

ombudsman VICTORIAN

**Investigation into allegations
against Mr Geoff Shaw MP**

October 2012

**Whistleblowers Protection
Act 2001**

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Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to section 103 of the *Whistleblowers Protection Act 2001*, I present to Parliament my report of an investigation into allegations against Mr Geoff Shaw MP.



G E Brouwer

OMBUDSMAN

10 October 2012

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Section 22A statement

1. This report is made pursuant to section 103 of the *Whistleblowers Protection Act 2001* (the WPA). Section 22A of the WPA allows me to disclose, in such a report, particulars likely to lead to the identification of a person against whom a protected disclosure has been made if I determine it is in the public interest to do so and if I set out in the report the reasons why I reached that determination.
2. Having considered the four matters referred to in section 22A(2), I have determined that it is in the public interest to identify a person against whom a protected disclosure has been made by disclosing the following particulars: the name, personal and business details and occupation of the subject. I have made this determination for a number of reasons.
3. I consider that it is in the public interest for the subject of a protected disclosure to be identified in a report to Parliament when the disclosure concerns allegations of improper conduct by a person holding a public office of certain significance, such as a Member of Parliament. This is particularly so when the allegations have already been made public or when the report indicates that there is merit in the allegations against the public officer.
4. This public interest is derived from the nature of the public office held. In this instance, the public interest arises from the importance of the role, duties and responsibilities of the office holder to the people of Victoria and to the electorate which the office holder represents, the need for the highest ethical standards for persons holding such offices and the need for transparent accountability in the performance of those roles, duties and responsibilities.
5. I do not consider that the public interest identified above can be satisfied by any means other than by identifying the subject of the disclosure; confidentiality or de-identification is not appropriate as those courses are, in the instances in this report, inconsistent with the identified public interest.
6. I also note that the report deals with facts and circumstances that have been the subject of media reporting, which has identified the subject as well as the nature of the concerns that are the focus of the protected disclosures. Accordingly, I consider that even if my report to Parliament 'de-identified' the subject of the disclosure or attempted to maintain confidentiality in some other way, the subject of the protected disclosures would still be readily identifiable.
7. The only way to avoid such identification would be to omit from any report to the Parliament any information relating to the practices undertaken by the subject. In my view, this would mean that I would not be able to make any form of meaningful report on the investigation of this matter. I consider that this would clearly be contrary to the public interest and that confidentiality in such circumstances would be inappropriate.

Background

Geoff Shaw MP

8. Mr Geoff Shaw was elected to the Legislative Assembly of the Victorian Parliament in November 2010. Since this time, he has represented the electorate of Frankston.
9. In addition to his role as a Member of Parliament, Mr Shaw was a Director of Geoff Shaw & Partners, an accounting firm, from 1987; and a Director of Southern Cross Hardware from 2008. At interview in July 2012, Mr Shaw said that his interest in these companies ceased in July 2012.

The disclosure

10. In May 2012, the Hon. Ken Smith MP, Speaker of the Legislative Assembly received disclosures under the Whistleblowers Protection Act¹ (the WPA) in relation to the conduct of Mr Shaw. The whistleblowers alleged:
 - Mr Shaw used, and allowed his employees to use, his parliamentary vehicle for commercial use
 - Mr Shaw may have used copying facilities at his electorate office for commercial use.
11. The Speaker concluded that the disclosures met the requirements for a protected disclosure under Part 2 of the WPA. On 1 June 2012, the Speaker referred the disclosures to me in accordance with section 96 of the WPA.²
12. After consideration, I determined that the disclosures met the requirements for a public interest disclosure as they showed or tended to show that Mr Shaw had engaged in improper conduct, as defined under the WPA. Accordingly, I commenced an investigation into the matters raised in the disclosures. The result of that investigation is contained in this report.

Investigation methodology

13. In investigating this matter, my officers:
 - reviewed documentation gathered by the Department of Parliamentary Services in its initial review of allegations against Mr Shaw
 - reviewed fuel records and the *Motor Vehicle FBT³ Logbook* completed by Mr Shaw in relation to his parliamentary vehicle
 - reviewed private company records detailing services and repairs on Mr Shaw's private business vehicles

1 Section 6 of the WPA provides that a disclosure about a member of Parliament must be made to – (a) the President of the Legislative Council, if the member is a member of the Legislative Council; or (b) the Speaker of the Legislative Assembly, if the member is a member of the Legislative Assembly.

2 Section 96 of the WPA provides that if a person makes a disclosure to the President or the Speaker in accordance with Part 2, they may refer the disclosure to my office for investigation. Under section 97, I must then determine whether or not the disclosure is a public interest disclosure.

3 Fringe Benefits Tax.

- reviewed the *Members of Parliament Vehicle Plan* (the plan), including the legal foundation for the plan
 - interviewed a number of witnesses under oath or affirmation, including Mr Shaw.
14. All witnesses interviewed on oath or affirmation were offered the opportunity to be legally represented or to be accompanied by a support person. None requested legal representation.
15. All people subject to adverse comments in this report were provided with the relevant sections of my draft report prior to my finalising its contents. Only Mr Shaw chose to respond. The defences raised in his response are fairly reflected in this report.

Use of parliamentary vehicles

16. Parliamentary vehicles are made available to Members of Parliament pursuant to the *Parliamentary Salaries and Superannuation (Provision of Vehicles) Regulations 2006* (the Vehicles Regulations).
17. Various parties are involved in the provision and use of these vehicles:
- According to the plan, the Victorian Government under the authority of the Minister for Finance, WorkCover and the Transport Accident Commission issued the plan. The plan details how Members of Parliament may use parliamentary vehicles.
 - The Department of Parliamentary Services is the registered owner of parliamentary vehicles.
 - VicFleet, Department of Treasury and Finance (VicFleet) acts as the fleet manager for parliamentary vehicles on behalf of the Department of Parliamentary Services. It is responsible for the procurement, registration, insurance, repair and disposal of all parliamentary vehicles. Its role also includes receiving records of fuel purchases from fuel companies.
 - Each Member of Parliament may have the use of a parliamentary vehicle. A person who holds a current drivers licence, and is nominated in writing by the Member of Parliament, may also drive the vehicle.⁴
18. The plan is a 'guide' for all Members of Parliament in relation to the use of parliamentary vehicles.
19. According to the plan, parliamentary vehicles 'are provided for electorate, Parliamentary and private use. Vehicles should not be used for commercial purposes'. The plan states, 'It is the Member's responsibility to ensure the person(s) authorised to drive the vehicle does not use it for commercial or illegal purposes'. The plan also states that parliamentary fuel cards, which are provided with each vehicle, are 'to be used for all fuel and oil purchases for that vehicle only'.

⁴ Regulation 6 of the Vehicles Regulations.

20. The plan does not define ‘electorate’, ‘Parliamentary’, ‘private’ or ‘commercial’ use. In relation to the restriction on using the vehicle for commercial use, I also note the use of the words ‘should not’ (as opposed to ‘must not’).
21. My investigation examined the foundation and effect of the plan. An extract from the *Members’ Guide*⁵ provided to my office by the Department of Parliamentary Services refers to the plan and summarises what the *Members’ Guide* describes as a Ministerial Direction issued by the Minister for Finance under the *Parliamentary Salaries and Superannuation Act 1968* (the *Parliamentary Salaries and Superannuation Act*). The extract states:
- The provision and use of vehicles is subject to the guidelines set out in the Members of Parliament Vehicle Plan. It is the Member’s responsibility to be familiar, and comply with the provisions of the Plan.
22. However, there appears to be no power in the *Parliamentary Salaries and Superannuation Act* or any other Act for the Minister to issue such a direction and no direction from the Minister has been located which purports to issue the plan or require Members of Parliament to comply with the plan.
23. The current version of the *Vehicles Regulations* also makes no reference to the plan. Regulation 7 lists four obligations⁶ for a Member of Parliament provided with a parliamentary vehicle and none of those obligations require or imply that the Member of Parliament must comply with the plan. However, an earlier (revoked) version of the regulations⁷ included the following provision:
- The provision and use of vehicles provided in accordance with regulation 3 is subject to the terms and conditions contained in the document “Members of Parliament Vehicle Plan-Information Booklet-Version 1”.
24. This earlier version was revoked on 20 August 1996, after six weeks operation.
25. In relation to the enforceability of the plan, the Senior Manager, VicFleet said VicFleet has no role in enforcing the plan. The Secretary, Department of Parliamentary Services said that the only option for him to address a breach of the policy would be for the department to cease paying for the vehicle. It is unclear on what legal basis the department could do this.
26. This indicates that the foundation of the plan, and any legal obligations that Members of Parliament have to comply with it are, at best, uncertain.
27. This, however, does not mean that Members of Parliament have no obligation to comply with the plan. Members of Parliament have a higher duty to the public, the Parliament and the State than the minimum standard established by the letter of the law.

5 The *Members’ Guide* is provided to Members of Parliament by the Department of Parliamentary Services. It provides detailed information relating to the department’s activities.

6 A Member of Parliament who is provided with a vehicle pursuant to regulation 4 must - (a) ensure that the vehicle is serviced and maintained; (b) ensure that the vehicle is kept in a protected and secure location when not in use; (c) promptly report any damage to the vehicle to persons designated for that purpose and; (d) comply with the requirements of any insurance policy or policies entered into by the Crown in relation to that vehicle.

7 Regulation 4 of the *Parliamentary Salaries and Superannuation (Vehicle) Regulations 1996*.

28. Since Members of Parliament were first provided with vehicles in 1996, the plan has been accepted by Members of Parliament, the Parliament and the government as containing the rules under which those vehicles are provided. I consider that Members of Parliament are bound to comply with the plan, notwithstanding any legal defects in its foundation.
29. The status of the plan equates with the code considered in paragraph 12 of the report of the *Qualifications Joint Select Committee of the Parliament* in 1974.⁸ That is, the principles in the plan, like those in the 1974 code⁹, are to be regarded as:
- Rules of propriety to the extent that they set the standard which Parliament and the people expect Members of Parliament and Ministers of the Crown to observe.
30. A breach of the rules established in the code may amount to a contempt of the Parliament. *The House of Representatives Practice* (Cth) states:
- Corruption in the performance of a Member's duties as a Member could also be punished as a contempt.¹⁰
31. Erskine May has also considered the standards of conduct for Members of Parliament in the United Kingdom Parliament, stating:
- The concern of the House of Commons extends beyond direct pecuniary corruption of Members. The House has emphasised that 'it is the personal responsibility of each Member to have regard to his public position and the good name of Parliament in the work he undertakes'.¹¹
32. I also consider that the provision of vehicles to Members of Parliament may be a privilege of the Parliament. That term, to use the definition found in *House of Representatives Practice*, refers to:
- the special rights and immunities which belong to the Houses, their committees and their Members, and which are considered essential for the proper operation of the Parliament. These rights and immunities allow the Houses to meet and carry out their proper constitutional roles, for committees to operate effectively, for Members to discharge their responsibilities to their constituents, and for others properly involved in the parliamentary processes to carry out their duties and responsibilities without obstruction or fear of prosecution.¹²
33. While it is a matter for each House to determine what comprises a contempt or breach of privilege, it would seem that the provision of vehicles to Members of Parliament, particularly at the very low cost that vehicles are provided to them¹³, can and should be regarded as a special right of members provided for the primary purpose of assisting Members of Parliament to discharge their responsibilities to their constituents. Accordingly, a breach of the accepted rules under which those vehicles are provided would be an abuse of that privilege, which the relevant House could penalise.

8 Section 3(2) of the *Members of Parliament (Register of Interests) Act 1978* requires that regard is to be had to that code when interpreting or applying the code established by that Act.

9 See paragraph C of the 1974 code.

10 Harris, I.C. (ed.), *House of Representatives Practice (fifth edition)* (Department of the House of Representatives, 2005) 730.

11 Erskine May, *Treatise on the Law, Proceedings and Usages of Parliament (22nd edition)* (Butterworths, 1997) 115.

12 Harris, I.C. (ed.), *House of Representatives Practice (fifth edition)* (Department of the House of Representatives, 2005) 707.

13 Parliamentary vehicles are provided at either 0.75% (4 cylinder vehicle) or 1% (6 cylinder vehicle) of base salary. For that contribution, the cost of annual registration, maintenance, running and fuel costs of the vehicle and the costs of any insurance are met by the State. See regulations 4 and 5 of the Vehicles Regulations.

34. Further, a breach of the plan may well be a breach of the code of conduct established by section 3 of the *Members of Parliament (Register of Interests) Act 1978* (Register of Interests Act). Section 3(1)(a) of the Register of Interests Act provides:
- Members shall –
- (i) accept that their prime responsibility is to the performance of their public duty and therefore ensure that this aim is not endangered or subordinated by involvement in conflicting private interests;
 - (ii) ensure that their conduct as Members must not be such as to bring discredit upon the Parliament.
35. It would seem that, if the allegations made in this disclosure are correct, then Mr Shaw may have acted in contravention of both subparagraphs (i) and (ii).
36. Section 3(1)(a)(i) may have been breached in that his employees' alleged use of the parliamentary vehicle for his commercial purposes, with his knowledge, was not for the performance of his public duty as a Member of Parliament. Such use of the vehicle may amount to Mr Shaw's subordination of his public duty to his conflicting private business interests.
37. Section 3(1)(a)(ii) may have been breached in that the commercial use of a parliamentary vehicle could bring discredit upon the Parliament as the public would likely consider this an abuse of the privileges and facilities available to Members of Parliament.
38. The consequences of such breaches are dealt with in Section 9 of the Register of Interests Act, which provides:
- Any wilful contravention of any of the requirements of this Act by any person shall be a contempt of the Parliament and may be dealt with accordingly and in addition to any other punishment that may be awarded by either House of the Parliament for a contempt of the House of which the Member is a Member the House may impose a fine upon the Member of such amount not exceeding \$2000 as it determines.

Conclusions

39. The plan states that Members of Parliament 'should not' use the vehicle for commercial use. While 'must not' conveys an obligation, 'should not' suggests that Members of Parliament may have a degree of discretion as to how they use their vehicles. The use of the words 'should not' suggests that a vehicle is not to be used for commercial purposes, unless that commercial purpose is unavoidable or incidental to the use of the vehicle for its primary use – for parliamentary, electorate or private use.
40. There is, however, significant uncertainty as to the legal foundation of the plan, as there is no legislative provision that can be located which authorises the plan, requires compliance with the plan or authorises any Minister to issue the plan.

41. Nonetheless, it is considered that Members of Parliament are required to comply with the plan given their heightened duties and obligations; as the plan is, in my view, a rule of propriety which the Parliament and the people expect Members of Parliament to observe. In his response to my draft report, Mr Shaw argued that this conclusion is one of law, is misleading and 'not open for [me] to draw'. I disagree.
42. Further, I consider that a breach of the plan may constitute a contempt or breach of parliamentary privilege or a breach of the code of conduct established by the Register of Interests Act. If so, a breaching Member of Parliament can be penalised by the relevant House.
43. In response to my draft report, Mr Shaw disagreed with my conclusion that, as a Member of Parliament, he is obliged to comply with the plan. He also disagrees that a breach of the plan may amount to a breach of privilege, a contempt of Parliament and/or a breach of the code of conduct established by the Register of Interests Act. I have set out his response to this issue in more detail later in my report.¹⁴

¹⁴ See my conclusions in the next chapter, entitled: 'Misuse of parliamentary resources'.

Misuse of parliamentary resources

Parliamentary vehicle

44. At interview, Mr Shaw gave evidence that he knew his parliamentary vehicle could not be used for commercial use. However, my investigation identified that Mr Shaw used his parliamentary vehicle for a commercial trip to Sale and that he used his parliamentary fuel card to purchase fuel for a private vehicle on one occasion, in contravention of the *Members of Parliament Motor Vehicle Plan* (the plan).
45. Mr Shaw's parliamentary vehicle was also used by Southern Cross Hardware for commercial use, including interstate trips. My investigation established, on the balance of probabilities, that Mr Shaw had knowledge his employees were using his vehicle in this way.

Mr Shaw's commercial use of the parliamentary vehicle - trip to Sale

46. At interview, Mr Shaw said that he believed he was permitted to drive his parliamentary vehicle anywhere 'in Australia for any purpose outside of commercial'. In explaining what 'commercial' meant to him, Mr Shaw said, 'anything to do with business'.
47. Mr Shaw said that he used his parliamentary vehicle to drive to Sale, regional Victoria, to collect Southern Cross Hardware stock on Good Friday 2011 (22 April).¹⁵ Details of the trip are not recorded in the *Motor Vehicle FBT Logbook*¹⁶ (the logbook) completed by Mr Shaw as he stopped completing it on 17 April 2011; however, Mr Shaw's telephone records indicate that he was in Sale on 22 April 2011.
48. At interview, Mr Shaw said that the week before the trip, Mr A¹⁷ advised him that they needed to collect Southern Cross Hardware stock from Sale. Mr Shaw said Mr A was unable to pick up the stock. Mr Shaw said he planned to go 'for a drive anyway' owing to family issues, so he drove to Sale to collect the stock.
49. This is contrary to the evidence of Mr A who said he 'was scheduled to go there [Sale] the following week' and he was unaware that Mr Shaw was travelling to collect the stock until Mr Shaw returned to Melbourne.
50. At interview, Mr Shaw was asked if his trip to Sale constituted commercial use. He said:

I would think it was incidental to what I was going to do ... Well I was going to go on a drive anyway - for my own pleasure and for my own personal stuff.

¹⁵ In his statutory declaration, sworn 2 July 2012, a former member of Southern Cross Hardware staff (Mr A) said the trip occurred on 31 March 2011. At interview, Mr A said it may have been a couple of weeks later.

¹⁶ Members of Parliament who choose to have a parliamentary vehicle under the plan are required to complete a *Motor Vehicle FBT Logbook*, which is valid for five years. They are only required to complete the logbook for 12 continuous weeks. The logbook includes details of each trip in the vehicle during that period, including the name of the driver, the date, odometer readings, the destination and the purpose of the journey. The logbook is retained by the Department of Parliamentary Services for taxation purposes. Mr Shaw completed a logbook from 24 January to 17 April 2011. This logbook was examined during my investigation.

¹⁷ Mr A worked for Southern Cross Hardware full-time from 2008 to 2011.

51. In response to my draft report, Mr Shaw stated:
- [T]his was incidental to my private trip on Good Friday 2011 – a public Holiday – in which I was going to travel to Lakes Entrance on a private trip anyway, which is through Sale.
52. However, instead of travelling to Lakes Entrance, Mr Shaw travelled to Sale in the morning to collect the stock and returned that day. When asked, at interview, if he would have travelled to Sale if he did not need to collect Southern Cross Hardware stock, he said, ‘No I don’t think so. I might have gone to Lakes Entrance’.

Southern Cross Hardware’s commercial use of the parliamentary vehicle

Mr Shaw nominates additional drivers

53. Mr A and Mr B¹⁸, who worked for Southern Cross Hardware full-time, were each provided with a vehicle to use for business purposes – to complete customer deliveries and pick ups – and also for private purposes. They said that the vehicles were part of their salary packages. One of the vehicles was owned by Southern Cross Hardware and the other was owned by Geoff Shaw & Partners.
54. In April and May 2011 respectively, Mr Shaw nominated Mr A and Mr B as drivers of his parliamentary vehicle by completing a form and submitting it to the Office of the Clerk of the Legislative Assembly.
55. At interview, Mr Shaw said:
- the reason I nominated them is if one of the cars [owned by Mr Shaw’s private businesses] for example was going in for a service or a change of tyres or whatever it was um that they – there was a car there that they could utilise for the day or for the week or whatever the time period was ... That they can drive to and from home.
56. Mr Shaw said he told Mr A and Mr B, ‘Guys, you can use this car and it can only be used for private purposes, to and from home’. Mr Shaw did not recall if he told them that they could not use the vehicle for commercial purposes; however, he said ‘I think that would have been part of it’. When asked if he provided Mr A and Mr B with documentation about using the vehicle, Mr Shaw said, ‘they probably got that ten pager or whatever it is guide, but I can’t recall’.
57. According to Mr A and Mr B, they did not receive any documentation detailing how they were to use the vehicle. However, they said they did sign a *Driver acknowledgment form*, which indicated that they had read the plan.
58. At interview under oath, both Mr A and Mr B disagreed with Mr Shaw’s evidence that he told them they could only use the vehicle for ‘private use’. In a statutory declaration, sworn 2 July 2012, Mr A said:
- Mr Shaw was particularly keen for us to use it [the parliamentary vehicle] for [business] day trips to the country. He said, if I was going to do 700km or more in a day, to let him know so he could swap cars with me ... [H]e said – if anybody asks it’s for personal use.

¹⁸ Mr B was a full-time employee from 2009 to 2011.

59. At interview, Mr B said that Mr Shaw asked him to advise him when he was going on his 'next country trip', so they could swap cars. Mr B said Mr Shaw knew that he was using the parliamentary vehicle for commercial use. He said:

Because that's my job, to go and see customers and stuff every day of the week. Fridays I tend to be in the office, but every other day I'm out seeing customers and calling on customers on behalf of SC [Southern Cross] Hardware.

60. In his statutory declaration, sworn 2 July 2012, Mr B further said:

He [Mr Shaw] told me that, if anyone asked me about it, I was to say I had the car for private use.

61. In response to my draft report, Mr Shaw stated:

Mr A was regularly in the office and was not out every Monday to Thursday seeing clients. If what he says ... were true both Mr A and Mr B would have had the [parliamentary] car regularly. In fact, Mr A was sacked in June 2011 and admits using the car only twice during this six month period, one of those times for only one day in February 2011, then does not admit to using it again until May 2011 - one month before he was sacked for stealing stock. If the vehicle were regularly used ... then it would have been used in the time from that one day in February to May, then from 23rd May to November 2011.

62. At interview, Mr Shaw provided a statutory declaration from Mr E, a former Southern Cross Hardware employee, which Mr Shaw said supported his version of events. In his declaration Mr E said that Mr A spent 'most of his time in the office' (as opposed to visiting customers). However, at interview under oath, Mr E said:

Sometimes he'd [Mr A] spend the whole week in the office just calling customers and sorting out stock, ordering new stock. And other weeks he would spend the whole week out going around seeing customers face to face.

Warrnambool - February 2011

63. My investigation identified that Mr Shaw first provided his parliamentary vehicle to Mr A in February 2011. Mr A said that he used the vehicle for a commercial trip to Warrnambool.
64. At interview, Mr A said:
- Generally every Friday or every second Friday we'd have a meeting just to discuss the week's - what we're doing, what trips are planned, and I said "I've got to do a trip down to Warrnambool to drop off some stainless sheets for the security doors" - and he [Mr Shaw] said "well, take my car it's got a tow bar".
65. Mr A said that after that trip, Mr Shaw 'said numerous times, "if you're doing day trips, let me know and you can use that car [the parliamentary vehicle]".'
66. Mr A's evidence about the trip to Warrnambool is supported by the parliamentary vehicle's logbook, which Mr Shaw completed from 24 January to 17 April 2011. At interview, Mr Shaw acknowledged that he completed the incorrect handwritten entry in the logbook for 21 February 2011, the date that Mr A drove to Warrnambool. The logbook entry is as follows:

- Name of driver: 'Geoff Shaw'
 - Date: '21/2 [2011]'
 - Kilometres travelled: '694'
 - Destination and purpose of journey: 'pvt' (private).
67. A round-trip from the Southern Cross Hardware factory in Carrum Downs to Warrnambool is approximately 630 kilometres.¹⁹
68. At this time, Mr Shaw had not nominated Mr A as an authorised driver of his parliamentary vehicle, as required by the Vehicles Regulations. This did not occur until April 2011. At interview, Mr Shaw gave evidence that he understood others could drive his parliamentary vehicle 'as long as they sign forms to say that they can'.
69. At interview, Mr Shaw was asked why he gave his parliamentary vehicle to Mr A on this occasion. Mr Shaw said:
- Maybe the car needed to go in for service I don't – they are the only reasons that I can put my finger on ... The only other reason may be – [Mr A] was quite a whinger with regards to his cars and comfort so it could be on that too – it could be that he – the Territory which was owned by the accounting firm [Geoff Shaw & Partners] used to have a couple of knocks or it – when it hit 80 it sort of jumped a little bit and he didn't like that sort of thing in it so he could have given it to me to have a look at and drive round for a while.
70. Mr Shaw, Mr A and Mr B all said that Mr Shaw's two private business vehicles (which were used by the Southern Cross Hardware employees) were serviced or repaired by three local businesses. Records from these three businesses reveal that neither of Mr Shaw's private business vehicles were serviced or repaired on or around 21 February 2011.
71. Mr Shaw gave evidence, under oath, that he was not aware that Mr A drove his parliamentary vehicle to Warrnambool. If he did not know prior to the trip that Mr A was using the vehicle for commercial use to travel to Warrnambool, it is likely to have been evident when Mr Shaw recorded the 694 kilometre trip in the logbook that Mr A had not merely driven between his home and work. When asked about this at interview, Mr Shaw said, 'I can't recall but I suppose I wasn't fussed'.

Use of parliamentary fuel card to fill a Southern Cross Hardware vehicle

72. According to Mr A, the first time he used the parliamentary vehicle, he filled the vehicle with Unleaded 95. He said the parliamentary fuel card could not be used for this type of fuel, so he had to pay for the fuel with his credit card.
73. In a statutory declaration, sworn 2 July 2012, Mr A said:
- Mr Shaw went off at me for not using the parliamentary card. So, the following Friday he met with me and we refilled a SCH [Southern Cross Hardware] car using the fuel card. That was when I started to question my relationship with him. I believe this was at Frankston BP and the fuel was about \$100. I specifically recall Mr Shaw asking me to reverse back from the pump so the service station operator could not take the registration number.

¹⁹ www.whereis.com.au.

74. In response to my draft report, Mr Shaw said, 'I categorically deny [Mr A's] allegation' (above).
75. However, at interview, Mr Shaw admitted that he used the parliamentary fuel card for his private vehicle on this occasion. He said Mr A returned his parliamentary vehicle and told him he had not used the fuel card. Mr Shaw said:
- I said fine - ok well - I'll take my Territory and go fill that up - and I filled it up with about \$80 roughly worth of fuel ... I saw this as a matching up of fuel that we had paid for and it was \$20 odd dollars Parliament's way not our way - so we were out of pocket twenty odd dollars ... I thought maybe that could be wrong but I was evening it up.
76. Mr Shaw denied that he took steps to prevent the petrol station attendant from seeing the registration of the vehicle.
77. The plan states that the parliamentary fuel cards are to be used for the parliamentary vehicle only.

New South Wales and country Victoria trips - May 2011

78. Mr A said that Mr Shaw gave him his parliamentary vehicle from 8 to 23 May 2011. During this time, Mr A said he visited Southern Cross Hardware customers in Albury, Lakes Entrance, Phillip Island, Traralgon, Wagga Wagga (New South Wales) and Yarrowonga, and other local destinations, such as Mornington, Pakenham and Rosebud.
79. Mr A's diary entries detail his trips to Wagga Wagga, Albury and Phillip Island and that he met Mr Shaw on 23 May 2011 to 'swap over cars' (Mr A returned the parliamentary vehicle to Mr Shaw and took possession of one of Mr Shaw's private business vehicles, which Mr Shaw had been using on that day).
80. Mr A's evidence is also supported by his Southern Cross Hardware expense sheets. He said he would usually pay for fuel for his Southern Cross Hardware vehicle and seek reimbursement via 'expense sheets'. His expense sheets show that he did not make a claim for fuel from 8 to 23 May 2011. Mr A said this was because he had the parliamentary vehicle and fuel card. His expense sheets show he made several claims for fuel before and after this period.
81. At interview, when asked why he used the parliamentary vehicle, Mr A said that he told Mr Shaw he 'had some trips to do', so Mr Shaw gave him the vehicle. Mr A said:
- He knew ... that I had country runs to do - which was the Albury/Wodonga trip which is a two night, three day trip about 1,500 kilometres - he knew I was doing that - I did another day trip to Albury about 2 weeks later and he knew about that because I told him where I was going at the meetings.
82. Mr A also said that Mr Shaw approved a \$105.65 accommodation claim for the May 2011 trip in his expense sheet. He said Mr Shaw would have approved the claims on the expense sheet and then authorised a Geoff Shaw & Partners officer to reimburse him.

83. Another witness supported Mr A's evidence, stating, under oath:
- [Mr A] spoke to me a few times just in passing, and said, "I've been given the Parliamentary car, I've been told [by Mr Shaw] I've got to drive this". He said, "I'm not allowed - I'm not allowed" [to drive the parliamentary vehicle].
84. Mr B also said he drove Mr Shaw's parliamentary vehicle for one day in May 2011. He said, 'I was doing my normal day – daily seeing customers and stuff like that'. Mr B said Mr Shaw knew he was using the vehicle for commercial purposes on that day:
- Because that's my job to go and see customers and stuff every day of the week.
85. In response to my draft report, Mr Shaw said, 'I categorically deny [Mr B's] allegation' (above).
86. Records from the three companies that serviced or repaired Mr Shaw's private business vehicles reveal that neither of Mr Shaw's private business vehicles were serviced or repaired in May 2011.
87. At interview, Mr Shaw said he did not recall giving his parliamentary vehicle to Mr A or Mr B in May 2011.

South Australia and country Victoria trips – October to December 2011

88. Mr B said, in a statutory declaration sworn 2 July 2012, that Mr Shaw gave him his parliamentary vehicle 'to continuously use from the end of October 2011 until I left in December 2011' (22 December 2011).
89. Fuel records from 30 October to 20 December 2011 demonstrate that during this period the parliamentary vehicle travelled over 6,500 kilometres and Mr B used the parliamentary fuel card to purchase over \$1,250 worth of fuel. During this time, Mr B said he used the vehicle to visit Southern Cross Hardware customers in South Australia and to complete local customer deliveries and pick ups.
90. Mr B said:
- He [Mr Shaw] told me that, if anyone asked me about it, I was to say I had the car for private use. During this period Mr Shaw saw me every week, either on a Thursday or a Friday ...
- So, for two months I worked for him using the parliamentary vehicle. He had given it to me and had taken my SCH [Southern Cross Hardware] car off me. He clearly knew what I was doing, I was working for him and keeping his business going, the only full time employee. The only vehicle he had provided to me was the parliamentary one, and I was continuing to travel to see customers and run the business on a day-to-day basis. I understand he is claiming he did not know I was using the vehicle for the business. This is nonsense. There is no way I could have done the job for him. I had to use the only vehicle he gave me, and had to travel in that job.
- During that period I drove the parliamentary vehicle to Adelaide. All the customer visits from late October until I left in December were done by me, using the vehicle. At that stage, I was literally going everywhere as [Mr A] had left.

91. In response to my draft report, Mr Shaw stated:
- I emphatically deny the statement [of Mr B] ... There was another car to use also, the Ford Falcon, which was for months at Southern Cross Hardware. Also at this time, because there was one staff member, country trips were reduced and more work was expected to be done via phone and couriers.
92. According to Mr B's evidence, Mr Shaw took the Ford Falcon away from the Southern Cross Hardware premises prior to October 2011. He said, from this time, there was only one business vehicle available (Ford Territory) and Mr Shaw took this vehicle from him at the end of October 2011.
93. Parliamentary vehicle fuel records for Mr Shaw's vehicle demonstrate that fuel was purchased in Stawell, country Victoria; Elizabeth Vale, South Australia; and Warrenheip, country Victoria on 7 to 9 November 2011.
94. Hansard records show that Mr Shaw was in Parliament on 8 and 9 November 2011 and could not have driven the vehicle on a trip to country Victoria and South Australia on those days.
95. In his statutory declaration, Mr B also said:
- Mr Shaw actually organised my accommodation in Adelaide so it is ludicrous for him to claim he did not know I was there. He rang up and paid for the accommodation in advance.
96. Mr B said he contacted Ms C at Geoff Shaw & Partners, who usually arranged payment for his accommodation. He said:
- [She] let me know that she can't pay it no more and to ring up Geoff [Shaw] and he'll organise to get payment for that hotel ... I rang up Geoff and spoke to him and he organised payment for that trip.
97. When asked about this by my officers, Ms C recalled a conversation with Mr B in which she advised him that she no longer had authority to arrange payment for accommodation. She did not recall where Mr B was travelling to or when the conversation occurred, but she said it was after September 2011.
98. Ms D, a former employee at Geoff Shaw & Partners, also gave evidence that, at this time, Mr Shaw was the only person who could pay for accommodation expenses for Southern Cross Hardware.
99. At interview, when asked if he paid for Mr B's accommodation prior to the trip, Mr Shaw said, 'Can't answer that'. When asked if he had prior knowledge that Mr B was travelling to South Australia for Southern Cross Hardware business, Mr Shaw said, 'I can't recall'.
100. In his response to my draft report, Mr Shaw did not make any observations about the evidence supporting Mr B's statement that Mr Shaw paid for his accommodation for the South Australia trip in advance.
101. Mr B also said:
- When I had been driving a SCH [Southern Cross Hardware] vehicle, I'd put my expense claims in to the girls in Mr Shaw's accountancy office. That would include gas and petrol expenses for the SCH vehicles. After he gave me the parliamentary vehicle, I used the [parliamentary] fuel cards, so no longer had gas and petrol expense claims. The girls in the office asked me where my claims were, and I told them I had the parliamentary car.

102. At interview, Mr Shaw said that he gave his parliamentary vehicle to Mr B when his private business vehicle 'had to go in for a major service'. Mr Shaw said:
- I don't know how long it was off for - maybe a working week but I'm not sure - I think he had the car for more than that - more than the week cause I remember there'd be a couple of times that he rang up - this is October/November last year - where he wanted to pick up the family from Tullamarine - I said fine that's no problem and there was times when we couldn't swap for whatever reason - whether I was busy because I was in Parliament or whether our times just didn't match up.
103. Records from the three companies that serviced or repaired Mr Shaw's private business vehicles reveal that, from October to December 2011, the private vehicle used by Mr B was only unavailable for two days owing to a service; 20 and 21 October 2011.
104. When asked at interview how he expected Mr B to do his job without a vehicle to use for customer visits, deliveries and picks ups, Mr Shaw said:
- Well during that time we weren't really doing the - we were more - because the roles were more condensed he was doing a lot less of that stuff and more on the phone.
105. Mr Shaw said he had 'no idea' if Mr B was doing deliveries during that time.
106. In response to my draft report, Mr Shaw said:
- The statements regarding costs and kilometres [above] ... are misleading and should not be included as they suggest that those amounts are all related to commercial use. I travel approximately 2500kms per month so during this time I alone would likely have travelled around 5000kms.
107. However, on balance, the evidence indicates that Mr Shaw did not use the parliamentary vehicle at all during this period. As stated above, Mr B gave evidence that Mr Shaw gave him the parliamentary vehicle 'to continuously use from the end of October 2011 until I left in December 2011' (22 December 2011). During this time, Mr B travelled over 1,200kms in a three day trip to South Australia (which Mr Shaw could not have completed as he was in Parliament).

Mr Shaw's role in the use of the parliamentary vehicle

108. At interview, Mr Shaw did not dispute that Mr A and Mr B had his parliamentary vehicle for their own use. He also said that they could only have gained access to his vehicle if he gave them the key.
109. However, Mr Shaw denied that he gave his parliamentary vehicle to Mr A and Mr B for commercial use. He said he did not know they were using the vehicle for such use until allegations appeared in the media.
110. Mr Shaw said he 'wasn't involved in the day-to-day running of the business' and did not 'have the day-to-day knowledge of what they [Mr A and Mr B] do'. This is inconsistent with the evidence of Mr A and Mr B. For example, Mr A said that he met with Mr Shaw 'generally every Friday or every second Friday ... to discuss the weeks - what we're doing, what trips are planned'. In response to my draft report, Mr Shaw said that 'his primary concern with the business was sales. How they got those sales was for them [Mr A and Mr B]'.

111. Mr Shaw also said that he nominated Mr A and Mr B to drive his parliamentary vehicle so they could drive it to and from work if one of his private business vehicles 'was going in for a service or a change of tyres'. This is not consistent with the evidence obtained by my officers from the private companies that repaired or serviced the Southern Cross Hardware vehicles.
112. In his response to my draft report, Mr Shaw did not make any comments about why the evidence I obtained did not support his statement that he only gave his parliamentary vehicle to Mr A and Mr B when the Southern Cross Hardware vehicles were being repaired or serviced.
113. Mr Shaw also said that Mr A complained about the private business vehicle available to him and that Mr A 'could have given it to me to have a look at and drive round for a while'. This is also inconsistent with Mr A's evidence that Mr Shaw asked him to use the parliamentary vehicle for country trips.
114. Mr A and Mr B both gave evidence that they required a vehicle to do their jobs, as one of their key duties was to visit customers. As Mr B said:

I understand he [Mr Shaw] is claiming he did not know I was using the vehicle for the business. This is nonsense. There is no way I could have done the job for him. I had to use the only vehicle he gave me, and had to travel in that job.
115. Mr Shaw disputed this at interview. He said Mr A and Mr B could use couriers for deliveries. He also said that Mr A was 'a person whose operations were at the factory rather than out and about'. When asked why he would need to give Mr A his parliamentary vehicle if this was the case, Mr Shaw said, 'because he would have to get from home to work'. This is implausible. As noted above, Mr A travelled 694 kilometres in the parliamentary vehicle on 21 February 2011, which Mr Shaw himself recorded in the parliamentary vehicle logbook.
116. Mr Shaw also said that when he gave his parliamentary vehicle to Mr B, he was doing 'a lot less' customer visits, deliveries and pickups.
117. As discussed earlier, Mr Shaw also provided a statutory declaration from Mr E, a former Southern Cross Hardware employee. At interview, Mr E said he is selling Southern Cross Hardware goods on consignment for Mr Shaw through the company of Mr E's wife. In response to my draft report, Mr Shaw said Mr E 'is not selling goods on consignment for me'.
118. When my investigators interviewed Mr E, they identified a number of inaccuracies in his declaration and, under oath, he conceded that '50 per cent' of his statutory declaration was based on what he said he was told by Mr A, not his direct knowledge. I consider much of the information contained in the statutory declaration to be unreliable.
119. Mr E was provided with an opportunity to respond to the sections of my draft report that related to him; however, he did not respond.

120. In his response to my draft report, Mr Shaw said:
- You choose to entirely disregard the evidence of [Mr E] ... on the basis of certain inaccuracies that you say diminish his credibility notwithstanding that his evidence appears to support my account of events.
121. Mr Shaw's response did not provide any explanation for the inaccuracies in Mr E's evidence.
122. Mr E also said in his declaration that Mr A 'wanted the company for himself'. He said that Mr A's relationship with Mr Shaw worsened:
- [Mr A] took it upon himself to make plans of starting his own business, doing some under the table deals with competitors. He also displayed some odd behaviour which involved doing cash sales, photocopying documents of suppliers and customer information ... [Mr A] called me on one occasion to help them load the trailer with approximately 10 thousand dollars worth of stock, that they were going to use as a ransom, so they could get what they wanted from Mr Shaw. I refused to help them and then I called Mr Shaw to tell him what was going on. Mr Shaw then called a meeting, and [Mr A] was sacked on the spot.
123. At interview, Mr A said he took some Southern Cross Hardware stock to withhold until Mr Shaw paid his outstanding tax and superannuation payments. However, he put the stock back the following day. He said that Mr Shaw used this 'to get rid of me'. In relation to Mr Shaw's use of the parliamentary vehicle, Mr A said, 'For me it's a question of Mr Shaw being accountable'.
124. At interview, Mr Shaw said: 'my thinking is that it's a set up to get back at me for him [Mr A] being sacked'. Further, in response to my draft report, Mr Shaw said:
- I sacked Mr A for theft of stock from my business in June 2011 ... Mr A has strong reason to unjustly pursue me; and this is to get back at me for him being sacked. Mr B, for his part, is closely associated with Mr A and left my employment to enter into business with Mr A. Further Mr A & Mr B have worked together in the past in a similar business. That factual context raises serious doubts as to the credibility of the[ir] evidence.
125. While Mr Shaw argues that Mr A bears him ill will, I consider that Mr A's evidence is reliable because it is supported by fuel records, the logbook, expense sheets, interstate accommodation records and diary entries. Mr B's account is similarly supported by documentary evidence. Mr Shaw made no comment about this evidence in his response to my draft report.
126. At interview, Mr Shaw also said:
- I've been a boss and employed people before and I know if employees do the wrong thing the buck stops with me - 100 percent. Whether I know that they were - what they were doing or not - the responsibility lies with me and I'll be the one that wears the burden for that.

Electorate office copying and printing facilities

127. The second allegation, also reported in a media article in May 2012,²⁰ was that Mr Shaw may have used copying and printing facilities at his electorate office for commercial use.
128. In relation to this issue, Mr A said:
- The only bulk photocopying I recall is of a price list, about 10 pages long. I handed the disc in at Mr Shaw's accountancy offices and picked up the photocopying from his electorate office. It amounted to roughly a full box of photocopying, maybe 500-1000 sheets. I cannot say where the photocopying took place.
129. In relation to this allegation, Mr Shaw provided two statutory declarations from an electorate officer and an employee at Geoff Shaw & Partners, stating that printing and copying for Mr Shaw's two businesses was not completed at Mr Shaw's electorate office. At interview, Mr Shaw said, 'they're all saying "no", so I can only say no. I refute it'.
130. A review by the Department of Parliamentary Services of Mr Shaw's electorate office printing expenses found 'no transactions in breach of guidelines' and that Mr Shaw's printing expenses were below the average Member of Parliament's use.
131. The evidence obtained during my investigation did not substantiate this allegation.

Conclusions

Parliamentary vehicle

132. My investigation established that Mr Shaw used, and allowed others to use, his parliamentary vehicle for commercial use.
133. Mr Shaw used the vehicle for a commercial trip to Sale. His own evidence was that he would not have travelled to Sale if he did not need to collect Southern Cross Hardware stock. While Mr Shaw states that the trip was 'incidental', this is not supported by his evidence.
134. Mr Shaw also used his parliamentary fuel card to purchase fuel for a private vehicle on one occasion, in contravention of the *Members of Parliament Motor Vehicle Plan* (the plan).
135. I am also satisfied that Mr Shaw gave his parliamentary vehicle to Mr A and Mr B to use for commercial use, including interstate trips, for Southern Cross Hardware. This is supported by the direct evidence of witnesses (including statutory declarations), fuel records, the logbook, expense sheets, interstate accommodation records and diary entries.
136. Given that Mr Shaw's actions were inconsistent with the plan, I consider that those actions may amount to a breach of privilege, a contempt of Parliament and/or a breach of the code of conduct established by the Register of Interests Act. This is, of course, a matter for the Legislative Assembly to consider and resolve, and for that purpose, I recommend

²⁰ David Hurley and Peter Rolfe, Herald Sun, 'MP was delivery driver', 27 May 2012.

that the House refer this issue to the Privileges Committee²¹ of that House or such other Committee as the House considers appropriate for consideration and recommendation to the House.

137. In addition, Mr Shaw has been publicly reported as stating that he will reimburse the Parliament for the cost of any commercial trips undertaken in his vehicle. The Parliament may wish to consider accepting this avenue.
138. I consider that the plan and its legislative basis need to be reviewed to ensure that there is a clear and unambiguous basis for Members' obligations regarding the vehicles with which they are provided.

A discussion of Mr Shaw's response to my conclusions

139. In his response to my draft report, Mr Shaw disagreed with my earlier statement that, in spite of its uncertain legal foundation, Members of Parliament are required to comply with the plan because of their heightened duties and obligations. The plan is, in my view, a rule of propriety which the Parliament and the people expect Members of Parliament to observe. Mr Shaw considers that this conclusion is one of law, is misleading and 'not open for [me] to draw'.
140. In Mr Shaw's view, his obligations are confined to the four circumstances specified in regulation 7 of the Vehicles Regulations, although he accepts that he, as a Member of Parliament, has higher duties to the public. However, in his view, that higher duty seems not to include compliance with the plan.
141. Mr Shaw also considers that the phrase in the plan, 'vehicles should not be used for commercial purposes' is not as confined as I suggested earlier in my report. He states my view is 'plainly wrong'. He considers that 'the discretion in the word "should" is absolutely clear'; by which I take it that he considers that the plan gives rise to an unfettered discretion regarding compliance.
142. Mr Shaw also disagrees with my conclusions that the use of a parliamentary vehicle in a manner inconsistent with the plan *may* amount to contempt of Parliament, a breach of privilege and/or a breach of the code of conduct established by section 3 of the Register of Interests Act, arguing that 'there is no support at law' for those propositions.
143. He considers, relying on the decision of the United Kingdom Supreme Court in *R v Chaytor [2011] 1 AC 684*, that the use of a parliamentary vehicle could not be considered to impact on the core or essential business of Parliament.
144. However, his reliance on *Chaytor* for this purpose seems problematic as that decision concerned whether dishonest use of parliamentary allowances is immune from external scrutiny by the courts on the basis that such claims are protected by parliamentary privilege, rather than the issue relevant to this report: whether the availability of parliamentary allowances to Members is a parliamentary privilege which members can breach and be punished for by the relevant House.

²¹ The role of the Privileges Committee is to examine and report to the House on breaches of parliamentary privilege. Matters are referred to the Committee by resolution of the House and involve investigation of possible breaches of privilege.

145. The court in *Chaytor* did not discuss the latter issue, although the following observation of Lord Roger seems consistent with my view that the provision of vehicles to Members of Parliament may be a privilege of the Parliament:

a system of allowances can rightly be seen as providing a necessary support to Members in carrying out all their parliamentary activities, including their core activities.

146. Mr Shaw disagreed with my view that his conduct may amount to contempt of Parliament. He did so by, incorrectly, considering that my conclusion was based on the definition of corrupt conduct in the WPA, which Mr Shaw stated 'bears no resemblance to the authorities regarding the power of the Parliament in relation to contempt proceedings'.

147. Mr Shaw did not refer to the relevance of the *Chaytor* decision to this issue, although, had he done so, he would have acknowledged that Lord Roger stated that the alleged excessive expense claims in that matter:

could well be regarded as an affront to the system of Members' allowances established by the House – and, so, as a contempt of the House, which the House could punish.

148. Finally, as to the code of conduct, Mr Shaw considers that he has not breached section 3(1)(a)(i) of the Register of Interests Act²² as the plan allows use of vehicles for private use. Mr Shaw did not, however, discuss how the code sits with use of vehicles in a private manner inconsistent with the plan (such as for commercial use).

149. In relation to section 3(1)(a)(ii), Mr Shaw argues that 'there appears to be no basis to assert that there is any conduct that would bring discredit on the Parliament'. He did not address the specific issue of whether the public would regard the abuse of the privileges or facilities available to Members to bring discredit on the Parliament.

150. Mr Shaw made no comment in relation to my suggestion that the Parliament consider accepting his reported offer to reimburse it for the cost of any commercial trips undertaken in his vehicle.

151. Mr Shaw also made no observations regarding my recommendation that the Privileges Committee consider his behaviour and whether it constitutes contempt, breach of privileges or breach of the code. I remain of the view that the House should be guided by an appropriate Committee of the House regarding those issues.

Electorate office copying and printing facilities

152. The evidence obtained during my investigation did not substantiate the allegation that Mr Shaw used printing and copying facilities at his electorate office for commercial use.

²² 'Members shall-(i) accept that their prime responsibility is to the performance of their public duty and therefore ensure that this aim is not endangered or subordinated by involvement in conflicting private interests'.

Recommendations

I recommend that:

Recommendation 1

The Department of Parliamentary Services review the foundation of the *Members of Parliament Motor Vehicle Plan* (the plan) and advise the Presiding Officers regarding the means by which a clear legislative basis can be provided for:

- the plan
- the obligation of Members of Parliament to comply with the plan
- the consequences of failure to comply with the plan.

In order to achieve this purpose, the Department of Parliamentary Services may wish to consider recommending that the regulations be amended to:

- restore the obligation that was included in the original *Parliamentary Salaries and Superannuation (Vehicle) Regulations 1996* so that the use of vehicles provided is expressly subject to the terms and conditions contained in vehicle plans
- empower the relevant Minister or other person or authority to issue plans.

Recommendation 2

The Legislative Assembly consider referring the issue of Mr Shaw's use of his vehicle to the Privileges Committee of that House or such other Committee as the House considers appropriate for consideration and report on the following issues:

- whether that usage was a contempt of Parliament, an abuse of the privileges of the Parliament and/or a breach of the code of conduct established by the Members of Parliament (Register of Interests) Act, and
- if so, what penalties should apply to Mr Shaw.

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Investigation into an alleged corrupt association

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Own motion investigation into the Department of Human Services - Child Protection Program

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February 2005

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Essendon Rental Housing Co-operative (ERHC)
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December 2004

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June 2004

