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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION DEWAR

Reference: Operation E13/0824

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 5 DECEMBER 2013

AT 2.05PM

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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 Commissioner Murray Kear.

MR OATES: Commissioner Kear will take the oath if you please, Commissioner, I seek a declaration on his behalf.

10 THE COMMISSIONER: Yes. I declare that all answers given by Mr Kear 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.

20 **I DECLARE THAT ALL ANSWERS GIVEN BY MR KEAR 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: Will you swear Mr Kear in please.

THE COMMISSIONER: Mr Fordham.

MR FORDHAM: What is your full name?---Murray Alexander Kear.

Your occupation?---Commissioner of the New South Wales State
Emergency Service.

10

And your work address?---6-8 Regent Street in Wollongong.

For how long have you been the Commissioner of the New South Wales
State Emergency Service?---Ah, five years.

Where did you work before that?---Ah, it was called New South Wales Fire
Brigades then, now Fire Rescue New South Wales.

20 And for how long were you with what is now Fire and Rescue New South
Wales?---28 years.

In the course of your 28 years did you become acquainted with a Mr Steven
Pearce?---I did.

It's the case isn't it that you have been closely acquainted with him from at
least 2008?---I have known him well since 2008.

You've been a mate of his since 2008 haven't you?---I've been a friend.

30 I'm putting it a big higher than that, he's been a mate since 2008 hasn't he?
---A friend and a mate.

You entertained each other in each other's houses before 2010 didn't you?
---Yes.

You'd been camping together at Bonnie Vale before 2010 hadn't you?
---Yes.

40 You interviewed Mr Pearce for a position at the SES shortly prior to 2010
when he was eventually employed?---Yes.

In the course of that interview you did not disclose, did you, that you were a
mate of his?---No.

When you employed Mr Pearce to the position of Deputy Commissioner of
the SES you did not disclose that he was your mate did you?---No, I didn't,
I didn't see that necessary.

I didn't ask you whether you thought it was necessary or not, I asked you a question and the question was did you disclose that he was your mate?
---Did I disclose that he was my mate?

Mmm?---No, I didn't.

THE COMMISSIONER: And how was he appointed, was there a, was there a group of people appointed to consider applicants or - - -?---There was a panel, yes.

10

There was a panel?---Yes.

And how many people were in the panel?---Three.

And were there, the two others, were they from outside the SES?---Ah, yes.

And how many applicants were there, about?---I'd have to check that, your Honour.

20

About?---Oh, there may have been six or seven.

And was there a shortlist?---An eligibility list - - -

Yes?--- - - - following the interview, yes.

But when you had six or seven did the choice come down to say one out of two?---Ah, usually one out of three.

30

One out of three?---I appointed the one that was the best out of the three.

Yes?---In relation to Mr Pearce but he wasn't number 1.

And, and - I beg your pardon?---In relation to Mr Pearce he wasn't the first person in the eligibility list.

Yes. Well, the ranking in the eligibility list doesn't count does it?---Oh, it does in, in regards to the first person that you have on the eligibility list is naturally the one you want to appoint and if that person knocks it back for any reason or, or something happens them in the early part of their employment - - -

40

I see?--- - - - then you can appoint the second person and then the third.

So was he, was he number 2?---3.

He was number 3 and the other two knocked it back?---That's correct. Oh, one, one was not allowed to be discharged from her ah, previous employer.

Right. Yes, thank you.

MR FORDHAM: Over the nine months of Ms McCarthy's employment she raised with you a number of issues in relation to Mr Pearce's conduct of his role, correct?---Yes.

10 In relation to, and I'll deal with them eventually in turn, but in relation to a number of those issues it was necessary for you to conduct at least some form of preliminary investigation, correct?---Correct, I reviewed all of the issues.

And at no stage during your view of any of those issues did you disclose to anybody that Steven Pearce was your mate, did you?---No, again, I didn't see it necessary.

You were at times looking into issues that may have been corrupt conduct weren't you?---That's the way that Ms McCarthy had identified some of them, that she thought it was possibly corrupt.

20 And so the allegations with which you were faced were the possibility of corrupt conduct on the part of Steven Pearce, that's right isn't it?---Could you just say that question again?

The allegations that Ms McCarthy raised involved the possibility of corrupt conduct on the part of Mr Pearce?---Yes, in her impressions they were ah, she thought they were possibly corrupt.

30 And at no stage in your personal investigations of Mr Pearce's conduct into what it was suggested was possibly corrupt did you disclose that he was your mate?---No, again same answer.

For the purpose of this inquiry, Operation Dewar you prepared a statement and supplied it to ICAC didn't you?---Correct.

In that statement at paragraph 158 you use the words, "I do not have a longstanding friendship DC Pearce." That is incorrect isn't it?---I made that statement in relation to Ms McCarthy alluding that I had a 28-year longstanding relationship with Mr Pearce where in fact I didn't.

40 To suggest that you didn't have a longstanding friendship with Mr Pearce would be incorrect wouldn't it?---It it wasn't in that context, yes.

THE COMMISSIONER: Ah, Mr Fordham, there's just one thing that I think that we should just get clear from the start. At a previous occasion, Mr Kear, I asked you if you adhered to that statement and whether it was correct and you said yes. Do you remember that?---No I don't. Is that at the private examination?

Yes. Well I'm asking you again now?---I've, I've said that I'm a friend, I'm a mate of Steve's.

No, no, no, no, no?---Yes.

Sorry. I'm not asking you that now. I'm asking you about the statement as a whole. That statement that was supplied to the Commission is that true and correct?---It's true and correct but in the context that I was answering the affidavit - - -

10

No, no - - -?--- - - - that Mrs McCarthy had put - - -

I understand what you're saying. That's not my question. I'm not asking - - -

MR FORDHAM: It's in the CE.

20

THE COMMISSIONER: - - - you about your answer on that issue. I'm asking you whether the statement you supplied to the Commission was true and correct?---It was correct.

And true?---And true.

Yes, thank you.

MR FORDHAM: In that statement which you have on the screen in front of you you will see a heading, "My Relationship with DC Pearce." Do you see that?---That is, but the font's a bit small.

30

Yes, I'm actually having the same problem?---Thank you. It's good now.

In relation to assertions by Ms McCarthy she had asserted that you had tolerated DC Pearce being incompetent because of a longstanding friendship?---Are you referring to clause 158?

157?---157. I see that clause, yes.

40

And you made this statement, "I do not have a longstanding friendship with DC Pearce." Correct?---That's what I said. I just want to ensure that, you know, that that was in the context of her saying a 28-year longstanding relationship.

As opposed to being his mate since 2008? You seek to draw that distinction do you?---As opposed to?

Ah hmm?---I don't understand the question.

He's been your mate since 2008 hasn't he?---He's been a friend and a mate since 2008.

And you don't refer to that as longstanding?---Not in relation to 28 years, no.

And do you say that the shortness of time makes a difference as to whether or not you had a conflict of interest in dealing with your mate in relation to these issues?---I don't see a conflict of interest in dealing with any person that's a friend or a mate.

THE COMMISSIONER: Why not?---I just don't. I would treat everybody fairly and equitably.

That's not the test for a conflict of interest, Mr Kear?---Right.

A conflict of interest is where an interest of your is in potential conflict with a duty. If you've got a friend who's involved in an inquiry which you are undertaking you have an interest in advancing the interest of your friend but you have a duty not to advance anybody's interest but to establish the truth. Do you understand a conflict of interest in that sense?---I think I understand what you're saying Commissioner and what I was saying is that I don't see a friendship, I would declare if I had a relative or I would declare if I had a commercial relationship with somebody that was on a panel but I don't see friendship or mateship as a conflict.

What do you see you, what is the difference between a mate and a relative, for the purposes of determining whether there's a conflict of interest?--- Because throughout my career I form friendships and have had many mates - - -

Let me put it to you this way, assume Ms McCarthy was a personal friend of mine.---Yes.

I can assure you I've never met her before this inquiry started but let's just assume hypothetically that she'd been a friend of mine and a close friend for five years and I sat in this inquiry listening to this, determining what the result should be without disclosing the fact that she'd been a friend of mine for five years. Would you think that was proper?---I wouldn't have thought it would have influenced your decision.

That's not what I'm asking?---Well that's the implication Commissioner.

No, no, it's not necessarily the implication. A conflict of interest is not dependent upon whether you would allow the conflict to affect your decision it's simply whether there is a conflict of interest. Do you understand the difference?---I do marginally.

Marginally. A conflict of interest is to be determined objectively, that is, do I have an interest and a duty which conflict? Whether you allow that, whether you allow a conflict in your decision is a different matter to the existence of a conflict.---That wasn't the way I dealt with it or I saw it.

I understand that. Do you think that that's correct, is that a proper thing to do?---I thought it was.

Yes.

10

MR FORDHAM: The SES has a code of conduct and ethics doesn't it?---It does.

Have you read it?---I have.

Can we get page 136 up on the screen please. In particular, did you ever read the Section 5.6.1 Conflict of Interest?---I would have.

Did you?---Yes, I read the whole document.

20

Well, did you take on board that the organisation of which you were the head created a document in which it defined a conflict of interest as existing when it is likely that a member could be influenced or could be perceived to be influenced?---Are you asking if I see those words in the document?

Mmm, did you read them?---Yes. Which part are you referring to?

The first paragraph, two lines.---Conflict, the conflict of interest existence when it's (not transcribable) or could be influenced or could be perceived to be influenced, yes I see those.

30

And wouldn't you agree with me that making decisions to the appointment and/or performance of a mate could be perceived to be influenced by a personal interest?---I didn't see it that way.

Do you see underneath all the dot points a paragraph commencing, members?---It's just off the screen at the moment.

All right. The nice man to my right will bring it up for you. It was up to you to ensure not only that you were impartial and objective but you demonstrated that the decisions are impartial, transparent and objective, correct?---(No Audible Reply)

40

THE COMMISSIONER: It's the second last dot point, Mr Fordham.

MR FORDHAM: No, no, I'm coming back to that in a moment, if you don't mind.

THE COMMISSIONER: Very well.

THE WITNESS: That's correct and that's why there's the three people on the panel with an independent person.

MR FORDHAM: But you didn't tell any of the three people on the panel that you were Steve Pearce's mate did you?---Um, yes they would have known that.

10 Not ten minutes ago you told the Commissioner that you did not, which is it?---That I didn't tell the panel members?

THE COMMISSIONER: Yes. You said you didn't tell the panel members? ---I don't recall that.

You said you didn't tell anyone. I presume that the panel members - - -?---
Oh - - -

20 - - - are embraced by the concept of anyone?---Well I, I did tell the panel member that these person, they actually knew. Les Tree was one of the panel members on one of the, one of the panels and he was a mate of Steve's.

But shouldn't you have disqualified yourself from the panel?---Um, no. No, I didn't see why.

Because you had a conflict of interest?---Commissioner, I didn't see it that way.

30 I know.

MR FORDHAM: Do you understand the difference between an actual conflict of interest and a perceived conflict of interest?---Yes.

And that's referred to in the next whole paragraph?---(No Audible Reply)

You have an obligation to inform somebody higher than you that the conflict may be apparent?---Are you referring to the last dot point?

40 No, I'm referring to the paragraph, "Where a member of the SES becomes aware that their involvement - - -

THE COMMISSIONER: So that - - -

MR FORDHAM: - - - may create a possible conflict of interest." The appointment of a mate is a possible conflict of interest isn't it?---No, I didn't see it that way.

Sitting here today do you agree with the proposition that it could be a conflict of interest?---No I don't.

Or a perceived conflict of interest?---No I don't because again I have many mates and many friends right throughout the organisation that I've had to discipline, that I've had to sit on panels with and I don't see that as a conflict of interest. I, it doesn't influence me and I never, it never entered my mind that that would be a conflict of interest.

- 10 Where the subject of possible corrupt behaviour, I'm not suggesting it's corrupt or otherwise but possible corrupt behaviour on the part of someone who is your mate is in issue you had an obligation to disclose your conflict didn't you?---Again I didn't see having a mate as a conflict of interest.

I see.

- THE COMMISSIONER: Why do you think that, this code of conduct provides that where a member of the SES becomes aware that their involvement in an issue may create a possible conflict of interest they must
20 inform a person higher than them in the hierarchy, why do you think that that provision is there?---So that if a person is under the impression or they perceive that there is a conflict of interest then they should tell somebody.

Why?---not

Tell their superior?---Tell their superior, their controller, supervisor, manager.

- 30 Why? Why do you think that's there?---To ensure that that because they believe there's a conflict of interest that they've shared it with somebody, that there's some transparency.

No. It's there so that their superior can tell them if the superior things you can't take that decision. Simply by telling people doesn't really help a great deal. When you're in a situation where you have to decide on who to employ and it's a decision between your mate and someone who you've never met before then there's a conflict of interest and you shouldn't be there making that decision. Do you accept that or not?---No I don't.

- 40 Have you ever had courses on conflicts of interest?---I have, yes.

Who's run them?---I think, I don't know the um, names of the organisations that were run but - - -

Well, well in what, when last have you had a course on conflicts of interest?---I did a course with the St James Ethics Centre.

Well they're a very good organisation?---They are.

They must have said to you what I've told you now?---They must have said to me, sorry, I missed the last part?

They must have said to you that where you have, were you allowed to make a decision that involves a conflict between someone who's a friend of yours and someone who isn't then you shouldn't be in the decision making role?--
-I don't recall them specifying that in the course.

10 MR FORDHAM: One of the things your document defines, and it's the second last dot point, as an example, "Is seeking to influence the objective selection of family members or friends or anyone with whom the member, that would be you, has a personal relationship for positions or opportunities in the SES." Do you see that?---I do.

And isn't it the case that when you interviewed Mr Pearce who you described as a friend or mate that was for an opportunity within the SES?---
But I also see that I wasn't seeking to influence the objective selection of that person.

20

THE COMMISSIONER: Of course you were, you made the decision didn't you?---With the panel members, the independent - - -

But you, I mean, your weight, did you, was there a vote or was it unanimous?---It was, everybody had to agree on the person.

Yeah, but your, your voice must have carried more weight than anyone else's?---No, usually I always let the other people in the panel speak first.

30 It doesn't matter, Mr Kear. Anyway, I'm not going to argue this with you, you'll see it in the report.

MR FORDHAM: Perhaps I'll move on. Tara McCarthy - - -

THE COMMISSIONER: Sorry, Mr Fordham.

MR FORDHAM: It's all right.

40 THE COMMISSIONER: You can see it here in black and white in the Code of Conduct what you must do in regard to a friend?---Not to influence the objective of the selection.

Yes. Well, it says "An example of a situation which might lead to a conflict of interest are" and then we have "seeking to influence the objective selection of family, friends" et cetera?---I do see that.

And you are saying that even though you voted for Mr Pearce you weren't seeking to influence the decision to employ him?---That's right, he, he was, he was my - - -

Well, what do you think your vote does?---Remembering he was my third choice.

I'm not interested in that, what do you think your vote does?---It, it is my - - -

10

Does your vote influence the decision?---One third of the decision, yes.

Yes, so you're seeking to influence the decision?---Well, I'd have to influence the decision if I voted.

Exactly?---I see.

So you're doing the very thing that your own code says you mustn't do? ---But again, I don't think that I was seeking to influence the objective by any - - -

20

But you voted for him, you voted for him?---But I would vote for a person that was not my friend as well.

That's legitimate. Could you vote for your son? If your son applied to join the SES would you vote for him?---I would perceive that as a conflict of interest.

So what would you do?---I would tell somebody higher.

30

But still stay on the committee?---Yes.

And then vote for him?---Only if he was the best candidate.

MR FORDHAM: At the time of that meeting with the two other panel members Mr Pearce was in fact not appointed was he?---That's correct.

He was appointed later from a reserve list?---That's correct.

40

You activated that reserve list didn't you?---That's correct.

And you appointed him from that reserve list?---I asked the DPC if it was all right to promote off the eligibility list for that position so I sought advice on that.

And in seeking that advice did you disclose that you were seeking to bring someone from the eligibility list who was your mate?---Well, the first one

wasn't my mate, the first choice um, was a woman in the UK and when she knocked it back then it was Pearce.

So, when you made that decision did you disclose that - - -?---No, I didn't.

--- ?--- - - - no I didn't.

You just need to let me ask the questions, ask the question - - -?---Oh, sorry.

10 - - - otherwise the poor lady behind you recording it can't make sense of it?
---Sorry about that.

Now, where was I? Ms McCarthy - - -

THE COMMISSIONER: The last paragraph is also relevant, Mr Fordham.

MR FORDHAM: Yes, on one view I could keep going through the entire document all afternoon.

20 THE COMMISSIONER: Yes, I know. All right, you're right, you're quite right, it's just that I'm - - -

MR FORDHAM: I can understand - - -

THE COMMISSIONER: - - - surprised at the approach.

MR FORDHAM: Well, perhaps to round this out can we get 136 back on screen and I want to go to the bottom paragraph since you've now gone to the top. Thank you. Now, it's not just actual conflicts of interest that your document deals with, it is potential for a conflict, correct?---That's correct, I can see that.

30

And a potential conflict of interest is defined in the document from your organisation to refer to, amongst other things, a situation where they are supervising or overseeing a member of their family or someone with whom they have a close personal relationship. At no stage did you declare the fact that Pearce was a mate of yours, did you?---No, I didn't.

40 Do you agree that you should have?---No, I don't.

Not even when you were looking into the question as to whether or not your mate, may have, engaged in corrupt conduct?---I didn't because I didn't think it was a conflict of interest or influence my decisions.

THE COMMISSIONER: What about the last sentence, what about the last sentence of the last paragraph. Members are not permitted to be involved in employment decisions, promotion, performance assessment et cetera et cetera or members of their own family or with someone with whom they are

having a close personal relationship. What about that sentence, do you say that you could ignore that?---Well Commissioner, well I admit that he was my mate and my friend but I don't admit I was having a close personal relationship with him.

Yes.

10 MR FORDHAM: Be all that as it may, at not stage in the hiring of Mr Pearce did you declare to anyone that he was your mate, that's right isn't it?---Except for the people on the panel.

You didn't, you told the Commissioner before that you did not, they assumed they would know, that is a very different proposition, now which is it?---No I didn't say that Mr Fordham, I said the people on the panel knew that I had a close personal relationship with Steve, they knew I knew him from the Fire Brigade, they knew that he had been known to me for a number of years.

20 So those people on the panel, to use your words, knew you had a close personal relationship with Mr Pearce, is that right?---They knew he was a friend and a mate.

Did you ever put that in writing in a memo to anyone to ensure that there was transparency in this process?---No, I didn't.

At any stage when you were dealing with Mr Pearce in relation to the potential allegations of mal-administration or corrupt conduct, did you declare that anywhere?---No, I didn't.

30 When it came to performance managing Mr Pearce earlier this year in or about 8 January, did you declare that?---Did I declare?

That he was your mate?---No, I didn't.

Do you think it's appropriate that you performance manage your mate?---It's appropriate that I performance manage somebody that reports to me whether they are mates are not.

40 If you're going to do so, you should do it thoroughly shouldn't you?---I should do it thoroughly?

Performance manage that person thoroughly?---Yes.

If you're going to performance manage someone thoroughly, you would want to set out exactly what it was that you were concerned about, correct? ---That I was concerned about, yes.

That would involve all of the matter of the proceedings months that had brought their conduct into question, would it not?---It may, I'm not sure about what you mean by that?

You would want to set out in performance managing them, what it is that you plan to do to management them over the ensuing months, wouldn't you?---It would involve identifying what I was concerned about that I need to performance management them on, yes.

- 10 It would also want to set out exactly what it was you intended to do about it over the following months as part of the management program, wouldn't it?
---Yes.

THE COMMISSIONER: Wouldn't you normally give them a series of tasks and then see over regular periods whether they've complied with your instructions properly?---It would depend what the issues were of course.

- 20 No, no, as a general rule, to performance manage someone you've got to give the person a program which the person has to follow and then it has to be checked, is that not right?---You have to tell them what you are concerned about and you have to have discussions and ensure that they are making improvements in those areas, yes.

That's not what I said. I said, you've got to give them a program which sets out what you expect them to do so you can measure their performance against what you have required them to do, do you accept that?---I accept that's an option but I don't think it's essential in every case.

- 30 MR FORDHAM: You would want to, wouldn't you, set out what you expect them to achieve over the coming months in order for the performance management to have any effect wouldn't you?---If it, if it's specific, yes, and if it's an area improvement I don't want them to do, you know, commit something again or repeat a mistake again, that's what I'd be identifying.

You would also in a document, recording a performance management meeting want to include what it is that might happen if someone fails to perform, wouldn't you?---Not always.

- 40 Would you do it sometimes?---Sometimes.

You would do it, wouldn't you, to ensure that the person knew exactly what it was that you required of them in order for them to improve their performance?---Yes.

THE COMMISSIONER: What's the point of a Performance Management Plan?---To make sure that they improve their performance, that they don't redo a mistake or whatever's been picked up in their deficiencies.

Well if that's all it is why can't you just talk to them - - -?---You could.

- - - and say, "Improve"?---You could just talk to them.

So why have a plan?---Well planning - - -

Why a Performance Management Plan?---That's, a verbal discussion could be a Performance Management Plan.

10

Where do you derive your understanding of what a Performance Management Plan is, from where?---From my understanding of leading people and, and, and trying to make them improve, trying to make, correct their mistakes.

Have you, is there any definition of a Performance Management Plan in the public service?---I don't know, I imagine there would be.

20 MR FORDHAM: If it pleases the Commissioner I'd now like to move to another topic before coming back to that issue.

THE COMMISSIONER: Yes.

MR FORDHAM: Ms McCarthy was employed as Deputy Commissioner, that's right?---Correct.

She was employed into the Corporate Services role?---Correct.

30 There were two Deputy Commissioners, Operations and Corporate Services?---Correct.

Ms McCarthy was employed and Mr Pearce laterally transferred into Operations, is that right?---Correct.

Ms McCarthy was charged with amongst other things ensuring 100 per cent compliance in relation to procurement contracts?---Yes.

40 She was charged with reviewing overtime and the overtime budget?---Correct. All directors, everybody in the SEG was also had that role.

It's specifically in her Performance Agreement though isn't it?---It is. It's in all - - -

Yes?---And um, it would be in Pearce's as well.

She was charged with effectively managing the way it is that the SES utilises assets such as cars and the like?---I, it would have been if, I don't

know it was that specific about cars but it would have been assets which would have included cars.

In her period with the SES Ms McCarthy brought about significant savings to the overtime budget didn't she?---Yes.

10 She did that by ensuring that overtime was paid in accordance with Government policy?---That, that was one of the areas that we affected but it was mainly by identifying how much we could cut overtime back either operationally or corporately.

There was an issue where the rate at which overtime was paid - - -?---There was.

- - - was analysed by Ms McCarthy and adjusted to the advantage of the SES budget wasn't there?---It was.

20 There was also significant changes made to the way in which department staff, or SES staff were able to use motor vehicles?---Yes.

There was improvements made to the collection of the amounts owed by staff for private usage, that's right isn't it?---Yes, sometimes we had to retrieve money from people and sometimes we had to pay them.

There was also significant changes made to parking?---Parking?

30 Parking that was available at the SES headquarters in Wollongong to be used by SES staff. That was changed by Ms McCarthy wasn't it?---I'm not sure about that one.

The fact of the matter is that what Ms McCarthy was employed to do amongst other things was improve governance?---Yes.

And compliance?---Yes.

And she did that in her nine months didn't she?---She was doing those things, yes.

40 Part of her role was to ensure 100 per cent legislative compliance in relation to procurement contracts wasn't it?---Yes.

And she did that, correct?---Yes.

In doing so she uncovered that there were two contracts with entities known as Karoshi and Performance Drivers?---She did.

In doing so what she uncovered was that those contracts did not comply with standard Government wording?---Correct.

She also discovered that they had termination clauses in favour of the contracting party with the SES?---Yes.

Far in excess of what is usual in a standard Government contract?---Yes. Well, far, I think it was 30 days to 90 days was the difference I understood at - - -

Three times?---Yes.

10

She also uncovered the contractual wording had in fact been supplied by the party that was going to contract with the SES?---Yes.

That the logo on the contract had been provided by an officer of the SES to the contracting party?---I'm not sure about that, I know our logo ended up on the contract but that's quite a common thing for all contracts, we always put the SES logo on all contracts.

20

That SES logo was supplied and placed on a contract that did not comply with Government procurement guidelines, that's right, isn't it?---That was the outcome, yes.

You yourself when told about these issues checked the contracts as against the websites that were available to you to check?---Yes, I brought up a standard contract up on the website and compared it to what I saw in the Karoshi contract.

30

Mr Pearce had been responsible for the negotiations and signing of those contracts on behalf of the SES hadn't he?---Yes.

You'd agree with me wouldn't you that his performance in relation to that issue was substandard?---Yes.

Karoshi was in the sum of \$240,000, do you, do you understand that to be the case?---No, I don't.

40

Do you know sitting here today whether or not the guidelines were followed in relation to the tender process that was undertaken?---I know that they weren't followed.

A tender process should have taken place and it didn't?---That's correct.

And in relation to Performance Drivers, there's a bit of a debate about it, but at the very least three quotes weren't obtained?---That's correct.

And on one view a tender process wasn't undertaken, correct?---Correct.

These are significant sums of Government money are they not?---The, the total amount we pay them?

Mmm?---Yes.

And you can well understand, can't you, that someone reporting to you when uncovering non-compliant contracts without a tender process would be concerned about that?---Yes.

10 And it involved significant sums?---Yes.

The potential for corruption had to be considered didn't it?---It did.

And she did so, Ms McCarthy?---She did.

You had a conversation with Ms McCarthy in relation to these issues, that's right isn't it?---I did.

20 You were on holidays in I think Tasmania at the time?---Correct.

When you were in Tasmania you didn't have access to the documents did you?---No.

Did you speak to Mr Pearce from Tasmania?---I don't think, I can't recall if I did.

Did you speak to Mr Trees?---From Tasmania, yes.

30 Tree singular, I apologise?---Yes.

Did you speak to Mr Scutella?---Yes.

40 Now in speaking to Mr Tree what if anything did you say to him?---I can't recall the exact words but it was discussing what Ms McCarthy had informed me of and I had, I think I had a number of conversations with Mr Tree and whether they thought that the two issues of not getting a quote and the three tenderers and not having the correct wordage in their opinion was corruption and whether they thought ah, it was necessary to stand Pearce down as Commissioner at the time because he was Acting Commissioner 'cause I was in Tasmania.

Now when you say they you're referring to Mr Scutella are you not?---Yes, you, I think you used both their words when you - - -

I apologise if we're at cross purposes. Now in your conversations with Mr Tree and Mr Scutella from Tasmania you had no more information than it appeared that there are anomalies in the process for the engagement of these two consultants did you?---That's right.

You had undertaken no investigation yourself because you were on holidays?---No, I was in Tasmania, that's right.

You had not looked at the contract?---Not from Tasmania, no.

You had not spoken to the contracting parties?---No.

10 You had not interviewed anybody than perhaps Mr Pearce to get his version of events?---That's correct.

And when you spoke to Mr Tree and Mr Scutella, you weren't able to give them very much information, were you?---Only the information that Miss McCarthy had given me by phone.

Now - - -?---And I believe Miss McCarthy also gave them the information herself.

20 One of the things that was discussed between you and Mr Tree was whether or not the matter should be reported to ICAC wasn't it?---That's right, I think I rang them up, I rang Mr Tree up a second time um, because in my first conversation I was under the impression that he had said that he hadn't said to Miss McCarthy to report to ICAC.

Mr Tree advised that the matter should be reported to ICAC didn't he?---In the second conversation he indicated something along the lines of Miss McCarthy if she thought it was right to do so.

30 At no stage did Mr Tree offer an opinion as to whether or not Mr Pearce's conduct was corrupt or not, did he?---It was my understanding from the conversation that he had in fact um, inferred that it wasn't corruption.

Well, you're saying inferred, what I want to suggest to you is this, Mr Tree has given evidence to this Commission that at no stage did he ever say whether or not Mr Pearce's conduct was corrupt or not, now, do you accept that?---Do that I accept that Mr Tree gave evidence to that degree?

40 Or assume that for me, do you accept that as a correct statement if that's what he said?---Yes, yes.

THE COMMISSIONER: That's ambiguous. What is it really saying - - -

MR FORDHAM: I'll go about it another way. At no stage did Mr Tree say to you that Mr Pearce was not corrupt in relation to these contracts, did he? ---My recollection of the discussion was that he had in fact said that it didn't appear to be corruption. I think I asked him a question something like, these two issues, does that sound like it could be corruption to you? That was my recollection of the discussion.

THE COMMISSIONER: How could anyone know at that stage without further investigation?---It was only at that stage, and what Mr Tree said to me was, no it doesn't sound like corruption, I don't think you should stand him down but you should review it when you get back from Tasmania. I think I even asked him should I come back early, do you want me to come back now.

10 MR FORDHAM: At no stage did Mr Tree offer an opinion one way or the other about whether or not Mr Pearce should be stood down, did he?---My recollection is that he did offer an opinion.

And at no stage did Mr Tree say anything to the effect that that this was at most a procedural irregularity?---That is my recollection of what he said.

When you spoke to Mr Tree on the first occasion, you had no documents, correct?---The contracts your referring to?

20 Yes.---No. I didn't have the contracts at any stage in Tasmania.

You had not conducted any investigation, that's correct?---Not from Tasmania, no.

And when you returned the limit of your investigation was a discussion with Ms McCarthy and Mr Pearce wasn't it?---That's correct.

At no - - -?---And a review of the contracts myself.

30 You reviewed them and saw that they didn't comply, that's right?---Yes, yes.

You interviewed Miss McCarthy and got her approach to the problem, that's right?---Correct.

You asked Mr Pearce what he done and he said it was a mistake?---Correct, he said he was, he thought by having them recommended from other agencies um, that they were complied and he was rushing them in because we were under time restraints, so he admitted that.

40 And you accept that because he was your mate?---No, I just accepted that.

THE COMMISSIONER: And you didn't make any inquiries as to whether there was any relationship or friendship or any other kind of relationship between Mr Pearce and the other contracting parties?---No I didn't.

So you just trusted Mr Pearce?---I did.

MR FORDHAM: And at no stage in your conversations with Mr Scutella from Tasmania did he offer an opinion one way or the other about whether or not Mr Pearce's conduct was corrupt, did he?---I have the recollection that it was a similar conversation to what I'd had with Mr Tree.

THE COMMISSIONER: What, that Mr Scutella said he didn't think that there was corruption involved?---I asked him did these two issues that Mrs McCarthy had brought um, "Does that sound like corruption? Should I stand Pearce down? Do you want me to come back early?"

10

But Mr Kear, corruption could only be determined on an investigation. One would have to investigate what Mr Pearce's motivation was for doing what he did and whether there were any surrounding circumstances that could indicate a motive. That's not to suggest that Mr Pearce is guilty of anything but on ordinary principles commonsense would tell you that once the possibility of corruption has arisen, so serious, that a proper investigation should be carried out or at least try and find out whether there was any relationship between Mr Pearce and the contracting parties. I mean, if there was corruption it speaks for itself that he wouldn't tell you the truth?---

20

There was no allegations made to me that Pearce was a friend of the contractor.

Of course not. Nobody knew whether he was or not. But that's something you have to investigate isn't it?---I thought the only two allegations were in regards to the, you know, not going out for tender and, and not using the standard contract - - -

Yes but - - -?---And from Tasmania I couldn't investigate anything.

30

Of course you couldn't. But isn't that an issue that should have been investigated eventually, that is why did he do what he did? Do the facts bear him out? Do the objective facts bear out what Mr Pearce says?---I trusted what he'd said to me and his answers.

Was that because he was a mate?---No, just that I knew of his performance up until that time.

Yeah.

40

MR FORDHAM: Did you ever ring Mr Eggert and investigate the matter with him as the contracting party?---No.

And did you ever talk to Mr Cook from Performance Drivers?---No.

So the extent of your investigation really was to compare the contracts and ask Mr Pearce for his version of events?---And Ms McCarthy, yes.

THE COMMISSIONER: And did you think that that was giving support to Ms McCarthy?---That I was looking into her allegations, yes.

Yeah, well looking into it was speaking to your mate?---Asking him why did, why did he do these things? Pearce didn't deny them. He actually admitted - - -

Yes, I know?--- - - - exactly what Mrs McCarthy had alleged.

10 You would have to admit them because the facts spoke for themselves. The contracts existed?---Correct.

I mean, wouldn't it take a certain amount of courage on the part of a person in Ms McCarthy's position to actually come forward to point out some mistake about a colleague of the same rank as hers in the organisation?--- I'm not sure about courage. It's what I expected her to do.

20 And then don't you think that if a person does that, that kind of report should be treated with respect?---I thought I treated it with respect.

Well, isn't treating it with respect also taking at least elementary steps to verify what, whether what Mr Pearce said was true?---That he didn't - - -

I'm not suggesting that, that what he said wasn't true. I'm just talking about what it means to treat a report by, like that with respect. That is you take elementary steps to investigate the explanation given by the person who's the subject of the report?---I, I took Pearce's admission that he'd done what the allegations said.

30 Yes, you accepted that on face value?--- - - - as a confirmation and, as you say, they were there, the contracts were there.

Yeah?---Yeah.

But you accepted Mr Pearce's explanation at face value without investigating with anyone else whether what he was saying was true? ---Yes.

40 And just, and then rejected really in effect Ms McCarthy's assertion that there was, there was a problem with Mr Pearce's conduct?---I accept that Ms McCarthy thought that Pearce had done something wrong.

And you didn't agree with her?---No, no, she, I did agree, he had done something wrong.

All right. But only to a limited, he just made a mistake?---Or he was negligent of the rules of Government.

Yeah.

MR FORDHAM: The view that you had taken was then expressed in a letter to ICAC dated 29 October, 2012 and that is document 353. Now if we can go to 354 briefly, do you have that on screen?---Yes.

Is that your signature?---Yes.

10 Please go back to 353 for me?---Perhaps if we could make the font a little bit bigger if that's all right? Thanks.

If you go down to the fourth paragraph?---The "I have now"?

Yes?---Yeah.

Yes, you've reviewed the matter?---Yes.

Do you see that?---I do.

20 Now that review as I understand it consisted of talking to Ms McCarthy, speaking to Mr Pearce and comparing the contracts?---And comparing the contracts and talking to Scutella and Tree.

THE COMMISSIONER: They couldn't make any decision without knowing more facts than you told them?---No, I was just telling them what I'd done.

30 MR FORDHAM: Now what you're suggesting in this letter is that there is nothing for ICAC to concern itself with, aren't you?---I think I'm actually asking at the end for their, if I could get you to scroll down to the bottom, it may, it may even be the next page.

Yes, there it is, "I am therefore of the opinion"?---"I would welcome further advice on this matter.

But you offered your opinion that there was no corrupt conduct, correct?
---That's correct, I did.

40 And that opinion supposedly came out of a review, that's right, isn't it?
---That's right.

And the review that you conducted was limited to talking to the person who may have been the subject of that corrupt conduct, Mr Pearce?---And Ms McCarthy and looking at the contracts.

At no stage did you talk to the other contracting parties to see what issues might have arisen, and I'm not suggesting these are real issues, but issues

arising out of, for instance, collateral benefits?---I don't understand what you mean by collateral benefits.

You didn't look into the question of how these contracts came about and whether anybody was getting any benefit out of them, did you?---There wasn't any allegations of that.

10 THE COMMISSIONER: But an allegation of corrupt conduct carries with it that implication?---Commissioner, it was my understanding that Ms McCarthy was saying that Pearce could possibly be corrupt because he didn't put the things out for tender and he didn't take, get, have the right wording of the contract.

Yes.

MR FORDHAM: Well, he didn't have the right wording of the contract to which to some degree was to the advantage of the contracting party. Did you think to look behind those issues to see what if anything was going on? ---No.

20

And what you did was rely on the word of your mate, that's right, isn't it? ---I, I trusted and believed what he had told me, irrespective of being a mate.

THE COMMISSIONER: You see, you see even on Mr Pearce's evidence the person who he spoke to at, what is it called, Kashogi?---Karoshi.

MR FORDHAM: Karoshi.

30 THE COMMISSIONER: Yes, did not or did something that wasn't correct, according to Mr Pearce he asked him for the standard contract that was used by Government but that wasn't what was provided so in response to Mr Pearce's own request the provision wasn't in accordance with what he believed, shouldn't that have been investigated too?---That he got the wording from Mr - - -

No, no, that he asked for a contract that was the standard, asked for a form of contract which was the standard form used by the Government and he asked Kashogi - - -?---Eggert.

40 - - - for this and he got something which wasn't what he asked for?---That's correct.

Well, shouldn't that have been investigated?---But Pearce told me that.

Yes, but you had no idea why Kashogi did what he did, or what it did and why Mr Pearce didn't pick it up at a glance that it was not a standard contract?---I didn't understand why Pearce didn't pick it up, is that the question?

Yes. Well - -?---I didn't, no I didn't understand how he couldn't pick it up.

You didn't, you didn't investigate that?---(No Audible Reply)

You didn't go and ask Kashogi, "Is this what Mr Peace asked for"?---No I didn't, no.

10 And, "If it is what he asked for why did you give him something different"?---No I didn't ask that.

But, you know, that, this would be investigation 101 wouldn't it?---I don't know about that.

MR FORDHAM: You'd picked up the discrepancies by simply looking at the internet and comparing it with the contracts?---I did, yes.

20 And didn't that raise at least the question about whether their might be some corrupt conduct underneath?---No, it raised the question of how Pearce had not known that he should have looked on the website and got off the standard contract.

So it never entered, again I'm not suggesting Mr Pearce is corrupt or otherwise, all I'm saying to you is it never entered your mind that he might be corrupt?---No.

And that's because he's your mate?---No, that's not correct.

30 Mr Schafer I think is the Marketing Manager at SES?---Yes. Marketing and Sponsorship.

Ms McCarthy uncovered in her tenure that Mr Schafer was not paying for the private use of his motor vehicle didn't she?---Yes.

Again, that was something that was part of the job she was tasked to do?---Yes.

40 In doing so it became apparent that what had been done was that NRMA sponsorship monies had been used to supply a car to Mr Schafer for which he did not pay for any private use, that's right isn't it?---And not only his car, it paid for his salary, it paid for all the other sundry items that he needed for his position.

And at no stage up until Ms McCarthy identified it had he paid back a single cent in relation to his private use of the motor vehicle?---That's correct.

In fact he was never asked to repay it was it?---We considered him repaying it. At the end of the day I waived his repayment.

You waived his repayment on the basis that Steven Pearce supplied you with a memo explaining what had happened?---And discussions with Ms McCarthy.

10 Steven Pearce put on a memo in which he identified that this may have come about as a miscommunication with him arising out of things he said?--
-That's correct.

Ms McCarthy had raised the question, the direct question as to whether or not Mr Pearce had directed Mr Pride of the accounts department, or perhaps accounts department's not the right word, but directed Mr Pride to not collect private receipts. She'd raised that with you hadn't she?---That's correct.

20 Ah hmm. Did you ever interview Mr Pride?---I did. I talked to him in my office.

And you came to the view that it was appropriate for Mr Pearce to provide you with a memo detailing his own involvement in what at the very least was mismanagement?---I don't agree with mismanagement. I received a report from Mr Pearce after he had spoken to um, Schafer.

Which looked into his own part in something which was clearly incorrect?--
-I asked him to supply me a memo on what were the circumstances regarding Pallier's vehicle.

30 Where it was, and whether it be right or wrong is not the point, but where it was that Mr Pearce was potentially implicated in the incorrect supply of a motor vehicle to Mr Schafer don't you think it would have been appropriate to ask someone other than Mr Pearce to provide you with a memo detailing what had occurred?---Well Schafer reported to Pearce at the time so I wanted him to talk to him first.

40 And you accepted from Mr Pearce that at the very least what had occurred was miscommunication from him leading to the problem with the Schafer vehicle?---Yes, I understood that they were sort of coming from opposite ends. One, Schafer that it was part of package, the word package to him means the car was thrown in but package to Pearce that it was allocated to the position and it wouldn't go through all the normal fleet processes.

So if we accept that proposition for a moment, that at the very least is mismanagement on Mr Pearce, isn't it?---I don't see that.

You waived the debt?---That's correct, we didn't actually know what the debt was.

No, I was just coming to that. You waived a debt without it being quantified so you knew exactly what it was you were waiving.---No, I did two things, one was that um, I couldn't ascertain how much it was because there was no log sheets um, Schafer had never put them in. And second, and we had a whole range of people that was either owed money or owed money to the organisation and there was an average of about \$2,500 that people could pay back and Schafer lived really close to the office and he travelled right around the state frequently so the best calculation I could come about was that Schafer was likely to owe less than \$2,500.

There's an estimate in Mr Pearce's memo of \$10,000 to \$15,000 isn't there? ---I don't recall that bit.

I'll leave that for a moment. Now, Mr Pallier was another person who was identified as owing money in relation to his motor vehicle?---That's correct.

Something in the order of \$10,000 I believe?---I think it started at \$10,000 and it ended up being around \$17,000.

That figure was derived from a report commissioned by the SES whilst Mr Pearce was the Deputy Commissioner of Corporate Services?---I believe so, I'm not sure about that point.

You understand, don't you, that there was disciplinary issues with Mr Pallier arising out of the fact that he was alleged to have sat on that report? ---Oh, yes, yes.

Did you ever raise with Mr Pearce, what, if anything, he did to follow up a report that had been commissioned within his department from someone who worked with him?---No I didn't really even, really know that it was commissioned whilst he was there. All I knew that when Miss McCarthy brought it to me that we had had a report done by IAB.

And again, in relation to the use of motor vehicles, that was something Miss McCarthy was tasked to deal with?---Oh yes, yes.

And she uncovered that in relation to Mr Pearce, Mr Pallier, I apologise, and others?---Correct.

Now in relation to Mr Pallier and to go back to my question, when this became apparent that this report may have been sat on, did you ever inquiry of Mr Pearce what he had done to follow up the report issue with Mr Pallier?---I didn't know that the report was done when Pearce was there, it was when McCarthy came to me, it was that we had to this report, there was no reference to when it was done.

Did you ever ask?---No, I didn't see the need.

Mr Pallier was disciplined, for amongst other things, some \$59,000 which was seen as an overuse of overtime wasn't he?---One of many things, yes.

That overtime had been signed off by Mr Pearce?---Correct.

10 And did you raise with Mr Pearce issues arising out of his management of Mr Pallier?---Yes, I asked Mr Pearce about the overtime, how much Mr Pallier had worked and Mr Pearce had identified that he had um, whilst he signed of on some overtime, he'd also knocked a proportion back.

20 THE COMMISSIONER: Were you satisfied with the overtime that had been claimed and authorised by Mr Pearce?---I was, I was alarmed at the amount of overtime that Pallier had worked and I'd asked Mr Pearce why he had worked and approved that amount of overtime for Mr Pallier and Mr Pearce had indicated that we were short staffed in the area, there was a lot on and he approved Pallier working overtime whilst at other times he thought that Mr Pallier should have done it within the confines of the normal working day and he knocked some back.

But shouldn't Mr Pearce have been disciplined in the same way as Mr Pallier?---For - Mr Pearce had the authority - - -

Approving the, approving the overtime?--- - - - to approve overtime.

Pardon?---Mr Pearce had the authority to approve overtime.

30 Yes, I know but if you were unhappy with the amount of overtime which the SES had to pay Mr Pallier that overtime had been approved by Mr Pearce? ---It had been.

So if you were going to discipline Mr Pallier for doing such overtime then you should discipline Mr Pearce for approving it?---I didn't discipline Mr Pallier over working overtime.

You didn't?---No.

Not at all?---Not at all.

40 MR FORDHAM: Didn't that form part of his dismissal, his use of overtime?---No. I had IAB look into all the allegations against Mr Pallier and many of them were proven not to require any further disciplinary proceedings or any other investigation by me on how serious it was that it could be dealt with by other matters but there were other matters within that report that I used as the, to ascertain the serious nature of Mr Pallier's misconduct.

The disciplinary process in relation to Mr Pallier included his excessive use of overtime didn't it?---The disciplinary?

Mmm?---No.

10 Not at all?---No, I didn't take into account Pallier working overtime in making my decision, in other words I had written that one off, that was something that IAB thought wasn't serious enough and therefore they, they had said to me here's one um, that doesn't require any further action, you could do, you could do mitigating circumstances but there was another two or three in IAB's report that stood out as very serious to me.

The thing that you say you wrote off, the excessive use of overtime, was all approved by Mr Pearce wasn't it?---The overtime was approved by Mr Pearce, it was.

20 Now at some stage in the IRC proceedings it came about, didn't it, that the issues of Mr Pearce's management of Mr Pallier were going to prove relevant to the dismissal process?---I believe that was the conversation that our barrister had had with Ms McCarthy.

And you became aware, didn't you, that there was an allegation, and I'm putting it no higher than that, that Mr Pearce had falsified one or more diary entries and provided them to IAB and eventually for the purposes of the IRC proceedings?---Yes, Ms McCarthy had indicated to me that she thought that Pearce had fabricated evidence, oh, the diary or file notes.

That is an extremely serious matter is it not?---It would have been, yes.

30 It was an extremely serious matter involving potential fabrication of evidence on the part of someone you regarded as a mate, correct?---That was the allegation by Ms McCarthy that Pearce had fabricated evidence, file notes or diary notes in his submission through to the IAB, yes.

Now you followed that up with Ms Calder who also was known as Grange I think?---Yes. I also followed it up with a Ms Colbey from IAB.

40 And in talking to Ms Grange you asked her the specific question did she use the word, I think it was fabricate?---Are you asking did she use the word fabricate?

Yeah, you rang Ms Calder and asked her whether or not she used a specific word which off the top of my head was fabricate.

MR HARRIS: It may have been falsification?

MR FORDHAM: Thank you very much.

Did she use the word falsification?---I asked Mr, Ms Calder if she thought if, if she told Ms McCarthy that Mr Pearce had falsified fabricated, ah, the diary notes or the file notes.

You asked her specifically whether or not she used the word falsification didn't you?---I don't recall me stressing that point.

You did not ask her the context of the conversations in which the potential allegation arose, did you?---The context of the, no I didn't.

10

You knew that Ms Brus was present at the conversation in which it was alleged that falsification became an issue?---

MR OATES: Your honour, Commissioner, I object to that. The evidence is more than one conversation, not the conversation.

THE COMMISSIONER: There is evidence of more than one conversation but there is only evidence on conversation when the falsification was used.

20

MR OATES: No, I think the evidence, as far as I recall it, and I could be wrong, was that there was a conversation between Ms Calder and Ms McCarthy as they walked to the coffee shop and then there was a further conversation at the coffee shop with Ms Brus.

THE COMMISSIONER: That's true.

MR OATES: What my friend, I thought, was suggesting was there was just one conversation.

30

THE COMMISSIONER: All right.

MR FORDHAM: You understood, didn't you, that the falsification issue had arisen out of a conversation in a coffee shop in Wollongong prior to the IRC Conciliation?---That's the place I understood, somewhere like that. It was in relation to them meeting somewhere when they were preparing for the IRC Case.

40

And you understood, didn't you, that they, the people you're referring to included Ms Brus, a barrister?---Yes, Ms Brus, Ms Calder and Ms McCarthy.

And in the investigation as to whether or not Mr Pearce had fabricated any evidence, you yourself did not ring Ms Brus and ask her for her version of events, did you?---No, because Ms McCarthy said it was based on Calder telling her something.

Perhaps you'd like to go back to my question. You did not ring Ms Brus and ask her for her version of events, did you?---No, no, I said that, no.

THE COMMISSIONER: But you would have known that Ms Brus was present when this alleged conversation took place?---I did know that Ms Brus was there, yes.

Why didn't you ask her whether, who was telling the truth Ms Calder or Ms McCarthy?---When I spoke to Ms Colbey, Colbey said in relation to this one, it's heresy, you should talk to Grange, then Calder when she came back if she'd actually said those things.

10

But one of the, one of the complaints against Ms McCarthy which you upheld was that she made allegations about the falsification of the diary notes without proper justification, isn't that right?---Yes, without checking with Ms Calder if she was going to say that that's what she said.

Why didn't you ask Ms Brus if Ms McCarthy was telling the truth?---Because I asked Ms Grange, did she say it.

20

Well, Ms Grange had an interest in, in trying to play down her role didn't she?---I don't understand that, no.

Well, she knew that you and Mr Pearce were mates and you were, this was a very serious allegation against Mr Pearce and I can, wouldn't she understand that you might not want hear it, care all this?---I couldn't speak for her motive but I wouldn't think so of her, no, not from my understanding of Ms Grange.

30

Well, anyway, you've got an independent witness who's actually a barrister who could tell you just by you lifting up the phone and phoning her whether Ms McCarthy was telling the truth or not and you didn't do that?---No, I didn't do that.

But you did rely on your disbelief of Ms McCarthy in coming to the decision to sack her?---It was one of many reasons.

But I know that, but it was an important reason, wasn't it?---It was an important break of trust, yes.

40

She asserted that Ms Grange, Ms Calder had told her that, Ms Calder was of the opinion that there were notes, must have been falsified, Ms Calder later you say disputed that so there was then a conflict between Ms McCarthy and Ms Calder, wasn't there?---I'm not sure if there was a conflict between them after - - -

I thought you said that Ms Calder disputed that she'd used the word "falsified"?---I asked Ms Calder a couple of things. One was um, did you tell Mrs, Ms McCarthy that Steven Pearce had fabricated evidence, and I asked her in the IRC case. She said no. And I said to her, in addition I said

beside that, put all the conversation aside have you any reason to believe that Mr Pearce fabricated evidence or do you have any evidence that he did, and she also said no.

Well, that was Ms Calder's evidence?---That's correct.

But Ms McCarthy said something else?---She said that Ms Grange had said that Pearce had fabricated evidence.

10 Yeah. So there was a dispute between the two of them?---(No Audible Reply)

Wasn't there?---I can see that, the way you draw that, yes.

Is there, there was clearly a dispute between them as to what had been said at the meeting. You chose to believe Ms Calder and to disbelieve Ms McCarthy. Why?---Because Ms McCarthy had said that Calder had said it and I asked the person that she was referring to in her complaint.

20 Well why did you - - -?---Otherwise it's just hearsay isn't it, it's just, "I said that somebody else said that somebody else said," so - - -

Why did you decide that Ms Calder was telling the truth when she denied having said it and that Ms McCarthy was not telling the truth when she asserted that Ms Calder had said it?---I just trusted that Calder was telling the truth.

30 But there you had Ms Brus who could tell you. Never mind your trust?---I didn't, no I didn't ring Ms Brus.

Why not?---I didn't see the necessity once Calder had said that she hadn't said it.

You were just very ready to disbelieve Ms McCarthy without checking up?---I just believed Ms Calder.

Yes?---I didn't, wasn't - - -

40 Without checking?---Without checking with Ms Calder?

No, without checking with Ms Brus, the independent witness?---No I didn't do that.

Why not?---Because I trusted and accepted what Calder had said - - -

And what Ms Calder had said - - -?--- - - - as the truth.

- - - Mr Calder had said was whitewashing your mate?---No, I don't - - -

But she was?---What Ms Calder had said was whitewashing my mate?

Yes. What, when she denied having, according to you having said that, having used the word “fabrication” or “falsification” she was thereby whitewashing Mr Pearce because she was not saying, “I never accused Mr Pearce of falsifying evidence”?---That’s correct, that’s what she said.

10 Yes. So you chose to believe her and not Ms McCarthy?---I, I chose to believe Calder and not Mrs McCarthy in the substantiation of that allegation.

Yes, but why?---(No Audible Reply)

What grounds?---That, that Calder didn’t say it.

But why believe in one and not the other, that’s a simple question?---I had no reason to disbelieve Ms - - -

20 And what reason did you have to disbelieve Ms McCarthy?---Because she was saying that Calder was, had said something.

Oh, Mr Kear. Yes, all right.

MR FORDHAM: Did you ever ask Ms Calder whether she had used a word similar or to the effect of “falsification”?---I didn’t put it that way. I’d asked, I asked her had she said to Ms McCarthy that Pearce had falsified or fabricated ah, any diary notes as evidence in the IRC case.

30 Ms Calder sat where you are yesterday and told the Commissioner that she used a word that was similar to or the effect of “falsification.” Do you say she’s lying when she said that?---I have no reason to know what, what, why she said that.

You limited yourself to asking a simple question, “Was the word ‘falsification’ used.” That’s right isn’t it?---No, that’s not.

40 You’ve agreed with me already that you didn’t ask about the context, that’s true isn’t it?---That’s correct.

And at no stage did you attempt to verify the position one way or the other with Ms Brus, a barrister employed, oh sorry, retained by the SES in this case who was there as a witness, correct?---No I didn’t call Mrs Brus.

And one of the reasons you didn’t do that was because you weren’t prepared to accept that Steven Pearce would do such a thing, that’s right isn’t it?---No, that’s not right.

Now, Mr Pearce had had fitted to his corporate motor vehicle a set of roof racks for the purposes of carrying surfboards, that's right isn't it?---I know he had roof racks put on his car, I don't, I imagine they were carrying surfboards and other stuff, whatever.

And you, you signed off on those didn't you?---I did, yes, yes.

Mr Pearce also had a set of electric brakes fitting for the purposes of towing his camper trailer, that's right isn't it?---That's correct.

10

And you signed off on those?---I believe so.

He reported to you?---Yes, yeah, I would sign off on most things unless I was absent and it was signed off by somebody else.

Ms McCarthy was tasked with, amongst other things, looking at expenditure as part of her corporate governance?---Yes.

20

And she uncovered those two items did she not?---Ah, yes.

And they were only repaid by Mr Pearce as they should have been after they were found and reported to you by Ms McCarthy?---Yes.

There was, wasn't there, a review of corporate credit card expenditure?
---Across the organisation?

Well, in part but at least in so far as Mr Pearce was concerned?---Oh, yes.

30

And there was an IAB desktop audit?---Yes, yes, in relation to Pearce you're talking to.

Yes?---Yes, yes.

And in relation to that audit there were 154 potential irregularities uncovered?---Yes, 154, 155, I can't recall.

Something in the order of \$11,000?---The total, yes.

40

A significant sum of Government money?---Yes.

There was in that report findings that there were inappropriate expenditure in the forms of personal items?---The roof racks and the, and the electric brakes, yes.

There was a reference to the mere statement of personal items in that report wasn't there?---Yes.

There was reference to the inappropriate purchase of alcohol?---Oh, yes.

There was reference was there not in relation to the inappropriate usage of Government money for the, for hotel accommodation?---Ah, yes, there was, I don't know if that's an inappropriate use.

Well - - -?---But there was hotel um, transactions on the um, Excel spreadsheet that I saw.

10 And weren't some of those identified as being over the amounts that should have been used by a Government employee?---I believe there was, yes.

And wasn't there claims for morning and afternoon tea that he was not entitled to?---There was claims for morning and afternoon tea, yes.

Mr Pearce, however, says that you authorised him verbally to do that when he first started. Is that correct?---That's correct.

20 There was problems with the obtaining of approval for travel and the claiming of subsistence?---Could you expand on that?

No, I can't because I'm reading from the report that you received?---Oh, right, can you say it again then.

It was highlighted that there was a failure to obtain prior approval for travel and to claim subsistence which I assume is - - -?---Oh, yes, yes, yes, correct.

And the claiming of that subsistence in excess of public sector rates?---Yes.

30 There were problems with receipting, correct?---Yes, and a failure to um, submit receipts for the transactions, yes.

Serious matters, correct?---When they, when there was no receipt given um, you know, whether you lose them or those sort of things there's a stat dec put in their place.

And there was a failure to provide those on certain occasions weren't, wasn't there?---A stat dec?

40 Mmm?---I'm not aware of that.

Isn't it the case that what we were talking about was - I withdraw that. What we're talking about again is corporate governance with which Ms McCarthy was charged?---Yes.

And what she was doing in uncovering these issues was bringing to your attention matters within the organisation that she was tasked to look after? ---Yes.

And they were serious matters?---Yes.

Potentially serious matters where it involved the expenditure of government money?---Yes.

And so, so far this afternoon, we've spoken about Ms McCarthy uncovering irregularities with compliance with government rules in relation to contracts, correct?---Correct.

10 That you agree was what she was tasked to do?---Yes.

And that the bringing of those matters to your attention and reporting them to ICAC was entirely appropriate, that's right isn't it?---Yes.

We've also discussed issues in relation to potential corruption in relation to the evidence, if you like, arising out of the diary notes.---Yes.

20 Again, entirely appropriate that where there's a hint of suspicion of impropriety that Ms McCarthy bring it to your attention?---Yes, I would expect everybody, anybody that uncovered that sort of stuff or noticed that stuff to do that.

And the same would apply in relation to expenditure?---Yes.

You had a performance review which you document on 8 January, 2013 at paragraph, sorry page 386 which will come up on your screen and if we can enlarge it for Mr Kear that would be helpful, thank you. Do you see that? ---Yep, I do.

30 You have listed there three issues in relation to Mr Pearce's performance. ---Yes.

In that document you have not raised, have you, any issue relating to Mr Schafer's car?---No.

Although that, on any view, arose out of what could be best described as at least a misunderstanding on Mr Pearce's portfolio?---I didn't list it because I saw it as an issue that Pearce couldn't have known.

40 Yes, thank you. In relation to this document did you set in place any form of follow up in terms of scheduled meetings to discuss the contents of this letter?---Yes, I asked for at least monthly meetings with Pearce to discuss those.

Those monthly meetings appear to be limited to questions or contracts, don't they, am I wrong about that?---Not only that, also the Mr Pearce's performance of his direct reports.

And it's the case, isn't it, that this document doesn't set anywhere what will happen if he doesn't measure up to the expectations that you hold for him?--
-No, it doesn't.

It should have, shouldn't it?---No, I don't, I didn't intend for that document to have that in it.

Did you intend to put it in some other document?---No.

10 So you did not intend – do I understand – to set out a list of what it was you expect from Mr Pearce?---Yes, in the letter I asked him to converse with me before he would enter into any other contracts with an external provider and I wanted to discuss with him and understand from him what he was doing in regards to improving his performance management of his direct reports.

Mr Pearce is in operations, isn't the entering into procurement contracts and the like something that is under the heading of corporate services?---No, no, it could possibly be that the Deputy Commissioner of Operations could enter into contracts and sign contracts, he had a delegation to do so. He had
20 areas in his portfolio like the State Communications Centre, the State Operations Centre which has a lot of assets, those sort of things that would have needed to be signed off by Mr Pearce.

Mr Pearce sat in that chair a few hours ago and told the Commissioner that he didn't think he was supposed to be entering into contracts when he was in operations, is he wrong about that?---I think he is, yes, he could possibly be.

Nowhere in this document do you set out what it is that may occur if he
30 doesn't measure?---Yes, that's right, I've said that.

This meeting I take it took place, or this letter sorry, was sent on 8 January, 2013?---(No Audible Reply)

It's at the top?---Yes.

A few days before you went camping together down at Bonnie Vale?---I'm not sure about the dates of when I was there.

40 How does 10 January this year sound?---Pretty good, yes. I'd have to check my diary we do go to Bonnie Vale in January.

Yes. On Saturday, the 12th I apologise. That's right isn't it?---I accept, I accept that.

Now, whilst under a performance management arrangement with you a month later Mr Pearce received a backdated pay rise on which you signed off, that's right isn't it?---Correct.

In dealing with his Performance Agreement up to November of 2012 one of the things that was referred to was compliance with corporate governance?--
-One of the things?

In his Performance Agreement?---Yes.

And he hadn't done that had he?---Not, not very well.

10 And that didn't hinder you in your decision to give him a pay rise did it?---
No it didn't because I looked at all the other things he'd achieved in his
Performance Agreement.

And the issue arising out of the miscommunication leading to the Schafer
problem, that didn't feature in your decision?---I didn't hold him
accountable for that.

The mismanagement of Mr Pallier, did that feature in your decision?---I, I
knew he hadn't performance managed Mr Pallier well but the, it didn't
20 affect me not finally to make the decision to give him a pay rise based on all
the other achievements that he had done.

Issues in relation to expenditure, are they featured in, in your decision
making?---Um, yes.

And is it the case that despite all of these matters you were prepared to
extend a pay rise to Mr Pearce despite those shortcomings in the previous
six to nine months?---Despite and comparing to the things he'd achieved.
But the things that he'd achieved in his Performance Agreement far
30 outweighed those mistakes and the lessons that he'd learnt.

The lessons that he'd learnt? Now, I take it were they going to be lessons
that you taught him in these performance management meetings that you
were going to have after 8 January, 2013?---Yes, I'm sure that um, he now
was probably well up on Government contract negotiation and how to do
those sort of things.

How many meetings did you have arising out of this Performance
Management Agreement between 8 January and about 12 or 13 of February
40 when you signed off on the pay rise?---Um, I couldn't be sure but we would
have one at least.

I take it you didn't spend your time down at Bonnie Vale discussing these
things?---No. Most of the time we weren't in attendance at Bonnie Vale
together. I'd, I can't be sure but um, I'm not sure whether he was on leave
or not but I was still working so I'd go backwards and forwards to the
caravan after work of a night. But he, I'm not saying I didn't see Mr Pearce

at the, at the, at the caravan park and no, we didn't discuss performance management issues that I can recall.

10 THE COMMISSIONER: Can you just, can you just describe a meeting or, where Mr Pearce was demonstrating his effective performance management of his direct reports?---We'd go through each of his direct reports and what were, what he perceived as any performance issues, any strengths and weaknesses that his direct reports had, what was he putting in place to, to change those to ensure that these people were improving their performance in the areas that he was concerned about.

MR FORDHAM: Up to and including February of this year Tara McCarthy had set about doing all of the things that she was tasked to do by you in her role as Director of Corporate Services hadn't she?---She was achieving all of those things you had, you had spoken to me about before, yes.

And that's why amongst other reasons you gave her a pay rise?---Correct.

20 She was not under a performance review was she?---No.

And she was never under a performance review right up until the day you sacked her?---That's correct.

There was a meeting of the senior executive group at Port Macquarie earlier this year and I believe in about late April?---There was a meeting at Port Macquarie, yes, I think it was around April.

30 And during that meeting you raised the issued of what you perceived as a personality conflict between Ms McCarthy and Mr Pearce, isn't that right? ---That was a discussion, it was the result of a discussion that we were talking in general about how does the organisation share and communicate when there has been conflict or bad performance and how do all the other managers and leaders learn about that.

When it was raised Ms McCarthy came out and boldly stated that there were really issues of trust and competence, not personality issues?---Trust and competence and I may have used the word integrity, there was a number of words used.

40 All of which were derogatory to Mr Pearce?---Yes.

You made the statement didn't you that you're going to have to make a decision as to whether one or both of them had to go?---Or that they both stayed, yes.

But if they couldn't sort it out one or both of them had to go?---That's correct. That, that had been a general statement made in a number of venues.

Well, I'll come back to that in a moment but on the assumption that they weren't going to sort it out you were going to make an election as to which one went weren't you?---Or both.

Well, you didn't sack both did you?---At the end I did not.

10 Now can we pull up 381 for me. Can we go to 382. That's an email from you to Tara McCarthy dealing with in part issues between them?---Yes, that's right, I believe I sent a similar one to Mr Pearce.

Yes, I'm going to come to that in just a moment. The email that you sent to Ms McCarthy is signed on 383?---Is it, yes.

Yes, do you see that, "See you tonight, Murray"?---I can't see that yet, no.

Oh, okay, hopefully someone will bring it up for you, 383?---Yes.

20 In the course of that email to Ms McCarthy back on page 382 you use these words, "Yeah I know, all sounds philosophical but I care about both of you and want to help." Do you see that?---Yeah, I do. Oh, I do now, yes.

Okay. Now can we go back to 381. About five lines from the bottom you will see a sentence that is almost the same, where it says, "Yeah, I know, all sounds philosophical," do you see that?---Yeah.

The difference is here you say, "I care about you and want to help," do you see that?---I do.

30 No mention of the both of them is there?---No.

Go down to the bottom and see how you signed it off?---"See you tonight."

"Your boss and mate, Murray"?---I can't see that yet.

Scroll down please. Thank you.---Yes, yes.

See that, your boss and mate, Murray.---Yes.

40 You had a very different relationship with Mr Pearce than the one you had with Ms McCarthy didn't you?---Yes.

And it influenced the decisions you made in relation to how you dealt with Mr Pearce?---No.

It influenced the decisions you made in relation to how you dealt with Ms McCarthy?---No.

There was a live-in conference at Manly which Ms McCarthy attended?---
Yes. I lectured at that same conference.

It as something called AIPM?---The Australian Institute of Police
Management.

And in the course of that conference, there was an issue in relation to
leadership and Ms McCarthy made open comments that were critical of you,
didn't she?---Yes.

10

And that took place in late April or early May of 2013.---Somewhere around
that time, yes.

About the time you decided to sack her.---That was one of the final things I
took into consideration.

And to go back to my question, about the time you decided to sack her?
---About the time, yes, that was just prior to that.

20

You sought advice from Graham Head who is the who is the Public Service
Commissioner?---Yes, I did.

When you spoke to Mr Head, had you already decided that the issue of trust
and confidence was the mechanism by which you would sack Ms
McCarthy?---I can't if I'd had the conversation with Crown Solicitors
before or after Mr Head.

30

When you went to Crown Solicitors, you went with the idea of trust and
confidence in mind and you asked for advice about Section 77 didn't you?
---I did ask for advice on 77, I hadn't narrowed it down to trust and
confidence but in the conversation with a person at Crown Sols, that became
a summary of all the things that I was concerned about.

You went to Crown Sols with the idea in mind firstly to sack Ms McCarthy?
---I was certainly considering it, yes.

40

And the idea of trust and confidence for the purposes of Section 77 of the
Act, you had in mind didn't you?---Not specifically just had locked in those
two words, I had a number of issues and my conversation with the person at
Crown Solicitors, we talked about all those things and the advice that I got
back was it was better not to list lots of reasons, to summarise it and I can't
recall if it was the person on the other end of the phone or that I indicated
trust and confidence seemed to summarise that and that would be best to
limit the types of reason you would give in a termination.

What you were looking for was a form of summary dismissal weren't you?
---No, I was just looking for whether I should state a reason or not and if I
do state a reason, how to do that.

You elected not to go through any disciplinary process with Ms McCarthy under the Public Sector Management Employees Act, didn't you?---That's correct.

And that's because you had no basis on which could discipline her, did her?
---I made that decision based on my, the loyalty, the trust, the confidence, the way that Tara was dividing the team, causing an issue through the organisation and I had spent lots of money trying to change her and I had
10 come to a point where I realised that that was going to be fruitless and that wouldn't occur.

She had performed in accordance with the agreement she had signed to work for your organisation, hadn't she?---In regards to the deliverables, the outputs, yes.

And you had no basis to fault her work, did you?---Her work as a leader and her work as a, as a member of the team, an effective member of the team, yes I did and that's why Ms McCarthy, Mr Pearce and I and then the rest of
20 SEG, were working so hard to change that.

You went and spoke to Graham Head, I withdraw that. You spoke with Graham Head, correct?---I did yes.

He warned he, didn't he, that some of the things that were being discussed sounded like they might be Public Interest disclosures made by Ms McCarthy?---I don't recall that emphasis by Mr Head.

He certainly raised the question of Public Interest Disclosures didn't he?---I
30 don't recall that, no.

Not at all?---No. He talked about um, notifying, he talked about an experience that he'd had for quite a long time in the discussion, that, that he'd had a similar occasion. He talked about notifying the Crown Solicitors. And I do remember him talking about the Ombudsman's office.

He advised you to talk to the Ombudsman's office before you sacked her didn't he?---No, I don't recall him telling me I was to notify them before, just in regards to notifying the Ombudsman's office.
40

He mentioned on more than one occasion that he advised you to speak to the Ombudsman's office?---I just recall it being mentioned. I don't know how many times.

Was the very last thing you, I withdraw that. He, he spoke to you about the fact that some of the things that Ms McCarthy had raised were potential Public Interest Disclosures and that you needed to be very careful about what you were doing didn't he?---I don't recall that.

Did you also speak to, I withdraw that. One of the things that he spoke to you about was the need to afford procedural fairness if you were going to go about what it was you were thinking of doing?---Yes, I remember that conversation.

And he gave you a timeframe something in the order of at least 48 hours didn't he?---No, I don't recall that.

10 He told you that whilst the Act looks like you can just summarily dismiss someone you really do need to afford them procedural fairness?---He did say you needed to afford them procedural fairness, yes.

And which part of marching into Ms McCarthy, sacking her with a cab already booked did you think afforded her procedural fairness?---I asked her, and following the Crown Solicitor's advice that I asked her is there anything she would want to say or anything she wanted to do because I was considering her termination. So I put it back to her in a procedural fairness, that, what I believe was procedural fairness to see if she needed to say or do
20 anything.

At no stage did you warn her in writing that you might be taking this step before you interviewed her did you?---No I didn't.

She was given no meaningful opportunity to respond was she?---Yes, I gave her that opportunity.

You'd already booked the cab hadn't you?---No, I don't believe I had. I don't book the cabs. Um, the, the um, girls, Sue Boyd or Liz Troiani, my
30 PAs would do that.

At your direction?---Um, I don't, I don't remember being involved in the booking but I, I think we were talking about how Ms McCarthy was going to get home.

Correct?---And I wanted to make sure she had a um, process of getting home.

Because you were going to sack her?---I don't recall if that was before I did
40 it or afterwards. I mean, I'd certainly made up my mind that it was happening so whether I was putting steps in place to make sure that Ms McCarthy could get home or not um, may have been done before I saw Ms McCarthy that day or afterwards.

You'd made up your mind before you went into the interview with her hadn't you?---Oh yes. That, that I was considering terminating her employment.

You'd made up your mind to sack her before you walked in?---Oh no, no. I was considering doing it and I wanted to um, see if Ms McCarthy wanted to say or do anything in regards to me saying to her I've lost trust and confidence in her.

When she said to you that, "I'll need to take some advice," you didn't say well, I'll wait and see what you come back with you. You sacked her on the spot?---She actually said no and, "Now I'll go get some advice."

- 10 Had you already prepared the termination letter before you walked in?---
Um, I'm not quite sure about that. Same, same sort of issue in regards to the cab.

You presented her with it during the meeting didn't you?---Oh, therefore it would have been prepared, yes.

- 20 You were strongly advised by Mr Head, the Public Service Commissioner to seek advice from the Ombudsman re: any PID issues that may have a bearing on your decision weren't you?---I can recall Mr Head mentioning the Ombudsman's office, that's my recollection.

You did not speak to the Ombudsman's office until after you sacked Ms McCarthy did you?---That's right. I notified them after.

- 30 When you spoke to Mr Head on 17 May and after the sacking you did not tell, I withdraw that. You told Mr Head that you had discussed the issues with the Ombudsman's office, that's right isn't it?---No, I don't recall that. I would have said to Mr Head that I was either going to or I had. I can't remember if I rang the Ombudsman's office before Graeme's or after Graeme's phone call. And I certainly indicated to him that I was.

Now you also spoke to Mr Tree prior to the sacking?---I can't recall whether I did or not, I'm not sure when Les Tree retired so - - -

Can we turn up page 6 of the brief please, do you see that document?---Yes.

Can we go to the next page please, page 7, that's your handwriting isn't it? ---Yes, it looks like it, yes.

- 40 And if you accept from me that there was a, through to page 16, can we go to page 16 for me, there is a series of notes by you which appears to culminate in a draft memo to Steven Pearce headed "Performance", do you see that document?---I see that document, yes.

That is the initial draft of the document I showed you before that eventually became 8 January this year?---I couldn't be sure. I think the other one was a letter, not a memo wasn't it?

Can we go back to page 7 please. This document sets out your thoughts in relation to the Tara McCarthy/Kevin Pearce, sorry, Steven Pearce issues doesn't it?---Yes, yes, it seems that way, yes.

Was that written earlier this year?---It, I can't be sure when it was written.

If you read through it slowly you will see that it seems to summarise a series of issues starting with Kevin Pearce?---Steven Pearce, yes.

10 Oh, sorry, Kevin Pallier?---Oh, sorry.

Kevin Pierce is a barrister. And at the bottom of that page you have written, "Tara is going to keep digging, get it on the table now"?---I see that.

What did you mean by that?---I wanted them to have a discussion about if Tara had any other concerns about Pearce um, to have it done in an arena, you know, that, that we could deal with all of them.

20 If you go to page 8 for me there's some events of last month and there are references there to things such as Kevin Pallier, overtime, audit issues and then you make this comment which appears to be addressed in your mind to Tara, "The deep end is not strong enough to describe your first eight weeks. Steve performance (arrow) my performance, the work you have done is stressful, time consuming and appropriate," and that was your view of what it was that Ms McCarthy had done in uncovering the things that she had done up till the time you wrote this memo"?---Yes, I've, I've always thought that it was appropriate that Ms McCarthy, the issues were raising were appropriate, yes.

30 If you go further down the page you appear to be addressing in your mind a conversation with Steve who I'm going to assume is Steven Pearce?---Yes, this is me preparing for one of our, one on three, the three of us getting together.

"And there are ramifications for Steve Pearce's performance."?---Yes, that's right.

40 "Protocols, tender, contracts, performance in managing Kevin, Phil Schafer's car," do you see that?---Yes, I do.

Now we can go back to it if you like but not all of those matters which you seems to regard as poor performance at page 8 in fact made it into the performance review did they?---Not all of them made it to the letter, no. The only thing that didn't by the look of it was Phil Schafer's car.

If we go to the next page, page 9 and again, this is your preparation. "Steve knows that I am disappointed with his omissions and decision. Steve knows that from today I won't tolerate any repeats."?---Correct.

Now, where in that letter for the performance review that we looked at before does it say that you won't be tolerating any repeats?---It doesn't.

No. And where in that letter does it suggest there will be consequences for Steve if he does repeat?---Well, it doesn't.

10 You see will further down, "Steve will begin a performance management programme which his monitor his decisions and performance."?---Yes.

And then you list your observations at the bottom of the page, "Tara hit the ground running and discovered non-compliant issues."?---Yes.

20 "With decisions of a fellow DC, that'd be Mr Pearce, "identified decisions by Steve that raised questions in your," being Tara's, "mind of his competence." On the next page you refer to anxiety and concern that Ms McCarthy must be feeling as a result of the actions that she must take, ie, "each action that we've discussed this afternoon you regard as appropriate," that's right, isn't it?---For her raising the issues that she discovered, yes.

You refer to her being amused at a lack of action by you?---Amused, yes.

Further down you list a series of issues that seem to relate to Steve and they go for the entire page don't they?---Oh, about three-quarters, yes.

30 And the last thing you say is that, and I reference this to Steve, "trying to come to terms with knowing that Tara is not doing anything wrong, her actions in addressing the issues are exposing your deficiencies," correct? ---That's correct.

What Ms McCarthy did was expose deficiencies on the part of Mr Pearce, correct?---Correct, mistakes he'd made, yes.

She began to question your competence as well didn't she?---She questioned my decisions on the way I dealt with them, yes.

40 She raised issues with your treatment of Mr Pearce and whether you were effectively blind to his shortcomings?---I don't recall her saying that I'm blind to his shortcomings, no.

No, I said effectively?---No, I disagree, no.

What she suggested, for instance at Manly, was that you were unable to deal with issues with Mr Pearce?---No, I think she just said I was unable to make decisions.

Regarding Mr Pearce?---I don't know what she was referring to.

It's the case isn't it that in the course of her tenure what Ms McCarthy had done was raise reports to firstly you, correct?---Yes.

ICAC?---Yes.

And refer matters to the IAB for the investigation of Mr Pearce?---Yes.

That's right isn't it?---Yes, and the Minister's office and the Ministry.

10 She had questioned his competence, that's right isn't it?---Yes.

She had raised what you understand to be Public Interest Disclosures in relation to a number of these issues where she sought thorough investigation?---I didn't know if they were Public Information Disclosures, she wrote me memos and she made some complaints about the contracts.

20 She wrote memos in which she suggested you take the matter further and conduct proper investigations pursuant to the relevant acts didn't she?
---Yeah, she recommended I take a disciplinary investigation into those issues.

She raised these issues into a man you regard as your mate, correct?---She raised them in regards to Steve Pearce who I perceive as a mate, yes.

You regard as your mate, you don't perceive him as anything, he's your mate isn't he?---Oh, he is, sorry, yes.

30 And she raised questions in relation to your competence?---I don't know if she ever raised queries about my competence, certainly that I couldn't make decisions if that's what you're alluding to.

She made adverse comments about you in public didn't she?---Yes.

And you sacked her in reprisal for doing those things and by that I mean reporting Mr Pearce, questioning you and criticising both Mr Pearce and you?---They weren't the only reasons, no.

THE COMMISSIONER: Mr Fordham, is this a convenient time?

40 MR FORDHAM: Yes.

THE COMMISSIONER: The Commission will adjourn until 10.00am tomorrow.

THE WITNESS WITHDREW

[4.05pm]

AT 4.05PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.05PM]