

## Item 11

### Supplementary Answers to Previous Questions

Supplementary Answers to Questions on Notice are as follows:

#### Question on Notice – Council 26 October 2020

#### Controls over Outsourced Providers

14. By Councillor Scott

#### Question

The City of Sydney has a range of external providers who provide services to our communities and our council, including operating our pools, gyms, waste and recycling services.

1. Please detail the City's legal obligations to ensure compliance with the activities of our external providers, including but not limited to Working with Children checks, compliance with the Fair Work Act, the Local Government Act, and a range of other legal requirements.
2. Please detail the controls the City of Sydney council has in place to ensure that those external providers undertake activities that comply with the City's legal, industrial and policy obligations.
3. Please detail the reporting mechanisms the City of Sydney has in place so that when noncompliance in external providers is established, via the City of Sydney's monitoring, the Council and regulators are appropriate notified.
4. Broken down by year since 2004, and by regulator, please detail the number of reports to external regulators the City of Sydney has made, as a result of the activities of our external providers.

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#### Answer by the Chief Executive Officer

A broad range of legislative obligations apply to the City's external service providers depending on the nature of the service provided.

Our contracts impose obligations on service providers to comply with all laws relevant to the service they are providing, together with particular obligations if there are specific requirements we need a service provider to comply with, but it depends on the nature of the service provided as to what obligations are imposed.

Generally, the City has rights to investigate potential breaches of legal obligations by service providers, including having an independent audit undertaken, and to terminate contracts for non-compliances or for convenience. Again, the type of rights depends on the nature of the service being provided. There is not a specific process or mechanism for reporting, but rather if the City becomes aware of a breach that is reportable to a particular agency, the City will make that report.

A CEO Update will be provided in relation to numbers of reports to external regulators.

### **Supplementary Answer**

For the information of the Lord Mayor and Councillors.

### **Background**

On 26 October 2020, in response to a Question on Notice it was advised that further information in relation to the number of reports to external regulators relating to outsourced providers would be provided by CEO update once staff had had an opportunity to review the relevant documentation.

Following a review of available information, reports to external regulators have only been identified by staff as being made in 2016 with two matters being reported, one to Safe Work and one to the Fair Work Ombudsman.

Generally, reporting obligations sit with the service provider under the terms of the contract. For example, where there is a notifiable incident involving a third party contractor, they are responsible for reporting the matter to Safe Work under the legislation. The City does not maintain registers of these reports.

## **Question on Notice – Council 26 October 2020**

### **Cleanaway Negative Leave**

15. By Councillor Scott

#### **Question**

In an article in the Australian Financial Review published on 30 September 2020, it was revealed that Cleanaway Waste Management changed its IT systems in March this year to allow employees to be pushed into 'negative' accrued annual leave.

The publication reported that front-line drivers would be restricted from overtime by Cleanaway, ensuring drivers only work eight-hour shifts as well as putting drivers on Rostered Days Off (RDOs) to reduce accruals.

In addition, Cleanaway purportedly reduced driver invoices by 5 per cent from April to June 2020, meaning that truck drivers would lose 5 per cent of any revenue earned during that time. Drivers were asked to sign a contract variation to allow for this deduction.

The AFR reported that some Cleanaway employees have had to work during their instructed annual leave to meet the demands of the company, and that many were pushed into negative leave balances.

1. Is the City aware of whether Cleanaway's negative leave strategy is in breach of the Fair Work Act 2009?
2. Has the reported restriction in access to overtime affected in any way the waste removal service Cleanaway is contracted to deliver to the City?
3. Has anyone from the City entered into discussions with, or asked questions of Cleanaway on the issues raised above? If so, please detail how many meetings and on what dates.

4. What action Sydney City has taken since the various reports in the Financial Review?
5. Does the City have an obligation to report to regulators as a result of the information revealed in the AFR? If so, has this been done?

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### **Answer by the Chief Executive Officer**

The allegations in relation to Cleanaway's management of employee leave conditions is an industrial matter for Cleanaway.

Cleanaway continues to meet its contractual obligations for the collection of the City's domestic waste. Reports of daily missed services are decreasing, while the number of booked services and overall tonnages collected has significantly increased. Further detailed information will be provided via a CEO Update.

The Chief Executive Officer and Director City Services have had and continue to have discussions with Cleanaway in relation to the City's contract.

The City does not have an obligation to report allegations raised in the media to regulators.

### **Supplementary Answer**

For the information of the Lord Mayor and Councillors in response to the Question on Notice Item 11.15, on 26 October 2020 from Councillor Scott.

### **Background**

The Question on Notice sought advice on Cleanaway's work practices in response to an article published by the Australian Financial Review on 30 September 2020.

The article raised concerns that access to overtime was restricted for employees. However, it is important to note that overtime is discretionary and not an employment entitlement.

The allegations in relation to Cleanaway's management of employee leave conditions is an industrial matter for Cleanaway.

Cleanaway continues to meet its contractual obligations for the collection of the City's domestic waste. Reports of daily missed services are decreasing, while the number of booked services and overall tonnages collected has significantly increased due the pandemic.

The CEO, Director, City Services and Manager of Cleansing and Waste have discussed the allegation raised by the media with Cleanaway Executive on multiple occasions. The Director, City Services facilitated a meeting on 3 November 2020 with members of the Cleanaway Executive and representatives of the City's Executive to further discuss the allegations.

During this meeting the City was able to confirm that in response to the pandemic, Cleanaway took action to reduce annual leave balances and overtime expenditure to mitigate any potential job losses. This included asking staff in management positions to take leave to reduce their leave balances, so operational positions could continue as normal. Cleanaway also reviewed and reduced its overtime expenditure.

Both measures are similar to those put in place by the City to reduce annual leave balances and overtime across all divisions in the City.

### **Question on Notice – Council 26 October 2020**

#### **Legal Matters Costs and Progress Update**

7. By Councillor Chung

#### **Question**

Could the Chief Executive Officer please provide:

1. An update of all court proceedings that Council is currently engaged in broken down by Court and type of matter (eg but not limited to class 1-5 appeals, local court prosecutions, NCAT proceedings, supreme court proceedings, IRC proceedings).
2. In table form, a summary of each court matter, costs to date, proceedings number and parties to the matter and status of each matter.
3. Year to date costs for each type of matter broken down by costs for consultants, external lawyers and other costs.
4. 2019/20 and year to date summary of matters finalised by matter including outcome and costs for each matter.

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#### **Answer by the Chief Executive Officer**

This information will take some time to compile and will be provided via the CEO Update.

#### **Supplementary Answer**

A confidential CEO Update will be provided to Councillors on 11 December 2020.