates other than Henesey-Smith, completely contrary to what we had agreed on 19 July. On 29 July, according to this transcript, Carr rings Reeves and tells him ‘no further contact, no further involvement’ the day before Petrovs is providing us with the letter to the ministers with all the candidates’ names. This is extraordinary behaviour. This is kind of maverick behaviour by the board.

On 30 July we get the letter from Petrovs to the minister saying, ‘Here are five names’ or ‘six names’ — whatever it was — of all the candidates. I get a message, some contact, as you mentioned last time, or the Chairman asked last time, from Reeves on 30 July saying, ‘What’s going on?’ I didn’t actually have a conversation with him, as I mentioned last time. I talked to Petrovs to say, ‘What’s going on?’ He is a bit apologetic again, right, and then his letter arrives. We have a process going on here of Carr saying that Petrovs spoke to him. He clearly was not in the loop. We have Angie Dickschen in evidence before you saying he clearly was in the loop. This is a totally confused board. This is a totally confused process.\textsuperscript{137}

In response to the Committee seeking clarification, Professor Neilson later wrote to the Committee stating

A record kept by my department indicates that Mr Reeves telephoned my office and left a message at 11.57 on 30 July 2001. As I stated in my evidence to the Committee, I do not believe that I spoke to Mr Reeves in response to his call. I assume Mr Reeves’ call related to Mr Reeves having been informed that he had been “closed out of the interview process”.\textsuperscript{138}
Notwithstanding the conflicting recollections about the events surrounding Mr Reeves being told he was no longer being considered, the Committee considers it significant that he would react to this information by immediately telephoning Professor Neilson.

More particularly, the Committee finds Professor Neilson’s explanation of the Reeves’ telephone call less than convincing, and notes the following inconsistencies in his evidence.

1. In his subsequent letter to the Committee Professor Neilson confirmed the fact, and precise timing, of the Reeves’ message, but did not provide a copy of that message to the Committee despite the Committee’s original call for all relevant records, a subsequent summons and a specific request during his appearance before the Committee.

2. In maintaining his insistence that he “did not believe” he had spoken to Mr Reeves directly regarding the “close out” question, Professor Neilson left the Committee wondering: how he could be so explicit in his recollection of the conversation with Chairman Petrovs, which was directly prompted by Mr Reeves’ message; why Mr Reeves would leave such a sensitive message as the “close out” enquiry with a staff member in Professor Neilson’s office; why Mr Reeves did not ring Professor Neilson on his mobile telephone in respect of his decision to withdraw; and why, in the circumstances, Professor Neilson did not report back to Mr Reeves on the explanation for the “close out”, or even show interest in whether anyone else so reported.

3. Professor Neilson’s letter to the Committee of 20 May 2002 maintains that he could only “assume” that Mr Reeves’ call related to him being
“closed out”, leaving the obvious question of how Professor Neilson knew to promptly telephone Chairman Petrovs to specifically ask for an explanation as to why Mr Reeves had been “closed out” given that he, Professor Neilson, denies having spoken to Mr Reeves in respect of the issue.

In this context, the Committee notes two particular aspects of Professor Neilson's evidence. Firstly, his letter to this Committee dated 4 September 2002 offers the explanation that Mr Reeves' message was conveyed to him orally by "a member of staff", but that his personal assistant was the only person who knew of the log book which recorded the call. However, the log entry eventually supplied to the Committee reports only the time and name of the caller. It contains no comment as to the nature or purpose of the call.

Secondly, Professor Neilson was able to categorically deny that the message of Reeves' close-out came to him from Minister Thwaites. The documents provided to the Committee by the Minister's office record that Mr Reeves telephoned Minister Thwaites' office on the same day that Professor Neilson called Chairman Petrovs to enquire "what's going on".

If, as Professor Neilson insists, Minister Thwaites did not telephone him, the obvious question left before the Committee is "What did Minister Thwaites do in response to Mr Reeves' call?" Against the background of his personal sponsorship of Mr Reeves' candidacy, it is hard to conceive that he, Minister Thwaites, did nothing. This was one of the many questions the Committee was keen to address to Minister Thwaites.

In all of this, the Committee is extremely disappointed at the general attitude adopted by both the Executive and the bureaucracy in respect of the Committee's enquiries. The outright resistance of the Ministers
directly involved, and the Attorney General in particular, has been well documented. The Committee views the fact that the logged entry of Mr Reeves' call to Professor Neilson's office was only provided in response to a specific, written request after Professor Neilson had appeared before the Committee on three separate occasions as a further example of the strategy to resist and obfuscate. The features of Professor Neilson's evidence cited above are regarded as further examples of that general strategy, and in the view of the Committee add further weight to the conclusion that even those directly involved in the second round interviews recognised the process to be both contrived and fundamentally flawed.

4.4.1 Reeves calls Minister Thwaites’ Office

Three email messages informing the Minister’s chief of staff to call Mr Reeves were submitted to the Committee as part of the Ministerial Response. The messages were sent on 13 July, 23 July, and 30 July 2001.

The Committee notes that it is too great a coincidence that Mr Reeves reacted to the news that he was no longer being considered for the position by ringing Professor Neilson at 11.57am on 30 July and ringing Minister Thwaites’ office on the same day.

This information reveals to the Committee that Mr Reeves felt that it was appropriate to call his contacts in Government at this time. The Committee believes that the fact that Mr Reeves was calling repeatedly to speak to the Minister’s office, at the time when candidates were being considered, indicates that Mr Reeves was in contact or seeking to be in contact with those charged with the responsibility for making decisions that personally involved him. On the very day after he was told he was no longer being considered for the position, Mr Reeves clearly felt that it was appropriate
to respond by ringing both the Minister and the head of the department responsible for the corporation rather than the search consultant or relevant Board members. The Committee notes that this was not a position any of the other candidates enjoyed.

The Committee believes, given the known friendship between the Premier and Mr Reeves, and the related association between Minister Thwaites and Mr Reeves, that in the interests of transparency and fairness of process during this time, Mr Reeves and the Minister should have deliberately abstained from telephone contact with one another. The Committee also believes that, in the circumstances, it was inappropriate for Mr Reeves to be attempting to speak to Professor Neilson.

FINDING 10

The Committee finds that the integrity of the consultative process between the URLC and the relevant Ministers was compromised by the accessibility of, and familiarity between, candidate Reeves, Professor Neilson and Minister Thwaites, as exemplified in the telephone calls placed by Candidate Reeves to Minister Thwaites and Secretary Neilson.

4.5 SECOND INTERVIEW PROCESS

4.5.1 Secretary Neilson meets with Secretary Moran

On 20 July 2001, the day after his meeting with Mr Petrovs and the selection sub-committee, Professor Neilson met with the Secretary of the Department of Premier and Cabinet, Mr Terry Moran, to seek Mr Moran’s
advice about various matters relating to the appointment. After he had summarised the situation for Mr Moran, Professor Neilson stated that

Terry and I were both concerned that the board had presented ministers with a fait accompli and this did not meet the requirements for consultation set out in the Act. We reached the conclusion that effective advice could not be given to the two ministers — the Treasurer and the Minister for Planning.  

In his evidence to the Committee, Mr Moran asserted that Professor Neilson conveyed strong misgivings about the Board’s proposal.

Professor Neilson expressed his concern that this proposal did not satisfy the requirements of the URLC Act that any appointment be made only after effective consultation with the minister and the Treasurer. He pointed out that he had not been consulted as a member of the interview panel about this decision. He had not received a copy of any report from the consultants, Heidrick and Struggles, until 19 July, and then only as a result of his specific request. He expressed the view that the interview report was incomplete and did not reflect his perceptions of the performance of the respective candidates.

Mr Moran also recalled that Professor Neilson focused on a perceived lack of engagement from the Board with the Government’s URLC policy changes.

Professor Neilson queried whether the board was listening to the government about its broad development strategy, which required the corporation to pursue urban renewal and social housing initiatives. Despite his best efforts, he said that the board did not appreciate the impact of the amendments to the URLC Act on the corporation’s role and direction. He was concerned that the new managing director needed to know how to develop and implement policy and understand how government works.
Professor Neilson and Mr Moran decided that effective advice could not be given to the Ministers unless senior officials had the opportunity to examine the leading candidates themselves. Mr Moran told the Committee

My view is that ministers should have quite a strong role where, in situations like this, there is a requirement for consultation . . .

They decided that the best way of doing this was for a panel of departmental secretaries to interview those candidates and, on the basis of conclusions drawn from this process, provide advice to ministers who, in turn, would advise the Board of their views.

The Committee notes that Professor Neilson met with Mr Moran the day after he had spoken to members of the URLC to encourage the commencement of a broader process of consultation. The Committee is surprised that Professor Neilson did not wait to see the Board’s further actions. Instead, the next day he met with a fellow senior public servant, communicated that the current process was entirely unsatisfactory (even though it was still in progress) and made plans to commence a separate process altogether.

The Committee notes that the Minister did not respond in writing to the letter of 30 July 2001 sent by the URLC Board which, at Professor Neilson’s suggestion, had been designed to overcome the criticisms levelled at the letter of 4 July 2001. Although the letter of 30 July 2001 did include information about all the candidates, and was less presumptive in tone about the Board’s recommended candidate and the incumbent’s position on the Board, the Government made no attempt to see this as a step in the consultation process. Instead, no response to the URLC was forthcoming. On 7 August 2001 Professor Neilson informed Mr Petrovs of
the commencement of an entirely new interview process and invited him to participate in accordance with the Minister’s direction.

**FINDING 11**

The Committee finds that, in intervening to commence a separate interview process, departmental secretaries Neilson and Moran inappropriately undermined the consultation process which was underway between the Board, the Minister and the Treasurer.

### 4.5.2 Professor Neilson seeks further interview process

On 3 August 2001, Professor Neilson prepared a brief for the Minister for Planning recommending that

[T]he secretary of the Department of Premier and Cabinet, the acting secretary of the Department of Treasury and Finance, and I conduct further interviews with candidate A, candidate B and Mr James Reeves; and the secretaries provide further advice and recommendations to you to consider in your formal consultation with the board on the most suitably qualified candidate for appointment to the position.\(^{146}\)

Despite having senior and experienced human resources personnel in the Department of Infrastructure, the Committee notes that Professor Neilson made no attempt to seek their views or draw on their experience prior to developing the second round interview process with Mr Moran. Ms Jenny Singleton, at the time Director of Human Resources, Department of Infrastructure, told the Committee
Ms SINGLETON — Did Professor Neilson seek your advice as head of human resources in his department when he set up the second-round interview process?

Ms SINGLETON - No, he did not.

Mr RICH-PHILLIPS — Do you know how he arrived at the decision to have a process which involved himself and two other secretaries?

Ms SINGLETON - I only understand from things I read after the process that he discussed this with Terry Moran; but I only learned that afterwards.147

The Committee notes the statements made by Ms Singleton, who told Committee that she could not recall another example of a second round of interviews of this nature being conducted:

Ms SINGLETON . . . Normally going through an interview process, sometimes there are second rounds of interviews. Often there are second rounds of interviews and you may bring forward several candidates from that first process and reinterview them. It is not an unusual thing — —

Mr HALLAM — Even where the interview panel is different?

Ms SINGLETON — It is less usual.

Mr HALLAM — It is less usual. Have you heard of it before?

Ms SINGLETON — I can’t recall an instance that I could refer you to.148

While the recommendation in Professor Neilson’s brief to the Minister was approved, the Minister also requested that the Chair of the URLC be included on the interview panel. Professor Neilson testified that on or around 7 August 2001 he informed Mr Petrovs that “the Minister was of the view that the Board had not adopted a proper process of consultation149,” and, as a result, a second round of interviews was to be conducted. When invited to be a member of the interview panel, Mr Petrovs agreed.
The Committee notes the comments made by Board member and former deputy secretary of the Department of Treasury and Finance, Mr Reilly, who told the Committee:

According to Urban and Regional Land Corporation legislation the appointment of the chief executive officer is a matter for the board of directors in consultation with the ministers. I do not see anything in the legislation anywhere that allows the formation of a bureaucratic committee. If that committee was formed to advise the ministers then, sure, I have no argument with that, but I did not see it as a committee that had carte blanche to make an appointment. 150

The Committee further notes the comments about the proposed second interview process made by Mr Owen Lennie, Board member, in an email to Ms Dickschen:

I have strong reservations about being seen to agree to the proposed process. The reasons are as follows:

- the Act charges the Board with the selection of the CEO;
- the terms and conditions of the appointment are to be settled after consultation with the ministers (both)
- we are told that the Board has been informed of the strong preference of the shareholders that the CEO also be a director – ie. that a Managing Director be appointed – but there is nothing in writing to this effect
- assuming that we can obtain evidence that this is the wish of the shareholder and that the Board has selected its preferred candidate the shareholder can:
- query the terms and conditions of the appointment – which has not happened; or
- query the suitability of the selected candidate for appointment as a director – which has not happened, since the preferred candidate is to be included in the proposed kangaroo interview process;
- the re-interview process undermines the Board’s prerogative in choosing the CEO and a CEO who is not beholden to the Board for his or her
appointment places the Board in an impossible position for proper corporate governance;

- if the preferred candidate of the Board is not deemed suitable for appointment as a director – which is the prerogative of the shareholders – the Board should be so informed (in writing or in person) and required to produce another candidate; and

- finally, any acquiescence by the board to a substitute interview process where others select the interviewees is an admission both that the process carried out by the Board was fundamentally flawed AND that the Board is not competent to carry out such a process – and a Board that acknowledges it is not competent to carry out its most important statutory duty does not have much claim for continued existence, in my view.\textsuperscript{151}

The Committee notes that Mr Lennie’s email highlights very pertinent concerns, and demonstrates that the Board was placed in a difficult position by Professor Neilson’s decision to initiate a second interview process separate from the appointment process it had established.

4.5.3 Heidrick and Struggles

Evidence to the Committee suggests that not only did the Board feel that the Department’s decision to commence a further interview process was inappropriate, but that the search consultants were also unhappy about the turn of events.

\textbf{Mr CARR} — I had found out that the Department of Infrastructure had decided that they wanted to reinterview Mr Reeves, Mr Henesey-Smith and an internal candidate. That was not standard procedure in a search. Somebody not involved and a non-client does not normally interview candidates without at least going through us and going through the courtesy of it. I conveyed to Ms Dickschen that we were very unhappy about that, that that was something that should not occur for a number of reasons, particularly privacy reasons, and the following were the comments that she made in that respect.

\textbf{The CHAIRMAN} — So she was of the view that it was an unorthodox situation, and you agreed with her?

\textbf{Mr CARR} — Yes, absolutely.\textsuperscript{152}
Mr Carr’s statements show that the decision to hold second interviews without seeking to involve or even contact the search consultants was a breach in standard recruitment practice. The lack of communication and adherence to normal practice that underpinned Professor Neilson’s unorthodox decision are again illustrated by Mr Carr’s observations.

4.6 SECOND INTERVIEWS

As set out in Professor Neilson’s brief to the Minister for Planning, the panel of departmental secretaries interviewed three candidates: the Board’s recommended candidate, Mr Henesey-Smith; the URLC internal candidate, Mr Moore; and Mr Reeves who, Mr Moran told the Committee, Professor Neilson thought “was best suited to lead the refocused corporation”.

The interviews took place on 17 August 2001. Ms Singleton was also present to take notes.

4.6.1 The Board’s reaction

On 17 August 2001, Mr Petrovs arrived to take his place on the interview panel. He handed Professor Neilson a letter for the Minister for Planning, dated 17 August 2001. The letter read:

I refer to our letter of 4 July and note that we have not yet received a response.

The Board of the URLC considers that it has gone through the proper process in relation to selecting the proposed Chief Executive of the URLC . . .

I have been informed by Lyndsay Neilson that it is proposed to reinterview a select number of the candidates previously interviewed by the Board sub
committee. The Board has no knowledge of the basis upon which those candidates were chosen for reinterview . . .

I also understand that these interviews have been arranged directly with each candidate without the involvement or knowledge of the Board's executive search consultants which I consider given the confidential nature of an executive search process is highly inappropriate.

The Board does not consider the proposed reinterview process is consultation and is not in accordance with the Act. Accordingly, the Board does not endorse this process and my presence at the interviews will be solely as an observer and is not to be taken of an endorsement of the process.\textsuperscript{154}

Mr Petrovs informed the Committee that he was not involved in the selection of candidates for this second interview process and was not privy to any information that explained the basis of selection.

\textbf{The CHAIRMAN} — You were not consulted and did not know at all as to who was to be interviewed in the second round of interviews until a couple of days prior to those interviews?

\textbf{Mr PETROVS} — Possibly. Maybe four or five, I cannot recall exactly, but I was certainly surprised when I turned up as an observer for the second round of interviews that only three candidates were in fact to be interviewed.\textsuperscript{155}

Mr Reilly, a former deputy secretary at DTF, agreed that it was surprising that the panel chose to interview a limited number of candidates.

\textbf{Mr HALLAM} — But my question was more as to your opinion of what it was that motivated the need for the second round of interviews.

\textbf{Mr REILLY} — I presume that the proposal that had been presented was not acceptable and the government wished it to be examined.

\textbf{Mr HALLAM} — If that was the case, why not interview all of those candidates who had been part of the first process?

\textbf{Mr REILLY} — If I had been involved I would have interviewed all of the candidates.\textsuperscript{156}
The Committee notes that the selection of candidates for re-interview included two candidates who did not figure in the selection sub-committee’s “best three” and excluded two of the best candidates identified by the selection sub-committee. The Committee is surprised that given the circumstances surrounding the second interview that all six candidates were not re-interviewed.

Indeed, when Mr Petrovs arrived for the interviews, he told the Committee that he directed only one comment to the panel members — he queried the selection of candidates:

Mr PETROVS — . . . in view of the fact that the government considered that the first process was flawed, I thought it was appropriate that all candidates should be interviewed.

The CHAIRMAN — Who answered that question or comment?

Mr PETROVS — Mr Moran answered the question and his response was, ‘We don’t have time to interview all of them’.

The Committee again expresses surprise that the Secretaries believed the appointment was so important that they needed to intervene and establish a separate interview process, but they could not put aside the time to interview all six candidates.

Professor Neilson offered the following explanation to the Committee:

Mr JENNINGS — From my recollection of the testimony of Mr Moran, he suggested that he and you discussed the relative merits of having three candidates on the basis of being a representative set — an internal candidate, a board’s candidate and a candidate whom you thought was worthy of being interviewed as a reasonable way forward — and that he was fully in agreement with those categories and that you subsequently filled in the names who fitted into those categories.
Prof. NEILSON — Yes, I had expressed to him my reservations about candidate A in terms of the whole sense of trying to lead change in the activities of the board in the direction of government policy, and I wanted, I guess, to have my judgement tested by my colleagues, so we certainly needed to interview candidate A. As I said, I felt that Reeves from my point of view was a person who — despite what the board thought — still had the capability to lead those changed directions, and I thought Candidate B had performed well and, as a matter of good practice — as one does — we needed an internal candidate. \[158\]

**FINDING 12**

The Committee finds that given the disapproval levelled at the Board’s selection process, the Secretaries’ decision to initiate a further round of interviews was astonishing, particularly given the Board’s assessment criteria were again employed. The Committee further finds that in choosing to select such a limited number of candidates without any clear guidelines, any opportunity to establish a process that would withstand scrutiny was lost.

Members of the Board were also disappointed that DOI chose to undermine the confidential nature of the relationship between the candidates and Heidrick & Struggles. Ms Dickschen believed it “inappropriate of Infrastructure/Neilson”:

it was not in accordance with what I would have seen as the proper process, having someone from the Department of Infrastructure contacting a candidate and in a sense taking the search procedure out of the hands of the selection committee of the board by contacting the candidates directly. \[159\]
Both the manner in which the candidates for this interview stage were approached (directly by the Department of Infrastructure) and the selection methods employed during the interviews (a series of questions, rather than a set of formal written criteria) were seen as highly irregular by the Board. The Committee notes that Professor Neilson was critical of the lack of formal criteria employed during the first round interviews. Mr Moran similarly told the Committee that “I believe that in some respects the selection criteria upon which the board had relied were defective”\textsuperscript{160}.

However, despite Professor Neilson’s and Mr Moran’s criticism of the Board’s selection methods, when asked by the Committee’s Chairman whether the second interview panel had a set of documented criteria, Ms Jenny Singleton (Director of Human Resources, DOI, at the time of the supplementary interviews) stated:

\begin{quote}
Ms SINGLETON — They had access to the position description that had previously been prepared. That was provided to them. \\
The CHAIRMAN — That is not my question. My question is: they did not have before them a set of criteria prepared either by you or anybody else? \\
Ms SINGLETON — No. \\
The CHAIRMAN — And there was no formal record of how each candidate came up against a set of criteria if they did not exist, you will agree? \\
Ms SINGLETON — No.\textsuperscript{161}
\end{quote}

Professor Neilson, when questioned under what criteria were the three applicants was assessed through the interview process, responded:

There are two related documents. There is one, I think, which is DOI 15, which is the position description prepared by Heidrick and Struggles; and the other, which is DPC 42.3, is the summary, I suppose, of all of that that was provided for the interviews by the three secretaries.
In the Heidrick and Struggles document there is a role description statement that says, ‘The primary objectives for the managing director will be: 1. manage and direct operation of the URLC to achieve agreed revenue and profit targets; 2. enhance the corporate identity of the URLC as a major player in the land development industry in Victoria; and 3. ensure URLC business strategies encompass government policy or other objectives as directed within the functions of the URLC Act 1997’.

In the document DPC 42.3 — in other words the notes that were given to the other two secretaries — there is a statement that says, ‘Primary objectives for the managing director’ — parallel with the Heidrick and Struggles document, and it says — ‘ensure URLC business strategies encompass government policy or other objectives as directed within the functions of the URLC Act 1997’. That is dot point 1. Now in the Heidrick and Struggles document that is actually dot point 3, so we have actually put more emphasis on that aspect, even though it is worded the same. Dot point 2 is, ‘manage and direct operations of the URLC to achieve agreed revenue and profit targets’ — and it is the same as the Heidrick and Struggles. Dot point 3 is, ‘enhance the corporate identity of the URLC as a major player in the land development industry in Victoria’ — the same as Heidrick and Struggles.

The CHAIRMAN — So which set of criteria were you working from?

Prof. NEILSON — When the three secretaries interviewed them? The same primary objectives for the managing director as the original interviews, but with a different emphasis, a stronger emphasis, on the policy role.162

Professor Neilson went on to say that these documents had been circulated and agreed to by the interview panel, prior to the interviews being conducted:

Prof. NEILSON — This was circulated to secretaries with the other body of paper that was used for the interviews.

The CHAIRMAN — And did they write back agreeing to that selection criteria?

Prof. NEILSON — No, but if they had had any problems they would have raised them with me at the meeting.
The CHAIRMAN — And did they raise them with you?

Prof. NEILSON — No.

The CHAIRMAN — So you prepared this document saying, ‘These will be the selection criteria’ and handed them on to Mr Moran and Mr Hehir, and neither of them came back to you with any comment in relation to them?

Prof. NEILSON — I did not personally prepare the document. Staff prepared the document as part of the information for the secretaries.

The CHAIRMAN — So the selection criteria for the appointment for this position was prepared by a staff member?

Prof. NEILSON — Sorry, I mean what we have got here is a document prepared by Heidrick and Struggles which sets out primary objectives. We were not, other than by way of emphasis, wanting to change that particularly — they seemed generically to be okay. I have human resources expertise in my department, as I must, and my presumption is that Jenny Singleton, as the person who was heading human resources, prepared this documentation.

The CHAIRMAN — So Jenny Singleton documented for you the criteria that the three heads of department were going to use in the selection process?

Prof. NEILSON — This document describes the functions of the URLC under the Act; the business objectives of the URLC, which I think are precisely parallel to the other paper; primary objectives for the managing director, which are parallel with the exception of the order; and then some suggested questions.

The CHAIRMAN — So is there a heading on that document which says ‘selection criteria’?

Prof. NEILSON — No, not in that specific language.\textsuperscript{163}

Given the sharp criticism that was levelled at the Board’s selection criteria by Professor Neilson and Mr Moran, the Committee notes that the second interview panel apparently relied on exactly the same documentation. The Committee believes that despite Professor Neilson and the other departmental Secretaries purporting to establish a supplementary selection process based on merit, their course of action was unorthodox, did not adhere to appropriate standards of transparency and their selection process
was primarily based on information that they had previously deemed inadequate.

FINDING 13

The Committee notes that in his advice to Minister Thwaites Professor Neilson undertook to seek agreement with the Board as to selection criteria but failed to do so. The Committee, however, finds that in authorising a second round of interviews, the direct approach of a limited number of candidates and the selection of those candidates on arbitrary criteria, Minister Thwaites tacitly allowed senior public servants to engage in a process that was simply designed to justify the appointment of a pre-ordained candidate.

4.6.2 Outcome of the interviews

Professor Neilson informed the Committee that following the interviews, the panel considered candidate A to be a credible candidate but more suited to a stable land development business rather than an agency that was going through a significant change of focus. The notes of the interviews indicate that Terry Moran expressed the view that candidate B would be a good chief operating officer. There was general consensus that the corporation would be best served if the services of candidate B could be retained.

We agreed that Jim Reeves was clearly the strongest candidate in terms of understanding policy directions in urban renewal and providing leadership and strategic vision, which we saw as important aspects of the new CEO’s and managing director’s role. However, Grant Hehir expressed reservations about
Jim Reeves’s lack of commercial experience. We agreed that we would undertake reference checks on Jim Reeves and candidate A.\textsuperscript{164}

### 4.6.3 Mr Petrovs’ understanding of the interviews

Mr Petrovs believed the second interview process did not result in any negative analysis of the Board’s preferred candidate. He informed the Committee that

> I think the comment made at the second round was, ‘Oh, Mark Henesey-Smith could do the job.’ It was a comment made by one of the panel members on the second round of interviews.\textsuperscript{165}

Moreover, according to Mr Petrovs, what did eventuate from the interviews was that the Acting Secretary of DTF highlighted that Mr Reeves lacked certain financial skills. The Committee received a copy of an email that Mr Petrovs sent to Ms Dickschen late in the afternoon of the 17 August 2001, that included the following observations

> Clearly Mark H-S came across as the most appropriate candidate with no negative comments from the interviewers. The Treasury guy through his questions identified key bits missing in Reeves’s background although they all did their best to place emphasis on the importance in this role on addressing government policy issues new to the corporation. The next step is for a reference on Reeves to see whether anyone can identify any skills he may have in the areas where he is clearly deficient and which were highlighted the first time around.\textsuperscript{166}

The Committee also received a copy of an email, again sent by Mr Petrovs to Ms Dickschen, this time on the 19 August 2001, which contained the statement
Reeves, on reflection, would be incapable of doing the job unless he had a 24-hour-a-day nursemaid . . . 167

In contrast to Mr Hehir identifying weaknesses in Mr Reeves's background particularly in relation to commercial experience, no weaknesses were identified with respect to Mr Henesey-Smith during the second round interview process or subsequent discussion.

Mr RICH-PHILLIPS - …. Can you inform the committee, was there anything that became apparent during the second interview process that would suggest that Mr Henesey-Smith was not capable of undertaking the `... need for change in the directions the government is expecting URLC to take ...'?

Mr PETROVS - Absolutely not.

Mr RICH-PHILLIPS - At that meeting you had with the minister and Professor Neilson, did they expand upon this dot point as to why they considered Mr Henesey-Smith not capable?

Mr PETROVS - No. 168

4.6.4 Amendment to Management Structure

Despite the emphasis placed by Professor Neilson and Mr Moran on what they argued was Mr Reeves’ clear suitability for the position, misgivings from Mr Hehir indicate that not all the Secretaries were comfortable that they had found the “outstanding candidate”169. The lack of commercial financial skills in Mr Reeves’ background were taken so seriously that the Government, on Mr Hehir’s suggestion, set about amending the management structure of the URLC to cater for the Reeves appointment. On 7 September 2001 Mr Hehir emailed his comments on the draft interview report to Professor Neilson:

Lyndsay, as discussed I believe that the interview report should clearly indicate the comparative lack of experience of the preferred candidate with respect to the commercial management of URLC. It would be worth recognising that this
was a factor in the URLC board selection committee reaching the conclusion it did. However, if one further amendment is made to the report I will agree with the conclusion that Mr Reeves be selected for the position on the basis of his superiority on matters relating to strategic management and vision. This amendment would be to recommend that appropriate support mechanisms are put in place to ensure that his relative inexperience in commercial issues is managed. This could be achieved by creating a new position of chief operating officer, which would also take the role of an associate director and participate in board meetings. This may also allay many of the board’s concerns. ¹⁷⁰

In agreeing to Reeves’ selection only if a mechanism for “managing” his deficiencies in commercial management was established, the Committee observes that Mr Hehir’s opinion on the suitability of Reeves was somewhat less enthusiastic than the “outstanding candidate” critique provided by Professor Neilson and Mr Moran. Furthermore, Mr Hehir told the Committee that he

felt strongly enough about the inclusion of that recommendation that I sent the email saying that I believed it should be included. I would have debated it quite strongly if Lyndsay had not have been positive, which he was immediately. ¹⁷¹

Despite Professor Neilson’s belief that Mr Reeves’ was the superior candidate, Mr Hehir’s amendment, which was to have the effect of fundamentally altering the existing management structure of the URLC, was readily accepted by Professor Neilson. Professor Neilson put this down to the emphasis he placed on Mr Reeves as the candidate best suited to implement the Government’s policy agenda for the URLC:

you’re trying to select a candidate who will take the organisation in the direction in which you want it to go.

If all you’re looking for is stability and continuity in where you’re going, you have one mix of skills and possibilities. If what you’re looking for is a significant change in direction you have another mix. You need to make sure
nonetheless that what you’ve got is a balance of capabilities at the executive levels of an organisation which meets all the requirements under the legislation including for commercial performance. And so the notion of having a COO — and, indeed, we didn’t mention it but the chief finance officer there as well — to back up a CEO candidate like Reeves who was a change agent and could deliver change was one that I was comfortable with.  

Professor Neilson asserted that the role of himself and the other secretaries was to communicate advice to the board from the Ministers, in order to “move forward”:

**Mr HALLAM** — You devised a substantial change in the management structure of the corporation which was determined without even the courtesy of advice to the board. Don’t you think that smacks of presumptuousness in the reverse direction?

**Prof. NEILSON** — No, I don’t think so. I think that what we are doing here is providing advice to the board from ministers as to what ministers saw as necessary in order to move forward.

Although Mr Reeves was not considered to be in the "top three" candidates by the Board members of the URLC, Mr Hehir, Mr Moran and Professor Neilson each considered him to be the best candidate. Interestingly, the conclusion of those three participants, that Mr Reeves was the best candidate, was made both before and after agreement had been reached by them to alter the management structure of the URLC to provide "appropriate support mechanisms" to cover Mr Reeves' perceived weaknesses.
FINDING 14

The Committee finds that Professor Neilson’s response to Mr Hehir’s suggested amendment to the interview report further indicates that the supplementary round of interviews was conducted to justify the appointment of the Government’s preferred candidate. Despite obvious deficiencies in Reeves’ suitability for the position, indeed, the same deficiencies that invalidated his selection in the first interview, Professor Neilson, Mr Moran and Mr Hehir continued to make allowances to facilitate the appointment.

4.6.5 Department of Treasury and Finance and the Treasurer

Despite the requirement of section 6 of the Act that both the Minister for Planning and the Treasurer be consulted with respect to the appointment of a Chief Executive Officer, evidence before the Committee suggests that the Treasurer’s role in the consultation process was minimal and that, although the Acting-Secretary of the department participated in the second round interviews during the later stages of the process, the Treasurer was not briefed by the Department of Treasury and Finance.

Mr RICH-PHILLIPS — Are you aware of any consultation between the Minister for Planning and the Treasurer on this matter after that email of 18 September?

Mr HEHIR — No.

Mr RICH-PHILLIPS — Did you seek to provide any advice to the Treasurer that you had reached this conclusion with Professor Neilson and Mr Moran?

Mr HEHIR — I have already provided the advice. I was part of the interview process.
Mr RICH-PHILLIPS — Did you provide any advice directly to the Treasurer?

Mr HEHIR — There was no need for me to.

Mr RICH-PHILLIPS — Yet you raised the prospect of that in this email to Professor Neilson which Professor Neilson apparently did not follow up, if I understand your answer correctly.

Mr HEHIR — I did not say that that was the case. That was not the nature of your question. You said am I aware. I assume that it was done.

Mr RICH-PHILLIPS — But you are not aware of any follow-up with the Treasurer, and you did not seek to find out if there was any follow-up with the Treasurer?

Mr HEHIR — No.  

FINDING 15

The Committee finds that, despite s.6 of the Urban and Regional Land Corporation Act 1997, requiring that the Treasurer and Minister for Planning jointly consult on the URLC appointment, the Minister for Planning and the Secretary, Department of Infrastructure, assumed control of the process to the extent that the Treasurer's role was minimised. The Committee further finds that the Treasurer, in failing to take a more pro-active role in the appointment process, did not meet his obligations under the Act.

4.6.6 Referee Checks

Following the supplementary interview round conducted by the Secretaries, it was agreed that reference checks would be carried out on Mr Henesey-Smith and Mr Reeves. The Committee notes that both Professor Neilson and Ms Singleton, who took on the responsibility for this task, acknowledged that Professor Neilson alone conducted the checks
for Mr Reeves, while Ms Singleton conducted the checks for Mr Henesey-Smith. The third candidate, Mr Moore, was seen by the interview panel as better placed to take on the new role of chief operating officer. The Committee finds it concerning that Professor Neilson, who had originally put forward Mr Reeves’ name for candidature, had re-written the Candidate Summary Notes with a view to improving the discussion of Mr Reeves and who had intervened in the consultative process, would now forgo the appearance of any transparency of process and personally nominate to conduct the reference checks for the candidate.

**FINDING 16**

The Committee finds that the decision to amend the URLC management structure to accommodate Mr Reeves’ lack of commercial experience, and the absence of transparency in the reference checking process further undermines the claim that the supplementary selection process was held to provide advice to Ministers based on merit.
5.1 INTRODUCTION

In accordance with Term of Reference (a), the Committee now examines the appointment and resignation of Mr Jim Reeves as Managing Director of the Urban and Regional Land Corporation.

5.2 RECOMMENDATION TO THE MINISTERS

On 18 September 2001 Professor Neilson sent the final report to Mr Hehir and Mr Moran. The report recommended that Mr Reeves be appointed and that the management structure of the URLC be amended to incorporate the new role of chief operating officer. All the Secretaries signed this document. On the same day, Professor Neilson prepared a draft briefing note to the Minister for Planning, which he also sent to Mr Hehir and Mr Moran. Mr Hehir responded by asking whether the Treasurer should be brought into the process before the Minister wrote to Mr Petrovs.

On 20 September 2001 a letter was sent to Mr Petrovs from the Minister. Professor Neilson had approved the format and content of the letter and had forwarded the draft to the other Secretaries, who had not suggested any amendments. The letter stated
I refer to correspondence from the URLC of 4 July, 30 July and 17 August variously signed by the Deputy Chairman and you relating to the appointment of a new Chief Executive Officer . . .

Setting aside other issues relating to the process the Board adopted in selecting a new Chief Executive, neither the Treasurer nor I consider that receiving a letter from the Board informing us of a Board decision constitutes ‘consultation’ under the Act . . .

The detail in the 30 July Board correspondence (which had included copies of all the candidate interviews and assessment reports compiled by Heidrick and Struggles) was evidently ignored. The letter went on to say that the Minister had sought advice from the Secretaries in order to respond adequately to the Board and that

I do not support the proposal to appoint Mr Henesey-Smith . . . in light of the need for change in the directions the Government is expecting the URLC to take . . . Based on the advice from the secretary DOI (supported by the secretary of Premier and Cabinet and the acting secretary of Treasury and Finance) it is the firm view of both myself and the Treasurer that the URLC board should now consider the appointment of Mr Jim Reeves as managing director, URLC, to provide the necessary change management, experience in large, complex urban renewal activities, and leadership in responding to the URLC’s new role and functions.

The Committee notes that despite the criticism of the Board’s “presumption” in recruiting for a “managing director”, the Minister’s letter used this term. The Committee further notes that Minister Thwaites was later attributed as stating “Consultation is a 2 way thing”179. The Committee is surprised that given such a belief, the Minister thought it acceptable to sign off on this letter which did not seek to engage in a “2 way process” but told the Board what it “should” do.
The letter was considered at a special meeting of the Board on 26 September 2001. The Board resolved:

that in light of the strong desire of the Ministers, being the shareholder of the Corporation, the position of Managing Director should be offered to Mr Reeves and the Minister for Planning be advised accordingly.\(^{180}\)

That same day, the Chair of the Board wrote to the Minister for Planning informing him of the resolution and that the letter

is to be taken as evidence that the Board has consulted with you and the Treasurer regarding the appointment.\(^{181}\)

The Committee notes the Board's acknowledgment that this letter of itself constitutes consultation. This can be contrasted with Professor Neilson's insistence that the Board's earlier correspondence did not constitute such consultation even though it reported on a selection process in which he had personally participated, and which had been approved in advance by Minister Thwaites. It can be further contrasted to Minister Thwaites's letter of 20 September 2002 which specifically ruled that the Board's earlier correspondence did not constitute consultation.

Mr Petrovs explained to the Committee that by this time it was clear to the Board that the Minister and the Treasurer wanted Mr Reeves to be appointed to that position. Mr Petrovs stated, “I don’t believe we had a choice\(^{182}\).”

Board member Angie Dickschen echoed Mr Petrov's view that the letter from Minister Thwaites constituted a direction to the Board.
Ms DICKSCHEN - My recollection is that there was a letter produced from
the minister, Mr Thwaites, indicating that he had rejected our preferred candidate and
suggesting that the board consider to appoint Mr Reeves as the executive officer.

Mr RICH-PHILLIPS - What was your view on that position?

Ms DICKSCHEN - I felt that it was a direction, and I felt that Henesey-Smith
was the best person for the job and that I was being directed to consider and appoint
somebody else who I did not think was the best person for the job.

* * * *

Mr RICH-PHILLIPS - As a result of that you subsequently submitted your
resignation.

Ms DICKSCHEN - Correct. 183

5.3 APPOINTMENT

On 4 October 2001, in response to the Board's communication of
26 September 2001 that it had resolved that Mr Reeves be appointed
Managing Director of the URLC, Minister Thwaites wrote to the Board
Chairman
to acknowledge the action proposed by the Board with respect to appointment
of a new Managing Director following consultation with myself and the
Treasurer as required by Section 6 of the Schedule to the Act. 184

This letter was received by the URLC on 8 October 2001. On 9 October
2001 a draft offer and employment contract were prepared within the
URLC. On 11 October 2001, Chairman Petrovs wrote to Mr Reeves
offering him "the position of Managing Director with the Urban and
Regional Land Corporation (URLC)". The Board offered a three year
contract conditional upon the appointment being made by the Governor in
Council. A package of $221, 500 was offered. The Committee notes that
this salary package, which according to evidence submitted to the Committee, was the same as Mr Glynn’s, was not referred to GSERP, as was required under Government policy.  

**Prof. NEILSON** — . . . in the letter of 30 July there is a reference to the fact that the chairman of the board would be initiating discussions with GSERP about the salary package, and my understanding is that there were subsequent discussions about the salary package with GSERP while I was away on leave, and it was concluded that the way forward would be that Reeves would be appointed at the same salary as Glynn, so there was no shifting of the salary package as a consequence of the appointment.  

**Mr HALLAM** — Mr Heywood suggested to the committee, though, that that did not obviate the need to address government policy. The fact that the package had not changed was, in his view, no reason as to why it should not be referred to the panel. He also confirmed that it had not been referred to the panel. I am simply asking why that was.  

* * * *  

**Mr HALLAM** — Are you aware that the package was not referred to GSERP, according to the secretary?  

**Prof. NEILSON** — No.  

**Mr HALLAM** — Are you aware that that was required as part of government policy?  

**Prof. NEILSON** — There is a document, DOI 74.1, which includes a 15 March 1999 letter to Marek Petrovs from Bill Heywood which has in it, ‘After consideration, the panel approved an increase in the chief executive’s total remuneration package up to $221 500. The adjustment is effective from 10 March 1999 for two years or until a new contact is entered into’. I presume that those who were having the discussions at the time — Marek Petrovs, Bill Heywood and John Taylor — were operating on the basis that that $221 500 had been approved and was reasonable.  

**Mr HALLAM** — But that document itself says that it shall apply until a new contract is executed, and I am talking about a new contract.  

**Prof. NEILSON** — That is obviously something that should have been done by the URLC if it had to be done. I mean, I do not know whether there were conversations between Marek Petrovs and Bill Heywood that said that —
Mr HALLAM — So it was the URC’s responsibility to refer the package to GSERP?

Prof. NEILSON — Yes.\textsuperscript{186}

The Committee believes that this is a further indication of the entrenched culture of miscommunication that typified the conduct of the entire appointment process. In this particular incident, it was the URC who, according to evidence to the Committee, had a track record of inadequate liaison with GSERP. In this case, the lack of communication meant that stated Government policy was not adhered to.

The Government, however, does not appear to be aware that their policy was breached. Mr Moran presented evidence to the Public Accounts and Estimates Committee that detailed that

Those bodies [Government Business Enterprises] are expected to check with the commissioner [of Public Employment] and the Government Sector Executive Remuneration Panel (GSERP) process for which he is responsible.\textsuperscript{187}

Mr Moran went on to say that

This is a relatively new arrangement. There is a transition period during which some of those bodies are outside the guidelines that have otherwise been established by the government because of decisions taken in the past.\textsuperscript{188}

New contracts or the rolling over of any existing contracts, Mr Moran and Mr Bracks told the PAEC Committee, would have the policy applied to them:

Mr HALLAM — And as each contract is rolled over then, the GSERP policy should apply?

Mr BRACKS — That would be our aim, to apply that policy, yes.\textsuperscript{189}

In direct contrast to the evidence presented to this Inquiry, Mr Bracks and Mr Moran then gave evidence to the PAEC that the appointment of Mr Reeves did comply with Government policy on GSERP:
Mr HALLAM — Can you explain why it was not applied in respect of the Urban and Regional Land Corporation?

Mr BRACKS — It was. It was within the current band.

Mr MORAN — Are you referring to the previous chief executive office (CEO) of the Urban and Regional Land Corporation — —

Mr HALLAM — Yes.

Mr MORAN — Who sought an increase in remuneration which was declined under these arrangements at the conclusion of his contract because what he wanted was inconsistent with this policy.

Mr HALLAM — I am not referring to that all. I am referring to — —

Mr BRACKS — You should be!

Mr HALLAM — I am referring to the appointment of Jim Reeves.

Mr BRACKS — That was in compliance.

Mr HALLAM — In compliance?

Mr BRACKS — Absolutely. The previous chief executive, my understanding was, sought an increase which was not approved.

Mr THEOPHANOUS — A massive increase.

Mr BRACKS — Which illustrates your point, bears out the very point you have made.

Mr HALLAM — Excepting that the appointment of Mr Reeves was not referred to GSERP.

Mr MORAN — My understanding of the arrangement was that it was consistent with the requirements of that process.

Mr BRACKS — That is right.190

The fact that both the Premier and the head of his Department were not aware that the URLC failed to comply with Government policy in agreeing to a salary package for Mr Reeves provides further evidence of a failure of communication within Government about the appointment process.

The Board letter of 11 October 2001 to Mr Reeves was accompanied by a draft contract. Mr Petrovs asked that Mr Reeves indicate his acceptance by 18 October 2001. On 16 October 2001 Mr Reeves accepted the terms and
conditions, and advised Mr Petrovs accordingly. Mr Reeves further stated that it was his intention to resign from the City of Brisbane on 16 November 2001.

On 16 October 2001, Brisbane Lord Mayor, Mr Jim Soorley, released a Media Statement indicating Mr Reeves had "been lured away to Victoria by one of the top jobs in the state". Mr Soorley congratulated Mr Reeves for his contributions.

On 19 October 2001 Mr Petrovs sent an email to all staff of the URLC advising them of Mr Reeves' appointment. On the same day the URLC issued its own media release concerning the appointment of Mr Reeves. Board members were advised that "It has been issued today following news of the appointment breaking from the Lord Mayor's office in Brisbane. The content has been cleared with the Minister's office".

On 7 November 2001 Mr Jerome sent a Ministerial Brief to the Minister for Planning recommending that Mr Thwaites sign an attached Cabinet Submission supporting the appointment of Mr Reeves, Chief Executive Officer designate of the URLC, as a Director of the URLC Board. The appointment would be from 14 January 2002 until 13 January 2005. Mr Jerome's brief included the following statement:

There may be some media and public criticism of Mr Reeves' appointment as Chief Executive Officer related mainly to his current position of Chief of Staff of the Queensland Lord Mayor.

The Committee considers such advice disingenuous. There is no intrinsic reason why any appointment to the Victorian public service from local government would attract "media and public criticism". Such censure could only stem, in the Committee's view, from an appointee, and an
appointment process, known to be vulnerable to criticism. Mr Jerome's advice, endorsed by Professor Neilson, is an admission that the process was flawed. Lest this assessment be judged inappropriate, the Committee finally observes that when the anticipated "media and public criticism" eventuated, it centred not on the association with the office of the City of Brisbane Lord Mayor, but on the widely-known friendship between Mr Reeves and senior figures in the Victorian Government, primarily the Premier.

**5.4 RESIGNATION**

On 29 October 2001, Ms Angie Dickschen wrote to Mr Petrovs and submitted her resignation from the Board of the URLC. On 12 November 2001 she similarly advise Minister Thwaites of her resignation. Ms Dickschen's resignation was interpreted in the press as having being caused by her dissatisfaction with the appointment of Mr Reeves.

On 3 August, Professor Neilson had, in a note to Minister Thwaites, written “Potentially a further vacancy pending”. Professor Neilson told the Committee that following discussions with Mr Petrovs he had become aware that there was a possibility that one of the Board members might resign.
5.5 WITHDRAWAL

On 16 November 2001 following the Lord Mayor of Brisbane's press release, commentary began to mount in the media concerning the appointment of a friend of the Premier as the Managing Director of the URLC. From 22 and 29 November 2001, Questions Without Notice on the matter were asked in the Legislative Assembly and Legislative Council respectively. Media scrutiny intensified. The Committee reiterates that none of the parliamentary or media commentary focussed on the connection with the Lord Mayor of Brisbane's office, but rather on the connection with the Premier and, with the passing of time, on the selection process, and the role of the Premier and Minister Thwaites in the appointment of Mr Reeves rather than the candidate earlier recommended by the Board.

On 28 November 2001, Mr Reeves advised Mr Petrovs that "I am withdrawing from the position of CEO of the Urban and Regional Land Corporation". He believed that the "public campaign waged against my appointment makes my position untenable”\(^{199}\).

On 6 December 2001, Mr Petrovs wrote to Mr Reeves accepting the withdrawal. On 12 December 2001, Mr Petrovs wrote to Minister Thwaites advising him that Mr Reeves had declined to accept the appointment\(^{200}\). The Committee notes that Mr Reeves had accepted the appointment and then withdrew.
CHAPTER SIX
CONCLUSIONS

6.1 INTRODUCTION

The selection, appointment and resignation of Mr Jim Reeves as Managing Director of the URLC was characterised by ministerial bias towards a particular candidate, erosion of Board independence, and Executive interference at the secretarial and ministerial levels. These factors directly contributed to a situation that more than 12 months since the departure of the former Managing Director leaves the URLC still without a Managing Director. In this final chapter, the Committee draws certain conclusions from the evidence examined.

6.2 FINDINGS

The Committee finds that the appointment of Mr Jim Reeves as Managing Director of the URCL was a result of direct Executive interference in the identification, selection and appointment processes. Specifically, the Committee finds that the Deputy Premier and then-Minister for Planning, the Honourable John Thwaites MP, and the Secretary of the Department of Infrastructure, Professor Lyndsay Neilson, directly interfered in the processes associated with the appointment of a Managing Director to the URLC.
FINDING 17

The Committee finds that the Deputy Premier, and then-Minister for Planning, the Honourable John Thwaites MP, in conjunction with the Secretary of the Department of Infrastructure, Professor Lyndsay Neilson, directly interfered in the process of selecting a Managing Director of the URLC by identifying, promoting, choosing and appointing a favoured candidate, Mr Jim Reeves, to the position.

None of the witnesses who appeared before the Committee challenged the Government's right to be involved in the selection of a candidate to fill such an important position.

However, the Committee considers that the Government left itself vulnerable to criticism on several accounts. These include —

- the Minister's decision simply not to respond to the Board's original recommendation; the Committee considers that this represents a gross discourtesy to the Board;
- the Government's preparedness to change the management structure of the URLC to accommodate its preferred candidate; this demonstrates clear favouritism and departure from the original brief and was unfair to both the Board and the other candidates;
- the accessibility extended to candidate Reeves by Minister Thwaites during the selection process; this was highly inappropriate; and
•the decision to proceed with supplementary interviews; this was clearly a contrivance to have the appointment of the Government's preferred candidate appear merit based.

FINDING 18

The Committee finds that then-Minister for Planning and the Secretary of the Department of Infrastructure compromised the autonomy of the URLC Board by intervening in the appointment of the URLC Managing Director. In particular the Minister and the Secretary failed to engage in dialogue with the Board when they deemed that the Board's recommended candidate was unacceptable.

The Committee concurs with the concerns raised by Board member Lennie\textsuperscript{201}. The Committee believes that the re-interview process undermined the Board’s involvement in choosing the CEO and, as Mr Lennie stated, a CEO who is not beholden to the Board for his or her appointment places the Board in a difficult position for proper corporate governance. The Committee further supports Mr Reilly’s contention that the decision to hold a substitute interview process equalled an assertion that the Board was incompetent, thus fundamentally undermining the Board’s ability to continue to function.

The Committee regrets not only that the names of Mr Mark Henesey-Smith and Mr Bryce Moore have become public but the extent to which their professional credibility has become the subject of discussion.
The Committee notes that the reputation of the URLC has been tarnished as a result of the inappropriate process implemented by the then-Minister for Planning, Professor Neilson, and Mr Moran.

**FINDING 19**

The Committee finds that selection of the URLC's recommended candidate was compromised not by the inappropriateness of its selection, but by a Board Report that lacked comparative analysis and persuasive justification such that the artificial focus of Executive discontent could become the quality of the Board Report rather than the quality of the recommended candidate.

The Committee comments that as a matter both of principle and practice, members of the Executive should not interfere with job interview panels once the structure and reporting responsibilities of such panels have been agreed.

**FINDING 20**

The Committee finds that the embarrassment suffered by individual candidates and the damage caused to the URLC's reputation can be fairly traced to Minister Thwaites' decision to abort the original selection process by authorising a supplementary process designed and structured to justify the appointment of his preferred candidate.
6.3 RECOMMENDATIONS

The Committee observes that Industrial Relations Victoria sets out the following objectives in relation to executive recruitment and selection processes in the Victorian public service:

- to ensure merit and equal opportunity principles apply, so there is open and fair competition for all vacancies
- to employ the most capable person available to a position
- to attract high calibre applicants from both the public and private sectors
- to ensure adequate market coverage in advertising vacancies
- to promote a professional approach to executive selection

Specifically, when a vacancy arises —

Agency Heads are required to notify a vacancy or a prospective vacancy as widely as needed to ensure a reasonable field of competent applicants. As a minimum all vacancies in public service agencies must be advertised so that there is a competitive field of applicants on which to base a selection decision. These standards (Commissioner for Public Employment Directions - "Selecting on Merit") apply unless an exemption has been granted.

While the Committee understands that the Public Sector Management and Employment Act 1998 does not specifically apply to a director of the URLC in respect of the office of director, the Committee believes that the URLC, as a public authority, and the Minister for Planning (who has responsibility for the Act) should be mindful of the potential for scrutiny of any decisions of both the Corporation itself and the Minister in relation to decisions about the Corporation. The Committee notes that if regard is had to the principles applicable to other public sector recruitment processes, a process that is transparent and accountable is established from the outset. Further, the Commissioner for Public Employment’s
Directions - "Selecting on Merit" – state that at minimum all public service agencies should abide by the following standards —

1. Policies are documented, fair, accessible to all employees and applied consistently.
2. Selection criteria relevant to the work to be performed are bias free, documented and made available to all applicants.
3. All vacancies for executive and on-going employment are advertised. Vacancies may be exempted from advertisement:
   - where the agency head certifies there is no breach of merit and equity
   - to employ members of disadvantaged groups declared by the Commissioner
   - where the agency head directs an employee be re-assigned at level.
4. Agency heads report decisions to exempt vacancies from advertisement in annual reports to Parliament.
5. The applicant's skills, knowledge and abilities, relevant to the work are fairly assessed.
6. Selection methods are relevant to the work and their application is free from unlawful discrimination, patronage and nepotism.
7. Decisions and processes provide procedural fairness.
8. Decisions are documented and capable of review.
9. Appropriate confidentiality is maintained.

While, again, the Committee notes that the appointment of URLC directors is not legally subject to these standards, the public sector standards for executive appointment ensure the establishment of a process that, if adhered to, protect the stakeholders from criticism. As the media coverage of the URLC Managing Director appointment demonstrated, any organisation that reports to the government has the potential to be the subject of political interest. Therefore, these organisations, although they may function autonomously day-to-day, need to have regard to establishing practices that stand up to public scrutiny. The Committee heard evidence, for example, that under Government policy the salary
package for the Managing Director was subject to GSERP approval, yet the process leading to the appointment of the Managing Director was conducted without regard to accountability principles.

**FINDING 21**

The Committee finds that Government policy was breached in that the terms and conditions of the position offered to Mr Jim Reeves were not cleared with the Government Sector Executive Remuneration Panel.

The process of recruiting and appointing the URLC’s Managing Director did not abide by any general guidelines that promoted accountability; the position was not advertised, there were no widely-available documented selection criteria or documented policies about the appointment process, there was no appropriate consideration given to the provision of procedural fairness, the decision-making was inadequately documented and mechanisms for review were not clearly established.

**RECOMMENDATION 2**

The Committee recommends that whenever a vacancy to a senior Government position arises, selection policies and a selection process are from the outset agreed upon by the relevant stakeholders and formally documented.

The Committee further repeats its recommendation of Chapter Four:
RECOMMENDATION 1 (repeated from Chapter Four)

The Committee recommends that in circumstances where appointments to senior Government positions are predicated on some form of defined consultative process, that such consultation:

(1) Be specified in the relevant statute;

OR

(2) Be the subject of an obligatory pre-process meeting of all relevant stakeholders in order to devise an agreed understanding of what constitutes “consultation”.

The Committee commends its findings and recommendations to the House and to the Executive.

Committee Room

16 September 2002
ENDNOTES


3 The Attorney General’s correspondence to the Committee was reproduced in the *First Interim Report Upon the Urban and Regional Land Corporation Managing Director*, Parliamentary Paper 142, Session 1999/2002 (*First Interim Report*).

4 The Committee’s view is endorsed, for example, by parliamentary practice in the Senate; see Evans, H. (ed.), *Odgers’ Australian Senate Practice*, 10th edition, Australian Government Publishing Service, Canberra, 2001, p.481.


6 On 14 February 2002 the Committee placed advertisements in the *Age* and the *Herald-Sun* stating that the Legislative Council had appointed a Select Committee on the Urban and Regional Land Corporation Managing Director Committee and that the Committee would hear evidence in public on 20, 21, 22 February 2002. On 27 February 2002 the Committee placed advertisements in the *Age* and the *Herald-Sun* stating that the Committee would hear evidence in public on 6 and 15 March 2002. All subsequent public hearings were advertised on the Committee’s web site.


11 Confers on both Houses in Victoria and their committees the powers, privileges and immunities possessed by the United Kingdom House of Commons in 1855.

12 *Standing Orders of the Legislative Council*, 217, 226 and 229.

13 *Standing Orders of the Legislative Council*, 220 and 221.


17 All quotations and information in this section are drawn from the URLC Annual Report, 2000-2001; in particular see 4-5; 19, 22-24; 47.
18 Urban and Regional Corporation Act 1997, s. 6.


22 Petrovs, Minutes of Evidence, 21 February 2002, 124.

23 Petrovs, Minutes of Evidence, 21 February 2002, 125.


28 Glynn, Minutes of Evidence, 20 February 2002, 23.

29 Moore, Minutes of Evidence, 22 February 2002, 150.

30 Moore, Minutes of Evidence, 22 February 2002, 150.

31 Petrovs, Minutes of Evidence, 21 February 2002, 124,

32 Neilson, Minutes of Evidence, 15 March 2002, 293.

33 Jerome, Minutes of Evidence, 22 February 2002, 131.

34 Age, 1 December 2001.

35 Neilson, Minutes of Evidence, 22 March 2002, 331.

36 Age, 1 December 2001.


40 Petrovs, Minutes of Evidence, 21 February 2002, 111.

41 Petrovs, Minutes of Evidence, 1 May 2002, p.383.


43 Age, 1 December 2001.

44 Thwaites Doorstop Interview on URLC, 27 November 2001.

45 Neilson, 22 March 2002, 312.


47 See, for example, Mr O Lennie, Minutes of Evidence, 6 March 2002, 197.


49 Petrovs, Minutes of Evidence, 21 February 2002, 110.

50 Moore, Minutes of Evidence, 22 February 2002, 151.
Professor Neilson indicated to the Committee (Minutes of Evidence, 15 March 2002, 279) that this meeting took place "on or around "15 May 2001; this is incorrect. Mr Petrovs indicated that he had several meeting with Professor Neilson in this period (Minutes of Evidence, 21 February 2002, 111. Given that the ULC was engaging headhunters on 11 May 2001 and that the correspondence included the name of Mr Reeves, the Committee must conclude that the meeting between Mr Petrovs and Professor Neilson took place sometime before 11 May 2001.


Petrovs, Minutes of Evidence, 21 February 2002, 117.

Above, n.1.

Petrovs, Minutes of Evidence, 1 May 2002, 382.

Petrovs, Minutes of Evidence, 1 May 2002, 382-383.

Proud to Dickschen, 10 May 2001, Dickschen Response.


Dickschen to Heidrick and Struggles, 1 May 2001, URLC Response.

Lennie, Minutes of Evidence, 6 March 2002, 187.

Cozart to Dickschen, 15 May 2001, Heidrick and Struggles Submission.

Carr, Minutes of Evidence, 20 February 2002, 38.


Carr, Minutes of Evidence, 20 February 2002, 53.


Carr, Minutes of Evidence, 20 February 2002, 53.

Davis, Minutes of Evidence, 21 February 2002, 69.

Davis, Record of Meeting, 3 December 2001, Ministerial Response DPC 35.

Cozart to Dickschen, Email, 20 June 2002, URLC Submission.

Hand-written notes attached to Candidate Summary Notes, undated, URLC Submission.

Petrovs, Minutes of Evidence, 21 February 2002, 120.


Dickschen, Minutes of Evidence, 21 February 2002, 91.

Reilly, Minutes of Evidence, 19 April 2002, 358.

78 Davis, Minutes of Evidence, 21 February 2002, 81.
80 Neilson, Minutes of Evidence, 22 March 2002, 318.
81 Minutes of Evidence, passim.
82 Lennie, Minutes of Evidence, 6 March 2002, 197.
83 Davis, Minutes of Evidence, 21 February 2002, 71.
84 Lennie, Minutes of Evidence, 6 March 2002, 204.
85 Davis, Minutes of Evidence, 21 February 2002, 73.
86 Carr, Minutes of Evidence, 20 February 2002, 62.
90 Neilson, Minutes of Evidence, 15 March 2002, 301.
92 Petrovs, Minutes of Evidence, 21 February 2002, 117.
94 Urban and Regional Land Corporation Act 1997, s.18(2).
95 URLC Corporate Plan 2001/02 — 2003/04, 4.
96 URLC Corporate Plan 2001/02 — 2003/04, 5.
97 URLC Corporate Plan 2001/02 — 2003/04, 12.
98 Lennie, Minutes of Evidence, 6 March 2002, 189.
100 Davis, Minutes of Evidence, 20 February 2002, 68.
101 Notes of Meeting between Minister for Planning, Professor Neilson, and Members of the Board of the URLC, 3 December 2001, Ministerial Response 35.
103 Reilly, Minutes of Evidence, 19 April 2002, 355.
104 Dickschen to Minister for Planning, 4 July 2001, URLC Submission; a duplicate of this letter was sent to the Treasurer.
107 Petrovs, Minutes of Evidence, 21 February 2002, 105.
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113 Carr, Minutes of Evidence, 20 February 2002, 52.
115 Carr, Minutes of Evidence, 20 February 2002, 53.
120 Neilson, Minutes of Evidence, 15 March 2002, 291.
121 Neilson, Minutes of Evidence, 22 March 2002, 315.
126 Letter from Mr Petrovs to the Minister for Planning and the Treasurer, 30 July 2001, Public Service Response, DOI 36.2.
128 Memorandum from Alan Hawkes, DTF, and Geoff Tabe, DTF, to Craig Cook, Chief of Staff, Treasurer’s Office, 8 August 2001, Public Service Response, DTF 40.
131 Carr, Minutes of Evidence, 20 February 2002, 46-47.
132 Dickschen, Minutes of Evidence, 21 February 2002, 98.
133 Petrovs, Minutes of Evidence, 21 February 2002, 105.
134 Neilson, Minutes of Evidence, 1 May 2002, 402-403.
135 Neilson, Minutes of Evidence, 22 March 2002, 323.
136 Neilson, Minutes of Evidence, 22 March 2002, 323.
137 Neilson, Minutes of Evidence, 15 March 2002, 315-316.
138 Letter from Neilson to the Committee, 20 May 2002.
139 Neilson, Minutes of Evidence, 22 March 2002, 463.
140 Email messages 11.1, 11.2 and 11.3, Ministerial Response.
141 Neilson, Minutes of Evidence, 15 March 2002, 282.
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146 Neilson to Thwaites, Ministerial Briefing Note, 3 August 2001, Public Service Response, DOI 37.2.


151 Email from Lennie to Dickschen, 14 August 2001, URC Response.

152 Carr, *Minutes of Evidence*, 20 February 2002, 44.


177 Letter from the Minister for Planning to the URLC, 20 September 2001, Public Service Response, DOI 68.
179 Thwaites, Meeting with Board of Urban and Regional Land Corporation, 3 December 2001, Ministerial Response 35.
180 URLC Minutes, 26 September 2001, URLC Response.
184 Thwaites to Petrovs, 4 October 2002, URLC Response.
191 Petrovs to Reeves, 11 October 2001; Reeves to Petrovs, 16 October 2001, URLC Response.
192 Moore to O'Halloran, Email, 24 October 2002, URLC Response.
194 Moore to Board Members, Facsimile, 19 October 2001, URLC Response.
195 Jerome to Thwaites, Ministerial Briefing Note, 7 November 2001, Public Service Response, DPC 77.4
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196 Point 9, Jerome to Thwaites, 7 November 2001, Public Service Response, DPC 77.4.
197 Neilson to Thwaites, Ministerial Briefing Note, Public Service Response, DOI 37.2 (see also Minutes of Evidence, 22 March 2002, p.346).
198 Neilson, Minutes of Evidence, 22 March 2002, 346.
199 Reeves to Petrovs, 28 November 2001, URC Response.
200 Petrovs to Thwaites, 12 December 2001, Public Service Response, DPC 86.
201 Email from Lennie to Dickschen, 14 August 2001, URC Response.
203 Urban and Regional Land Corporation Act 1997, Schedule 1, 3(2).
204 Commissioner for Public Employment Directions – “Selecting on Merit.”