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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION NICKEL

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 17 OCTOBER 2013

AT 10.00AM

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

THE COMMISSIONER: Mr McLure.

MR McLURE: Commissioner, I call Mark McDonagh.

THE COMMISSIONER: Yes. Ms McGlinchey?

MS McGLINCHEY: Yes, Commissioner. The witness will take an affirmation and we seek a section 38 declaration.

- 10 THE COMMISSIONER: Yes. I declare that all answers given by Mr McDonagh and all documents and things 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 and 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 MCDONAGH AND ALL DOCUMENTS AND THINGS 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 AND ACCORDINGLY THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT PRODUCED.**

THE COMMISSIONER: Could you administer the affirmation please.

MR McLURE: Commissioner, could the witness please be shown Exhibits 1 and 2? Can I have his logbook too please. Oh sorry, what's the exhibit number? Mr McDonagh, some time in 2012 did you decide that you wanted to obtain a heavy rigid driver's licence?---Yes.

10 Did you attend the RTA in order to start that process?---Yes I did.

Did you undertake a knowledge test?---Yes.

Did you pass that test?---Yes I did.

Were you then issued with a logbook and a guide to heavy vehicle competency based assessment?---Yes I did.

Do you see the documents that are on the table in front of you?---Yes.

20 Are they the documents that you were issued by the RTA?---Yes.

Now, if you look at the logbook to start off with can you turn please to - or let me first ask you this. Did you read through these documents when you received them?---No.

Did you read them at all?---No.

THE COMMISSIONER: Pardon?---No.

30 MR McLURE: So at no point have you ever looked through the documents that you were issued by the RTA?---I've already, I've already seen them before because I've done the test before.

You've done the test before?---Yeah.

So when, what do you mean by that? When did you first do the test?---I done it um, three years ago.

40 For what licence?---For the MR.

For the medium rigid licence?---Yeah, yeah.

So when you, when you went for your medium rigid licence were you issued with these same documents?---Same documents, yes.

And you read through the documents on that occasion did you?---Yeah.

So when you obtained your medium rigid licence did you do it through a competency assessor or did you, were you tested by an RTA assessor?---It was a competency assessor.

All right, so when you did that did you go through a series of training sessions - - -?---Yeah.

- - - and then some assessment sessions?---Yep.

10 So how long were your training sessions?---Um, it was the whole day. Half the day was the training session and then, by the end of it it was just a half hour was the assessment, the last half hour.

All right, so that's half a day of training and then - - -?---It was a half day course I done.

Right. A half day course?---Ah hmm.

20 So based on that experience when you decided to go for your heavy rigid licence did you expect that in order to get it what you were going to have to do is do about a half day of training and assessment with a competency based assessor?---Yes.

All right. Well, just looking at the logbook that you have in front of you you'll see there's some page numbers in the top right-hand corner?---Yep.

If you turn to page 1769?---Is this the one?

30 No, that's not the one. Page 1769?---Oh, I missed one. Yeah.

Can you show me so I can see it. Yeah, that's it. So based on your experience from obtaining a medium rigid licence did you understand that when you went for your heavy rigid licence these were the sort of competencies your assessor was going to have to determine whether you were competent at?---Yes.

All right. Now, you eventually obtained, I'll start again. You eventually went to see Mr Christopher Binos to be assessed for heavy rigid licence? ---Yes.

40 Didn't you?---Ah hmm.

And you later presented your logbooks to the RTA in order to obtain your heavy rigid licence?---Yes.

Now I'll ask you this question, do you admit that Mr Binos did not assess you in accordance with the RTA's requirements?---Yes.

Now let's go back and work out how that happened. How did you first come to be in contact with Mr Binos?---Um, I got his, his number through, I met some guys at a pub and we were talking about working and just general life and I happened to mention that I need to upgrade my licence and um, one of them gave me Mr Binos's phone number.

And what was the name of the person that gave you that phone number?  
---Um, I don't know it was in the pub we were just drinking I, I don't actually know his name.

10

Was he a friend of yours?---Oh, I kind of knew him from being in the pub but not, not necessarily friends.

You got no idea of the person's name?---I don't know his name but I, I just knew him from being in the pub that, as I used to drink there regularly.

All right. So he gave you his telephone number - - -?---Yeah.

- - - and you then contacted Mr Binos?---Yes.

20

And what arrangement did you make with him on the telephone?---Um, I asked him what was involved in getting my licence and um, he told me that he could do it in a number of ways that he could do it um, the legitimate way as in you can do the tests and pay \$1,200 or you could just skip all that because you've already done the test and you can just pay me extra money and then I just fill out your logbook.

And what did you say to that?---I said yes.

30

As in yes to what?---As in yes, we would just do it the easier way because I've already done it so I just, I just thought it would be easier just to fill out the logbook.

And did he say what the price would be for the easier way?---Yeah.

What was that?---\$1,800.

Right. And did he ask for you to pay it in a particular way, cash, credit card, cheque?---Cash.

40

Right. So when was this telephone conversation?---It was some time before Christmas.

Some time before Christmas - - -?---Yeah.

- - - of 2012?---Yeah.

All right. Can the witness please be shown Exhibit 23, Commissioner.

So, Mr McDonagh, is the number in the top of the right-hand corner you're looking at 501?---Yes.

Okay. So can you see there that, that's your name and address in the top hand, left-hand corner isn't it?---Yeah.

And can you see that the document says it was issued on the 28 December 2012?---Yes.

10

So does that help you to remember that that's the date that you attended the Merrylands registry of the RTA to - - -?---Yes.

- - - pass your knowledge test and get the logbook?---Yeah.

All right. Well in relation to that did you go to see Mr Binos?---I think it was on the same day or the day after.

20 Right. And when in relation to the issue of the logbook did you telephone him?---Um, that's - I think it was the same, the day before that.

All right?---Oh, see I'm not really sure when I phoned initially, it was a few days beforehand.

All right. So when you went to see him the same day or the day after. Where did you go to see him?---At his house.

Where was that?---Um, in, near Five, Balmain.

30 Balmain?---Balmain, yeah.

Now what, what did you take with you?---I took my logbook and the cash.

And what did you discuss with him when you were there?---Um, just not much it was just brief and he said just leave the logbook with me um, and I gave him the money and it was pretty much it.

How much money did you give him?---1800.

40 And what arrangement did you make to have the logbook returned to you? ---He told me that he return it.

And what did he do then?---So he just took my logbook.

Yeah. But how, how was it returned to you?---He, he returned it to me.

Where did he return it to you?---Um, we met at Burger King on Hoxton Park.

Burger King at where, sorry?---Hoxton Park.

Hoxton Park. And when was it that he returned it to you?---Um, I think it's two days later, a day or two later.

All right. Now if you turn the, sorry, if you turn the page and look at page 502 and look at 503 as well you'll see some entries there?---Ah hmm.

10 So looking at the top half of the page is that your signature under the, in the block where it says applicant signature?---Yes, it is.

And the same again in the bottom half of the page?---Yes, it is.

And the same again on page 503?---Yes, it is.

And when did you sign the document?---When I went to his house.

20 Right. And when it was returned to you by Mr Binos at the Burger King at Hoxton Park was the rest of the information by then entered?---Yes.

Now at some stage after that did you present these logbooks to the RTA?  
---Yes, I did.

And they issued you with a heavy rigid licence?---Yes.

30 All right. Now when you were with Mr Binos at his place at Balmain and you gave him the money you knew didn't you that what he was going to do was make false entries in your logbook to the effect that he had assessed you in accordance with the RMS's requirements?---Yes.

And you knew that was dishonest at the time you did it, didn't you?---Yes, I did, yes.

And when you took these logbooks to the RTA in order to obtain your heavy rigid licence you knew what you were doing was deceiving the RTA into thinking that you'd been properly assessed by Mr Binos, correct?  
---Yes.

40 And you knew that was dishonest when you didn't, when you did it, didn't you?---Yes.

Can I have the CE please. Commissioner, I hand you this document. Commissioner, at page 32 in the bottom right-hand corner, lines 10 and 11, I seek lifting of the non-publication order concerning - - -

THE COMMISSIONER: Yes, you have that.

**THE SUPPRESSION ORDER IS LIFTED OVER LINES 10 AND 11  
OF PAGE 32 OF THE COMPULSORY EXAMINATION**

MR McLURE: Mr McDonagh, on 30 August, 2013 you participated in a compulsory examination with this Commission didn't you?---Yes.

10 Do you remember during that examination you were asked this question and gave this answer, "You, well, okay, perhaps I'll withdraw that and ask you this, how long did you spend with Chris doing the assessments on that day?" and you answered, "All day." Do you remember giving that evidence?  
---Yes, I do.

That, that evidence was incorrect, wasn't it?---Yes.

And you knew it was incorrect when you gave that evidence?---Yes.

20 You knew when you were giving evidence to the Commission that it was an offence to give false or misleading evidence?---Yeah, I didn't fully understand what the implications were of my actions at the time - - -

Right?--- - - - and, and I apologise for that.

THE COMMISSIONER: But the, the Commissioner, the Assistant Commissioner who was presiding when you gave that evidence explained to you, didn't she, exactly - - -?---Yes.

30 - - - what, explained to you that if you gave false evidence to the Commission that would be an offence?---She explained it but I didn't, I didn't fully understand my actions at the time.

You didn't fully understand your own actions?---Yeah, I didn't, I didn't, I didn't understand the implications of what I was getting into at the time.

MR McLURE: There's nothing further, Commissioner.

40 THE COMMISSIONER: Yes. Does anyone wish to ask Mr McDonagh any questions? Ms McGlinchey?

MS McGLINCHEY: No, thank you, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr McDonagh. You are discharged from the summons.

MR McLURE: I'm sorry, Commissioner, excuse me one moment, I'm just getting some instructions. Oh, I see. I'm sorry, I'm asked to put another matter if you don't mind.



THE COMMISSIONER: I beg your pardon?

MR McLURE: I've been asked to put another matter if you don't mind, Commissioner.

THE COMMISSIONER: Yes.

10 MR McLURE: Excuse me just one moment. Commissioner, I ask for a lifting of the suppression order at page 30 from lines 7, that is the question beginning, "Did he arrive" to line 10, the answer finishing "the company vehicle".

THE COMMISSIONER: Yes, you have it.

**THE SUPPRESSION ORDER IS LIFTED OVER LINES 7 TO 10 OF PAGE 30 OF THE COMPULSORY EXAMINATION**

20

MR McLURE: Mr McDonagh, during your examination on 30 August, 2013 there was this series of questions and answers?---Ah hmm. .

"Did he arrive in a truck," this is of course a reference to Mr Binos?  
---Yeah.

You said, "No, we used our own truck"?---Yeah.

30 Question, "So was it on this day that you did the assessment?" Answer, "Yes." Question, "Which vehicle did you use?" Answer, "The company vehicle?"---Yes.

Was that correct?---No.

So there was no, you never used any vehicle at all in your dealings with Mr Binos?---No.

40 And did you give him the registration details of any vehicle that was owned by you or known to you?---No.

Is that, thank you, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr McDonagh. You're free to leave. Your summons is discharged. Thank you.

**THE WITNESS EXCUSED**

**[10.15am]**

THE COMMISSIONER: Mr McLure.

MR McLURE: Commissioner, I call Alexander Daubney.

THE COMMISSIONER: Mr Daubney, you're not legally represented?

MR DAUBNEY: No, that's correct.

10 THE COMMISSIONER: Have you, you weren't at the Commission yesterday were you, or were you?---No.

I need to explain something to you before you give evidence so if you could listen carefully and if you don't understand please tell me. As a witness appearing before the Commission you're required to answer all relevant questions and produce any documents you're asked to produce, and you must tell us even though your answer or the production may incriminate you. But if you object to answering any question or producing any document your answer or the document cannot be used against you in any  
20 civil proceedings or subject to two exceptions in any criminal or disciplinary proceedings. The first exception is that this protection does not prevent your evidence from being used against you in a prosecution for giving false or misleading evidence or for other, other offences under the ICAC Act. The second exception applies to public officials. You're not a public official so it doesn't apply to you. So do you understand what I've said so far?

MR DAUBNEY: Yeah, is that section 38?

30 THE COMMISSIONER: I beg your pardon?

MR DAUBNEY: Is that the section 38, is that what - - -

THE COMMISSIONER: Yes.

MR DAUBNEY: (not transcribable)

THE COMMISSIONER: Do you know about section 38?

40 MR DAUBNEY: Yep.

THE COMMISSIONER: Somebody explained it to you?

MR DAUBNEY: Yeah.

THE COMMISSIONER: You want me to make section 38 order?

MR DAUBNEY: Yes please.

THE COMMISSIONER: Yes. I declare that all answers given by Mr Daubney 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 and accordingly there is no need for him to make objection in respect of any particular answer given or document produced.

10 **I DECLARE THAT ALL ANSWERS GIVEN BY MR DAUBNEY  
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 AND ACCORDINGLY THERE IS NO NEED FOR HIM  
TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR  
ANSWER GIVEN OR DOCUMENT PRODUCED.**

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

20 MR DAUBNEY: Um, either.

THE COMMISSIONER: No, no. It's a matter for you, it's a matter for your conscience. Do you want to swear on the Bible or not?---Yeah, I'll go the Bible.

Okay. Could you swear Mr Daubney in please.

THE COMMISSIONER: Mr McLure.

MR McLURE: Is your name Alexander Daubney?---That's correct.

Your address please?---Ah, 15, or Lot 30 ah, Lot 30 Kains Flat Road,  
Cooyal.

10

Mr Daubney, in around December of last year did you decide that you  
wanted to obtain a heavy rigid licence?---That's correct.

What classes of licence did you hold at the time?---Oh, a CP2 and a,  
possibly a motorbike licence.

All right?---Yeah.

20 So did you attend the Blacktown registry of the RTA on 18 December, 2012  
to start the process of getting your heavy rigid licence?---That's correct.

You undertook a knowledge test?---Correct.

Which you passed?---Correct.

And, Commissioner, could the witness be shown Exhibits 1 and 2 please?

THE COMMISSIONER: Yes.

30 MR McLURE: After successfully passing the knowledge test were you  
issued with copies of the documents that have just been put in front of you?--  
--Correct.

Now, if you look at the logbook to start off with did you read through that?--  
--Oh, not really.

Did you look at it at all?---Not really.

40 You've never looked at the logbook or the guide?---Oh, I had a quick look  
through the guide but yeah, I didn't read the whole thing.

So what did you understand was the process that you'd have to go through  
in order to obtain your heavy rigid licence?---Be assessed.

By who?---A heavy vehicle assessor.

And what did you understand the assessment would be?---A day's, day's  
course roughly.

Right. So you thought you were going to have to go to an assessor and you'd spend a day with him or her driving a heavy rigid truck?---That's correct.

And at the end of that day if the assessor thought you were competent you could then go back to the RTA and get your licence?---That's correct.

10 And did you understand that during the day there are a whole range of different skills that the assessor would determine whether or not you were competent at?---Correct.

All right. Did that actually happen?---No.

But you did nevertheless take a logbook with some entries in it to the RTA to obtain your heavy rigid licence didn't you?---Correct.

And you were issued with a heavy rigid licence?---That's correct.

20 All right. Well, let's work out how that happened. So how did you - the person that you took your logbooks to was Mr Binos, correct?---Correct.

How did you come to be in contact with him?---As I said previously I'm not a hundred per cent sure how I got his, his number but - 'cause I was doing a range of things, I was searching on the internet, I was asking people but I come across his number and phone called him.

So you think you got it from the internet?---Yeah, I think so.

30 It wasn't from a recommendation from anyone else?---No, no.

Are you sure of that?---Positive.

So you telephoned him no doubt?---Yes.

40 And what was discussed?---I asked about doing my competency test and he said yeah, come, come down and see me and then when I was then, when I went and seen him he (not transcribable) said can do it two ways and, yeah, two ways, you can actually do the test or not do the test and he'll fill out my book.

So just going back to the phone call was there any discussion during the phone call about whether you could do it the two ways as you say, being properly assessed or another way?---Yeah, there could have been, yeah, I think so.

And was there any discussion about the cost?---It was rough, yeah, I think it was roughly, I think I roughly paid about fifteen hundred.

But in the phone call with him - - -?---\$1,000 maybe.

In the phone call with him did he tell you how much it would cost?---I'm not 100 per cent sure, mate, I think so, yes. Yeah, yeah, he would have, yes.

And do you remember what he said the cost would be?---From memory it was 1,000 to \$1,500 roughly.

10 All right. So remembering that you went to the RTA Registry on 18 December, 2012 when, when did you telephone him?---I think the same day.

And when did you go to see him?---I think the same day.

Where did you go to see him?---At his, his place in - - -

Where's that?---In the city way, Drummoyne maybe I think.

20 All right. And you took your logbook with you?---Correct.

And what, what did you give him when you were at his place?---My logbook and the cash.

How much cash did you give him?---From memory it was 1,000 to 1,500 as I said.

30 And was there any further discussion between you and him when you were at his place at Drummoyne about how much it was going to cost and what he was going to do for you?---He just said leave the money and the logbook with him and he'll call me when it's, when it's completed.

And is that what happened?---That's correct.

When did he call you in relation to that day you visited him?---I think the next day or a couple of days after.

And what did you do?---I then went back and picked up my logbook.

40 Commissioner, could the witness be shown Exhibit 24 please. So there should be some numbers in the top right-hand corner of the document. So looking at page 2538, halfway down the page, is that your signature in the block "Applicant's signature"?---That's correct.

And over the page 2539 does your signature appear twice on that page in the blocks "Applicant's signature"?---That's correct.

The same again for page 2540?---Correct.

So when did you sign this document?---When I picked up my books or either, either, either, either when I dropped them off or when I picked them up on one occasion.

All right. And just so I'm being, being clear about it when I ask you when did you sign it I'm referring to the signatures on 2539 and 2540, do you understand?---Yes.

10 Now when, when you picked up your book from Mr Binos the rest of the entries that appear on pages 2539 and 2540, had they been made by him by then?---That's correct.

You then took it to the RTA and you were issued with your heavy rigid licence?---That's true.

Now when you gave Mr Binos the money and left your logbook with him what you knew he was going to do was make false entries in your logbook certifying that he'd found you to be competent to drive a heavy rigid  
20 vehicle, correct?---That's true.

And you knew that what you were doing was dishonest at the time you did it, correct?---That's true.

And when you presented your logbook to the RTA you knew you were deceiving the RTA into believing that you'd been properly assessed by Mr Binos in accordance with the RMS's requirements, correct?---That's correct.

30 And you knew that was dishonest at the time that you did it?---Yes.

Could I have the CE please.

Commissioner, I hand you this document. Commissioner, using the numbers in the top right-hand corner page 2511.

THE COMMISSIONER: Yes.

MR McLURE: The last line and the two lines before that I seek a lifting of  
40 the suppression order.

THE COMMISSIONER: Yes.

**THE SUPPRESSION ORDER IS LIFTED OVER THE LAST THREE LINES OF PAGE 2511**

MR McLURE: Mr McDonagh, on 1 October 2013 you attended an examination with this Commission, correct?---Correct.

You were asked, do you agree that you were asked on that occasion this, "I'm suggesting that you didn't complete any assessments on 19 December or any day. Do you agree with me or is what I'm saying false?" Your answer was, "No, I don't agree." Do you accept that?---Yes.

10 And then you were asked, "So you're saying that you did complete the assessments?" and you answered, "An assessment, yes." Do you accept that?---Yes.

Now you knew didn't you when - I'll start again. That, that evidence that you gave was false wasn't it?---That's correct.

You knew that when you were giving evidence to the Commission that it was an offence to give false or misleading evidence?---That's correct.

20 And you knew when you gave those answers that what you were saying was false didn't you?---Correct.

Commissioner, that's the examination.

THE COMMISSIONER: Any questions for McDonagh? Thank you, Mr McDonagh. You're free to go, you're discharged from the summons? ---Thank you.

30 **THE WITNESS EXCUSED** **[10.27am]**

MR McLURE: Commissioner, we have a number of exhibits to tender. Could I just pass up a list of what we propose to tender and we've assigned provisional exhibit numbers to them.

THE COMMISSIONER: Yes.

40 MR McLURE: Starting from where we left off yesterday.

THE COMMISSIONER: Yes.

MR McLURE: I'll make these lists available to the representatives.

THE COMMISSIONER: Yes. I assume that there's nothing in here that's controversial.



MR McLURE: No. In the sense that the vast majority of it is proving the ownership of vehicles that were nominated.

THE COMMISSIONER: Well does - I just want to know can I make this - do the legal representatives involved want to look at the document or can I make the exhibit number?

MR OATES: Well, Commissioner, apart from what was tendered yesterday in relation to Mr Florio can I ask go through you ask Counsel Assisting  
10 whether there's any document there that affects my client Mr Florio.

MR McLURE: There's nothing additional, okay, so there's nothing additional concerning Mr Florio.

MR OATES: I'm content.

THE COMMISSIONER: Ms McGlinchey?

MS McGLINCHEY: I would ask the same question in relation to Mr  
20 McDonagh.

MR McLURE: It's the same again because the same, same again because it's the same people.

MS McGLINCHEY: Could I just ask has the, has the logbook been tendered or is that part of the bundle that's been tendered now?

MR McLURE: Yes. So Mr, Mr McDonagh's logbook is Exhibit 25 I'm  
30 sure.

THE COMMISSIONER: Tendered yesterday.

MR McLURE: Tendered yesterday. 23 tendered yesterday.

MS McGLINCHEY: Thank you. The only, the only matter is, about that is that if I could just ask for Mr McDonagh's address on Exhibit 23 to be suppressed.

THE COMMISSIONER: Yes. It will be suppressed.  
40

**THE ADDRESS OF MR McDONAGH IN EXHIBIT 23 IS SUPPRESSED**

THE COMMISSIONER: Mr Blake, do you want to - have you anything to say about this?

MR BLAKE: Well I don't know what's on the list but I assume there's three statements from officers of the RMS.

THE COMMISSIONER: Just spend a couple of minutes looking at it and let me know what you think, what you have to say. The subject to, anything that Mr Blake may have to say. The documents in the list handed up will be admitted as exhibits and will be assigned the exhibit numbers given.

10 MR McLURE: Shall we just let you know, Commissioner, through your associate when Mr Blake's had an opportunity to look - - -

THE COMMISSIONER: Yes.

MR McLURE: - - - at it and we might ask you to come back in.

THE COMMISSIONER: Well, yes, except, yes. Is that the end of the oral evidence?

20 MR McLURE: That, that is.

THE COMMISSIONER: Yes. And, and I suggest you have seven days from today to provide written submissions and the other party seven days is, from receipt of your submissions. Is that acceptable?

McGLINCHEY: Yes.

30 THE COMMISSIONER: Thank you, Mr McLure. There's something I would like to invite you to do. I know it's unusual but it would be of assistance to me if you made, Mr Oates and Ms McGlinchey, if you made oral submissions of a few minutes each as to what you submit should be done about the, about referring the offences under the ICAC Act that you clients have really in effect admitted for prosecution. Do you understand what I'm saying?

MR OATES: Yes.

MS McGLINCHEY: Yes, Commissioner.

40 THE COMMISSIONER: The reason that I'm doing this is that there really doesn't seem to be much for you to make any submissions on. Everything has been admitted and it's really a matter of the Commission exercising it's discretion as to what it would do, and I'm sure Mr McLure would be assisted in making his submissions in hearing what you have to say.

MS McGLINCHEY: When would you like us to do that?

THE COMMISSIONER: Now.

MS McGLINCHEY: Now. Okay. Do you want to go first?

MR OATES: Sure.

MS McGLINCHEY: Thank you, Commissioner. I really welcome the opportunity to - - -

THE COMMISSIONER: Yes.

10 MR OATES: Commissioner, with respect to Mr Florio it's trite but true I'm sure that the Commission is constituted principally to delve into corrupt issues, systemic issues. And the systemic issue here in my respectful submission is one, Mr Binos as an assessor, and two, the other matter raised by Mr - - -

THE COMMISSIONER: Yes. Sorry, sorry to interrupt, Mr Oates.

MR OATES: Yes.

20 THE COMMISSIONER: I just want, is Mr, Mr Alexander, I'm going to ask you too if you want to. You can also make submissions once Ms McGlinchey's finished.

MR ALEXANDER: Thank you.

THE COMMISSIONER: Yes.

30 MR OATES: And the role of RMS in whether or not their systems were adequate. In that context in my submission my client, notwithstanding his dishonesty which is admitted, but my client is not in my respect, respectful submission the principle focus of the Commission's inquiry. Secondly, he has not utilised the licence with which he was issued. That must be in my respectful submission a mitigating factor on his part. He didn't get the licence so he could go and immediately drive trucks. He got it as a, to use a vernacular, backup in case one of his drivers was ill and - - -

THE COMMISSIONER: So that might be correct but I, there is a question about his credibility.

40 MR OATES: Yes, there is.

THE COMMISSIONER: So I'm not foreclosing making a finding in the way that you say but I'm a little sceptical about it.

MR OATES: But being - - -

THE COMMISSIONER: I know there's no proof to the contrary - - -

MR OATES: Yes.

THE COMMISSIONER: - - - but it doesn't mean I'm obliged to accept what he says. I may accept what he says. I'm just telling you this so you can deal with it if you wish.

MR OATES: Yes. In my submission the issue that you're referring to, I assume it's the basis upon which he obtained the telephone number of Mr Binos and whether he knew that Mr Binos was prepared to issue a licence  
10 without an assessment.

THE COMMISSIONER: Well, he also doesn't tell the truth in the, in the compulsory examination then.

MR OATES: Yes.

THE COMMISSIONER: Well, that's it. It's that more than anything.

MR OATES: I can deal with the compulsory examination this way, as I  
20 asked him yesterday had he sought any legal assistance prior to attending the Commission for the compulsory examination. He gave some evidence and that was in accordance with instructions he gave me prior that he received the summons, he didn't know really the nature of the matter, he's a lay person, he's a, he's a businessman certainly but he hasn't a degree, he doesn't have more than high school education.

THE COMMISSIONER: You don't need a degree to tell the truth, Mr Oates.

MR OATES: Certainly. But when he came down here, Commissioner, he  
30 was put in a room, not in some directive fashion perhaps but he was asked to wait and he was brought into what, what he described yesterday in response to a question from me, "A courtroom like environment," and he was overwhelmed. And to you use again a vernacular, Your Honour, it seems clear from the evidence he gave yesterday when he did admit his involvement that on that occasion he just pulled the wrong rein. He panicked and he gave an answer which was untruthful but which upon being spoken to by me and upon having a chance to reflect he realised that was the  
40 wrong choice.

THE COMMISSIONER: Yeah.

MR OATES: And that's exactly where it lies. He just made a mistake on the day that he turned up here. Not a mistake in terms of - - -

THE COMMISSIONER: It was pretty deliberate I think.

MR OATES: I'm sorry?

THE COMMISSIONER: It was pretty deliberate.

MR OATES: Oh, yes, there's no doubt about that.

THE COMMISSIONER: I understand, you've said as much as what can be said for him, I accept that.

10 MR OATES: I'm not trying to run an argument that he, that he was, that he was - - -

THE COMMISSIONER: No, I know.

MR OATES: - - - without his, that he wasn't acting consciously but he, he acted perhaps in a human way. I imagine many of the other people who were interviewed by the Commission did accept it but half a dozen or so didn't and perhaps they were all in the same position.

20 THE COMMISSIONER: Well, the thing is, the thing that weighs with me, and I think you should know this, is that had he told the truth and had the others told the truth we may never have had a public inquiry.

MR OATES: Yes.

THE COMMISSIONER: So these two days have been spent because they lied.

MR OATES: Yes.

30 THE COMMISSIONER: So that's what's weighing with me.

MR OATES: Yes. But from, from his perspective he certainly wouldn't have known that.

40 THE COMMISSIONER: You see, since I've been Commissioner I have said that we would exercise - our policy is to exercise a discretion in favour of people who tell us the truth at the earliest possible moment and we have, I mean, I think almost uniformly, I mean, it might, it might not have happened but I can't remember it not happening, in every case that people have told us the truth at the earliest opportunity we have not recommended prosecution on these kind of offences and sometimes when they are not the focus of the inquiry as you put it we haven't recommended prosecution at all. But your client didn't tell the truth, didn't come clean at the earliest possible opportunity. He came clean in the witness box and that's perhaps deserving of some consideration. Can you think of any consideration that accommodates that sort of situation?

MR OATES: The best I can put forward, Commissioner, is that after I spoke to him in conference on Tuesday I telephoned Counsel Assisting and I indicated to Counsel Assisting that the evidence my client would give in the box in the public inquiry would be different to that in respect of which he gave in the compulsory examination. So it wasn't a matter of him coming down here and waiting to see what happened, waiting to see whether Mr Binos or somebody else produced some material against him, he made that decision after being spoken to by me, the very first occasion he's had any legal advice about the matter and as you would be - without  
10 revealing what was said in conference, Commissioner, you would no doubt understand that in those conferences there's more than just legal matters spoken about.

THE COMMISSIONER: Of course. I have to ask you this, Mr Oates, did you know the strength of the case against your client when you - - -

MR OATES: No. No, I didn't know Mr Binos had made any concessions until he entered the witness box.

20 THE COMMISSIONER: Right.

MR OATES: And can I say this to you also in respect of the point you made about the public inquiry having to be held because of those people who told lies in the compulsory examination, it's not quite on all fours of the situation where somebody goes to trial knowing full well that the only reason they're going to trial is because they're pleading not guilty and their lawyers have probably spoken to them and said - - -

30 THE COMMISSIONER: I know it's different but it's something that weighs with me.

MR OATES: Yes. And one further matter - - -

THE COMMISSIONER: It's been a waste of, it's been a waste, it's been a waste of the, of money for the Commission's budget, it lies very close to my heart.

40 MR OATES: It lies close to my heart, Commissioner, as a taxpayer I pay part of the budget.

THE COMMISSIONER: Yes.

MR OATES: But, but he's only one sixth responsible.

THE COMMISSIONER: I think you're at a little distance from your heart than - - -

MR OATES: Yes.

THE COMMISSIONER: - - - as far as I am concerned but anyway that's the point.

MR OATES: Yes. But he's, he's not totally responsible for that of course.

THE COMMISSIONER: No, no, he's not, no. Yes, thank you. Ms McGlinchey, is there anything different you can say?

10 MS McGLINCHEY: Not really. I'll keep it, I'll keep it quick just in relation to Mr McDonagh. I'm obviously in a similar situation to, to Mr Oates' client but can I just say that Mr McDonagh came here today and he was - I think he was completely honest.

THE COMMISSIONER: Yes, he was.

MS McGLINCHEY: There appeared to be no matters which Counsel Assisting - - -

20 THE COMMISSIONER: No doubt about that.

MS McGLINCHEY: Okay, great, all right. Like Mr Oates' client he was not represented when he came to the, to the Commission the first time and that's no criticism of anybody except him for that, he, he could have applied for representation, he has said here today that he was, he was a little bit confused and he's told me that he didn't quite understand essentially when he was coming here the seriousness of the Commission's proceedings and the Commission's powers as most people don't. Mr McDonagh is a simple man, he's a working man, like a lot of people I think he just came here  
30 thinking that he could just gloss over things and - - -

THE COMMISSIONER: I'm always reminded of the schoolboy explaining the teacher that he's, the dog ate his homework.

MS McGLINCHEY: Yes, right. Exactly. So he came along here and was surprised to say the least at the seriousness of the matter and he made a mistake, right in giving the evidence that he, that he did.

40 Now I spoke to him the day before the Commission public hearing there was a little bit of a delay in approval so I was not able to talk to him until the day before the Commission's inquiry. At that time I didn't know the strength of the evidence and he certainly didn't either. He, I can tell the Commission that he has been honest with me from the initial telephone call that he intended to come along and tell the truth and that he saw the error of his ways and realised that he had pretty much dug himself into a hole that he was going to have to get out of. And he did try to apologise to the Commission in the witness-box today. I don't know whether you heard that but he did attempt to say that he was sorry for that.

I would ask you, Commissioner, to exercise your discretion in relation to Mr McDonagh. He, it is true that there has been a Commission hearing but it's been a very short one in relation to how these matters can get drawn out if people maintain their false position. I spoke to Counsel Assisting yesterday afternoon from the point of view of hoping that I can avoid him having to do a lot of preparation not realising at that time that Mr McDonagh was going to give a different version so I did indicate to him that he could expect Mr McDonagh would be coming back and giving very honest evidence and I think that that's been true and that he did that today so that's, I can only ask you to exercise your discretion. Thank you.

THE COMMISSIONER: Do you want to say anything, Mr Alexander?

MR ALEXANDER: In relation to Mr Binos?

THE COMMISSIONER: Pardon?

MR ALEXANDER: In relation to Mr Binos?  
20

THE COMMISSIONER: Yes.

MR ALEXANDER: Yes.

THE COMMISSIONER: But only in relation to offences under the ICAC Act. The, the other offences I'm afraid there's no question of discretion.

MR ALEXANDER: I hear what - - -

30 THE COMMISSIONER: As far as I'm concerned.

MR ALEXANDER: Commissioner, the only submission I would make is this, from the first available opportunity Mr Binos has made full and frank disclosures.

THE COMMISSIONER: Has he? First available opportunity.

MR McLURE: Commissioner, I'm sorry to interrupt. I don't think the evidence would show that Mr Binos had told any lies during the compulsory examination.  
40

THE COMMISSIONER: I see. Well then I'm mistaken. Thank you for pointing that out.

MR ALEXANDER: So - - -

THE COMMISSIONER: So it doesn't apply.



MR ALEXANDER: It doesn't apply, sorry, that's why I, I asked initially.

THE COMMISSIONER: No, no.

MR ALEXANDER: Thank you.

THE COMMISSIONER: I'm in error, I'm sorry.

MR McLURE: Commissioner, I'm sensitive to the fact that Mr McDonagh  
10 is not legally represented. He's still in the - - -

THE COMMISSIONER: Well I can tell Mr McDonagh that everything that  
Mr Oates and Ms McGlinchey has said will be taken into account in regard  
to his case as well. If there's anything different you wanted to say you're  
welcome to say it, Mr McDonagh.

MR McDONAGH: Everything they just said I'm in the same position, um,  
I'm, yeah, I - at first I did not realise the seriousness of this case until further  
20 assessing it, I was, I panicked, I was a bit intimidated as to, as I use my  
licence on a daily basis and that's why false evidence was given. I'm  
sincerely sorry.

THE COMMISSIONER: That will all be taken into account.

MR ALEXANDER: Commissioner, could I just mention one other matter?

THE COMMISSIONER: What's that?

MR ALEXANDER: As I recall from yesterday Mr Binos was not  
30 discharged from his summons - - -

THE COMMISSIONER: Yes. He'll be, he is discharged now.

### **THE BINOS IS DISCHARGED FROM THE SUMMONS**

MR ALEXANDER: Thank you.

MR McLURE: I think that's everything subject to the question of the  
40 exhibits.

THE COMMISSIONER: Mr Blake, have you had a chance to look  
through?

MR BLAKE: Yes, Commissioner. Up to number 50 I have no problem  
whatsoever. With proposed Exhibits 51 to 54 inclusive I haven't had a  
chance to see them or check the providence of the documents. The RMS is

well aware and accepts that there are fatalities involving road vehicles but we'd just like to see where the figures come from. It may be we have our - -  
-

THE COMMISSIONER: Yes, by all means. Will you be in touch with Ms McLure?

MR BLAKE: Yes, your Honour.

10 THE COMMISSIONER: All right. Perhaps today or by - end of - by close of business tomorrow.

MR BLAKE: Yes. There's no problem with that, Commissioner.

THE COMMISSIONER: And you'll just inform Ms Lee. The Commission will adjourn, thank you.

20 **#EXHIBIT 29 - STATEMENT OF MARDI LOUISE COLBRAN – DIRECTOR OF GRAMARDI PTY LTD. REGISTERED OWNER OF TRUCK NUMBER KEN-604 (NSW). TRUCK PURCHASED FROM TRUCKSALES.COM.AU WEBSITE. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

30 **#EXHIBIT 30 - STATEMENT OF GEORGE JOUKADOR, OWNER OF TRUCK NUMBER AQ-08-AS (NSW). TRUCK ADVERTISED AT THE TIME ON TRUCKSALES.COM.AU WEBSITE. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

40 **#EXHIBIT 31 - STATEMENT OF ROCCO (ROY) PAPALLO, DIRECTOR OF SYDNEY TRUCKS & MACHINERY CENTRE PTY LTD. REGISTERED OWNER OF TRUCK NUMBER BIG-358 (NSW). TRUCK ADVERTISED ON THE COMPANY WEBSITE AS WELL AS TRUCKSALES.COM.AU AND TRUCKWORLD.COM.AU WEBSITES. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

**#EXHIBIT 32 - STATEMENT OF SUSAN POTTER, PREVIOUS OWNER OF MJP-694 (NSW). ARRANGED FOR THE TRUCK TO BE COLLECTED BY HER NEPHEW, JAMES MURRAY, TO BE**

**TAKEN TO HIS PROPERTY IN OUTER SYDNEY. MURRAY ADVERTISED THE TRUCK ON BEHALF OF POTTER ON TRUCKSALES.COM.AU WEBSITE. SOLD TO A COMPANY IN QUEENSLAND ON THE 1/8/12. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

10 **#EXHIBIT 33 - STATEMENT OF PAUL SHEPHERD, DIRECTOR OF SHEPHERD PLANT HIRE PTY LTD IN QUEENSLAND. PURCHASED TRUCK NUMBER MJP-694 (NSW) FROM POTTER. COLLECTED TRUCK FROM THE PREMISES OF MURRAY ON 1/8/12. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

20 **#EXHIBIT 34 - STATEMENT OF JAMES MURRAY. NEPHEW OF SUSAN POTTER. COLLECTED THE TRUCK (MJP-694) AND OTHER EQUIPMENT FROM POTTER AND DROVE THEM TO HIS OUTER SYDNEY PREMISES. TRUCK REMAINED IN HIS PROPERTY UNTIL SOLD AND COLLECTED ON THE 1/8/12. ADVERTISED THE TRUCK ON TRUCKSALES.COM.AU WEBSITE. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

30 **#EXHIBIT 35 - STATEMENT OF JOSEPH BARTOLO, DIRECTOR OF J & G PLANT HIRE PTY LTD. REGISTERED OWNER OF TRUCK NUMBER UFY-683 (NSW). ONLY PERSONS AUTHORISED AND USED THIS TRUCK TO UNDERTAKE ANY HVCBA AND/OR TRAINING WERE HIS TWO SONS, EDEN AND JACOB BARTOLO. DOES NOT KNOW THE OTHER HVCBA APPLICANTS AND DENIED THAT THEY USED THE TRUCK ON THE NOMINATED DATES.**

40 **#EXHIBIT 36 - STATEMENT OF ALEX DONNELLY RESIDES IN NORTHERN NSW. REGISTERED OWNER OF FORD 1 TONNE UTILITY NUMBER ZBU-867 (NSW). DENIED THAT ANY PERSON USED HIS UTILITY TO FOR HVCBA OR TRAINING IN SYDNEY ON THE NOMINATED DATE.**

**#EXHIBIT 37 - STATEMENT OF GREGORY HOOPER. REGISTERED OWNER OF TRUCK NUMBER BE-90-FZ (NSW).**

**RESIDES IN NORTHERN NSW. TRUCK ADVERTISED AT THE TIME ON TRUCKSALES.COM.AU WEBSITE. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

10 **#EXHIBIT 38 - STATEMENT OF CHRISTOPHER BERGERSEN, BERGERSEN TRANSPORT. REGISTERED OWNER OF TRUCK NUMBER AB-99-GT (NSW). ADVERTISED THE TRUCK ON TRUCKSALES.COM.AU. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

20 **#EXHIBIT 39 - STATEMENT OF MICHAEL WORTHING (DATED 3 JULY 2013). RESIDES IN NORTHERN NSW. REGISTERED OWNER OF TRUCK NUMBER BQ-41-VH (NSW). TRUCK WAS ADVERTISED ON TRUCKWORLD.COM.AU WEBSITE. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

**#EXHIBIT 40 - ADDITIONAL STATEMENT OF MICHAEL WORTHING – DATED 1 AUGUST 2013.**

30 **#EXHIBIT 41 - STATEMENT OF RICHARD (RICK) NEWMAN. RESIDES IN VICTORIA. WAS THE REGISTERED OWNER OF TRUCK NUMBER NULINE (VIC). TRUCK WAS ADVERTISED ON TRUCKSALES.COM.AU WEBSITE. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

40 **#EXHIBIT 42 - STATEMENT OF MICHAEL LEBIC, DIRECTOR OF NU-LINE BUILDING GROUP PTY LTD. REGISTERED OWNER OF FORD 1 TONNE UTILITY NULINE. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

**#EXHIBIT 43 - STATEMENT OF RYAN MCLEOD, SALES MANAGER WITH AUSTRALIAN MACHINERY WHOLESALERS**

**IN VICTORIA. COMPANY IS THE REGISTERED OWNER OF TRUCK NUMBER RZF-320 (VIC). TRUCK ADVERTISED ON THEIR PERSONAL WEBSITE (MACHINERYWHOLESALERS.COM.AU) AS WELL AS TRUCKSALES.COM.AU AND TRUCKWORLD.COM.AU. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

10

**#EXHIBIT 44 - STATEMENT OF YOUSSEF TAHA, DIRECTOR OF N & G TIPPER SERVICES PTY LTD. REGISTERED OWNER OF TRUCK NUMBER BH39MY (NSW). PURCHASED TRUCK FROM TRUCKSALES.COM.AU. NEVER USED FOR ANY HVCBA OR TRAINING ON THE NOMINATED DATES. DOES NOT KNOW ANY OF THE HVCBA APPLICANTS RECORDED AGAINST THE TRUCK.**

20

**#EXHIBIT 45 - STATEMENT OF PATRICK GALLAGHER, MANAGING DIRECTOR OF GALLAGHER HOTEL MANAGEMENT GROUP. PROVIDES THE FACSIMILE NUMBER FOR PJ GALLAGHERS HOTEL, DRUMMOYNE. DENIED THAT CHRISTOPHER BINOS WAS AUTHORISED OR ALLOWED TO FAX ANY DOCUMENTATION FROM THE HOTEL.**

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**#EXHIBIT 46 - STATEMENT OF ADAM MCCARRON, HOTEL MANAGER AT PJ'S IRISH PUB, DRUMMOYNE. PROVIDES THE FACSIMILE NUMBER FOR PJ GALLAGHERS HOTEL, DRUMMOYNE. DENIED THAT CHRISTOPHER BINOS WAS AUTHORISED OR ALLOWED TO FAX ANY DOCUMENTATION FROM THE HOTEL.**

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**#EXHIBIT 47 - STATEMENT OF DAVID SIMPSON, INVESTIGATOR WITH AUSTRALIA POST SECURITY & INVESTIGATIONS. PROVIDES THE FACSIMILE NUMBER AND EXPLAIN PROCESSED FOR CUSTOMERS USING THE FACSIMILE MACHINE AT THE DRUMMOYNE POST OFFICE.**

**#EXHIBIT 48 - STATEMENT OF MATTHEW CAFE, ROADS & MARITIME SERVICES' ACTING MANAGER – CUSTOMER EDUCATION UNIT**

**#EXHIBIT 49 - STATEMENT OF MARIO TESTA, ROADS & MARITIME SERVICES' TEAM LEADER – COMPLIANCE & ASSURANCE**

**#EXHIBIT 50 - STATEMENT OF PETER WELLS – ROADS & MARITIME SERVICES' DIRECTOR OF THE SAFETY & COMPLIANCE DIVISION.**

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**#EXHIBIT 51 - FATAL HEAVY VEHICLE CRASHES – QUARTERLY BULLETIN OCTOBER-NOVEMBER 2012**

**#EXHIBIT 52 - NSW ROAD TOLL STATISTICS UP TO 9 OCTOBER 2013**

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**#EXHIBIT 53 - ROAD DEATHS AUSTRALIA – AUGUST 2013**

**#EXHIBIT 54 - HEAVY VEHICLE CRASH DATA ANALYSIS UPDATE AS AT MAY 2012**

**AT 10.44AM THE MATTER WAS ADJOURNED ACCORDINGLY  
[10.44am]**