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HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION DEWAR

Reference: Operation E13/0824

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY, 3 DECEMBER 2013

AT 10.06AM

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

THE COMMISSIONER: Mr Fordham.

MR FORDHAM: Please the Commission, I appear with my learned friend, Mr O'Neill as Counsel Assisting.

THE COMMISSIONER: Yes, thank you. This is the Commission's public inquiry into an operation conducted by the Commission known as Operation Dewar. By section 31(5) of the Independent Commission Against Corruption Act I am obliged to announce the scope and purpose of the inquiry. The Commission has already made known that the following matters form part of the scope and purpose of the inquiry. (1) Whether Murray Kear, the Commissioner of the New South Wales State Emergency Services, took detrimental action against Ms Tara McCarthy, including dismissing her from the position of Deputy Commissioner SES, in reprisal for her making allegations that Steven Pearce, a Deputy Commissioner of the SES, had engaged in corrupt conduct. (2) Whether Murray Kear improperly showed favour to Steven Pearce by failing to appropriately investigate allegations made by Tara McCarthy that Steven Pearce had engaged in corrupt conduct. (3) In relation – whether in relation to allegations (1) and (2) Murray Kear made false statements to or attempted to mislead an officer or officers of the Independent Commission Against Corruption in the exercise of their functions under the Independent Commission Against Corruption Act.

The scope and purpose is hereby widened by the addition of the following. (4) Whether Commissioner Kear failed to recognise, disclose and manage a conflict of interest arising out of his friendship with Steven Pearce in connection with the hiring, managing, performance management and investigation of Deputy Commissioner Pearce and the dismissal of Tara McCarthy.

The Commission's standard directions apply to this inquiry. Those directions are contained in the witness information package, and I assume that all counsel have copies, if they do not they should simply ask the Commission officers present in the hearing room and they will be given copies. I propose firstly to ask Mr Fordham, Counsel Assisting, to open the hearing. There will then be a short adjournment. I will then take appearances.

Mr Fordham.

MR FORDHAM: Commissioner, on 14 May, 2013, Deputy Commissioner Tara McCarthy was dismissed from her position at the New South Wales State Emergency Service by Commissioner Murray Kear on the basis that he had lost trust and confidence in her – an expression that is a term of art and law for the purposes of section 77 of the Public Sector and Employment Management Act 2002.

During her nine months in the position Deputy Commissioner McCarthy had set about reforming, improving, and implementing appropriate governance for the SES. This is exactly what she was employed to do. In the course of doing so she significantly changed the benefits previously claimed by SES paid staff in order to comply with appropriate State Government policy. More importantly she uncovered a series of issues surrounding the performance of Deputy Commissioner Steven Pearce. She raised a number of Public Interest Disclosures, reports to management, and reports to the Independent Commission Against Corruption. Finally, and in the absence of effective and/or appropriate management on the part of her Commissioner Kear, Ms McCarthy criticised both Deputy Commissioner Pearce and Commissioner Kear.

This is an inquiry pursuant to section 31 of the Independent Commission Against Corruption Act, 1988. The purpose of the inquiry is to investigate whether Commissioner Kear has engaged in corrupt conduct for the purposes of section 8 and 9 of the ICAC Act. The focus of this inquiry will be the manner in which Commissioner Kear dealt with former Deputy Commissioner McCarthy and the allegations she raised in relation to the performance, governance, and propriety of the SES. The scope of the inquiry includes the following allegations: (1) that whether Murray Kear, the Commissioner for the New South Wales SES took detrimental action against Tara McCarthy including dismissing her from her position of Deputy Commissioner SES in reprisal for Tara McCarthy making allegations that Steven Pearce, a Deputy Commissioner of the SES had engaged in corrupt conduct; (2) whether Murray Kear sorry, improperly showed favour to Steven Pearce by failing to appropriately investigate allegations made by Tara McCarthy that Steven Pearce had engaged in corrupt conduct; (3) in relation to allegations (1) and (2) whether Murray Kear made false statements to, or attempted to mislead an officer or officers of the ICAC, or the Independent Commission Against Corruption in the exercise of their functions pursuant to the Act; and (4), whether Commissioner Kear failed to recognise, disclose, and manage a conflict of interest arising out of his friendship with Steven Pearce in connection with the hiring, managing, performance management, and investigation of Deputy Commissioner Pearce and the dismissal of Tara McCarthy.

This public inquiry will be conducted to gather evidence relevant to those allegations. For the purposes of determining the matters referred to in section 13 of the Independent Commission Against Corruption Act, namely whether any corrupt conduct or any other conduct referred to in section 13(1)(a) has occurred, is occurring, or is about to occur, whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct, and whether any methods of work practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct. Commissioner Kear was and is a public official for the purposes of the Independent Commission Against Corruption

Act. Issues to be considered here will include whether his conduct adversely affected the honest and impartial exercise of his functions.

If Ms McCarthy was terminated as a reprisal then that will be corrupt conduct for the purposes of section 9 of the ICAC Act as it could constitute or involve a criminal offence, a disciplinary offence or reasonable grounds for dismissal.

10 This inquiry is not intended to examine the totality of nor prove the underlying issues about which Ms McCarthy was concerned and made report. It is not about the governance of the SES at large. Both of those matters will be the subject of inquiry elsewhere. However, those matters will be the subject of evidence in order for this inquiry to properly analyse the allegations and conduct in question.

20 The relevant starting point for this inquiry is whether on the information before her former Deputy Commissioner McCarthy was under an obligation to report and disclose that information and whether in reprisal for doing so she was terminated. It will be alleged that Commissioner Kear improperly showed favour to Deputy Commissioner Pearce by failing to appropriately investigate the allegations made. It will be alleged that Commissioner Kear made false statements to or attempted to mislead an officer of the Independent Commission Against Corruption in the exercise of his or her function under the Act. Those statements are alleged to be statements made by Commissioner Kear to ICAC to the effect that he had undertaken inquiry of his own to independently assess the veracity of what Commissioner McCarthy had disclosed. After conducting that inquiry he had concluded that there was nothing to investigate and following her termination
30 Ms McCarthy would complain about the circumstances of her termination but there was no substance to the allegations. Finally, the inquiry will examine whether Commissioner Kear ought to have recognised, disclosed and managed a conflict of interest.

40 The New South Wales SES is an emergency and rescue service made up almost entirely of volunteers, with 10,000 members in 229 units located throughout New South Wales. The SES sits within the portfolio of the Minister for Police and Emergency Services. Founded in 1955 the SES and its members are well-recognised in the community, in particular by their distinctive orange overalls. The SES's reputation was built on the hard and selfless work of volunteers who gave and give freely of their time to assist their communities. In essence it is the embodiment of many of the values of contemporary, that contemporary Australia purports to uphold, tolerance, lending a helping hand, sticking together in tough times and mateship. The evidence suggests that Commissioner Kear allowed the importance of that last value, mateship, to permeate the manner in which he administered a significant public entity and managed the issues raised by Ms McCarthy.

In addition to over 10,000 volunteer members the SES employs approximately 329 full or part-time staff. The SES headquarters is in Wollongong where the Commissioner and his staff are located. It is the lead agency in floods, storms and tsunami as specified by the State Emergency and Rescue Management Act. The SES also assists the New South Wales Police, the Ambulance Service and other New South Wales bodies. The SES's powers are set out under the State Emergency Service Act, relevantly for the purpose of this inquiry, the SES consists and consisted of two major divisions, each overseen by its own Deputy Commissioner. They are

10 Corporate Services and Planning, a division set up for the management of SES, its finance and logistics, its marketing and similar activities, and Operations, a division which manages the SES response in the field. Both Deputy Commissioners report to the Commissioner, Mr Murray Kear, who in turn reports to the Minister for the Police and Emergency Services.

Commissioner Kear, as the Chief Executive Officer of a New South Wales public sector agency, has a delegation to hire and fire executives. In 2012 the total expenses of the SES were a little over \$101 billion – million, sorry, \$101 million with a total revenue of a little over \$97 million. The SES's

20 primary source of income is funding from the New South Wales Government with a boost of \$96 million over five years provided in 2012. It also derives some funding from sponsorships and donations.

Commissioner Kear assumed his role with the SES in 2008 after transferring from senior management in what is now known as Fire and Rescue New South Wales. Deputy Commissioner Pearce was also a former officer of what is now known as Fire and Rescue New South Wales. The two have known each other from at least 2006. Deputy Commissioner Pearce in an email to Commissioner Kear describes him, Commissioner Kear, as a very

30 authentic mate and a good boss and notes that those factors were, and I'm quoting directly, "Probably the two major reasons I left the firies that I love."

Commissioner Kear gave ICAC a statement for the purposes of this inquiry in which he states that he does not have a long-standing friendship with Deputy Commissioner Pearce. We anticipate that his oral evidence will be slightly less dogmatic. We also anticipate that Deputy Commissioner Pearce will acknowledge the long-standing mateship between him and Commissioner Kear. The two men and their families holiday together.

40 Commissioner Kear sat on the original interview panel when Deputy Commissioner Pearce first applied to join the SES. No conflict was disclosed. Deputy Commissioner Pearce was not appointed at that time but was later appointed by Commissioner Kear. No conflict was disclosed.

During all the events that will be the subject of this inquiry where Commissioner Kear dealt with the complaints made by Ms McCarthy about the conduct of Deputy Commissioner Pearce, Commissioner Kear failed to disclose the friendship and the conflict.

Most importantly, when the decision to sack Deputy Commissioner McCarthy was made by Commissioner Kear, it followed statements by Commissioner Kear that, "Either one or both of them," referring to Deputy Commissioners Pearce and McCarthy, "Had to go." No conflict was disclosed or managed.

- Ms McCarthy had a significant background in the public sector having worked at, amongst other places, the WorkCover Authority and in Health.
- 10 In pre-interview testing and on the analysis of Commissioner Kear, Ms McCarthy's strengths were in relation to governance and process. These were the very skills that the SES required having metamorphosised from a volunteer outfit into a significant public entity controlling a substantial budget with a considerable equipment and asset base.

The 1902 short story about a cursed talisman that grants wishes, The Monkey's Paw by W.W. Jacobs, opens with this line, "Be careful what you wish for, you may receive it."

- 20 Some time prior to the appointment of Ms McCarthy it was resolved to create two Deputy Commissioners and to split their roles. Initially Mr Kear employed Deputy Commissioner Dieter Gescke as Deputy Commissioner of Operations with Deputy Commissioner Pearce in charge of Corporate Services, however in mid 2012 Deputy Commissioner Gescke retired leaving his position vacant.

- Deputy Commissioner Pearce expressed some interest in the operational role. After Deputy Commissioner Gescke resigned both Deputy Commissioner Pearce and Ms McCarthy were considered for each of the
- 30 Deputy Commissioner's roles. Ms McCarthy was offered the role of Deputy Commissioner of Corporate Services. Deputy Commissioner Pearce was laterally transferred into Operations. From her testing and references it was apparent that Ms McCarthy would be a diligent administrator and hard worker. She proved to be both. Deputy Commissioner McCarthy's deliverables were set out in a performance agreement dated 15 November, 2012 signed by Commissioner Kear. Some of the terms of her agreement that are relevant were that by 2013 to undertake a review of all current procurement contracts to ensure 100 per cent legislative compliance, to
- 40 recast existing budget allocations to achieve Corporate overtime saving based on increased governance frameworks, ensuring overtime is pre-approved and directed and paid in accordance with award conditions, to achieve budget savings through the implementation of the correct payment of the excess travel allowances, and to decrease the agency's annual leave liability by implementing the award provisions for suspension of flex and monthly reporting at senior executive group of annual leave management.

On 14 May, 2013 and after approximately nine months of active service Deputy Commissioner McCarthy's contract was terminated pursuant to

section 77(1) of the Public Sector and Employment Management Act 2002. In his letter to Deputy Commissioner McCarthy Commissioner Kear stated that, "The employer of an executive officer may remove the executive officer from an executive position at any time for any or no reason and without notice. The reason being that you have lost my confidence and trust." Deputy Commissioner McCarthy, now Ms McCarthy was then escorted from the SES. The evidence suggests that the decision had been well and truly made in the days prior and that the interview was an exercise in formality. No opportunity for comment was realistically made,
10 procedural fairness was not afforded. It is telling that a cab had already been arranged to take Ms McCarthy home. Shortly after her termination Ms McCarthy commenced unfair dismissal proceedings against her former employer, the SES. Those proceedings were later settled.

In her nine months as Deputy Commissioner Ms McCarthy accomplished a significant amount of change in the SES however, it was in five key areas that she drew the attention and the ire of both Commissioner Kear and Deputy Commissioner Pearce. Those areas were an investigation into the activities of a Mr Kevin Pallier who was terminated for amongst other
20 things abuse of overtime, all of which had been authorised by Deputy Commissioner Pearce, Mr Pallier's alleged insubordination and his travel and working arrangements. In the course of this exercise Ms McCarthy formed the belief that Deputy Commissioner Pearce had not correctly supervised Mr Pallier. It was then the compliance with procurement standards, and in particular two consultancy contract entered into by the SES with the parties that had been commissioned by Deputy Commissioner Pearce. Both contracts did not comply with the relevant procurement guidelines established by the New South Wales Government. The third
30 issue was the use of Corporate credit cards by Deputy Commissioner Pearce for non-approved expenditure. The fourth was the potential falsification of evidence by Deputy Commissioner Pearce that was used against Mr Pallier in support of his termination. And the fifth were potential abuses of travel allowances by Deputy Commissioner Pearce.

These issues were uncovered by Ms McCarthy in the course of doing what she was employed to do. All of the allegations had a basis. This presented Commissioner Kear with a problem. Diligent investigation by one of his Deputy Commissioners was exposing issues with the other that were at the very least manifestations of incompetence. In addition, his new Deputy
40 Commissioner was implementing appropriate governance at the SES. Changes had been made that altered SES employees rights to overtime, the use of motor vehicles, parking and travel. Not surprisingly this created some disquiet amongst the employed ranks of the SES.

Just prior to his dismissal Ms McCarthy had criticised Deputy Commissioner Pearce. She had also and in open forum criticised the management abilities of Commissioner Kear and in particular in relation to

his handling of Steven Pearce. Commissioner Kear openly stated that one or both of his deputies had to go. He chose Tara McCarthy.

10 The contract issue. On or about 10 October, 2012 and during her review of a swathe of contracts to which SES was a party, Deputy Commissioner McCarthy formed the view that two existing consultancies under her portfolio were failing to deliver what was required. Those consultancies or agreements were with two entities, Karoshi Pty Limited and an outfit known as Performance Drivers. When Deputy Commissioner McCarthy went to
10 terminate the Karoshi agreement she realised it was not in the standard New South Wales Government contractual format. The Karoshi and Performance Drivers contracts were non-compliant. They contained extended termination clauses to the disadvantage of the SES.

20 There is evidence that Deputy Commissioner Pearce was intimately involved in the entering into both contracts by the SES. The evidence will show that both contracts exceeded the amount for which the SES could contract without formal procurement procedures. Deputy Commissioner Pearce providing badging and logos so that the documents would look like SES documents. The evidence will be that Deputy Commissioner Pearce did nothing other than rely on a Mr Eggert of Karoshi to satisfy himself that the contracts were appropriate. On discovery of these matters Deputy Commissioner McCarthy rang Commissioner Kear who was holidaying in Tasmania and gave him an outline of the situation. Deputy Commissioner McCarthy was told to get legal advice.

30 Deputy Commissioner McCarthy also reported the entry into the contracts by the SES and Deputy Commissioner Pearce to ICAC in accordance with section 11 of the Act. It is difficult to see how one could challenge that the referral was appropriate. Ms McCarthy had reasonable grounds to suspect that the contract issues were matters that concerned or may concern, have concerned, corrupt conduct. On or about 29 October, 2012 Commissioner Kear returned from leave and discussed the Karoshi and Performance Drivers contracts with Deputy Commissioner McCarthy. During that conversation Commissioner Kear is alleged to have told Deputy Commissioner McCarthy that he was not going to take any action. There does not appear to have been a formal investigation by Commissioner Kear of Deputy Commissioner Pearce's involvement in the contracts, nor did
40 Commissioner Kear disclose any conflict that could hinder his ability to investigate the issue formally. Rather, Commissioner Kear relied on his trust of Deputy Commissioner Pearce. No independent or other inquiry was made of the contracting parties, no independent person was appointed to analyse or investigate.

Ultimately both contracts were cancelled. The Karoshi contract required a termination payment of \$40,000. Deputy Commissioner Pearce was subsequently placed on a Performance Management Plan. By letter dated

29 October, 2012, ICAC was told by Commissioner Kear that there was nothing for it to consider.

The Pallier issue. In or about late September 2012, Deputy Commissioner McCarthy became concerned about overtime and motor vehicle usage by the then Director of Finance, Fleet and Logistics, Mr Kevin Pallier. Up until the appointment of Deputy Commissioner McCarthy in August 2012, Mr Pallier had been supervised by Deputy Commissioner Pearce. Upon discovering what she thought were anomalies, Deputy Commissioner McCarthy brought her concerns to the attention of Commissioner Kear who suspended Mr Pallier pending a formal investigation. Ms Helen Colbey, an investigator from the New South Wales Internal Audit Bureau, also known as IAB, was engaged by Commissioner Kear to undertake an investigation into Mr Pallier. Commissioner Kear appointed Deputy Commissioner McCarthy to manage the investigation.

During the course of those investigations, Deputy Commissioner McCarthy became concerned in relation to a number of matters involving the supervision of Mr Pallier by Deputy Commissioner Pearce. Principally those concerns related to Deputy Commissioner Pearce's approval of overtime for Mr Pallier in an amount of nearly \$60,000 and flexible working arrangements. It seemed that Deputy Commissioner Pearce had failed to appropriately supervise Mr Pallier. The inquiry will hear that Deputy Commissioner McCarthy's concerns were validly held. Deputy Commissioner Pearce failed to appropriately manage Mr Pallier. It was a matter for which Deputy Commissioner Pearce was later performance managed.

Nevertheless, in or about January 2013 Mr Pallier was terminated. After bringing unfair dismissal proceedings – which will be the subject of a later issue in this inquiry – Mr Pallier was later reinstated to the SES at a lower grade.

The Corporate credit card issue. In or about November 2012, Mr Mark Pride from the Finance Team within SES, provided Deputy Commissioner McCarthy with a reconciliation that indicated that Deputy Commissioner Pearce had purchased roof racks for his vehicle, an SES vehicle, on 6 December, 2011, to the value of about \$286. It was alleged that these roof racks were for Deputy Commissioner Pearce to carry surfboards. Deputy Commissioner McCarthy's further investigations revealed that Deputy Commissioner Pearce had also invoiced the SES for installation of electric brakes for the towing of his camper trailer with his motor vehicle. Deputy Commissioner McCarthy brought both of these matters to the attention of Commissioner Kear, indicating that they needed to be properly investigated. Commissioner Kear informed Deputy Commissioner McCarthy that he would talk to Deputy Commissioner Pearce. This inquiry will need to consider the appropriateness of this step.

Commissioner Kear had signed off on these installations. Commissioner Kear relied on the fact of repayment to justify the lack of investigation. The fact that repayment was approximately 15 months and two years respectively after the event, and only after discovery by Ms McCarthy, seems to have been ignored by Commissioner Kear.

- 10 On or about 25 March, 2013, a further number of credit card statements for Deputy Commissioner Pearce were brought to the attention of Deputy Commissioner McCarthy. Deputy Commissioner McCarthy reviewed the expenses and determined that many of them appeared to fall outside the New South Wales Government policy. She determined that she would engage IAB to conduct a desktop audit but not a full investigation. On 5 April, 2013 IAB finished its audit. That audit concluded that there were 154 claims made by Deputy Commissioner Pearce that required further investigation with the potential irregularities to exceed \$11,000. On 23 April, 2013 Deputy Commissioner McCarthy wrote to Commissioner Kear making a formal Public Interest Disclosure about the misuse of the SES Corporate credit card by Deputy Commissioner Pearce.
- 20 Phil Schafer was the Manager, Marketing and Sponsorship. On or about 21 October, 2012 Deputy Commissioner McCarthy met with Mr Schafer who reported directly to her. During this meeting they discussed the fact that Mr Schafer was not paying for the private use of his Corporate motor vehicle at all. It was discovered that Deputy Commissioner Pearce had arranged with Mr Schafer that he would give him the private use of a motor vehicle in order to induce him to take the job. In order to do so the SES would use NRMA sponsorship monies to cover the cost of the vehicle. Deputy Commissioner McCarthy informed Commissioner Kear of the facts. A few days later Commissioner Kear informed Deputy Commissioner McCarthy
- 30 that there was nothing to be concerned about and that he would not be conducting an investigation. It is notable that Deputy Commissioner Pearce produced a briefing note in which he appears to have investigated or at least commented on his own involvement in this issue. On or about 15 November, 2012 Commissioner Kear waived the debt of Mr Schafer in relation to the car. As at the date of the waiver Commissioner Kear had not ascertained the value of the waiver.
- 40 During the process of gathering evidence for the Kevin Pallier proceedings Ms Colbey requested Deputy Commissioner Pearce provide any diary entries that supported his contention that he had counselled Mr Pallier in relation to the issues for which Mr Pallier was subsequently terminated. Rather than producing a written copy Deputy Commissioner Pearce produced a typed version. On the morning of the Kevin Pallier mediation it is alleged that Deputy Commissioner McCarthy and Ms Lorna Grange, now Calder, and a barrister, Ms Elaine Brus met at a coffee shop in Wollongong. It is alleged by Deputy Commissioner McCarthy but Ms Grange disclosed that she had some reservation about the authenticity of Deputy Commissioner Pearce's notes. Deputy Commissioner McCarthy alleges that

she was told the notes were falsified. Deputy Commissioner McCarthy brought this allegation to Commissioner Kear. It formed the subject of a Public Interest Disclosure dated 24 April, 2013. Commissioner Kear did not undertake an investigation beyond revealing the handwritten notes and speaking to Ms Grange, now Calder. Ms Grange produced a memo in which she denied using the words falsified and stated that she did proffer reasons as to how the notes may have come about appropriately or otherwise but that she had no evidence to support any scenario. Ms Brus who it is anticipated will give evidence that there was at least some basis for Ms McCarthy's allegations was not contacted nor interviewed.

In or about 10 April, 2013 Commissioner Kear and Deputy Commissioner McCarthy were present at a team building meeting in Port Macquarie for the senior executive group of the SES. During that meeting Commissioner Kear raised the matter of the conflicts between Deputy Commissioner McCarthy and Deputy Commissioner Pearce in the context of a personality clash. Deputy Commissioner McCarthy is alleged to have responded that it was not a personality conflict but rather a matter of integrity and honesty.

On 7 May, 2013 Deputy Commissioner McCarthy received an email from Commissioner Kear regarding the public interest disclosure she had made to him on 23 April. In that email Commissioner Kear advised that he had briefed IAB and that on his initial review of the transactions he had formed the view that the expenditure on his SES Corporate credit card by Deputy Commissioner Pearce complied with policy. In that email Commissioner Kear advised that he was treating the process as a fact-finding process and not a disciplinary one.

In early May Ms McCarthy criticised both Deputy Commissioner Pearce and Commissioner Kear at a workshop in Manly attended by various rescue authorities. Ms McCarthy was sacked shortly after. Immediately prior to sacking Ms McCarthy Commissioner Kear sought advice from, amongst other people, the Crown Solicitor's Office, a Mr Tree, Chief Executive of the Minister, sorry, Ministry for Police and Emergency Services, and Graeme Head, the Public Service Commissioner in relation to the intended dismissal.

The evidence suggests that Mr Kear went to the Crown Solicitor's office with the section 77 process in mind. Commissioner Kear was counselled by both Mr Tree and Mr Head about the delicate nature of what he was thinking of doing. In particular the questions of Public Interest Disclosure and the importance of procedural fairness were highlighted. It was suggested by Mr Head that the Ombudsman be contacted prior to any action being taken. This was not done until after termination. On 14 May, 2013, Commissioner and Mr Mark Morrow met with Deputy Commissioner McCarthy. She was sacked. It is apparent from the way in which she was terminated that Ms McCarthy was not given any real opportunity to respond to any termination. She had not previously been given any warning or

notice. There were never any competence or performance issues arising out of Ms McCarthy's employment. Commissioner Kear has confirmed this in writing. During her tenure Deputy Commissioner McCarthy instituted appropriate compliance and governance and in doing so she saved the SES significant amounts of money.

10 Sometimes you need to be extremely careful what you wish for in case you get it. Commissioner Kear and the SES needed an efficient process-driven person to guide the SES and improve its governance. That is exactly what he got in Ms McCarthy. Having got governance and accountability it began to interfere with what seems to have been regarded as an appropriate status quo. To make matters worse it resulted in open criticism of Deputy Commissioner Pearce and Commissioner Kear. The obvious inference is that Tara McCarthy was terminated as a reprisal for bringing the conduct of Deputy Commissioner Pearce into question, making Public Interest Disclosures and criticising Commissioner Kear. It is alleged that on two occasions Commissioner Kear attempted to mislead ICAC. Without any meaningful investigation he informed ICAC that there was nothing to be investigated in relation to the contract issue. Following Ms McCarthy's termination Commissioner Kear informed ICAC that Ms McCarthy would make a complaint and that there was nothing in it.

20 Finally and in relation to a matter that underpins this whole saga, at no stage did Commissioner Kear identify, acknowledge or appropriately manage the clear conflict of interest that arose out of his relationship with Deputy Commissioner Pearce. This is clearly demonstrated by what the evidence will show to be a paltry performance review undertaken by Commissioner Kear of Deputy Commissioner Pearce in January 2013, shortly prior to going on holidays with him and approving a backdated pay rise.

30 The ability of people within the public sector to raise issues of potential corruption and mismanagement is paramount to the efficient administration of New South Wales. It is for that reason that this public inquiry will examine these matters and in particular the termination of Ms McCarthy who appears to have done what we would hope all people in positions of authority within the public sector would do when confronted with similar problems and scenarios.

40 An important aspect of this inquiry will be the prevention of corruption in the future. The potential for the misguided use of the delegation to hire and fire is a matter that requires careful consideration. The provision of guidance and support to people with that delegation is also a matter of considerable importance. This is particularly so where a conflict of interest can lead to partial decision-making which may constitute corrupt conduct.

If it pleases the Commission.

THE COMMISSIONER: Thank you, Mr Fordham. The Commission will now adjourn for five minutes.

SHORT ADJOURNMENT

[10.52am]

THE COMMISSIONER: So I'll take appearances now.

- 10 MR TAYLOR: Commissioner, if it pleases my name's Taylor, Solicitor. I seek the authorisation to appear on behalf of Tara McCarthy.

THE COMMISSIONER: Yes, Mr Taylor.

MR TAYLOR: Thank you.

MR HARRIS: Commissioner, my name is Harris, seeking authorisation if you please to represent the interests of Steven Pearce.

- 20 THE COMMISSIONER: Yes, thank you.

MR HARRIS: Thank you, Commissioner.

MR OATES: If the Commissioner pleases my name is Oates and I seek the authorisation to represent Mr Kear.

THE COMMISSIONER: Yes, Mr Oates.

MR OATES: If the Commissioner pleases.

30

THE COMMISSIONER: Anyone else?

MR WILLIS: Commissioner, my name is Willis. I seek leave to appear for Graeme Head.

THE COMMISSIONER: Yes, Mr Willis, you have leave.

MR WILLIS: Thank you.

- 40 MR DUNNE: Commissioner, my name is Dunne. I seek authorisation to appear on behalf of Mark Morrow.

THE COMMISSIONER: Yes Mr Dunne, you have leave.

MR DUNNE: Thank you.

MS McGLINCHEY: Commissioner, my name is Ms McGlinchey. I seek leave to appear for Lorna Calder.

THE COMMISSIONER: Yes Ms McGlinchey, you have leave.

MS McGLINCHEY: Thank you.

THE COMMISSIONER: Is that it? I think it is. Mr Fordham.

MR FORDHAM: If the Commissioner pleases I tender a two volume brief of evidence.

10

THE COMMISSIONER: Yes. The Commission will receive as Exhibits 1 and 2 two volumes of documents.

#EXHIBIT 1 - PUBLIC INQUIRY BRIEF VOLUME 1

#EXHIBIT 2 - PUBLIC INQUIRY BRIEF VOLUME 2

20

MR FORDHAM: If it please the Commission I call Ms Tara McCarthy.

THE COMMISSIONER: Ms McCarthy.

MR TAYLOR: Whilst Ms McCarthy makes her way to the witness box, Commissioner, I communicate that she will take an affirmation and I will be seeking a declaration under section - - -

THE COMMISSIONER: Yes.

30

MR FORDHAM: Commissioner, just before Ms McCarthy is sworn - - -

THE COMMISSIONER: Won't you sit down Ms McCarthy.

MR FORDHAM: - - - it's been brought to my attention that there are email addresses and mobile phone numbers within the brief of evidence and I seek a suppression order in relation to those items so that - - -

40 THE COMMISSIONER: Yes, very well. The, all email addresses and telephone numbers in exhibits 1 and 2 are suppressed.

**ALL EMAIL ADDRESSES AND TELEPHONE NUMBERS IN
EXHIBITS 1 AND 2 ARE SUPPRESSED**

MR FORDHAM: And I would seek the same order for any address other than a work address if there be one.

THE COMMISSIONER: And all addresses other than work addresses are suppressed as well.

**ALL ADDRESSES OTHER THAN WORK ADDRESSES ARE
SUPPRESSED**

10 MR FORDHAM: If it please the Commission.

THE COMMISSIONER: Yes, I will proceed to make the section 38 declaration now. I declare that all answers given by Ms McCarthy and all documents and produced by her during the course of her evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for her to make objection in respect of any particular answer given or document produced.

20 **I DECLARE THAT ALL ANSWERS GIVEN BY MS MCCARTHY
AND ALL DOCUMENTS AND PRODUCED BY HER DURING THE
COURSE OF HER EVIDENCE AT THIS PUBLIC INQUIRY ARE
TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED
ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR
HER TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR
ANSWER GIVEN OR DOCUMENT PRODUCED.**

30 THE COMMISSIONER: Could you administer the affirmation to
Ms McCarthy please.

THE COMMISSIONER: Mr Fordham.

MR FORDHAM: Thank you.

What is your full name?---Tara Mary McCarthy.

10

Your current occupation?---Unemployed.

Up until 14 May of this year what was your employment?---I was the Deputy Commissioner Corporate Services and Planning for the New South Wales SES.

20

THE COMMISSIONER: Ms McCarthy, could you come closer to the microphone so that will enable people at the back to hear you.

MR FORDHAM: You might repeat that last answer if you could?---I was the Deputy Commissioner Corporate Services and Planning for the New South Wales SES.

For how long had you had that position?---Since 3 September, 2012.

How did you come to leave that position?---I was sacked.

30

When?---On 14 May, 2013.

Prior to 14 May, 2013 had you ever been the subject of an adverse performance review?---No, I had not.

Had you ever received any warning or similar document dealing with your performance as the Deputy Commissioner of the SES?---In a positive or a negative?

40

Sorry, I'll withdraw that. Had you received any adverse - - -?---Adverse, sorry.

Sorry, had you received a document with an adverse review of your performance and your position as a Deputy Commissioner of the SES? ---No, I had not.

In January of this year did something happen with your pay rate?---Yes.

What happened?---I received an increment, the SOOR Tribunal annual reviews the remuneration for senior executive staff, what the organisation,

the CEO is required to do as a performance review and make a determination as to whether my performance has been satisfactory so that I receive that pay rise. I received advice that I was to receive that pay rise and it was to be backdated to the date of the determination by the SOOR Tribunal.

Thank you. Now I just want to ask you a little bit about your background in the public sector. What position did you hold prior to coming to the SES?
---I was working for Transport for New South Wales as a programme
10 manager.

And I won't go through in exhaustive fashion but had there been other areas of the public sector in which you had worked?---Yes, I'd worked for New South Wales Health in clinical governance and risk, I'd worked for WorkCover New South Wales for 12 years, initially as a safety inspector and moving my way through the organisation to the direct, a senior executive position as a director. I'd worked for the Federal Government for what's now known as Fair Work Australia in Industrial Relations as their
20 general manager.

Thank you. Now you described your role as a Deputy Commissioner of Corporate Services. In your time at the SES how many Deputy Commissioners were there?---There were two.

Who was the other one?---Steve Pearce.

And what role did he play?---He was the Deputy Commissioner Operations.

Now could you briefly describe the dichotomy between the two positions?
30 ---Corporate Services was responsible for what was colloquially called 90 per cent of the business. It was finance, fleet, logistics, ICT, human resources, ministerial unit, media, marketing, those sorts of things and Operations involved primarily the emergency response of the organisation and preparedness prior to an event.

Which of those two roles had you initially applied for?---I applied for the Deputy Commissioner Operations.

In any event, which role were you offered?---Deputy Commissioner
40 Corporate Services.

Was there a performance agreement that you entered into when you started in that role?---Soon after as a requirement with the contract, for it to be a value contract I needed to develop a performance agreement that is endorsed by my supervisor, in this case by Commissioner Kear.

If the Commissioner would kindly turn to page 369 of the brief, it is contained in folder 2. Do you have on the screen in front of you a performance agreement with your name on it?---I do, yes.

If you would kindly go to the next page at 370, that will come up on the screen for you?---Yes.

You see the first entry there relates to asset management at the SES?---Yes.

10 Now, was asset management part of your portfolio?---Yes, it was.

And the first entry was that you were to undertake a review of all current procurement contracts to ensure 100 per cent legislative compliance. Is that right?---That's correct, yes.

And is that something you set about doing?---Yes, I did.

Would you kindly turn to the next page at 371, Commissioner, and that's coming up on the screen?---Yes.

20 The fifth bullet point seems to relate to Corporate overtime?---Yes.

And was that something you were charged with examining?---Yes, I was.

Is that something you did?---Yes, it is.

As part of your role at the SES, was it also necessary for you to look into such things as the use of Corporate motor vehicles?---Yes, it was.

30 And did you do that?---I did.

Now, I want to ask you a little bit about some of those individual items and then I'll go back to them in more detail if that's all right with you. The first thing I want to ask you is this. Sitting here today are you able to estimate what the overtime budget was, the Corporate overtime budget, when you started?---It was around about \$1 million.

And was that something you were charged to looking into?---Yes.

40 Did you do that?---I did.

What if any issues did you discover in relation to the use of overtime at the SES?---I discovered that overtime was being initiated through self-activation which was in contravention of the award requirements. I discovered that the use of Corporate, Corporate overtime was widespread across the agency and there were members of the SES, paid members of the SES who were receiving significant amounts of Corporate overtime, I discovered that there were no pre-approvals being undertaken in relation to

requests for overtime, overtime was commonly being performed on a Sunday which attracted a higher rate, I also discovered that the payment of overtime was being paid at the incorrect rate, that is- - -

10 Can I stop you there for a minute, because we've got a fair bit of information and I just want to break some of it up. You referred to self-activation. What do you mean by that?---I mean that an officer would make a decision that they were going to perform overtime and then subsequently inform their supervisor that they came in on the weekend or they performed overtime on the weekend and ah, that would then be approved and paid.

And how does that relate to the concept of pre-approval that you just spoke about a moment ago?---There's a requirement that all overtime must be pre-approved, it's an expectation that managers are able to consider whether there's a real need for the overtime in the first place before they make a determination to approve it.

20 Now, you mentioned Sundays a moment ago. Is overtime paid at differential rates, depending on what day of the week it is taken?---That's my understanding, yes.

And did you discover something about the days on which overtime was being taken?---I was informed that overtime was commonly being performed on a Sunday.

And does that attract a higher rate?---To the best of my knowledge, yes.

30 Now, you were then dealing, when I stopped you – and please forgive me but I do need to keep this sequential – with rates of overtime. What if anything was the issue there?---I discovered that overtime was being paid at the rate that an officer was engaged at, their hourly rate, whereas the overtime provisions in the award capped the rate at grade 8 plus a dollar. What that means is, if you're a clerk and you're above a grade 8 clerk, you would not be paid at your hourly rate, you should be paid at grade 8 plus a dollar, and that was not occurring.

40 Thank you. Now, you mentioned the clerks and perhaps in order that everyone can understand what we're talking about, I might just put a little flesh on the organisation if I can. When you were working at the SES who was the Commissioner?---Who was the Commissioner?

Mmm?---Murray Kear.

Who was directly beneath him?---Myself and Steve Pearce.

And was there then a series of people who reported to you?---Yes, there were a number of directors.

And a series of people who reported to Mr Pearce?---Yes, also directors.

And they were all called directors, is that correct?---Yes.

And then each of those directors had a reporting line of a small department?---Yes.

10 Thank you. Now I just want to ask you something about conferences and the use of facilities. With the SES being the type of organisation that it was, was it often necessary to hold conferences with external organisations?---It would be occasionally necessary.

And where was it that those conferences are ideally to take place?---There's a directive from Premier and Cabinet that all Government agencies are to source a Government venue in the first instance.

20 Were Government venues available to the SES in Wollongong?---Yes, I believe there are a number. There's a directory and there's some sport and recreation facilities in Berry not far from the SES.

And to your understanding when you commenced in your position and began investigating your portfolio were Government conference facilities being used?---No they were not.

What was being used?---Typically private venues within the area or in Sydney.

30 And to your understanding from the investigations that you undertook did that result in a higher or lower expenditure for the SES?---Generally a private, to use private facilities would be more expensive.

Now you referred to motor vehicles a moment ago. Now, I understand there's a number of issues with motor vehicles but firstly was the use of motor vehicles, Corporate motor vehicles by the SES paid staff something you looked into?---Yes it was.

40 And what if any issues did you identify?---I identified that the SES had developed a policy a number of years prior to my commencing which created an opportunity for various levels of staff within the organisation to enter into a motor vehicle leasing arrangement between the SES and themselves for private use. It was an arrangement which was essentially mirrored the arrangements for Senior Executive Services officers within Government. It allowed clerks to lease a motor vehicle, identify or nominate what they believed to be their private usage and what they believed to be work related usage and then make contributions according to the nomination.

Now, was there any issue in relation to that nominations, in - - -?---There was.

Sorry. Nominations that you've just given evidence about?---Yes.

And that's a nomination of private as opposed to public use, right?---Yes, work related use, yes.

Right. Thank you?---Yes there were issues.

10

And what were the issues?---Ah, the issues following an audit that was undertaken and brought to my attention it identified that a significant number of people within the scheme were seriously under-nominating their private usage of the motor vehicle and therefore their contributions were well below what they should be.

Now, what if anything were the implications for the SES arising out of that?---The implications were that the SES had for a number of years funded the private use of motor vehicles for a number of staff.

20

Now, were there any tax issues arising out of that?---Yes. There are also fringe benefit tax issues because there's a requirement that your usage of the motor vehicle, your private usage attracts a certain amount of fringe benefit tax as well.

Now as a result of the views that you came to in relation to motor vehicle usage did you institute any change at the SES?---I did.

30

What was it?---I instituted a new policy whereby only senior officers and senior executives could access the motor vehicle scheme. For senior officers that scheme was significantly, I guess tightened. Originally people could access vehicles up to \$70,000 in value. That was, there were restrictions placed around that limiting it to \$35,000 vehicle. There were limits around the requirement that the vehicles provided had to meet the needs of the SES, they couldn't chose a vehicle that suited them rather, and had no value to the organisation. I instituted the requirement to do annual calculations in relation to contributions and fringe benefit tax.

40

Thank you. Now, as a result of the institution of changes that you made did that result in a saving for the budget of the SES?---Yes. There was significant savings.

I want to go back a moment to the overtime we spoke about a moment ago. What if any changes, you told us about some of the changes. Were they instituted?---Yes they were.

And did that result in a saving for the budget of the SES?---Yes, there was significant savings.

In relation to the external conference facilities were any changes instituted there?---Yes, there was now requirement to source a Government facility in the first instance.

All right. Now I want to ask you a little bit about travel. Given the nature of the organisation is that something that the paid staff of the SES are required to do?---A number of them, not everybody, but yes.

- 10 And what if any issues did you identify in relation to travel?---Oh, I identified that travel was being undertaken without the necessary pre-approval so like overtime there was a requirement to submit approval for your travel arrangements, so again your manager could consider whether it was an appropriate submission and make a determination as to whether it was approved. That was not occurring.

I just want to ask you a couple of questions about who if anyone reported to you. Who is David Rae?---David Rae is the Director of Human Services.

- 20 And did he report to you?---Yes, he did.

Did Mr Edwards report to you?---Yes.

Whilst you were there did Mr Pallier report to you?---He did until his suspension.

Okay. Ms Davies, did she report to you, Belinda Davies?---No.

- 30 Okay, thank you. To whom did Mr Morrow report?---He reported to Steve Pearce.

Thank you. And what about Greg Newton?---Again to Steve Pearce.

Was it the case that there was something called the SEG?---Yes.

What was that?---It was the Senior Executive Group, it consisted of the Commissioner, the two Deputy Commissioners and the directors.

- 40 And was it the case that there was an agenda set for each of the meetings of that SEG?---Yes.

And in the course of record keeping for the SES was there a list of the papers that were to be tabled for consideration by the SEG?---Yes.

On each occasion?---Yes.

Could you please turn up page 18 for me of Exhibit 1. Do you have that document in front of you?---Yes.

And do you recognise that as a table of SEG agenda items, tabled by you?
---Yes.

And if the Commission's electronic people could keep going through, if you have a look at pages 19 and 20 and 21 you will see that there is a list of papers that were tabled either by you, those who worked for you and on a small number of instances people who did not report to you, such as Mr Morrow?---Yes, that's correct, yes.

10

Thank you. Now, given what you'd brought into the SES to do how important was the question of governance for the exercise of your duties?
---It was of significant importance.

And was it a primary focus of what it was you were attempting to do?
---Yes.

And when we talk about governance, what was it that you were trying to achieve?---Compliance with the requirements and checks and mechanisms in place to monitor those and ensure that we were doing things the way we were supposed to and in the best interests of the people of New South Wales.

20

Now despite the fact I got it spectacularly wrong in the opening, the budget was a little over \$100 million, correct?---Yes.

And most of that \$100 million is public money brought in from the New South Wales Government?---A significant amount of that money is brought in through levies but yes, it comes through the Government.

30

Is there also access to Federal funding for disaster relief and the like?---Yes, there is.

And is that accounted for separately?---It is, yes.

Now one of the things I asked you about before was your performance agreement and the necessity for you to ensure 100 per cent compliance of procurement contracts, do you remember that?---Yes, I do.

40

Now, after starting and shortly after starting, is that something you did?
---Yes, I did.

In the course of doing so did you become aware of two contracts, namely Karoshi and Performance Drivers?---I did.

To what did they relate?---They related to a series of work that was a budget enhancement, you mentioned in your opening \$96 million for some new initiatives for the SES whereby we took ownership of our fleet which had

been previously provided by councils and we took responsibility for the facilities in which our volunteers were housed.

THE COMMISSIONER: So I'm not sure what the contracts related to?
---They related to the implementation of those two transitional programs, so for us to take ownership of our fleet, so to, to shift from councils supplying the vehicles to the SES supplying the vehicles, and to the SES managing and paying for the use of all the facilities.

10 So were these management services being provided by the two companies?

---The services provided by the two companies were to assist with transitioning to those new arrangements or a consultancy ah, services.

Right.

MR FORDHAM: In the materials before the Commissioner that transition is described as one of the biggest projects the SES had ever undertaken. Is that your understanding?---Yes.

20 Now, as at the time that you commenced work at the SES was it your understanding that there were thresholds within Government procurement guidelines as to when it was that you didn't require a quote, when it was that you did require a quote and when it was that you had to go to open tender?
---Yes.

And are you able to tell the Commissioner what those numbers were?

---At the time in relation to consultancies the threshold that I was aware of was under \$30,000 you didn't need to go to a quote, between 30,000 and 150,000 you were required to get three quotes from the pre-qualification
30 scheme which is a scheme where companies have submitted their services to Government and they've been assessed by Procurement New South Wales as being suitable, if it was over \$150,000 you were to go to tender.

And when we're using those figures we're talking about expenditure of public moneys. Correct?---That's right, yes.

Now, when you commenced your analysis of the contracts, what was it that drew your attention to Karoshi and Performance Drivers?---Initially my
40 attention was drawn to the Karoshi contract because I had concerns about the performance of the consultant and I believed that he was performing fairly low-level work which could be quite easily achieved within the organisation, so I went- - -

THE COMMISSIONER: So in other words what they were doing was unnecessary?---It was very low level and we could have managed it in-house.

Yes. So it's correct to say it wasn't necessary work?---It wasn't necessary to be externally contracted, yes.

MR FORDHAM: Now, having had your attention drawn to it did you at some stage examine either or both of those contracts?---I did. I initially examined the Karoshi contract. The first thing I noticed was it did not appear to be a standard New South Wales Government contract.

10 Now, can I stop you there for a minute. What do you mean by standard New South Wales Government contract?---Procurement New South Wales provide standardised contracts that are recommended for use where you obviously insert information in different places relevant to the services you're engaging, but there are standard clauses around termination and deliverables and, and those sorts of things.

What was it about the contract that drew you to the conclusion that it wasn't a standard New South Wales contract?---The first thing that came to my attention was the termination clause which was 90 days.

20 Now, when you say a termination clause of 90 days, how does that compare to a standard New South Wales Government contract?---The ones that I had been previously involved with had provisions for immediate termination of a contract.

And putting it simply, is that a -- the clause that you identified more or less advantageous to the SES than the standard?---It was less advantageous to the SES.

30 Considerably so?---Yes, 90 days was a significant amount of money.

And is there anything else that drew your attention to the contract and its form when you formed the view that it didn't comply?---It didn't appear to have clear deliverables, they were very vague and it was just, it didn't look familiar. It referred to a few attachments, there were no attachments. It referred to some procurement guidelines and they weren't there either.

THE COMMISSIONER: Do you remember what the 90 days represented in terms of money?---Ah yes, \$60,000.

40 MR FORDHAM: Is that on either or both of them?---On both contracts.

Now, in the course of examining this question of the contract did you become aware of the total value, and I'll deal with each of them, of the contracts?---I did.

Can we deal with Karoshi, what was your estimate at the total value?---\$240,000.

And what about Performance Drivers?---It was the same, \$240,000.

THE COMMISSIONER: Does that represent the amount of money payable to these companies over the period of the contract?---Yes.

MR FORDHAM: There's been another figure suggested of \$189,000 in relation to Performance Drivers. If that be correct where does that sit in relation to the guidelines in relation to procurement and whether or not you'd have to go to open tender?---It would still be over the \$150,000 threshold which was the limit at the time and would require open tender.

Had either of these contracts gone to open tender?---To the best of my knowledge no.

And how many quotes were you able to identify having been received - - -?
--Only - - -

- - - before, hang on, just, it's very important that I get my question out so that you answer it and it all makes sense. And it's often my fault for the way I express myself. So I'll ask it again. Were you able to ascertain whether or not there had been any quotes obtained in relation to either or both contracts?---I was aware that there was only one quote submitted for each of those contracts.

THE COMMISSIONER: That is by - - -?---By Performance Drivers and Karoshi.

MR FORDHAM: As a result of discovering this information what if anything did you do?---I commenced making inquiries. I met with Alan Cook who is the principle of Performance Drivers. I questioned him in relation to the contract arrangements. At the time we were unable to locate his contract within the office so I asked him if he was able to provide me with a copy of the contract to which he did. I asked him whether he was aware of the requirement to obtain quotes to which he said that he was. He mentioned he was on the pre-qualification scheme. In the course of that conversation he disclosed to me that he had thought it odd at the time that Steve Pearce had told him the, the value of the work and had advised him that the SES would pay \$240,000 for their services prior to him submitting the quote.

Did you have any, or did you have a discussion with anyone from Karoshi?--I did.

Who?---I spoke to Frank Eggert who was the principle of Karoshi.

And what did you say to him and what did he say to you?---I asked him whether he was aware that there was a requirement to go to quote, or to tender to which he said yes he was. I asked him did he know where the

contract had come from, it wasn't a Government contract. He informed me that yes, he had provided it to Steve Pearce who had then rebadged it. I asked him was he aware that the termination clause in the contract was not standard to which he replied yes, he was aware.

Now, I just want to go back to one of those issues for a moment. You talked about re-badging. What do you mean by that?---I mean if you looked at the contract it had the SES logo on it in various sections so at a glance it looked like an SES contract.

10

THE COMMISSIONER: When you say SES contract you mean a contract produced by SES?---Yes.

MR FORDHAM: Perhaps for simplicity if we go to 264 of volume 1. Now, this in fact appears to be the last draft of this contract and is unsigned but is the badging you're referring to that which appears on page 264 to the top right of centre?---That's correct.

20

Now where had that badging come from?---I assume it came from our logos, we had various, a library of various logos which you could cut and paste into documents.

THE COMMISSIONER: Is this badge at page 264 in the, in the precise form of the SES logo?---Yes.

30

MR FORDHAM: Now did Mr Eggert, and I think you've given this answer but I want to just go through it sequentially, did Mr Eggert say anything to you about where that badge had come from?---He, he'd said to me that Steve had rebadged it but no he didn't say where Steve had got the badging from.

Well, did he suggest in any way, shape or form that he had, he being Mr Eggert, had supplied the badging?---No.

40

Now with all that information on board what if anything were your concerns?---Ah, I was concerned that you had two significant contracts, almost half a million dollars of SES money that had not gone to, through a proper tendering or quotation process, that I was of the view, particularly in relation to Karoshi, we were not receiving value for money. I was concerned that the quantum for the two consultancies had been disclosed which was a breach of the guidelines and, you know, that the procurement guidelines in general did not appear to have been followed.

Now with those concerns at that point what, if anything, did you think you should do?---Ah, I formed the view that it was of serious concern and I made the decision that I felt it was of enough concern to contact the Commissioner whilst he was on holidays in Tasmania.

Now whilst he was on holidays who if anyone was in charge of the SES?
---Steve Pearce was acting Commissioner.

When you contacted the Commissioner how did you contact him?---I telephoned him.

10 And what if anything did you say to him?---I explained to him that - I was apologetic firstly for interrupting his holidays and then said that this is a serious matter that I need to discuss, I explained that I had uncovered these two contracts, neither of which appeared to have gone through a proper process. I was very concerned. There were issues around the termination clauses within the contracts, there were issues around the form of the contract and, and the failure to obtain competitive quotes.

And before doing so had you spoken to Mr Pearce?---No, I had not.

20 All right. What if anything did Mr Kear say in response to the issues you were raising?---His initial response was that he would contact Les Tree from the Ministry and he would get back to me.

Did he get back to you?---He did, he contacted me a short time later. He requested that I obtain legal advice from Crown Solicitors. He also requested that I immediate inform - - -

THE COMMISSIONER: Legal advice about what?---About exiting, you know, the validity of the contracts. Ah - - -

30 MR FORDHAM: Now I'll just stop you there for a minute. You mentioned a Mr Tree. Who was he?---He was the Director-General of the Ministry of Police and Emergency Services at the time.

Now I interrupted you at the point where you were telling us that you'd been told to get some advice from Crown Solicitors?---Yes.

40 That's where you were up to. Did Mr Kear say anything else to you?---Yes, he, he instructed me to contact Steve Pearce immediately and inform him of the issues. I explained that I was about to walk into a meeting in Sydney and he asked that I contact him as a matter of urgency and I said I would attempt to do that later that afternoon.

When you say him are you referring to Pearce or - - -?---Yeah, sorry, Kear asked me to contact Steve Pearce as a matter of urgency that day.

Did you do so?---I did so, I arranged a meeting at 5.30 that afternoon. We met in the offices of Fire and Rescue New South Wales.

And what if anything did you say to Mr Pearce?---I said to Steve Pearce please don't say anything, I need to tell you something, let me say it and

don't say anything. I then said to him we've got a serious issue, these two contracts that you have engaged the services do not follow the procurement guidelines, it is a very serious matter. Despite me telling Steve Pearce not to say anything he chose to inform me that he had made a mistake.

Now, I'll stop you there for a minute. Now doing the best you can, can you remember what he actually said?---I, words to the effect of, "It was, it was all mistake. I didn't know what the rules were. I didn't know I was required to get quotes."

10

Did you raise with Mr Pearce - - -

THE COMMISSIONER: Sorry Mr - - -

MR FORDHAM: Sorry, did you want to ask - - -

20 THE COMMISSIONER: Can you just go back a bit, when you, can you just say what you said to Mr Pearce first?---I, I said, "Steve, please don't say anything. Let me finish speaking. I've got something very serious to raise with you." I said, you know, "There are issues around these two contracts that you have engaged consultancy services. It appears you didn't get quotes. They don't follow Government procedures. It's a very serious matter."

Right, so, and his response was - - -?---His response was that he ah, words to the effect of, "I didn't realise that I needed to get quotes. I've made a mistake. It was nothing other than a mistake."

30 MR FORDHAM: As at the second half of last year were the procurement guidelines readily available?---Yes they are available on a website.

THE COMMISSIONER: On the SES website?---No, they're available on Procurement New South Wales' website.

MR FORDHAM: Now, in the course of the conversation did you raise anything with Mr Pearce about the badging of the contract?---Not that I recall at that time.

40 Do you have any recollection of Mr Pearce saying anything about the badging?---I don't know whether it was at that stage or later but he, he certainly at some point informed me that yes he had received a contract from Frank Eggert and he had re-badged the contract.

THE COMMISSIONER: Did you ask him why?---Ah, yes. He said that he didn't know there were Government contracts.

Sorry, he - - -?---He didn't know there was standard Government contracts so he'd asked - - -

He didn't know that Government standard contracts existed?---Yes.

But that, is that by he badged it?---That's why he asked Mr Eggert to give him a contract so he could use that.

MR FORDHAM: And just so we're clear about it did Mr Pearce say anything to you about who had provided the noncompliant wording?---Yes, he informed me that the contract had been provided by Frank Eggert.

10

THE COMMISSIONER: By - - -?---Frank Eggert.

Both contracts?---Yes.

MR FORDHAM: Was the Performance Drivers contract simply another use of the first contract, being the Karoshi contract?---That's correct.

And did you compare the wording?---Yes.

20 And how did they compare?---Ah, they were essentially the same. There were some slight differences around the services to be provided and obviously the name of the, the firms and things like that.

What about the termination clause?---Yes, same termination clause.

Now, at this point you are in possession of information relating to noncompliant contracts for somewhere between four and \$500,000 worth of Government money. Did you form a view about whether or not you should talk to anyone else?---Ah, yes.

30

Who did you speak to?---I spoke, well I sought legal advice.

From whom?---Ah, Clayton Utz.

And you mentioned the Crown Solicitor's office before. How did you come to go to Clayton Utz?---Ah, I was aware from my previous dealings with Government that Crown Solicitors can be notoriously slow in providing advice so previously we'd tended to use other approved Government solicitors so I sought approval from Les Tree to approach one of the panel solicitors being Clayton Utz and he approved that.

40

Now, how did you seek permission from Mr Tree?---In a phone conversation.

And was that on or about 16 October?---Yes.

THE COMMISSIONER: There's something I'd just like to ask you about these two companies. Are they well known?---Karoshi I believe not. My

understanding is it was established by Frank Eggert when he was offered this work, so he created his own company to be the agency for the, the consultancy arrangements. Performance Drivers, I've not come across them before but I think they've been around for a little while.

And what, is Frank Eggert well known in this area?---Ah, I've not come across him before.

And do you know what his qualifications are?---No, I don't.

10

And had SES ever dealt with Performance Drivers or Karoshi before?
---I believe Performance Drivers, I'm not sure about Karoshi.

Where do you get that from?---From discussions with Alan that he had, he had done work, Alan Cook, the principal of Performance Drivers, that he had previously done some work for the SES.

And what are his qualifications, do you know?---Don't know. He, he's the principal though, he, he tends to provide other people to do the work.

20

And did you know of any prior relationship between the principals of these two companies and anyone at SES?---No.

And is this an area where there are a number of organisations which are, which are able to provide the services that were the subject of these two contracts?---Yes, there would have been numerous organisations that could have provided those services.

And are these well-known organisations?---Yes. All your typical
30 consultancy firms, most of which are listed by Procurement New South Wales as being pre-approved to provide services to Government.

And are these two companies pre-approved?---Performance Drivers is, Karoshi is not.

And how do you find out whether it's pre-approved or not?---You go to the Procurement Website and you can look them up or you can contact Procurement New South Wales and they'll inform you.

40 Thank you.

MR FORDHAM: But whether they're pre-approved or not, if they're over, if the value of the services is over \$150,000 what actually has to take place?
---At that time you had to go to tender. That threshold has since been lifted but at the time it was \$150,000.

THE COMMISSIONER: So when, when you go to tender who, who organises the tender process?---You can run it in-house or you can use the services of Procurement New South Wales to coordinate the tender for you.

MR FORDHAM: And just so we're clear about it, between 30,000 and \$150,000, how many quotes were needed?---Three quotes.

From, are they, do they have to be from people approved on- -?---Yeah.

10 - - -the Procurement Website?---Yes, from the pre-qualification scheme.

THE COMMISSIONER: Do you know how the sum of \$240,000 was arrived at?---No, I have no idea. It was \$20,000 a month- - -

I understand that?--- - - -over 12 months but I don't know how it was quantified to, to be services to that value.

And do, yes. Thank you.

20 MR FORDHAM: And just to follow up on the Commissioner's question, were you able to identify from the file any work that had been done in order to estimate the forward projected cost of either or both of these consultancies?---No.

Now, we were talking about Mr Tree and some permission to use a private firm of solicitors in order to get some advice. Now, I'm going to come back to Mr Tree in a moment, but to cut to the chase, were the contracts with Karoshi and Performance Drivers effectively terminated?---Ah, at a later date they were, yes.

30 And was there any cost to the SES for that termination?---Yes. The Karoshi contract we negotiated a settlement agreement which was I believe around \$40,000 to exit the contract in lieu of the 90-day clause which, which would have required a payment of \$60,000. The Performance Drivers contract, that company informed me that they would not be seeking any compensation for the early exit of the contract, that their reputation was of significant importance to them and they did not want to be seen to have been involved in something untoward.

40 All right. Now, going back to Mr Tree for a moment, having suggested advice from a private - or allowing you to get advice from a private firm of solicitors was there any conversation with Mr Tree about any notification that you should or should not make?---Yes. We had, we had a conversation firstly regarding whether he wanted me to prepare a ministerial briefing to which he said yes and that was subsequently done, and to also, he was also asked the question by me about whether he wanted me to make a section 11 notification to ICAC.

I'll stop you there for a minute. What words did you actually use when speaking to Mr Tree?---I said words to the effect of, Do you want me to report this matter to ICAC?

And did he respond?---He said, "Yes, if that's required but please let Murray Kear know."

With that in mind did you make a report?---I did, yes.

10 Who to?---I - do you want me to name the ICAC person?

Oh, to which agency, sorry?---To - I made a section 11 notification by phone to ICAC.

Now did you discuss - who's Helen Colbey?---Helen Colbey is I think a contractor would be the right term, does a lot of work for IAB.

20 What's IAB?---Ah, Internal Audit Bureau, they're a statutory authority that do investigations into misconduct, they produce policies, guidelines, audits, a number of other services to Government agencies.

Did you have any discussion with her in relation to this contract issue?---I did. Following my conversation with Les Tree in relation to making a section 11 notification if it was necessary I sought advice from Helen Colbey and I, I had a discussion where I explained the situation and she then provided me with a fairly extensive list of matters that she felt needed to be considered, one of which was that it most definitely required a section 11 notification to ICAC.

30 Leaving aside what anybody else thought about this, what was your view about whether or not this should be reported to an agency such as ICAC?
---My view was that yes, it should be reported.

Why?---Because there was potential that it was a corrupt activity. I was not aware whether Mr Pearce had a relationship with any of these contractors and whether it was deliberate that he had failed to follow guidelines.

40 You've used the words "potential", is what you're suggesting that there were a whole series of potentials here and someone needed to look at it?
---Yes, that's right.

And did you have a view about whether that should be an internal review or an external independent review?---My view would be that it's best conducted externally, it was a serious matter and that that was also the view of Helen Colbey.

Is that partly because if it is that there's nothing going on at all and there is no problem it's better to be done by an external independent party?---That's correct.

Alternatively what's the advantage if there in fact is something from this, an external review?---That there's no bias.

10 Now after talking to Ms Colbey did you have another conversation with Mr Kear?---I, I did. I had taken extensive notes following my conversation with Helen Colbey and I read through my notes on, and it was quite an exhaustive list of advice and matters to be considered in relation to this and I read those through to Murray Kear. I also informed him in, in those notes that Helen was of the view, Helen Colbey was of the view that a section 11 notification should be made.

Who was the Police Minister at the time?---Michael Gallacher.

I appreciate he's got more titles than that - - -?---Yes.

20 - - - but in short form that he's the Police Minister. Who was his Chief of Staff?---Brad Scutella.

And did you have any conversations with Mr Scutella about what you were concerned about in relation to these contracts in mid-October, 2012?---Yes, I did.

30 What did you say to him?---I contacted Brad and, Scutella, and informed him of the situation. I advised him that I was preparing a Ministerial briefing which he would receive that same day. In that conversation he said to me words to the effect of, I'm very concerned about Steve Pearce continuing to act as Commissioner. I said words to the effect of, That issue has been raised. I have mentioned that to Murray. If you have concerns, Brad, can I suggest you contact Murray directly to discuss that.

Now when you say Murray to whom are you referring?---Murray Kear.

Thank you.

40 THE COMMISSIONER: Did you say that you had raised that with Mr Kear yourself?---Yes.

And when did you do that?---I raised that in having read the list of dot points that Helen Colbey had gone through that he needed to consider, one of which was the fact that Steve Pearce was currently in the Acting Commissioner role and he needed to reconsider that decision in light of the information.

And what did Mr Kear reply?---He informed me that he'd give it some thought and he would get back to me.

And did he ever get back to you?---He did. He got back to me the next day and informed me that he was not going to change that decision. He was quite comfortable with Steve Pearce continuing as Acting Commissioner.

MR FORDHAM: Now, did you have a conversation with Mr Kear when he returned from leave?---I did, on 29 October.

10

Now, I want to go back a step to the conversation you were having a moment ago which is as I understand it when Mr Kear was still in New Zealand?---No, Tasmania.

Tasmania, sorry?---Yes.

Is that right?---Yep.

20

And in informing you that he wasn't going to remove Pearce at this stage did he say anything to you about any investigations that he had undertaken from his holiday destination?---He told me that he had spoken to Steve and Steve had said it was a mistake and that he accepted that and that ah, he, he didn't see that he needed to do anything until he returned. He did advise me to proceed with the section 11 notification.

And did you do so?---I did.

Was that in writing or orally or, how was that done?---That was by phone.

30

Was that eventually followed up by the SES to your knowledge?---It was followed up the next day firstly by ICAC who when I'd made the first phone call said it was highly regular to receive phone notifications. I was contacted the next day where the ICAC officer said given the serious nature of the issue the supervisor had accepted the verbal notification and that it was going to be joined with a previous section 11 notification in regards to Mr Pallier.

Thank you. Now, you mentioned a conversation on the 29th?---Yes.

40

How many days prior to the 29th had Mr Kear returned from leave?---I believe that's his first day back at work.

And do you have a recollection of what time during the day you had a conversation with him about these events?---It was around about 9.00am.

And in the course of that conversation what if anything did Mr Kear say to you?---He entered my office. It was the first time I'd seen him since he returned from leave. Ah, we immediately had a conversation about the

contracts and he said words to the effect of, "I've given the matter a great deal of thought. I've spoken to Les Tree and the MPs, the Ministry and I've spoken to the Minister's Office. I'm satisfied that it was nothing more than a mistake and I'm not going to take any further action."

Was there any discussion between you and Mr Kear about any investigation with the parties such as the contracting parties?---No.

10 Was there any discussion about the potential referral of this matter to any external agency other than ICAC?---Only in that I said in my conversation to him that I believed the matter required a proper investigation.

And what was Mr Kear's response to that?---Ah, he, he did not agree with me. He said that he was satisfied that it was a mistake and he wasn't taking the matter any further.

20 THE COMMISSIONER: Did he explain to you how he reached that level of satisfaction?---Only in that he had spoken to ah, Steve Pearce about it. He had accepted his version that it was a mistake. He had also spoken to the Minister's Office and he had spoken to Les Tree from the Ministry. They had informed him that Steve Pearce was a good bloke and if he could sort it out that would be good.

Now, did you say anything to Mr Kear about how you would continue to deal with these issues?---I did.

30 What did you say?---I informed Murray Kear that I strongly disagreed with his decision not to adequately investigate the matter. I said words to the effect of, "I have sought legal advice and I have responsibilities which require me to adequately discharge my duties. In that advice I have been told that I should brief the matter up to you formally."

MR FORDHAM: And did Mr Kear respond to that?---He, he became very angry and- - -

Perhaps I'll stop you there for a minute. I'm asking you a very- - -?---Yeah, yes.

40 If I want to know how he looked or what he did I will ask you?---Okay.

So please just work with me. Did he respond to it?---Yes.

What did he say?---Okay. He said words to the effect of, If you do that you will seriously jeopardise our working relationship. If you, if you write a brief- - -

THE COMMISSIONER: Whose working relationship?---Ours, his and mine. "If you provide a brief that means that you do not trust me and I

don't believe that we could continue to work together if you do not trust me."

MR FORDHAM: Now, when he said that to you, how was his tone compared to what it normally was?---He, he was louder, I felt he was angry, he was getting red in the face and each of his sentences were prefaced with the use of my name, which he didn't normally do, so he was, Tara, if you do that, Tara, if you, so it was in my experience quite an aggressive conversation.

10

Is he normally a loud man?---No, not at all.

Normally an aggressive man?---No.

In his dealings with you- - -

THE COMMISSIONER: Mr Fordham, there's a complaint from the back about not hearing so I'd be grateful if, if you could also address the microphone.

20

MR FORDHAM: I've been accused of many things in my life but being quiet is not one of them. Okay.

THE COMMISSIONER: Mr Fordham, when you've come to the end of this contract there's just a couple of questions, this topic, there are a couple of questions I'd like to ask if you could just let me know.

MR FORDHAM: Well, perhaps if you'd like to ask those now I'll- - -

30

THE COMMISSIONER: Yes. Ms McCarthy, can you just look at page 270 of this, of Exhibit 1, this folder. Do you have the folder in front of you? ---It's just coming up on the screen now.

Right?---Yes.

You'll see that services is defined at the bottom of the page, it means the services set out in Annexure A?---Yes.

Do you see that?---Yes.

40

And if you go to Annexure A which is at page 301- - -?---Yes.

- - -there's a, a reference in the first paragraph to a "Centrally agency managed and controlled model." Do you see that?---Yes.

And in the second paragraph there's a reference to the implementation model?---Yes.

And in the third paragraph on the first line there's reference again to the model?---Yes.

And the last paragraph before the dot points there's again a reference to the Fleet Management Model. Do you see that?---Sorry, in the fourth paragraph did you- - -

The last paragraph before the, starting, "The service provider- - ?---Yes, yes.

10

- - -will be required to ensure the fleet management model." Do you see that?---Yes.

If you turn over the page and the second line there refers again to the fleet model?---Yes.

Do you see that?---Yes.

20

Do you know whether there was ever any such model?---No, I don't.

Did you ever see a model?---No.

Where would that model be?---It could possibly be contained in the business case that secured the funding from Treasury.

But where, where would it be kept – I presume it would be kept somewhere within SES?---Yes, it should.

30

Where?---Ah, the business cases are normally kept within the Commissioner's office or in the Finance area.

Finance area. Who's responsible for that?---Ah, Andrew Edwards was the Director of Finance, or is.

But when you – did you, did you – in the course of your investigations into these contracts did you – you seem to have had regard to the work they did, these two companies?---Yes.

40

And how did you go about that?---Ah, I was – the two consultancies were handed over to me upon commencement.

What do you mean handed, how is a consultancy handed over to you? ---Well, the work that they were doing I guess, the programs, the two programs became- - -

Well, how did you know what the program was?---I was briefed in relation - - -

By – briefed by who?---Ah, by Steve Pearce.

And did he show you the model?---I, I saw the business case for the funding.

The business case, that's SES's business case?---To Treasury, to - - -

To get the \$240,000 in each case?---No, no, no, no. The business case to Treasury to receive the \$96 million worth of - - -

10

Yes?--- - - - enhancements over a five year period to run these two programmes.

Well, the cost of the programmes would be part of the \$96 million?---Yes.

Is there reference in the business case to these two programmes?---The business case was for these two, these two programmes to occur.

20

I see. That, that included the cost of the vehicles I take it?---That's right, yes.

But did the business case refer to the nature of the services that were required?---I don't know.

Well, I still don't know what you mean by Mr Pearce handing over the consultancies?---What, what he handed over to me was a programme of works which required the SES, one of which was relating to fleet so it required the SES over a period of time to take control and ownership of all of its vehicles.

30

And who is the drafter of these programmes?---Sorry, I don't - - -

Well, you said that he handed over a programme?---Yes.

That's a written programme?---Yes, there was a business case that outlined the programme.

40

Well, where did that come from?---That was developed by the SES and submitted to Treasury prior to my starting.

Before the contracts were entered into?---Yes.

So was the discussion of the services rendered and to be rendered by these two companies, did it, did these discussions ever proceed against or by reference to some document where it could be seen what their contractual obligations were?---I never had that type of conversation, no.

Well, how could you measure what they were doing without looking at the contract?---So I, I looked at the contract that they were engaged under.

Yes, but the contract provides for a model, I mean, the work that they were to do depended on the model?---Yes.

But I get the impression that there was no model?---Well, the model was loosely the ownership, the transition of ownership to the SES of the vehicles and to take responsibility for the maintenance of various facilities.

10

This is, this is a kind of an intangible model is it?---It was for - the programme of works required the development of the model in order to do that. So for example was the model that we would purchase the vehicles from council, was the model that we would lease the vehicles, would we buy the vehicles in future, what type of vehicles.

I understand?---Those sorts of things.

20

But the model, surely the model is, is reduced to writing so that everyone can see what the model is?---My understanding that the, the broad description of the model was the transitioning over of the fleet ownership and responsibility to the SES.

But that kind of - if that's all it is there's no definition of the obligations of the service provider?---Only, the only definitions were inside of those two contracts that I was aware of.

Well, the contract would, is it'd do what's set out in Annexure A?---Yeah.

30

Annexure A says, it refers to an implementation model and a model on several occasions that term is used suggesting there, that these companies are to produce a document which sets out the model?---Yes.

But this seems as if it comes as a revelation to you?---No, I understood that the two consultancies had been engaged to assist with and develop the process for which the SES would implement the two programmes of work that had received funding by Treasury.

40

How long had they been rendering services before you discovered the contracts?---A couple of months.

And they had already charged?---Yes.

And is there a document which sets out the services they provided for which there were charges?---As they produced work do you mean or - - -

Yes. Or as they sent in their monthly claim?---Ah, I believe they used to submit like a timesheet the days that they'd worked, and claiming. It didn't, it didn't identify deliverables.

But the so called deliverables were never defined?---No, and that was one of my concerns with these two contracts.

Did you raise that with Mr Pearce?---I did, that there was no clear information within the contract in relation to what our expectations were.

10

And what did he say?---I don't recall what he said. I think in the scheme of things it was a less, less of an issue.

Did you raise this with Mr Kear?---I did.

And what did he say?---I particularly raised it in relation to Karoshi because I was concerned that we weren't getting value for money and as I said the contract did not seem to define hours of work, the deliverables and so on. It was a very loose contract and it was very onerous on the SES rather than on the consultancy.

20

And what did he say?---He, that was in the context that we were going to terminate the services of both providers so - - -

And he agreed that they should be terminated?---He did, yes.

For that reason?---No. He agreed that they should be terminated because they were not standard Government contracts.

30 And that's the only reason?---Yes.

Thank you.

MR FORDHAM: Perhaps just to wrap that up if I can go back a step, prior to you taking over the role of Corporate Services who was the Deputy Commissioner in that role?---Steve Pearce.

The contracts that we are talking about, in which portfolio did they subsist?--Under Corporate Services.

40

Do I understand this correctly, that, just so we're clear about it, what had happened was that the SES had put a proposal to Treasury for \$96 million in funding, correct?---Ah, they might have put it for me but they received 96 million.

Yes, fair enough too. And the object of that funding was to bring across assets such as motor vehicles, buildings and equipment to within the SES?--Ah yeah, not buildings. It was to - - -

Oh, sorry?--- - - responsibility for maintenance of the buildings.

Thank you?---Yes.

And it was in the course of attempting to deliver that outcome that these two consultancies were entered into?---Yes.

10 And what drew your attention to the contracts was firstly that you weren't sure they were delivering what they were supposed to deliver?---Yes.

And secondly on closer analysis they did not comply with what you knew to be procurement guidelines?---Yes.

And it was those issues that sparked your investigation?---Yes.

Thank you. If it please the Commissioner I was going to move to another topic.

20 THE COMMISSIONER: Yes, thank you.

MR FORDHAM: Who is Kevin Pallier?---Kevin Pallier at my commencement with the SES was the Chief Financial Officer and the Director of Finance, Fleet and Logistics.

What does he do now?---He is a 19 clerk.

30 Is that a higher or lower position than the one he previously held?---That's a lower position.

How did he come to be in that position?---He was sacked by Murray Kear and he subsequently took action in the Industrial Relations Commission and as part of a negotiated agreement he accepted an offer of a lower position to return to work.

Which director, sorry I withdraw that. Which deputy commissioner by reference to title, so Occupational or Corporate Services, did Mr Pallier report to?---Corporate Services.

40 And prior to your employment who was that?---Steve Pearce.

Once you commenced who did Mr Pallier report to?---He reported to me.

And in September, 2012 did you, did aspects of the manner in which Mr Pallier was accessing benefits come to your attention?---It did.

Which aspects were they?---The first matter that came to my attention was in relation to a reconciliation audit of the private usage of motor vehicles. It

indicated, firstly the report hadn't been actioned but secondly that Kevin Pallier had a significant debt relating in his under-identification of private use.

You say hadn't been actioned. For how long had the report been in existence?---I believe about three months.

And who had commissioned the report?---Kevin Pallier.

10 And at that stage who was he reporting to?---To Steve Pearce.

And when you say a significant debt, what did the debt relate to?---The debt related to the nominated private use versus the actual private use of the motor vehicle and then the cost associated with that for the difference.

In short form was the report critical of Mr Pallier firstly?---The report was essentially just a table of what people had paid versus what they should have paid. Mr Pallier was one of a number of people on that report who appeared to have debts to the agency.

20

His debt was in excess of \$10,000, wasn't it?---To the best of my knowledge, yes, around about that.

Now, had that report been actioned by Mr Pallier that would have required him to repay the money. Correct?---That's right.

Subject to those he reported to agreeing to waive that sum if they wished to?---I guess it would be highly unusual to waive a debt like that.

30 Well, how unusual is it that debts in relation to motor vehicles were waived by the SES?---Ah, it, it normally shouldn't happen, I was certainly aware that it had happened on a couple of occasions.

I'll come back to it later but it happened in relation to a Mr Schafer, didn't it?---That's right.

40 THE COMMISSIONER: Is there a policy that -- does SES have a written policy that relates to the waiver of these debts?---Not, not that I'm aware of, but my understanding from having been in Government is that if you incur a debt then you have to take responsibility for that. It's not for an agency to waiver that debt. If you received a benefit you're required to, to pay the cost of that benefit.

MR FORDHAM: In any event, the report that recorded amongst other things that Mr Pallier owed a debt- -?---Yes.

- - -something in excess of \$10,000, had not been actioned by him?---Yes.

And how did you discover that?---I discovered it because I was -- it was my first week in the position, I was meeting with all my key staff, Kevin Pallier was on leave and Natalie McLean was acting in his position and she brought me that report raising concerns that it had not been actioned.

THE COMMISSIONER: That it had not been actioned?---Yes.

10 And what was it that had to be done?---The debt identified a number of staff who had significant -- sorry, the report identified that there was a number of staff who had significant debts to the agency in relation to their arrangement with motor vehicles and so the action was to implement recovery of those debts.

And how many people were involved, how many debtors?---Ah, there were a couple of people who actually owed small amounts of money but for the main most people actually owed the agency maybe 10, 12, I can't remember exactly.

20 And what sort of amounts are you- -?---Ah, the highest amount that I recall was Mr Pallier's which was around 10,000, some were 6,000, \$7,000.

So over all between 50 to \$100,000 was owing to the agency?---Yes, for that particular report.

For that?---There was still another -- there were still other years that hadn't been calculated as well.

30 What year are we talking about?---I think it was '11 to '12 but I'm not 100 per cent certain. That's the Fringe Benefit Tax year so it's March, 1 April to the end of March.

MR FORDHAM: Thank you. And when you say action, what you're really saying is that the report hadn't been tabled or given to a supervisor. Correct?---Yes.

And therefore no effort had been made to that point to recover the debts owing to the SES?---Yes.

40 And in some instances payments repaid to officers who'd overpaid?
---That's right.

What was the second issue in relation to Mr Pallier that had come to your attention?---It was in relation to his use of overtime.

Ah hmm?---He had made a comment to me that served as a flag I guess in relation to how he viewed overtime and- - -

What was that comment?---He said words to the effect of, "When I took this job it was a lot less than I used to earn, at least the SES has overtime."

And as a result of hearing that comment what if anything did you do?
---I asked for the record to be pulled in relation to the overtime that he had received over the last 12 months.

10 And when you looked at the overtime records over the 12 months prior to September 2012 what did you discover about the amount of overtime Mr Pallier had accumulated?---It was in the vicinity of \$60,000.

Who if anyone had approved that sum?---I found out later, not at that time, but later that all his overtime claims had been approved by his then supervisor Steve Pearce.

Now we spoke about this a couple of hours ago, but is that overtime, was that supposed to be pre-approved?---Yes, it was.

20 And was it pre-approved?---To the best of my knowledge no.

THE COMMISSIONER: Over what period did it extend, the \$60,000?
---12 months or 13 months I think it was but - - -

MR FORDHAM: Now, as a result of coming across those two pieces of information did you do anything?---I did. I - - -

What did you do?---I spoke to Murray Kear, I informed him of my concerns.

30 And what was his response?---Ah, his response, he, he raised that there had been another issue in relation to the gifts register and some matter with the Audit Office. He said that he felt it was time to have a meeting with Kevin and that we should launch an independent investigation.

40 What if anything happened to Mr Pallier's immediate employment?---Ah, on, on the day of the meeting Murray Kear informed me that he had changed his mind and he was going to suspend Kevin Pallier. We had a meeting and in that meeting Kevin was informed that an independent investigation was to be undertaken and he was suspended.

THE COMMISSIONER: Well, what did he say, Mr Pallier?---Oh, he was very upset, he was very shocked. He said he had always done his job with the interests of the SES, he had worked very hard, words to that effect.

Well, what did he say about, did he say anything about the approvals for overtime that he had been given?---Not that I recall.

MR FORDHAM: Now just to go back a step, did Mr Kear say anything to you about what if anything had caused him to change his mind between scheduling the meeting and having the meeting with Kevin Pallier?---No.

Now the Commissioner has just asked you a question about approval. Is it - no, I withdraw that. You say you eventually found out who had approved the overtime, how did you find out?---Ah, I found out through the investigation with Helen Colbey.

10 And Helen Colbey was from where?---IAB.

And what if anything was she retained to do?---She was retained to conduct an independent investigation into the issues.

And to your knowledge did she do so?---Yes.

Who supervised that investigation for the purposes of the SES?---Originally I did for a period of time but as the investigation progressed I was removed from supervising it.

20 Were you given any reason as to why you were removed?---No.

Who replaced you?---Murray Kear.

Now in the course of the investigation I take it that Mr Pallier was asked for his version of events?---Yes.

30 And do you have any knowledge of, and I'll ask you about individually, but his answers to the queries that were raised of him?---I have limited knowledge.

Do you know whether or not he was questioned about his overtime?---Yes.

And what if anything did Mr Pallier say in his defence?---I understand that he insisted that he had performed all the overtime, that he had completed the overtime because of the significant increase in work that was expected of him in moving the agency's finances towards a more robust system, that he had done so all with the approval of Steve Pearce and he had never been questioned in relation to the amount of overtime that he was performing.

40 THE COMMISSIONER: That in effect means, please correct me if I'm wrong, that he was saying that Mr Pearce had approved the overtime - - -? ---Yes.

- - - for which he was claiming?---Yes.

For which he had claimed?---Yes.

What did Mr Kear say about that?---What, sorry, what - - -

What did Mr Kear say about that?---Oh, I raised the issue with Mr Kear following a conversation with Helen Colbey, I said Helen is of the view that all this overtime has been approved by Steve Pearce, Steve Pearce is Kevin's senior officer, that she was of the view that Murray Kear needed to investigate Steve's management of Kevin Pallier because Kevin could mitigate the circumstances and say he had done all the overtime with the approval of his supervisor.

10

And there's something about this episode that I find odd. I do understand if somebody does overtime to say the value of \$60,000 and doesn't get any approval for it but claims it and is paid it. That's something seriously wrong?---Yes.

But if somebody does \$60,000 worth of overtime for which he subsequently gets approval from his boss on what possible basis could he be suspended? ---That's, I would ask the same question. I, that was the decision that Murray Kear made.

20

But did you ask the same question?---At the time he was suspended I wasn't aware that the overtime had all been approved by Steve Pearce. When I became aware during the course of the investigation I did ask questions about that and raised the issues around Steve Pearce's conduct and supervision of Kevin Pallier.

And what was the answer?---Ah, the answer was that Murray Kear had no issues with the way Steve had supervised Kevin Pallier.

30 But it's not so much of the issues with Mr Pearce, it's the issues with Mr Pallier. Why could be, on what basis did he still have an issue with Mr Pallier once Mr Pallier had done the work with the approval of Mr Pearce?--I don't know, you'd have to ask him that.

I will.

MR FORDHAM: Part of the arrangements that were an issue aside from overtime were disputed flexible working arrangements, correct?---Yes.

40 And who approved those?---Ah, I believe they were also approved by Steve Pearce and there was emails to support this broad approval.

And the further thing was a question in relation to work related regional trips?---Yes.

And who if anyone, well were they supposed to be approved?---Yes, travel - - -

Were they approved?---I believe there were 10 regional trips undertaken prior to my commencement which were all approved by Steve Pearce.

Was there upcoming regional trip that had come to your attention?---Yes there was.

And did you approve or not approve that trip?---I did not approve that trip.

10 Why not?---Ah, because I wasn't satisfied that it had a benefit to the organisation. I was also concerned that it was occurring during school holidays. It involved Mr Pallier taking his wife and children and he'd failed to declare that up front and there was potential for costs to be incurred on the agency in association with taking his family.

Now, Mr Pallier is being investigated for so called infringements in relation to overtime, flexible working arrangements, and travel, correct?---Yes.

And as you understood it who did he report to?---Steve Pearce.

20 And did you form a view about whether or not the management of Kevin Pallier was appropriate?---I formed the view that it was not appropriate.

Did you discuss that with Ms Colbey of the IAB?---She raised it with me initially. She raised as I said before concerns about the management. She said that it was going to jeopardise the strength of the case that the had undertaken all these activities with the approval of his supervisor, Steve Pearce and for the SES to take action against Kevin they would need to investigate Steve Pearce's conduct in managing Kevin Pallier as well.

30 Now, having been given that information did you raise it in terms with Mr Kear?---I did. I explained all of that.

And what was his response?---Ah, his response was his standard response about, "I don't have any problems with Steve Pearce and the way he managed Kevin."

Subsequent to this independent investigation dealing with Mr Pallier in which he raised the defence, "That it was all authorised by my supervisor," what happened to him?---Ah, he was terminated.

40 And was that in January of this year?---Yes.

THE COMMISSIONER: Ms McCarthy, in the course of these discussions relating to overtime did anybody ever suggest that Mr Pallier had claimed or was claiming overtime in respect of which he had not received any approval from Mr Pearce?---No. He had a broad approval from Mr, from Steve Pearce to perform the overtime and every claim had been signed by Steve

Pearce. So there was, there was documented claims, each one signed by Steve Pearce.

So were there any claims which hadn't been signed by Mr Pearce?
---No, none that were submitted.

MR FORDHAM: Now, we just dealt with the fact that Mr Pallier was terminated. Do I understand that this was the sequence of events. You raised potential issues relating to Mr Pallier's access to benefits and loadings with Mr Kear?---Yes.

That that led to Mr Kear instigating an external investigation by IAB into the events regarding Mr Pallier?---Yes.

It led to him being suspended pending the outcome of that investigation?
---Yes.

And that consequent upon the investigation he was terminated?---Yes.

20 So put simply, you raised potential problems with Mr Pallier which kicked off a line of independent inquiry leading to termination?---Yes.

No hesitation on the part of Mr Kear in doing so?---No.

That's launching the independent investigation?---No.

Were you aware at the time that Mr Pallier had also been accused of perhaps being disrespectful or insubordinate to managers within SES?---Not at the time, no.

30 You became aware of that later?---Yes.

Now, whose – could we just turn up page 245 of volume 1. Just to be clear about it, is that an example of an overtime claim form for Kevin Pallier?
---(No Audible Reply)

Is that on your screen?---Yes, it looks like one, yes.

40 And do you see the approval down in the left-hand corner?---Yes.

And who's that by?---Steven Pearce.

Yeah. And if you go to the following page, 246, a similar document again authorised by Mr Pearce?---Yes.

Okay. And finally, just for the purposes of this exercise, 247, that's a Flexitime record?---Yes.

Again authorised by Mr Pearce?---Yes.

And relating to Mr Pallier?---Yes.

And for which Mr Pallier was disciplined. Correct?---Yes.

Now, who was Mr Schafer?---Ah, Mr Schafer was the Manager of Marketing and Sponsorship.

10 THE COMMISSIONER: I beg your pardon?---Is the Manager of Marketing and Sponsorship.

MR FORDHAM: Do I take it that the SES derives at least some of its funding from private sponsorship?---Yes, it does.

And was that what it was that Mr Schafer was employed to manage and I imagine expand?---Yes.

20 Did Mr Schafer have access to a motor vehicle from the SES?---He did.

And in the course of October 2012 did you become aware of an anomaly as to how it was that he accessed that motor vehicle?---I did.

What was the anomaly?---The anomaly was that he had full private use of a motor vehicle and it was being fully funded by the SES.

30 Now, I just want to go back a step. When you say full private use, what do you mean by that?---I mean he could use it 24/7, go on holidays, use it for anything, all petrol, everything associated with that motor vehicle running costs were being paid for by the SES.

And was he required to keep a logbook or any similar item in relation to that usage?---I believe he was.

Was that a usual arrangement within the SES, that someone gets full private use of a motor vehicle?---No, it's a breach of Government policy.

40 Was Mr Schafer being asked to account for his private use of the motor vehicle?---Only in that he filled in a logbook.

Was he being asked to pay for his private use of the motor vehicle?---No, he was not.

Did you make inquiries as to how that had come about?---I did.

And who did you inquire of?---Initially Phil Schafer.

And when you spoke to Mr Shafer what did you ask him?---I said words to the effect of, It's come to my attention that you have a motor vehicle and you're not making contributions, can you explain to me what the arrangement is.

And did he reply?---Yes, he, he informed me that when he had applied for his position he had had a conversation with Steve Pearce who had interviewed him. In that conversation Steve Pearce had said, "What's it going to take to get you to come over to the SES?" His reply to Steve Pearce was, "Well, I've always had a motor vehicle so I'd like a motor vehicle," to which he said Steve Pearce replied, "Not a problem, I'll get it sorted out."

Now where did the money come from to pay for this motor vehicle to which Mr Schafer had full private access?---It was coming from NRMA sponsorship money.

And do you know who - - -

20 THE COMMISSIONER: That's SES money is it?---Once it comes in the door it's SES money, yes.

MR FORDHAM: But when you say it's NRMA sponsorship money I imagine there's a set of account and payments made, how did you identify where the money had come from?---Phil had his own budget that he was responsible for and it was a line item in his budget.

I see. And part of that budget included the NRMA money?---That was, sorry, that was the budget I'm talking about, so - - -

30 I see. So there was a budget of money supplied by the NRMA?---Yes.

And a line item underneath that budget was the motor vehicle to which Mr Schafer was giving access?---Yes, there was \$15,000 per annum allocated for a motor vehicle.

And who authorised that?---To the best of my knowledge Steve Pearce.

40 Did you do something about that?---I did.

What did you do?---I raised the issue with Murray Kear and brought it to his attention.

What did you say to Mr Kear?---I said, "We've got another issue, it appears Phil Schafer has a motor vehicle, he's not making any contributions, I've met with him, he's informed me that Steve Pearce made the arrangements. I believe from my conversations with Mr Schafer he had no idea that it wasn't appropriate. I think the matter needs to be investigated."

And what did Mr Kear say to you?---He said words to the effect of, I'll have a talk to him.

Did you follow it up?---I did.

And when you followed it up what if anything did Mr Kear say to you about what had occurred and what investigations he'd made?---He informed me that he had spoken to Steve Pearce, that Steve Pearce denied any
10 involvement. He had informed Murray Kear that people were mistaken. He had never organised or asked for anybody to provide a motor vehicle with no contributions. Mr Kear informed me that he was accepting Steve Pearce's version of events and he was not taking any further action. I raised with him that there were some staff from fleet and finance who had informed me that they were operating under instruction.

I'll stop you there. About whom are you speaking?---I'm talking about Mark Price and Amanda Singleton.

20 And when you say they'd informed you of something, in the course of investigating how this arrangement had come about did you interview various staff members?---I did.

Was one of those Mr Pride?---Yes.

And when you spoke to Mr Pride what if anything did he say to you?---He said to me that the arrangement had been instigated by Steve Pearce, that he was, it had been organised under his instruction. I asked Mr Pride if he had any emails or any information to support that, he went back and had a look
30 and he got back to me and he said he didn't but that Kevin Pallier may, at the time Kevin Pallier was suspended.

And with that in mind did you inform Mr Kear of the issue you were having with the provision of a car?---Yes, I did.

Was there any resistance to the proposition that Mr Shafer shouldn't have the car in the way that he did by Mr Kear?---No.

What was in issue I take it was how it had come back?---Yes.
40

Do you know whether or not Mr Kear interviewed for instance Mr Pride?
---Mr Kear informed me that he did interview Mark Pride and he advised me, he said words to the effect of, I've spoken to Mark Pride. He says, he's admitted that it was a misunderstanding and it was a mistake.

Now - - -

THE COMMISSIONER: Sorry, that what was a mistake?---Ah, according to Murray Kear he advised me that Mark Pride had said that he had misunderstood the instructions.

From - - ?---From Steve Pearce in not recovering contributions for the vehicle.

Well what actually happened to the vehicle after that?---Ah, the vehicle was taken from him and returned to the pool of vehicles.

10

And did he ever have to pay the money that was owing for his personal use?---His debt was waived by Murray Kear.

MR FORDHAM: On who's recommendation was that debt waived?---I believe a submission or a memo from Steve Pearce to Murray Kear.

Can you have a look at document 363 which is in volume 2, Exhibit 2. Do you recognise that as a briefing note?---Yes.

20 If you go to the next, actually if you go to page 365?---Yep.

Who is it signed by?---Steven Pearce.

And have you seen this document before?---I've glanced at his previously, yes.

Well, I'll deal with it later with another witness but part of this document in fact recommends waiver does it not?---Yes.

30 And now if you go back to page 364?---Yep.

Paragraph 2 is in fact a reference to the miscommunication or misunderstanding that you were referring to before?---Yes.

That is a misunderstanding on the part of Mr Pearce, correct, and those working with him?---Yes.

Don't worry about what the document says. Your understanding is that Mr Pearce said there is a misunderstanding of what he'd said?---Yes.

40

And he produced the briefing note dealing with that alleged misunderstanding and making a recommendation about what should happen?---Yes.

Was anything further suggested to be done by Mr Kear in relation to that issue?---I, I had a conversation with Mr Kear that I believed it required a more comprehensive investigation. He didn't agree and he said he was accepting Steve Pearce's version of events.

Now, if you go to 367 is that a document, 367, I apologise. 367. That is a memo dealing with debts incurred in relation to private motor vehicles, correct?---Yes.

And that memo come about because of in part the investigations you'd done into this and other issues arising out of motor vehicle usage?---Yes.

10 The object of which was to regularise the provision of Corporate motor vehicles, correct?---Yes.

And their private usage?---(No Audible Reply)

You have to say something?---Yes. Yes.

And the budget of the SES?---Yes.

20 They're also tax implications that were potentially catastrophic for the SES weren't there?---Yes, that's right.

Arising out of amongst other things a fringe benefits tax liability?---That's correct.

Which if the arrangements had continued could have led to a significant debt on the part of the SES?---That's correct.

And did you take advice from the tax office in relation to that issue?---I did.

30 And did you manage to avoid that outcome by the implementation of amongst other things this policy?---Yes. We didn't, we didn't I guess confirm that we had totally avoided that outcome.

I should hope not?---We're still in discussions. But we are in discussions.

Thank you. All right, now, where was I up to. I've lost my notes. Oh, thank you. During your employment at the SES was there Corporate credit cards available for the use of executives at the SES?---Yes.

40 Was there also the ability to charge expenses to the SES?---Yes.

Was there a policy in force that you were aware of dealing with how Corporate credit cards should be used?---Yes, there are a number of policies.

And were they SES policies?---Both. There were SES, there were Treasury guidelines and there were documents through Premier and Cabinet.

And did the SES policy refer to the Treasury guidelines and the Premier and Cabinet documents?---I can't recall.

All right. There were also policies about expenses?---Yes.

Putting it simply, were the expenses generated either off card or using the Corporate credit card supposed to be Corporate expenses referable to the activities of the SES?---Yes.

- 10 In, in your role with Corporate Services did you look into the use of (1) expenses and (2) Corporate credit cards?---Yes.

In the course of that investigation did you become aware of some expenditure on the part of Mr Pearce that you formed a view about and the view being whether or not it related to uses by the SES?---Yes.

As at the second half of last year did Mr Pearce's car have roof racks on it? ---Yes.

- 20 And for what were they used?---He told me they were to carry his surfboards.

Did the car also have electric brakes?---Yes.

And what were they needed for?---Again he informed me to tow his camper trailer.

Who had paid for those two items?---The SES.

- 30 And were they referable to a credit card?---The roof racks had been paid for by credit card, the electric brakes had been paid for by invoice.

Did you call for the documents relating to those items?---I did.

And in doing so did you become aware who had authorised the payments? ---Yeah, I did, yes.

And who had authorised them?---Murray Kear.

- 40 Now, were they eventually repaid by Mr Pearce?---Yes, they were.

And what brought that about?---They were repaid because I raised the issues with Murray Kear, he advised me that he'd again talk to Steve. He came back to me and said that it was a mistake and that Steve was going to pay back the money.

Now, can you just have a look at the mistake for a moment at page 164 of Exhibit 1. Now, if you go - -?---Yes.

--go down you'll see someone has circled an item for \$286, purchase of roof racks for SES vehicle?---Yes.

That's dated the 20th of the 11th, 2010, is it not?---Um, oh, yes, sorry, yes.

When was this repaid?---Oh, it was repaid after I bought it to Murray Kear's attention, so sometime after September 2012.

10 And the electric brakes for the towing of the camper trailer, that was also repaid I think in excess of 15 months after it had been incurred, wasn't it?
---That's correct.

And again after you had raised it?---Yes.

When you raised it with Mr Kear what did you actually say?---I said words to the effect of, it's come to my attention that Steve has purchased roof racks on his Corporate credit card, he's also invoiced the SES for the installation of electric brakes for his camper trailer, obviously he's not
20 allowed to do this, I think you know, it's a serious issue, we need to investigate it.

And what if anything did Mr Kear say to you?---At the time he said he'd talk to, to Steve Pearce about it.

Did you follow it up with Mr Kear?---I did, yeah.

What did he say to you?---He said that he'd spoken with Steve, it was a mistake, he didn't realise that he couldn't, he wasn't supposed to claim
30 those things and he was going to pay the money back.

And to your knowledge he did so?---I believe so.

Did you form a view about the seriousness of that issue?---Yes.

And what was your view?---I believed it was a breach of the code of conduct and it was an inappropriate use of SES money.

Well did you say that to Mr Kear?---At the time I said I thought it was a
40 serious matter and it required investigation.

All right. To your knowledge was any investigation done?---No.

Now, I want to move to the broader question of expenses. Did you become aware of a reconciliation of Mr Pearce's credit card?---Yes.

And on being, who made you aware of it?---Mark Pride and Jenny Pilledge.

And when you looked at the reconciliation did you form a view about the appropriateness or otherwise of some of the expenditure on the card?---Yes.

And what was your view?---I, I glanced at a number of pages of documents, I glanced over them and there were a number of expenses that I believed were potentially inappropriate.

10 And what did those expenses relate to?---They related to accommodation in Sydney. They related to meals, significant numbers, cups of coffee and morning teas.

Now, I just want to go to accommodation for a moment. I take it from time to time in the course of the employment of someone such as a deputy director they have to stay away from their home?---Yes.

When they do so is there any guidance as to what level of accommodation one should be using?---Yes.

20 And what is, what level of accommodation should you be using?---I can't remember the figures but there is a dollar amount attributed depending on your level or your position within an organisation. The higher you are the nicer the motel, the rate goes up as you, but I can't recall what those dollar amounts are.

Then does it go as high as including accommodation in places like the Sofitel and the Hilton?---Not as far as I'm aware.

30 Now, having become aware of what you thought might be anomalies did you report that to someone?---I did.

Who?---I did two things, firstly I informed Murray Kear.

And when you informed him what did you do, what did you say to him?---I, I said that I had been given a number of documents from Jenny Pilledge and Mark Pride in relation to Steve Pearce's use of his credit card. I've had a glance over those documents. There appear to be a number of concerns. I'm going to get IAB to conduct a desktop audit, there are too many items for me to be able to manage this myself. I will keep you informed.

40 And were IAB engaged in relation to that desktop audit?---Yes they were.

And did you receive information from IAB as to the result of that desktop audit?---I did.

And when you received that information in summary form what did it tell you?---It identified 154 irregularities. It classified those irregularities into different areas. It indicated the 154 equated to around about \$11,500. The irregularities ranged from accommodation, exceeding the accommodation

cap rate, the accommodation being in Sydney, meals, coffees, the signing off of the credit card, and so on.

Was there any, I withdraw that. Now, as a result of receiving that information did you discuss it with Mr Kear?---I did.

What did you say to him?---I informed him that the IAB report had come back, that it was identifying a number of issues, and that I was going to be preparing a memo to him in relation to that.

10

Now, I'll come to the memo in a moment but did he say anything in response to what you were telling him and the fact that you were going to prepare a memo?---At the time I raised that some of the issues were about accommodation and coffees and meals and he said that he wasn't necessarily of the view that that would be a problem.

THE COMMISSIONER: Meaning what?---That he didn't have an issue with using a Corporate credit card for meals or accommodation and coffees.

20 MR FORDHAM: You mentioned Sydney?---Yes.

Do you know where Mr Pearce lived in the second half of last year?---Yes. To the best of my knowledge.

Where?---At Helensburgh.

Where's that?---That's in, on the edge of the Sydney Metropolitan area.

Now, if you could go to page 435 for me.

30

MR HARRIS: Commissioner, just while we're going to that page on behalf of Mr Pearce is that reference to Helensburgh a matter that might be covered by the suppression order in relation to addresses?

THE COMMISSIONER: Hardly. There's no address there.

MR HARRIS: Well, it's a partial address but I won't cavil with your ruling, Commissioner.

40 THE COMMISSIONER: I mean, is it, I just don't see what harm it can do, Mr Harris. If you can tell me what harm it can do I might change my mind but I just don't see it.

MR HARRIS: Well, it's his family home, Your Honour, Commissioner and

THE COMMISSIONER: No, I understand that.

MR HARRIS: Yeah, and there are other people resident there of course.

THE COMMISSIONER: Yes.

MR HARRIS: In a - - -

THE COMMISSIONER: But if it was the address I would give a suppression order but I - - -

10 MR HARRIS: As you please.

THE COMMISSIONER: I think the point is that it's, it's of relevance in the inquiry- - -

MR HARRIS: Of course.

THE COMMISSIONER: - - - in relation to the legitimacy of the claims.

20 MR HARRIS: Yes, Commissioner, I wasn't disputing the relevance, merely the publication of it.

THE COMMISSIONER: That's why I'm reluctant to grant the order. I would grant the suppression order for the address but that's a very vague description so I'm afraid I won't.

MR HARRIS: Yep.

MR FORDHAM: Do you have page 435 on the screen?---Ah, it doesn't have a number but- - -

30 Well, take it from me it is. Is it headed- - -?---Oh, yes, it does now, yes.

Thank you. And is that a document you prepared?---Yes.

And does it amongst other things attach the IAD (as said) desktop audit - - -?---Yes.

- - -although not in this version?---Yes.

40 And as a result of the information that you had received at that stage - I'm not suggesting it was a full audit, but on the basis of that desktop audit did you form a view as to what needed to happen?---I did.

And what was your view?---That the Commissioner should appoint an independent external investigator from IAB to investigate the allegations.

Aside from putting it in this document did you raise it with Mr Kear?---Yes, I did.

What was his response?---His response, he, he flicked through the report, he informed me that he didn't have a concern in relation to accommodation in Sydney and the purchase of meals and coffees. I responded back, "Well, Murray, what are you saying? I live, you know, 10 minutes from the city, is it okay for me to be claiming meals when I'm in the city at meetings?" And he said, "Well, no, not exactly." And I said, "Well then why is it okay for Steve? He lives in the Sydney metropolitan area?" He said, "Well, I don't know that I've got a problem with it but I will look into it."

10

There are in fact or there is in fact guidance available as to what is available to be claimed, isn't there?---Yes.

And one of those things is a kilometre distance- -?---Yes.

- - -from your home as to where it is you're working?---Yes.

Yes. And you did come to be aware eventually that some of the claims that Mr Pearce had made were in fact validly available to him- -?---Yes.

20

- - -in the form of meals?---Yes.

And in some cases accommodation?---Yes.

The issue as far as you were concerned was perhaps the lavishness or otherwise of the accommodation. Correct?---Yes.

And also the provision of things like afternoon tea and morning tea?---Yes.

30

Was the purchase of alcohol an issue in the audit as far as you were concerned?---I believe it was identified and noted as having been repaid and the audit asked or suggested that that just be followed up.

And the reasoning behind that, your understanding as a public sector or former public sector employee is that you are not supposed to put personal items on your card and repay yourself, are you?---Yes, that's correct.

Thank you. I note the time.

40

THE COMMISSIONER: Is it a convenient time, Mr- - -

MR FORDHAM: It is.

LUNCHEON ADJOURNMENT

[12.59pm]