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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 THURSDAY, 5 DECEMBER 2013

AT 10.02AM

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

THE COMMISSIONER: Mr Fordham.

MR FORDHAM: I call Mr Scutella.

THE COMMISSIONER: Yes.

MR MOSES: Yes, Commissioner, my name is Moses, I seek leave to appear with or for Mr Scutella.

10 THE COMMISSIONER: Yes, Mr Moses, you have leave.

MR MOSES: Thank you, thank you, Commissioner.

THE COMMISSIONER: Do you wish me to make a section 38 order?

MR MOSES: No, Commissioner, it's not, it's not required.

20 THE COMMISSIONER: Yes. Please come and sit down, Mr Scutella. Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR SCUTELLA: Under oath please, sir.

THE COMMISSIONER: Mr Fordham.

MR FORDHAM: Thank you.

Mr Scutella, I might get you to just sit a bit closer to that microphone, we've had some trouble with people hearing what's going on. What is your full  
10 name?---Brad Scutella.

Your occupation?---Chief of Staff to the Minister of Police and Emergency Services.

And your business address?---Is Level 33, Governor Macquarie Tower, Sydney.

As the Chief of Staff to the Minister do I understand that there's a fairly complicated structure that sits beneath you which includes the New South  
20 Wales State Emergency Service?---That's correct, sir.

You've helpfully prepared a diagram of the structure as it was I think from September of last year through to at least April of this year when Mr Tree retired. Can I show you a copy of that document?---Most certainly, sir.

Two for the Commissioner. Just briefly, Mr Scutella, we see the Minister at the top?---That's correct.

And then the actual Ministry, that is I take it where you are in that box?  
30 ---Ah, no, I'm in the top box with the Minister actually.

Thank you?---Our office, we have approximately 10 staff in our office and then down below that is the Ministry whereby they, we, we have a large number of staff there who assist us with correspondence and briefing papers and specialist advice.

And what was Mr Tree's role before he retired?---Ah, Chief Executive.

Thank you. And then beneath that there's two further boxes which appear  
40 to be a division of labour between policy and finance and a particular area of counter terrorism and disaster (not transcribable)?---That's correct, yeah.

And then beneath those boxes there appears to be a number of Government agencies dealing with what one might describe as emergency services?  
---That's correct.

Thank you. I tender that document.

THE COMMISSIONER: Exhibit 7 is a, is a diagram prepared by Mr Scutella relating to the various departments under the control of the Minister for Police and Emergency Services?---Can I just clarify, sir - - -

**#EXHIBIT 7 - DIAGRAM PREPARED BY MR SCUTELLA  
RELATING TO VARIOUS DEPARTMENTS UNDER CONTROL OF  
MINISTER FOR POLICE AND EMERGENCY SERVICES**

10

THE COMMISSIONER: Yes, of course?--- - - - this was prepared by one of my staff members under my instruction. Yep.

MR FORDHAM: In any event having had it prepared for you you've reviewed it and you're content that it's accurate?---That's correct.

Thank you. Now, can I take you to October of last year?---Yes.

20

On or about 16 October did you receive a phone call from a Ms Tara McCarthy?---Yes I did.

And at that time did you understand her to be working for the SES?---That's correct, sir.

When she phoned you do you recall what it was she phoned you about?---She contacted me to inform that she had found some anomalies in relation to some contracts.

30

And did she give you any detail of the actual contracts themselves?---Um, she may have but I, I can't recall whether she did or not.

Were any details given to you about what the anomalies related to?---Not following process properly.

And finally was there any detail given to you about who it was that hadn't followed the process properly?---Ah, Deputy Commissioner Pearce.

40

At that stage who was the acting head of the SES?---Deputy Commissioner Pearce.

Did you have any reservation at that point about whether or not someone who may or may not be the subject of some anomalies in some contracts should be continuing in the role as Deputy Commissioner?---Um, I wasn't too sure only because I wasn't too sure the circumstances of those anomalies.

Did you give any advice to Ms McCarthy?---Um, I indicated to her that if it's of a fraud and corruption type nature she should contact the ICAC as well as to Mr Les Tree.

Now, were you then contacted by Mr Kear?---Um, either he contacted me or I contacted him.

At the time do you know where he was?---Ah, he was on holidays in Tasmania.

10

When you had, did you have a conversation with him?---I did. I informed him of the conversation I had just had with Deputy Commissioner McCarthy.

Did Mr Kear give you any details of anything he knew about the contracts at that point?---No, sir.

Did you give him any advice?---No, sir.

20

During the course of that conversation did you say anything to him about whether or not Deputy Commissioner Pearce had engaged in corrupt conduct?---No I hadn't.

Did you say anything to him about whether or not this was merely a question of irregularity?---Ah, no. I just conveyed the information which was conveyed to me.

30

THE COMMISSIONER: I'm sorry, I can't hear, Mr Scutella?---Sorry. I just conveyed the information to Mr Kear as it was to the best of my ability to ah, from Ms McCarthy.

MR FORDHAM: Was there only one phone call with Mr Kear or were there a series of follow-up phone calls in relation to this issue of the contracts?---Um, I think we did have series of phone calls mainly in relation to operation issues and from time to time he would raise this issue of contracts.

40

Now, at any stage were you possessed of sufficient information to form a view about the existence or otherwise of corrupt conduct?---Ah, no sir. We don't examine the minutia detail in our office, we have, we deal on a fairly macro level.

And at any stage follow that initial phone call with Mr Kear and specifically in relation to the conduct of Mr Pearce did you ever say to Mr Kear that you did not consider DC Pearce is, had engaged in corrupt conduct?---No sir, I had no opinion.

Did you ever say that it was at most a procedural irregularity that might require performance management?---Ah, no sir, I had no detail in front of me to make those comments.

Did you ever offer an opinion as to whether it was appropriate or inappropriate to stand Mr Pearce down pending any investigation?---I can't recall, sir.

10 Well there's a big difference between I don't recall and it didn't happen. Do you actually have a memory at all either way?---Um, I can't recall whether that conversation occurred um, it was something whereby um, from time to time we would discuss various issues and this issue would come up from time to time as well.

All right, thank you. Now can I take your forward to May of this year and if the Commission could turn to page 466. Do you recognise that document?  
---Yes, sir, it's a file note which I made after having a conversation with Mr Kear.

20 And just so that we're clear about it I would ask if we could that we for the purposes of identification show you pages 467, 468. To the best of your recollection is that the extent of the file note that you made?---Um, yes, sir.

Now I want to go forward now to 488 and 489. Are they file notes made by you in relation to a conversation on the 13<sup>th</sup> of May of this year?---Yes, sir.

And then would you kindly turn to page 494 and then 495. Are they further file notes made by you following a conversation on or about 14 May of this year?---Yes, sir.

30 Now at the risk of annoying the man to my right could we go back to 466. Do you have that document?---Yes, I do, sir.

The file note refers to Ms McCarthy making ongoing complaints against Steve Pearce, that's right isn't it?---That's correct, sir.

The file note continues to appear to refer to procurement and proper procurement procedures. Do you see that?---Yes, sir.

40 Does that relate to the contract matter we were discussing earlier?---Yes, sir.

And there's a discussion in relation to irregularities?---Yes, sir.

Further down there are issues relating to what appears to be additions to Mr Pearce's car. It might be the next page actually, I'm looking at a transcript?---Right.

Apologise for that. Now I'll go back a step. When we're discussing the procurement issues did you give any advice in relation to whether or not the matters should be referred to anyone?---Yes, I indicated that he should conduct an independent external investigation and have the matter referred to ICAC.

In your position and in relation to the portfolios you oversee what is the importance of referring matters such as these to an independent body such as ICAC?---Um, so that these matters could be properly investigated.

10

Is there any significance in the fact that it's being referred to a third party?---Um, to show independence and impartiality.

Now you might need to go to the next page.

THE COMMISSIONER: Can I just ask one question about page 466 - - -

MR FORDHAM: Yes.

20 THE COMMISSIONER: - - - Mr Scutella. In the last sentence of the first paragraph, the most significant feature was that there was no concern that he had received any personal gain, only a minor irregularity?---Mmm.

Who said that?---Mr Kear, sir.

Thank you, yes.

30 MR FORDHAM: In relation to the statements about whether or not allegations had been substantiated, did Mr Kear give you any information about the extent of any investigation undertaken by him or on his behalf?---He indicated that he had organised for an investigation to be conducted by IAB and he had also looked into the matter as well and his initial review of the matter indicated that these matters were of a minor irregularity only.

When he made the reference to IAB, sitting here today do you remember whether that was in relation to the procurement contracts or in relation to other matters?---My understanding at that point in time was in relation to the contracts procurement and then later further conversation on actual credit card usage.

40

THE COMMISSIONER: I'm sorry, I can't hear, Mr Scutella?---My understanding was at that point in time it related to contracts procurement and then at a later stage, likewise in relation to credit card usage.

Credit cards?---That's correct.

MR FORDHAM: In any, in any event and in relation to both of those matters it was your advice that the matter should be referred to ICAC?

---That's correct, sir.

Now if you go to 467, in the very last paragraph you refer to disparaging comments being made about senior officers, do you see that?---That's correct, sir.

And then if we can go to 468 those disparaging comments included comments made about him?---That's correct, sir.

- 10 Do you remember what if anything he said about the comments being made about him?---No, he didn't, I don't recall if he said any examples but he spoke in general terms rather than specific from my recollection.

And where it is in that first paragraph of 468 that there was a consideration being given to dismissal - - -?---Yes.

- - - in what context was that consideration being discussed?---My understanding was in relation to disparaging comments about himself and, and other senior officers.

20

And the qualifier appears to relate to whether or not the comments or sorry, the subject of the disparaging comments is substantiated, is that correct? ---That's, that's how he explained it to me, sir.

THE COMMISSIONER: I'm not sure if I can read your writing, Mr Scutella?---Sorry, sir.

The top of page 468?---Yes.

- 30 The sentence begins, "Including him MK indicating that he could not objectively" - - -?---"Deal with the complaints about SP."

"Deal with," is that "deal with" is it?---"Deal with", that's correct.

Yes, thank you.

MR FORDHAM: And so if we understand that note correctly the disparaging comments included a, the fact that he couldn't objectively deal with Steven Pearce?---That's correct, sir.

40

Did Mr Kear say anything to you about the nature and the extent of his relationship with Mr Pearce at this time?---My understanding of the relationship was that they appeared to get on quite well, whether they were close friends or not I don't know but they appeared to have a good relationship.

And if I could just ask you to go back to the question that I was attempting to ask and I'll try and ask another one, was anything actually said by



Mr Kear to you in this conversation about the nature and extent of his association with Mr Pearce?---No, not that I can recall, no.

And did he raise any issues with you that may affect the partiality or otherwise of any decision he made about Mr Pearce or Ms McCarthy?---No.

10 THE COMMISSIONER: Did Mr - what, what was Mr Kear's purpose in phoning you and telling you these things that you've recorded in the note, Mr Scutella, did he tell you?---We receive advice from our various Commissioners and Deputy Commissioners on matters of a sensitive nature from time to time. The purpose is just to advise and to inform of significant incidents which may occur from time to time.

So he was not then requesting your advice?---Ah, no, sir.

Did you give him advice?---Um, my advice was to report it to the ICAC.

20 And what did he say?---Um, um, my understanding was that he would be reporting it, sir.

Thank you.

MR FORDHAM: Further down there's a reference to a Mr Graeme Head who we found out yesterday is the Public Service Commissioner?---Yes, sir. That's not on my screen at the moment.

468?---Yeah. That's correct, sir.

30 Did he disclose the nature of the advice that he received from Mr Head or merely that he had advice?---Merely that he had advice, sir.

And beyond the conversation in the relation to the reporting of matters to ICAC did you give any further or other advice to Mr Kear about what he would do in relation to this potential dismissal?---No, sir.

Now can we go to 488 please. Now the first paragraph where there's a reference to the situation with TM who we can assume as Tara McCarthy had become more difficult?---That's correct, sir.

40 Was it explained to you what that difficulty was?---Um, I assumed in terms of um - - -

THE COMMISSIONER: No. What was it explained to you?---No, sir.

MR FORDHAM: Now further down there's a reference to matters relating to the credit card not being, it looks like substantiating, no, there was no substance to the allegations and had spoke to IAB and their interim feedback. Do you see that reference about three lines in?---Yes, sir.

Yeah. I take it that is information that Mr Kear gave you and which you made a note of?---That's correct, sir.

Was there any discussion between you and him about exactly what it was that had not been substantiated?---No, sir, it was of a general type nature.

And further that there'd been a discussion with a HR manager in relation to an issue with some notes or evidence and whether or not they've been  
10 falsified. That's correct?---That's correct, sir.

Was there any discussion between, well by Mr Kear in relation to any context around that or simply whether or not had or had not been substantiated?---Um, from my recollection, sir, it was the case of him informing me that there as an allegation of Mr Pearce allegedly giving false evidence at a tribunal at an IRC proceeding, as to the detail I wasn't aware of it.

Thank you. And on page 48, or the bottom of 488 you'll you make, it  
20 appears to be a recommendation or at least the provision of some information?---That's correct, sir.

Which investigation are you referring to there?---This matter which is he's just raised with me in relation to credit card usage and also the alleged false information.

And what if any advice were you giving in relation to that issue?---Oh, to report the matter to the ICAC.

And if we turn to 489 you seem to have recorded that?---That's, that's  
30 correct, sir.

And then having been given that advice by you what was it that Mr Kear indicated that he might do?---Um, he indicated that um, he may be terminating her services as a result of disparaging comments um, in relation to, about senior officers of the SES.

THE COMMISSIONER: Is that all he said, that was the only reason he gave I mean?---Um, from what, to the best of my recollection, sir, yes.  
40

I take it that had he given another reason for his desire to terminate her services you would have recorded it?---Yes, sir.

MR FORDHAM: You then had a further conversation with him at about 12.15 on the 14<sup>th</sup> and that appears at 494?---That's correct, sir.

Now, if you can just kindly read that first paragraph, I want to ask you some questions about it so perhaps just read it to yourself?---Yes sir.

Now, from what you were told by Mr Kear what did you understand to be the basis for the consideration of this dismissal?---Um, that as a result of Ms McCarthy making inappropriate comments in relation to, or disparaging comments about Mr Kear and the SES and other SES officers, that he'd lost his trust and confidence in her and that he intended to dismiss her.

10 You used the word disparaging in the note. I take it you do take fairly extensive notes. If there'd been any other basis given you would have recorded it?---Um, that's a summary of my recollection of that conversation.

And the conversation centred on the disparaging comments, correct?---  
That's correct, sir.

Had there been some further or other basis you would have made a note of it?---Yes sir, if he had have indicated other things as well I would have recorded it.

20 And further that he'd taken certain advice from Graeme Head and the Crown Solicitor?---That's correct, sir.

You then provided some advice about the mechanics of how it was things may pan out if it was to be followed through on that - - -?---That's correct, sir.

Now, within the senior executives of the portfolios that report to you I take there's not a unanimity of opinion, there's various opinions at various times by senior executives?---That's correct, sir.

30 Is that something you encourage, diversity so that you get the best out of your portfolios?---Um, in terms of the operations of the portfolios we leave entirely with the Commissioners in terms of um, who they engage and how they operate. That's an entirely an issue for, for each respective Commissioner.

Where it is that people within the portfolios that report to you suspect that there may be corrupt conduct or maladministration that is something you would encourage them to report, correct?---That's correct, sir.

40 Whether or not it eventually proves to be made out it's important that those suspicions are properly investigated, do you agree with that?---That's correct, sir.

Yes, I have nothing further. Thank you.

THE COMMISSIONER: Mr Oates?

MR OATES: Similar situation as yesterday?

THE COMMISSIONER: No I won't allow that. You've, this witness was foreshadowed, he's given evidence about conversations. I have no doubt that you client has instructed you about those and, or if he hasn't he should have.

MR OATES: Well, we didn't know what he was - - -

10 THE COMMISSIONER: This witness does not come as a surprise. It's obvious what his evidence was going to go to.

MR OATES: We didn't know what he was going to say, Commissioner.

THE COMMISSIONER: Well you should have instructions as to what your client says about what he told Mr Scutella.

20 MR OATES: Commissioner, it would be a simple matter for, with respect to the staff to have given me the notes, identify what the notes were. There's no index with the brief. I didn't know whose notes they were.

MR FORDHAM: I'm assuming, Commissioner, that my learned friend had access to instructions on which I cross examined this gentleman and in particular statements by Mr Kear on which I also cross, sorry, on which I also cross examined Mr Tree that Mr Kear had been told by Mr Scutella and Mr Tree that there was no corrupt conduct on the part of Steven Pearce. Now, if that wasn't obvious yesterday I'd be very surprised.

30 THE COMMISSIONER: Now, do you have instructions about that, Mr Oates?

MR OATES: I have some instructions, Your Honour, but I don't have instructions with respect to all that Mr Scutella said. I should be able to obtain instructions reasonably quickly.

THE COMMISSIONER: Well, I'll give you 15 minutes. We'll adjourn for 15 minutes.

MR OATES: As you please.

40

**SHORT ADJOURNMENT**

**[10.29am]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 [REDACTED]

[REDACTED]

[REDACTED]

30

MR FORDHAM: Thank you, Commissioner.

THE COMMISSIONER: Mr Oates.

40

MR OATES: I don't have any questions, Commissioner. Commissioner, I understand the Commission is dissatisfied we're not having instructions. Lest that reflect upon my client I can indicate this, yesterday when Mr - well, Mr Head gave evidence, when Mr Tree gave evidence, I didn't have any questions after consulting my client. Had their statements been provided to me I wouldn't have required them to be called. The same in relation to Mr Scutella. I asked yesterday whether there was a statement. There isn't one. It wasn't pointed out to me that there were numerous pages of his notes in the brief. As I indicated, there's no index. I had no way of knowing whose notes they were. Had I been alerted to that I might very well have been able to avoid Mr Scutella being delayed this morning and the Commission being delayed.

THE COMMISSIONER: Yes. Does anybody wish to question Mr Scutella?

MR HARRIS: No, thank you, Commissioner.

THE COMMISSIONER: Mr Scutella, that concludes your evidence, thank you for coming?---Thank you.

You're free to go?---Thank you, sir.

**THE WITNESS EXCUSED**

**[10.44am]**

10

MR MOSES: Commissioner, may Ms (not transcribable) and myself be excused?

THE COMMISSIONER: Yes, certainly.

MR MOSES: Thank you, Commissioner.

THE COMMISSIONER: Mr Fordham.

20

MR FORDHAM: I call Mr Pearce.

MR HARRIS: Commissioner, could I foreshadow that Mr Pearce is seeking the section 38 declaration.

THE COMMISSIONER: Yes, thank you.

MR HARRIS: He'll give evidence under oath.

30 THE COMMISSIONER: Thank you. I declare that all answers given by Mr Pearce and all documents 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.

40 **I DECLARE THAT ALL ANSWERS GIVEN BY MR PEARCE AND ALL DOCUMENTS 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.**

THE COMMISSIONER: Would you swear Mr Pearce in please. Would you swear Mr Pearce in.

THE COMMISSIONER: Mr Fordham.

MR FORDHAM: Sir, what is your full name?---Steven John Pearce.

Your occupation?---Is Deputy Commissioner.

10 Of?---Sorry, New South Wales State Emergency Service.

What's your business address?---Is 6-8 Regent Street, Wollongong.

For how long have you - - -

THE COMMISSIONER: Mr Pearce, do you mind just speaking into the microphone because you are actually in audible?---Sorry, sir.

20 Where you stand, where you sit now?---6 to 8 Regent Street, Wollongong.

MR FORDHAM: For how long have you been with the SES?---Just over three years.

Before the SES where did you work?---Ah, with New South Wales Fire Brigades it's now known as Fire Rescue New South Wales.

For how long were you with the Fire Brigades?---Ah, 25 years.

30 In the course of your employment with the Fire Brigade did you come to know Murray Kear?---I did.

When?---When um, Mr Kear as appointed as the Regional Commander for West Region I think around 2005 or around there.

Mr Kear was one of the reasons that you wanted to apply to move to the SES wasn't he?---He was one, yes.

40 Your relationship with Mr, with Mr Kear was one of the reasons that you wanted to apply to the SES wasn't it?---Not, that wasn't um, a factor.

You have been going camping with Mr Kear at Bonnie Vale since at least 2008 haven't you?---That would be correct, I'm not sure about the year but yes, I've been, um camping there with Mr Kear and his family.

You are a very, very good mate of Mr Kear aren't you?---I'd agree with that, yes.

You have described him in emails and I can take you to them if you want as a good boss and a mate?---Correct.

The mateship that you have with Mr Kear is something that is important to you, correct?---It is, yes.

It has formed the basis in part of your working relationship hasn't it?---It has.

- 10 Mr Kear has supported you in the entire time that you've been at the SES hasn't he?---I would say, yes.

You were interviewed by Mr Kear when you initially applied to the, to the SES weren't you?---Correct.

You weren't employed on that occasion?---Correct.

You were later employed by Mr Kear?---I was, correct.

- 20 When was that?---The initial application that I applied for was Deputy Commissioner Operations, I was unsuccessful in that and um, and incumbent Mr Dieter Gescke got that, I, sorry, I remained in my employment with New South Wales Fire Brigades, um, I can't recall a time period but I think it was within four to six months after that that I received the phone call to say that Mr Kear had received permission by the Government to um, establish an additional Deputy Commissioner's position in Corporate Services.

- 30 What year were you first employed by the SES?---2010, November.

The first time you'd gone camping with Mr Kear was back in 2008, that's right isn't it?---I can't recall the year but it would have been, yes.

THE COMMISSIONER: It's a couple of years before you joined the SES?---Correct.

MR FORDHAM: Prior to joining the SES you had entertained each other in each other's homes hadn't you?---I believe so, yes.

- 40 And that is prior to you applying for a job and being interviewed by Mr Kear, correct?---That would, that would have been correct.

Commissioner, I would like to make an application that the next question and answer be suppressed and if you'll bear with me you'll soon see why.

THE COMMISSIONER: Well let me hear the, let me hear the question.

MR FORDHAM: What is your mobile phone number?



THE COMMISSIONER: Yes. The, the answer to that question will be suppressed.

**THERE IS A SUPPRESSION ORDER IN RELATION TO MR PEARCE'S TELEPHONE NUMBER**

10 THE WITNESS: [REDACTED]

MR FORDHAM: I make the same application in relation to the next question that I'm about to ask.

THE COMMISSIONER: Yes, that also concerns an address or evidence that Mr Pearce gives about his telephone numbers and address is suppressed.

20 [REDACTED]

[REDACTED]

[REDACTED]

30 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40 [REDACTED]

[REDACTED]

[REDACTED]

MR FORDHAM: You from time to time engage in text messaging do you not?---I do, yes.

You text message Murray Kear?---I do, yes.

From time to time you pass on text message to Murray Kear that you think he might like to see?---Yes.

10 Earlier this year did you pass on a text message that was sent to you by your sons?---I can't recall.

I would like that also suppressed.

THE COMMISSIONER: Why, Mr Fordham?

MR FORDHAM: Because I'm about to ask a question that will relate to that.

20 THE COMMISSIONER: All right. That is suppressed.

**THERE IS A SUPPRESSION ORDER IN RELATION TO A TEXT MESSAGE SENT TO MR PEARCE**

MR FORDHAM: Do you have that text message? Have you ever referred to Ms McCarthy in derogatory terms?---In the workplace or at home?

30 Anywhere?---Not in the workplace, no. At home, yes.

Have you ever passed on a text message to Mr Kear which Tara McCarthy was referred to as a [REDACTED]---I can't recall. I can recall that term being mentioned in my home.

Did you ever pass on - - -

THE COMMISSIONER: By you?---I beg your pardon?

40 By you?---No.

By, I see. By somebody else in your home?---Correct.

MR FORDHAM: On 28 May of this year and after Ms McCarthy was sacked did you pass on a text message to Mr Kear in which the term [REDACTED] was used to describe Tara McCarthy?---I can't recall but if you have the text message evidence then it must be true.

In that text message, which I'm happy to show you in a moment did you pass on a text message to your boss and mate, Mr Kear in which the words "will get what she deserves," was used?---I can't recall that either, sir.

And is what she deserved sacking?---Not in my mind, no sir.

Did you think it was appropriate to pass on text messages containing that level of vilification to your boss about a former workmate?---No, it would not be termed as appropriate, no.

10

You passed it on because it summarised your views in relation to Ms McCarthy didn't you?---At that time yes.

I'll show you a copy of a document, and I have a copy for the Commission.

THE COMMISSIONER: I think you should produce the email, Mr Fordham. You should produce the email.

MR FORDHAM: I'm going to.

20

THE COMMISSIONER: And the text message.

MR FORDHAM: Have a look at box 53. Do you see that?---Yes.

Read it to yourself?---I've read it.

That's the text message that you passed on to your boss isn't it?---Correct.

The text message you agree is inappropriate, correct?---Correct.

30

You passed it on so that you could show some support for Mr Kear didn't you?---Correct.

Your mate?---Yes, he is my mate.

I tender that entry.

THE COMMISSIONER: It's a string of text messages. Is this derived from somebody's telephone?

40

MR FORDHAM: It is from Mr Pearce's telephone, oh, Mr Kear's telephone, I apologise.

THE COMMISSIONER: Yes. The string of text messages from Mr Kear's telephone is Exhibit 8.

**#EXHIBIT 8 - LIST OF TEXT MESSAGES SENT FROM  
MR KEAR'S MOBILE PHONE**

MR HARRIS: Commissioner, I note that the suppressed names are on that document, for example box 53 and - - -

THE COMMISSIONER: Yes, addresses and names of Mr Pearce's [REDACTED], in this Exhibit 8 are suppressed.

10

MR HARRIS: Thank you. I suppose I should add as are the phone numbers, sir.

THE COMMISSIONER: As are the phone numbers.

MR HARRIS: Thank you.

20

**THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF  
MR PEARCE'S [REDACTED] CONTAINED IN EXHIBIT 8 ARE  
SUPPRESSED**

MR FORDHAM: Prior to Ms McCarthy commencing at the SES you were in the role of Commissioner Corporate Services?---Correct.

Part of the role that you undertook involved the management of Procurement?---Correct.

30 The administration of overtime for certain employees?---Yes.

The use of motor vehicles?---Yes.

The migration of things like the motor vehicle fleet and the maintenance of SES buildings and equipment into the SES's control?---Yes.

Those matters were passed over to Ms McCarthy when she was employed? ---That's correct.

40 You in, in your employment with the SES laterally transferred from the Corporate Services to the Operations portfolio once Ms McCarthy started? ---Correct.

The migration of the fleet and the migration of the maintenance and responsibility for buildings was described by you as the biggest, sorry, as part of the biggest single asset development that had taken place in the SES's history wasn't it?---Correct.

I think there was a significant amount of Government funding that was obtained for the purpose of doing so?---96 million.

And were you part of the team that put together the business case to get that 96 million?---Yes.

The business case was, was that managed by you?---It wasn't just a business case, it was a series of proposals.

- 10 In order to manage this process it became necessary you thought to bring on board some consultants?---Both prior to obtaining the money, the extra 96 million, and then after, yes.

One of the companies that was invited to work as a consultant was Karoshi, K-a-r-o-s-h-i, correct?---Ah, correct, that was after we'd received the money.

And they were brought on board to assist with this fleet migration issue?  
---That's correct.

- 20 You were responsible for the negotiations with Karoshi to bring them on board?---I led the negotiations with another team, yes.

Perhaps we'll go back to my question. You were responsible for it weren't you?---Yes.

The Karoshi contracts are non-compliant with Government guidelines aren't they?---I now know that, yes.

- 30 The Karoshi contracts contain a termination clause beneficial to Karoshi and outside the normal Government procurement guidelines. That's right isn't it?---Yes, I now know that, yes.

And you didn't know it then?---No.

The Karoshi contracts utilise a wording that is not standard Government procurement wording, correct?---A word are we talking about or - - -

- 40 Wording the contracts themselves?---No, no, that's correct, yes.

Where did you get the wording for the Karoshi contract?---I got the contract and the wording from Mr Eggert.

Mr Eggert is who?---Mr Eggert is the principal of Karoshi Pty Limited.

Did you ask Mr Eggert to provide wording for the contracts?---I asked um, Mr Eggert to provide me a contract he'd used with other Government agencies.

Did you ask Mr Eggert to provide you with the wording for the contract?  
---No, sir, I asked him to provide a contract that he'd used with other  
Government agencies.

Perhaps I'll put it another way, did you supply Mr Eggert with standard  
Government procurement guideline contract wording?---No, I didn't.

10 Did you ask Mr Eggert to provide you with the wording for a contract to be  
used for this consultancy?---I recall asking Mr Eggert to provide wording  
for a certain section which is section 7 of the contract.

Can we pull up 261 please, 261.

THE COMMISSIONER: Is that volume 1?

MR FORDHAM: Volume 1, thank you, Commissioner.

20 Have a look at the email at the bottom of the page if you wouldn't mind, it's  
the second one from the bottom, it commences, "Steve, PSA template"?  
---Yeah.

Now Frank Eggert supplied you with that template didn't he?---He did, yes.

He left an annexure blank for you to fill in?---Yes.

We can look at it if you like but that's really the identification details for the  
SES isn't it?---I, um, I believe so, yes.  
Now the contract itself there is a version of it at page 264. That has an SES  
30 logo on it doesn't it?---It does.

How did that come to be there?---I provided that to Mr Eggert to apply to  
the um, to the cover of the document.

Now could we go back to 261 for a moment please. In that email dated 18  
May 2012 and whilst you were in charge of the negotiations for this contract  
Mr Eggert sent you an email in which he said also the dodgy looking SES  
logo on the first page is a copy and paste from your website. Correct?---I  
don't have that in front of me.

40 261. Volume 1?---Oh sorry, no, sorry, yeah, I see that down the bottom  
there.

Yeah?---Yes, correct.

Now did you use the dodgy looking logo or did you provide him with a  
better one?---No, I provided him with a better one.

And you did that didn't you so that the contract would look as if it had come from the SES?---No, I did that because I applied the corporate logo to the majority of our corporate stationery as part of a branding program.

Branded so that it would look like it'd come from the SES?---Branded so it just looked like an SES document, yes.

But it wasn't an SES document was it?---No, it was a document that I presumed was a standard Government contract.

10

It wasn't an SES document was it?---No.

And to suggest it was would have been false, correct?---I wasn't trying to suggest it was an SES document.

20

THE COMMISSIONER: Well why did you ask this man for, to get you a Government contract, why didn't you simply go to the appropriate Government channels and ask for a contract?---Because as I had explained to the Commissioner when he was doing the investigation into, into the contracts was that, for expediency I was trying to get the, the project underway as quick as I could to get the fleet out to the volunteers, so it was more for expediency you know lack of process if you want to call it, yes.

MR FORDHAM: You wanted the contract to represent that the SES was in it didn't you?---Oh yes.

The amount of the contract was some \$240,000 wasn't it?---Correct.

30

As at May of last year the Government Procurement Guidelines were that under \$30,000 you could contract without quotes or tender weren't they?---Yes.

Between 30 and \$150,000 it was necessary to obtain three quotes from a pre-approved provider?---Yes, I know that now, yes.

THE COMMISSIONER: You mean you didn't know that then?---No sir.

40

How, what's your explanation for not knowing it then?---Again, sir you could put to naivety. Um, my understanding of the procurement arrangements was um, correct that in regards to under \$30,000 you didn't need a quote. Um, my understanding was up to \$250,000 you didn't need a quote if you'd already engaged with that contractor on a previous term. And over \$250,000 you're required to put it out to tender.

Does the SES have a policy relating to procurement?---I would presume it does, sir, yes.

Did you check it out?---No I didn't.

Why not?---Again sir, lack of process, just expediency trying to get um, the process underway.

But didn't you know that procurements is regarded by the Government as a really important issue and something which has caused wastages of millions and millions of dollars?---Yes, I did that, sir. I do know that, sir.

10 And therefore the Government had put in place rules to try and prevent that kind of wastage from happening?---Ah hmm. Yes, sir.

But you ignored all that?---Yes, you could say, oh no, I take that back, sir. I didn't consciously ignore that. This was my um, assumption of how, you know, the procurement guidelines worked and during the entire process of procuring the contract and the contractors I ensured what I thought for transparency that I included multiple other officers on there and also included multiple other officers in the engagement of the contractors.

20 What gave rise to that assumption?---Ah, the assumption that it was correct? Yeah?---It was just my previous assumption, sir.

Well why, where did it come from?---(No Audible Reply)

What facts gave rise to the assumption?---When, when I was working for Fire Rescue I used to work in an area out near the Logistics Division and I can recall having conversations with um, with officers there in the Logistics Unit when they were procuring contracts.

30 And?---And that's where um, my recollection was in regards to what the process was for procurement as far as the levels.

I see.

MR FORDHAM: Over \$150,000 you were supposed to go to public tender weren't you?---I now know that, yes.

40 Yes. Now, it's the case isn't it that you did nothing, I withdraw that. What did you do to check that the contract that you were going to utilise supplied by the other contracting party was appropriate for use by a Government agency such as the SES?---Sir, in honestly I didn't do anything because I presumed it was the correct contract from an approved contractor that had been recommended to me by the Director of State Fleet.

You now know don't you that Karoshi wasn't an approved provider at that point?---I now know that, yes.

And they were supposed to be?---Yes, I understand that, yes.



You mentioned some other officers before, you're not trying to blame anyone else for your mistake are you?---No, no, not at all, sir.

THE COMMISSIONER: You were the senior officer involved were you?  
---Correct.

MR FORDHAM: Can we go to page 263 please. You sent that email on 28 May, 2012 to Mr Eggert?---That's correct.

10

In that email you asked him to complete item 7?---That's right.

If we could go over to page 297, do you see the highlighted section in item 7?---That's right.

Now in there, that is where the SES, in this case you, was supposed to insert the priority of any specifications, standards that you want the service provider, Karoshi, to observe?---It was my understanding that that section there was the specifications for the vehicles, RTA specs, things like that.

20

You were asking him to fill in a section in relation to what it was in part you were going to be paying his company \$240,000 to achieve?---I was asking him to fill in the specifications that I thought was required or I presumed was required for the procurement and maintenance of a new vehicle fleet, yes.

30

Well, let's go over to item 7 as it - excuse me. I apologise for having to do it this way but unfortunately the final version didn't make the brief. Can I show you this document - oh, don't stand up, it's all right, someone will bring it to you. Look down at item 7?---Yes.

Those are the items that you had asked the provider to fill in?---Correct.

I tender that document.

THE COMMISSIONER: Yes, can I see it, please?

40

MR FORDHAM: It is a, it's the final version which we've now uncovered which is a signed version of the Professional Services Agreement between New South Wales State Emergency Service and Karoshi Pty Limited.

THE COMMISSIONER: So Exhibit 9 is the signed version of the Professional Services Agreement between SES and Karoshi Pty Limited.

**#EXHIBIT 9 - SIGNED VERSION OF THE PROFESSIONAL SERVICES AGREEMENT BETWEEN NSW STATE EMERGENCY SERVICE AND KAROSHI PTY LIMITED**

THE COMMISSIONER: Mr Pearce, did you take any steps to have this contract vetted by someone experienced in contracts?---Ah, yes, sir, to my, to my recollection I was um, only thinking about this um, the other night in preparation for today's hearing, was I can't be certain um, but during the entire process um, I was assisted by my director of logistics and finance and I'm unsure but I may have asked um, Mr, Mr Pallier to also check through the contents of the contract but again, I'm unsure of that. I do recall asking  
10 someone else to read through the contract ah, with me um, I don't know whether I've sent that in, in an email to someone but I haven't been able to access um, any emails to be able to confirm or verify that.

MR FORDHAM: Did you ever go to the internet and look up the procurement guidelines?---I didn't, no, sir.

Did you ever go to New South Wales Audit or any other Government website to check for the appropriate wordings of contracts?---No, I didn't at the time, sir.  
20

Did you ever talk to any of, of your available superiors and by that I mean people within the Ministry about what if anything you should do to ensure compliance?---No, I didn't, sir.

You'd agree with me wouldn't you that at best what you did in relation to these contracts was negligent?---I would agree with that sir, yes.

THE COMMISSIONER: I mean, it's quite extraordinary isn't it that you gave Karoshi carte blanche to put in whatever they liked in the contract?---I  
30 gave them, I wouldn't say carte blanche as far as the contract documents. Karoshi never provided a quotation, oh sorry, not provided a quotation, never stated how much money the contract was to be worth. What I asked of Karoshi at the time particular in that section 7, to put it in context was the documents and guidelines specifically to RTA specifications and other documents in relation to the implementation of the fleet.

But where, was there any written provision defining precisely what Karoshi was going to do to earn it's money?---Ah, yes sir. It was um, at the end of the document.  
40

I beg your pardon?---There was, there's an annexure to the document I believe um, to state out what the company was to do.

Well, you've got the documents in front of you haven't you?---I have sir, yes.

Where's the, where is this document to which you're referring?

MR FORDHAM: I don't think this copy has an annexure, Your Honour.

THE COMMISSIONER: Is this the complete document or not?---No it's not.

THE COMMISSIONER: So what is the annexure?---Um, in, in your brief of evidence there, in the copy of the contract you have in the brief of evidence it'll show that.

10 MR FORDHAM: 301 apparently.

THE COMMISSIONER: There's that, is, do you have it there, 301?---No sir.

MR FORDHAM: Yes, it's coming up on the screen now.

THE COMMISSIONER: You say that defines the services?---Um, is there another page still to go?

20 THE COMMISSIONER: Yes.

MR FORDHAM: 302?---Yes, sir.

THE COMMISSIONER: Well, where's the model to which reference is made in this?---The model was what the consultancy was to develop on their engagement where if you, I don't know whether you have a copy of the business case but the business case had all the specifications on where and how and what time and what type of vehicles were to be delivered.

30 Well, is that business case incorporated as a contractual obligation in this contract?---Yes, sir.

Where's that?---(No Audible Reply)

Where does it say that?---Can we have a look at the other page?

MR FORDHAM: It's item 7.

THE COMMISSIONER: I beg your pardon?

40

MR FORDHAM: Item 7.

THE COMMISSIONER: Item 7.

MR FORDHAM: Of the schedule. Third bullet point.

THE COMMISSIONER: So this provides that the business case is part of, is a contract document. Where does, does it say that the services has to be as itemised in the business case?---(No Audible Reply)

Is that something you checked?---Is it on the, on the next page, sir?

MR FORDHAM: I think if you go back to 2.1 that may assist, Commissioner.

10 THE COMMISSIONER: Yes. All right. I can see that, yes.

MR FORDHAM: Perhaps if I can deal with it this way. You relied on the service provider to provide you with the wording of the contract for the engagement of their services, correct?---I relied on the provider to provide me with a copy of a contract they'd used with other previous Government agencies, yes sir.

20 Perhaps it's my question. I'll ask it again. You relied on the service provider to provide you with the wording of a contract for the engagement of their services, yes or no?---I'll have to stick to my previous answer, sir, but if you want a yes or no answer I'll say yes.

You relied on that service provider to provide you with, amongst other things, the wording for a termination clause that was more advantageous than is usual for Government contracts, yes?---Yes, I now know that is more advantageous and, yes, that's correct.

It cost the SES money to get out of this contract didn't it?---Yes, sir.

30 You'd agree with me, wouldn't you, that it was inappropriate for you to rely on the service provider for the wording of the contract?---I would agree with you, sir.

You would also agree that it was inappropriate to provide badging so that it looked like this was an SES generated document?---No, I wouldn't agree with you on that, sir, no.

You think that's all right do you?---Yes, I do.

40 THE COMMISSIONER: Who, who were you telling that it was an SES document by putting the badge on it?---Sir, it was just um, part of um, a branding, a corporate branding programme so I understand your question who was I telling, it wasn't applied to tell anyone in particular nor - - -

Well, it was applied to, to tell anybody who looked at it?---It was, ah, yes, sir.

And that was false?---Pardon?

That was false?---It was fast?

False?---False.

Mmm?---Ah, that was false that it was a SES contract?

Yes?---Um, I now know that, that it wasn't the appropriate Government contract, yes, sir.

10

No, but you always knew that it wasn't an SES contract?---I always knew um, that it wasn't an SES specific contract, yes.

You, you always knew that it wasn't a contract which SES had produced?  
---Correct.

But the badging made it look as if it was?---I can see that point, yes, sir.

20

And that was false?---It was false that it wasn't an SES contract, correct.

But I don't understand why you wanted the badge on a contract between you and a private person, this is not a document that's going out into the marketplace?---No, sir, it was just by, by a matter of um, routine that I, that we, I and we applied the corporate logo to all our external stationery. Sir, if I, if I can add if, if there is an inference that I was trying to mislead something to think that, someone, an entity, that it was supposed to be an official SES produced document to obtain some form of advantage for anyone I can totally sit here and deny that.

30

MR FORDHAM: If we cut the last bit out about advantage you can't deny that though, can you?---Could you restate back what, I forgot (not transcribable)

Well, I'll put it in short form?---Yes.

You have represented that this is an SES document when it is not, that's right isn't it?---Ah, that's correct.

40

Now you committed the SES to spend \$240,000 in Government money without any regards to the procurement guidelines, didn't you?---I entered the contract under what I thought were the procurement guidelines.

You didn't even look on the internet to see what they were, did you?---No, that's correct.

You entered into that contract without any regard to what the procurement guidelines were, didn't you?---I entered into the contract under what I assumed were the procurement guidelines.

You were wrong?---I was wrong.

You didn't look to see what they were did you?---Correct.

You'd agree with me that that is inappropriate?---I would agree that that was inappropriate.

10 THE COMMISSIONER: Mr Fordham, there's a query from the media about the suppression order in relation to Exhibit 8. I need to clarify that. The - what is suppressed is the names of Mr Pearce's sons, the reference to Mr Pearce's, to Mr Pearce's sons and telephone numbers and addresses if there are any, otherwise nothing is suppressed.

MR FORDHAM: Thank you. Did Mr Kear discuss with you the, your conduct in relation to these contracts?---Yes, he did.

20 When?---Once it was um, initially when it was first brought to his attention when there was a referral to ICAC.

So when was that - - -?---Pardon me.

- - - in October of last year?---Correct.

And what if anything did he ask you?---Um, he asked, he asked me um, basically he interrogated me over the phone whilst he was in Tasmania then had a meeting when he returned.

30 Yeah. Now in the course of that interrogation what did he ask you?---He has asked me um, the process and the procedures of how I engaged Karoshi to which I explained to him.

Did he say anything to you about whether what you had done was appropriate or inappropriate?---I can't recall, sir.

40 At a later time and when he had returned from Tasmania did he say anything to you about whether your performance in relation to the Karoshi contract was appropriate or inappropriate?---From memory I believe he said you'd made a major mistake.

The reference being you being you Steven Pearce - - -?---Yes.

- - - had made a major mistake?---Yes.

THE COMMISSIONER: What, I still don't really know what he asked you. Can you tell us what - - -?---Oh, sorry, okay.

- - - Mr Kear asked you?---Mr Kear um, Mr Kear informed me that Tara McCarthy had made a submission to ICAC in relation to the engagement of the contract and he said I need to tell me exactly how did you go about and come about the contractors um, to which you know I went through a lengthy process and explained it to him.

And did he ask you anything else?---Um, he had asked me had I used the appropriate procurement process to which I replied to him I used the process I thought was correct.

10

And that's all?---Oh no, he, sorry, sir.

What else did he ask you?---Okay. He asked me um, first of all how did I come about um, engaging Karoshi in the first instance to which I told him that when um, we decided that we were going to redraft the business case in preparation for putting a submission to the Government that I went to Fire Rescue New South Wales to their Assistant Director of Fleet Mr Flanning as I had no idea about who was going to be a specialist in the fleet business. Um, Mr Flanning, um, put me onto the Director of State Fleet Mr Bruce Mitchell whom I rung that, that afternoon. Mr Mitchell told me that there was only two - - -

20

What I'm really asking you, Mr - - -?---I beg your pardon?

Mr Pearce, I just asked you what, what Mr Kear asked?---He asked me how um, did I get onto the contractors so who referred the contractors to me, he asked me did I know the contractors before the engagement, he asked me did I use um, the appropriate procurement process.

30

What did you say to that?---To, to which I told him I've used what I think is the appropriate process.

Yes?---He asked me did I have from memory, from memory, did I have any concerns with the performance of the contractors to which I said no.

Yes. Anything else?---Yes, there was.

What was that?---He said, "Steven, I need you to tell me is there anything corrupt in this engagement process?" to which I said no.

40

Did you - so he didn't ask you why you had not followed - - -?---Not, not - - -

- - - procedures that were laid down by the Government?---Not during that telephone conversation, sir. Um, at the second meeting back in the office where we had to step right through and I, and I showed him the process at how I engaged, he did ask why hadn't I obtained three quotes to which I told him you know my assumption on what the procurement process was.

Um, Mr Kear also asked me why didn't I, um look at the, the proper procurement process you know to which I openly admitted that I just, at this, to try and get this done as quickly as possible. Basically I think I used the terms like a bull at a gate.

MR FORDHAM: You used exactly the same contract wording supplied by Karoshi to engage an outfit called Performance Drivers didn't you?---I did, yes.

10 And we can go through it all again but you made all the same mistakes didn't you?---Correct. Because I presumed that that contract was a standard Government contract.

But just to concentrate on my question, and I can list them one at a time if you like - - -?---Please.

20 - - - but you made all the same mistakes didn't you?---Oh. I made the mistake of not checking that it was an appropriate Government contract. I made the mistake of trusting that it was an appropriate Government contract.

You made the mistake of using an inappropriate termination clause, correct?---Correct.

And you re-badged a contract that was not an SES contract or a Government contract as an SES contract?---And I re-badged a document that I thought was a Government contract with the SES logo.

30 MR HARRIS: Commissioner, if I might just interrupt my friend there, I think in asking Mr Pearce if he'd made all the same mistakes, and my friend, Counsel Assisting, correct me I'm wrong here that one difference might be that Performance Drivers was an approved Government contractor and that might be clarified please.

MR FORDHAM: I'm happy to concede that issue?---Can I also then add - - -

I haven't asked you a question?---Mmm.

40 Now, Tara McCarthy – sorry, Commissioner.

THE COMMISSIONER: Sorry. Did Mr Kear ask you about the termination clause?---He, yes he did, sir. He asked me did I know that the termination clause in the contract was not the standard Government 30 day clause to which I said, "No, I didn't know that."

And did he ask you about the re-badging?---No, sir. Not to my memory.



Thank you.

MR FORDHAM: Amongst the tasks that Tara McCarthy was given when she commenced with the SES was to examine the procurement practices of the SES, correct?---Ah, correct.

You would agree with me wouldn't you that it was entirely appropriate that she examined the Karoshi and Performance Drivers contracts?---Oh yes, I agree.

10

You'd agree with me that it was entirely appropriate that she identified the issues that we have been discussing with the Karoshi and Performance Drivers contract?---Ah, yes.

You would agree with me that it was entirely appropriate for her to report those matters given the noncompliance?---Yes.

THE COMMISSIONER: And report them to ICAC?---Yes, sir.

20 Did you discuss her reporting of this to ICAC with Mr Kear?---I did sir, yes.

What was the discussion?---The discussion was that um, I was disappointed that Tara had gone straight to a report to ICAC, you know, within I think it was a, you know, a matter of weeks of being in the agency before she'd even come and asked me anything in regards to the context of the engagement process. I had no, I had no issues with her taking it to ICAC. The issue was the process.

30 Well what process did you have an issue with?---Um, my issue, sir, was that even if it was um, given to ICAC, referred to ICAC that at least there was context into how the engagement process occurred first.

With what in mind?---Just to put my side of the story forward, sir.

But that would be put to ICAC wouldn't it?---It would have, yes. I presume it was.

40 What did, what did Mr Kear say when you expressed your disappointment in these terms?---I can't recall, sir.

Really?---Yes, sir.

Was he on your side?---No, not really, sir. That's, at that, at that time Murray was starting to um, be more biased I guess um, against me.

So he, he thought that Ms McCarthy had done the right thing did he?---I presume so, sir, yes.

You presume by reference to what he said to you?---Um, yes, ah, in, in way of his ah, his actions and, and commentary to the rest of the senior executive group, yes.

What was his commentary to the senior executive group?---Well, basically that um, you know, that, that I had made, you know, a serious mistake in relation to the engagement of the contracts um, it wouldn't be tolerated he explained to the ah, ah, to the group exactly the performance management process that he'd put me on after that.

10

So how long after you learnt that this was going to be reported to ICAC did this meeting with the senior management group take place?---Oh, I couldn't recall, sir.

Approximately?---Four weeks, three weeks, I think.

20

And did Mr Kear take any measures to make sure that everybody knew, every relevant person in the organisation knew that when there was a contract to be entered into that the Government procedures should be followed and where they were to be found?---Not um, I can't recall, sir, whether there was a, a directive to the rest of the senior executive group or to the agency, no.

Does that mean you can't remember that happening?---It means I can't remember that happening, sir.

30

MR FORDHAM: When you used the words "bias" a moment ago what you're referring to is legitimate criticism of the way in which you had handled this contractual issue isn't it?---Ah, no, I used bias, sir, in the terms um, of consciously and openly um, demonstrating that ah, Mr Kear was not showing favouritism towards me.

I see. Not showing favouritism towards you by admonishing you for mistakes you now freely admit you made?---Yes.

Now Ms McCarthy did talk to you about this contractual issue didn't she? ---After she had ah, made the submission to ICAC, yes.

40

You'd agree with the proposition wouldn't you that where you have a potential for corruption an officer in the ranks such as the Deputy Commissioner should report it?---I agree, yes.

In this case there were a contract worth \$240,000 - - -?---Ah hmm.

- - - and another contract worth somewhere between 180 and 240, depending on which calculation you use, but in any event a significant sum of money that was not in accordance with appropriate Government guidelines?---Before I answer that I'd just like to correct you on the second

part of the statement, sir, that the second contract that I engaged Performance Drivers on was nowhere near \$240,000.

It was certainly over the \$150,000 limit for tender wasn't it?---Ah, no, sir.

You disagree with that?---I disagree from my memory of that contract, sir.

10 Well, if I suggested to you that when you add up the numbers over the period of the contract it comes to \$189,000, do you agree or disagree?---I disagree, sir, without looking at the contract.

Do you agree with the proposition that the Performance Drivers contract was certainly over the three quote level of \$30,000?---I do agree, yes.

And you hadn't complied with that either had you?---No, sir, I didn't.

20 And where it is that you have non-compliant contracts for Government money it is a reasonable step isn't it that a person in the, in the role of a Deputy Commissioner at least looks into the question of whether there might be corruption?---If I had of been in um, Tara's position I would have done the same.

Thank you. And when Ms McCarthy spoke to you what she said was, "Please, Steve, don't say anything, let me finish speaking. I have got something very serious to raise with you." Now, firstly, you agree that the issues in relation to the contracts were potentially serious?---Yes.

30 She said to you, "These are issues around these two contracts in which you've engaged consultancy services it appears you didn't get quotes." And that was right wasn't it?---To my memory, yes.

And you hadn't got quotes?---And I hadn't got quotes, that's correct.

And they don't follow Government procedures that's what she said to you? ---Yes.

And it was correct you hadn't followed Government procedures?---That's correct.

40 And she also said to you it's a very serious matter. You don't disagree with that proposition do you?---No, I don't.

And your response was that you didn't realise you needed to get quotes and you've made a mistake?---To my memory, yes, that was my response.

Nothing more than a mistake?---Yes.

Was the Commissioner planning on taking a morning tea adjournment or, I don't mind either way.

THE COMMISSIONER: I think we can go on, Mr - - -

MR FORDHAM: Thank you. Who's Kevin Pallier?

THE COMMISSIONER: Unless anybody has an objection we should go on?

10

THE WITNESS: Kevin Pallier um, was the CFO of the agency.

MR FORDHAM: You say he was what does he do now?---Kevin is a project officer.

Is that a higher or lower position than he formally had?---It's a lower position.

20

How did he come to have that lower position?---Um, IAB did an investigation to Kevin on multiple disciplinary matters and the Commissioner and Tara I think made the determination to terminate Kevin.

Kevin Pallier was terminated for a number of issues one of which was excessive overtime, correct?---I believe so now, yes.

Some \$60,000?---I believe that was the figure, yes.

30

Actually it's 59 I apologise but near enough to 60. \$59,000 worth of overtime for which you had signed off?---Correct.

You had approved?---I had approved it, yes.

And you'd approved it after the event and not in accordance with Government policy?---After the event?

Mmm. It wasn't pre-approved was it?---Um, yes, the majority of that overtime was pre-approved.

40

So do you say that Mr Pallier was sacked for pre-approved overtime that you approved?---I had um, no knowledge or understanding of what the circumstances Mr Pallier was, was sacked in relation to overtime.

MR HARRIS: Commissioner, I think that might be unfair to ask Mr Pearce that he knows if Mr Pallier was sacked because of the overtime and I think it best it's one of the, it's one of the reasons.

THE COMMISSIONER: That's correct. But in so far as it related to overtime, in so far as the complaint against Mr Pallier related to overtime

and in respect of which he was sacked, in respect of which the overtime contributed to his sacking do you say that some of that overtime was approved by you before it was done by Mr Pallier?---I'd say that um, the majority of that overtime was approved prior to Mr Pallier um, working the overtime, the overtime they had concerned with was um, overtime that Kevin um, didn't seek my, my, my approval first.

But you had approved later?---Yes, sir, on um, Kevin's submission of what he needed to do the overtime for - - -

10

So how much, can you put an estimate on, on how much was overtime that you approved after he done it? I don't understand you just say the majority was pre-approved, is that right?---That's right, sir, yes, I gave Kevin verbal approval - - -

20

So how much do you think approximately, how much overtime was approved after the event?---Well as I, as I stated to Mrs Colby in the investigation there were only a few occasions where Mr Pallier presented me with time sheets that I hadn't given him pre-approval um, to work that overtime, it may have been two time sheets but the time sheets may, may add up um, to a month of, of um, claimed overtime but I couldn't put a percentage down on it, sir, no.

Well would it be more than half - - -?---Oh actually, no, if, if - - -

I take it it would have been more than half. Because you said that the majority was pre-approved?---I would, I would say, sir, it would be closer to 80 per cent.

30

80 per cent was pre-approved?---Ah, in, to my knowledge, yes sir.

Well how on earth did overtime come to be part of the complaint then?  
---Sir, I never made any complaint about Kevin's overtime.

Did you tell Mr Kear that 80 per cent was pre-approved?---Sir, I only had dealings with Ms Colbey.

40

So the answer's no?---Um, oh actually, if I can step back on that I told Mr Kear that Kevin had worked overtime that was not pre-approved and there was a significant amount of overtime that I refused to sign off on.

There is no, where are the claims which you refused to sign off on, Mr - - -  
?---I gave them back to Kevin.

And did you, did you inform appropriate persons that your complaint was in respect of overtime which you didn't approve at all?---Sir, I hadn't um - - -

No, just answer yes or no please?---Could you give me the question again, please?

Did you tell anybody in authority that your complaint in relation to overtime worked by Mr Pallier was for overtime for which he claimed without any approval in respect of claims which you'd returned to him?---Sir, I didn't make a complaint.

10 I didn't ask if you complained. I asked if you told anybody?---I told from memory Mr Kear when they rang me um, I think it was Mr Kear and Tara rang me on 20 September I think the date was, that they were thinking about suspending Kevin for a myriad of reasons and one of them was the overtime, that the overtime that Kevin had been paid I had um, authorised.

So what was the point of telling you that?---I beg your pardon?

What was the point of telling you that?---Telling the Commissioner that?

20 I thought you said that was Mr Kear told you that?---No, I told Mr Kear that, sir.

You told Mr Kear that?---Yes, sir.

And you didn't tell Mr Kear anything about overtime that had been claimed but which you'd refused to sign off on?---Oh no, I told Mr Kear that as well, sir.

You told him that as well?---Yes, sir.

30 Did you tell Ms Colbey?---Ah, yes sir, from memory.

Well you would hardly tell Mr Kear and not Ms Colbey?---No, as I said I, I told Mr Kear and I told Ms Colbey. But sir, my, my statement that um, may have caused you some angst was that I never made an allegation or a complaint that Mr Pallier's overtime was excessive and I never made an allegation or complaint that I thought Kevin was fraudulently claiming overtime. If there's one thing I thought Kevin was, apart from everything else was a honest guy.

40 You thought that if, the overtime he was claiming was justified?---Ah, yes sir, otherwise I wouldn't have signed off on it.

Ah hmm. Yes, Mr Fordham.

MR FORDHAM: You did however tell Ms Colbey that you had personal concerns about the extent of overtime being worked by Kevin?---I did tell Ms Colbey I had personal concerns, yes.

And that you'd raised that with Kevin?---Ah, yes.

And that part of that issue was a few occasions on which he didn't get prior approval?---Correct.

Now, the long and the short of it is that part of the disciplinary process in relation to Mr Pallier related to his overtime. You're aware of that aren't you?---I had now, I had no involvement in the disciplinary process of Kevin. I was kept at arm's length.

10

And the overtime for which he was disciplined was signed off by you?---Correct.

When you spoke to Ms Colbey about these issues did she ever ask you for documents that might support the proposition that you had counselled Kevin in relation to issues such as the overtime?---Um, I was asked did I have any documents to counsel Kevin in regards to all the excessive hours he was working, yes.

20 Did you have, sorry, I withdraw that. Were you specifically asked for diary notes?---Ah, I was asked for um, file notes or diary notes. I can't remember, sir.

When you were asked for those diary notes or file notes what you produced was a typewritten document, correct?---Ah, correct.

You later, and by that I mean after the IRC process you were asked by Mr Kear to produce the original handwritten documents?---Yes.

30 And you did so?---Yes.

And that was the first time that you had produced those handwritten documents to anyone?---Ah, I hadn't been asked before that, sir.

Well, you'd been asked for diary notes or files notes hadn't you?---Correct, yes, yeah.

40 And had it occurred to you that you might produce the handwritten ones when you were asked for them?---No, sir, because ah, I produced a summary of points I thought that um, the Commissioner and Tara would need when they informed me that they were thinking about - - -

THE COMMISSIONER: That's not, that's not what you were - - -?  
--- - - - suspending - - -

- - - asked for, that's not what you were asked for is it?---I was asked for um, any, any documentation that I had pertaining to the concerns.

I thought you said you were asked for diary notes or file notes?---Sir, I'd have to um, refer back to the email.

You just said that didn't you? Didn't you just say that? Five minutes ago you said you were asked for diary notes or file notes?---I was, I was asked to provide any diary notes by um, um, Lorna Grange.

Or file notes or just diary notes?---Yeah, ah, both.

10 But you didn't do that?---Oh, I did.

You provided a summary?---Ah, yes. I - - -

Why didn't you simply hand over your diary notes or file notes?---Because I, I thought it would be easier to hand over a summary document that I had provided Murray and Tara before they decided to suspend Kevin.

So you, you could edit the diary notes?---I could?

20 Edit?---Um - - -

You chose what to put in and what to leave out?---Ah, yes, correct.

MR FORDHAM: I'm just going to show you a copy of the typewritten document that you produced. When asked for diary notes or file notes that is what you produced and it goes further, we can show you the next two pages, can you show the next page for me, thank you. That's what you produced?---That's the um, copy that I gave Ms Colbey, yes.

30 That is a summary document, correct?---Correct.

It is not the original diary or file notes?---It's a summary of those file notes.

Thank you. Those file notes appear from pages 228 and following?

THE COMMISSIONER: Is that right?---Not all of those came from that um, from the diary, sir, no.

40 MR FORDHAM: So just so we're clear about it, not everything in the summary came from your diary is that right?---I believe everything except the last point in that summary that you showed previously.

THE COMMISSIONER: But, but pages 229 and following comprise your diary notes?---These ones here, yes.

MR FORDHAM: Now, just looking at, for instance, page 231 it's your practice to, it looks like one of those large red or red and black diary type books lined and you have a habit of writing address, sorry, dates and names



in the left-hand column and then text in the right-hand lined section of the page commenced with the top line, correct?---Um, normally I would do that, yes.

And if we go through, page 232, that appears to be what you've done?  
---Yes.

Page 233?---Yes.

10 4, 5?---Yeah.

7?---Ah, correct.

And we can keep going through to 241 but from 242 it's the same and 243 goes slightly higher in a series of dot points. Can we go back now to 235. That entry of 31/5/2012 are notes you took in relation to a meeting with Mr Pallier?---Yes.

20 And you will see, are you able to read the last two lines for me? Perhaps commence it with the sentence above, "I stated"?---"I stated again that the overtime I did not approve was overtime I did not endorse to be worked. I stated that I never directed Kevin, or expected Kevin," or KP, "To work under - - -

Sorry, we're at cross purposes. Go down to the very bottom and go up three lines. "I stated that," do you see that?---Yep. "I stated that I'd never um, directed or expected KP to work undirected or excessive hours and continue to have this position."

30 Now, go to the next page. Now, do you see there there's black pen and then blue pen?---I do.

Do you see there that that is the only occasion on which you have written above really the text lines in this diary?---Yes.

In relation to the note on the previous page are you able to tell the Commissioner when it was added?---I would presume it was added ah, the next day or when I had the meeting with ah, Phil Schafer.

40 But not at the same time as the one on the previous page?---No, looking at the diary no, it wouldn't look like that, no sir.

When you look at it it's a continuation of your recollections of that meeting?---Yes.

And if one was to read that document taking into account the answers you've just given it appears it's been added at a later time to flesh out what's been on the previous page?---Yes, sir.

There's nothing in that note to suggest it's been added at a later until one really sits down and starts reading it is there?---I don't know um, oh sorry. Can you say the question again?

The note doesn't have a notation such as - - -?---Oh, no.

- - - added?---No.

10 Thank you. Now, was Mr Pallier a frustrating employee?---At times, yes.

And at times you said so did you not?---I did, yes.

Sometimes Mr Kear said so, correct?---Correct.

From time to time you would email each other expressing frustration at the difficulties you were having with managing Mr Pallier?---Ah, correct. I'd often get counsel from the Commissioner on how best to counsel Kevin sometimes.

20

Was some, I withdraw that. Let's have a look at page 258 for a minute. Have a look at the top email for me?---Yes.

Is that your way of requesting counselling?---It's my way of expressing frustration, yes.

And if you have a look at the email below that Mr Kear appears to have written, "What the .....?" And that is in direct relation to the email below it where Mr Pallier has said certain things?---Ah, yes sir.

30

And as part of the counselling you were clearly receiving in relation to Mr Pallier did you ever pass over management in the manner set out in the email at the top of page 256?---(No Audible Reply)

"Now you can deal with him as I'm about to explode"?---Yes, sir.

As soon as Tara McCarthy identified issues with Kevin Pallier's overtime and also the manner in which he dealt with other members of staff he was suspended wasn't he?---Um, I'm not sure what you mean about dealing with other members of staff.

40

All right. As soon as Tara McCarthy raised issues in relation to Kevin Pallier with Mr Kear Mr Pallier was suspended?---Um, that's not my understanding, no sir.

He was disciplined?---My understanding is that once the Commissioner received adverse comments and complaints from the members of the Audit

and Risk Committee couple with everything else that's when Kevin was um, suspended.

Kevin Pallier was the subject of a third party investigation in the form of IAB wasn't he?---He was.

Mr Pallier was suspended and then sacked?---That's my understanding, yes, sir.

- 10 Mr Pallier whatever his faults might have been had spoken out about members of the SES?---In the context of?

He had said things that regarded as I think the words used were "insubordination" were they not?---My understanding is um, a bit different. My understanding is that Tara and Murray received phone calls from all the members of the Audit Risk Committee and independent members to state that.

- 20 Mr Pallier was disciplined in part for the overtime that you'd signed off on? ---Looking at the report, yes.

Mr Schafer?---Mr Schafer is the Manager of Marketing and Sponsorship.

When Mr Schafer was initially employed by the SES who interviewed him?---I did.

As part of that interview did Mr Schafer raise with you his desire to have access to a motor vehicle?---He did.

- 30 Did he say anything to you about access that he'd had to motor vehicles in previous employment?---He did.

What did he say?---From memory in his previous employment um, he had a vehicle supplied in the position.

Was he supplied a vehicle by the SES initially after his employment?---Yes, we leased another pool vehicle to supply to that position because that was a creation of a new position.

- 40 That vehicle was supplied at your direction wasn't it?---The leasing of that vehicle was supplied at my direction, yes.

Mr Schafer did not pay for his private usage as and until Tara McCarthy found out that he was not paying, that's right isn't it?---That is correct, yes.

That again was one of the things that Ms McCarthy had been charged with looking into was the usage of motor vehicles?---That's correct.

And why I'm on that topic Ms McCarthy in fact changed the way motor vehicles were used by staff at the SES?---Yes.

And that caused some disquiet to your observation amongst the people who worked there?---Ah, yes.

They effectively lost access to a perk?---They lost access to their vehicle, yes.

She changed the arrangements in relation to parking?---Yes.

10

So that people did not have advantage of effectively free parking at SES?  
---That would be my understanding, yes.

Again matters with which she was charged?---Correct.

Mr Schafer had access to a motor vehicle for some months without the paying for any of his private usage, correct?---I now know that, yes.

20

Well didn't you direct that the vehicle should be supplied out of NRMA funds?---I said the vehicle was to be leased from NRMA funds, yes.

That is sponsorship monies paid by the NRMA to the SES for use by the SES?---Correct.

You prepared a briefing note in relation to the Schafer motor vehicle issue?  
---Yes.

30

And that can be found at 363. The -- one of the recommendations you made was that Mr Schafer not be required to pay back amounts that he may have owed due to his private usage?---Yes, my recommendation was that he wasn't to pay back the, the debt that he'd incurred, yes.

At the time you made that recommendation the debt had not been quantified?---I can't recall that, sir. Actually if I go back I believe um, it was mentioned to me it was around \$15,000.

Somewhere between 10 and \$15,000 was an estimate?---Yes.

40

But it had not been quantified had it?---No.

Part of - I withdraw that. Who asked you to put together this briefing?  
---Ah, no one, I did it myself, sir.

Part of the briefing that you put together dealt with your involvement in this issue?---Correct.

You described a miscommunication?---In part of the document, yes, I do.

And what you suggest is that there was a miscommunication arising out of things you may have said?---Ah, correct, yes.

That miscommunication led to Mr Schafer understanding that he would have the same arrangements for his vehicle that he'd had in the private industry?---That's um, correct, that's what I, I found out from Phil, yes.

And that he wouldn't have to pay money for the private use of that vehicle?  
---That was Phil's understanding, yes.

10

And did you ever direct Mr Pride that Mr Schafer was not to be billed for his private usage?---No, I never directed him that.

But what you are sure about is that Mr Schafer had that understanding arising out of something you said that may have been misinterpreted?---That was part of the reason, yes.

And so having identified your role in that accumulation of debt you recommended that it be waived?---Correct.

20

And it was?---Ah, my understanding, yes.

I'll just be one moment if you don't mind. One of the - I'll just go back to Mr Pallier for a moment, another issue for which he was investigated, disciplined and sacked was an issue in relation to a report on the private usage of motor vehicles?---Yes.

And again, something under Ms McCarthy's watch once she started?---Um, no, no, the um, my understanding is that that report was ah, commissioned um, through myself and Kevin through the Audit Risk Committee.

30

Yes and I've expressed the question badly and I apologise. The usage of motor vehicles once she started was something that Ms McCarthy was to look at?---Yes.

Prior to that it had been yours?---Ah, yes.

And in the course of that you had commissioned a report?---Ah, yes.

40 The allegation was that Mr Pallier had sat on that report?---Ah, that was um, the assumption, yes.

And the allegation was that he'd sat on that report because it in part suggested he owed something in the order of \$10,000 to the SES for his usage?---Ah, that was the investigator's findings, yes.

Now, that report that you'd commissioned, did you ever follow up with Mr Pallier as to what was happening with it?---No, I left it in the hands of Mr Pallier.

Did you ever wonder where this report was after it had been commissioned?---No, sir, we had that much business on that um, Mr Pallier had carriage of that report.

10 And just to complete that line of questioning, you agree, don't you, that you didn't follow that up with Mr Pallier?---No, I left it in Mr Pallier's hands.

You like to surf?---I do.

As part of that occupation you required roof racks for your vehicle so that you could carry your surfboards?---Um, not all the time but I know your line of questioning so yes.

20 And it's the case isn't it that you got some racks for your vehicle and billed it to the SES?---Ah, yes, I, I purchased ah, roof racks probably in the first three weeks of ah, getting the leased work vehicle, yes.

You paid that money back to the SES I think somewhere between 15 months and two years after obtaining those roof racks?---Ah, from memory, yes, sir, I paid it back um, November 2012.

After Ms McCarthy had identified the anomaly?---Um, after the anomaly had been identified, yes.

30 And investigated?---Um, I don't know whether it was investigated, sir.

Well, Ms McCarthy looked into it, found the receipts, and you were asked for the money back?---Yes.

You have a camper trailer?---I do.

And for that you had electric brakes added to your vehicle?---Again sir, yes. On the private component of the vehicle, yes.

40 Ah hmm. And you billed that to the SES?---I did, sir, under the understanding that that was um, the way to do it.

Who gave you that understanding?---Oh, that was my understanding, sir.

Where did you get it?---Ah, just from observations from other senior officer's vehicles, SES vehicles.

Mr Kear signed off on both of those expenses didn't he?---Ah, I presume so, sir, yes.

Well, perhaps we'll pull them up. Can I have - - -?---That would be good.

- - - 164 please? Have you got 164 for me? The circled section two thirds of the way down the page, that's the roof racks in question?---I see it and I see it approval for payment.

Yeah, well perhaps if you just wait for my questions that would be very helpful. Do you see - - -?---No worries then.

10

Do you see the circled section?---I do.

That is the roof racks?---Correct.

Do you see the authorisation for payment?---Approval for payment, yes.

Yeah. And that's Murray Kear's signature?---It is.

20

Thank you. Can we go to 358 please. That is the invoice in relation to the electric brakes?---It is.

And to your understanding that was also signed off by Mr Kear wasn't it?---I presume you have the docket there, yes sir. I'd say yes.

Well, don't worry about what I may or may not have?---Ah hmm.

Why don't you just answer my question? You reported to Mr Kear?---I did.

30

He signed off on it didn't he?---I would presume so, sir, yes.

That would be the camper trailer that you take to Bonnie Vale wouldn't it?--It would be, yes.

With Mr Kear?---Ah, yes.

And you also from time to time require accommodation when you are working?---Ah, that's correct, sir.

40

Are there guidelines about what level of accommodation you should enjoy as a Deputy Commissioner of the SES?---Ah, there are, yes sir.

And do they include places such as the Sofitel and the Hilton?---Um, if you can get it at the appropriate rates or if there's no other available accommodation for the business need.

What was the appropriate rate as at July of 2011?---I couldn't tell you.

And I take it on occasions when you stayed at the Sheraton, the Sofitel, and, I'll withdraw it, I just, the Hilton they were occasions when you couldn't get other more suitable accommodation?---Um, that was what I was advised by my Executive Assistant, yes.

Now, you had a credit card?---I did.

That credit card was a corporate credit card paid for by the SES?---Ah, that's correct.

10

That credit card was for use in your employment?---It was.

It was for your use when conducting business for and on behalf of the SES?--Correct.

It was not for your private use was it?---Ah, no sir.

There was an IAB desktop audit in relation to the use of your credit card?---There was.

20

In the initial desktop audit there were 154 irregularities that were potentially in breach of Government guidelines were there not?---I believe so, yes.

They amounted some \$11,000?---Ah, correct.

Without going into unnecessary detail they included purchase of personal items such as alcohol?---Inadvertently, yes.

30 Well, I didn't ask you whether it was deliberate or not, I asked you whether it was included?---Ah, yes.

There was an issue raised about whether or not you're entitled to lunch when working in Sydney because you were living more than 55 kilometres from Sydney?---I don't know whether it was an issue raised it was part of the investigation to look at, yes.

And I think that eventually was decided in your favour in relation to the lunches wasn't it?---I believe so, yes.

40 However anomalies were raised in relation to things like the purchases of morning and afternoon tea?---Yes.

The use of your corporate credit card to purchase items for personal use?---What morning teas?

No. Just items for personal use, I'm reading from the report?---Okay, yes.



The lack of detail to support purchases that you had made that were supposedly in the course of your employment with the SES?---I believe so.

The failure to obtain prior approval for travel?---I believe so.

The claim of subsistence in excess of public sector rates?---Yes, I believe so.

- 10 And the lack of statutory declarations or receipts where expenditure had been made?---I believe that was um, on the report as well.

The use of Government money via the corporate credit card was also something that after her commencement fell under corporate services and Tara McCarthy?---It did, yes.

And you'd agree with me wouldn't you that it was entirely appropriate that she investigate the use of corporate credit cards by you and anybody else at the SES?---I'd agree with that.

- 20 And where anomalies were identified it was entirely appropriate that she actioned them?---I would agree, yes.

You would also agree would you not that the expenses in the forms of the roof racks and the brakes again fell under what was corporate services once Tara McCarthy came into her position?---Yes.

And it was entirely appropriate that she investigated those items?---Yes.

- 30 You would agree wouldn't you that it was entirely appropriate that having identified those expenditures she sought repayment?---Yes.

And reported it?---Yes.

You were the subject of a performance review in January of this year?---To my memory, yes.

You were put on a Performance Management Plan by Mr Kear?---That is correct.

- 40 That Performance Management Plan was documented on 8 January 2013 in a letter sent to you, correct?---I'd have to look at the letter, sir.

I'm just about to show it to you. Could we go to 386 please and 387 so we can show you the whole document and then I'll take you back. Now back to 386. That letter followed I understand a meeting between you and Mr Kear?---Yes.

On a number of occasion including 31 October?---I couldn't be sure of the date, sir.

It's all right. The things that were raised with you were the contract for the New South Wales SES fleet, that's right isn't it?---That's right.

That is the anomalies that Ms McCarthy identified and which you agreed with me were at best negligent?---Correct.

- 10 The contract for transferring the SES unit costs was part of the anomalies that Ms McCarthy identified in October of 2012?---That's right.

Further your role in the performance management of Kevin Pallier?  
---Mmm, that's correct.

For which – I withdraw that. For behaviour for which he was sacked?  
---Yes. Part of, yes.

- 20 And the issues in relation to Kevin Pallier were identified at least in part by Ms McCarthy in accordance with what she was paid to do?---Yes, in part, correct.

Now did Mr Kear at this point raise with you or in this, sorry, in the meeting leading to this letter the Kevin Schafer incident?---To my memory, no, sir.

Sorry, Phil Schafer, I apologise. An exercise that although we don't know the exact figure probably cost the SES somewhere between 10 and \$15,000, correct?---Ah, correct.

- 30 And which arose on your understanding out of a misunderstanding of things you said?---Partly of, yes.

At that stage were the issues in relation to the inappropriate expenditure on personal use items for your motor vehicle, were they part of this meeting?  
---I can't recall, sir.

No, they're certainly not listed are they?---They're not.

- 40 No. Was any issue in relation to your use of the corporate credit card raised in this meeting?---I can't recall, sir.

Well, it didn't get mentioned in the, in the written version. Does that assist you?---I still can't recall, sir.

Now read, read through it if you like but I don't quite understand when I read this document what you were required to do as a result of your performance review and perhaps you could assist me, were there regular

meetings put in your diary to follow up on this performance review?---Not formally regular meetings, no.

Were, sorry, Commissioner did you wish to ask something?

THE COMMISSIONER: Yes, I just want to ask what direct reports are?---I beg your pardon?

10 What are direct reports?---Um, officers that report to me, sir, such as um, Mr Pallier at this time.

MR FORDHAM: By way of example Mr Pearce is a direct report to Mr Kear, Mr Pallier was at the relevant time a direct report to Mr Pearce. There's a whole language we've had to learn.

THE COMMISSIONER: Yes, I can - - -

20 MR FORDHAM: Now no formal meetings scheduled following this?---Not to memory, sir, I'd have to look at my diary.

Well, this is a pretty big event in your career, isn't it, being performance managed?---Mmm, it was very embarrassing, sir.

Mmm, and I would have thought you wouldn't need to look at your diary to tell me whether or not as result of this meeting I was followed up with regular meetings to discuss something about which you were embarrassed? ---I would have to look at my diary, sir.

30 Were there any parameters set, for instance, if you achieve X then we're on track?---No, sir, the - my - to my knowledge the parameters um, were specifically relating to the engagement of any future contracts or contractors.

THE COMMISSIONER: That's not a Performance Management Plan, that's simply saying to you you can't do that without coming to me? ---Correct.

40 MR FORDHAM: Because you're in Operations, you don't engage contracts do you?---I shouldn't, no, sir.

So was there anything said, perhaps if we go to the other side of the coin, if you don't perform this is what's going to happen?---I can't recall that conversation, sir, no.

Now this happened on the 8<sup>th</sup>, did any of the informal performance management meetings take place at Bonnie Vale from the following weekend when you went camping with Mr Kear?---I don't think that'd be the appropriate place to do a performance management meeting, sir.

No. But this performance management meeting which set no parameters for your future conduct took place a number of days before you again went on holidays with Mr Kear, correct?---Ah, if that's correct in our calendar, yes, sir.

THE COMMISSIONER: What did you, how did - did you ever demonstrate your effective performance management of your direct reports?---Did, say that again, please?

10

I'm just using the language that is apparently used in the SES?---Um, yes, sir, in - - -

I'm asking you did you demonstrate your effective - - -?---Yes.

- - - your effective performance management to your direct reports?---Ah, yes, sir.

20

How did you do that?---Ah, through my um, ah, performance agreement submission back to the Commissioner to show um, exactly what's been achieved under that portfolio.

Well how do you show what's been achieved under the portfolio?---I list all the achievements and ah, list, and put that onto the performance agreement. Um, or um, we go through and discuss um, all the performance agreements.

But isn't that something that would happen in any event in any organisation?---Ah, it would, sir.

30

Pardon?---It would, sir.

I mean, surely in SES you meet at regular intervals with the Commissioner and you - - -?---Correct.

- - - show him what you've achieved - - -?---Yes.

- - - and you discuss whether it's in accordance with what you'd planned?---Correct.

40

So this Performance Management Plan is nothing more than following what you ordinarily do?---You could look at it that way, sir, I guess.

Have you ever seen a Performance Management Plan before?---Not for me, no sir.

No, for anyone else?---Ah, yes sir.

How many?---Ah, quite a few.

And have you ever seen any that is anything like yours?---To my memory, no sir.

I mean, this Performance Management Plan is a pseudo plan isn't it?---I - - -

10 This is, this is your plan, the Performance Management Plan is simply to do what you in any event would do and had been doing since you'd been employed there, have monthly meetings where you'd show the Commissioner what you'd done in the past month?---You could look at it that way, sir yes.

Well how else can you look at it?---Sir, the way that um, and no doubt you'll get to ask the Commissioner himself but the way that the Commissioner managed and led the organisation was on, based on trust with his, with his directors that - - -

20 Yeah. I can tell you that most, very many of ICAC's investigations and inquiries are based on management situations where the only management tool was trust?---Ah hmm.

That seems to be the management tool in this case?---I would say um, I would say that you're probably correct there, sir, yes.

Nothing else?---Apart from the um, the Performance Agreement, no.

Ah hmm.

30 MR FORDHAM: Can you bring 390 for a moment, please? Thank you. Now, that's an email from you to Murray Kear dated 10 January, two days after that letter that I was just asking you about, discussing going camping that weekend, correct?---Correct.

Now, a little over a month after that, so in the month you've had a performance meeting of some sort, you've been given a performance review in which Mr Kear's perceived failures of your performance were discussed. You then received a pay rise, is that right?---That is correct.

40 And you got that on or about 13 February?---I believe so, yes.

Part of that pay rise involved an analysis of your Performance Plan for the 12 months prior to November, 2013?---Ah, it would have been, sir, yes.

And can we have page 411 up? I'm not sure I fully understand the management context but there's a Personal Development Plan and then we have I assume what you've done for the last 12 months, correct?---(No Audible Reply)

1(a) Personal Statement for the last 12 months?---(No Audible Reply)

Do you see that?---I do, sir. Then, just having a read through it.

Yeah. Now, the fourth bullet point, "Introduced required governance frameworks"?---Yes.

10 Well, if you accept the proposition that you agreed with before that you were negligent in relation to those contracts, you didn't really come up to speed on that one did you?---I would say that was probably the one glitch out of the Government's frameworks, yes.

Well, one for which you were the subject of a performance review?---That's right.

Now, go down about another three and you'll see, "2, commenced fleet management project. Commenced unit funding project"?---Yes.

20 Yeah. Your commencement of those two items was um, at least in part the inappropriate engagement of the two consultants not in accordance with Government protocol, correct?---Correct.

And it's the case isn't it that despite those issues and despite being on a performance review you received that pay rise on or about the 7 February 2013 back dated?---That would be correct, sir.

30 THE COMMISSIONER: Do you have a, a meeting, did you have a meeting with the Commissioner before you got an increase in your salary to discuss what you had done?---I believe so, sir, but I can't um, I can't quantify that.

Well it does seem to me would you agree that the Performance Management Plan was never any hindrance to your progression within SES?---Sorry, sir, could you repeat that.

The existence of the Performance Management Plan was never any hindrance to your career progression in SES?---Um, I remained at the rank of Deputy Commissioner.

40 Yes. I mean the next step is Commissioner?---Um - - -

But you got the kind of increases that you expected?---I got an increase, sir, but I never expected any increase.

Well so you in fact you got an increase that you never expected?---I got, I got an increase in pay, sir, yes.

That you never expected?---That I never expected.

So the Performance Management Plan has never been a block to your advancement in SES?---No, sir.

MR FORDHAM: A pay increase signed off by someone you describe as a mate, correct?---Correct.

Following a six month period in which Ms McCarthy had identified a number of short comings in your performance, correct?---In relation to the pay rise?

10

Well following a six month period in which Ms McCarthy had identified a number of short comings in your performance?---Correct.

Ms McCarthy in Part was charged with ensuring appropriate governance, that's right isn't it?---That's right.

In doing so she brought in procedures that required for instance the filling out forms so that you could spend Government money, that's right isn't it? ---I'm not sure what procedures you're talking about, sir.

20

I'm just talking generally at the moment. She brought in procedures and made you follow them?---Made me follow them?

Well you in general with the SES?---Yes, sir.

Did you ever describe the procedures that Ms McCarthy had brought in in relation to expenditures as ridiculous red tape?---I would need to know what context expenditures was, sir.

30 In relation to expenses when travelling to places such as Sydney and associated costs such as parking lunch and the like?---Yes, sir.

Associated costs which required the expenditure of Government money? ---Correct.

And which are governed by procedures that are in place for public sector organisations such as the SES?---Correct.

40 And your attitude to that was what Ms McCarthy had instituted in accordance with Government policy was ridiculous red tape, correct? ---That's correct.

Thank you. I have nothing further. I have nothing further, Commissioner.

THE COMMISSIONER: Yes, thank you. Does anybody wish to question Mr Pearce?

MR OATES: I don't have any questions, thank you, Commissioner.

THE COMMISSIONER: Yes. Mr Harris?

MR HARRIS: If I may, thank you.

Mr Pearce, if I could just talk about the accommodation?---Yes, sir.

May I just clarify did you stay at the Sheraton in the course or associated with your duties at the SES?---Yes, sir.

10

All right. And Sofitel and Hilton?---Um, I presume so, yes, sir.

All right. Who - you said my executive assistant advised me?---Yes, sir.

Who, did you ever make, choose your own accommodation?---Ah, no, sir.

All right. Did you ever make your own bookings?---Ah, no, sir.

20

All right. Did you ever make your own bookings?---No, sir.

Did you ever direct her where you wanted to stay?---No, sir.

Him or her, I'm sorry?---No, sir.

30

All right. Just in relation to the purchase of alcohol and you used the word inadvertently but just explain please what happened when you used your credit card and included alcohol on it?---Yes, I um, I've, I've never intentionally purchased alcohol on, on the credit card. The, the alcohol inclusion on the credit card was part of meals when I was travelling inter or intrastate and the establishment that I was either staying at or eating at wouldn't split the bill so on return I'd report that there was alcohol on the card and I'd immediately reimburse it.

All right. Did you have some understanding of any guideline or specifications to incurring costs for morning or afternoon teas?---Um, I, I did, sir, but I had um, also full authorisation from the Commissioner to um, ah, buy coffees to be networking.

40

All right. I have nothing further, thank you.

THE COMMISSIONER: Yes.

MR FORDHAM: When did you get the authorisation from the Commissioner to spend public money on morning and afternoon tea?---Ah, when I first commenced.

Was that in writing?---No, sir, it was verbally, he gave it verbally to um, all the directors.



And did he give you any other directions about what you could and couldn't do with public money with your corporate credit card?---Ah, no, sir.

Thank you, nothing further.

THE COMMISSIONER: Yes, thank you, Mr Pearce, that concludes your evidence, you're free to go?---Thank you, sir.

10

**THE WITNESS EXCUSED**

**[12.37pm]**

MR FORDHAM: If it please the Commission, I understand Mr Kear is not in the room at the moment, perhaps if we recommence at 2 o'clock and we'll start on him.

THE COMMISSIONER: All right.

20

**LUNCHEON ADJOURNMENT**

**[12.37pm]**