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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION TUNIC

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 29 MAY, 2015

AT 2.10PM

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THE COMMISSIONER: Yes. Yes, Mr Naylor.

<GREG COLE-CLARK, on former oath

[2.10pm]

MR NAYLOR: Commissioner, might Mr Cole-Clark be provided with Exhibit T3 please. Sir, I'll take you to the relevant parts of that document in a moment. I had asked you some questions before the luncheon adjournment in relation to the audit processes. Do you remember those questions and answers?---Yeah. Yes.

All right. And as I understand your evidence, sir, the process that you had in place was that external auditors would be engaged to conduct an annual audit. Is that, is that a fair assessment of, or a fair summary of what you said?---That's - - -

If I'm wrong in any way then let me know?---No, no, no. I just want to clarify it if I may.

Yes?---There was, there's three different types of audits. Basically there's the quality certification audit.

Yes?---There's the financial audits that are done and then you can engage if you wish independent people to do specific tasks or specific audits based on, on a request.

I see?---So the ones, Mr Naylor, I was talking about before were the ones who did the annual report – annual audits.

And sorry, are they done by external people or are they done within the organisation?---No, they're done by the – they're arranged by the audit office and people are contracted to the - - -

I see?--- - - - audit office.

I see. And the first one that you talked about - - -?---The quality certification audit.

Yes. What does that involve?---Yeah, I've mentioned the Board is quality certified.

Yes?---There's a process of audits on, you know, procedures and that that's carried out by those people.

Has there – I – as I understand there used to be a process, and perhaps there still is, whereby audits were conducted internally by staff within the organisation of files held within other offices?---Yes. If I may explain - - -

Am I right about that?---If I can explain that to assist it may help.

Yes?---That process you're talking about is the quality certification audit, Mr Naylor.

10 Yes?---And I can't give the absolute details because I don't organise it but the general process is there's a number of reviews done internally, like staff are trained to do, do these audits right, processes. This is supported by a group called SAI Global who then does another audit and then every three years a different person comes along from SAI Global and does a full independent audit and that gives you recertification of your quality processes.

And when you say "quality processes" I just want to try and understand what it is they are auditing?---They're auditing in accordance with ISO 9001 which is a standard right, that they judge and benchmark you against. So they look at - - -

20 A standard for what?---I guess that you're complying or you're doing your processes according to what it says on, on a, on a procedure. Yeah, that's basically what they look at.

Do they assess the degree to which there is compliance with the organisation's policies and procedures?---If there's a procedure, yes, they're looking to see whether the procedure, you know, as you go through the procedure is being done as the procedure says, yes.

30 Well, there is a procedure isn't there?---Yeah, yeah.

Right?---That's what they measure against.

There's this great bundle of documents called a Business Management System which comprises the policies and procedures of the Mine Subsidence Board isn't there?---Correct.

40 Right. And that's a bundle of documents which you have been very instrumental in compiling and indeed been the author of to an extent. That's right isn't it?---Yes, that's right.

Right. And the audit that you talk about is an audit of – conducted by sometimes internal but also external by SAI Global - - -?---Yes.

- - - of the extent to which those policies and procedures are complied with. That's what you're saying?---That's basically, yes.

Just thinking – in relation to the internal part of that process, that's where as I understand a member of staff within the MSB - - -?---Correct.

- - - audits a number of files from another office. That's right isn't it?  
---That's my understanding of how it works, yeah.

Well – and what happens is that a number of files get selected by the other office or do the files get selected by the person conducting the audit, do you know?---Look, I'm not exactly sure exactly how that works. I imagine, and I'm imaging that what would – they would ask, for example, if you went to an office that never did a pothole there you would – or they only did one,  
10 you would have to get some idea that they had a pothole event in order to measure the elimination of danger against that.

Yeah. You see, the whole purpose, the whole purpose of an audit, sir, is to check whether things have been done correctly and you say in your evidence now that you're not sure how the process occurs, that is to say, you don't know how the files get selected for the audit. That's right isn't it?  
---When the internal audit is done - - -

Yes?—Are you talking about staff and they go down - - -  
20

I'm talking about the internal audit?---No, I'm not sure. I'm not sure exactly how they arrive at receiving the file that they wish to audit. No, I'm not sure.

Well I don't mean to beat around the bush, I'm sorry?---No, you're all right.

But the issue is this. It would be important, would it not that the auditor, the person conducting the audit is able to select him or herself the files to be audited and not be provided the files by the person whose files they are, or  
30 has carriage of them?---Yes, I agree, agree.

That would be, that would be a very important part of the process, would it not?---I agree.

Right?---That they should go down and get whatever file they wish.

Right. And it would be a cause of significant concern if the person conducting the audit wasn't able to select the files and indeed had the files selected for him or her by the person who had carriage of the files. That  
40 would be a problem, wouldn't it?---Ah, it would not be the way I'd want the audit to be done, no.

No?---It should be an open and transparent, um, audit.

Because there's a risk, isn't there. If you let the person whose files are being audited select the files then they could provide you with a file that looks okay and you as the auditor might be denied the opportunity to look at

a file which has some problems with it. That's right, isn't it?---Yeah, I agree.

And so what have you done to ensure that when internal audits take place, the internal auditor is able to select the file for him or herself?---The audit process has got a process. I haven't personally done anything on that. I understand the systems there, I've got the system implemented, they got quality certification, Mr Naylor, supported by independent auditors and then every three years it's another auditor who comes along. So you would trust that the, ah, rigor and, ah, value of that system works. And then each occasion we have been successful in getting, ah, ah, recertification. So that's the confidence I have that the system's working.

All right.

THE COMMISSIONER: But Mr Cole-Clark, I'm sorry, it can't be working?---Right.

It can't be working. Because we've demonstrated over two weeks of hearings that it's not working. I mean I'm not being critical of you personally?---No, no, no.

But it's, but it's, one can put auditing systems in place but if the auditor is, is not given random access to files and more particularly, if the auditor actually rings up and makes an appointment to go there at a preordained time, everyone in that office knows that they're about to be audited. And so the capacity for those persons if they're doing something wrong, to hide what it is that they're doing, defeats the audit process. Do you see, do you see the problem?---I understand. Yeah, I understand what you're saying, your Honour.

But that appears to be what's happened in the case of the MSB. Otherwise your auditing process would've picked up these problems?---The process as I understand it, and the process is overseen by SAI Global, they're the auditors and they do the certification. So what I'm saying, the process that they do and they'd arranged is that they, your Honour, would let people know that they're going to an office on a day. I don't think and I don't believe that that means you can't get whatever file you want. I agree with you, Mr Naylor, that they should be able to grab any file they want. And as far as I understood that's what happened.

MR NAYLOR: But if the internal, sorry. If the audit is being conducted at least in the first phase internally by a member of your staff I would have thought, tell me I'm wrong, that you as CEO would be intensely interested in how the audit is carried out rather than just saying "Well the audit is the responsibility of SAI Global". You as the CEO, you as the ultimate manager of the person who's conducting the audit would have an intense interest in the process of how it's occurring. That's right, isn't it?---Yeah.

There's a process and I believe it should be occurring as the process is done. I agree with you.

And, sir, the other part of this puzzle is you would, in order for the audit, the internal phase of the audit to have integrity, the person conducting the audit would need to be thoroughly versed in the relevant policies and procedures, would they not?---The way in understood these quality certification audits being done, Mr Naylor, and I can only give you my experience, right. What I understand is being done, right. I spoke to and at the end of every twelve  
10 months or so I'd have a debriefing from the external auditor, your Honour.

THE COMMISSIONER: We're talking about the internal process?  
---No, I understand that, I'm just saying the process, I'm sorry.

Yes?---And so just repeat what you're saying again then, you're saying I have an interest in that?

MR NAYLOR: Let me, let me come to the point?---Yeah, yeah, please, that  
20 would be good.

If the internal part of the audit is conducted by a member of staff who is not trained and not familiar with the policies and procedures, then the audit is doomed from the start, isn't it?---They're all trained, Mr Naylor.

Are they? Right?---They all have to be trained. You have to be trained in order to do the audit process and they're all trained by I believe SAI global, but you can't do an audit unless you're trained.

And if, as is the evidence before this Commission, Mrs Evans comes along  
30 to the Commission and says yes, I was involved in an audit process, but no, I didn't have familiarity with the policies and procedures, that would be a problem, wouldn't it?---Yes, if you try to do an audit without familiarity, yes.

Right. Sir, look at Exhibit T3 which is in front of you, that document, that's a document which is dated, it's in fact described as a draft but it's dated July 2009. It's a document prepared by IAB Services. Who are IAB Services, do you know?---They are the Internal Audit Bureau.

40 Right. And you see, look at page 1, look at the objective of this particular audit that was conducted, and the objective, the particular items – so underneath Objective there's some paragraphs. The objective of the review was to provide management with confidence that property repairers are selected and managed appropriately by the Board, the particular items identified as significant items of interest for the purpose of examining controls and procedures were, probity issues concerning the appointment of approved repairers, including the advertising, assessing in terms of pre-established criteria, maintenance of records, awarding of contracts to

approved repairers. A couple of dot points down, the rotational policy of selecting repairers for specific jobs in each district. Now, and the next point is important as well, reporting to the Board each month on the use of repairers and repair work performed. So they, they were the issues of significance in relation to this particular document, this particular examination. Now, if we go over a few pages there's a summary, there's detailed report of findings that starts at page 4. Go over to page 7. This is at the end, this is part of the detailed report of findings, and it's under the subheading which begins at the bottom of page 6, The Rotational Policy for  
10 Selecting Contractors at a District Level. See that?---No, sorry, can you just say that again, please, Mr - - -

Bottom of page 6 there's a heading towards the bottom. The Rotational Policy for Selecting Contractors at a District Level. See that?---No. Oh, hang on. I don't believe I have a page 6, nor do I have a page – unless I've got this wrong, I'm missing something, I don't have page 8 either.

THE COMMISSIONER: Might be the photocopy. We'll get another copy.

20 MS HOGAN-DORAN: I have the same problem with my copy. I think it might be the ICAC exhibit itself.

MR NAYLOR: Well, I apologise, sir.

THE COMMISSIONER: Sorry.

MS HOGAN-DORAN: I've only just noticed that the ICAC exhibit is missing every second page.

30 THE COMMISSIONER: All right. Well, it's on the screen isn't it?

UNIDENTIFIED SPEAKER: No.

THE COMMISSIONER: No. Sorry. Wrong one.

UNIDENTIFIED SPEAKER: It's on the screen but the pages are missing.

THE COMMISSIONER: We'll have to rectify that, Mr Naylor. Sorry about that.

40

MR NAYLOR: I don't think it's fair, Commissioner, to take the witness to the document without the document. I'm sorry, I'll come back to that if I may.

THE COMMISSIONER: Have you got a complete copy?

MR NAYLOR: It's quite important actually.

THE COMMISSIONER: The actual exhibit book. Mr Naylor, have you got a complete copy of the document?

MR NAYLOR: I do, I do.

THE COMMISSIONER: Would you mind handing that up and I'll get my associate to do some copies?

MR NAYLOR: Not at all, Commissioner. It's got my markings and highlighting on it. Let me deal with another issue while that's happening if I may. Sir, I want to take you to what I think will be the last property file. So if I can have available please to Mr Cole-Clark Exhibit T54, page 2567. That's volume 5?---Thank you. May I have that number again, please, Mr Naylor?

MR NAYLOR: Yes, of course?---2567 was it?

The page number is 2567, and what I want to do very briefly, sir, is just walk you through the file. At 2567 is the claim investigation report and you'll see it's prepared by Mr Bullock, 4 July, 2012. See that?---Yeah, signed and dated that, yeah.

Yes, and the previous page he estimates the value of the cost of repairs to be \$10,000. See that?---Yes.

All right. And there's no issues, sir, Mr Bullock had at that time a financial delegation to approve that claim. He, there wasn't a district supervisor involved in preparation of the document, it's just Mr Bullock, but the financial delegations make it clear enough that Mr Bullock had a financial delegation up to \$10,000 where he was the person who prepared the document. You accept that from me, that that's what the financial delegations say?---Okay, I accept that.

And the claim having been approved by Mr Bullock, and I'll show you where the evidence of that is, go please to – you'll have to go back a few pages to 2553. This is the claim processing worksheet on the beginning at the front of the file?---Ah, yes.

You see there's a section in this document in the middle of the page under Claim Report?---Yes.

Yes, and approval of delegate, and it looks like there's Mr Bullock's name there. It's a bit faint but it would appear to be Mr Bullock's name, and next to it there's a date, see that, 4 July, 2012, that seems to be the date on which Mr Bullock has approved the claim?---May I just confirm, Mr Naylor, is that you saying that that's Mr Bullock's name next to that, is it?

Yes, yes?---Okay.



He's already accepted, sir, that that's his name in respect of similar-looking documents?---It's all right, I just can't read it very well.

All right. So the claim's been approved by Mr Bullock, he wrote up the claim but he's also approved it and that was okay, and then he's prepared the scope of works and the scope of works starts at 2562. See that?---Yes, yeah, I see 2562, yeah.

10 Right. And at this particular time it seems that one quote was required, given the value of the works that had been estimated, \$10,000, one quote was required. Take it from me, sir, there are no quotes on the file - - -?  
---Okay.

- - - which would appear to demonstrate a failure to comply with the need for one quote. Just take, accept that from me?---Yeah.

Accept from me also it's not in the tender book?---Ah hmm.

20 All right. Now, go back to that claim processing worksheet if you wouldn't mind and go to the next section down under "claim report tender". See that?---(No Audible Reply)

And it says "tender documentation completed" and "yes" has been circled. Now, that would suggest would it not that the process that was meant to be complied with in relation to the tender has been complied with. That's what that would seem to suggest on its face wouldn't it?---That's what it seems to suggest to me, yes.

30 Right?---Yes.

But if one quote, as was required, was not obtained then the tender process was not complied with. That's right isn't it?---That's the way I would look at it, Mr Naylor, yes.

Right. So that would be misleading would it not?---Yes.

Right. And that same page, the same page – pardon me. You see a bit further down under "repairs"?---Yes.

40

There's the name of the contractor A&DJ Building Services and then underneath that "completion date" 1 September, 2012. See that?---Yes.

And this all is in Mr Bullock's handwriting. He's accepted that in relation to similar looking documents?---Yes.

Accept that it's Mr Bullock's handwriting, all right. Then the invoice, if you just go to 2558. It's a few pages over. That's the invoice, the tax

invoice which is rendered by the contractor. See that?---Yes, yes. Sorry, Mr Naylor.

Yeah. And then go to the previous page 2557. That form will be familiar to you won't it?---Sorry.

2557?---Yeah, I heard the – yeah, the last bit I didn't hear, sorry.

10 That form is familiar to you isn't it?---It's a form that's provided I understand to the financial people, yeah.

Well, let's look at it. This is compensation claim payment. Yes?  
---Ah hmm.

And it's got what appears to be Mr Bullock's signature on it?---Yes.

Right. And it's got a date next to it 6/9/2012?---Yes.

20 And what it says is "work has been, has been completed satisfactorily and the charge is considered reasonable. Signature of delegate." This is Mr Bullock approving payment of that tax invoice that I just showed you isn't it?---That's what it appears to be, Mr Naylor, yes.

30 Right. Okay. So this is a case in which Mr Bullock prepared the claim, estimated the value of the works, approved the claim, failed to comply it seems with the need to get a quote, wrote on the claim processing worksheet at the front of the file that the tender process had been completed with and then authorised payment of the invoice, in so doing saying that the work had been completed satisfactorily. He's been involved in every step of the process. You see that?---Yes, I understand what you - you said.

Right. He's exercised two financial delegations in the process. The first financial delegation is the approval of the claim and the second financial delegation is the approval of the tenderer and the effect of that is when payment gets authorised. You see that?---Yes, I get what you - - -

40 So he's been involved from start to finish and there's a risk in that isn't there – I've asked you some questions about this before and I don't want to travel over old ground too much, but there's a risk is there not that if Mr Bullock has a relationship, has developed a corrupt relationship with this particular tenderer then the process can be manipulated. That's right isn't it?---Yes, the process I think looking at this could be manipulated if you have that. Yeah, absolutely.

Right. There's no independent scrutiny, there's no other third party involved in the assessment or the approval process is there?---Not in this one you've shown me, no.

Mr Bullock could with the contractor agree to increase the amount approved for the tender and no one else would be available to check it because no one else needs to be involved in the process. You see that?---Yeah, that's, yeah.

All right. And the evidence before this Commission, sir, is that is precisely what occurred in this case. That by arrangement between the tenderer and Mr Bullock, at Mr Bullock's initiative, \$4,000 got added to the price of this job, \$4,000?---Mmm.

10 And that was a secret commission that was added to the invoice that was ultimately submitted by Mr Salmon on the instructions of Mr Bullock. That \$4,000 was defrauded from the MSB because of the capacity within the system as well as Mr Bullock's own actions of course. But because for no other – it's not – it's very important. Because there was this capacity within the system for Mr Bullock to develop a relationship, a corrupt relationship with a contractor and for the system not to pick that risk up. Do you understand all of that?---Yeah. I understand exactly what you say.

Right?---And that's where trust and experience alone is something you can't  
20 rely on and that's where, you know - - -

Precisely?--- - - - we've been looking at different options to, ah, improve that.

Right?---But at that time it wasn't, you know, it wasn't I guess, I don't know.

Well, the other document that I am having copied, sir?---Yeah.

30 Pardon me. Yes, I can provide that to you now. I'm sorry that you didn't have - - -?---All right.

- - - the complete copy before. You see the, the matter I've just taken you to concerned a property at 5A Huen Place and the steps in the file that we've just gone through occurred in 2012. The document that you've just been handed, sir, is an audit report by IAB dated 2009. Now I've lost my copy. And let's just look at it. This is a 2009 document. Go, go please, to page 7, 6 and 7. See there's a subheading towards the bottom of page 6, "The Rotational Policy for Selecting Contractors"?---Ah, what paragraph is that  
40 please, Mr Naylor, sorry?

I'm just directing you to the heading The Rotation of Policy?---Ah, okay, sorry. Yeah, sorry, I see what you're saying, yeah.

Yes, all right. And then if you go to the next page, in the middle of the page, it doesn't come out terribly well on the copy but there are the words "risk rating" on the left-hand side of the page and on the other side of the page "moderate"?---Yes.

So this is the auditor saying “There’s a moderate risk rating in respect of the rotational policy” and beneath that they’ve set out what the implications of the risk are. And the first is “perception of preferential treatment for particular contractors”. See that? First dot point?---Ah hmm.

Yeah. Second, “perception of collusion between staff and contractors” See that?---Yes, yeah.

- 10 Third dot point “potential loss of more cost effective options”. Now let’s go over a couple of pages. Go over to page 9, please. And go to section 4 and there’s a heading just below the middle of the page “Minimisation of Opportunities for Fraud”. See that?---Yes, yeah.

And just read to yourself the first paragraph?---Yes, Mr Naylor.

Read that?---Yes.

- 20 Sir, this document would have become available to you, would it not, in your capacity as CEO of the Mine Subsidence Board?---It may have. Ah, these documents were, um, dealt with by the manager of finance and admin. Um, so I’m not sure about this one and I can’t recall that I have seen it. Um, but yeah.

Well, as CEO you would have an intense interest, would you not, in risk in relation to fraud of the Mine Subsidence Fund?---Absolutely, you don’t want those things.

- 30 So if you had seen this, and I accept that you don’t now remember whether you did or not, but if you had seen this, the issue which is raised in this paragraph which says that there is a risk, there some low-level opportunities for collusion between district managers and supervisors with preferred contractors, that would be a matter of concern to you, would it not? ---It would be a matter of concern, Mr Naylor, I agree.

Yeah?---But there’s also at the back page I notice a thing about management responses, I’m not sure what, you know, what the ah, you know, what the, maybe the manager finance admin said about that or assessed it.

- 40 Sir, are you disclaiming responsibility - - -?---No, I’m not, as CEO - - -

- - - for the need to ensure - - -?---No, no. As CEO I’m responsible for the Mine Subsidence Board. I’m not doing that at all. I’m just making, I’m just making a comment of, of what might have transpired, that’s all.

See, I’d asked you some questions before the luncheon adjournment about the risks that are created by having the same financial delegate involved at all steps of the process and my recollection at least of some of your

evidence is that you did not know that there was a risk in relation to that, prior to ICAC becoming involved. That was the import of your evidence before I thought. Tell me I'm wrong?---No, if that's what you're saying I said, yeah.

Right. This document would suggest that if you had had access to it at the time you would have become aware of precisely that risk?---If I'd had access to that document, yeah.

10 Right?---I can't say I've seen it or, or not, Mr Naylor.

Right?---Look, all we can – sorry.

So but I have to ask the question whether the evidence that you gave earlier was evidence to the best of your ability?---Oh, absolutely, Mr Naylor, my whole, my whole being for the last six or eight months has been to try and assist ICAC in this investigation. I'm telling you exactly as I can recall it.

Okay.

20

THE COMMISSIONER: Do you want to tender that document, Mr Naylor?

MR NAYLOR: It's already in.

THE COMMISSIONER: It's already in, right.

MR NAYLOR: Not obviously in complete form but we'll correct that.

30 THE COMMISSIONER: No, no, we'll make sure that it is the complete form.

MR NAYLOR: Thank you.

THE COMMISSIONER: I'm just wondering about the statement of the other gentleman to which Mr Griffin referred.

MR NAYLOR: Yes, yes. That's the statement of Peter Evans and I have no difficulty, pardon me, I don't seem to have it. I've read it,  
40 Commissioner, I haven't, I've read the statement itself, there are quite a few annexures to it, I haven't read those, but having read the statement I have no difficulty with tendering.

THE COMMISSIONER: All right. Well, that will be Exhibit T66.

**#EXHIBIT T66 - STATEMENT OF PETER EVANS DATED 29 MAY 2015**

MR NAYLOR: Now, just while we're on these processes, sir you provided a draft, a statement to, statement of information to ICAC and that's already been tendered. I just have a couple of questions about that for you. In the statement you've talked about a whole range of things, including expenditure delegations, and part of the statement deals with this form, the Compensation Claim Payment Form, and we were just looking at that in the context of the 5A Huen Place property?---Yeah.

10

So it might be convenient to deal with it in that context. 2557 is where the form is?---Yes, Mr Naylor, yep.

And what I'm just trying to understand is you see what happened in this case of course was that Mr Bullock authorised payment of the invoice and there's the signature and the date, and then there's a section at the bottom of the form, the final payment and then there's a schedule, and then there's another signature down the bottom right-hand corner. Can you explain what is going on in that section of the document?---Um, no.

20

No?---I can't, no. I'm sorry but I can't.

Okay. Because - - -?---That's not a form that, like, you know, the CEO, this is a form that's for processing of the thing and it probably goes to the financial section.

But you're the CEO and you'd be cognisant of processes within the organisation, including financial accounting processes, would you not? ---I know there's a form that filled out but as CEO, as I already explained, there's a, you know, a great deal of things I do from a corporate thing so that's not a form I would see.

30

Right?---I can't say what the, the, the ah, signature is but it appears to be a payment - - -

Yes?--- - - - for a cheque.

Well, let me put, let me come to the issue and try to put this proposition to you, and you may or may not know the answer, but see obviously something happens with the form and perhaps the file after Mr Bullock has signed off on it, yes, because he signed off on it on 6 September, 2012, and see down the bottom there's some handwriting, "10 September, 2012." So someone else does something in respect of this file and what Mr Bullock has authorised after he's authorised the payment, and the answer obviously what has to happen is that the payment has to be made?---That's correct, yeah.

40

Right. So it would make some sense if this was a record of the claim, of the payment having been made, the financial processes that go, that are gone

through in order to transfer funds from the Mine Subsidence Fund to the building contractor? Do you know if that's what this is meant to record?  
---No, I don't.

No. And the question I've got is this, is whether the person who's involved in organising for payment cheques to see whether or not in this case Mr Bullock had the appropriate financial delegation to do what he was purporting to do, do you know if that process takes place?---I'm not sure of the, the actual details but I know there are, I understand there are anyway  
10 some checks and balances, Mr Naylor, in people looking at schedule C, but I don't know to what detail, I can't say that when the financial people get the details.

You don't know who checks or who is meant to check as to whether or not Mr Bullock in this case was - - -?---My- - -

- - -exercising his financial delegation appropriately?---My understand is that is checked or supposed to be checked in the financial section somewhere.

20

But you don't know?---I don't know exactly how.

Sir, just going to another aspect. That deals with one aspect of the statement, your statement about which I had a question. There's just, there's another aspect and I'm looking at page 1. You can have your statement, I think you should have your statement available, please, T65. Thank you so much?---Yes.

30 And I'm looking at the first page, paragraph 4. Just read paragraph 4 to yourself?---On the first page, Mr Naylor?

Yes?---Yeah.

Paragraph 4?---Mmm.

40 So what I'm interested in, sir, is the last part of the last sentence. So where you say, "The MSB scheme of compensation is funded by a levy on colliery proprietors and does not make use of public funds," I'll put this proposition to you, sir, that that's wrong, that the MSB does indeed make use of public funds, that the Mine Subsidence legislation creates effectively a public insurance scheme and once the levies are paid by the collieries into the Mine Subsidence Fund they become public funds. That's right, isn't it?

---That's your interpretation. What I'm writing - - -

That's - - -?---What I'm writing there, Mr - - -

MR GRIFFIN: I object to that question, Commissioner. That invites legal interpretation this witness is not qualified to answer.

THE COMMISSIONER: Well, all right. It might be something for submissions.

MR NAYLOR: All right. Sir, there's some evidence before the Commission that the MSB has as I understand about 37-odd staffing positions but a significant number of them have not been filled and have not been filled for a considerable period of time. Is that right?---There are some positions that are filled by temporary staff.

10

Yes?---And a, a couple of positions that I guess I'd like to have filled but haven't been filled but I don't believe the number is 37.

All right. Which positions do you have in mind you would like filled but have not been filled?---The actual vacant position where no one has been in to actually fill the position, in particular I would have liked a computer manager or a systems manager right, and that's a position that's a new position I guess that's not been filled.

20

Right?---I think, Mr Naylor, I'm just trying to think because a lot of other positions are either filled by temporary employees or employees acting in, in a position.

What about the position of secretary?---That's – secretary to manager finance is a position that needs to be filled but there are people in there doing, or have been people in there doing the – all the Finance and Admin side of it.

30

At all times?---There may have been some, some gaps but we would be unable to produce annual accounts if we didn't have someone in there doing the accounts and that for that area. So we produce them and we've got a, you know, what is it called, reserved or whatever it is, accounts every year so there's been someone doing that job.

I see. Because it's rather an important position is it not?---Yes, absolutely.

If for no other reason that the person occupying that position has significant financial delegations?---If that's exercised, yes.

40

Yes?---Yeah.

And it's important isn't it because in order to keep the train on the tracks, in order to keep processes occurring as they should, delegations have to be exercised and they have to be exercised in a timely way?---Correct.

And if that doesn't occur because, for example, the position is not filled or there's someone there not performing the job, then that tends to stymie processes - - -?---It makes life more - - -



- - - and things get held up don't they?---It makes, it makes things more difficult. It doesn't mean things get held up because they have to be processed and there's a number of people who have delegations to approve claims or other things including myself, the manager, sorry, the subsidence risk engineer and the manager Finance and Admin.

You mentioned earlier in your evidence that you had concerns I think in relation to workload?---Yes.

10

And have had it at times. Can you elaborate on that for the Commission?  
---I carry an extensive workload.

Yes?---Have for some time. I guess as things have become more challenging in risk assessment for the Board then I've been required to do more and, yeah, I've certainly had a big workload.

20

Do you think you might have been doing the work that would have otherwise been done by other people had the positions been filled?---Other staffing would help but a lot of – and it's not that it hasn't been discussed by any means, but also, you know, at Board level there's matters that if they're facilitated and supported could happen a lot quicker than they do so to be honest I found myself a lot of times dealing with longer term jobs that I really felt that the, the chairperson in kind should be assisting me.

I see. Do you think you've been hampered in any way in doing your job properly because of lack of staffing or high workload that was unable to be shared between others?---I don't believe I've been hampered in any way.

30

Right?---But it's certainly put a very, very significant impost on me and I worked very long hours to achieve those things, Mr Naylor.

40

Right. Sir, at the beginning of your evidence I tried as best I could to summarise for you the nature of the evidence that ICAC has heard in the last several weeks of this public enquiry. And of course the Commission has heard everything you've had to say. Do you, do you take any responsibility for what have obviously been very serious, very serious misconduct on the part of one employee. Do you, do you take any responsibility for what has occurred?---As Chief Executive Officer of an organisation, um, you must be accountable. I didn't in any way understand this was occurring, know it was occurring. I believe that my staff and everyone did everything we, ah, should and could've done. Um, and in hindsight there's many, many things that, you know, things that we are already approving and we do that continuous improvement. But as CEO, ah, yeah, I guess that people will say well, you know, how did this happen.

Right?---Pretty disappointing.

Pardon me. Pardon me, I'm sorry. Commissioner, at this time I will tender a bundle of documents. There are a number of documents within the bundle, let me identify them. There's an IAB Mine Subsidence Board Review of Administration of Claims Work, dated February, 2006. There's an IAB Services Review of Picton District Office Operational Processes, December, 2000 and, sorry, 2008. There's an IAB Review of Property Management System, dated March 2012. And finally, a letter from the Director General of the Department of Trade and Investment to the  
10 Commission, dated 13 March, 2015. I tender that as a bundle.

THE COMMISSIONER: Yes. That bundle of documents will be Exhibit T67.

**#EXHIBIT T67 - BUNDLE – IAB REVIEW OF ADMINISTRATION OF CLAIMS REPAIR WORK FEB 2006; IAB REVIEW OF PICTON DISTRICT OFFICE – OPERATIONAL PROCESSES JULY 2008; IAB REVIEW OF INTERNAL CONTROLS MAY 2010; IAB  
20 REVIEW OF PROPERTY MANAGEMENT SYSTEM MARCH 2012; LETTER FROM MARK PATERSON, SECRETARY, DEPARTMENT OF TRADE & INVESTMENT DATED 13 MARCH 2015**

MR NAYLOR: I have no further questions. Thank you, Commissioner.

THE COMMISSIONER: Thank you. Does anyone have any questions of Mr Cole-Clark?  
30

MR BECKETT: Yes.

THE COMMISSIONER: Yes.

MR BECKETT: Mr Cole-Clark, my name is Beckett. I appear for Ms Hargreaves and also for the Department of Trade and Investment. Just a number of questions in relation to the evidence you've just given in the last twenty or so minutes- -?---Commissioner, may I ask if he could speak up. I can't hear him, I'm sorry.  
40

THE COMMISSIONER: Yes. Could you speak up Mr Beckett, he's having trouble hearing you.

MR BECKETT: Yes, I apologise I hadn't, is that any better, Mr Cole-Clark?---A little but not much, I'm sorry.

Well, okay, I'll try and speak quite close to the microphone.

THE COMMISSIONER: Mr Beckett, would you like to come up to the front here, that might be a better option. They're just, I think the chances are your voice will carry more effectively from there.

MR BECKETT: Yes. I wonder if that's better. Yes, I appear for Ms Hargreaves and the Department of Trade and Investment. A couple of questions. First is about staffing. Now it's the case, is it not, that a review was done in April of the number of positions in the MSB as a whole?---Yes. I assisted with a review.

10

Yes. And that review identified 37 positions within the MSB. Is that correct?---I don't believe that is correct. Um, and I met with, ah, the PLC people, ah, just before I went on leave. Ah, I'm not saying it's not, I'm just saying that there was some double counting and that in some of the, their figures.

20

How many positions? How many positions?---Look, I'm not exactly sure but it might've been, ah, I think the desired number might've been, um, ah, I'm not sure around 32 or something, but I'm not quite sure. I think there was at least three that were - - -

All right. And that review also revealed that there were 18 positions that were not filled either by a permanent member or by some form of contract staff member. Is that correct?---Look, I haven't seen the details of that review. I'd like to comment but I haven't seen it and I therefore don't know.

So you don't know?---No, I'm sorry.

30

So you can't, can you tell the Commissioner how many vacant positions there are at the MSB as of today?---I think I attempted to answer that before. If you're talking about positions that don't have someone in - - -

40

Yes?--- - - -there was a position for a computer manager which was a request that I'd asked previously and is not a position filled, there was a position I think in a mapping section that wasn't necessarily urgent but we're filling and there was a number of temporary people, so I, and obviously Mr Bullock has left so that position is vacant because no one has been or tried to act in that position but hasn't, so there's vacancy there.

And there's been evidence here at ICAC that there are at least another further two members, two positions at Picton for example that are filled by contract staff, not by permanent staff?---Yeah, yeah, yeah, yeah. But that is, that is, may I just, may I just say to you that the staffing at Picton office had a, Commissioner, a district manager and had a number of district supervisors and clerical staff. It was aimed and staffed according to what we needed as there was a rise and fall in the number of jobs. So we had at one stage 800 claims, I think we're down to about 170 to 180, and from my

perspective it was never intended that every one of those jobs was a permanent job.

Right. Now, in any event, you don't cavil with the finding, and we have it Ms Hargreaves' statement at paragraph 4 I think, that there are at the moment 18 positions which remain unfilled?---Again I said earlier I can't comment that that's - - -

10 All right. Thank you. Now, you were asked by Mr Naylor about document T3, I think it's now become T66, it was the draft report of the IAB dated July 2009. Is that correct?---Yes.

It's still T3, all right, I apologise. I'll start that again. I'll withdraw the question. You were asked about the document T3 which was the IAB report of July 2009. Do you remember those questions and that document? It was the one that was missing a page?---I think that might be the one I have here, thank you.

20 Yes, that's the one you have in your hand?---Yeah.

Now, I think you said during questions from Mr Naylor that the responsibility for actioning recommendations for example with respect to this document fell within the remit of the manager of finance and administration. Is that right?---What I, what I believe I said, and if I didn't, that's what I mean, is that the manager finance and admin or one of those roles in Finance would liaise with these people, yeah.

30 All right. Now, I understand that that position is now occupied by a Mr Thatcher. Is that correct?---That's correct, yes.

As of April of this year?---That's correct, yeah.

And that the position remained unfilled for about, or at least over three years prior to that?---Ah, there was people doing those roles, at least the financial and accounting parts of those roles, there was also another person there I think for another, and I'm trying to recall, Commissioner, but I think for Mr Wooden who was in that role for I think 12 months or nine months that was there, so again it was vacant for a period, yeah.

40 So there have been a series of people either acting in the position or alternatively - - -?---That's correct, yeah, that's right.

- - other people undertaking - - -?---Yeah, yeah, yeah.

- - - the duties of that position over the last three years. Is that correct? ---Yeah, yeah, or there could have been some periods where it was ah, vacant.

All right. And you'd agree that that was undesirable in terms of first of all continuity within the organisation around the important task of managing the finances of the organisation?---Yes.

Yes. All right. And it would have been preferable to actually have somebody in a permanent basis for that period of time fulfilling the position on a permanent basis?---Absolutely, on more than one occasion, more than one I might say, I approached the Board Chairman to get assistance to fill those roles, and that role particularly, and we didn't seem to get anywhere or go anywhere. I'm not sure why that's the case, but even the Board members expressed their concern as well.

Did you raise the issue with the secretary of the Department to fast track the recruitment of that particular position?---Ah, how do you mean in, what do you mean by the secretary?

The secretary of the Department Of Trade & Investment?---I just need to go through that question again so I understand what you're saying because - - -

20 Well, let's go back through it. You were referring to Mr Mullard a moment ago?---Yes, yeah.

He was the chair of the MSB at the time?---That's correct. He was, yeah.

He was also the executive director of Resources and Energy within the Department of Trade and Investment - - -?---That's correct.

- - - was he not?---Yes.

30 Yes. He reported himself to the secretary of the Department of Trade and Investment known at that time as the director general. Do you agree with that?---Yes, he - I'm not sure that, I'm not quite sure about that actually. Sorry. Because I mean there was - he was executive director and I'm not sure whether there wasn't a deputy secretary above him and then the secretary.

Well, in any event, sir - - -?---There was actually.

40 - - - the secretary or the director general whatever he was called, particularly Mr Paterson, Mark Paterson, he was there overseeing ultimately the work of Mr Mullard was he not?---I'm not sure whether he was doing that in the case of respect to the Mine Subsidence Board.

But he was his boss. At the end of the day he was Mr Mullard's boss wasn't he?---Yes.

Yes. Did you raise it with him that you had been unable to fill the position of manager of Finance and Administration despite having raised it with Mr Mullard?---And not getting any success.

Indeed?---I met with the secretary to raise a number of concerns I had.

Did you raise that issue?---I believe staffing was raised.

10 Was that particular position raised?---It would have been as part of the staffing, yeah.

But you don't recall?---It was an important role so I can only assume it was but certainly, yes, I raised issues of staffing.

20 Did you raise it formally in the sense of writing to the secretary to seek appointment of somebody on a permanent basis to the position of manager of Finance and Administration within the MSB?---No, I didn't. I mean I report to the Mine Subsidence Board and the Board members as, as that. That's my – I understand my duty and my action and the chair of the Board but I did speak to the secretary, yes.

All right. Now, you mentioned, you mentioned in your evidence – you said that there was some concerns about actions taken by the chair with respect to your work in terms of hampering your ability to fulfil your position. Do you recall that evidence?---I don't recall that being said. Perhaps you'll remind me. Sorry.

30 All right. Well, it was a general comment but a comment – you were sked by Mr Naylor a number of questions about workload within the MSB and you said one of the concerns you had was that at the Board level there was some delays in terms of your ability to perform your work - - -?---Yeah.

- - - in an efficient manner?---Yes.

Do you recall saying that?---Something along those lines, yes.

40 Yes. And I think you either directly or indirectly implied the chair of the MSB had created some blockage or was creating difficulties for you in fulfilling your position. Do you recall that evidence?---In being able to work as efficiently as we should, yeah.

Yes. And which chair were you referring to when you said it?---I was referring to the time of Mr Mullard.

All right?---Yeah.

Was there anything in particular that you were – that you wanted to indicate was holding you up in terms of the fulfilment of your position?---Oh, there

was obviously the staffing issues. There was a number of issues but staffing was one of them. The fact that I was having to do – that, that we were having, I don't know difficulties, but I don't think it should have occurred but things like Act amendments, other jobs that we were getting done through the Department were not being done as quickly and as efficiently as we required. Yeah, there was quite a few things that were raised.

10 All right. Now, you also said I think in respect of the production the annual accounts of the MSB there were some problems there and I'm not sure I've completely captured your evidence with respect to that but there was a hold up I think in producing the annual accounts. Do you recall that evidence you gave?---I don't recall saying that, no.

All right. I might have that wrong so I won't, I won't take that any further. All right. Yes, those are, those are my questions. Thank you.

THE COMMISSIONER: Thank you, Mr Beckett. Yes, Mr Chee.

20 MR CHEE: Mr Cole-Clark, can you hear me?---Just.

I think I may have to come up?---I can hear him a bit better than - - -

Mr Cole-Clark, I appear for Darren Bullock?---Yes, Mr Chee.

Can you hear me now?---I can, yeah, it's fine. Thank you, Mr Chee.

Thank you. Just a few questions about payment of invoices. How do your invoices get paid by the MSB?---Um, they're paid by the financial section.

30 Are they paid by cheque, by electronic transfer or some other method?---I don't run the payments, Mr Chee, but I understand that there may be a mixture of things. But I'm pretty sure all of them now, or most of them, are done by direct deposit now.

Was there a time when they were paid by cheque?---Ah, yes, I believe there was.

40 And who would sign those cheques?---Um, I'm not sure who signed the cheques off.

I understand that Mr Evans was appointed Subsidence Risk Engineer in about 2010. Is that correct?---Around that time, yeah, 2010, 2011.

And who was employed as the Subsidence Risk Engineer prior to Mr Evans?---Um, there was a couple of people prior to that. I think Mr Davis at one stage and I think a Mr Hanson going back some years.

Could you be a bit more specific in time?---No, I can't.

Was there a Risk Subsidence Engineer in 2009?---I don't know. I can't say that. I don't know.

I think your evidence is that part of reviewing documents you would consult with various - - -?---Yeah.

10 - - - technical specialists, including the Subsidence Risk Engineer. Would you have consulted with the Risk Subsidence Engineer, sorry, this Subsidence Risk Engineer in 2009, 2010?---I don't know - - -

All right?--- - - - whether I consulted him. It may have been the manager of finance and admin. I just mentioned that I consulted with other staff, Mr Chee, and I gave examples of the, the people I do. I mean some of those positions were vacant so there may be a time I couldn't.

20 Okay. Thank you. You were questioned earlier by Counsel Assisting as to the steps that you took in reviewing a document before approving it and I think your evidence was that you would discuss with the person who sent up the document amongst others. Is that correct?---I said, "I may have done that," I didn't say it was always done. I said, "I may have discussed it with the person who sent the document up." Yeah.

I wasn't suggesting that you always, I was just saying as an example that's what you do?---Yeah. It was an example, yes.

30 That was one of your, that was your evidence. You were shown a number of documents which had been authored on the face of them by Mr Bullock. During the course of his employment at the MSB did you consult with him in respect of documents that he put forward for his, for your approval?

MR NAYLOR: Well, I object, Commissioner, it's very broad.

MR CHEE: Well, I must say that my instructions are of such a nature that I am unable to, well, I'm getting to the point where I'm, I'll put some propositions but I am limited and hampered in some way by the instructions that I have and I'm doing the best that I can.

40 THE COMMISSIONER: Well, anyway, look, I understood the witness to say that he did from time to time have discussions with Mr Bullock but he's unable to say in relation to which documents or files. Is that right?---That's correct.

All right. Go on, Mr Chee.



MR CHEE: All right. Thank you. Did Mr Bullock ever speak to you about what he should do if he couldn't find a suitable tenderer from the list of approved tenderers?---I don't recall that discussion.

Could I put it to you that such a conversation did occur and that you said to him words to the effect "Pick other people, look in the yellow pages", and "You're running your area just get the job done"?---No.

10 Okay. Did Mr Bullock ever speak to you about MSB policies and the application of those policies at the Picton office at any time?---Just repeat that, please for me?

Did Mr Bullock speak to you about MSB policies and the application of those policies at the Picton office at any time?---I don't believe so.

20 Could I put it to you that in fact he did speak to you on occasions and that you responded to him by saying words to the effect "I like the way you work. You and I think outside the square to get the job done. You're keeping us out of the media. Just keep doing it the way you're doing"?---Sorry, Mr Chee, but that's ridiculous, no.

Thank you?---Thank you.

THE COMMISSIONER: Anyone else? Ms Hogan-Doran, any questions?

MS HOGAN-DORAN: No.

30 THE COMMISSIONER: No. Mr Griffin?

MR GRIFFIN: I have no questions, thank you, Commissioner.

THE COMMISSIONER: Thank you.

Mr Cole-Clark, you can step down, you're excused.

**THE WITNESS EXCUSED**

**[3.15pm]**

40

MR NAYLOR: Commissioner, I call Kylie Hargreaves.

THE COMMISSIONER: Just take a seat.

MS HARGREAVES: Sorry.

THE COMMISSIONER: Just take a seat, Ms Hargreaves.

MS HARGREAVES: I'm not entirely sure what you want, need me to do so - - -

THE COMMISSIONER: That's all right. Mr Beckett.

MR BECKETT: Yes.

THE COMMISSIONER: Does your client wish to take advantage of a 38 order?

10

MR BECKETT: She certainly does, and she wishes to give her evidence by affirmation.

THE COMMISSIONER: Thank you.

Ms Hargreaves, can I just make sure that you understand that the section 38 order that I am empowered to make under the Act protects you from the use of your answers against you in civil or criminal proceedings but it doesn't protect you if it should be found that you've given false or misleading evidence. You appreciate that?

20

MS HARGREAVES: I do.

THE COMMISSIONER: Yes. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

30

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED**

40

THE COMMISSIONER: Could we have the witness affirmed, please.

<KYLIE HARGREAVES, affirmed

[3.16pm]

THE COMMISSIONER: Yes, Mr Naylor.

MR NAYLOR: Now, your name is Kylie Hargreaves?---Correct.

And you are the Deputy Secretary Division of Resources & Energy  
Department of Trade & Investment Regional Infrastructure and Services?  
10 ---Correct.

Have I got all of that right?---Yeah.

Madam, you've provided two statements for the benefit of the  
Commission's inquiry, one is dated 8 April, 2015 and the other is dated 19  
May, 2015. That's right?---Ah hmm, correct.

All right. I tender those documents, Commissioner.

20 THE COMMISSIONER: Thank you. Those statements will be Exhibit  
T68.

**#EXHIBIT T68 - STATEMENT OF KYLIE HARGREAVES DATED  
8 APRIL 2015 AND 19 MAY 2015**

MR NAYLOR: Ms Hargreaves, do you have with you a copy of those  
statements?---I don't.

30 That's okay.

THE COMMISSIONER: I can give you these ones if you like.

MR NAYLOR: All right. I'll try and keep the questions to a minimum and  
avoid referring to the documents too much. Ms Hargreaves, as I read your  
statements you've been occupying senior management positions in public  
sector agencies since 1996. Is that right?---That's, senior, sorry, yes, I  
40 joined the Australian Trade Commission and went up through the ranks for  
17 years there and I've obviously joined the New South Wales Government  
about five years ago as an executive director level and climbed since then.

Right. So you've got significant experience working in the public sector?  
---I do.

And you've also got qualifications as I see in international business?---I do.

All right. Just some questions to begin with about the MSB, the role of the Board, the nature of the MSB as an entity. The usual way in which Government departments and indeed statutory authorities such as ICAC work is that they get their resourcing, they get their money via an allocation from Consolidated Revenue and then they're accountable of course to, if it came via a department, I guess via the department that was the source of the funds then ultimately as well to Parliament which makes the allocation. Am I right in thinking that the Mine Subsidence Board is quite a different kind of organisation and that's because it doesn't get its funding from an allocation from Consolidated Revenue, it gets its money from levies which are imposed on collieries. That's right, isn't it?---Correct, yeah.

And it becomes responsible for the proper management of those funds?  
---Correct.

And it's rather, it's almost unique perhaps insofar as public sector organisations are concerned, is it not, in your experience?---In my experience it's quite unusual, yes.

20 Yes. And would I be right in suggesting that because there isn't that process whereby the funds come from an allocation of Consolidated Revenue and it comes directly via the levy process, it places a degree of importance, does it not, on the Board to ensure that the funds which it receives are properly administered?---Correct.

Is that - - -?---That's fair.

Is that a fair proposition?---That's fair, yeah.

30 All right. Because in the ordinary circumstance I appreciate things operate slightly differently at State and Federal levels, for example at a Federal level bureaucrats often get hauled before the Senates Estimate Committee and they have to answer for the way in which they've expended funds which have been allocated to them, and as I understand it there's a similar process at a State level with budget committees but what happens in relation to the MSB, do you know, is there a budget committee process for the MSB?  
---Not that I'm aware of, no.

40 Right. What, what kind of accountability mechanism is there, is there some equivalent kind of accountability mechanism as what I've just described for Government departments?---So I'll try and answer in the best way I can in terms of how we get some accountability for MSB money management.

Yes?---We do actually have to table to Parliament an annual report which includes all the financial records for the MSB on an annual basis.

Yes?---So that gives us a level of public sector scrutiny, for want of a better word.

Yes?---Obviously we're answerable to the collieries as well, so the collieries can actually have some visibility in those reports about how their moneys are being used and where they're being used, and that's probably it. So for example I went to my first estimates hearings last year, we're not being asked about MSB in that context.

Right?---We were asked about consolidated funds and what we're doing with consolidated funds.

10

Right. Right. You used the word "their" when you were talking about the collieries' money, essentially the funds within the Mine Subsidence Fund, and what I infer from that, and correct me please if I'm misapprehending what you're saying, is that the money within the Mine Subsidence Fund is the, belongs to the collieries?---I guess it's probably a bit of a mix.

Yes?---I'm looking at the source. So they, they provide, my, my interpretation of how it works is they provide the levies under legislative requirement.

20

Yes?---And we're using those funds to ensure public safety and repairs to house work and civil works and those sorts of things caused by mine damage.

Yes?---So I guess it's theirs when it comes to us and then it's the MSB's when they have it because they have to deploy it for the benefit of the broader community of New South Wales.

Yes?---Does that make sense?

30

Yes, no, thank you. No doubt Mr Beckett will object on legal grounds if I overstep the mark with the next question, but is this a fair proposition, that the Mine Subsidence Board, it's charged with performing the functions under the Act. That's right isn't it?---Correct.

And the Act and the associated Regulation are the instruments by which the collieries are levied to provide money that is the source of funds to the Mine Subsidence Board?---Correct.

40

And the Board is charged under legislation with performing a very public duty, is it not?---Certainly in terms of making sure that those funds are then deployed, as I said, to rectify issues associated with mining.

Yes. It's really in the nature of a public insurance scheme, is it not, that is being administered by the Mine Subsidence Board?---I haven't got a lot of experience in public insurance schemes - - -

No, okay?--- - - - but I can see the logic, yeah.

All right?---Yeah.

In any event, the Board is performing statutory functions in relation to moneys that are accumulated under legislation and the funds therefore are public funds as well. Do you agree with that proposition?

MR GRIFFIN: I object to that question, Commissioner, for the same reason earlier on.

10

THE COMMISSIONER: Well - - -

MR GRIFFIN: It's a legal issue.

THE COMMISSIONER: Well, I don't know. I would have thought, I would have thought that this is a witness who is eminently qualified to give an opinion as to whether or not they're identified as public moneys. I mean is that necessarily a term of art?

20

MR GRIFFIN: No, well, I don't accept your first proposition, Commissioner, that she's eminently qualified to answer the question.

THE COMMISSIONER: Well, I'm just looking at her CV and I don't know who else would be qualified. But anyway, look - - -

MR NAYLOR: I'll move on, Commissioner.

30

THE COMMISSIONER: Perhaps we can just ask – can I ask you, Ms Hargreaves, is the term “public moneys” is that a term of art that's applied by way of some legislative definition for purposes of public accounting methods or, do you know?---(No audible reply)

No?---No.

Okay. All right. Well, let's move on then, Mr Naylor.

40

MR NAYLOR: I'll move on, Commissioner. The point I suppose that I'm interested in is that having regard to the fact that the Board is in somewhat of a unique position so far as public agencies are concerned, it receives all this money and then it has to administer it. It places something of a premium in terms of importance on the Board to ensure that what it does it does with propriety and appropriately. That's right isn't it?---Absolutely. So, yeah, in that sense I completely agree that the money comes in from the collieries and it is to be applied with the utmost accountability and transparency as if they were public funds depending on whatever legal description you want to describe.

And appropriate emphasis therefore has to be given by the Board when it performs its duties with regard to that, that concept?---Correct, yeah. I agree.

In your two statements you've very helpfully, thank you, identified a number of initiatives that are – have been embarked upon to try to improve both probity and other related policies and procedures within the Board. So, for example, we can note that the Board has already engaged the Department of Public Works to review the procurement process. That's right isn't it?---Correct, yeah.

Okay. And what's also under way is the filling of vacant positions, the most important positions first and then other positions of lesser priority. That's right isn't it?---Correct.

Okay. And it's important those jobs get filled so that the Board can do its job effectively?---Correct.

And the other process importantly that's under way is you're trying to identify processes within the Board that can be farmed out for want of a better expression to, to sectors within the Department so that – such as back office functions?---Correct.

Functions that are not necessarily integral to the professional way in which the Board does it's work and that would free up resources within the Board so that it could get on with doing what it has to do but in a way that is both efficient and has probity. That's right?---Correct.

As I understand there are – what I'd like to do now is just put to you a number of propositions about other potential corruption prevention strategies, potential ideas. You may, you may not have a view about it? ---Ah hmm.

You don't have to express a view about it but let me just advance a few suggestions and you can respond as you wish. As I understand –well, withdraw that, Commissioner. You may have heard some evidence already about tampering with the tender box at the Picton District Office. As I understand a process is already under way to remove the tender box and to move – for the Board to move to eTendering. Is that right?---Correct, yes.

Right?---So we recently wrote to all the suppliers on the MSB prequalification list to advise them that we'd be moving to the New South Wales Schedule.

Yes?---And asking them to get onto the prequalification list for the New South Wales General Construction Schedule.

Okay?---Because we'll be discontinuing the MSB one.

All right. And can I make this assumption that you're generally familiar with the nature of the evidence that ICAC has heard over the last several weeks?---Roughly but in huge detail.

10 Okay. That's okay. There's been evidence of secret commissions having been arranged for and earned by Mr Bullock, both through the variation to contracts process as well as the original contract process, and on the other side cover quoting to hide as it were the involvement of one contractor who has added on secret commissions at the initiative of Mr Bullock. That's in a nutshell the nature of the evidence and you may have heard today Mr Cole-Clark's evidence and a number of issues were raised which could I suggest are salient to the question as to how to improve strategies and policies and procedures such as, for example, separating the claim approval process and the tender approval process. Is that something that is – is that an idea worthy of further consideration?---Yeah, definitely.

20 Right?---I think, um, the point about making sure you've got lots of separation in the decision as well as hardwiring in some of your basic checks, um, so that you can't actually overwrite delegations and things like that. Obviously no brainers, they're sort of low hanging fruit, um, that we should be implanting as quickly as possible.

30 Yes. When you say hard wired what do you mean?---Um, sorry. So, you know in, um, for example many of the sort of more contemporary accounting and project management systems, um, the work, the electronic work flow is controlled, it's hard wired so that you can't have Kylie Hargreaves entering, um, you know a claim, um, signing off on that claim and issuing an invoice because the system automatically recognises that I'm breaching the delegations or breaching the amount of authority that I'm allowed to expend.

Right. Okay. And it would be useful also when reconfiguring systems not just to have that kind of hard wiring check in place but perhaps this goes back to my earlier point. But to avoid one person with a financial delegation being involved at successive steps in the process?---Correct, yeah. You should always have human separation.

40 All right. Okay. I have an impression and look, I might be mistaken about this but, so please correct me if I'm wrong. But this is an organisation that as I suggested before, is rather unique in terms of the way it was funded to, it is an independent statutory authority, it answers to the Minister. The involvement of the department you've explained it's relationship, you've explained in your statements. But the import of the evidence before the Commission is that a particular district manager, Mr Bullock, was given considerable autonomy and considerable power in terms of the exercise of financial delegations at a district office. And so we've got an organisation which is in one sense out there on its own and not necessarily part of the



public sector in the usual way and we've got a particular part of that organisation which seems to operate very independently. That doesn't seem to me to be a very good model for ensuring scrutiny of process?---I think it could certainly be improved. Um, so even just, you know, a district office can be quite small.

10 Ah hmm?---And obviously if you've got three, four, five people that are all sort of supposedly checking each other, that's a very small culture. Um, whereas if you've got a more centralised system you can actually make sure that some of that, um, ability to influence each other is reduced. So I think there's a number of ways that you can actually, um, better de-risk the system, ah, and, and, you know, you can't have a 100 per cent trust and you can't have it 100 per cent systematised. Ah, you've got to have something in the middle and you've just got to find the best way to do that.

20 And I think you've kind of hit on in your answer what I would regard as, what I can suggest might be an important concept and that is risk. It's about, is it not, when developing systems, identifying risks and then developing a way of dealing with those risks that's reasonable in all circumstances?---Correct. So ideally you'd have a flow chart of the process and you'd work out the risk at each stage and you'd have a risk management for each one of those stages.

30 Right. I had asked Mr Cole-Clark some questions and perhaps you were here during the hearing, I'm not sure, but in relation to this circumstance where there's a – where the MSB, Picton office, uses a list of selected tenderers that are approved on a biannual basis, that's the evidence. And what we have seen in the evidence is that corrupt relationships developed between Mr Bullock and particular contractors. And it would – one possible way of trying to detect the development of those relationships and then deal with them before it's too late, is if data is collected and comes up to the Board which shows when particular contractors are being engaged and how often they're being engaged and how much their contracts are. Essentially data to show that particular contractors if this occurring might be earning considerably more, being given contracts which are worth considerably more, relative to others on the tenderers panel?---So one of the things we've asked, um, ah, Peter Thatcher to do is look at, what we're calling a dashboard.

40 Ah hmm?---And so that's exactly what we want where some basically sort of – in my head they're like pie charts basically where you can actually say, okay, for the volume of contracts both at an MSB level but also at a district level, who's winning the business, how frequently, does it look odd, and you'll be able to sort of get at least an early warning system sometimes of patterns that you might otherwise miss in a sort of day-to-day point of view. So you're right, data-led dashboards is something that we've requested Peter Thatcher to look at for the Board.

And you may have heard some evidence today as well about the audit process - - -?---Yeah.

- - - that has been in place in the past, there was some evidence to the effect that an audit was done in 2009 identifying the risk of collusion between the contractors and MSB staff, do you have any thoughts at the moment about how to improve the audit process?---Certainly. I mean I think one of the early hearings was saying it was, they were given the files to check, not a genuine random selection.

10

Yes?---So obviously no, an audit needs to have a random selection, when the auditors go in and if they're going in every year they normally produce a risk report.

Yes?---Those risk reports need to be tabled at the Board level so that we can actually track progress against each one of those and you know, if there's any moderate or high risks you should be trending down obviously over time to low because you're actually implementing systems and procedures and training that reduces that to a more acceptable level.

20

Have you had an opportunity since you've become involved with the Board to actually see the policy and procedures documentation?---No, I still don't have it. Apparently it's some massive folder in their offices in Newcastle.

Yes, yes?---So no, I haven't seen it.

It occupies about one of these lever arch folders?---Yeah.

30

It would be unfair for me to ask you too many questions about that, except I can make, I can put this proposition, that it would appear to be not only voluminous but dense and difficult to get your head around. Just make that assumption for me. What would you regard as important in terms of if there is to be a review of the policies and procedures document, I don't suggest that there is or it's a matter for others, but if there is to be a review what are the important issues that should be taken into account when reviewing a bunch of policies and procedures like that do you think?---Well, the first one is you've got to bite-size it down.

40

Yes?---People aren't going to be able to absorb something that large, it's got to be repetitively trained in and repetitively refreshed. You've got to have access to it, so you know, you've got to have online access to it, you've got to have hard copy access to it, it should be in induction courses, there's a whole range of things and obviously Trade & Investment does the same thing for our people. If you had to try and understand all the policies and procedures at once you'd find it overwhelming but you can actually quite regularly train, drip-feed them, make sure the people and the systems, you've got centres of excellence that people can go and refer to and all that

sort of stuff. So there's a whole range of ways to make something that's that thick far less intimidating.

Okay. And there's been some evidence today in particular about the issue of trust, trust being reposed in particular managers within the MSB. I'm just interested in your views about the use of policies and procedures and to what extent if at all that trust can be used within an organisation, particularly one that involves the exercise of sometimes significant financial delegations?---We've also got to earn the trust of the community and the trust of the industry so part of that is actually being able to evidence base that you're using moneys wisely and well, so I don't think – quite often I face it as a regulator now with my own people in Resources & Energy, they say, you don't trust us, if you question a decision or if you're asking for an evidence-based trail to that decision and my response to them is consistently, no, it's not about, it's actually not about trust, it's actually about making sure that you are protected as an employee, the Government is protected, those public funds are protected, and if everything is being done well and simply then there's nothing to fear about the evidence-based questioning. So your files should be complete, your decisions, your reasons for decisions should be documented, someone should be able to go and see it cold and actually be able to say, yeah, I can follow the logic for that and I agree with that decision, I can see that's a reasonable decision. That's not a – asking that sort of level of performance is not a distrustful management, it is just good management.

All right. No further questions thanks, Commissioner.

THE COMMISSIONER: Does anyone have any questions of Ms Hargreaves?

MR BECKETT: No, no questions.

THE COMMISSIONER: Thank you, Ms Hargreaves, you may step down.

**THE WITNESS EXCUSED** **[3.41pm]**

THE COMMISSIONER: Just on this question that Mr Griffin has raised, I'm looking at an ATO ruling which says that public funds are those established and controlled by governmental or quasi-governmental authority. I'm sure there's other definitions out there, Mr Griffin.

MR GRIFFIN: I wasn't putting a contrary definition, I was just saying the witnesses - - -

THE COMMISSIONER: Oh, well.

MR GRIFFIN: - - - weren't the appropriate people to be commenting on it.

THE COMMISSIONER: No, but anyway, if you want to make a point about that I suppose you should address it in the submissions.

MR GRIFFIN: Indeed.

THE COMMISSIONER: Which brings me to the close of this particular inquiry. I would appreciate that there's a volume of material here that has to be canvassed in the course of submissions. I'm going to suggest that Counsel Assisting's submission are due to be filed and served before the close of business on 26 June, which is four weeks from today, with submissions in response to those submissions to be filed and served by the close of business of 17 July, so that's a further three weeks and then any final submissions in reply from Counsel Assisting to be filed and served by close of business on 24 July so that there's effectively a conclusion to the submission process within two months. Does anyone have any difficulties in that regard? No. No. Could I indicate that the standard directions apply which includes the confidentiality of all submissions so that beyond of course circulating the submissions to other counsel and parties there should be no publication of submissions.

MS HOGAN-DORAN: Commissioner, could I ask one question - - -

THE COMMISSIONER: Yes.

MS HOGAN-DORAN: - - - in relation to submissions.

THE COMMISSIONER: Yes.

MS HOGAN-DORAN: And it may be that, Commissioner, you're not in a position to answer it. Is it anticipated that the Corruption Prevention Unit will also serve submissions as part of the – or with Counsel Assisting's submissions just in terms of our resources?

THE COMMISSIONER: I think Counsel Assisting will probably include some corruption prevention submissions in the course of his submissions. We don't normally circulate submissions from within the Commission but they'd be reflected in Counsel Assisting's submissions generally so - - -

MS HOGAN-DORAN: Yes. It's more a timing thing I think. In a previous inquiry some submissions came forward in relation to corruption prevention at a different time to Counsel Assisting's initial submissions so that was my only query. Thank you, Commissioner.

THE COMMISSIONER: I think we've done that particular subject to death, Ms Hogan-Doran. Yes.

MS HOGAN-DORAN: Thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Chee.

MR CHEE: Commissioner, one last matter of housekeeping. I don't believe that Mr Bullock has been released from his - - -

10 THE COMMISSIONER: Oh, no, no. No, of course he's released. We're at the end of the inquiry but I think it was, it was important that he was here at least for Mr Cole-Clark's evidence. All right. Unless there's anything else I'll adjourn the inquiry. Thank you to Counsel for your assistance.

**AT 3.45PM THE MATTER WAS ADJOURNED ACCORDINGLY  
[3.45PM]**