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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION DEWAR

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY, 4 DECEMBER 2013

AT 10.03AM

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THE COMMISSIONER: Mr Fordham.

MR FORDHAM: I understand that Ms McCarthy is to return to the witness box - - -

THE COMMISSIONER: Yes.

MR FORDHAM: - - - to be cross-examined this morning.

10 THE COMMISSIONER: Yes.

MR FORDHAM: Following that we have a number of - three or four witnesses lined up, some of whom are Government officials. There is one Government witness we cannot get until tomorrow morning. In my view and subject to any ruling you make it would be inappropriate to start on Mr Pearce and Mr Kear as and until I've completed the other oral evidence. I will endeavour to move with Mr Pearce tomorrow morning and when he finishes we will then have Mr Kear. I am confident that we will finish certainly by Tuesday but may well finish by Friday.

20 THE COMMISSIONER: Yes, thank you, Mr Fordham. Ms McCarthy.

MR FORDHAM: I should raise one issue.

THE COMMISSIONER: Yes.

MR FORDHAM: Which is there are - I am having some copies made of some statements. Mr Wheeler, the Deputy Ombudsman, has expressed a view with which I agree which is neither competent nor compellable, we've
30 taken a statement from him and subject to what everybody at the bar table has to say and any ruling from the Commissioner I intend to tender it. There is then a Ms Fredman who received some material from Mr Kear and we have a statement from her which I intend to tender and unless anyone really requires it I cannot see the utility in calling her to give oral evidence.

THE COMMISSIONER: Yes.

MR FORDHAM: I'll hand out the documents to the others before I move to a formal tender later in the day.

40 THE COMMISSIONER: Very well. Ms McCarthy. I should say that the Commission has received complaints from members of the public that yesterday very often they were unable to hear what was being said. So I would again appeal to counsel and witnesses to speak into the microphone. After that I'm now told that there are problems with the mechanism so we have to - is it fixed? No, we can proceed.

THE COMMISSIONER: Ms McCarthy I'm not going to administer the oath again, you understand that you're still under the oath and the section 38 order continues to apply to you.

Mr Oates.

10 MR OATES: Thank you, Commissioner.

Ms McCarthy, I represent Mr Kear. Do you understand that?---Yes, I do.

Were you present yesterday afternoon when Ms Brus gave evidence?---I was, yes.

20 Did you ask Ms Brus for advice about what should be done with respect to the Industrial Relations Commission proceedings in the wake of your understanding that there was a suggestion evidence had been fabricated?

MR TAYLOR: I'd object to this line of questioning. The evidence from Ms Brus was quite clear, Commissioner, that no evidence had been filed in the Commission both prior to or subsequent to the first and or the second conciliation conference then the matter then settled without any evidence being filed.

Apprehend my friend's going to be up putting - - -

30 THE COMMISSIONER: Well I think you should just wait until that happens, Mr Taylor.

MR TAYLOR: If the Commission pleases.

THE COMMISSIONER: So just put the question again please, Mr Oates.

MR OATES: I'm sorry I didn't hear you, Commissioner.

THE COMMISSIONER: Put the question again please.

40 MR OATES: Did you ask Ms Brus for advice about what should be done with respect to the Industrial Relations Commission proceedings that's the unfair dismissal proceeding commenced by Mr Pallier in the wake of your understanding of there being a suggestion that Mr Pearce had fabricated evidence?---No, I did not.

She was there with you at the coffee table wasn't she?---Yes.

She was counselled briefed by the SES to conduct the proceedings on the organisations part?---Yes.

You were the person providing her with instructions?---Yes.

You are one of the most senior people in the organisation?---Yes.

10 Why didn't you ask this very competent very experience counsel what might happen in the event that these proceedings continued?---At that point we were there for conciliation and that's what we discussed was conciliation.

But you see if the allegation was correct wouldn't the proceedings themselves irrespective whether there are conciliation or otherwise had been proceeding under potentially false basis?

THE COMMISSIONER: I won't allow that. That's not necessarily so. That's too broadly put.

20 MR OATES: If Mr Pallier believed that the Pearce material had been fabricated that would have put his case in - - -

THE COMMISSIONER: Well I think you should define the material.

MR OATES: I beg your pardon?

THE COMMISSIONER: Define the material. It's too broadly put, Mr Oates, all you need to say is Mr Pallier believed that a diary entry or diary entries had been fabricated.

30 MR OATES: Yes, thank you, Commissioner.

You had knowledge or you believed you had knowledge that some evidence crucial to the case for the SES may have been fabricated?---I don't know that it was crucial but it was some evidence, yes.

You knew from your conversation with Ms Brus that the material was very important to the case for the SES?---Sorry, the diary notes?

40 Yes?---No, I wouldn't, I don't know how crucial it was.

Did you hear the evidence of Ms Brus yesterday when she said that in your presence at the coffee shop she told both you and Ms Calder that Mr Pearce's role as Mr Pallier's manager was critical, particularly given what I saw to be a major problem with the matter of the overtime and we would have to put Mr Pearce into the witness box, that's at page 95 of the transcript yesterday?---Yes, I recollect words to that effect.

You accept Ms Brus' view don't you, that that was a critical component?
---Yes.

She then said that you looked and Ms Calder looked somewhat dissatisfied with the suggestion that Mr Pearce would have to get into the witness box?

THE COMMISSIONER: I don't think she - I don't think that was her evidence. She was, the looks of dissatisfaction - - -

10 MR OATES: Sorry.

THE COMMISSIONER: - - - related to the advice that she'd given.

MR OATES: That's very correct, Commissioner. I'll put it in full.

Ms Brus went on to say, "I recall that there was a look of I suppose dissatisfaction with that proposal from both Ms McCarthy and Ms Grange at that suggestion, you heard Ms Brus say that, do you recall her saying that to you in conference in a coffee shop?---She didn't say to me - - -

20

THE COMMISSIONER: No, no, she didn't say that?--- - - there was a look of dissatisfaction.

She didn't say that, Mr Oates, she said that she noticed a look of dissatisfaction on the faces of Ms McCarthy and Ms Calder at the advice she had given.

MR OATES: Was there a look of dissatisfaction on your face or were you dissatisfied with the advice she gave you that Mr Pearce may have to get in
30 the witness box?

THE COMMISSIONER: Those are two questions, put one.

MR OATES: Were you dissatisfied with the suggestion that Mr Pearce would have to get in the witness box?---I don't recollect.

You said yesterday that you were removed from the Pallier investigation by Mr Kear?---Yes.

40 Let me suggest to you that's not the case?---Is that a question?

Yes.

THE COMMISSIONER: The question is do you accept that, do you accept that that's not the case?

MR OATES: Do you agree?---No, I don't.

You took the allegation of fabrication of evidence back to Mr Kear didn't you?---Yes, I did.

That was after the conciliation?---Yes, I did.

There was a second conciliation wasn't there?---Yes.

Mr Kear didn't remove you from the position of authority you had in relation to that second conciliation did he?---No, he did not.

10

No?---But we're talking about two different things.

So Mr Kear removed you from the investigation then - - -

THE COMMISSIONER: Sorry, Mr Oates, I just want to get clarity on this.

When were you removed from the conciliation, before or after the second conciliation?---No, I was removed from managing the investigation when it was ongoing and then conducted by Helen Colbey before the findings had been delivered by IAB.

20

But at what stage was that in relation to the conciliation?---That was some months before the conciliation hearing, when the matter went to the Industrial Relations Commission I was then asked to become reinvolved with the matter.

MR OATES: So Mr Kear removed you from the investigation and then gave you ultimate authority to manage the matter in the Industrial Relations Commission.

30

MR FORDHAM: I object to this. There has to be some relevance to the inquiry that was put forward and the scope of this inquiry and it's difficult to see how this relates.

THE COMMISSIONER: Yes. What is the relevance of this, Mr Oates?

MR OATES: Well, I'm only going on the relevance that Counsel Assisting demonstrated when he introduced the evidence that she'd been removed from the investigation, I'm just testing it. It seems to me that that question as to whether she was later given a greater authority in my submission is relevant to whether she was later given a greater authority in my submission is relevant to whether she was taken off the investigation in the first place.

40

THE COMMISSIONER: Well, I understand that. You can question Ms McCarthy on that issue.

MR OATES: So what you're saying is that Mr Kear took you off the investigation, correct?---He took me off oversight of an investigation being conducted by Helen Colbey.

Yes. And did you in some way find that was wrong? Are you criticising Mr Kear for that?---I'm saying that he took me off the investigation.

But there might be myriad reasons why he would do that mightn't there?---
There could be, yes.

10

Many of them, in fact all of them legitimate, true?---(No Audible Reply)

MR FORDHAM: Well hang on, there's two questions there.

MR OATES: All of the legitimate, correct?---That could be correct, yes.

Yes. Yes.

20

THE COMMISSIONER: This is not Ms McCarthy's point, it's the Commissions Point. There's an inference that's available from this. It's not Ms McCarthy who's drawing the inference. The inference is something, the groundwork for the inference has been laid by her evidence which is being led but it's not for Ms McCarthy to explain that.

MR OATES: Yes, I accept it's for the Commission to make that determination. And if there are to be inferences drawn then it can be taken into account the later conduct of Mr Kear.

30

THE COMMISSIONER: Yeah, of course.

MR OATES: Yes. And that later conduct was that he appointed you to a position whereby you were going to instruct Ms Brus at the Industrial Relations Commission, true?---Yes.

And even though there was an allegation by you after the first conciliation date that there was some evidence that had been fabricated, potentially fabricated by Mr Pearce Mr Kear left you in that role and you settled the case for the SES?---Yes.

40

THE COMMISSIONER: Ms McCarthy, as I understand your evidence you were first removed from your role as supervisor of the investigation, is that right?---As managing it, supervisor, whatever term you use in relation to Helen Colbey who was conducting the investigation.

Yes?---So I wasn't - - -

I understand that. And sorry, what were you going to say?---I wasn't doing the investigation.

No. No?---Yeah.

But you were supervising it?---Yes.

When you were asked to take over responsibility for the conciliation had that anything to do with the investigation?---The conciliation, or the reason why we were in conciliation was because the investigation was the reason that Murray Kear had used to sack Kevin Pallier.

10

Had the investigation completed at that stage or was it still ongoing?---No, it was complete.

It was complete by the time the first conciliation occurred?---Yes, it was complete I believe in December of 2012. Kevin Pallier was sacked as a result of Murray Kear's analysis of that investigation in January, 2013 and the conciliation and the Industrial Relations Commission action was after his sacking.

20 Thank you. Mr Oates.

MR OATES: Trust among members of staff in the public service is very important isn't it?---Yes.

If you loose faith in somebody then that's a major difficulty in the relationship?---Yes.

THE COMMISSIONER: Well loosing faith and loosing trust are two different things.

30

MR OATES: I'll go back to using them both then, Commissioner. If you loose trust in somebody, if your trust is no longer well placed and that's what you feel that's a major difficulty in a relationship isn't it?---Yes.

You were aware weren't you of the reasons Mr Pallier was terminated?---No I wasn't.

THE COMMISSIONER: I think you better put the reasons.

40 MR OATES: One more question in the interim if you don't mind, Commissioner.

THE COMMISSIONER: Yes.

MR OATES: You went to the conciliation on two occasions?---Yes.

Had a conference with Ms Brus on two occasions?---More than two occasions but - - -

And you don't know why Mr Pallier was sacked?---(No Audible Reply)

THE COMMISSIONER: No, no, she didn't say that?---I, I don't know how Commissioner Kear came to the conclusion to sack Kevin Pallier - - -

MR OATES: What do you - - -?--- - - - having read the investigation.

10 What do you understand to be the, sorry, you didn't read the investigation?
---I read the, I read part of the investigation prior to attending conciliation.
That was the first time it was made available to me.

You consider that reading part of the investigation armed you appropriately to conduct a conciliation on behalf of the SES?---I was conducting conciliation on behalf of the SES under instruction from Murray Kear.

Oh Mr Kear his decision was it?

20 THE COMMISSIONER: I beg your pardon? I can't hear you.

THE WITNESS: What, what I - - -

MR OATES: It was Mr Kear's decision was it, the decision to, the decisions you made in the conciliation?---Yes, they were his - - -

Oh were they?---They were his decisions.

30 Right?---I was representing him. He outlined what I was allowed to propose via the barrister, what we might offer financially, what we might offer in relation to a return to employment and so on, they were not my decisions. I was representing what he authorised me to instruct.

When did the conversation with Mr Kear when he gave you those instructions take place?---They were in a phone conference with Mr Kear, Elaine Brus, Lorna Calder and myself.

Do you know the grounds upon which Mr Pallier was dismissed?---No.

40 Do you know that Mr Pallier and I assume you do because you gave brief evidence about this subject yesterday had been sitting on a report which made him liable for some funds he had to return to the Department for use of motor vehicles?---Yes.

It's a serious matter?---Yes.

THE COMMISSIONER: The report couldn't make him liable.

MR OATES: In which he was liable. That was the fleet report wasn't it, where he had concealed or hadn't brought forward a report whereby his contribution for private use of his vehicle was due to the SES?---His and other peoples, yes.

Yes. And his was the largest?---Yes.

10 And it was brought to your attention by somebody else when Mr Pallier wasn't there because, well it was brought to your attention when Mr Pallier wasn't there?---Yes.

Yes. And that was a serious matter?---I believe so.

Yes. It was also serious in two, another way wasn't it? Not just in the fact that he owed money that hadn't been paid but that he was concealing it from his employer?---He was potentially concealing it from his employer. Potential serious breach of trust?---Yes.

20 THE COMMISSIONER: When you say potential what do you mean?---At that point in time I wasn't aware who knew what, I had been presented with this report and it appeared that it'd not been actioned for three months. That was the issue that was referred for investigation.

I'm sorry, I'm not following this, I don't understand. Can you just -- the, the report, the report said what?---The report was a reconciliation of peoples private use of motor vehicles versus their actual private use and the private use attracts personal contribution and it had reconciled what their payments were against what their payments should be and the fringe benefit tax implications.

30

Yes. But you were asked whether you, whether Mr Pallier was concealing his debt?---Yes.

And, and did you know that he was, I thought that's what you replied that was potentially the case?---It could have been. What I knew was he had not actioned that report, he had not brought it to other peoples attention.

All right, thank you?---Was he concealing, I, I don't know.

40 Yes. That's what you mean by potentially concealed?---Yes.

The fact that he'd done nothing about it?---Yes.

Yes, thank you. Yes, Mr Oates.

MR OATES: And did you also know that Mr Pallier was found to have bullied a, an employee of IAB?---Um, I'm not sure that he was found to, there was some allegation around that.

And that was in relation to trying to persuade that lady not to include in a report of hers some information about a gift - - -?---Yes.

- - - that Mr Pallier had received?---Yes.

Bullying a very serious matter in the public service isn't it?---Yes.

10 THE COMMISSIONER: Was there a finding that Mr Pallier had and not done anything about the report and kept it from others or was that an allegation?---It was an allegation. He, I mean these are probably questions better put to Helen Colby who conducted the investigation but my recollection is that he provided an opposing view as to why he had not actioned it in relation to his work load and other, and other matters.

Yeah.

20 MR OATES: You mentioned yesterday that the contract between the SES and Karoshi was \$240,000, that's the potential value of the contract?---Over a 12 month period.

Yes. I'm not trying to trick you here but am I looking at the contract it's potentially \$260,000. Do you agree with that?---Not to the best of my knowledge.

If you call, and again I stand to be corrected but the document reads, "\$2,000 per month for a year on a certain - - -

30 THE COMMISSIONER: \$2,000.

MR OATES: \$2,000 a week - - -

THE COMMISSIONER: \$2,000 a week?---\$20,000 a month.

MR OATES: I'm sorry, sorry, 20. Thank you. Thank you. \$20,000 a week. A month?---A month.

40 A month. Yeah, thank you. But the, did you calculate the fact that there was an amount also allowed for June, that is the month prior to that when there was work at 1250 per day which also would have amounted to \$20,000?---Ah, I don't recollect. What I calculated to the best of my memory was the contract had provision for a four month, four week period of leave so I took a month off the value of the contract which would be \$20,000 and brought it to \$240,000.

Thank you. When you mentioned that Mr Karoshi, I beg your pardon, Karoshi Pty Limited's matter was settled for \$40,000 you were present at that, at that meeting?---Yes.

You and Mr Kear negotiated with Mr Eggert?---Ah, I recall I said nothing in that meeting.

I beg your pardon. But you were there at the meeting?---I was.

So you heard what was said?---Yes.

10 Yes. I'm not suggesting you are being untruthful about this but are you able to say whether it was definitely \$40,000? It might have been \$25,000?---Ah no, it's in the vicinity of \$40,000.

\$20,000 perhaps, would that be the amount?---To the best of my knowledge it was in the vicinity of \$40,000 but I'm sure it can be confirmed.

But I suggest to you it was \$25,000 negotiated at the table with you and Mr Eggert, and Mr Kear. Do you accept that?---I can only say to the best of my recollection it was around \$40,000.

20 I think you've previously said that when you raised the Karoshi matter with Mr Kear, that is the non-standard contract and the lack of tender that you also raised a suggestion that Mr Pearce had provided confidential information to the potential contractors that the tariff was about \$240,000 for the work?---Yes.

And I think you suggested that you told Mr Kear those three things together?---Sorry, what, what three things?

30 Yes. That the contract was out of standard form - - -

THE COMMISSIONER: Could you speak a bit louder, Ms McCarthy. So, yes Mr Oates.

MR OATES: The three things were that the contract was not in standard form, secondly that it hadn't gone to tender, and thirdly that Mr Pearce was alleged to have told at least one contractor, that is the man from Performance Drivers that the fee for the contract was to be \$240,000?---To the best of knowledge, yes.

40 Yes. Do you think you might be mistaken about that and have told Mr Kear about the irregularity of the contract and about the lack of tendering at the first instance and later told him about the suggestion that Mr Pearce had provided information about the price for the contract?---It's possible.

Do you recall some evidence yesterday about the overtime issue and you describe it as being an overpayment or overtime was being overpaid to staff

because it was being paid at their award rate rather than the grade 8 clerk rate plus \$1?---Yes.

And you drafted a memo or an email which Mr Kear approved and it went to the members of the SES and there was dissatisfaction about that reduction?---There was dissatisfaction from a small number of staff who were impacted by the decrease, the application of the decreased rate, very minor dissatisfaction, yes, a very small number of people.

10 Yes. Did you take all the complaints or did some of them go direct to Mr Kear do you think?---No idea.

So you don't know how many complaints he received?---No.

So when you say a small number of people you're talking about your personal experience with the complaints?---No, I'm talking about a discussion that was had on the matter in the senior executive group where it was raised that there was a small group of people who were unhappy about the decision.

20

Did Mr Kear raise that with you some other time when he asked you about the advice that you gave him?

THE COMMISSIONER: Are you suggesting, Mr Oates, that Mr Kear said the advice was wrong?

MR OATES: No.

THE COMMISSIONER: So I don't understand the purpose of the question.
30

MR OATES: Was there some later conversation where Mr Pearce - I withdraw that, Mr Kear said to you that - I withdraw that, let me start again, Commissioner. Several months after the change did Mr Kear say to you that effectively there had been a period of de-motivation and mistrust among staff over the reduction in overtime rates?---Not that I recollect, no.

And did he also to you, I suggest, at the time that you said to him well, something along these lines, When we first discussed the issue I told you that you could have simply continued to allow the rates at the higher level?
40 ---No, I don't recall that and that would be incorrect.

THE COMMISSIONER: That would have been contrary to policy wouldn't it?---That's right, contrary to the award.

Contrary to the award.

MR OATES: And that there was a discretion in Mr Kear, Mr Kear had a discretion to allow that if he wanted to do so?---No, he did not have discretion to allow it. To the best of my knowledge he did not.

And Mr Kear reminded you that in mid September when you raised the issue of overtime you hadn't told him that there was any flexibility, that it had to be reduced. Do you recall that conversation?---No, I do not.

10 You certainly deny ever giving Mr Kear advice that he had the capacity in his position as Commissioner to leave the rates of overtime as they existed prior to you suggesting the change?---Sorry, can you just clarify?

You, you did not, from what I understand of your evidence, tell Mr Kear that he had a discretion to allow overtime rates to remain as they had been? ---No, I did not, I did not tell him he had that discretion, I am of the view he did not have that discretion.

20 You gave evidence yesterday, transcript page 36.9, this is in the context of you having reported to Mr Kear the Karoshi and Performance Drivers contracts irregularities, that Mr Kear said to you after you told him you weren't satisfied with his decision about Mr Pearce and that you were going to do a brief, "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," that's what you said yesterday?---Yes, to the best of my - - -

You adhere to that today on your oath?---Yes. Words to that effect.

30 Let me suggest to you this was the conversation, Mr Kear said words to the effect of, "If you need to you can do a brief but this is the way I see it, Pearce made a mistake or he was negligent, corrupt not negligent" and you said something - - -

THE COMMISSIONER: Sorry, corrupt not negligent?

MR OATES: I beg your pardon, not corruption negligence.

THE COMMISSIONER: I think you better start again, Mr Oates.

40 MR OATES: You said words to the effect - - -

THE COMMISSIONER: Put it one by, put it part, put it part by part otherwise it gets too long.

MR OATES: You said words to the effect of if you need to, I'm sorry, Mr Kear said words to the effect of, "If you need to you can", that is put forward a brief, "but this is the way I see it Pearce made a mistake." Do you agree that's what he said?---Absolutely not.

And you said something like, "Well I feel a bit insecure as you haven't signed off on the contract." Did you say that?---They weren't the words I used. Would you like me to tell you?

THE COMMISSIONER: Sorry, I can't hear you, Ms McCarthy.

MR OATES: Were they the words that Mr - - -

10 MR FORDHAM: Hang on. The witness was giving an answer and then your Honour, the Commissioner didn't hear it she should be, she should be entitled to repeat it.

THE COMMISSIONER: Yes, please.

THE WITNESS: Sorry, I said they weren't the words I used would you like me to tell you the words that I recall using.

20 MR OATES: And I was going to ask her to answer my question and then I'm sure my friend could ask the other question he wishes to do so.

THE COMMISSIONER: But your question's been answered.

MR OATES: Thank you. That's - I'll move on.
And did Mr Kear then say, "You needn't be concerned about that, I understand this is something you should be doing as part of your job"?
---No, he did not say that.

"If you wish I'll sign off on your contract today?---Yes, he did say that.

30 THE COMMISSIONER: What contract is that?---My contract of employment.

MR OATES: "You needn't feel insecure - - -

40 THE COMMISSIONER: Sorry, what did he mean, what does that mean?
---When you join an organisation as a senior executive you're employed under a contract that contract is usually executed some weeks after you commence because you need to develop a performance agreement as an annexure of that contract and that takes a number of weeks to do. So for your first few weeks within the organisation sometimes you know six or eight weeks you don't have an executed contract.

All right, thank you.

MR OATES: What does that mean in a legal sense do you know, does it mean that your employment or your position's at the whim of the - - -

THE COMMISSIONER: Well I won't allow that, won't allow that.

MR OATES: Commissioner?

THE COMMISSIONER: I won't allow that, Mr Oates.

MR OATES: I'm only asking for her understanding, your Honour.

THE COMMISSIONER: I won't. Ask the question again please.

10 MR OATES: What do you understand that to mean potentially in respect of your position that you were there at the whim of the Commissioner or that there was some break upon him being able to remove you before the contract was executed? What do you understand the position to be?---I, I understood that my contract that hadn't yet been signed was for a five year period, without that being signed my tenure could be for any period and could be potentially terminated at any point.

So you understood or thought you understood anyway that Mr Kear had the power to remove you immediately if he chose to do so?---Yes.

20 Let me also suggest to you that Mr Kear wasn't angry.

THE COMMISSIONER: When?

MR OATES: At the time of this conversation?---I disagree with that.

Yes. And he didn't raise his voice?---Again I disagree.

30 In a general sense he was supportive of you in that instance?---No, he was not.

You applied for the job as Deputy Commissioner when it was advertised as being for operations, true?---I'm not sure it's specified in the advertisement that it was operations, in a conversation with Murray Kear he informed me that the role as, it would be in the area of operations and we had a conversation about what that meant.

That was the job that you sought?---Yes.

40 And later when he offered you a position it was Corporate Services?---Yes.

And you expressed your disappointment that it wasn't the Operations job but you took the Corporate Services job?---Yes.

And you later raised it with him again that you were disappointed that you didn't have the Operations job?---I raised with him at some point afterwards that, or very soon after my appointment that my skills I believed that I had

stronger skills in Operations however I was more than happy to do the Corporate Services portfolio.

Yes, that's why you took the job. You were happy to do the, do that work initially?---Yes.

10 Correct. But as the, your appointment went on did you say words to the effect of, to Mr Kear, that Operations was what you, what you really wanted?---As my appointment went on I in fact said to Mr Kear that I was rather pleased that I had ended up in Corporate Services, it had turned into being a much more complicated role, much more interesting, and had ah, much more of an impact on the operations of the organisation. So upon reflection I was pleased to have been given that position.

20 Did you tell Mr Kear after the initial conversation when you accepted the position at any time that you were disappointed that you were in Corporate Services?---I believe I advised him, as I said before that I thought my skills were better suited for Operations however I was happy to take the Corporate Services role.

Is that when you had the initial conversation accepting the job?---No. That was at second interview where Murray Kear informed me he was thinking about changing the vacancy to Corporate Services, how did I feel about that? Would I continue with my application?

30 Yes. After you were in the role of Corporate Services Deputy Commissioner did you at some time, any time tell Mr Kear that you were disappointed that you had not been appointed Deputy Commissioner Operations? I'm talking about the end of 2012?---Ah, as I said I informed Mr Kear that having sat in the role for a number of weeks I was now quite pleased to be in it, it was a far more interesting role than I had anticipated.

THE COMMISSIONER: Is your answers, I just, I think you can answer Mr Oates' question yes or no?---Okay. Sorry, can you ask the question - - -

MR OATES: You wish me to repeat the question?---Yeah, sure.

40 Did you towards the end of 2012 express disappointment to Mr Kear that you had not been appointed Deputy Commissioner Operations as that was the role you really wanted?---No.

Did you, did you complain to other members throughout the course of your employment, including also Mr Kear that you were dissatisfied that you'd been appointed Deputy Commissioner Corporate Services?---No.

Did you express to Mr Kear and/or other members of the SES during your employment that the role you really wanted was Operations and you were disappointed you didn't have it?---I, I expressed that I had initially applied

for the position of Deputy Commissioner Operations. When it changed and Corporate Services was the offer I initially felt disappointed. However, having been in the role for a number of weeks I was pleased that it had turned out that way and I had been appointed to the position of Corporate Services.

During the course of your employment, about nine months wasn't it?---
September through to May, yep.

- 10 Did you tell Mr Kear on more than one occasion that you were disappointed you had not been appointed Deputy Commissioner Operations?

THE COMMISSIONER: You can just answer that yes or no.

MR OATES: I don't think she has, Your Honour.

THE COMMISSIONER: Well why are you answering it, why are you asking it again?

- 20 MR OATES: I don't think she's answered the question, Your Honour, Commissioner.

THE COMMISSIONER: Well, I'm saying that she can answer it yes or no.

MR OATES: Yes she can.

THE COMMISSIONER: That's all I said.

- 30 MR OATES: Oh sorry, I thought you were, I thought you suggested to me that she'd already answered the question. I beg your pardon?---Did I on more than one occasion?

On one or more occasions?---Express disappointment? Yes, I answered that before in the, when the offer was made.

THE COMMISSIONER: And that's the only time? Or did you express that disappointment later?---Later on we had a conversation where I - - -

- 40 Just answer it yes or no, please. It's just, Ms McCarthy, I just want to get over this. I don't see that it's really relevant?---Okay.

But I, so I just would like you to answer the question yes or no so we can move on to something else?---Can you ask - - -

Do you know - all right. Ask the question again please, Mr Oates.

MR OATES: Leaving aside the initial expression of disappointment when you were discussing the job or being offered the job by Mr Kear, right?

---Yes.

During the course of your nine months' employment with the SES did you tell Mr Kear on one or more occasions that you were disappointed you hadn't been appointed Deputy Commissioner Operations, yes or no?---Yes, yes.

How many times?---Once.

10 When do you say - - -

THE COMMISSIONER: That's the time you've already told us about?
---Where I said I was very pleased to be in Corporate Services.

Yes, all right. Okay. Thanks.

MR OATES: The answer to my question then is no, is it not?---(No Audible Reply)

20 I asked you whether you'd been, whether you'd ever expressed to Mr Kear that you were dissatisfied you hadn't been appointed to Deputy Commissioner Operations?---My answer is yes, I did.

Yes, and that was when the job was being offered to you, correct?---Correct.

At any other time in the course of your employment?---Yes.

I don't understand.

30 THE COMMISSIONER: That's the second time when - - -?---The second time was when I referred to I was initially disappointed at not getting the role of Operations, however, now that I have been in the job for a number of weeks I am really pleased.

MR OATES: Yes, that was on an occasion - - -

THE COMMISSIONER: Mr Oates, I'd really like you to move on now to a different point.

40 MR OATES: Did you ever say to any other SES member throughout the nine months of your employment that you were disappointed that you hadn't been appointed Deputy Commissioner Operations?

THE COMMISSIONER: Why is this relevant, Mr Oates?

MR OATES: Relevant in terms of motive, your Honour, motive.

THE COMMISSIONER: Motive?

MR OATES: Well, these are - - -

THE COMMISSIONER: Motive for what?

MR OATES: Well, these are credit issues, your Honour, Commissioner.

THE COMMISSIONER: Motive for what?

10 MR OATES: Well, that's a matter for submissions, Commissioner.

THE COMMISSIONER: I really don't understand the relevance of this at all and we've spent a long time on it.

MR OATES: Well, Commissioner, I don't mean to be disrespectful but - - -

THE COMMISSIONER: I just want to know why it's relevant, I'm asking you.

20 MR OATES: The questions were reasonably simple and - - -

THE COMMISSIONER: I'm sure they're simple, I just want to know why they're relevant.

MR OATES: I've expressed my view, my, my submissions.

THE COMMISSIONER: No, you have not, you have not explained to me why they're relevant other than to say they explain motive, I don't understand that answer because what is, motive for what?

30

MR OATES: Well, your Honour, there are, Commissioner, I beg your pardon, there are certain matters in respect of which this witness differs in her evidence to my, to my client and I'll be making submissions in respect of which person should be accepted later on.

THE COMMISSIONER: Yes. I understand that.

MR OATES: Yes.

40 THE COMMISSIONER: So?

MR OATES: And whether somebody wants a particular job may be a motivation for a particular comment.

THE COMMISSIONER: All right. Just, just, ask your last question on this topic and move on please.

MR OATES: Did you during the course of your nine months' employment ever tell any SES members or other staff of the SES that you were disappointed you had not been appointed Deputy Commissioner Operations?---Yes, I made reference to my initial conversation with Murray Kear.

THE COMMISSIONER: Is that - - -

10 MR OATES: It doesn't answer the question?---Yes, I did and I referred to the statement that I had made to Murray Kear when he informed me at the second interview, so I made reference to it to another member of staff in relation to the comment made at my second interview.

THE COMMISSIONER: That is to say that when you said that you were initially disappointed but now you're pleased?---Yeah, yes.

The evidence is crystal clear on this, Mr Oates. Can we now move on please?

20 MR OATES: With respect, Commissioner, that's not an answer to my question.

THE COMMISSIONER: Well, I'm sorry. Now move on.

MR OATES: Then that's all I have to put.

THE COMMISSIONER: Yes, thank you. Mr Fordham?

MR FORDHAM: No questions, thank you.

30 THE COMMISSIONER: Yes, thank you.

MR TAYLOR: Sorry, Commissioner, can I just ask one question?

THE COMMISSIONER: Yes.

40 MR TAYLOR: Ms McCarthy, yesterday you gave some evidence in relation to Mr Shafer's matter and, this is at transcript page 52, Commissioner, you had a conversation with Mr Kear and your evidence was that Mr Kear informed you that he had interviewed Mark Pride and he advised me words to the effect, I've spoken to Mark Pride, he says he admitted that was a misunderstanding, it was a mistake, do you remember that evidence?---I do, yes.

Firstly, who's Mark Pride?---He's the manager of finance.

After Mr Kear said those words to you did you speak to Mr Pride?---I did, yes.

And what did you say to him and what did he say to you?---I said words to the effect of, "Mark, Murray tells me that he spoke to you in relation to Phil Schafer's motor vehicle and that you admitted that you had misunderstood Steve Pearce." Mark said to me, "I have not had any conversation with Murray Kear. That's not true. The only conversation that I have had was with Steve Pearce where he attempted to get me to say that I had made a mistake and I refused to do that."

Yes, thank you. Nothing further, Commissioner.

10

MR FORDHAM: I still have nothing, Commissioner.

THE COMMISSIONER: Yes, thank you, Ms McCarthy?---Thank you.

Thank you for your evidence, you're excused.

THE WITNESS EXCUSED

[10.50am]

20

MR FORDHAM: If it pleases the Commissioner I call Lorna Calder.

THE COMMISSIONER: Yes. Ms McGlinchey.

MS McGLINCHEY: Commissioner, we'll be seeking a declaration and the witness will take an oath.

THE COMMISSIONER: Thank you. I declare that all answers given by Mrs Calder and all documents 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

40

I DECLARE THAT ALL ANSWERS GIVEN BY MRS CALDER AND ALL DOCUMENTS 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.

THE COMMISSIONER: Would you swear Mrs Calder in please.

THE COMMISSIONER: Mr Fordham.

MR FORDHAM: Thank you. What is your full name?---Lorna-Ann Calder.

Were you formally known as Grange?---Yes.

10

And when did that change?---Ah, 4 April this year.

[REDACTED]

What is your occupation?---I'm the Manager of Human Resources for the State Emergency Service.

20

For how long have you had that role?---Ah, since February, 1990.

I see?---23 years.

23 years. In your role as Manager, Human Resources do I assume you've seen a great deal of change in the organisation?---Yes, I've seen most of the contemporary changes from 1990 when there was a major restructure and all of them since that.

30

And is, it is, sorry is it a fair statement to say that it's gone from a largely volunteer run organisation to a more structured professional one?---Ah, I think the volunteers would always consider that they were a professional organisation however, it has become better staffed and better funded than what it was in 1990. Ah, so we've come from a very small ratio of staff to volunteers to a medium sized public sector agency.

Thank you, you've put it far better than I would have. Now, can I just ask you some questions about Mr Kevin Pallier?---Yes.

40

The Commission's heard some evidence about him and his action as against the SES. Was that something that you were involved in in your role as Human Resources Manager?---On the outside of it. I wasn't involved in the investigation at all. That was more Tara and the, Ms Colbey, the IAB investigator. But I did accompany Ms McCarthy to the conciliation meetings.

Thank you. I might get you to just move slightly closer to that microphone because I suspect people are having trouble hearing you?---Okay.

Thank you. As a result of your involvement with this proceedings did you become aware of what were the major issues for the Industrial Relations proceedings?---Yeah, more or less.

And you became aware didn't you that a significant issue in those proceedings was the amount of overtime taken by Mr Pallier?---I think there were a number of significant issues including - - -

10 THE COMMISSIONER: He just only asked one question relating to the overtime. Is Mr Fordham correct or not?---Yes.

MR FORDHAM: Thank you. There were other issues, correct?---Yes.

The fact of the matter was that in relation to Mr Pallier's appointment he reported to Steven Pearce didn't he?---Yes.

20 And in the course of discussions prior to the conciliation conference with Ms Brus, the barrister and Ms McCarthy of the SES the fact of Mr Pearce's involvement was discussed wasn't it?---Yes.

I just want to take you if I may forward. Could the Commission please turn to page 501. Do you have that Commissioner?

THE COMMISSIONER: (No audible reply)

MR FORDHAM: Ms Calder, do you have that on the screen in front of you?---I do, yes.

30 Is that a memorandum produced by you?---Yes.

And what is the date of it?---The 15 of May.

And I need you to speak up for me, you're very softly spoken?---Sorry.

It's all right?---The 15 May 2013.

40 How long after the events the subject of that memorandum was it produced?---The memorandum was produced as a result of a telephone call that I'd had with Mr Kear probably the night before or a couple of days before in which we discussed some allegations that Ms McCarthy had made regarding diary notes that Mr Pearce had possibly falsified.

Yeah. Now I just want to go back to the question that I asked you and I'm sure it's my fault so I'll put it again and if you don't understand please tell me?---Okay.

The events relating to the potential falsification they were before you'd gone on leave for your wedding weren't they?---Yes, they were.

In fact before April?---Yes.

Thank you. Now the memo that you produced was as a result of direct questioning by Mr Kear was it not?---Yes.

What Mr Kear asked you was whether a particular word had been used, correct?---Yes.

10 Mr Kear didn't ask you about the context of the conversation did he?---No, not, not, not that I recall.

And in answering Mr Kear's question to you you addressed yourself to that question and that question only?---Yes.

But I'm not saying you should have but the memo doesn't go into any of the context surrounding the potential falsification does it?---No.

20 I just want to take you to some of that context if I may. Can we just go back to the meeting in the coffee shop prior to the conciliation. Do you understand that?---Yes.

Present were yourself?---Yes.

Ms McCarthy?---Yes.

Ms Brus?---Yes.

30 One of the issues that had arisen in relation to Mr Pallier's matter was whether or not had been appropriately managed by Mr Pearce wasn't it?
---Yes, that's correct.

In relation to that issue have you yourself suggested that it would be helpful if there were diary notes relating to management of Mr Pallier by Mr Pearce?---Yes.

40 Because you had that view did you ask Mr Pearce to produce them?---Not at the time we were having the conversation in the coffee shop but if I could go back and explain that?

Of course?---The initial request for diary notes came from a conversation that I had by Mr Pearce where he and I were discussing the possible investigation into Mr Pallier, at that stage Mr Pallier had been, had been suspended and one of the issue that I said would be important was that he was able to show that he had properly supervised Mr Pearce and that he should um, and it, when he advised that he had and that he had made diary notes regarding his counselling sessions with Mr Pallier I said; I asked him to forward me those diary notes.

Did he do so?---No, he didn't forward me diary notes.

What did he forward you?---He forwarded me a, I guess a summary of dates and conversation or observations that he had with Mr Pallier, it was a three page document.

I can show it to you if you like but in your memo you refer to a diary note, should it be that that is a plural?---Yeah.

10

Was there more than one page you were given?---Yes, there were three pages.

Can the Commission please turn up page 335. Do you have that document?
---Yes.

Now can we look at 336 and then 337. Now doing the best you can sitting here today are they copies of documents that you were forwarded by Mr Pearce?---Yes, they are.

20

And are they the documents that were forwarded to you in answer to your request for diary notes?---Yes.

When you asked for diary notes what had you expected to receive?---I expected to receive copies of notes that he, that Steve Pearce had made in his diary regarding conversations that he had had or directions that he had given to Mr Pallier or memos where he might have followed up conversations by directing Mr Pallier to take certain actions.

30

What format, aside from the memos and where you refer to diary notes, what format did you expect to get them in, typewritten or handwritten?
---Well, most - I would have expected them in handwritten because it was a diary so some people keep electronic diaries of that so it could have been electronic.

Were you surprised by the provision of the document that I have just shown you in that typewritten form?---Yes, I probably was.

40

Did you make that surprise known coming forward in the coffee shop to Ms McCarthy and Ms Brus?---I first referred to the matter when I was walking down to the coffee shop with Ms McCarthy only. We were discussing that there was, we were vulnerable in this matter because of the poor supervision of Mr Pallier. I at that stage mentioned that Mr Pearce hadn't forwarded the expected diary notes that I had requested and I didn't think that they had been given to the investigator and I expressed surprise at that.

In the coffee shop was that subject revisited?---Yes, it was.

Was there a discussion led by Ms Brus about some of the difficulties that might arise in running this case if you had to call Mr Pearce?---I don't recollect that, no, I think it was more a general discussion on whether Mr Pallier had been appropriately supervised and the effect that that might have on the case.

THE COMMISSIONER: Can I just ask you about this concept of appropriately supervised.

10 MR FORDHAM: That was my question.

THE COMMISSIONER: What did you have in mind by that?---Are you asking my opinion?

20 Well, you have said that there was a discussion about whether Mr Pallier was appropriately supervised. I'm asking you what you understood by that? ---My understanding of the conversation was that what we were suggesting was that he, Mr Pallier, should have been more directly supervised, should probably have been warned regarding the overuse of overtime, more closely supervised in that, in the work that he did and, and when he wasn't complying that further action should have been taken and none of that had occurred.

Yes.

MR FORDHAM: You had a view as a human resources manager of some 20 years' experience that that may well cause you problems in the IRC didn't you?---Yes.

30 And that - - -

THE COMMISSIONER: Sorry, Mr Fordham, but I don't really understand that either. I take it you knew that Mr Pearce had signed off on Mr Pallier's overtime claims?---Yes, he would have, otherwise they wouldn't have been paid.

Yeah. But that was the basic problem wasn't it? Mr Pearce had approved the claims?---Yes.

40 It wasn't a matter of appropriate supervision for the purpose of the case, for the purposes of the case the problem was how can you dismiss a man for taking overtime when his boss approved it? Isn't that right?---Yes, I agree.

And I mean what you've said about appropriate supervision is undoubtedly correct but that wasn't an issue for the case, that was just something that should have been done but for the case it was really just about impossible to argue that Mr Pallier had wrongly claimed overtime because Mr Pearce had approved it. Isn't that right?---Yes.

So I don't understand the discussion then. Wasn't the discussion about Mr Pearce's authorising of the overtime?---Yes, it was.

MR FORDHAM: One of the issues that you were aware of was that Kevin Pallier was saying that the overtime had been authorised?---Yes.

And you knew that?---Yes.

10 And that was part of a discussion you were having with Ms McCarthy and Ms Brus wasn't it?---Yes.

Part of the conversation also to him to whether or not you would be able to call Mr Pearce to give evidence in the matter wasn't settled at conciliation and it had to go to trial?---Mmm, I, I don't recollect that part of the conversation.

20 Going back to the diary for a moment it was certainly your expectation that you would have been given a copy of a diary rather than a summary. Isn't that right?---That was my expectation.

And you expressed that expectation to the meeting with Ms McCarthy and Ms Brus didn't you?---Yes, I did.

You also expressed your surprise that you had not been given the original handwritten notes didn't you?---Yes.

30 With that in mind there was a discussion wasn't there about, about how that summary document that you had seen had come about?---Yes.

One of the propositions that you advanced was that it had been created after the event and after you asked for it?---Yes.

That would be a falsification wouldn't it?---Yes.

One of the propositions was that it was a summary of events that had occurred close to the time of writing but after the event?---Yes.

40 Correct?---Yes.

That would not be a contemporaneous document would it?---No.

And if anyone said it was then they would be telling a lie, correct?---Yes.

In the course of this conversation you used a word similar in effect to falsify didn't you?---Um, yes, as far as I can recollect.

And when you were asked by Mr Kear you were asked one simple question did you use the word, actually use the word falsify, correct?---Yes.

Sitting here today it's the case isn't it that going back to your memory at that coffee shop you did use the word falsify didn't you?---I don't recollect using the word falsify.

Do you certainly agree with the proposition that you used a word similar in effect to falsify?---Yes, I think I would.

10

Yeah. And so when you produced this memo you dealt with one question and one question only and that was the use of an actual word, correct?
---Yes.

Murray Kear did not ask you about the context of the conversations that I have just taken you do did he?---Not that I recollect, no.

20

And had he have done so you would have put it in the memo wouldn't you?
---We had a very general conversation. I had just returned from leave so it was, it was you know about a number of different things but he did during the conversation tell me that Tara had made, had put a memo to him um, regarding the falsification of records and he asked me if I'd used those words or I said to him I didn't make that statement.

But sitting here today you've just told the Commissioner that you used a word similar in effect to falsify. You've said it twice, correct?---Yeah, yes.

30

Now, let's just go back a step to your memo. You refer to a one page summary of his notes in your memo. I take it that's simply a mistake?---
Yes.

It should have been three?---Three, yes.

One of the propositions you put forward was that after your request the document was created as a history of discussions, not a contemporaneous document is it?---No.

40

Secondly that the notes may well exist but all you got was the summary?---
Yes.

But you weren't able to say whether or not that summary related to an underlying document because you hadn't been given it, to be fair to you?---
That's right.

And finally that they did not exist at all, correct?---That was a possibility.

Yeah. A fabrication?---I didn't use that word.

No, I didn't ask you that. I said that if they didn't exist at all that would be a fabrication?---Yes.

It would be a falsification?---Yes.

And what you were really saying is that sitting there at that moment you didn't have enough evidence in your mind to go either way?---That's exactly correct.

10 THE COMMISSIONER: At which moment is that, Mr Fordham?

MR FORDHAM: When she wrote this memo. Correct?---Yes.

But that you would agree with me wouldn't you at the very least one possibility that had been discussed was something to the effect of these documents had been falsified or fabricated?---Yes.

Thank you. I have nothing further.

20 THE COMMISSIONER: Yes, Mr Harris?

MR HARRIS: Commissioner, thank you. My name is Harris. I represent Mr Pearce. Ms Calder, you have told the inquiry just now, or very recently that you have expressed surprise that you had not received the original or actual diary entries, correct?---Correct.

30 All right. Did you express that surprise to Mr Pearce?---No, we didn't, after I received the diary notes we didn't have a further discussion, or after I received the three-page document we didn't have a further discussion regarding this matter because it was being investigated by the Internal Investigation Bureau.

Well are you saying that your concerns about having what in affect is a typed summary arose quite close to this conciliation meeting?---Yes.

Yes. All right.

40 THE COMMISSIONER: Are you, are you saying that your concerns didn't arise at the time you got this document?---Ah, they did but I also expressed surprise when I was discussing this with Tara that I hadn't at the time received copies of his diary.

MR HARRIS: All right. Now don't think I'm being critical of you please but you hadn't actually asked Mr Pearce to provide you with any original handwritten or other diary?---Yes, that's correct.

All right. Thank you, Commissioner.

THE COMMISSIONER: Mr Oates?

MR OATES: Nothing, thank you Commissioner.

THE COMMISSIONER: No. Does anyone else wish to questions Mrs Colbey, Mrs Calder, I beg your pardon? No. Mrs Calder, did you read these, this document which is called "File Notes, 15 May to 21 August?" Did you read it?---Did I read it?

10 Yes?---Um, yes I did.

And did you read it at the time you were given it?---Ah, probably not on the exact like - - -

No shortly - - -?---I don't recall.

Shortly after?---Yes. Some time shortly after.

20 Well, the first question that I have is did you see that the heading is, "File Notes"?---Yes.

Is that the same thing as diary entries?---Not in my opinion, no.

I'm not sure what the practice is at the SES in relation to file notes but I know what lawyers do?---Right.

They have a file, they make notes and they put the notes in the file?---Right.

30 Is that, is that what happens, is that your understanding of file notes?---In general terms, yes.

So were there to be notes in existence from which this document at pages 335 to 337 was copied, you would expect to find them in a file?---Or in a diary.

Well, not in a diary I suggest because it's headed "File notes"?---Yes.

40 It's not headed diary notes, it's headed "File notes" so would you expect to find them in a file?---Yes, after they were made.

What file?---Well, these, these particular notes probably would have been in the investigation file into Mr Pallier's misconduct.

Could it be in any other file? Could they be in any other file?---That's a possibility.

What file?---I'm not sure, wherever Mr Pearce would have wanted to file them so that he could recall them at a later stage in his - I would have

assumed that the document headed "File notes" would have been constructed from notations he had made in his diary.

Well, would that be file notes?---No, they would be diary notes which was why I was surprised when I didn't just get the diary notes.

Right. Now I understand your evidence on one issue to be as follows, and please correct me if I'm wrong, I may have misunderstood you, but I understood you to agree or say that Mr Pearce had signed off on all of the overtime claims that Mr Palliser had made - - -?---I don't know - - -

- - - Pallier had made?---I don't know if he signed off on all of the claims that were made. Certainly what was paid to him were all authorised by Mr Pearce. He may have had claims that Mr Pearce didn't sign, I wouldn't have seen those.

Do you know whether they existed or not?---No, I don't.

Where would they be if they existed?---Either returned to Mr Pallier or destroyed because they weren't approved.

Returned by whom?---Mr Pearce, his supervisor.

There is no reference in the file notes that any claims were returned, is there?---No.

Would you have expected there to be such a record were there to be claims that had been returned?---Yes, I would.

Yes, Mr Fordham.

MR FORDHAM: I have nothing, thank you.

THE COMMISSIONER: Yes, thank you for your evidence, Ms Calder, you're excused?---Thanks, sir.

THE WITNESS EXCUSED

[11.18am]

40

MR FORDHAM: May I just talk to Ms McGlinchey?

THE COMMISSIONER: Yes. Shall we take a five minute adjournment?

MR FORDHAM: Yes.

SHORT ADJOURNMENT

[11.18am]

THE COMMISSIONER: Mr Fordham.

MR FORDHAM: If the Commissioner pleases I call Graham Charles Head.

THE COMMISSIONER: Yes, Mr Head. Mr Willis.

MR WILLIS: Commissioner, I have explained then effect of section 38 of the Act to Mr Head, I am instructed that he does not ask for a declaration - -
-

10

THE COMMISSIONER: Yes.

MR WILLIS: - - - and he will take an affirmation.

THE COMMISSIONER: Yes, would you administer the affirmation to Mr Head please.

THE COMMISSIONER: Yes, Mr Fordham.

Mr Head, what is your full name?---Graham Charles Head.

And your position?---Public Service Commissioner.

10 Can I ask you what your business address is?---4-6 Bligh Street in Sydney.

Would you mind telling me what is involved in the role of Public Service Commissioner?---The Public Service, the office of the Public Service Commissioner was created on the 1 November 2011 as a result of significant amendments to the public sector Employment and Management Act and essentially and in summary it transferred most of the strategic work force management functions that had previously been performed administratively by the Premier's Department into an independent statutory office. The office is constituted through the, the statutory office of the
20 Public Service Commissioner and there is a small organisation that exists to serve the office of Commissioner and carrying out those functions.

Is, does the provision of advice to senior public officials or senior public servants is that part of the role?---Yes. The role involves, well there are explicit objectives and functions in the Act. Some of those relate to the issue of the moment which is reform of public sector management and some of them are more ongoing functions about leading the sector around a range of work force management practices and that's done through both the development of guidelines but also on a case by case basis advising people
30 about things that they need to take account of in making decisions that are there's to make under the Act.

Thank you. Now for the purpose of this inquiry did you prepare a statement dated 29 November 2013?---Yes.

Is that a copy of the statement you have in front of you?---Yes.

Would you kindly look at these two documents and tell me whether or not they are a copy of the statement that you prepared?---Yes.
40

And if you go to the last page and indeed the foot of each page does your signature appear there?---Yes.

I tender that statement.

THE COMMISSIONER: Yes. The statement of Mr Head will be, dated 29 November 2013 will be Exhibit 3.

**#EXHIBIT 3 - STATEMENT OF GRAEME CHARLES HEAD
DATED 29 NOVEMBER 2013.**

MR FORDHAM: Thank you. Could I ask you to turn to page 6, sorry, page 2 paragraph 6 for me?---Yes.

- 10 Now a moment ago I asked you about the provision of advice was it the case that as at May of last year people in positions such as Mr Kear would seek advice from you from time to time?---Yes.

And one of the things they would seek advice about was in relation to the management of their senior work force?---They might, yes. There's no compulsion for them to seek advice.

If they seek they advice do you give it?---Yes, if it's appropriate for me to give it.

- 20 Now on 8 May 2013 you had a meeting with Commissioner Kear?---Yes.

And that was at your office in Bligh Street?---Yes.

What was it that Mr Kear asked you?---Mr Kear was considering um, the use of section 77 of the Act which is the section of the Act that creates the head of power for removing executive officers, executive officers within the Act people generally referred to as being in the senior executive service and he was um, he came to seek to advice on the way that section is applied.

- 30 So who actually raised section 77 was that Mr Kear or you?---Mr Kear raised the issue of removal, I don't recall whether he raised it in terms, where he quoted the relevant section of the Act but he raised the issue of removal, um and I then discussed with him the application of section 77.

In the initial discussion referable to the removing of one of two executive officers did he identify who they were?---Ah, he identified that they were his two deputies and ah, I think during the course of the conversation he referred to both of them by name.

- 40 The word "toxic" is used in the following paragraph. Is that a word that used or Mr Kear?---No, it's a word that's in quotation marks because it's a word that he used to me.

And did he give you any indication as to how long standing that dispute was?---Um, I don't recall that he mentioned the time but he did indicate that there had been an ongoing problem in the relationship and that there was little prospect of resolving that problem.

I appreciate it's set out in paragraph 8 but would you kindly tell me what advice you gave in relation to section 77?---Well, I provided him with the advice that I would provide anybody who asked that question. Because of the way the Act is drafted it refers to removal with or without reason, with or without notice and that paragraph also relates to other provisions in the Act that include privative clauses around, around removal. So it is important that people understand that notwithstanding the very bald statements in the Act that we advise that people need to afford a process of procedural fairness when exercising that power.

10

Did you provide any detail as to what it was that would constitute the appropriate provision of procedural fairness in this case?---What I described was the process that I myself use on the occasions when I'm using this power which involves at a minimum providing somebody with a written indication of your intent to remove and affording them an opportunity to respond to the fact that you've notified them that you're intending to remove them, and then the last point considering any matters they raise in relation to that intent.

20

You refer in the last line to a timeframe. What timeframe is it that you are referring to?---Neither the Act nor any of the formal guidance material provides a specific timeframe so the test I apply and I encourage other people to apply is a reasonableness test where people have sufficient time to actually respond to the fact they've been told they're being removed. So typically where it's possible and depending on the circumstances we would encourage people to offer up to a week but a minimum of typically 48 hours.

30

Now, you referred to people. Is that the advice that you gave Mr Kear on that day?---I believe the way, that when I gave him advice I indicated an example that I had been involved in and the timeframes that had applied in that example where there was a minimum turnaround of 48 hours.

40

And what is it that is the purpose of giving someone that period of say 48 hours, why do you encourage that?---Well essentially, you know, as I said in my witness statement a layperson's reading of the Act might suggest that it permits summary removal but the relevant case law suggests that procedural fairness must be offered and therefore in the circumstances where you're removing someone it would be reasonable to give them an appropriate amount of time to bring up any issues they wish to raise in relation to that intent.

And where you say at the end of paragraph 8, "I also advised Mr Kear of the timeframe that would typically be involved - - -?---That's the point at which I used the example.

Okay?---And I reiterate there is no formal timeframe that appears in the relevant guidelines or in the statute itself so again it's about reasonableness.

And certainly though the advice you gave was that that example was an appropriate indication of what it was Mr Kear might consider doing?---And it was framed as a, as a minimum. The example I used had a relatively short turnaround but it was a matter of days.

10 In paragraph 11 you refer to the toxic dispute and on the third line that Mr Kear informed you of a series of claims or counterclaims. Now, did he give you any particulars of those?---Um, he indicated in a general sense that they were conduct related matters. I recall that he used an example of allegations around credit card misuse which was the point at which, because I'd inferred from the conversation that these complaints had been made to him and they were about, at least some of them were about allegations to do with credit cards, that there could, that the nature of these complaints may already have triggered the Public Interest Disclosures Act.

20 Now in your position as the Public Service Commissioner what is your understanding of the relevance of the triggering of the Public Interest Disclosure Act?---Well, relevant in this context because he was considering removing an officer who may have made a, who had made complaints which may be captured by the PID Act and would therefore have a bearing on whether the removal of that officer could constitute a reprisal action within the meaning of that Act.

30 And is the fact that this may constitute depending on the underlying circumstances a reprisal something you discussed with Mr Kear?---What I discussed was that the removal of, a removal under section 77 would need to be a proper removal within the meaning of the Act and if there were public interest disclosures that that would have a bearing on, on any decision he made in relation to section 77 and I encouraged him to speak to the Ombudsman's Office as the organisation with responsibility for the PID Act to assist him to understand whether or not these matters were indeed PIDs.

40 And to be fair to you that's something that you were not in a position to advise on as to whether or not they were PID?---I would always refer people to the appropriate authority. If they are exercising a power under the Public Sector Employment Management Act that relates to their obligations under other legislation then the referral is to both seek their own internal advice and to seek the advice of the relevant organisation.

Now annexed to your statement I sincerely hope there are some notes?
---Yes.

Excellent. And there's a typewritten version I think - - -?---Yes.

- - - over the back which for obvious reasons I've looked at. Under 8/5/2103, the fifth dot point, do you see "Advised that some of the general

issues that he described by way of content may have PID issues,” do you see that?---Yes.

And then the next sentence reads, “Advise that he cannot take reprisal actions in relation to PID,” do you see that?---Yes.

And is that something you advised him?---Yes.

10 Now, did Mr Pearce say anything - sorry, did Mr Kear say anything to you during your discussion with him about whether or not any of the allegations had been investigated?---There was a reference, and I believe it’s referred to in my witness statement, that some of the matters had been examined by IAB so that would have indicated an internal review.

20 And again to be fair to you, you didn’t descend into the detail of what it was that he investigated or what the result was?---No, once I’d determined that the general character of some of these things may have been captured by the PID Act it wasn’t appropriate for me to drill down into the detail of these reports, simply to say that there was a potential issue there that he should consult the Ombudsman’s Office about but I, I did make the point that internal reviews, the fact of having conducted them doesn’t necessarily negate your obligations in relation to other organisations that may have a legitimate interest in reviewing those things.

Now, at paragraph 13 you set out some of the things that might be done in order to analyse whether or not the issues raised by Ms McCarthy were Public Interest Disclosures. Do you see that?---Yes.

30 Now, the guidance material you refer to there, what is that?---Well there is guidance material that’s published by the Ombudsman’s office in relation to PIDs. There’s obviously where PIDs are dealing with allegations of corrupt conduct there’s material published by the Independent Commission Against Corruption. And the other thing that’s important to note is that there are routinely, or in the past there have routinely been circulars issued some of which are memoranda from the Premier and drawing people’s attention to new obligations in relation to the PID Act and other things. I did not itemise those things, simply referred to the fact that there is generally guidance available on these matters.

40 And the question of PID is not limited merely to corruption is it?---No.

It can be a reference to persons within the public sector making complaint about maladministration?---Yes. My reference to the Ombudsman’s office were, was that the Ombudsman has specific responsibility under the PID Act, not just for the Act generally but for the maladministration component and with the brief description of some of the matters that Mr Kear raised with me I formed the view that seeking advice on whether or not any of these constituted a complaint about maladministration was probably

appropriate. I did not go into all the detail there, simply suggested that he call the Ombudsman's office.

In fact you suggested it more than once didn't you?---Yes, because it was the, I accompanied Mr Kear to the exit doors on the floor where my office is and um, advised him that in this position I would seek advice as, you know, as a matter of some urgency on that point.

10 And in fact what you recommended was the seeking of formal advice?---
Well, I don't know if I used the word formal but I did by referring him to the organisation with formal responsibility it was, it was in order to seek the advice of that organisation. People could also seek there own internal legal advice.

20 Having given that advice did Mr Kear say anything to you about his intentions?---I, I can't recall how we finished the conversation at the door but certainly the impression I had was that I had given him some helpful and necessary information in forming a view about whether he could use section 77 and I expected that he would go off and have that conversation.

Now, in relation to your advice that he contact the Ombudsman which is a more narrow question than the last one I asked you, if you look at the last paragraph, last line, sorry, of paragraph 14 what was it that Mr Kear said that drew you to the conclusion that he would contact the Ombudsman?---Well, that when I gave the advice he gave an affirmative response.

30 Thank you. Now was there also discussion, and I'm going back up the page a bit into 13 in relation to consideration of a referral to the Independent Commission Against Corruption?---I just made a general point that without knowing the detail of all of the matters that the PID Act covered both things. But I should say that nothing in what Mr Kear described to me, and it was just a sort of cursory reference to an example of some of the allegations caused me to conclude that his ICAC Act reporting obligations had been triggered. But the fact that these things might have been PIDs could have been discussed with the Ombudsman and appropriate judgements made.

40 And you understand that as Public Service Commissioner where it is that people seek you advice in relation to for instance complaints that are made that might go to ICAC and it's your practice to encourage people to seek external transparent review?---Sorry, can you ask that again?

Is it your practice to encourage people, where issues arise that may be corruption is it your practice to encourage people to seek external review?---It's, I would always encourage people to be aware that they have a set of obligations under each of these pieces of legislation and to the extent that they aren't aware in detail of those obligations they should make themselves aware. Mr Kear of course had been in post for several years so these would not have been new matters in terms of having those obligations.

Now I just want to turn to the conversation at 1.30pm on the 17 May 2013 which forms the second part of your note and paragraph 16 and following?
---Yes.

And you, you set out there that you asked Mr Kear if he'd spoken to the Ombudsman. Now I just want to go into that conversation a little bit. Doing the best you can are you able to tell me what you said?---Well, um, he, in the course of the discussion not that it was principally, I mean he rang
10 to advise me that he had removed Ms McCarthy and in the course of being advised of that I, I asked him whether or not he had spoken to the Ombudsman um, and he indicated to me I believe that he had spoken to one of the Deputy Ombudsman.

Did he say when?---No, he did not.

And I'm just looking at your, it's my, it's the typed version of your handwritten note. You see there, "Satisfied that there are no PID issues", looking at the context of your statement you asked the question, "Had he
20 satisfied himself"?---Well the whole purpose for referring him to the Ombudsman in the first place was solely the issue to do with whether or not the PID Act had been triggered so it was an obvious question for, for me to ask. I don't recall him responding directly to that question except to indicate that he'd spoken to the Deputy Ombudsman. I assumed that whatever had transpired in that conversation had meant that um, given that he was advising me that he removed Ms McCarthy that there were no issues and that the conversation had happened prior to the removal and most of the conversation was actually spent on the removal process and then a
30 description of what was contained in the staff notice that had followed the removal.

All right. And just to go back a step, when you gave the advice that the Ombudsman should be contact I take it what you're advising that that ought to be done contacting the Ombudsman before removal?---Well yes, because it was a matter directly related to whether or not the power to remove could or should be exercised in that context.

Now you were then given a description of the removal process and did you form a view about whether or not that process conformed to the advice that
40 you had given him?---Well I formed a view that it didn't on the basis that it appeared to happen in a form that I would describe as a summary removal. I, no formal notification in writing of an intent to remove and no reasonable time frame within which to um, make a submission in respect of that intent and subsequently no reasonable time frame um, to consider any issues raised in such a submission.

Thank you. And then finally there was a discussion about the notice that had been issued for removal and what if anything did you say about that?---I

was surprised at the content of the notice and typically when somebody is removed under section 77, and I should explain for the benefit of the Commission that section 77 applies for things like restructures if you were reducing the number of SES so it's deployed in a number of different contexts, but outside a restructuring context people often draw a conclusion that it's, it's, you know, been used because there's been some irretrievable breakdown between the chief executive and the executive. People are generally encouraged simply to issue a communication that advises that somebody is leaving on a particular date, that acknowledges the contribution they've made and typically, although again this is not a requirement and I don't recall whether or not I specifically raised this in the meeting of the 8th, I always provide a copy of the draft staff notice to the person being removed before its issued.

Correct me if I'm wrong but there are in fact disciplinary actions that can be taken in relation to even senior staff if it is that you wish to head down the course of removal that don't involve section 77 aren't there?---Disciplinary procedures?

Mmm?---Ah, yes, I mean removal is, removal is obviously the most extreme measure but there are other measures that people can take in relation to performance management, in relation to counselling, in relation to other disciplinary measures.

And one of the results of that disciplinary process can be series of warnings followed by an eventual termination, isn't that right?---Yes.

Thank you. I'll just be one moment if you don't mind. Yes, thank you, I have nothing further?---Thank you.

THE COMMISSIONER: Yes. Mr Oates, do you have any questions for Mr Head?

MR OATES: Commissioner, I can't at the moment cross-examine or consider whether I should cross-examine Mr Head. I wasn't until a few moments prior to him getting in the witness box given his evidence. I've been, I've not, I've not had any opportunity to take instructions from my client.

THE COMMISSIONER: When did you get the statement?

MR OATES: Three or four minutes before he got in the witness box.

MR FORDHAM: I had planned just to call all of the witnesses orally but thought it might help some people if I handed out a statement.

THE COMMISSIONER: Yes, the statement shouldn't be used - I mean, if we had called Mr Head without putting in the statement, Mr Oates, what would your attitude have been then?

MR OATES: It's the same issue, I don't mean to make any issue about being given the statement a few minutes beforehand.

THE COMMISSIONER: All right.

10 MR OATES: I just had no notice of what Mr Head would say.

THE COMMISSIONER: Sir, could you come back at 2.15, at 2 o'clock?
---Yes.

Yes. Well, Mr Head will return at 2 o'clock, you can cross-examine then.

MR OATES: If the Commission pleases.

20 THE COMMISSIONER: Does anyone else wish to cross-examine Mr Head?

MR WILLIS: No, Commissioner.

THE COMMISSIONER: Mr Head, Mr Head, I'm sorry that we can't progress with you further but if you wouldn't mind leaving the witness box and returning at 2 o'clock. Thank you.

30 **THE WITNESS WITHDREW** **[12.02pm]**

MR FORDHAM: We have Mr Tree coming at 12.15.

THE COMMISSIONER: All right.

MR FORDHAM: I apologise.

THE COMMISSIONER: No, no, that's all right. We'll adjourn till 12.15.

40 **SHORT ADJOURNMENT** **[12.02pm]**

THE COMMISSIONER: Mr Fordham.

MR FORDHAM: If it please you, Commissioner I call Leslie Thomas Tree.

THE COMMISSIONER: Mr Tree. And is Mr Tree legally represented?

MR FORDHAM: No.

THE COMMISSIONER: No.

MR FORDHAM: It would appear not. I had assumed he was but I would probably make the application for an order in any event.

THE COMMISSIONER: An order?

10 MR FORDHAM: Yeah, well - - -

THE COMMISSIONER: What, a section 38 order you mean?

MR FORDHAM: Yes.

THE COMMISSIONER: I must explain that to Mr - - -

MR FORDHAM: Yes, that's what I was thinking. He probably, he may or may not want one.

20 THE COMMISSIONER: I understand that. Mr Tree, before you give your evidence I need to explain a section of the Independent Commission Against Corruption Act which affords a degree of protection to all witnesses who come before the Commission if they want it. Not everybody wants it. Most do. The protection is this, that if you object to any question being asked of you that your answer cannot be used against you in any criminal or civil proceedings and what we do if the witness wants that kind of protection is to make a blanket order before the witness gives any evidence to the effect that all the evidence that the witness is giving is to be regarded as being given
30 under objection so that the protection is there.

MR TREE: Yep.

THE COMMISSIONER: Do you understand that?

MR TREE: Yes, I understand that.

THE COMMISSIONER: Do you wish me to make such an order?

40 MR TREE: Yes, yes please.

THE COMMISSIONER: Yes. I declare that all answers given by Mr Tree and all documents and produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection. Accordingly there is no need for him to make objection in respect of any particular answer given or document produced.

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

- 10 THE COMMISSIONER: Do you wish to make your, to give you evidence under oath or do you wish to affirm the truth of your evidence?

MR TREE: Under oath please.

THE COMMISSIONER: So would you swear Mr Tree in please.

THE COMMISSIONER: Mr Fordham.

MR FORDHAM: Sir, what is your full name?---Leslie Thomas Tree.

And your current occupation?---Retired.

10 When did you retire?---On 5 April, 2013.

Prior to that date what was your position?---I was the Chief Executive of the Ministry for Police and Emergency Services. I commenced in that role on 4 April, 2011.

Within the portfolio that you worked in was SES one of the agencies that reported to you?---Ah, reported to the Minister but it was in our portfolio, yes.

20 And over the period in which you were in the position did you come to know Murray Kear, the Commissioner of the SES?---Yes.

And from time to time did Mr Kear seek advice from you in relation to matters concerning the SES?---Yes.

From time to time and in his absence did his relevant deputies seek advice from you in matters concerning the SES?---Yes.

30 On or about well, mid-October last year did you receive a phone call from Ms Tara McCarthy?---Yes I did.

Thank you. Now, you've taken the trouble of preparing a statement for us?--Ah hmm.

Do you have a copy of that in front of you?---Yes I do.

I'm going to show you a copy of a document, and there's one for the Commissioner. Is that a copy of a statement prepared by you for the purposes of this inquiry?---Yes it is.

40 Could you just check are they your signatures that appear on the bottom of all seven pages?---They, yes they are.

I tender that document.

THE COMMISSIONER: Yes, the statement of Mr Tree dated 19 November, 2013 is Exhibit 4.

**#EXHIBIT 4 - STATEMENT OF LESLIE TREE DATED 19
NOVEMBER 2013**

MR FORDHAM: Now, I just want to take you to the telephone conversation which is set out at paragraph 10 and following?---Ah hmm.

10 Sitting here today, and please have reference to your statement if you need to, what was the subject matter of that conversation?---Oh, um, Deputy Commissioner McCarthy rang me and said that the Internal Audit Bureau which she commissioned to do a review of procedures in the SES had uncovered that there were two contracts that looked to be outside the Government guidelines for the letting of contracts and that she sought my advice on whether to engage the Crown Solicitor or to get a panel solicitor and my advice was to use a panel of solicitors because they would, someone off the panel because they would invariably be a faster source of advice.

20 And were you give any detail as to what the irregularities were?---Not to my recollection.

Is the fact that procurement contracts appear to be irregular an important tissue for the governance of an organisation such as the SES?---Yes, the Government has strict guidelines on how to let, let contracts and they're extensively published and available.

30 In the course of the conversation that you had with Ms McCarthy, was there any discussion about obligations or otherwise to report to ICAC?---Well, I recall saying that if Ms McCarthy considered there was any corrupt conduct involved then she had an obligation to report it to ICAC under the relevant provisions in the ICAC Act.

Did that advice extend to only proven corrupt conduct or whether there may be corrupt conduct?---Well, think the Act says may, may be conduct, corrupt conduct so it would have included the possibility.

This was reported to you, do I understand the position this way, a bit like law, politics, what you don't want is surprises?---Yeah, that's exactly right.

40 And one of the reasons matters are reported to you is so that you can inform the Minister, amongst other people?---That's right and that's why I asked Ms McCarthy to prepare a briefing note which was subsequently received which we would then, we being the Ministry for Police would turn into a, a note for the Minister's use in case he was surprised in media or in Parliament about the matter.

Now if you turn to the last page, that appears to be a copy of a briefing note?---Yes.

And is that the briefing note that you eventually received?---Ah, yes.

You'll see there under the key issues there's a reference to a contract exceeding \$150,000 - - -?---Ah hmm.

- - - as at October of last year. What is the relevance of that figure?---Well, to my recollection \$150,000 you must get - in excess of \$150,000 you must get, go to public tender.

10

Is there a different procedure between 30 and 150?---You can get three quotes.

And below 30?---You could just get someone off a panel of contractors that is available to the Government.

20

What is the prequalification list referred to in item 2?---That is a document that is published by, I think it's the Department of Finance and Services which lists all the number of people who have prequalified according to their requirements.

I might get you to just come a bit closer to that microphone?---Yeah, sorry, yeah.

That's all right. Prequalified for what?---Well, to offer services to the Government, consultancy services to the Government.

30

And finally, the reference to the Government guidelines, to your understanding what does that refer to?---Well, they would be the guidelines that are published by the Department of Finance and Services.

And as at October of last year and indeed last year, the entirety of last year, were they freely available on the internet?---Yes.

40

Now, do I understand that you weren't given any particular detail of the contracts but were given sufficient information to form a view about whether or not they seemed to be outside Government guidelines?---Well, the view was, that was put to me that they, they were outside the Government guidelines because of the amount of the money involved and the fact that the tendering process hadn't been followed so my supposition was that they were outside the guidelines and we needed to get some legal advice to see if we could break those contracts.

And on the understanding that you appear - well, I withdraw that. Do you have a fairly low threshold for the reporting of matters to independent bodies to review them?---Yes, I, during my career I've had an extensive role in police integrity, going back to having responsibility for the Police

Integrity Act and have reported on, as I say in my statement a number of matters to the relevant oversight body.

Now were you also informed of some issues regarding a man by the name of Pallier who was a finance director?---That there were significant irregularities in Mr Pallier's performance and his claiming of a number of matters, that was about the extent of it to my recollection.

10 And did you give Ms McCarthy any advice about whether or not she should report that to - - -?---Well I told her she should report that as well include that in her report.

And report that to anybody in particular?---To the ICAC.

Now subsequent to this conversation did you have a conversation with Mr Kear?---Yes. I recall on the same day I had a conversation with Mr Kear.

20 Now in the course of that conversation by topic rather than detail firstly what was discussed?---Well the issue about the contract and obtaining the legal advice as a matter of urgency and the performance of Mr Pallier.

Was there any discussion about whether or not the matters should be referred to ICAC?---My recollection is that I gave Mr Kear the same advice that he should report the matter or ensure the matter was reported.

During the course of that conversation did you ever say anything to Mr Kear to the effect that you did not consider DC Pearce's conduct to be corrupt conduct?---That, I don't recall saying that at all.

30 There's a difference between I do not recall and I did not say it?---Right.

Sitting here today - - -?---Ah hmm.

- - - casting your mind back - - -?---Right.

- - - did you say to Mr Kear that you did not consider DC Pearce's conduct to be corrupt conduct?---No.

40 Did you say anything to the effect that the contract issue was at most a procedural irregularity?---No.

And did you say in relation to that issue that it was a procedural irregularity that might require performance management when Mr Kear returned from leave?---No.

Did you give any advice about whether or not it was necessary to stand DC Pearce down in the interim and by that I mean until Mr Kear returned?
---No, I can't recall that ever being raised.

Did you ever during your conversations with Mr Kear in relation to the two issues brought to your attention say to him that you didn't think it was worth reporting to ICAC?---No.

Yes. Excuse me for one moment. Nothing further, thank you.

THE COMMISSIONER: Thank you, Mr Fordham. Mr Oates?

- 10 MR OATES: I thank my friend for a copy of the statement being provided but I'm in the same position with respect to Mr Tree was I was in relation to Mr Head.

THE COMMISSIONER: All right. Mr Tree?---Ah hmm.

Well is there anyone else who wants to question Mr Tree?

MR OATES: No, thanks.

- 20 THE COMMISSIONER: Mr Tree, I'm afraid that I'm going to have to ask you to return, if you could return at 2.15?---Yeah, okay.

We may not be ready for you then but we may?---Okay. At 2.15?

Yes, please?---Okay.

THE WITNESS WITHDREW [12.34pm]

- 30 THE COMMISSIONER: Yes. The Commission will adjourn till 2.00pm.

LUNCHEON ADJOURNMENT [12.34pm]