

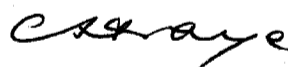
# NSW ICAC EXHIBIT

## STATEMENT IN THE MATTER OF: State Emergency Services - Op Dewar

PLACE: Sydney  
NAME: Graeme Charles Head  
ADDRESS: Known to the ICAC  
OCCUPATION: Public Service Commissioner  
DATE: 29 November 2013

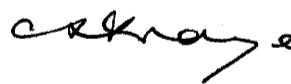
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1. This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give in Court as a witness. The statement is true to the best of my knowledge and belief, and I make it knowing that if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.
2. I am 55 years of age.
3. I am the NSW Public Service Commissioner and I have held that statutory office since 1 November 2011 when the office was first created, pursuant to s 3D of the Public Sector Employment and Management Act 2002 (the PSEM Act). The group of staff comprising the Public Service Commission exists to support the Commissioner in the exercise of the powers of that office.
4. Sections 3E and 3F of the PSEM Act prescribe the principal objectives and functions of my position, respectively.
5. Prior to taking on this role, I was Deputy Secretary of the Commonwealth Department of Health and Ageing and Chief Executive of the Health Reform Transition Office in 2010-11. I have had approximately more than 30 years experience in a variety of public sector roles in New South Wales; I have more than 17 years experience in executive roles. Most recently before joining the Commonwealth, I was the Director General of what is now the Department of Finance and Services (formerly Department of Services,



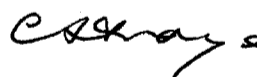
Technology and Administration) in New South Wales. Previously, I have also been Deputy Director General of the Premier's Department, Chief Executive of the Sydney Catchment Authority and Assistance Director General in the New South Wales EPA.

6. On 8 May 2013, the SES Commissioner, Murray Kear, came to see me at my office at 4-6 Bligh Street, Sydney. Mr Kear was seeking my guidance on the application of s 77 of the PSEM Act. Section 77 deals with the removal of executive officers (as defined by the Act). My recollection of the discussion is that it focussed on a decision Mr Kear was considering making that would entail removing one of two executive officers.
7. Mr Kear advised me that there was a longstanding "toxic" dispute between two executive officers and he was considering his options on the basis that there was no reasonable prospect of the conflict being resolved. This was why he was seeking my advice in relation to the PSEM Act. He advised me that he was considering removing one or other or both of the officers.
8. I explained to Mr Kear that s 77 of the PSEM Act, to a layperson, might suggest that summary dismissal of executive officers is available without affording procedural fairness. However, I explained that this was not the case in practice and advised Mr Kear that removal of a person under that section generally involves a process of affording procedural fairness. The process should, at a minimum, include advising the executive officer concerned of the intent to remove them and affording the officer an opportunity to make a submission about that intent and considering that submission before making any decision. I also advised Mr Kear of the timeframe that would typically be involved.
9. I also told Mr Kear there is no specific statutory process for the affording of procedural fairness and the powers under s 77 are exercised by individual CEO's as decision makers. However, arising out of a High Court decision in a matter several years ago (Jarrett v Commissioner of Police), the Public Service Commission encourages people exercising those powers to allow a



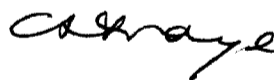
reasonable timeframe for an officer to make a submission and, in turn, that the person making the decision must take an appropriate amount of time to consider what, if anything, the officer has submitted.

10. I noted that, notwithstanding the complexities of affording procedural fairness within a framework where a person can be removed for any or no reason, it was important for CEOs to take account of the process I had outlined. I also referred Mr Kear to the Senior Executive Service Guidelines, which provide information on a wide range of matters concerned with Senior Executive Service employment.
11. Mr Kear provided me with some context as to the characteristics of the relationship between the two executive officers, which he described as "toxic." He indicated that there had been a series of claims and counter claims about various conduct related issues. At that point in the conversation, I made it clear that I was not the best person to advise on all aspects of his obligations in relation to those things and that my statutory office deals with certain things, including the operation of the PSEM Act, but the nature of some of those complaints sounded to me as though they may be Public Interest Disclosure Act (PID Act) related matters and that the Ombudsman's office would more appropriately advise on some matters.
12. Mr Kear described to me what was happening in a general sense, that is that the two executives were essentially challenging each other's authority in relation to different parts of their roles and that this was translating into behaviour whereby Ms McCarthy in particular, according to Mr Kear, was making a series of what he felt were unfounded claims. He indicated that some of these matters had been examined, as I recall, by the Internal Audit Bureau and had not "stood up" in the process. He did not go into a great deal of additional detail and that is partly because my role in this was not to assist him to make any decision about those matters, but rather to explain the operation of the PSEM Act, about which he was uncertain. I took the opportunity to make it very clear that he should not rely upon his own (ie a layperson's) reading of the legislation, which suggests to an untrained eye a



greater degree of freedom in relation to the process of removal than that which is actually the case. I told him he should take account of the fact that there is a well established approach relating to the removal of executive officers and I then raised the issues about public interest disclosures.

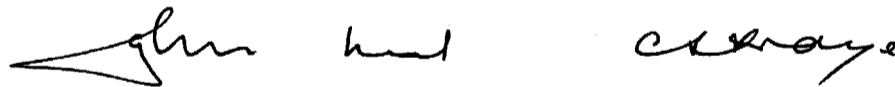
13. I recall telling Mr Kear that the best way to establish whether or not matters raised by Ms McCarthy were PIDs was to:- review any guidance material; seek proper advice internally and also to discuss the matter with the Ombudsman's Office. I also told him that it may be the case that through those discussions with the Ombudsman's Office, and depending on the detail of the matters under consideration, it may be necessary for a matter to be referred to the Independent Commission Against Corruption (ICAC). I discussed the need for Mr Kear to be aware of his obligations in respect of both the ICAC Act and the PID Act and indicated that where he was uncertain about something he could contact the relevant organisation. I told him that I had experienced similar circumstances where I had sought advice from one or other of those agencies in the past.
14. I discussed with Mr Kear a "de-identified" example from the past where I was required, in the first instance to undertake an interval review into a matter and provide the report of that review to the ICAC in order for it to decide whether to investigate further. I recall at that point he again indicated that he had undertaken some internal reviews - my recollection is that he mentioned the Internal Audit Bureau - and I made the point to him that while that may be the case, the PID Act may have already been triggered and the fact of having done internal reviews would not normally negate other obligations he may have beyond conducting internal reviews. I reiterated that if these, or any of these matters were PIDs, then that would have implications as to whether or not he could remove someone under s77 of the PSEM Act. At the end of our meeting, I accompanied Mr Kear to the exit and stressed this last point to him, and said something to the effect of, "The first thing you should do on leaving here is seek formal advice on whether or not a PID process is already in place". Mr Kear told me that he would contact the Ombudsman.



15. Immediately after the meeting on 8 May 2013, I made some contemporaneous handwritten notes about my conversation with Mr Kear.

**EXHIBIT: I PRODUCE A COPY OF THOSE NOTES.**

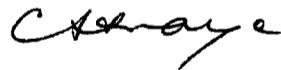
16. At about 1.30pm on 17 May 2013, I received a telephone call from Murray Kear, being a follow-up call to our meeting on 8 May 2013. I was surprised by a few things in this conversation. Firstly, I asked Mr Kear if he had spoken to the Ombudsman and he indicated that he had spoken to one of the Deputy Ombudsman. I said something to the effect of, "So have you satisfied yourself through that discussion whether there were any PID issues?" I do not recall him responding directly to that question, but I made a point of restating that that had been the purpose of directing him to the Ombudsman in the first instance. He then informed me that he had removed Tara McCarthy, one of the two executive officers and described the process he had followed. I was surprised at hearing this, because in his description to me of that process, it did not sound to me as though he had taken account of the matters concerning procedural fairness that we had discussed. What he described to me was a summary dismissal. At that time, I assumed that he had spoken to the Ombudsman's Office prior to the removal of the officer, although I did not ask him specifically about the timing of that discussion and he did not volunteer to me the details of the timing of any conversations that occurred subsequent to his 8 May meeting with me.
17. Mr Kear told me that he had a short discussion with Tara McCarthy and removed her. That was concerning to me for two reasons: apparent failure to take account of the matters I had raised regarding procedural fairness; and the content of a notice issued to staff that he described to me. Mr Kear indicated that the notice said that he had removed Ms McCarthy due to a loss of confidence. I indicated that it was not usual to advise staff of either the fact of a s 77 removal, or the reasons for that removal. I indicated that good practice would usually involve consulting the affected executive officer on the draft notice. I have no recollection of having a copy of that notice either before or after the phone call in which it was described.

Three handwritten signatures are present at the bottom of the page. The first signature on the left is a stylized, cursive signature. The middle signature is a simple, blocky signature. The signature on the right is a cursive signature that appears to read 'C. Kear'.

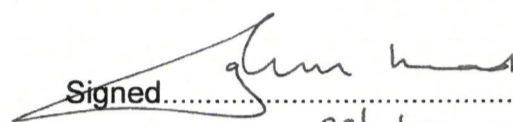

18. After my phone conversation with Murray Kear on the 17 May 2013, I made some contemporaneous handwritten notes in my diary. I later transcribed those notes together with the diary notes I made on the 8 May 2013 into a typewritten file note.

**EXHIBIT: I PRODUCE A COPY OF THOSE NOTES AND FILE NOTE**

19. I do not believe that I have had any conversation with Mr Kear in relation to this matter since that conversation on 17 May 2013. I think that he provided an email about legal proceedings and that was the last communication that I recall. I do not have any notes about any other conversations. I have met with Mr Kear on one occasion to discuss matters related to his reappointment (at the expiration of his contract) to the role he occupies.
20. As for the legal proceedings initiated by Tara McCarthy, that was a matter handled by the Ministry for Police and Emergency Services and the Attorney General's Department. I did not have any involvement in those proceedings, but I did, by way of background, provide to the then Acting CEO of the Ministry and the then Director General of the Department a brief description of the matters that had been discussed at the 8 May meeting with Mr Kear.
21. From what I know about the dismissal of Tara McCarthy by Murray Kear, I can form a judgment that it would not appear, based upon the description by Mr Kear of what transpired, that the process issues to do with the s 77 removals under the PSEM Act had been adequately addressed by him in effecting the removal. As I do not have access to the original complaints that Ms McCarthy made, it is not for me to form a view about whether Mr Kear's obligations under the PID Act had been triggered, so I cannot make a comment about this other than to reiterate that I am of the view that by the end of our meeting on the 8 May, Mr Kear was aware that there may be issues related to the PID Act and he was aware that it was my very strong recommendation that he discuss these issues with the appropriate organisation before making any decision regarding removal.



22. In relation to Ms McCarthy, any decision regarding her removal under s 77 of the PSEM Act rested with Mr Kear. The question of whether someone can exercise that power or not in the current arrangements depends on whether or not they are the division head within the meaning of the Act, which Mr Kear is. He was not exercising the power under my delegation. It is my opinion that Mr Kear understood that I was drawing attention to things he must consider in his capacity as the decision maker.

Signed.....  ..... Witness.....  .....  
29/11/13 29/11/13

8/5/18

Murray Keen

- long-standing 'toxic' dispute between 2 execs
- considering options on the basis that there's no reasonable prospect of conflict being resolved.
- considering removal of me or other as both
- seeking advice on PSEMA Act
  - advised of relevant provisions, need to afford procedural fairness, process for doing same.
- advised that some of that same of the general issues he had described by way of context may have PID Act issues. Advised that he cannot take reprisal actions in relation to PID. PSC not able to advise him on whether matters were PID and what implications for considering options. Strongly advised to seek advice from the Outbursts team re ~~not~~ any PID issues that may have a bearing on his decision.

Murray Keen - Follow-up call 13/5/18

- advised me that he had discussed with outbursts team's office (Dep).
- satisfied that there are no PID issues
- advised me that he had already removed the officer
- sole process for removal did not follow what I had discussed with him re nature of intent in writing.
- advised that he had issued a staff notice stating his reason for removal
- indicated that I was surprised that he had issued such a notice on chat, while it was in session, it may have been wise to consult on the approach to communicating with staff

\*

Following removal of Burgess letter sent to PSC.

# NSW ICAC EXHIBIT

File Note

Graeme Head, Public Service Commissioner

8/05/2013

Murray Kear

- Longstanding 'toxic' dispute between 2 execs
- Considering options on the basis that there's no reasonable prospect of conflict being resolved.
- Considering removal of one or other or both
- Seeking advice on PSEM Act
  - Advised of relevant provision, need to afford procedural fairness, process for doing same
- Advised that some of that some of the general issues he had described by way of context may have PID Act issues. Advised that he cannot take reprisal actions in relation to PID. PSC not able to advise him on whether matters were PID and what implications for considering options. Strongly advised to seek advice from the Ombudsman re any PID issues that may have a bearing on his decision

Murray Kear

Follow up call 1.30 pm 17/05/13

- Advised me that he had discussed with ombudsman's office (Dep)
- Satisfied that there are no PID issues
- Advised me that he had already removed the officer
- Process for removal did not follow what I had discussed with him re notice of intent in writing
- Advised that he had issued a staff notice stating his reason for removal

I indicated that I was surprised that he had issued such a notice and that, while it was his decision, it may have been wise to consult on the approach re communicating with staff.

\* following removal, copy of lawyers letter sent to PSC.