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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION TUNIC

Reference: Operation E13/1800

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 30 MARCH, 2015

AT 10.10AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: This is a public inquiry being conducted for the purposes of an investigation of allegations and circumstances which imply that Darren Bullock, a former district manager of the Mine Subsidence Board, Picton office, received or may have received corrupt payments or other benefits as an inducement or reward for showing favourable treatment to building contractor Kevin Inskip of Plantac Pty Limited, that he may have revealed confidential Mine Subsidence Board tender information to Plantac Pty Limited and he may have breached Mine Subsidence Board financial delegations policies and/or procedures in relation to the awarding of contracts and the making of payments to Plantac Pty Limited and that he may have received corrupt payments or other benefits as an inducement or reward for showing favourable treatment to William Kendall of Will Built Homes Pty Limited while he, that is Mr Bullock, was employed by the Board from about November 2003 to December 2014 inclusive and the inquiry will also investigate whether the systems, policies and procedures of the Board allowed, encouraged or caused corrupt conduct of the kind referred to in the allegations and circumstances just related and whether they should be changed to reduce the likelihood of the occurrence of corrupt conduct in the future.

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Could I just indicate for timetabling purposes that the inquiry will sit this week until 1.00pm on Thursday and will resume at 10.00am on next Tuesday. Before we proceed to the opening as I understand it there is an application?

MR CHEE: That's correct, Commissioner. My name is Chee, I seek authorisation to appear on behalf of Mr Darren Bullock.

THE COMMISSIONER: Yes, that leave is granted, Mr Chee.

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MR CHEE: On Friday of last week the witness list to Operation Tunic was published and it included a witness by the name of Gareth Davies. I have received instructions that the chief investigator of Operation Tunic is well-known to and has attended multiple social functions with this witness. A duty of procedural fairness arises where proceedings may destroy, defeat or prejudice a person's rights, interests or legitimate expectations, I refer to *Annetts v McCann*. The High Court has given a broad construction to the term "proceedings" in this context. In *Ainsworth v the Criminal Justice Commission* it was stated that once the Commission is seen as a body possessing functions and responsibilities of that kind and scope and empowered to conduct its proceedings in any manner that it thinks proper, proceedings must be seen as referring to any step no matter how informal taken in the course of or in relation to its functions and responsibilities rather than to the formal or public steps which sometimes attend the discharge of those functions and responsibilities.

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In *Ainsworth* the High Court followed decisions in *re Pergamon Press* and *Mahon v Air New Zealand* where it was held that investigative powers

considered attracted a duty to act fairly. Under the principles of natural justice therefore a person whose interests may be adversely affected such as Mr Bullock is entitled to a fair hearing and a fair investigation. The actions of the chief investigator who conducted and appears to be continuing to conduct this investigation may be subject to apprehended bias and may constitute grounds for a complaint of impropriety to the Commission's inspector under section 57B(1)(b) of the Act.

10 I ask the Commission firstly whether the relationship between the chief investigator and the witness, Mr Davies, has been disclosed to the Commission? Secondly, if so, why has the chief investigator been allowed to continue to act in this role when clearly there is the potential for apprehended bias on his part? Thirdly, does the Commission believe that it can continue with this public hearing notwithstanding that the investigation is potentially tainted due to bias?

20 A further issue which I have raised previously is the service of documents on Mr Bullock. By email dated 25 November, 2014 I wrote to the Commission's lawyers advising that documents had been served upon Mr Bullock at his workplace.

The documents contained information as to the scope of inquiry, however the document was issued in an unremarkable envelope addressed to Darren Bullock, care of the Mine Subsidence Board and was delivered to the Picton address of the Board. It was not marked private or confidential. Accordingly it was received at the Picton office and it was dealt with as an ordinary piece of mail intended for the Mine Subsidence Board. It was opened by a person other than Mr Bullock and read by at least one person, if not more. The Picton office of the Mine Subsidence Board only contains a
30 handful of staff, most of who are being called today as witnesses at this public hearing.

40 Within my email to the Commission concern was expressed that due to the mode in which the Commission had served the document, information as to the scope of investigation could have been circulated amongst the staff at the Board and more broadly within the local community and there was the potential that investigations could be prejudiced. No written response was received to these concerns, however a Commission lawyer telephoned on the same day to apologise in relation to the service of the documents and confirm that future correspondence would be forwarded to my office.

I am instructed this practice may have continued in relation to other witnesses and there is the concern that the allegations against Mr Bullock have effectively been broadcast to relevant witnesses during the course of investigations, such that Mr Bullock will not have an opportunity to receive a fair hearing or that Mr Bullock has received a fair investigation. It also appears that this conduct could constitute grounds for a further complaint of impropriety to the inspector under section 57B(1)(b) of the Act.

I ask further whether the Commissioner believes that continuing with this public hearing, notwithstanding the evidence obtained during the course of this investigation could be tainted due to prejudicial and in my submission, absolutely preventable disclosures made by the Commission to witnesses. I am instructed to apply for the investigation to be discontinued pursuant to section 23(3) of the act on the grounds that the investigation is contrary to law and a referral be made to the inspector in relation to the possible apprehended bias of the chief investigator and also the conduct of the Commission in respect of potentially prejudicial disclosures to witnesses.

I have a copy of the cases which I've referred to and I'm happy to hand them up.

THE COMMISSIONER: Thank you, Mr Chee.

Do I take it, Mr Chee, that the only basis of your application is section 20(3)?

MR CHEE: It's on the basis that there are – it would be contrary to law if this were to proceed, and yes, I am seeking that it be discontinued under section 20(3).

THE COMMISSIONER: All right. Well, can I just note for present purposes that section 20(3) vests a discretion in the Commission to discontinue an investigation on the basis of three circumstances, any one of which would satisfy the section, either the subject matter of the investigation is trivial or the conduct concerned occurred at a remote time or if the investigation was initiated as a result of a complaint that was frivolous, vexatious or not in good faith. You don't allege any of those three things, do you, Mr Chee?

MR CHEE: Commissioner, I believe that that particular section refers to three scenarios which are included, they are not exclusive, and I'm not relying upon the grounds which – one of those three grounds, I'm rather relying upon the ground that it would be contrary to law for this to continue.

THE COMMISSIONER: Well, if it's – sorry, but if it's contrary to law then, then the result would be that the Commission had no jurisdiction whatsoever to conduct the investigation. I understand your application to be primarily on the basis of apprehended bias.

MR CHEE: That is correct.

THE COMMISSIONER: Well, there are ways of dealing with questions of apprehended bias, but anyway, let's just proceed on that basis, shall we. Before we go any further, could I just ask you, Mr Naylor, as Counsel

Assisting whether you have any instructions in relation to the matters that have been raised?

MR NAYLOR: The application is opposed, Commissioner. Section 20(3) in my submission, Commissioner, does not apply. The tenor of the application on behalf of Mr Bullock relates to apprehended bias, and I will deal with both components in turn.

10 We might accept for the moment, Commissioner, that the general rules of natural justice as apply under the general law include a component in relation to apprehended bias. I accept for the time being, Commissioner, that if there's a proper basis for contending that there might be bias or apprehended bias, actual or ostensible, then it may be, it may fall within the rubric of the rules of natural justice and it would, it would be necessary to take that into account.

20 In this particular case, Your Honour – Commissioner, can I deal first of all with the submission that one of the witnesses, Gareth Davies, is known to chief investigator Jeff Lawrence. My instructions – I've made inquiries, Commissioner – are that Mr Lawrence does not know Mr Davies. There is no foundation in my submission, Commissioner, for the first component of the submission that there's any basis for this inquiry to be discontinued on the grounds of apprehended bias or even actual bias in respect of the relationship between one of the witnesses, Mr Davies, and the chief investigator, Jeff Lawrence.

30 In relation to the second component of the application that there may be some basis for the inquiry being discontinued on the grounds that there is some kind of apprehended bias by virtue of a summons being served for Mr Bullock at the office of the – at the Picton District Office and thereby becoming known to other staff who work in the office, well, in my submission, Commissioner, that can be dealt with by Mr Chee in examination of the relevant witnesses. There is no unfairness, in my submission, by virtue of the fact that the document may have been served at the Picton office to the extent that Mr Chee's client feels disaffected. If he is suggesting, Commissioner, that staff at the office by virtue of having seen the document may colour their evidence then he can make appropriate inquiry when those witnesses are called. Those are my submissions, Commissioner.

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THE COMMISSIONER: Mr Chee, do you want to call any evidence on the application?

MR CHEE: I think I would have to ask for Mr Davies to be called to give evidence and also ask for Jeff Lawrence to be so that it could be tested.

THE COMMISSIONER: Well, you see as things presently stand, there is no evidentiary foundation for your application on the first limb because

unless we can establish that such a relationship did exist between Mr Lawrence and Mr Davies then the matter goes no further.

MR CHEE: Indeed.

THE COMMISSIONER: Have you spoken to Mr Davies this morning?

MR CHEE: No, I haven't. It was - - -

10 THE COMMISSIONER: Is he here, is Mr Gareth Davies here?

MR STEWART: Commissioner, Stewart, solicitor. I appear on behalf of Mr Davies.

THE COMMISSIONER: Yes, Mr Stewart. Yes.

MR STEWART: This is the first I've heard of it.

20 THE COMMISSIONER: Right.

MR STEWART: And obviously I would need to take instructions from my client on that point.

THE COMMISSIONER: Right. And your, is your client here?

MR STEWART: He is. He is before the Commission.

30 THE COMMISSIONER: All right. Can we just settle on thing though. Mr Chee, do I take it that you want this application dealt with before the opening?

MR CHEE: I think it might be appropriate. It might – but I'm in the hands of the Commission.

THE COMMISSIONER: Well, I'm just conscious of the procedural impasse. If you want the investigation discontinued then I can't go any further until the application is dealt with.

40 MR CHEE: Indeed that's, that would be my submission as to why it would be appropriate for it to be dealt with.

THE COMMISSIONER: All right. Well, can I just pass to the second limb of the application. Mr Chee, in the light of what Mr Naylor has said it would seem to me to be self-evident that you can test the boundaries of the extent to which people may have been made aware of the allegation and the extent to which their evidence might be coloured by that but on a more, if I could put it this way, practical note. As you would know being someone who appears in this jurisdiction, leaving to one side witnesses who are

called here under our compulsory examination processes, there are as you would know many people who voluntarily come before the Commission and give us information. There is absolutely no power in the Commission to prevent those persons from telling anybody that they wish to tell about their suspicions in relation to other people. If your application is correct it makes no sense that there would be grounds for apprehended bias on the basis of a summons that was circulated as opposed to a ground for apprehended bias on the basis of someone in the community who was quite willing to broadcast to the community generally that they had concerns about alleged corrupt practices.

MR CHEE: Commissioner the difficulty that I have is that witnesses will often be under the Section 112 order preventing them from even disclosing that the existence of an document for example.

THE COMMISSIONER: Well they may be under that.

MR CHEE: They may be.

20 THE COMMISSIONER: They may be under that difficulty. They may not be.

MR CHEE: And yet it seems to me incongruous that the Commission's actions actually in some way make that order - - -

THE COMMISSIONER: All right.

MR CHEE: - - - in some cases meaningless.

30 THE COMMISSIONER: All right. Well I appreciate the boundaries of the application. And can I just say this again, on the second limb of your application it would seem as though you were proceeding on the basis that staff, sorry, I'll withdraw that. It would seem that you were proceeding on the basis that the Board staff may have seen the document. You don't know that they did see the document. But more importantly that that then led to Board staff communicating that scope and purpose to other people generally?

40 MR CHEE: Commissioner, my instructions are that at least one other person we know has read that document. Because it was received and opened by another person and stamped as being received by another person before it come into - - -

THE COMMISSIONER: All right.

MR CHEE: - - - Mr Bullock's possessions. We don't know how many people may have read it but due to the, the interactions within the

community and within the office, it would that those, that particular, that information was circulated. To what extent I do not know.

THE COMMISSIONER: Can you indicate for me what particular document it was and at what time it was received in the Board's office? The date may be critical.

MR CHEE: The document, um, was a summons to appear and give evidence and I think I might need release from a Section 112 Order to
10 disclose the contents of this document?

THE COMMISSIONER: Well you don't, I'm not concerned about the contents.

MR CHEE: All right. All right.

THE COMMISSIONER: I know what they are but - - -

MR CHEE: Okay, very well.
20

THE COMMISSIONER: But what date was it that you say the document was received in the Board's office?

MR CHEE: It, it's stamped the 25th of November, 2014 with a Mine Subsidence Board, Picton received stamp.

THE COMMISSIONER: All right. Thank you. All right. Well now that Mr Naylor has that information we can deal with that part of the application. But can I suggest that we take a short adjournment so that Mr Davies's
30 representatives can take instructions and you can speak to Mr Davies if you wish and you can speak to Mr Lawrence if you wish. But at this stage we can't proceed much further until that matter's resolved. Could you just let me know through the Commission's associate when you're in a position to proceed with the Application?

MR CHEE: Yes, Commissioner and could I just note that this issue arose on Friday when the Witness List was published.

THE COMMISSIONER: Yes.
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MR CHEE: And I haven't had opportunity to speak to Mr Lawrence or - - -

THE COMMISSIONER: No. All right. Well - - -

MR CHEE: - - - or Mr Davies or his legal representative appointed.

THE COMMISSIONER: All right. Well you have that, you have that opportunity now. Thank you.

SHORT ADJOURNMENT

[10.28am]

THE COMMISSIONER: Yes, Mr Chee.

MR CHEE: Thank you, Commissioner. I have had time to speak to the legal representative for Mr Davies and with Counsel Assisting. It appears that a representation was made by Mr Davies to Mr Bullock to the effect
10 that he might have known this person, this investigator, however it seems to - on further inquiry it seems to be that he was mistaken and so accordingly I withdraw the first component of my application. In respect of the second component of the application I note that Commissioner you have indicated a proposed way to deal with those concerns and I am happy for, for it to proceed in that way.

THE COMMISSIONER: Right, thank you, thank you, Mr Chee. Well, then we can proceed with the opening and after the opening I'll take the applications for the appearances. Yes, Mr Naylor.

20

MR NAYLOR: Commissioner, this is a public inquiry concerning allegations that a former district manager of the Mine Subsidence Board, Darren Bullock, received corrupt payments from Kevin Inskip, principal of Plantac Pty Limited, a building contractor engaged by the MSB to repair residential homes in the Picton area damaged as a result of mine subsidence.

It's anticipated, Commissioner, that the evidence will show that for a period of at least seven years from about 2008 to 2014 Mr Inskip made cash payments to Mr Bullock for the purpose of Plantac securing building work
30 from the MSB. The arrangement involved Mr Inskip presenting draft invoices to Mr Bullock showing the cost of variations over and above the original contract price. Mr Bullock would then inform Mr Inskip how much he wanted to receive for the job to which the invoices related. Mr Inskip would arrange for the amount designated by Mr Bullock to be added to the cost of the variations. A fresh invoice would be prepared incorporating the extra amount added by Mr Bullock. The invoice would then be sent to the MSB for payment. In his capacity as district manager Mr Bullock would then authorise payment of the invoice.

40 This arrangement, Commissioner, provided Mr Inskip with a source of funds to make cash payments to Mr Bullock. The payment arrangement involved Mr Bullock contacting Mr Inskip to tell him when he needed some money. Mr Inskip would then arrange for the cash to be withdrawn from Plantac's bank account. The cash notes would be placed into an envelope, Mr Inskip would hand the envelope to Mr Bullock, usually when they next saw one another on a building site or at an arranged meeting. It's likely that the evidence will show that from about 2008 to 2014 Mr Bullock received in excess of \$300,000 from Plantac. It is possible that this is a conservative

estimate of the amount of payments received by Mr Bullock because the arrangement between Mr Bullock and Mr Inskip may have continued for longer than seven years.

Plantac was originally installed as an MSB selected tenderer in June 2005. This was about 18 months after Mr Bullock commenced working at the Board as district manager of the Picton office. The question arises whether Mr Bullock had a similar relationship with any other MSB selected tenderers.

10

The hearing will take evidence relating to how the payments by Plantac were made and facilitated, it will also examine the systems policies and procedures of the MSB relating to the procurement of building contractors. Before considering these policies and procedures it's useful to outline the role functions and operations of the MSB and briefly profile Mr Bullock.

20

The Mine Subsidence Board is a statutory authority constituted under the Mine Subsidence Compensation Act 1961. The Board was first established on March 1, 1929 under the Mine Subsidence Act 1928. The 1928 Act established an insurance scheme for the purpose of compensating owners of buildings or improvements damaged by coal or shale mine subsidence in designated mine subsidence districts. It required landowners, local councils, public authorities and mine owner to pay insurance premiums. The premiums were deposited into a statutory fund called the Mine Subsidence Insurance Fund. The 1928 Act provided that coal and shale mine owners who kept up to date with their insurance premiums were exempt from legal liability to pay damages for subsidence caused by their mining operation.

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In 1961 the statute that originally established the MSB was repealed and replaced with a new Act. The new Act continued the statutory insurance scheme for damage caused by coal and shale mine subsidence. One notable change was to limit the obligation to pay premiums or contributions to colliery owners. Under the current Act the Board must issue a notice each year to each colliery requiring it to make a contribution to the Mine Subsidence Compensation Fund. The amount of each yearly contribution led in from collieries in New South Wales is a percentage of the land value of each colliery. The relevant percentage are prescribed by the Mine Subsidence Compensation Regulation 2012.

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The Board is responsible for administering the fund into which mining companies' contributions are paid. As under the 1928 Act, Commissioner, colliery proprietors whose contributions are not in arrears get the benefit of a statutory exemption from legal liability for damage caused by mine subsidence.

During the financial year ending 30 June, 2013, the Board received \$19.15 million in colliery levies. In the previous financial year colliery contributions to the fund totalled \$18 million. As at 30 June, 2013 the net

assets in the Mine Subsidence Compensation Fund stood at \$78.56 million. Responsibility for ensuring that these funds are properly administered lies with the board. The board is subject to the direction and control of the Minister for Resources and Energy.

10 Under the Act the Board has two primary functions. One of these primary functions is to pay compensation out of the fund for damage to improvements, for example residential houses, caused by mine subsidence. The fund may also be used to pay compensation for damage to household effects or to meet the costs of rent while premises are uninhabitable. The Board may authorise payments from the fund to meet expenses in relation to land infrastructure arising from mine subsidence, for example, where there is a need to build a retaining wall or to repair a road, bridge or drain that has been damaged by mine subsidence. The fund may be drawn upon by the Board to meet its expenses in administering the Act. The Board's expenses will include the cost of investigating claims for compensation.

20 Instead of paying monetary compensation to the owners of buildings or other improvements damaged by subsidence, the Board has a discretion to carry out remediation works or repairs to restore the damaged land or buildings to a condition as nearly as practicable equivalent to their condition before the mine subsidence damage occurred. If the land owner consents, the Board may purchase the property providing that the purchase price is not affected by the damage. The Board may later sell or lease a property that has been affected by mine subsidence damage.

30 During the year ending 30 June, 2013 the Board processed 362 claims for compensation for mine subsidence damage. 133 of these claims, more than a third, Commissioner, were processed by the Picton District Office of the MSB. In the 2013 financial year the Board paid out a total of 7.45 million for mine subsidence damage claims. It's likely that this included the cost of both remediation works and monetary compensation. In the previous financial year ending 30 June, 2012 the Board paid out almost double that amount \$13.27 million. In 2012 payments out of the fund for mine subsidence damage were almost 75 per cent of the total contributions received from coal companies for the same year.

40 The second major function of the MSB, Commissioner, is to act as a consent authority for all land subdivisions and applications to erect or alter buildings or other improvements on land situated in mine subsidence districts. The Board imposes conditions on proposed developments that take into account the risk of land subsidence due to mining operations. The Board also issues guidelines for building developments and provides subsidence design parameters for major structures. This function serves not only to ensure that the proposed developments are as safe as possible but it also helps to avoid calls being made on the fund in the future by way of claims for compensation due to mine subsidence damage.

The mine subsidence district is an area designed under the Act in recognition of the fact that it may become subject to mine subsidence. There are currently 19 mine subsidence districts in New South Wales. A number of mine subsidence districts cover areas of coal mining areas around the edges of the Sydney Gunnedah basin to the north and west of Sydney. These districts take in the Hunter Valley, Muswellbrook, Singleton, Cessnock, Lithgow, Rylstone, Maitland, Newcastle and Wyong. There are also a number of mine subsidence districts in the area to the south and west of Sydney covering what are called the Southern Coalfields. These districts take in the townships of Picton, Appin, Bargo, Tahmoor and Thirlmere among others. The allegations of corruption that are the subject of this public inquiry focus upon the activities of the MSB in relation to claims for compensation in and around Tahmoor and Thirlmere.

The type of mining conducted in the Tahmoor and Thirlmere areas is known as longwall mining. It's a type of underground coal mining that involves long corridors of about 250 metres in width being dug parallel to the surface of the ground. MSB files to be tendered in this public inquiry include maps that depict multiple longwall mine shafts running directly beneath the township of Tahmoor.

The Tahmoor Colliery commenced operations in 2004. The work in relation to the various Mine Subsidence districts is shared between four district offices. MSB district offices are located at Newcastle, Singleton, Wyong and Picton. The Newcastle District Office services the Lower Hunter, Newcastle and Maitland areas, the Singleton District Office services the Upper Hunter, Gunnedah and Lithgow areas. The Wyong District Office at the MSB deals only with mine subsidence in the Wyong area. The Picton District Office services the Southern Coalfields including the areas of Wollongong, Tahmoor and Thirlmere.

The head office of the MSB is located within the Newcastle District Office and employs a number of staff who provide financial and administrative support to the organisation. This branch of the office is headed up by the secretary and manager, financial administration, the secretary, although this position is understood to be currently vacant. Head office also has a mapping and research division which, among other things, produces maps of mine subsidence area and sometimes provides advice to district offices about when subsidence is expected to cease following the completion of mining operations. This division of the MSB is supervised by the subsidence risk engineer.

Each district office has a district manager. The larger district offices, Newcastle and Picton, also have a number of district supervisors, each office has one or more administrative staff to assist in the processing of claims for compensation and the performance of the Board's other statutory functions. As at June 2013 the MSB had a total of 28 staff across all four offices, including a number of temporary staff. The role of district

supervisors includes dealing with claims for compensation for mine subsidence damage. This involves conducting inspections of properties in relation to which claims have been made, preparing claim investigation reports, estimating the cost of repairs, organising for quotes to be obtained for repairs or tenders invited and let as well as oversighting and approving the work of building and other contractors engaged by the Board to carry out repairs.

10 District managers may perform the same functions as district supervisors. Former district, Picton district manager Bullock had carriage of his own claim files. He worked on more significant or higher valued claims as well as claims for damage to public infrastructure such as roads. As well as managing claims district managers are responsible for managing their respective officers. District managers have a financial delegation to approve expenditure from the fund to meet the cost of repairs and the payment of compensation.

20 One issue in this inquiry, Commissioner, will involve the fact that Mr Bullock was unique among MSB district managers in that for compensation claims related to mine subsidence in the Tahmoor area he was able to engage building contractors using selected tender procedures that allowed for contractors to perform works of a significantly higher value than his district manager counterparts in other offices. Whereas most district managers were restricted in their use of the selective tender process for works up to a value of \$20,000, Mr Bullock was able to use the selected tender process as distinct from a public tender process to engage building contractors for compensation claims up to a value of \$50,000 if the claim related to mine subsidence in the Tahmoor area. It will be necessary to try to understand the claim and compensation process.

30 The organisational structure of the MSB is such that the four district managers, the secretary and the subsidence risk engineer report to the chief executive officer of the MSB. Since about 1994 the CEO of the MSB has been Mr Greg Cole-Clark. Mr Cole-Clark in turn reports to the Board. There are six Board members. They are all appointed under the Act. The chairperson of the Board is the secretary of the New South Wales Department of Trade and Investment or his or her nominee. For a number of years prior to about October 2014 the chairperson of the Board was Brad Mullard. Mr Mullard was Executive Director, Mineral Resources of the
40 Department. In about October last year Mr Mullard was replaced by Kylie Hargreaves. Ms Hargreaves is the Deputy Secretary, Resources and Energy of the Department of Trade and Investment.

There are five other Board members, all Ministerial appointees, and they are the Chief Inspector of Coalmines nominated by the Minister for Resources and Energy, a nominee of coalmine proprietors, a nominee of the Minister for Local Government, a nominee of the Minister for Resources and Energy representing the interests of owners of buildings and improvement in mine

subsidence districts and engineer nominated by the Minister for Public Works.

Darren Bullock was employed as the MSB Southern and Coalfield District Manager from November 2003 to December 2014. Mr Bullock's starting salary at the MSB was \$72,435 per annum gross. By the time of his resignation from the Board in December 2014 his annual salary before tax was \$105,346 or thereabouts.

10 Mr Bullock was a carpenter by trade. For about 12 or 13 years he was employed by the Department of Public Works. He then moved to the private sector where he worked as a buildings operation manager for Westpac for several years. It was during this period of time, in about the mid-1990s that he met Mr Inskip. After leaving Westpac Mr Bullock worked as an assessor with AAMI for about three years. He then returned to the Department of Public Works before taking up his appointment with the MSB.

20 In January 2003 Mr Bullock was fortunate to win \$200,000 in a lotto. In November 2003 Mr Bullock married his wife, Julie. Mrs Bullock is an occupational therapist.

30 Between January 2003 and December 2014 Mr Bullock purchased a property, erected a house and swimming pool on it, purchased three motor vehicles and a jet-ski and went on at least four overseas holidays with his family. In 2010 and 2011 a significant extension was added to Mr Bullock's house at a cost of approximately \$200,000. The extension was built by Will Built Homes. Will Built Homes has been a selected tenderer for the MSB since 2009. The principal of Will Built Homes is William Kendall.

Throughout the period from 2003 to 2014, Mr Bullock kept large amounts of cash at his home. According to Mr Bullock he moved this cash into and out of his bank accounts. Financial analysis is likely to show that the source of funds kept at home is unexplained. The evidence will show that at least \$40,000 in cash was used to pay for the house extension in 2010 and 2011.

40 During the period from about 2008 to 2014 when the alleged corruption took place, the MSB had in place a large bundle of policies and procedures described as a Business Management System. Some of these policies and procedures related to compensation claims. In more recent times these policy and procedure documents have been available to MSB staff electronically via an Intranet facility. The Commission has obtained a copy of the documents that were in force in 2009 and 2014 as well as a number of documents that appear to amend the policy and procedures during the intervening period. Copies of these documents will be tendered into evidence.

The inquiry will examine whether the policies and procedures in relation to compensation claims were complied with and if this did not occur or relevant processes were circumvented or avoided, how this occurred. A number of MSB files in relation to specific properties will be tendered and examined. Questions are likely to arise about whether systems for ensuring compliance with and implementation of the policies and procedures such as internal and external audits were adequate.

10 The first step in the process leading to the repair of a house damaged by mine subsidence or sometimes the payment of compensation involves the lodgement of a compensation claim application. The application must be made in writing by the property owner using the relevant form. The application must be submitted to one of the four district offices of the MSB. The application must describe the nature and extent of the damage said by the owner to have been due to the effects of mine subsidence. The next step in the process involves the relevant district manager assigning carriage of the claim either to him or herself or where available, a district supervisor.

20 During the period from about 2009 to 2014 the Picton Office had two district supervisors in addition to Mr Bullock. Once a claim has been assigned, the relevant district supervisor or district manager inspects the property and prepares a claim investigation report. The report describes and usually photographs, includes photographs of the property and the damage. Importantly it includes an assessment of whether the damage is considered to have been caused by Mine Subsidence. If the damage is assessed as not having been caused by Mine Subsidence the claim is refused. If the claim is assessed as having been caused by Mine Subsidence the claim investigation report will include an estimate of the likely cost of repairs.

30 The MSB's Annual Report for the year ending 30 June, 2013 noted that about 25% of compensation claims are refused on the basis that the relevant damage is assessed as not having been caused by Mine Subsidence. The Annual Report also observed that in residential areas that are undermined only about 25% of structures are damaged by Mine Subsidence. And most of this damage is cosmetic and not structural. Sometimes a property in relation to which a compensation claim is made has already been inspected by the MSB before the claim is received.

40 The MSB has a program of offering pre-mining inspections to home owners in areas where Mine Subsidence damage has not yet occurred but where subsidence is predicted to occur having regard to information available to the MSB about future coal mining operations. Pre-mining inspections are conducted by district managers or district supervisors free of charge. Home owners are provided with a copy of the inspection report including photographs of the house before affected by any subsidence damage. If a pre-mining report is available in relation to a property whose owner has made a claim for compensation it will be used as the point of reference for

assessing whether damage has been caused by Mine Subsidence and if so, the extent of the damage.

10 Once a claim investigation report has been completed it's submitted to an MSB officer with an appropriate financial delegation to decide whether or not to accept or refuse the claim. And if the report recommends that the claim should be accepted, the delegation officer must approve the amount to be spent on repairs or compensation. Once a claim has been accepted and expenditure approved, processes commence to engage a contractor to carry out the necessary repairs. The general policy of the Board is to arrange for repairs to be carried out rather than to pay monetary compensation to property owners.

20 Although from information available to the Commission there have been occasions when financial compensation has been paid rather than the Board arranging for repairs or remediation works. The process for procurement of the contractor to carry out repairs depends upon the estimated cost of the repairs. The MSB's policies and procedures define the documentation to be sent to tenderers. Among the documents to be sent are a tender form and a technical specification or scope of works outlining the repairs or other works needing to be done. The scope of works document is prepared by the district supervisor or district manager with carriage of the particular claim.

After sending out the tendered documentation to invited tenderers, or in the case of the public tender, to those requesting a tender package a site inspection is arranged. This site inspection takes place at the premises to be repaired and is attended by all prospective tenderers and the district supervisor or district manager managing the claim.

30 The MSB policy and procedure documents provide that tenders must be submitted on the prescribed form and lodged in the MSB's tender box by the nominated time. Tender boxes must have two separate locks and must not be opened by the district supervisor or district manager with carriage of the particular claim. Rather the tender box must be opened by two officers, one of whom is not involved with the claim that is the subject of the tender. The other officer must be an administrative officer.

40 Once a tender box has been opened, details in relation to the tenders received, including the amount of each tender, must be entered into a tender book. Documents to be put into evidence include tender books for the Picton District Office for the period from 28 October, 2005 to 21 October, 2014. Once the tender book has been filled in by it and opened tenders are given to the district officer with carriage of the claim, the district officer then assesses the tenders and formulates a recommendation about which, if any tender should be selected.

The policies and procedures require a number of considerations to be taken into account when selecting a tenderer, specifically the known area of

expertise of the tenderer in relation to the job, the known response time of the tenderer to commence the work and the reliability of the tenderer with respect to prompt completion of the work.

10 The recommendation as to which tenderer should be selected is then submitted for approval to an MSB officer with an appropriate financial delegation. Once the selection of a tenderer has been approved, repair or remediation work can commence. The district supervisor or district manager with carriage of the claim is required to regularly supervise the works and issue site instructions if the work is found to be unsatisfactory.

20 The MSB's policies and procedures recognise that additional or unforeseen work may be required, the cost of which has not been provided for in a tender price accepted by the Board. The documents provide that variations to contract price may be approved up to 25 per cent of the contract price, or \$10,000, whichever is lesser. The policy and procedure documents do not make it clear who has the necessarily financial delegation to approve a variation although it seems likely that it's the same delegate who approved the selection of the tenderer and awarded the original contract.

It's anticipated that the Commission will hear evidence from some MSB staff that they thought that the limit on variations was 15 per cent of the contract price. It's not easy to understand how this understanding or practice may have developed, although it seems possible that it has its origins in another section of the policies and procedures that relate to tenders that exceed the amount approved for the relevant works.

30 The policies and procedures make provision for a tender to be accepted where it is not more than 15 per cent in excess of the amount approved for the value of works. The documents also provide that only the Board has the power to prove acceptance of a tender which is more than 15 per cent in excess of the estimate for the value of the works.

40 Whatever, Commissioner, should have been the correct way of interpreting these aspects of the policies and procedures and whatever may have been customs, practices or understandings adopted by MSB staff for approving variations to an approved contract, the evidence is likely to show that former Picton District Manager Bullock approved variations in excess of both 15 per cent and 25 per cent of the contract price. It's likely that the evidence will demonstrate that a practice developed that involved Plantac submitting tenders falling short of the \$50,000 threshold, then after being selected by Mr Bullock as the selected tenderer, submitting invoices for multiple variations. In some cases the combined value of these variations exceeded the original contract price.

The MSB policies and procedures provide that requests for progress payments and final invoices should not be approved until the work has been inspected and carried out to the satisfaction of the relevant supervising

district officer. It's anticipated that the evidence will show that multiple invoices from Plantac were approved by Mr Bullock, if not on the same day that they were received, then the following day or very shortly thereafter. The timing of the payment approvals gives rise to a question as to whether or not any or any adequate inspections could practically have been undertaken before payment was approved to check whether the works being invoiced had been carried out satisfactorily.

10 As mentioned, Commissioner, there are two stages in the process for getting damaged buildings repaired that involved MSB officers exercising financial delegations. The first of these phases is when a claim is accepted and approval is given to spend money on repairs, the second phase is when a tenderer is selected to perform the repairs. This phase involves accepting the successful tenderer's quote then engaging the tenderer.

The policies and procedures clearly state that MSB officers holding financial delegations must not exceed their delegations and they must comply with all policies, procedures and guidelines adopted by the Board.

20 If approval is needed for expenditure in excess of the limit of a particular delegate, the matter must be referred to the next senior delegate with appropriate authority. From the Business Management System documents available to the Commission, it would appear that from 12 January, 2005 to 9 January, 2007 where the cost of repairs was estimated to be less than \$1,500 a district supervisor or district manager could simply instruct any contractor on the Board's list of selected tenderers to carry out the necessary repairs. Where the value of the works was between \$1,500 and \$5,000 one competitive tender needed to be obtained. Where the value of the repairs was between 10,000 and \$20,000 three competitive tenders had to be
30 obtained. Where the value of the works was estimated to be in excess of \$20,000 a public tender was required in order to select the contractor to perform the repairs.

40 For works with a value of \$20,000 or less tenders or quotes were required to be sought from contractors that had been preselected and included on a list of preapproved tenderers. Each list of selected tenders were approved by the Board every two years after seeking expressions of interest by a process of public advertisement. Invitations from the MSB to preselected tenderers to submit a quote or tender were required to be sent on a rotational basis presumably to ensure a fair distribution of work among preselected tenderers.

On 22 June, 2005 the Board approved a list of selected tenderers for works with a value up to \$20,000. This list of building contractors included Plantac Pty Limited. This list was current for a period of two years until 30 June, 2007. Every two years since the Board has approved a new list of selected tenderers that has included Plantac. Since June, 2009 the lists have also included Willbuilt Homes.

From 10 January, 2007 to 1 March, 2012 district managers had delegated authority to refuse a claim if the property was assessed as not being undermined and this authority was irrespective of the value of the alleged damaged. A district manager also had authority to approve a claim up to a value of \$20,000 provided that this approval was on the basis of a claim investigation report prepared by a district supervisor. If the claim investigation report was not prepared by a district supervisor, that is, the report was prepared by a district manager him or herself, the power of the district manager to approve claims was limited to \$10,000.

Also from 10 January, 2007 to 1 March, 2012 the subsidence risk engineer had a financial delegation to approve claims up to the value of \$20,000. The CEO had a financial delegation to approve claims up to a value of \$100,000. There were no financial delegations to approve claims in excess of \$100,000. Proposals for expenditure on claims in excess of \$100,000 needed to be submitted to the Board for its collective consideration.

From 10 January, 2007 to 1 March, 2012 district supervisors had a financial delegation to select tenderers where the value of the works was not more than \$1,500. District managers had a financial delegation to accept tenders to a value of not more than \$5,000. The subsidence risk engineer did not have any financial delegation to accept tenders. The CEO and the secretary each had a financial delegation to approve tenders up to the value of \$200,000. Tenders with a value in excess of \$200,000 needed to be submitted to the Board.

On 26 September, 2007, Commissioner, the Board increased the \$20,000 limit for selected tenderers to \$50,000 for repairs in the Tahmoor area. The Board's decision had the effect of avoiding the need for a public tender process for Tahmoor mine subsidence claims with a value of between 20 and \$50,000. It is understood that the reason for this decision lay in the fact that the Tahmoor Colliery was resulting in a high number of compensation claims and that it was more efficient to use a selective as distinct from a public tender process.

The policies and procedures do not make explicit the number of quotes or tenders needed for a selected tender process with a value of up to \$50,000. It seems likely that three quotes or tenders were required from contractors on the pre-approved list of selected tenderers where the value of the works exceeded \$10,000 and was less than \$50,000.

According to documents obtained by the Commission there would appear to be no record of the Board ever having modified the financial delegations in 2007 to enable MSB officers other than the CEO and the secretary, finance officer to approve tenders in the Tahmoor area with a value of up to \$50,000. Accordingly, Commissioner, it would appear that from 26 September, 2007 when the Board increased the limit for the selected,

selective tender process to \$50,000 to 1 March, 2012, the Picton district manager's financial delegation to approve tenders for work in the Tahmoor area remained at \$5,000. It is anticipated that evidence will be received to the effect that MSB staff may have had a different understanding, specifically, that the Picton district manager had authority to approve tenders up to a value of \$50,000.

10 There will be evidence that between 2007 and March 2012 Mr Bullock sought to exercise a financial delegation to approve the award of building contracts to Plantac and other contractors in excess of \$40,000. According to documents available to the Commission there does not appear to have been any lawful basis for Mr Bullock to approve the selection of tenderers during this period whose quotes were in excess of \$5,000.

20 From 1 March, 2012, Commissioner, the Board's financial delegations to various MSB officers varied according to the documents. The CEO was authorised to approve rectification claims up to a value of \$200,000. This was an increase on the earlier documented delegation of \$100,000. District managers continued to be authorised to approve rectification claims up to a value of \$20,000 or \$10,000 if a district supervisor had not prepared a claim investigation report.

30 The list of financial delegations from 1 March, 2012 differs from earlier documents in that it specifically authorised the Picton district manager to approve rectification claims up to a value of \$50,000 for Tahmoor related claims. The March 2012 financial delegations also appear to change the limits for MSB officers authorised to approve the acceptance of tenders whereas previously both the CEO and secretary were authorised to approve tenders up to a value of \$200,000. The 2012 delegations increased the CEO's delegation to \$1 million and took away the secretary's authorisation to approve any tenders. District supervisors were given authority to approve tenders up to a value of \$8,000, previously \$1,500. The financial delegations of district managers to approve tenders appeared to be brought in line with their authority to approve claims. From 1 March, 2012, apparently for the first time according to documents available to the Commission, former district, former Picton district manager Bullock had authority to approve tenders with a value of up to \$50,000. In April 2013 the MSB's policies and procedures were amended it would appear to recognise four different kinds of tendering, specifically open or public tendering, selective tendering, invited tendering and the use of a single selected service provider. The value of the goods or services to be procured dictated the tendering method to be used. So for works estimated to have a value of up to \$30,000 only one tender or quote was required from a single selected tenderer. For works valued between \$30,000 and \$50,000 it was optional to obtain a single quote from a selected tender or three quotes from invited tenderers. For works with a value between \$50,000 and \$1 million three tenders were required together with a tender evaluation plan.

In January 2014, Commissioner, the limits were changed to require three tenders or quotes for any works valued at between \$15,000 and \$1 million. The changes to the tendering system in 2013 and 2014 appear to be consistent with directions given by the New South Wales Procurement Board effective from 1 July, 2013.

10 The New South Wales Procurement Board was originally established on 3 July, 2002. Its objectives include the development and implementation of a Government-wide approach to procurement and ensuring the best value for money on the procurement of goods and services by and for Government agencies. The functions of the Board include overseeing the procurement of goods and services by and for Government agencies and developing and implementing procurement policies.

20 Commissioner, the focus of the inquiry is on the alleged corrupt relationship between Mr Bullock and Plantac Pty Limited, the adequacies of the MSB written policies and procedures during the period that Mr Bullock was employed as Picton Office District Manager, and whether these documented systems were properly implemented or enforced.

30 Documents will show that the risk of MSB officers treating tenderers preferentially and defrauding the MSB was recognised as long ago as 2009. At the same time, however, it seems clear that despite changes to the procurement system in the last two years that were apparently consistent with procurement Board policy, that corruption continued until just before Mr Bullock resigned in December 2014. A question naturally arises about the adequacy of current strategies and the systems for minimising the risk of corruption in relation to Government procurement of building services where the value of the services to be provided range from a few thousand dollars to tens of thousands of dollars. A number of factors may impact upon this question, including Government policy, the fact that the MSB is an independent statutory authority, resourcing, staffing and the Board's relationship with the Department of Trade and Investment.

It's not intended, Commissioner, for this inquiry to address and answer all of these issues. To the extent however that they can at least be identified for further consideration, that may be useful.

40 Commissioner, it is expected that the hearing will run for eight days over two weeks on either side of Easter. The first several witnesses will be staff from the Picton District Office of the MSB with whom Mr Bullock worked. They will be followed by building contractors, Kevin Inskip and William Kendall. It is anticipated, Commissioner, that Mr Bullock, MSB CEO Mr Cole-Clark and MSB Chairperson, Kylie Hargreaves, will be called in the week after Easter.

THE COMMISSIONER: Thank you, Mr Naylor.

Could I at this stage invite applications for leave to appear, if you could state the name of the person for whom you appear. Yes, Ms Hogan-Doran?

MS HOGAN-DORAN: Yes. I seek with my learned friend, Mr Chapman, authorisation and leave to appear on behalf of the Mine Subsidence Board, instructed by Mr Andrew McLeod of Kilmurray Lawyers.

THE COMMISSIONER: Thank you. Yes, that leave is granted.

10 MR BECKETT: Your Honour, my name is Beckett. I appear with your authorisation for the Department of Trade and Investment and for Ms Hargraves, instructed by Ms Kudrina, K-u-d-r-i-n-a.

THE COMMISSIONER: Thank you, Mr Beckett, that leave is granted.

Yes, Mr Oates?

MR OATES: My name is Oates, Commissioner, I seek your authorisation to appear for Mr Inskip, instructed by Andrew Harris & Associates.

20

THE COMMISSIONER: Yes, thank you, Mr Oates, that leave is also granted.

MR OATES: As the Commission pleases.

MR WILLIS: Commissioner, my name is Willis. I seek your leave to appear for Matthew Montgomery.

THE COMMISSIONER: Thank you, Mr Willis, that leave is granted.

30

MR EURELL: Commissioner, my name is Eurell. I seek leave to appear for William Kendall of Will Built Homes.

THE COMMISSIONER: Sorry, what was the surname?

MR EURELL; Kendall.

THE COMMISSIONER: Yes, sorry, your surname?

40 MR EURELL: Eurell.

THE COMMISSIONER: Eurell.

MR EURELL: E-u-r-e-l-l.

THE COMMISSIONER: Thank you, Mr Eurell. Thank you. That leave is granted. Yes?

MR STEWART: Commissioner, Stewart, solicitor.

THE COMMISSIONER: Yes.

MR STEWART: I seek leave to appear on behalf of Mr Davies?

THE COMMISSIONER: Yes, Mr Stewart, that leave is granted.

MR STEWART: Thank you, Commissioner.

10

MS McGLINCHEY: Commissioner, my name is Ms McGlinchey. I seek leave to appear for Mrs Barbara Inskip.

THE COMMISSIONER: Yes. Thank you, Ms McGlinchey. That leave is granted.

MR CHALMERS: Yes. Good morning, Commissioner. My name is Michael Chalmers, Solicitor.

20

THE COMMISSIONER: Yes, Mr Chalmers.

MR CHALMERS: I seek leave to appear for Mrs Julie Bullock.

THE COMMISSIONER: Mrs?

MR CHALMERS: Bullock.

THE COMMISSIONER: Julie Bullock. Thank you. That leave is granted, Mr Chalmers.

30

MR CHALMERS: Thank you.

MR TAYLOR: Commissioner, my name is Taylor. I seek authorisation to appear on behalf of Mr John Rawes, spelt R-a-w-e-s.

THE COMMISSIONER: Yes. Thank you, Mr Taylor. That leave is granted.

MR TAYLOR: Thank you, Commissioner.

40

THE COMMISSIONER: Anyone else, is that everyone? Thank you. Yes. Thank you, Mr Naylor. Are we ready for the first witness?

MR NAYLOR: May I at this stage, Commissioner, just before I, before I call the first witness tender some documents?

THE COMMISSIONER: Yes.

MR NAYLOR: Could I first of all tender, Commissioner, the tender bundle which has been made available to the parties prior to the commencement of the public inquiry. In your version, Commissioner, it should be in six volumes from page 1 through to page 2,876, and I understand that the parties have received electronic versions of all of those documents. I exclude from the tender, Commissioner, three pages being pages 1423, 1429 and 1430.

THE COMMISSIONER: Yes.

10

MR NAYLOR: Those three documents, Commissioner – those three pages rather were inadvertently included in the documents sent to the parties. May I just briefly explain the contents of the tender bundle, Commissioner.

THE COMMISSIONER: Yes.

20

MR NAYLOR: Volumes 1, 2 and the first part of volume 3 comprise the MSB policies and procedures, relevant copies of minutes of the Board in chronological order. Volume 3, Commissioner, contains the tender book. Volumes 3, 4 and 5 all contain MSB compensation claim files relating to 11 properties in the Tahmoor/Thirlmere area and the final part of the tender bundle, Commissioner, comprises financial material relating to Plantac and material relating to Mr Bullock. Could I, Commissioner, at this point apply for an non-publication order under section 112 of the ICAC Act in respect of to the extent that documents in the tender bundle contain this information, Mr Bullock's home address, all personal phone numbers, all personal email addresses and bank account numbers for Mr Bullock and his wife. That's the first application, Commissioner.

30

THE COMMISSIONER: Yes. I suppress from publication pursuant to section 112 of the Act, being satisfied that it is necessary and desirable to do so in the public interest, the following information, Mr Bullock's home address, personal phone numbers, email addresses and/or bank account numbers relating to either Mr Bullock or his wife.

40

I SUPPRESS FROM PUBLICATION PURSUANT TO SECTION 112 OF THE ACT, BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE TO DO SO IN THE PUBLIC INTEREST, THE FOLLOWING INFORMATION, MR BULLOCK'S HOME ADDRESS, PERSONAL PHONE NUMBERS, EMAIL ADDRESSES AND/OR BANK ACCOUNT NUMBERS RELATING TO EITHER MR BULLOCK OR HIS WIFE

MR NAYLOR: If the Commission pleases, the next non-publication order that I seek, Commissioner, is in respect of the various MSB compensation claim property files that form part of the tender bundle and I would ask that

the names of the owners of the various properties mentioned in those files, their phone numbers, email addresses not be published.

THE COMMISSIONER: Do I take I that there are no bank account details in any of those files?

MR NAYLOR: I was just coming to that. The last, the last volume of the tender bundle contains financial material relating to both Plantac and Mr Bullock and I would ask that bank account numbers in relation to both
10 Plantac and Mr Bullock not be published.

THE COMMISSIONER: Are there, are there no bank account numbers in the MSB compensation files to which you've referred?

MR NAYLOR: I don't know the answer to that, Commissioner.

THE COMMISSIONER: Might make that order for more abundant caution.

Pursuant to Section 112 of the Act being satisfied that it is necessary or
20 desirable to do so in the public interest, suppress from publication in the MSB compensation files that are contained within Volumes 3, 4 and 5. The following information, the names of the owners of those properties, the phone numbers attributable to those persons and any email addresses. I include within the terms of that order any reference to bank account numbers of the owners of those properties. And in relation to Volume of the materials, I also impose a non-publication order for the same reasons in respect of the bank account numbers contained within that volume.

30 **PURSUANT TO SECTION 112 OF THE ACT BEING SATISFIED THAT IT IS NECESSARY OR DESIRABLE TO DO SO IN THE PUBLIC INTEREST, SUPPRESS FROM PUBLICATION IN THE MSB COMPENSATION FILES THAT ARE CONTAINED WITHIN VOLUMES 3, 4 AND 5. THE FOLLOWING INFORMATION, THE NAMES OF THE OWNERS OF THOSE PROPERTIES, THE PHONE NUMBERS ATTRIBUTABLE TO THOSE PERSONS AND ANY EMAIL ADDRESSES. I INCLUDE WITHIN THE TERMS OF THAT ORDER ANY REFERENCE TO BANK ACCOUNT NUMBERS OF**
40 **THE OWNERS OF THOSE PROPERTIES. AND IN RELATION TO VOLUME OF THE MATERIALS, I ALSO IMPOSE A NON-PUBLICATION ORDER FOR THE SAME REASONS IN RESPECT OF THE BANK ACCOUNT NUMBERS CONTAINED WITHIN THAT VOLUME**

MR NAYLOR: If the Commissioner pleases. May I Commissioner just return to something I'd said a few moments ago. Could I please add to the documents, pages, rather to be excluded from the tender, page 1407?

THE COMMISSIONER: Yes. All right. In respect of the six volumes, from pages 1 to 2,876, with the exception of pages 1407, 1423, 1429 and 1430, I'll mark that material Exhibit T1.

#EXHIBIT T1 - TENDER BUNDLES 6 VOLUMES PAGES 1 – 2876

10 MR NAYLOR: The Commission pleases.

THE COMMISSIONER: Thank you.

MR NAYLOR: Commissioner, may I tender separately from the tender bundle, a schedule of financial delegations dated 1 March, 2012? Copies of these additional tenders, Commissioner, are available in hard copy for the parties, having regard to difficulties with the website.

THE COMMISSIONER: Thank you.

20

MR NAYLOR: And I can hand up a copy.

THE COMMISSIONER: All right. The schedule of the financial delegations dated 1 March 2012 is Exhibit T2.

**#EXHIBIT T2 - SCHEDULE OF FINANCIAL DELEGATIONS
DATED 1 MARCH 2013**

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MR NAYLOR: Next Commissioner, may I tender an Internal Audit Bureau Service Report and titled Mine Subsidence Board, Review of Management of Board Repairers IAB Job Number MINSUB9606, dated July 2009? And once again Commissioner, hard copies are available for the parties.

THE COMMISSIONER: Thank you. The Internal Audit Bureau report of July, 2009 is Exhibit T3.

40 **#EXHIBIT T3 - IAB SERVICES MINE SUBSIDENCE BOARD
REVIEW OF MANAGEMENT OF BOARD REPAIRERS DRAFT
JULY 2009**

MR NAYLOR: Lastly Commissioner, could I tender as a bundle, MSB Annual Reports for the years ending 30 June, 2013 and 30 June, 2012?

THE COMMISSIONER: Yes, the MSB Annual Reports of 2013, 2012, Exhibit T4.

#EXHIBIT T4 - MINE SUBSIDENCE BOARD ANNUAL REPORTS OF 2011/2012 AND 2012/2013

10 And finally, Commissioner, this is not a tender but may I hand up as an aide memoire copies will be available for the parties as well chronologies that have been prepared in relation to, at this stage, 4 of the 11 properties that I've referred to, the files for which are in the tender bundle. These are intended, Commissioner, as I say to assist. They're not, I don't propose to tender them. As Commissioner, you will see when you look at the documents, these property files in the tender bundle, it's rather difficult to negotiate them because they're in reverse chronological order and indeed not really in strict chronological order anyway. So these chronologies put relevant events into chronological order and refer to relevant pages.

20 THE COMMISSIONER: Thank you. Perhaps, Mr Naylor, I'll just mark the chronologies compendiously at MFI 1.

#MFI 1 – CHRONOLOGIES RELATING TO THE TENDER BUNDLE VOLUMES

30 MR NAYLOR: Thank you, Commissioner. In due course, Commissioner, there will be chronologies for the balance of the properties handed up.

THE COMMISSIONER: Thank you.

MS McGLINCHEY: Commissioner, while the, while the witness is making her way to the witness box - - -

THE COMMISSIONER: Yes.

40 MS McGLINCHEY: Could I ask that an additional non-publication order is made for the home address of Mrs Inskip? I do anticipate that will be mentioned in evidence.

THE COMMISSIONER: Yes, there's no objection to that, Mr Naylor?

MR NAYLOR: No, Commissioner.

THE COMMISSIONER: No. All right. The address and any personal identifying information other than of course the name of the witness is suppressed pursuant to section 112.

**THE ADDRESS AND PERSONAL IDENTIFYING INFORMATION
OF MRS INSKIP IS SUPPRESSED PURSUANT TO SECTION 112**

MS McGLINCHEY: Thanks, Commissioner.

10 MR OATES: Commissioner, I have the same application with respect to
Mr Inskip if you please.

THE COMMISSIONER: Well, that follows, yes, thank you, Mr Oates, it's
included.

MR OATES: Some of the, some of the phone numbers might be different,
that's all.

20 THE COMMISSIONER: That, all right. Well, then the phone numbers of
both Mr and Mrs Inskip are suppressed according to the same order.

**THE PHONE NUMBERS OF MR AND MRS INSKIP ARE
SUPPRESSED PURSUANT TO SECTION 112**

THE COMMISSIONER: Yes, Mr – sorry, Mr Naylor if you could just – I
think Mr Chalmers wants to make some application.

30 MR CHALMERS: Yes, a similar application in relation to Mrs Bullock
given - - -

THE COMMISSIONER: Mrs Bullock's covered by the order that I've
already made.

MR CHALMERS: All right, in relation to home address.

THE COMMISSIONER: Yes.

40 MR CHALMERS: And her, her separate accounts.

THE COMMISSIONER: Yes.

MR CHALMERS: Thank you.

THE COMMISSIONER: That was included.

MR CHALMERS: Thank you.

THE COMMISSIONER: Right. I'm sorry. Who do we have now, Mr - - -

MR NAYLOR: Mr Montgomery.

THE COMMISSIONER: Mr Montgomery. Mr Montgomery, do you have anyone appearing for you today?

MR MONTGOMERY: Yes, I do.

10 THE COMMISSIONER: Right.

MR MONTGOMERY: Mr Willis.

THE COMMISSIONER: Mr Willis.

MR WILLIS: That would be me.

THE COMMISSIONER: Thank you, Mr Willis. Mr Willis, have you informed Mr Montgomery of the effect of a section 38 order?
20

MR WILLIS: I have, Commissioner.

THE COMMISSIONER: Does he wish to take advantage of that?

MR WILLIS: He does.

THE COMMISSIONER: Right. Mr Montgomery, can I just explain something to you so that you're quite clear about the effect of the order. The order protects you from the use of your answers against you in civil and criminal proceedings, if any of those should take place at some future time but the order does not protect you from the use of your answers against you if it should be found that you have deliberately misled or lied to the Commission. Do you understand that?
30

MR MONTGOMERY: I understand.

THE COMMISSIONER: In those circumstances it would still be available for you to be prosecuted for an offence under the Act, under the ICAC Act. Do you understand that?
40

MR MONTGOMERY: I understand.

THE COMMISSIONER: 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 accordingly there is no

need for the witness to make objection in respect of any particular answer given or document or thing produced.

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.

10

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

20

OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

THE COMMISSIONER: Do you wish to be sworn or affirmed, Mr Montgomery?

MR MONTGOMERY: Ah, sworn.

THE COMMISSIONER: Thank you.

30

THE COMMISSIONER: Yes, Mr Naylor.

MR NAYLOR: Sir, what is your full name?---It's Matthew James Montgomery.

10 And what is your occupation?---I'm a district supervisor for the Mine Subsidence Board, Picton office.

All right. And how long have you been employed in that capacity?---Ah, since, it'll be four years this year, since 2011.

All right. Do you know, do you know when in 2011?---It was either the end of October or beginning of November.

20 Okay. All right. And, sir, are you employed as a permanent member of staff or on a temporary basis?---I'm a temporary employee through Hays.

So what are your qualifications and work experience?---I'm a builder. Prior to coming to the Mine Subsidence Board I worked as a foreman for a construction company for the, for seven years or so there um, and prior to that I worked in various ah, building roles.

How long have you been working in the building sector?---Since 1992.

30 Sir, I want to ask you some questions about your understanding of the compensation claim process and the process that leads to houses being repaired as a consequence of mine subsidence. Can you briefly outline what your current understanding is of the process whereby a person claims compensation and then repairs are effected to their homes?---Sorry, I don't understand the question.

What's the process - - -?---Yeah.

- - - whereby - - -?---If someone - - -

40 - - - a person gets their home repaired?--- - - - submits a claim. Okay, if someone, if someone submits, someone believes their, their house has suffered from mine subsidence damage I will, they will submit a claim form to the Mine Subsidence Board, ah, it will be then handed to one of the district supervisors to make contact with the owners and we will assess whether there is the need for emergency repairs and once if, whether emergency repairs are needed we'll carry those out, if not we will attend to the final repair when subsidence is complete.

All right. And at any point in time do you prepare some kind of report?---
Yes, we do ah, at the final claim inspection we'll carry out a report then.

All right. And who prepares those reports?---The district supervisor that
attends the property.

Okay. And to whom do the reports get submitted?---To the district
manager.

10 All right. And what do the reports say?---It just identifies where the
property is over the longwalls, how much subsidence the property
experienced, the nature of the damage and our determination on whether it's
subsidence-related or not.

All right. And does it say anything about the likely cost of repairs?---Yes, it
does.

All right. So - - -?---It says – there's an estimated cost.

20 All right. And you as the district supervisor use your experience, do you
- - -?---That's right.

- - - to assess how much the cost of the repairs is likely to be?---That's right.

All right. And what's your understanding of the financial delegations in
relation to approving a claim inspection report?---I, my understanding is I
can approve my own, a tender up to \$8,000.

30 Yes?---Above that I need to submit it to my – that's with one tender, and
above that I need to send it to my district manager for approval.

All right. And what's your understanding of your district manager's
capacity to approve claims?---It, it was \$50,000, up to \$50,000, it's now
\$20,000.

And when did that change?---Um, it was recently, when John Rawes was
um, went into the acting role of district manager at Picton.

40 I see. And just before I go further, sir, are you familiar with what is called,
a collection of documents called the Business Management System?
---Not, I'm not completely familiar with it, no.

Well, have you ever looked at a bundle of documents called the MSB's
Business Management System?---Yes, I have looked at them.

All right. And do you remember the last time that you looked at those
documents?---No, I don't.

All right. When you were first employed by the MSB in October or November 2011, were you shown the documents?---Not to my recollection.

All right. Was Mr Bullock the district manager of - - -?---He was.

- - - the Picton office at that time?---He was.

10 Did you receive any kind of training or instruction to the effect that you should have a look at these policies and procedures?---I don't, I don't remember any, I don't remember going through the policy and procedures at that time.

All right. How is it that you're aware that a Claim Investigation Report needs to be prepared in respect of a compensation claim?---During my training I was taken through the steps by both John Rawes and Darren Bullock and that's how I learnt the procedures.

Kind of on the job training?---That's right.

20 Not by reference to the documented, the documents?---No, no. I was given a, a sheet of a list of delegations um, which I, which I've kept and - - -

Yes?--- - - - that was what I referred to.

All right. Do you remember, you were engaged around October/November 2011, were you given a list of financial delegations at that time?---Yes, yes, I was.

30 All right. And the financial delegations that you've given some evidence about already, in particular that you had a financial delegation of \$8,000 - - -?---Mmm.

- - - your belief is that that was on the list of financial delegations that you were given at the time that you were engaged?---At the time I believe it was \$5,000 when I, when I started.

All right. But sometime after that it increased?---That's right.

40 All right. And at the time that you were engaged do you know, do you remember what the district manager's relevant delegation was?---I believe it was \$50,000.

Okay. Now, this is the - this can get a little bit confusing, so just bear with me. The \$5,000 delegation that you refer to - - -?---Mmm.

- - - is that a delegation to approve what's in a Claim Investigation Report or is that a delegation to approve the selection of a tenderer?---It's to approve the selection of a tenderer.

All right. And so when you say now that you've got an \$8,000 delegation, that's a delegation to approve the selection of a tenderer?---Ah hmm. That's right.

All right. And do you have any delegation that you're aware of to approve a claim investigation report – to approve expenditure proposed in a claim investigation report?---I believe it's \$8,000.

10 Okay. So your understanding is that you have an \$8,000 delegation in relation to both - - -?---Yeah, the sign off of the estimated funds – ah, sorry, no, no, it's not.

All right?---I need to have every tender – every claim signed off. I can't approve any estimated costs.

I see. So you agree with me that there are these two phases?---Yes.

20 The first phase is the claim - - -?---Claim, yes.

- - - investigation report gets prepared and that includes an estimate of the cost of works?---Ah hmm.

And a person with the appropriate delegation has to approve expenditure on the basis of that report?---That's right.

All right?---That's right.

30 And are you now saying that you don't have any delegation to approve that phase?---I can't, I can't approve my own claim, claim report.

All right. But – and am I right in understanding that you wouldn't receive anyone else's report - - -?---No, I wouldn't.

- - - to approve because you're a district supervisor?---That's right.

40 All right. And if, if a claim investigation report is prepared by another district supervisor the person to whom it would be submitted wouldn't be you it would be the district manager?---That's right.

All right. So you have no delegation to approve an estimate - - -?---That's right.

- - - in a claim investigation report but you do have a delegation to approve the selection of a tenderer - - -?---That's right.

- - - providing it's for an amount not - - -?---Less than 8,000.

- - - not more than \$8,000?---Ah hmm.

Previously when you were first engaged it was \$5,000?---That's right.

That's your understanding?---That's my understanding.

Okay. So do you know what a major claim is?---No. No, I don't.

10 No. All right. The witness might be shown Exhibit T1, volume 1, page 41. See the page numbers are down the bottom at the bottom right-hand side of the page or you can look on - - -?---On the screen.

- - - on the screen. That's fine?---Yeah. Oh, this one. Pretty easy. Thanks. This one was it.

Just go to the top of the screen?---Yeah.

Have you, have you seen that document before?---No, I haven't.

20 All right. You see, sir, if you go under the subheading "Actions 2.1. A potential major claim should be considered where any of the following issues are identified." First I'll point "repairs as estimated to exceed \$50,000". Do you see that?---Yes.

Have you ever been instructed that where the cost of a claim is likely to exceed \$50,000 the procedures require it to be dealt with as a major claim?
---Yes, I, I am – I, I have – I am familiar with that, yes.

30 You are familiar with that?---Yes, yeah.

And what's your understanding of how major claims are to be dealt with?
---Um, above \$50,000 it requires CEO approval.

40 Okay. And what about how the claim is to be dealt with. Say the, say the claim investigation report estimates the cost of the repairs to be more than \$50,000 how do you, how does that get progressed through the organisation?---Um, if we are sending it to the CEO we'll need to collect more um, more evidence to – so it can be displayed to him without attending the property as to why that claim is going to exceed \$50,000.

I see. Your understanding, tell me if I'm wrong, your understanding is that the CEO is the one with delegated authority to approve works that would exceed \$50,000?---Yes.

Yes?---To approve, to approve a tender - - -

Yes?--- - - - over \$50,000, yes.

Let's – it's important that we don't get to confused about this. At this stage I'm just talking about - - -?---Just - - -

- - - the first phase of the process - - -?---Okay.

- - - which is where a claim investigation report has been prepared?---Yeah. Okay.

- - - and an estimate of the cost?---Okay, yeah.

10

So I'm not, I'm not talking about the second phase which is where a tenderer gets selected on the basis of a number of quotes or tenders having been received?---Right.

I'm just talking about the first phase. So if you were to prepare a claim investigation report for example which estimated the cost of works to be in excess of \$50,000 to whom would that be submitted?---To the CEO.

20

Right. And if I can take you to paragraph 2.2 on that page, this particular document which is dated 25 February, 2005 but assume from me it, it would appear to have been in operation for, up until, for, for a longer period of time than that, it says in the event of there being potential for a major claim the matter should be referred to the subsidence risk engineer for consideration. Has that course ever been taken in your experience in, in respect of a claim that might exceed \$50,000?---No. Can I just read through that again?

Of course?---No, no, we haven't - I've never followed that procedure.

30

All right. And if the witness could be shown please T1, volume 2, page 542. Now, so this, this would appear to be a more recent incarnation of the document that I just showed you, the previous document had a date stamp of 25 February, 2005 on the bottom of it - - -?---Mmm.

- - - and this one has a date stamp of 1 May, 2013 on the bottom of it, do you see that?---Yes.

All right. But it relates to evaluation of major claims, do you see that? ---Yes.

40

And paragraph 2.1 seems to be in the same terms relevantly as the previous document insofar as it says that "A potential claim should be considered, a potential major claim should be considered where any of the following issues are identified," first dot point, "repairs as estimated to exceed 50,000", you see that?---Yeah.

And then the next numbered paragraph, 2.2, just take a moment to have a read of that?---Ah hmm. Ah hmm.

Have you read that?---Yeah.

You see the second sentence there, well, the first sentence says that the matter is to be referred to the district manager and then the district manager is to advise the CEO and the subsidence risk engineer and the secretary, do you see that?---Yes, I see it.

10 Does that accord with your understanding of how major claims are to be dealt with?---Yes, from, from my role as a district supervisor, oh, well, it'll, it'll progress to the district manager - - -

Yes?--- - - - and then the district manager will liaise with the CEO.

Right?---It won't, it won't be so much that I'm involved at that, at that stage but um, I've never ah, had a claim where we haven't um, managed the claim that we've sent up, we've, they've always been returned to our office for us to manage.

20 Okay. You're not aware of any matters in the period of time that you've been working at the MSB where claims estimated to be in excess of \$50,000 worth of works have had to go through the Subsidence Risk Engineer because they're major claims?---Not that I'm aware of.

No. All right. Sir, there are circumstances, are there not, in which pre-mining reports get prepared?---That's right.

30 All right. And that's a situation, they're prepared in circumstances where the MSB has formed an expectation that a particular area may become subject to mine subsidence because of current coalmining operations? ---That's right.

And the MSB offers to homeowners in the area to conduct an evaluation or inspection of their property for the purpose of assessing whether or not they are damaged in any way prior to any possible mine subsidence occurring? ---That's correct.

40 Have you – sir, do you still have those two folders there in front of you? ---Yes, I do.

So if you could go to the first folder that we were looking at before, volume 1 at page 37?---Yep.

Do you have that there?---I do.

And you'll see it's headed "Pre-Mining Inspections?"---Yes, I have that.

Can I just ask, sir, have you ever had occasion to look at this document before?---No, I've never looked at the pre-mining.

Have you prepared pre-mining inspection reports before?---Yes, I have.

10 And how is it that you've gone about preparing a pre-mining inspection report if you haven't looked at this document?---Um, I – the first pre-mining report I did, I did with John Rawes, he showed me what's required. We also have a Word document template um, which was take out to the house and we just follow that.

Okay?---And, yep.

So once again, what you know about preparing pre-mining inspections was learned on the job as it were, as distinct from sitting down and - - -?---That's right.

- - - reading any documents?---That's correct.

20 Okay. And while you've got that, that folder there, sir, can I take you back a few pages, page 25. If at any time – can I just say, if at any time you need an opportunity to read the document - - -?---Ah hmm.

- - - please say so, but I'll try and draw your attention - - -?---All right.

- - - as best I can to the relevant parts of it?---Thanks.

30 See page 25 headed, "Business Management System Claims for Compensation?"---Yes.

Have you ever looked at this document before?---Not to my recollection, no.

Okay. It goes for several pages, you might just want to look over the several pages through page 28. Yes. So have you had a chance to look at those pages?---I've looked at that, yeah.

And you're confirmed in your belief that you don't think you've seen these pages before?---I don't believe I've seen those pages before, no.

40 All right. And again if I can take you back a few more pages back to page 17. That's a document which is headed Repairs to Properties?---Yes.

Do you see that?---Yes.

Again it goes for several pages. Just take a moment to, to look at those pages. I'll take you to some aspects of the document in a moment but as a general proposition have you read that document before that you can recall?---I, I haven't read that before.

No. So you see at paragraph number 2.1 on the first page - - -?---Yes.

- - - where it says registered, read just the second sentence, “Registered tenderers for repair works” or “refer to list of registered tenderers for repair works of less than \$20,000” and this, this is that part of the process involving going out to tender?---Yes.

10 So you’ve not, you’ve not seen this particular document before?---Ah, I’ve – not, not this document but I have got a list of the selected tenderers.

Okay. And what, what’s your understanding of how the list of selected tenderers is meant to be used?---My understanding is that we’ve just, we’ve got a pool of builders - - -

Yes?--- - - - which we need to rotate through what jobs we have available.

20 All right. And are there financial delegations or financial limits rather that attach to the use of builders on that list?---Yes, there are.

And what, what are those limits?---Um, I don’t know off the top of my head, I have it, I have it on, at the office but I don’t know off the top of my head.

Okay. Does, does the figure of \$20,000 here - - -?---Yes.

- - - on this page ring a bell?---It does.

30 In what sense?---Um, we’ve got builders ah, that are approved to work up to a certain amount and then we’ve got other builders which are approved to work beyond that amount.

Okay?---That’s my understanding.

And off the top of your head you don’t know what, what the limits are for some builders and not others?---Ah, I believe there’s \$150,000 being one of the limits but off the top of my head I don’t know.

40 Okay. I’ll, I’ll bring you to a document about that if I may. Sir, can I just take you back to the discussion we were having about the claim investigation report. My understanding, and correct me if I’m wrong, is that the choice to be made when preparing the claim investigation report is whether the claim should be accepted or refused, that’s right?---That’s right.

And you would refuse the claim if you formed the view as a district supervisor that the damage has not been caused by mine subsidence? ---That’s correct.

And if the damage has been caused by mine subsidence then you would recommend that the claim be proved, approved rather, and you would estimate the likely cost of repairs?---That's right.

Am I, am I right in thinking, sir, that as a general proposition the Board's preferred approach is to repair properties or to engage building contractors or other contractors to repair properties rather than giving monetary compensation?---That's correct.

10 There are some circumstances - - -?---There are some.

- - - where monetary compensation might be given?---Yes, there are.

All right. Do you know what kind of circumstances?---Um, there are occasions where the home owner might be a builder or, or handyman style person himself. Ah, there are other situations where the, the owner might be carrying out repairs in the future and they just want to – they'll incorporate the repairs in with their, their own extensions or whatever they might be doing.

20

All right. Are there circumstances where a claim might be found to be justified because the damage is caused by mine subsidence but it might be deferred?---Yes.

That repairs might be deferred?---Yes, there are those circumstances.

When might that happen?---Um, usually at the owner's request.

30 Okay?---The – if, if it comes to the point where we're ready to do a claim inspection that would normally indicate that we're ready to carry out the repairs as well. So um, owners have requested in the past that we defer repairs.

Are there circumstances in which you would defer preparing a claim investigation report or defer an inspection?---Yes. Ah, we wouldn't do the, the final inspection until we're, we're confident subsidence is complete.

40 All right?---And it won't be – the house won't be ah, influenced by mine subsidence any more.

Well, it might me, might it not, that a person complains or lodges a claim to the effect that their home has been affected by mine subsidence but am I right in thinking that the coal mining operations in relation to that subsidence or that have caused that subsidence are ongoing and so you might defer a final inspection for quite some time?---For a matter of years, yeah.

All right. In the meantime you might do emergency repairs?---Yeah. It's our responsibility to keep the home safe and serviceable.

Right. All right.

10 THE COMMISSIONER: Mr Montgomery, can I just ask you a question. A moment ago you said that the owner of the property might be doing their own work and so they would ask you to defer the repair work so that they could do all the work at once?---Um, what I was – when I was – regarding the – speaking of – regarding the home owners doing their own work, it was um – that, that was when they might ask for monetary compensation so they can just incorporate their - - -

Oh, I see?--- - - - their work - - -

I see?--- - - - with the repairs for mine subsidence.

20 I see. All right. So there wouldn't be, there wouldn't be – well, perhaps I should just ask you this question, are there any circumstances where, for example, owners of a property might be, you know, installing a pool or renovating a kitchen and they, they ask that the repair work be carried out contiguous with that other works so that it was all done at once?---That – there's – that situation has arisen as well.

30 All right. And insofar as the Board is carrying out work that work should only be, as I understand it, to repair the work or to repair the damage that's caused by mine subsidence so you would never be put in a position where you would be doing in effect improvement works on the property?---No. No, we wouldn't.

MR NAYLOR: Sir, do you still have volume 1 there in front of you?---Ah, folder 1?

Folder 1?---Yes.

And can I ask you to turn to page 238. Do you have that, sir?---I have that.

40 All right. That, that is described – that document is described at the top as a “Schedule of Delegations as at 10 January, 2007”. Do you recall having seen that document before?---I, I have a – not, not this version.

All right?---Not this version.

All right. Well, your – what's your memory of the version that you've seen?---The version I have at work is 2012.

All right. So for the period of time that you were first employed from October or November, 2011 up to the time of the 2012 document that you

had, what's your – from your memory what's your memory of the financial delegations that applied during that period?---Um, my memory is that the only change was the 5,000 to 8,000 for um, a district supervisor's um, approval of a tender.

Approval of a tender?---Yeah.

10 So if we can just look – stay with this document for the moment. I'll take you to the other document that I suspect that you might be thinking of in just a moment. But you see line 4 and it says "claims"?---Yes.

You see that?---Yes.

And if you run across there are various columns and the columns refer to the CEO, the subsidence risk engineer, and if you move – the secretary and finance administrator moving across. DM stands for district manager and DS stands for district supervisor. That's right?---That's right.

20 Right. So this would seem to suggest that from 10 January, 2007 you didn't have any authority to approve a claim. That's right?---That's right.

That's consistent with your understanding?---Consistent with this.

Okay. Whereas, whereas, the district manager had authority to approve a claim up to a value of \$20,000, that's right?---That's right.

30 And then there's a note down at the bottom of the page to accept only not refuse, accept when not undermined \$10,000 unless DS does report. A bit hard to quite work what that means, but my understanding, and tell me I'm wrong, is that where the district manager prepares the report, him or herself - - -?---Mmm.

And you have to answer this question, I suppose, based on your, your knowledge rather than this document?---Mmm.

40 Where the district manager prepares the report, he can only approve a claim up to a value of \$10,000 but if a district supervisor presents a report to him, he can approve, he or she can approve up to a value of \$20,000?---That's what, that's what I see anyway.

That's your understanding?---That's my understanding, yeah.

Okay. All right. And is that different, is that situation different for Tahmoor related claims to your knowledge?---Um, Tahmoor, the only difference I know for Tahmoor is that the, the delegation went up to 50,000 for homes in Tahmoor and the surrounding area.

All right. Which delegation are you referring to?---The, well the one I refer to the 2012.

Okay. All right. Well I guess we should come to that document then. Do you still have Folder 2 there in front of you?---I do.

All right. So if you turn over to page 492 and if at the same time, you could be handed Exhibit T2. Have you got both of those documents?---Yes, I do.

10 It would appear, sir, that they are the same except that one document's dated as at 1 March, 2012 and the other is dated as at 1 July, 2012, yes?---That's right.

And have you seen either of those documents before?---Yes, I have.

Which one?---Ah, both of them.

Both of them?---Mmm.

20 All right. And, well let's, let's just look at the March, 2012 document. You see there's a column to the left number 2, Claims and then paragraph B Claims Approved Rectification?---Yes.

There are various financial delegations set out there. And in relation to the district supervisors there's no financial delegation to approve a claim?---That's right.

That's consistent with your understanding?---Yes, it is.

30 All right. And whereas for the district manager, it suggests that there's capacity, financial delegation capacity to approve a claim up to a value of \$20,000. That's right?---That's right.

Except where it's in relation to the Tahmoor project and then you look at Note 8 down the bottom. The district manager at the Picton office has a separate delegation for the Tahmoor project, \$50,000?---That's right.

40 Right. So as at 1 March, 2012 the Picton office district manager could approve a claim up to a value of \$50,000 where that was, where the estimated works were up to that value. That's right?---Yes.

Yeah. But for all other claims, if it wasn't a Tahmoor related claim, the district manager's authority to approve a claim was limited to \$20,000?---That's right.

All right. And it would appear, would it not, that there's no difference between the 1 March, 2012 document and the 1 July, 2012 document, that's right?---Yes, that's right.

All right. And it would appear, would it not, that there's no difference between the 1 March, 2012 document and the 1 July, 2012 document, that's right?---Yes, that's right.

They speak for themselves but - - -?---Yes, that's right.

Well, you, you didn't – you've seen both of these documents before?
---Yes.

10 Yes. You, did you change your understanding or practices in relation to the July 2012 document compared with what your practices were in relation to the March 2012 document?---No.

Nothing changed?---No.

No. Okay. All right. And when, when you refer to your delegation in relation to approving tenders being \$8,000, we have to go down the page a bit further, you see item 3 point, item 3 is about "infrastructure contractors invite and accept tenders", you see that?---Yes.

20

Item 3.2, "Open or selective tender", you see that?---Yes.

And then item (d) "Other tasks include rectification works"?---Yes.

And at the end of that row is - \$8,000 is specified, is that the delegation that you were referring to?---That is.

Right. You're not referring to the other two delegations above it are you, in respect of ordinary claims for compensation?---No.

30

No. And to the left that column is the column designating the district manager's delegations?---That's right.

And it would appear as at 1 March, 2012 he had, he or she had delegations which mirrored or were the same as the delegations in respect of approving claims, that's right?---That's right.

The particular delegation at item 3.2(d), that's a delegation for approving the selection of tenderers isn't it?---Sorry, could you say that again?

40

Yeah. The, the delegation that we're looking at at the moment where you've got an \$8,000 delegation?---3.2(d)?

Yeah?---Yeah.

That's a delegation for approving the selection of a tenderer isn't it?
---That's right.

Okay. And for, for the time that you've worked at, at the MSB, you may have already said this, but there's a list of selected tenderers is there not?
---That's right.

Okay. And I think your evidence is that there are different limits for different kinds of work, is that right?---Yes.

10 Okay. And for building contractors, leave aside for the Tahmoor area, put that to one side, for building contractors, for the time that you've worked for the MSB am I right in thinking that the selected tenderers can do works up to a value of \$20,000?---Yes.

All right. Whereas for Tahmoor the selected tenderers are available to do work up to a value of \$50,000?---Yes.

That's right?---That's, that's what I understand.

20 Okay. All right?---I, I don't have that um, I have that paperwork at, I keep it at work, I don't have it, I don't remember it off the top of my head.

That's all right, I'm interested in your understandings?---Yeah, okay.

Can we go back, can we go back, sir, to folder 1, page 238. This was the schedule of delegations dated 10 January, 2007?---Yes.

And I've asked you some questions already about line 3, claims, can you go down to line 11 or delegation number 11, "Acceptance of tenders"?---Yes.

30 You see that?---Yes.

That would seem to suggest, sir, that as at 10 January, 2007 a district supervisor had a, had a financial delegation to accept a tender up to the value of \$1,500?---Yes.

I appreciate you weren't working for the Board at that particular time?---No, I wasn't.

40 But at any time that you've been working for the Board, has that been the financial delegation that has applied to the work that you've done?---No.

Right. For the time that you've been employed by the Board, what has been – and prior to March 2012, what's your understanding, as best as you can recall, of the financial delegation that applied to you in relation to the acceptance of tenders?---My understanding was it was \$5,000.

Okay. So if the documents show that your delegation was only \$1,500, not \$5,000, then that, then either there are documents missing - -?---Mmm.

- - - or you've been misinformed about what your delegation is?---Yes.

Up to March 2012?---2012, mmm.

Okay. And how is it that you became aware that your delegation was \$5,000?---Ah, that, it was just discussion, it was a discussion, it was like you said, on, on, on the job.

10 Okay?---That was how we - - -

Discussion with the district manager and/or other - - -?---And, yes.

- - - district supervisors?---Yes.

Okay. You mentioned I think that these selected tenderers are to be selected on a rotational basis. Is that right?---Yes.

20 What does that mean to you?---Um, not to continually use the same, same builders on a tender, on, on, on our tenders.

And why would you not continue to use the same builders?---Ah, to keep a, maintain a fair tendering process.

I see. Can I take you – have you still got folder 1 there?---Yes.

Can I take you to page 449?---Yes.

30 See that, so this is a Mine Subsidence Board Policy Statement - - -?---Ah
hmm.

- - - on the topic of repairs. It's dated 12 January, 2005. And you see in the first – before I go on, have you seen this document before?---Yes, I have.

Do you know when you might have seen it?---No.

That might be a hard question?---I think it was just a passing, yeah, yeah, I've, I've, I've seen it, I don't know when.

40 Has – did anyone ever sit you down and say this is an MSB policy statement and you need to be familiar with it in order to do your work as a district supervisor?---No.

Right. So the circumstances in which you became aware of it was, was different from that?---Yes.

Do you remember what the circumstances were?---No, I um, I – previously I said I hadn't, I think when we started I said I hadn't seen this one, that was wrong, I did, I have seen it.

You have seen it?---I just, yeah, I have seen it.

Yeah?---But um, with regards to this, I'm just, it must have been in browsing that I have.

Just browsing?---Yeah.

10 Okay. You see, you see at paragraph number 1 - - -?---Mmm.

- - - just read that to yourself?---Mmm.

Does anything in paragraph 1 not accord with your understanding of the process?---Um, no.

No?---No.

20 So the first sentence is about this process whereby every couple of years the Board nominates - - -?---That's right.

- - - contactors to go onto the selected tenderers list?---That's right.

All right. And for that, and then they're on that list for a couple of years? ---Yes.

And by being on the list they can be drawn upon as it were to do work for the MSB up to the relevant limit?---Ah hmm.

30 And it says here the limit is \$20,000?---Yes.

All right. Your understanding is that the limit is higher for Tahmoor. Is that right?---Yes.

Okay. All right. And the process whereby you engage a tenderer, so we've kind of moved on from the first part of the process which is whether to accept or refuse a claim and let's assume that a claim has been accepted and we're moving onto the next phase which involves engaging a tenderer? ---Ah hmm.

40 So if the, if the value of the works has been assessed at less than \$20,000 or in the case of Tahmoor less than \$50,000 then you can go to the list, and tell me if I'm mistaken about this, but the process involves where tenders are required then you invite tenderers from that list to submit quotes essentially?---That's right, yes.

All right. And how many tenderers do you invite?---Three.

Always?---Sometimes more.

All right?---Yeah.

When would you do more?---Um, I think I've only done one, one tender with, with more and it was only because another builder wanted to be on the tender so - - -

All right?--- - - - always three for me.

10 Always three?---Yeah.

Would you ever say just try to seek just one quote rather than three?---Yes, only if I know it's going to be less than \$8,000.

Okay. All right. So in this next paragraph, just have a read of paragraph 2 to yourself, just the first part of paragraph 2?---Referring to these, these tenders as submitted to the chief executive officer?

20 No, just the, the paragraph before that?---Okay.

"For work less than \$5,000 only one competitive tender is required"?---Ah
hmm.

Does that accord with your practice?---Um, no. I'll do 8,000 or - - -

No. 8,000 is your limit?---Yeah. Yeah.

So below 8,000 you can seek one tender, one quote?---One, one, one quote.

30 Yeah. And from 8,000, am I understanding your evidence correctly, from 8,000 up to 20,000 you seek three quotes?---That's right.

Sometimes more?---Yeah. Rarely more.

All right. Okay?---Usually three.

And in relation to Tahmoor related jobs, from 8,000 up to 50,000 you'd seek three quotes?---Three quotes.

40 And you'd seek those quotes from, from contractors who are on the selected tenderers list?---That's right.

All right. And how in practice do you apply the rotational policy?---Um, I just - I don't, I don't ah, I don't have a formal way I rotate it. I just - I know who I've used. We often discuss it in the office who's got a lot of work at the moment and we won't put them on - - -

Yeah?--- - - - on the tender. That's how we do it.

And are there, are there contractors who you've used on the list who you shy away from?---ah, yes.

Why would you do that?---Um, if we – due to the nature of what we do it's quite sensitive in the community and if we, if we have a bad experience with one of the builders and we might feel uncomfortable sending them into someone's home or um, or if there's excessive variations ah, from the, from the builders in the past well, we might not use them as often as we would.

10

All right. And are there equally, conversely are there contractors on the list who you give some form of preference to?---Um, there's a pool of builders which we will show preference to from – we've got quite a few builders on the list um, and again, due to the nature of the job quite often there's emergency works or um, where we need to call the builder out and um, local builders are, are much easier to come by to, to ah, to get those emergency works done.

20

Right. Well, what about not for emergency works but for, for works done on a claim, where a claim investigation report's been prepared?---Yeah, so, so in that case um, quite often we will have had the same builder attend the property to do emergency works and a relationship's developed between the owners and they will request that builder be – if, if they've had a positive experience they'll request for that builder.

All right. Can I, can I ask you to go to folder 2?---Mmm.

Page 496. Have you got that document?---Yes.

30

This is a document, you can go to the previous page too if you like, page 495, page 495 is a minute by the Board signed off by the chairman approving contractors to go on the list as registered for tenders between values of 50 and 150,000, you see that?---Yes.

And then over the page there's the list and on page 496 are all the building contractors?---Yes.

40

And so the – if you go over the page a little bit, page 498 what the, down the bottom of the page just above Mr Cole-Clark's signature there's a recommendation, the recommendation is that the Board accept and approve the list of selected contractors for 2013 to 2015 and that – so this appears to be the list that the Board has accepted as per Mr Cole-Clark's recommendation, being the current list of building contractors?---That's right.

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

Okay. And that seems to be a rather long list. Am I right in thinking that you rotate, subject to the evidence you've already given about some you shy away from because they don't do a good job which was essentially the tenor of your evidence if I'm not - - -?---Yeah, that's right, yeah.

- - - if I'm understanding correct?---Yeah.

And others you might favour because they already have a pre-existing relationship with the, the occupants because they've done work?---Mmm.

10

You, you rotate, do you, through this list?---Oh, we wouldn't, there'd be, there are builders on here that we wouldn't, well, that we haven't spoken with ah, if for example there um, I'm just trying to find an example. Shore Contracting, it's, they're, they're marked down as a builder for Picton but we've never had any, we've never um, we've never used them.

Where are you, I'm sorry I'm not quite - - -?---Oh, I'm just looking at um, the page 497.

20 Yes?---Shore Contracting.

Shore Contracting?---Yeah.

They, they appear to be listed among the earthmoving contractors not the building contractors?---Oh, I'm sorry, yeah.

Yeah?---Right, sorry.

30 But let's just stay on page 496 which is where all the building contractors are listed, let's not - - -?---Okay.

Let's not worry about the next two pages. Do you – subject to the considerations that I've just mentioned and that you've just given evidence about, do you rotate through the list of building contractors on this page? ---Most of them.

Most of them?---Yeah.

40 All right. Now just moving across the page, see there's two columns, one 50 – in the, in the first column there are many mentions of the amount 50,000?---Yes.

And in the second column there are mentions of an amount of 150,000? ---Yes.

Can you inform the Commission as to what your understanding is of those limits?---Um, that, that's the limit of the ah, contract value that we can approve, they can tender up to.

Right. So – well, let’s take the first one for example, A&DJ Building Services which works in the area of Picton. What I’m just trying to understand is how they can be engaged up to a value of 50,000 and the other circumstances in which they can be engaged up to a value of 150,000, what’s the difference? What, in what circumstances can they be engaged to perform work at one level and not the other and vice versa, do you know?
---No, I don’t.

10 No.

THE COMMISSIONER: Mr Montgomery, when these builders apply to be on the, the panel, do they themselves nominate the areas that they wish to be engaged in?---I believe they do, yeah.

MR NAYLOR: So equally, if we can go down the page, for example, there, there are several on this list where a \$50,000 limit, well two in particular, David K Reed Bricklaying and Resinject?---Mmm.

20 They have a \$50,000 limit but not \$150,000 limit. Do you know what the explanation is for the absence of \$150,000 limit?---Um, I don’t. I would, I would imagine this because of insurance reasons or - - -

Well - - -?---I know with, um, Resinject they’re not actually a builder they’re a, um, a company that does releveling of homes so - - -

All right?---And the other, the other David K Reed Bricklaying, and I think they’re a smaller operator.

30 Okay. And let’s go to Plantac. It’s in the reverse situation. There is no limit there, \$50,000 limit. It just has a \$150,000 limit. What does that mean?---I don’t know.

Because my understanding of your evidence is that you can use contractors on this list up to a value of \$20,000 for non-Tahmoor related claims?---
Mmm.

But up to a value of \$50,000 for Tahmoor related claims. That’s your understanding?---That’s my understanding, yes.

40

Of the current practice?---Yes.

Whereas this would seem to suggest, well A, it doesn’t mention \$20,000 at all. But B, it would suggest there’s no \$50,000 limit for Plantac. It’s limit is \$150,000. Does that accord with your understanding of how it works in practice?---Well, I don’t know if that, in regard to the delegations of, um, me as a district supervisor and also as the, a district manager of Picton previously being allowed up to \$50,000.

Yeah?---I don't think these, that's our delegated authority to approve whereas, my understanding is that these are what the, these are more insurance related or, um, what, what those builders are willing to work up to as far as contract subs go, that's my understanding.

That these figures relate to their capacity - - -?---That's right.

10 - - - having regard to - - -?---Yeah.

- - - insurance considerations that they're not financial delegations?---That was, that was my understanding.

I see. Yeah. Have you seen this document or a version of this document previously?---I've seen a version of it.

With the two different columns?---Yes.

20 Right. And have you had a conversation with anyone at any time about what the two different columns mean?---Um, no. Not to my recollection.

Okay. So the, what you're saying to the Commission now about insurance being an explanation for the limits - - -?---Mmm.

- - - is based upon what?---Ah, my assumption.

An assumption?---Yeah.

30 And not, not a conversation with anyone?---No.

And nothing you've been told by - - -?---It's, it's, I couldn't say for certain that there hasn't been a discussion about it.

Mmm?---Um, we have district meetings and it's quite possible it was brought up at those venues, but I don't, I don't recall it.

40 All right. Just, I'm just trying to sort this out. Can you go over the page to page 511. And this is a document heading, headed Contractors Infrastructure Works. See that?---Yes.

And have you seen this document before?---No, I haven't.

All right. See on the first page, about the middle of the page, talks about different kinds of tendering methods?---Yes.

There are four main methods of tendering, open tendering, selective tendering, limited tendering invited and limited tendering direct negotiation single invitation?---Yes.

Do you know, do you know what the third one is, limited tendering invited, do you – let’s ignore what’s on the document, do you have an understanding of what an invited tender is?---Um, no.

10 Do you know what the difference between an invited tender and a selected tender is?---Um, a selected tender is on – a tenderer that we’ve picked off that panel um, so we’ve chosen the builders off that panel.

And what’s your understanding, see the first option is open tendering?
---Mmm.

That’s public tendering, isn’t it?---Ah hmm, that’s right.

20 What’s your understanding of when you need to go to public tender in relation Tactical Operations Unit Tahmoor-related claims now?---Um, I, I don’t know when we would go to public tendering.

Is there some kind of limit that says, well, we can use the selected tenderers up to, up to a certain maximum but beyond that, for the bigger jobs we have to go to a public tender?---Um, we’ve got a procurement plan which would outline it but I don’t know off the top of my head.

30 Have you ever been to any training or any seminars about procurement?
---I’ve attended district, district meeting where we’ve discussed, where it’s been discussed.

All right?---Mmm.

And have you ever been told to have a look at any documents about what the procurement process is in relation to public tendering?---No, not in relation to - - -

No. Have you ever been involved in a public tender?---No, I haven’t.

40 What’s the maximum amount in terms of the value of works that you’ve had to be involved in for any one particular job?---Um, I’ve ah, around about 500,000.

500,000. That’s a lot. And whereabouts was that job as best as you can recall?---An, they’re 60 Brundah Road.

Yes. And do you remember how you went about engaging contractors to do that work?---It was a house rebuild.

Yes?---Um, so it was, that was, that wasn't just one contract, that was a number, so demolition, the house rebuild and landscaping.

All right?---Um, with regards to the, the new home build, we work on a um, the owner will select a home which is comparable in size and finishes and then I will receive a quote from that builder that they choose for, and send that to the Board for approval.

10 So you only send one, you only, you base your recommendation to the Board on the basis of only one quote?---Yes, it's, it's usually a home builder, like Masterton Homes or someone like that.

All right. How often has that happened, have you been involved in that kind of process?---Um, three, three or four times.

And was it always the same process, you'd, you'd just get one quote and submit it to the board?---Yes.

20 All right. Can you go over the page, 512. See there's a table there in the middle of the page?---Yes.

As I read this table, and I just want you to tell me if your understanding is any different, as I read this table what it suggests is that where the value of the works is less than \$15,000, and just pausing, this is a document dated January 2014 down the bottom of the page?---Ah hmm.

30 And so this would rather seem to suggest that from January 2014 at least, maybe before, but certainly as at January 2104, if the value of the works to be done were less than \$15,000 you only needed one quote, whether it was from a selected tenderer or an invited tenderer. That seems to be what it says, doesn't it?---That's, that's how I see it.

Right. And, and is that a rule that you've applied in practice at all?---Um, so just, sorry, can I just, can we just - - -?

Of course?--- - - -recap?

40 By all means?---I just want to get my head round that. Um, we were talking about the 15,000, under \$15,000?

Yeah. See the first row - - -?---Yeah.

- - - under the heading "estimate"?---Yes.

It says "less than 15,000"?---Yeah.

And you go across the row?---Mmm.

There are various tender options?---Yeah.

“(min)” I guess that means minimum - - -?---Mmm.

- - - invitations. So as I – so the first sub-column for want of a better description “open”. I think that means open tender?---Open tender, yes.

So you’ve got the option to go to an open tender for a contract less than \$15,000?---Mmm.

10

But equally you’ve got those other two options, you can get one selected tender - - -?---Or one invited.

- - - or one invited tender - - -?---Mmm.

- - - for amounts less than \$15,000?---Mmm.

Does that accord with your practice at all?---Um, no. I generally will work on um, over – under \$8,000 I will get one.

20

Yeah?---Ah, one tender.

Yeah?---And over that I’ll work – I’ll get three.

And that’s, and that \$8,000 is your financial delegation - - -?---That’s right.

- - - in relation to the approval of a tender isn’t it?---Yeah, yes.

All right. Whereas this would seem to be talking about when you need to go - - -?---When you need - - -

30

- - - and get tenders?---That’s right.

And how many you need to get - - -?---Yes.

- - - in particular circumstances?---Yes.

It’s all a bit confusing but - - -?---Yeah.

40

And, and you can see from that table that as you go higher you need to get three quotes?---That’s right.

Depending upon how much it is. And it would even – if you go down where the, where the amount, where the, where the contract has a value of in excess of 250,000 you have to get three selected tenders - - -?---Mmm.

- - - from not later than January 2014?---Ah hmm.

Does, does that accord with your understanding of what the current practice is?---Um, with – not, not with a new home construction because with a new home construction - - -

Yes?--- - - - where, where, what, what governs what is approved is is the home comparable in size and finishes to what the, what the previous home had.

10 Okay?---So that's, that's how, how we, how we organise our tenders for those.

So there's some kind of exceptional rule that applies to new home constructions?---Yes.

So where it's a new home construction you can just get one quote? ---That's how we do it.

Yeah?---Mmm.

20 Whereas if it's not a rebuild, if it's not a new home this would suggest that if it's, if the value is more than 250,000 you need three tenders?---Yeah. If, if it was a situation where we had plans drawn up for a home and we were using different builders to, we, we were tendering it out to different builders because we were using of the builders off our ah, tender list um, then in that situation we would but when we're, when they choose a home from Homeworld or something like that and it's a specific home from a brand of home, home builder then we'll go with that one.

30 Okay. I note the time, Commissioner.

THE COMMISSIONER: Yes, thank you. I'll adjourn. We'll resume at 2 o'clock, thank you.

LUNCHEON ADJOURNMENT

[1.03pm]