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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

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OPERATION VESTA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 25 JULY 2011

AT 2.05PM

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

MR BEECH-JONES: Commissioner, if I can just announce my appearance for Mr Kelly leading Mr Andronos.

THE COMMISSIONER: Yes, Mr - - -

MR BEECH-JONES: I apologise for not being here.

THE COMMISSIONER: No, no, that's fine. Thank you.

10 MR NEWLINDS: Mr Commissioner, before we recommence with Mr Kelly can I just clarify one matter from the opening. At the bottom of page 8 at the top of page 9 of the transcript I was talking about who paid for who in relation to the first trip. Can I correct that and say this, in relation to Mr Charif Kazal we understand from the documents the following was the position – that in the first instance Parkview paid for Mr Kazal's ticket and subsequently on the presentation by Parkview to AWT of an invoice AWT reimbursed Parkview for the cost of that ticket. So ultimately, Mr Kazal paid for his own ticket.

20 THE COMMISSIONER: Yes, thank. Mr Newlinds, before you commence I just want to take something up with Mr Korn. Mr Korn, my provisional view and I'm not talking about the document that you did make an objection about because I think your objection falls away in the light of the evidence.

MR KORN: Except for one thing, I believe I've now been told that from 210 onwards that, the document does fall within the description that I had asserted but the page we were looking at 208 does not, 208 and 209. Did I say, sorry, 908 I'm sorry (not transcribable)

30 THE COMMISSIONER: I might - - -

MR KORN: I'm told since, since Commissioner's issue at the bench I'm told that 908 does not fall within the description that I have understood but, as I said earlier, 910 onwards does.

THE COMMISSIONER: Yes, but the objection you took was to 908.

MR KORN: Yes it was.

40 THE COMMISSIONER: And I, I did not uphold that objection and I assume that you don't press objection, I did give you leave to raise it again if you wish but in the light of the evidence I assume that you do not wish to persist in that objection.

MR KORN: For that - - -

THE COMMISSIONER: But in regard to that document.

MR KORN: In respect of page 908 and 909 that's correct.

THE COMMISSIONER: Right. Now my provisional view in relation to any other documents that fall into the class that you thought this document fell into and I, I'm of the view that you did that, if the document is used you don't lose your privilege because you don't voluntarily consent to the use of it and you're compelled to the use of it. So, you do not use, lose the privilege so and also it's inconvenient for the practical running of the inquiry to prevent everybody present here and indeed the media who have  
10 access to the proceedings from looking at the documents. It's also unfair on those who would wish to cross-examine on the basis of the documents for the purposes of this inquiry but if you really wish to press the point which I have really no utility because I don't think you lose your privilege, I'm prepared if you want me to, to make an order that there be no publication outside the hearing room of the documents which are held to this by me to subject to legal professional privilege. So that's the best I can do for you.

**I'M PREPARED IF YOU WANT ME TO, TO MAKE AN ORDER  
20 THAT THERE BE NO PUBLICATION OUTSIDE THE HEARING ROOM OF THE DOCUMENTS WHICH ARE HELD TO THIS BY ME TO SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE.**

MR KORN: Then I'll take that.

THE COMMISSIONER: And I think you're fortunate if I may say so.

MR KORN: I don't know about fortunate, but you take what you're entitled to.  
30

THE COMMISSIONER: Yes Miss Hogan-Doran.

MS HOGAN-DORAN: Commissioner, in light of your Honour, what your Commissioner's ruling in respect of pages 908 and 909 of the bundle, those pages were not provided to my instructing solicitor and I would seek access to a copy of those documents.

THE COMMISSIONER: Yes, just make whatever, make the arrangements  
40 with the solicitor to the Commission.

MS HOGAN-DORAN: Thank you, Commissioner.

THE COMMISSIONER: Mr Newlinds.

MR NEWLINDS: Mr Kelly, I want to ask you some questions about the circumstances about which you received reimbursement for both the cost of the air ticket to Dubai and also the cost of the accommodation.---Yes.

I think you're aware that your credit card records record your credit card paying for those two items - - -?---Yes.

10

- - -and they add up to \$11,000 odd dollars. Correct?---Yes.

Now how do you say – I'll withdraw that. You were sometime shortly after the trip reimbursed for that ticket, you say.---Yes.

And you received a payment in cash?---Correct.

Now would you please tell me yourself how it was that you came to receive that cash, who you received it from and the circumstances of receiving it?---  
20 Yes, my recollection is that I met with Rodric David at his offices where he gave me an envelope with the money in it that reimbursed those costs.

Okay, now. Just getting a bit more into the detail, do you remember the circumstances under which you met with Rodric David, did he invite you down for the purpose of paying you the money?---I don't recall specifically but, no, that's a presumption.

Well, how often do you recall being at Rodric David's office after the first trip to Dubai?---Rarely, so, it may have been the only time.

30

Right. But you can't remember whether he invited you down, you just turned up - - -?---Or I called him first, I don't remember who called who.

When you went down there were you expecting to receive money?---Yes.

Were you expecting to receive cash?---I think so, yes.

All right. Now, when did it first come to your knowledge that you were going to get cash?---I can't recall whether that was agreed before the trip or,  
40 you know, afterwards but it didn't surprise me.

It didn't surprise you?---No.

It didn't surprise you that you received \$11,000-odd in cash? Sorry about that, Mr Kelly. How many other times in your life has some, has someone paid you \$11,000-odd in cash?---Well, the reason, the difficulty is - - -

So it is none?---No, that's not correct, that's why I was trying to answer you. In the UAE there's a different currency and the term, you know, five 10,000 is commonly used and that was a common amount to be getting, withdrawing, all those things so it doesn't in my recollection stand out as, you know, anything extraordinary other than the fact it was reimbursing the cost.

But hold on, this is UAE shekels or whatever they are is it?---Dirhams.

10 Dirhams, fine.

THE COMMISSIONER: You'll get into serious trouble if you mentioned shekels in the UAE, Mr Newlinds.

MR NEWLINDS: You well understand that my question was directed more towards how many times in your life have you received \$11,000 Australian in cash?---Yeah, I understand the question, I'm merely highlighting that in terms of (not transcribable)

20 THE COMMISSIONER: Just answer the question, Mr Kelly, it will shorten the time?---Once.

MR NEWLINDS: And this was the once?---Yes.

All right. So it was an unusual event?---Yes.

And did you wonder to yourself why am I getting paid in cash?---No, I was just worried about reimbursed for the cost.

30 Now, was anyone else there when Mr David gave you the money?---No.

Did he say anything to you?---Nothing that I specifically recall, it was just small talk and I picked it up and left.

What had you done to make him aware of how much money you needed to get?---I'd given him a copy of the airline booking and my hotel accommodation.

40 Did you do that at the meeting or at some earlier time?---No, I believe the accommodation was given on the day that I paid it and the hotel and the airport was one, I handed over at the same time or earlier.

And when he gave you the money was it a pile of cash, were there coins involved?---I don't recall coins, no.

So just, just paper money?---Yes.

And did you count it?---I don't specifically recall counting it, no.

Well, do you think you counted it?---Well, I would have taken it to the bank and (not transcribable)

Do you think you counted it?---I don't think I counted it, no. I trusted him to give me the right amount of money.

All right. Did you have in your own head how much it was you needed to collect?---Yes, I knew the amount of those costs, 11,000.

10

But it was, it wasn't 11,000, it was a, a bigger - - -?---Oh, 11,167 or whatever it is, yeah.

All right. And you knew that figure in your head, did you?---Well, yeah, I knew what the MasterCard bills were.

And what did you do with the money?---Well, I deposited it in the bank.

20

All right. And in what form did you receive it? Was it piles of cash, was it mixed denominations or can you describe it?---Again, I don't, I don't specifically whether it was mixed denominations versus just 50's or 100's or whatever.

You can't remember?---No.

You don't have a picture of this event in your mind?---No.

Do you think it was in an envelope?---Yes.

30

Did you open the envelope to have a look what was inside it?---Well, I knew what was inside it.

Please, would you answer the question?---No, no.

And I'm sure you've seen movies when people get envelopes purporting to contain money and they open them to very disappointedly find torn up newspapers?---Yes, I'm familiar with that.

40

Have you see those movies?---Yes.

Did you check whether the envelope contained cash?---Not while I was talking to Rodric David, no.

Was there anything written on the outside of the envelope?---Not that I recall.

What colour was it?---White.

What size was it?---A4.

Was it sealed?---Yes.

What, with a sticky thing or stuck down?---No, I don't remember the form that it was stuck down.

And how fat was it?---Just an A4 envelope sort of, I don't know, yay fat.

10 Two, two-odd inches?---Oh - - -

Just, just do that again so we can all see it?---(not transcribable)

Less than, just less than an inch?---Yes.

Did whatever was in that cover the entirety of the envelope or was there a lump in one point?---No, it was just all inside it. That was, you know, flattish.

20 So it was flattish?---Yes.

I see. All right. Do you remember taking it to the bank?---I recall going to the bank but I don't remember the specific day or anything like that.

Do you remember going to the bank with the envelope with what you thought was cash inside it?---I remember going to the bank with money, I don't recall if I still had the envelope.

30 Can you remember whether you went to the bank directly from Mr David's office?---No, I believe I went home first.

You believe you went home, do you remember doing that?---Not specifically but that's my recollection.

Why do you believe you went home if you don't specifically recall that? ---Well, I'm just saying my recollection is that I did it on the way home from work.

40 So you do remember taking it home?---Well, I'm saying I recall it being on the way home from work but I also know that, you know, that wouldn't have coincided with the days where the money was deposited.

Why do you know that?---Because it was late in the day, the bank would be closed.

Right. And was it late in the day?---Yes, I believe it was on my way home.

And how did you travel home that night?---By car.

And when you got home was anyone there?---My wife and children, yes.

Did you show them this huge amount of cash?---No.

Did you tell them that you had in your, where was the money when you went home, was it still in the car?---No, I would've taken it inside.

10 When you say "I would've" does that mean you remember?---I took it inside.

You took it inside, you remember that do you?---Yes.

What did you do with it when you took it inside?---I just left it in my bag.

So it was in your bag in the envelope?---Yes.

Still unopened?---Yes.

20 And did you tell anyone it was in there?---No.

All right. And what happens next in relation to the money?---Well, I would've then deposited it in the bank.

Not I would have but do you remember?---I don't specifically recall the exact day in which I did it, I've checked on date but I'm saying I don't specifically recall.

30 Do you remember putting it in the bank?---I recall being at the bank, yes.

I'm sure you've been to the bank many times, do you remember being - - -?  
---(not transcribable) Well, I recall going to the bank after visiting Mr David and my recollection is it was to clear the credit card.

Do you remember being at the bank with the envelope with the cash in it?  
---I remember being at the bank and clearing my credit card.

THE COMMISSIONER: Clearing your credit card?---Yes.

40 What does that mean?---Well, paying it, the only transactions on it were the UAE trip.

MR NEWLINDS: So is the answer to my question do you remember being at the bank with the envelope with the cash in it, you don't remember that?  
---I don't remember all those details, I remember being at the bank clearing my credit card.

But how do you remember that, tell us what's in your memory?---Well, I remember clearing the credit card thinking thank God, I've cleared the credit card.

Well, how did you do it?---By making a deposit at the bank to - - -

Of cash?---Yes.

So you remember that do you?---That's what I said.

10

You remember being at the bank with cash?---Clearing my credit card, yes.

Sufficient cash to clear your credit card?---Yes.

And by this point in time have you counted the money?---I don't specifically recall whether I counted it as such.

You can't remember counting it ever?---In terms of before being at the bank, no.

20

So you were at the bank, did you count it there?---Well, I would've, yes.

You say you would've, do you remember that?---I don't specifically recall counting it but I would've had to fill out the deposit.

That's because you know that the banks have deposit slips which require you to write in how much?---Yes.

But if you trusted Mr David you knew how much in there didn't you?

30

---Yes.

So you didn't need to count it at that point did you?---I didn't need to count it, no.

So you don't remember counting it at all do you?---I don't specifically remember counting it but that's what I'm saying, you have to make the deposit.

40

But do you remember the lady or the man behind the counter checking whether the amount of cash you were handing over coincided with what was written on the deposit slip?---No.

Do you remember making one deposit or two deposits?---Again, this is where my memory is grey, I remember, my recollection is clearing the credit card, I know from reviewing the evidence that there was a deposit.

THE COMMISSIONER: There would be no reason for you to make two deposits would there, not on your evidence?---Not specifically, no.

You go to the bank once, you deposit all the money, is that right?  
---Normally, yes.

Is that what you did?---No, I'm saying I know there's two deposits that have gone into the account.

Can you explain the two deposits?---I can't off the top of my head, no, I don't recall.

10

It sounds quite odd. If you've got all the money at once as you say in one envelope that you didn't open until you got to the bank why are there two deposits shown in the bank statement?---As I said I don't recall that part of it.

MR BEECH-JONES: I object. I don't think he said he didn't open the envelope till he got to (not transcribable)?---I said I didn't open it when I met with Rodric David.

20 THE COMMISSIONER: And you didn't open it at home?---I didn't say that.

MR NEWLINDS: Yes, you did.

THE COMMISSIONER: You were asked, you certainly did.

MR BEECH-JONES: (not transcribable) did not say that he did not open it  
- - -

30 THE COMMISSIONER: All right, Mr Beech-Jones, I understand the point, I'm just trying to clarify it. You said that you didn't count it, you didn't open it when you saw Mr David?---Mr David.

Is that right?---Correct.

You said that you didn't count it at home?---I don't recall saying I didn't count it at home, I said I recall- - -

40 Did you count it at home?---I don't recall, but I didn't say I didn't.

You took the envelope to the bank?---I didn't say I did that either.

I'm asking you?---Well, I've already answered that I don't recall.

Do you mind answering it again?---I don't mind at all.

Well, then answer it?---I don't recall taking the envelope to the bank.

Again I ask you, what explanation do you have for two deposits?---Well, I don't off the top of my head have one so I can't recall.

MR NEWLINDS: Do you remember there being two deposits?---Not specifically, no.

Well, what does not specifically mean, does that mean no, I don't remember?---Well, it's one of those things, you, you know that there's two there, it, it may ring a bell but it may not so I don't specifically remember.  
10 It's not something that I would generally focus on a great deal.

THE COMMISSIONER: But when you go to clear your, you seemed to be very relieved when you cleared your credit card?---That's right. That's the only reason I remember going to the bank.

So wouldn't you remember if you cleared it with one deposit or not, because if you'd had to do it with two deposits you wouldn't have cleared it?  
---I don't remember that was the case, I just remember clearing it.

20 MR NEWLINDS: I wonder if we could bring up document number 376. And I think you've seen this before, Mr Kelly, this is your credit card statement- - -?---Yes.

- - -for the period 18 June to 17 July, 2007. And it shows you that at the commencement of that period the account was in debit in \$11,162.13. Do you see that?---Yes.

And I think you know because you've seen the documents recently that that is the combined total of the cost of the airfare and the cost of the  
30 accommodation in Dubai?---Yes.

Is that right?

THE COMMISSIONER: Excuse me, Mr Newlinds. How much was the airfare and how much was the hotel accommodation?---The airfare was a bout I think eight thousand or something and the balance is the hotel.

MR NEWLINDS: We, we can show that by a document, Mr  
40 Commissioner.

THE COMMISSIONER: Thank you. We can do it later if it suits you.

MR NEWLINDS: Yes, thank you. And if you go to the next page, which is 377, you can see that the way that account was cleared, to use your words  
- - -?---Yep.

- - -is that a total of \$11,170 was paid which was \$7.87 more than the amount that was owed. Do you see that?---Yes.

And which meant that at the end of that period there was a \$7.87 credit?  
---Yes.

So indeed it seems that you received cash slightly more than the amount you were entitled to, \$7.87 worth?---Yeah.

Do you remember being alive to that at the time?---Not specifically.

- 10 Do you remember turning your mind to whether what that meant was that you in fact owed Mr David \$7.87?---No, I don't recall worrying about that.

You didn't worry about that. But you don't remember?---Not specifically.

Now, can you see from page 377 that indeed there was a depot on 18 June, 2007 of \$5,000?---Yes.

And another deposit on 20 June of \$6,170?---Yes.

- 20 Now, can you tell us anything about the circumstances under which it seems that you didn't on your first trip to the bank clear your credit card, rather you seem to have paid \$5,000 and not cleared the credit card?---No, I can't recall.

And so the circumstance that you were giving evidence about a few minutes ago when you said, "I remember being very relieved that I'd cleared my credit card", that really has to be the second payment, doesn't it?---Well, yes.

- 30 Well, do you remember when you made the payment to clear the credit card that in fact what you were doing was only paying some of the money you had received?---No.

Do you have any recollection at all about the circumstances under which you put this money in the bank?---In what sense?

What do you actually remember, rather, as opposed to - - -?---Well, as I've said I recall clearing my credit card.

- 40 But when you say that's a conclusion, what do you actually remember doing?---Going to the bank and paying the teller to clear my credit card.

Well, do you agree with me that on the assumption that these documents are accurate records that's got to be the second payment?---Yes.

Because when you made the first payment you wouldn't have thought, I've cleared my credit card, did you?---That's correct.

In fact you would've thought the opposite, I haven't cleared my credit card?---Yes.

And do you remember anything about that?---No, I don't.

THE COMMISSIONER: Is it possible that you got, went to Mr David's office twice and got two envelopes?---I only recall going there once.

10 MR NEWLINDS: Is it possible that you delivered the, split the deposits into two so as to get each of them below the \$10,000 limit so that they're not reported?---I don't recall.

Right. Well, were you aware at the time that one of the many regulations that citizens - - -?---I agree.

- - - of this country operate under is that any deposit of cash made into a bank by a customer is reported by the bank as a matter of law to the powers that be?---I understand, yes.

20 Did you know that then?---Yes.

And did you understand that that was for the purpose of such information being available to the Taxation Department and other Government instrumentalities?---Yes.

So, but you don't think that that was an explanation?---I don't recall (not transcribable)

30 Can you think of any explanation, any rational explanation as to why - - -?  
---The only thing that comes to mind is I may well not have wanted to carry that much money at one time.

Well, that would involve, but that's pure speculation isn't it?---That's what you're asking me to do.

Any other rational explanation?---No.

Can you remember?---no.

40 If you just if you would have a look, or if you could bring up document 271 just to clarify a matter for the Commissioner. Here we have your, and you tell me if I get this wrong, Mr Kelly, here we have, you're saying a statement for the same account, it's for the period 18 May, 2000-and - - -?  
---7, yes.

Seven to 17 June, 20007 which shows going from an opening of zero to a closing of \$11,162.13 debit?---Yes.

And the next page 272 tells us I think, and correct me if I'm wrong, that that amount is made up firstly of a payment of Emirates Inc. Sydney on 25 May for \$8,558.55 and that's the air ticket, is it not?---That's correct.

And the next one is to the Emirates Palace Abu Dhabi for \$2,603.58 and that was the accommodation?---That's correct.

10 And I think you'll agree with me that there's no other relevant movements on this account between the two statements we've looked at?---That's correct.

Are you sure that Charif Kazal didn't pay you this cash?---Yes.

Now, why are you so sure about that?---Because I remember getting it from Rodric David.

You don't have a clear recollection of getting it from Rodric David do you? ---Yes.

20 You remember getting an envelope which you didn't open?---I didn't open it when I was with Rodric David.

You then took it home that night and left it in your briefcase you said?---I had it in my briefcase, yes.

Unopened?---I didn't say it was unopened, I said I had it in my briefcase, I may well have counted it and checked it that night and decided to split it into two lots or whatever I did.

30 You might fly to the moon as well, you're just guessing aren't you?

MR BEECH-JONES: I object.

THE WITNESS: I'm trying to answer your question.

MR NEWLINDS: You don't remember whether you opened it or not, is that the position?---I believe I would've opened it.

40 You believe you would've opened it?---Yes.

Any why do you believe that?---Because it's just the thing you would do. Make sure you don't have bits of newspaper in it.

May I suggest to you the thing that you would do would be to open it and count it in the presence of Mr David?---I had no reason not to - - -

But you did have a reason - - -?---And if it hadn't I would have gone back to see him.

Did you have a reason not to trust him that night, is that it?---No, it's just the natural thing you do.

All right. Well, I'm suggesting to you the natural thing you do would be to count it in his office before you left, do you accept that?---No.

And the natural thing for him to ask you for would be a receipt, do you accept that?---No.

10

Did he ask you for a receipt?---No.

Did you give him a receipt?---No.

Is there any paperwork at all that you're aware of that records this payment?---No.

Okay. But you say you thought the natural thing to do was to check it that night?---Yes.

20

Do you remember doing that?---No.

So you're speculating?---Yes.

The next day, well, you then remember going to the bank and clearing your credit card?---Yes.

But you only remember one trip to the bank?---That's the only one I have a recollection of.

30

And you had no memory that can assist you in explaining why there are two deposits?---No.

Even though the thing you were most anxious about was getting rid of the liability on your credit card?---That's right, that's what - - -

THE COMMISSIONER: Did you go the very next day to the bank?---I don't recall.

40

Yes, but you wouldn't, I assume that it's not something you would like to do and that is to have in your briefcase \$11,000 cash?---No, it's not so it would have been, you know, soon thereafter I expect. I know I've had things on and different work times or whatever and I don't recall.

MR NEWLINDS: But is the way your memory works this, that we have a lot of trouble remembering run of the mill things that happen on a day to day basis, so for example if I asked you what you had for lunch on some day in the middle of 2007 there's no way you would remember, correct?

---Correct.

However, if I asked you what you had for lunch on some memorable lunch you might remember?---That's fair to say.

So the way your memory works is that you tend to remember things that are out of ordinary run of things and that at the time seemed unusual?---I remember, yeah, bits and pieces.

10 On the one hand but on the other hand you don't tend to remember things that are just mundane?---In some cases, yes.

Well, just looking back at it now you would accept would you not that when you received this amount of money in cash that was something in your experience that was very much unusual?---It's, it's unusual in my experience but it's not something that I, you know, attached a lot of gravity to.

20 Can I ask that document number 3 be brought up please and I'm taking you right back to 2001?---Yes.

Where you are writing a memo to a Mr Kanofski, K-A-O, sorry, K-A-N-O-F-S-K-I?---Yes.

Where you are disclosing something that you feel you should disclose in relation to your dealings in relation to a company called Kelly Business Consulting Pty Limited?---That's correct.

30 Which had a consultancy arrangement with SHFA at the time?---That's correct.

And what you were bringing to the attention of your then superior was that Kelly Business Consulting Pty Limited was going to be acting on behalf of Synergy Consulting Group as a business relationship manager for New South Wales, do you see that?---Yes.

40 And that there may be a problem because as you were the principal liaison between SHFA and Synergy at the moment, who I think are an IT company - - -?---Yes.

- - - you perceived that there might be a conflict?---That's right.

And indeed in this disclosure you suggest a way forward which is that you not have anything to do with Synergy matters in the future?---Yes.

And your superior at the time we can see from the handwritten notes at the bottom, if you can just scroll down the bottom, it's a bit cut off but

assuming that is Mr Kanofski's signature at the bottom which we can't quite see - - -?---Yes.

- - - whoever it is that's agreed took no objection to what you were proposing?---Yes.

All right. So there it was that you had disclosed a situation in 2001 which you thought ought be disclosed together with a proposal as to a way that people could go forward and manage that conflict?---Yes.

10

And your superior at the time accepted what you proposed and allowed matters to proceed on that basis?---Yes.

And may we take it therefore that from as early as 2001 you were well aware of the necessity for disclosure of conflicts?---Yes.

And you well understood that in the course of disclosing a conflict it was open to you to suggest a way that the particular conflict could be managed? ---Yes.

20

For example, if I can now apply that to the situation in 2007, it was open to you to disclose what you were doing to Dr Lang and to suggest to him that a way it could be managed would be for you to no longer have any dealings with Kazal files?---(NO AUDIBLE REPLY)

MR BEECH-JONES: I object and ask if my friend could specify the words, "What you were doing?"

30

MR NEWLINDS: I think he knows. If you'd been here before lunch, Mr Beech-Jones, you'd have a fair idea.

MR BEECH-JONES: Well, what I do know from before lunch is there were various times when my friend said (not transcribable) in the evidence, hence the phrase, "What you were doing", has an ambiguity about it.

THE COMMISSIONER: Well, Mr Newlinds, rephrase the question.

MR NEWLINDS: It was open to you to say something like this to Dr Lang?---No, because I didn't perceive there was a conflict.

40

Please, can I finish the question?---I thought you- - -

And you don't have to keep saying, "I didn't perceive there was a conflict of interest." I think you've made that point entirely clear. It was open to you though, notwithstanding that you say you didn't perceive a conflict of interest, to say to Dr Lang something like this. Hello, Robert, sorry to bother you. I don't think this needs to be disclosed but I'm just being overly cautious. I've agreed to go on a trip to Dubai with a Mr David and some of

his staff from Parkview. Charif Kazal's coming along as well. He's a consultant doing things that I don't quite know the detail of for Mr David. Both Mr Kazal and I have a common goal in that we both want this business to get up and running because if it does we both have a hope that we will get a job in that business. I have gone along with allowing people to create documents which falsely state that in fact I'm a director and employee of Parkview but don't worry about that because it's not true and they're only going to be distributed in the UAE. I'm just disclosing that to you and what I suggest, because there might be a perceived conflict in all this, is that you just don't let me work on any Kazal files in the future and we can manage it that way. It was open to you to say that, wasn't it?---Anything's open to me to say.

And you say the reason you didn't say something like that was simply because you didn't perceive there to be a conflict?---Correct.

Now, can I ask that document 8 be brought up, please. Actually if we can start with 9. If we just scroll down to the bottom of 9 do you see there's a letter, or I'll just bring you up to speed on this. What's happening is, if you go to the very top of page 10 and the bottom of page 9 is that someone has offered someone within, a person called Jason Fuller a terrific offer in that they can go to see the WWA World Wrestling Allstars for, at the, at the behest and being paid for by a client. Do you see that?---Yes.

If we then move up to the middle of page 9 we can see that Mr Fuller has written to you, "Hi, Andrew. You recall the (not transcribable) concert discount offer. You also remember that you raised some concerns re extending such discount offers to SHFA staff. Attached you will see another such off that's come out this week. I expect that we may get these offers every so often as SEC", which I take it is Sydney Entertainment Centre, "Is keen to use us in SHFA marketing to assist them building a profile of the venue." And in the last paragraph Jason Fuller is asking you for your insight and consideration into the best way that SHFA may address these and future offers. So what we're talking about is a ticket to the wrestling?---Correct.

And then if you go to the very bottom of page 8, your response starts with, "Ross, can I get your", sorry. You then forward it on to Ross McGregor - - -?---Yes.

- - -who I take it was your superior at the time?---No. He worked in HR.

Okay. You sought Mr McGregor's input?---Yes.

Asked for his interpretation. And then at the top of page 9, "The histories of it is that I queried previously whether such offers breached the SHFA policy on staff accepting discounts from stakeholders. I think this is getting into a grey area that might bite us if staff generally are taking up such offers

whereas for marketing and promotional staff I can understand there is a need”, et cetera. And then at the end you say, “Am I being too harsh?” Do you see that?---No. This is a different page up here? No.

THE COMMISSIONER: Top of page 9, Mr Kelly.

MR NEWLINDS: It’s up there now?---Yes.

10 All right. Then if you go to the top of page 8, the main part of page 8, it starts with “Dear Andrew, we’ve got Mr McGregor’s response to you.” And he starts off by telling you, “The overriding principle is that a public servant should not receive any personal benefit through his or her position nor should a public service put them in a position of conflict of interest.” Do you see that?---Yes.

Now, when he told you that of course he was telling you nothing you didn’t already know?---Correct.

20 “The SHFA Code of Ethics states no gifts should be accepted for personal use unless such action has been proved by the manager of the intended recipient.” And then there’s examples, sporting tickets, restaurants, entertainment, accommodation. “If approved these gifts must also be recorded in a register, do you see that?---Yes.

And it’s a fact, isn’t it, that during the whole period that you were employed by SHFA there was a gifts register?---That’s my recollection, yes.

30 And it was a requirement that any gift that an employee received from a potential stakeholder, if I can use the jargon, had to be recorded in the register?---Yes.

And if the gift was considered by those who made these decisions too generous it had to be, I think, sold and go into some charity?---Or returned, yes.

40 Or returned. Mr McGregory then goes on, “Such offers can only be considered on a case by case basis. Let’s look at the issue of conflict of interest. If one of SHFA’s tenants say Amo Roma”, so he’s using a Kazal restaurant as an example, “offered free discounted meals to staff my opinion would be not to authorise when Amo Roma lease comes up for renewal it could be argued that staff were biased in favour of the lessee, a perceived benefit to the offer on, however, if a restaurant in Balmain offered the same I couldn’t see any benefit for the restaurant nor would there be any conflict. If the offer in question is from a tenant I urge caution.”?---Yes.

Now, once again nothing Mr McGregor told you in that letter really told you anything you didn’t already know?---No.

You understood the conflicts had to be disclosed?---Yes.

You understood that gifts had to be disclosed?---Yes.

And you understood that it was a question of perception of bias as much as actual bias in terms of a conflict?---Yes.

And when any dealings with tenants were concerned caution was required as the default position?---Yes.

10

And without going over it again your explanation for not disclosing the trip to Dubai and your dealings with Mr David concerning that trip was that properly characterised there were in fact dealings with either Mr David or Parkview and the fact Mr Kazal was also a consultant to Mr David or Parkview is irrelevant?---I'm saying that example given there Mr David was the equivalent of the restaurant in Balmain.

20

Thank you. Now, if you could bring up document 12. Now, just bringing you forward to 2005 I think and we are looking at a decision that was made in relation to The Rocks Café, 99 George Street whereby a new lease had been requested by the tenant and agreed to on the terms set out in this document by the Authority. Do you see that?---Yes.

Now, do you remember this decision?---What year did you say it was?

It's '05?---I recall that, I read it in the evidence, yes.

30

And you can see at the bottom of page 12 you were one of the signatories? ---Yes.

I'm not suggesting that there's anything in particular about this you should recall?---Yes.

I think this is one of the decisions or grants of a new lease that was made by SHFA without putting it out to public tender which has been the subject of criticism in the past?---Yes, should've had a policy that allowed that.

40

Ordinarily things were meant to go to public tender but there were exceptions?---I wouldn't say ordinarily. SHFA had a policy whereby existing tenants would be eligible for renewal. So it was only if that wasn't going to proceed would it go to public tender.

And if we just go back to page, or forward to page 18 please. We can see that prior to the decision there was some correspondence between, and the letter starts at page 18 is signed by Charif Kazal at page 19 to Mr Paul Neilsen and another letter from Mr Charif Kazal which starts at page 16 of 3 March, 2005 to Mr John Isaacs who was then the Chairman of the Sydney Harbour Foreshore Authority. And then on page 13 and following is the

relevant part of the Board papers whereby the decision was recommended to the Board. Do you see all that?---The Board papers is not up in front of me but - - -

I'm sorry, if you just go, it starts at page 12 which is the actual minute of the decision. And then if you look at page 13 I think you'll agree that we're looking at part of the Board papers?---Yes, that's correct.

10 And if you then go to page 21 please. We can see the minutes of a meeting of the Board of SHFA of 19 October, 2005, do you see that?---Yes.

You are not recorded as there may I point out to you. If you go to page 22 it's a decision concerning 106 George Street which was then partly occupied by the Billich Gallery and it was a request for change of use. And if you look at page 22 paragraph 6.4 which is towards the bottom?---Yes.

20 New lease to La Mela, M-E-L-A, Pizzeria. We can see that you and Mr Neilsen spoke to a paper about providing a new 20 year lease to the Kazals and that you noted that the operator had broad experience in the industry and had sought a longer lease to assist with lending for the restaurant and so on?---Yes.

So there was a decision made in relation to the Kazals in 2005 concerning 106 George Street which you had input to and it would be fair to say you recommended the decision be made?---Yes.

30 Now, the next thing I just wanted you to look at if I could was a document at page number 46 it starts. And I can tell you that it was obtained by ICAC investigators from your computer and it appears to be what you call, it was called a Direct, an ICAC Direct Dealing Checklist for project 100 George Street, The Rocks, do you see that?---Yes.

And if we just go through to the document which I hope is immediately behind that, it doesn't have numbers on it, it is the direct negotiations ICAC Guideline issued in May 2066, do you see that?---(not transcribable).

40 Okay. Well, they haven't put it in there but you agree with me don't you that that was your attempt, and I'm not in any way criticising you, to go through the process that ICAC had recommended when dealing with direct negotiations?---Yes.

Direct negotiations being in contrast to putting matters out to public tender?--Yes.

And direct negotiations being something that often was undertaken if it was the current tenant that was being dealt with?---Yes.

And you were aware at the time ICAC had published warnings to the effect that at the very least, perceptions of bias can arise in circumstances where there is no public tender and the present tenant is dealt with- - -?---Yes.

- - -because often other people perceive that as the present tenant being given favouritism. Is that right?---Yes.

10 Okay. Now, if you go to page 50, please. And I don't think there's any chance. If we could also look at 52 at the same time. I know it's not possible on the screen but if you can do that in your folder?---Yep.

I think it's right to say that the one at 52 is on letterhead and the one at 50, the one at 52 is on letterhead and signed and the one at 52 is a draft.---The one at 50.

The one at 50 is a draft. Do you, this is a document that you created in June 2006?---Yes.

20 And the first thing it does is confirm that you have read and understood the SHFA Code of Conduct?---Yes.

And agree to be bound by its contents- - -?---Yes.

- - -in respect of your duties in relation to the project, which was 100 George Street?---Yes.

30 And you then, and I'm paraphrasing, disclose that you had a business relationship with Charif Kazal and the Kazals because you had dealt with Kazals on other tenancy properties?---Yes.

That's the first matter. And the second matter being that Charif Kazal was the president of The Rocks Chamber of Commerce and you'd dealt with him on that basis?---Yes.

May we take it that you thought that was an appropriate disclosure at the time?---Yes.

40 That you had spend time with Charif Kazal in his capacity as president of The Rocks Chamber of Commerce?---Yes.

And that you had had some dealings with the Kazals which obviously your superiors knew about because they were SHFA dealings, weren't they? ---Yeah.

May we take it you were being pretty cautious when you disclosed those matters?---Yes, and it was done in the context of that earlier table that you identified.

I see. So what you, what you were doing, is this fair, is, you got out the ICAC guideline, you went through the checklist and one of the things ICAC said, "Make sure that any conflict is disclosed?"---That's right. All members of the project should disclose.

10 Can I just ask you to look at number 53, please? And I think you agreed with this in general terms when I asked you about it this morning, it's right that from about the middle of 2006 you were looking for a job in that you were putting your curriculum vitae out to people who you thought might be able to assist you, such as recruitment consultants?---Yes.

Can we then look at document 60, please. This is a request or an application been put to you by Emma Donahue, someone within SHFA, in relation to a request that the Kazals had made to upgrade some electrical supply into the premises 135 George Street- - -?---Yes.

20 - - -which was the restaurant premises. And I think if you look at page 61, the second page of that letter, the amount that was being sought at that time was \$33,000-odd?---Yes.

And I don't know if you, do you agree with me or are you able to agree with me that ultimately an amount of \$20,000 was agreed to be paid- - -?---Yes.

- - -after much to-ing and fro-ing about whether the present supply was adequate for a restaurant or not?---Yes.

30 With certain people in SHFA taking the view that it was?---Well, it was so much whether it was adequate, it was who responsible for it when the original DA went in.

All right. And there was a debate about that?---That's right. The tenant argued that it was SHFA and SHFA people couldn't find the actual DA so weren't able to counter it either way.

And in the end there was a type of compromise because the Kazals didn't get as much as they'd originally asked for?---Yes.

And you recommended that that payment be made?---Yes.

40 And that sort of judgement call, if I can call it that, is the sort of thing that you had to do in your job a lot, wasn't it?---Yes.

To form a view about something that was not capable of being resolved on a black and white basis?---That's generally what I dealt with, yes.

And to make recommendations to your superiors that matters between SHFA as landlord and tenants be resolved by some form of compromise? ---Often, yes.

The, the amount, being the agreed amount, often not being capable of being justified on some scientific analysis but rather being- - -?---That was because the lease would be grey or, you know, silent.

But rather being justified really by a judgement call by someone like you and those- - -?---Judgement and relying on past practice.

10 THE COMMISSIONER: It's a discretionary factor?---To a degree yeah.

It's an exercise of discretion rather- - -?---Yes.

- - -on your part- - -?---Yes.

- - -based on judgement?---Yes.

20 MR NEWLINDS: Now, can we go forward, please to document number 71. Can you see at the bottom of page 71 it's an email from yourself at your home computer I think, the andrewandlorraineKelly is your home computer or was?---Yes.

To Charif Kazal and you're pointing out to him that you've noticed the tender in relation to the Penrith Leagues Club?---Yes.

And what you're really saying, if I may paraphrase, that that may be an interesting business prospect for Mr Kazal?---Or for them to introduce someone from the UAE to, yeah.

30 Ah hmm. And then just moving up, a little bit up page 71 we can see that Mr Charif Kazal responded by saying, "Hi, Andrew, I'll pass it on to my brother Tony." Tony was the Kazal as you understood it who was in the UAE and had the contacts there?---That's correct.

And he then goes on to say, "Could you please email me resume again as Tony will try to get it to some contacts in Dubai." Do you see that?---Yes.

What he was asking you to do was for you to again send him your resume - - -?---Yes.

40 - - -so that Tony through his contacts in Dubai could put your name about as someone who might be looking for a job?---Yes.

Can we then go to document 75, please. And we're looking at a decision or some correspondence in relation to 99 George Street which is The Rocks Café. And if you look at the part of the letter on page 75- - -?---Sorry, which- - -

Page 75 you can see there's a request in relation to 135 George Street. Do you see that?---Yes.

And that's the Amo Roma Restaurant. And I, number 4 is the electrical board issue I think still simmering along, if that's the right word for electrics?---Yep.

10 And then over the page at 76 we're now dealing with 99 George Street, which is The Rocks Café and what was being sought was a rent abatement?  
---Yes.

It seems that SHFA's saying to the Kazals, we've considered your request for rent abatement due to recent weather conditions and advise that your request has been declined. The authority can't be held liable for bad weather?---Yes.

Now, was that, was that decision something that you had input into?  
---I don't recall.

20 In the ordinary run of things would that be something that would have come to your attention?---No. Generally the only things that came to my attention were when there was problems that weren't able to be resolved at the head of property level.

All right. If you can go then to page 79, which is the second page of a letter that starts at 78. This is Charif Kazal responding in relation to 99 George Street. Do you see the heading there?---Yeah, 99 George Street, yeah.

30 Now, he, he's had, there's some dispute about fire alarms which I don't think we need to worry about other than to note that's the sort of, sort of dispute that any tenant has with their landlord from time to time?---Yes.

That's fair, isn't it?---Yes.

40 And then in the third-last paragraph Mr Kazal says, "We accept your advice." This is about the rent abatement for rain, I think. "And the other matters raised again and thank you for your quick response." I'm really only showing that to, as an example of a typical dealing between the Kazals on the one hand and SHFA on the other?---Yes.

And then at page 80 we can see that on 15 September, 2006, you send your updated CV to Charif Kazal, presumably I think you'd agree with me for the purpose of him forwarding it on to his brother Tony- - -

- - - to give to contacts - - -?---Yes.

- - - and, and you ask in the second paragraph for Mr Kazal to contact you if he thought there was anything lacking in the CV, tell me if I am over-simplifying but is that fair?---That's fair.

And if we then go to page 99 please, if you just run your eye over page 98. 99 and 100 and tell me if you agree with this: some time in September 2006 Charif Kazal who has a nephew who was doing law that was looking for a job asked you if you could do anything to assist his nephew in getting a job in the law and you forwarded that on to one of the lawyers that you dealt with at SHFA - - -?---Yes.

- - - and at page 100, at the very top you said don't know, and I won't mention the man's name, so you can't vouch for him personally however his uncle is Charif Kazal, President of The Rocks Chamber of Commerce who I deal with regularly. If Michael is anything like him I would think he would be of excellent character?---Yes.

Now, I appreciate that there are shades of grey in all this but is it fair for me to point out in September 2006 there seems to have been a position where Charif Kazal was doing you some sort of favour by getting his brother to put your CV around Dubai on the one hand and you were doing Charif Kazal some sort of favour by trying to put his nephew into the, into contact with a solicitor and putting a good word in with that solicitor?---Yeah, you could say that.

Now, I'm not suggesting that those matters necessarily had to be disclosed but would you accept this, that one, once such favours start going backwards and forwards the question of whether things have got far enough for there to be disclosure has to be thought about?---I don't agree (not transcribable)

You don't think one is anywhere near wherever the line might be?---No.

Completely inconsequential?---Yes.

All right. If we then go to page 107 we're just continuing on with the story about the electrical upgrade and under (not transcribable) that this document tells us that by October 2006 you were at least on the email list where that topic is being dealt with, do you see that?---Yeah.

At page 108 we can see that on 17 October, 2006 you've had a discussion with a solicitor contact of yours about Mr Kazal's nephew - - -?---Yes.

- - - and you're reporting to him what you've been told in that discussion? ---Yes.

At page 110 you just have a continuation of the discussion concerning the electrical supplier to the Amo Roma Restaurant, do you see that?---Yes.

That continues at page 118 if anyone can actually read the font on that page but that's what I'm told happened, through to about 120, I'm really pointing that out more for the Commissioner's purpose than yours, Mr Kelly. Can I ask you though Mr Kelly to go to page 122. Now this is the beginning of the story in relation to a decision that was made in January 2007 concerning a reimbursement to the Kazals as tenants by SHFA as landlord of an amount of \$335,000. Do you remember that decision?---Yes.

- 10 And is this a fair summary of what happened: the Kazals had apparently without the consent of SHFA gone ahead and did some, done some work at the premises?---I don't think it's quite that black and white, they lodged a DA but additional work was done.

Over and above what had been approved?---What was in there.

There was then an issue as to how much of that work should properly be apportioned to base building?---Yes.

- 20 And how much should be apportioned to tenant's fit out?---Yes.

Because the way the contract of lease worked was that if the tenant did work that improve the base building then SHFA would pay?---More or less, yeah.

The theory being well, SHFA would always own the base building so it had an ongoing benefit from that?---Yes.

But if it was a tenant's fit out then the tenant paid?---Yes.

- 30 Once again, it's reasonable for me to say that these sort of disputes come up quite regularly between - - -?---Yes.

- - - all landlords and tenants no doubt?---Particularly in an old (not transcribable)

But particularly in a heritage listed premises such as the ones that SHFA was managing?---Yes.

- 40 And once again it's a question for judgment by the decision-maker as to SHFA as to how one resolves those disputes?---Yes.

Because it's inevitably almost impossible to get to the bottom of what is actually the true answer - - -?---Yes.

- - - with any form of precision - - -?---Yes.

- - - and so one deals with it as a matter of negotiation?---To an extent negotiation but also some research and assessment by quantity surveyors and the like has to be done.

Now in relation to this particular decision though do you recall that there was within SHFA different people with different views as to what should happen?---Yes.

10 Some people had a very firm view that a very small amount of money should be paid, something like \$50,000-odd?---One person to my knowledge, yes.

And who was that, Mr Cock?---Yes.

And the Kazals themselves had asked for I think about 390 plus GST originally?---Yes.

20 And in the end your recommendation to Dr Lang which went to the Board was that an amount of 335 was reasonable?---Yes.

And that recommendation was accepted by the Board as you understand it? ---Or the CEO, I'm not sure it went to the board.

All right. And if we go to page 134, I'm sorry, I withdraw that. If we go to 137 is that a memo you wrote on 2 January, 2007 to Mr Lang setting out in commendable if I may so short form the history of what had happened between the parties and the to-ing and fro-ing?---Yes.

30 And putting forward your recommendation - - -?---Yes.

- - - which we can see from the handwriting on the document Dr Lang approves?---Yes.

40 And if we look at page 139 in the process of approving he said to you, this the handwriting underneath the signature, I note your advice and the actions taken to ensure future situations are more adequately covered and what he was talking about then was well, could some of the blame for the dispute be laid at SHFA's doorstep because no one really did anything about it when the unapproved works were happening?---That's right. That's the consent process that's referred to.

Which had put the Kazals in a position where they had finished the work before they started the discussion which gave them an advantage because it had already been done and it was hard to identify?---It had already been done and our people hadn't been involved in supervising it.

All right. Once again, a matter for judgment, discretion for someone like you bringing to bear all your experience in the area, yes?---Yes, but there was also some science - - -

Which can't be - yeah, there were some science although - - -

MR BEECH-JONES: (not transcribable) if my friend put a proposition to him and I think Mr Kelly should be allowed to answer it (not transcribable) responsive answer.

10

MR NEWLINDS: I think you were about to say, yes, but there was some science involved?---Well, some science involved, you know, I dealt with, you know, the Head of Heritage in coming up with a recommendation based on had these works been applied for in the first place, how would they have been dealt with and that's where we arrived at that resulting decision.

THE COMMISSIONER: Did you take the advice of a quantity surveyor? ---There's already - a quantity surveyor's report was supplied and so it was assessing, so Facilities was asked to assess are the claims by the quantity surveyor accurate, valid, please comment. That's all they were asked to comment on.

20

And who is the quantity surveyor?---I think it's mentioned somewhere in all these documents - - -

All right?--- - - - who it was but it was a, yeah, contracted one, I'm not sure who it was so, and their figures are included in the total on page 138, sorry, no, it's not, that some of the earlier ones. But anyway so we had the quantity surveyor's figures, the Facilities management team then assessed those quantity surveyor's figures to decide of those, you know, they're meant to say are they valid, reasonably accurate, et cetera.

30

So can I just ask, what is AMF estimate on page 138, what's that?---Asset and Facilities, that's Mr Cock who was the, you know, maintenance manager.

So that was his recommendation?---Yes.

And is there somewhere shown of what the quantity surveyor said?---There is, it's in, sorry, one of the earlier memorandums, if I can go back to, starting on page 129.

40

Yes?---He's got a description of all the items and the third last column is QS Assessment.

I see?---So they've done that and - - -

And what were they assessing?---They're assessing the works that are purported to be done, the Kazals produce receipts saying we did these works so the QS has gone in to look to justify that those works did in fact occur and what were the reasonable costs have been, and they look at the invoices and other things.

10 And was SHFA obliged under the lease to pay whatever costs there were or were these, did these costs have to fall into a particular category before they were paid?---Yes, as mentioned base building works, SHFA was responsible for, fit-out works is the tenant.

And this was the issue here?---Partly, but in this instance Mr Cock also, you know, attributed arbitrary percentages based on what he felt should've been the case based on his views.

Percentages of what?---Percentages of the QS's assessment. So if you look at the columns there, the second column where it says Payment Percentage is not what he's recommending.

20 As I understand what you say the Quantity Surveyor assesses what he thought was the work that was done - - -?---Yes.

- - - and the reasonable cost of that?---Yes.

Then a decision had to be made as to whether that fell into fit-out or base works?---Yes.

The quantity surveyor doesn't do that?---No.

30 And Mr Cock had done that and made a recommendation?---He was required to do that but his recommendations didn't follow that logic which is why it was changed.

40 And what, how did you arrive at your recommendation?---I then spoke to the Head of Heritage and he's normally involved in assessing these applications if they had to be made upfront and said to him, Well, okay, let's assume the QS, you know, is reasonably accurate, let's identify what works would've been approved and being what we, SHFA, would define as base building versus just arbitrarily deciding – the flaw in Mr Cock's approach which came up with the 59,000 is because some works were authorised through the application process he just said don't reimburse it.

Was SHFA obliged to reimburse work that wasn't authorised?---Yes. Well, in the context of this the work, it wasn't authorised as such but what they outlined in their claim is that the work occurred because when they started other work incidents happened, things fell, collapsed et cetera - - -

I'm merely just trying to find out whether SHFA was obliged to pay for work that wasn't authorised as a strict legal question?---Well, I couldn't answer it as a strict legal question.

Is that not something you looked at?---Well, in a legal sense we were required to do base building works so it was automatically - - -

I'm asking you about something else now. I'm asking you about work done without authority.

10

MR BEECH-JONES: I object that they may not, they're not necessarily consistent. The question assumes they're inconsistent and - - -

THE COMMISSIONER: Mr Beech-Jones, the witness is able to answer this, this is his everyday – I'm trying to find out what his state of mind was.

MR BEECH-JONES: With respect that's (not transcribable).

20 THE COMMISSIONER: I hear what you say and I will proceed, thank you. I would appreciate it if unnecessary interruptions were not effected. Now, Mr Kelly, I'm trying to find out whether you understood that if work was done which was not authorised SHFA was obliged under the lease to pay? ---That's my understanding.

Sorry, your understanding was what?---That SHFA is obliged to pay.

And did you ever verify that?---No, I don't recall ever getting legal advice.

30 So what made you think that?---Because the only reason it wasn't authorised was it happened in the course of doing the work and had our people been involved in supervising it it would've been raised and discussed on the spot and paperwork sorted out.

But isn't the issue of being there and supervising it important because then your people, as you term them, can see whether or not the work was done? ---Yes, it is important and they were made aware of this project in advance but for whatever reason weren't there to supervise it and that's up to them to have done.

40 Up to them about what?---Well, again, before a project commences they have to get landowner's consent to do the project and that outlines what they're proposing to do, that had to go to each of the teams, the Head of Facilities, Mr Cock, the Head of Property Heritage, all of those people were aware before it started that these works were proposed. Now, the process should be that they monitor the works and if there's any problems arise it gets discussed before the works continue but no one monitored it and supervised it and it was only after the event that all this blew up. So our

team had not followed the process that we should've followed to monitor the works.

Is there anything in the leases that says that SHFA is only liable for work that it authorises?---I don't believe so. It's something that would be silent in the lease.

So your question of authority it irrelevant to the question whether SHFA should pay or not?---I'm not sure what you mean by authority.

10

Whether the works were authorised?---Well, no.

Sorry, no being it is irrelevant?---I believe it's irrelevant, yes.

It is irrelevant?---Yes.

So it doesn't matter whether the person gets authority or not SHFA will pay?---Well, it, it matters and they're supposed to do it but, you know, these are the problems that come up, when it doesn't happen you have to reach a resolution, you can't just say we're not going to do it.

20

I understand that. Can you just explain please how does it matter?---Well, in the lease it states that the landlord is responsible for base building works and the tenant is responsible for fit-out. Now, at the landowner's consent stage SHFA could have elected to do the base building works first and say we'll do our works and then when we're finished you do your fit-out works, that would've been a much cleaner and better way to manage it but that didn't happen. Not only that SHFA could've supervised the project so that if any incident like this came up it could've been addressed at the time, that didn't happen either. So there is a degree of mitigation of both sides have responsibility for the outcome but when it all blew up I was the one that had to try and come up with an answer well, how do we address this and that's how it was addressed.

30

And I'm just trying to understand how it was addressed. You said you spoke to a person from Heritage?---That's right. So in terms of the works that didn't get the approval but were done, you know, we've looked at it and said, well, okay, if they lodged an application form in advance for doing these works what would you have approved. So of the 390,000-odd 330,000 was identified would've received approval.

40

And did you go through each item with the person from Heritage?---Yes.

How long did that take?---Possibly an hour.

And on what basis was the decision made, was it made on the basis just of general experience or did somebody actually look at the work that was done?---Well, the QS was responsible for looking at it.

I know that. But that's between you and the Heritage man that was, did either of you inspect the work?---He would've inspected the work.

He would have?---Yes.

What does that mean? You don't know?---I don't know for certain. He was involved in the process - - -

10 So for all we know the work was, it might not have been inspected?---It might not have been.

So the decision to make the payments of, it's 300,000-odd, 350 - - -?---(not transcribable).

- - - as opposed to what Mr Cock recommended of 59,000 was made as a result of (not transcribable) inspection without anybody necessarily having inspected the work?---Yes, based on the fact that the QS has identified the works that were done and most of these works you couldn't go down  
20 afterwards and see because they're behind walls and things so you'd have to (not transcribable).

I understand. I just wanted to understand the background to this. Thank you.

MR NEWLINDS: Is your understanding that Mr Cock took the view that because the work was not approved then the tenant wasn't entitled to any money regardless of whether it applied to base work, base building or not?  
---That's correct.

30 And did you take a different view as to that?---(NO AUDIBLE REPLY)

And in relation to some of the questions the Commission was asking you when we talk about consent SHFA of course wears two hats at this point in time. On the one hand it's the landlord and I'm presuming that within the lease there's a provision that says you have to get the landlord's consent before you do any work?---Yes.

40 But on the other hand it's the consent authority for the purpose of DA's and the like. Correct?---Yes.

Now, for the purpose of the DA-type approval, that's a different area of SHFA?---That's right, not my division.

And for the purpose of the approval authority supervising or looking at the works as they go ahead, that was a matter for the approval authority to ensure that what was being done was compliant with the consent?---Well, yeah. There's, there's two aspects. They'd need to look at it from the DA's

perspective to make sure that it was complying with all the DA conditions that they sent and that's the statutory planning area and that was a completely different division. From a facilities management property management perspective, our division had a responsibility to monitor it as a, you know, tenant management, asset management.

And is this right, if you don't, if you don't manage it as a tenant management issue and if the matter cannot be agreed between the parties then ultimately some court will have to decide- -?---Yes.

10

- - -in a piece of litigation?---Yes.

And may I take it that's not considered the best way to resolve these things? ---It's the least-desired solution.

Now, was there some system within SHFA at the time so that these sort of decisions could be looked at and second-guessed later that required you to document all matters that you took into account when taking such a decision to make a recommendation?---No. The process was, you know, when you'd get a memorandum such as that that explained it and I also discussed it at the time with the CEO and that was the strategy that was agreed and then it's documented and he approved it.

20

Now, at page 142 if we could bring that up, we're dealing with 100 George Street which is the pizza shop, and we're in February 2007 I can tell you. Do you recall that there was a recommendation- - -?---Sorry, that's August '06.

30

Oh, is it. Yes, thank you for that. In August '06 you make a recommendation concerning a longer lease in relation to the pizza restaurant at 100 George Street which had started off earlier in the document we looked at a few minutes ago?---That's right. In 2005, yes.

Yes. And if you again move forward to 173, please, this time dealing with 91 George Street?---Yes.

Right, which is the property that used to be the, perhaps at this stage, March 2007, was Costi's?---Costi's Seafood, yep.

40

And Costi's had assigned their leasehold interest to the Kazals or one of their companies?---It went to someone else first, but yes. Costi's to someone else, someone else to Kazals.

All right. And may I take it that there was a provision in the lease that the Costi's had which said that something like whilst the landlord's consent was required, that consent could not unreasonably be withheld?---Yes.

And I'm assuming, but you tell me if I'm wrong, that the consent of SHFA was sought and obtained for the assignment?---I, I can't recall specifically but I assume so.

Can you think of any reason in March 2007 why a Kazal company so long as it was adequately resourced or guarantees from appropriate people would not be considered by SHFA to be an appropriate tenant?---No reason at all.

10 And if I can then ask you go to page 198. Now, we're on a new topic now, this is now a SHFA decision, this is a draft letter, a signed version, which is the first document in bundle 2 of the folder, a signed version which is at page 202 and 201 which appears to have Mr Kazal's signature on it. And I don't think there's any relevant, they're in slightly different format but I think I can say to you that in substance they're the same. So perhaps if we look at the signed version at 201 and 202?---Yes.

This is one of the letters I was asking you about this morning?---Yes.

20 A letter to Mr Mike Stokes of Chesterton International, April 2007, apparently signed by Mr Charif Kazal. And we can see in the second bullet point on page 202 that you're being held out at least as being involved in the team of people that are seeking to put together a DL with Chesterton's? ---Yes.

And my question for you is this. Were you aware of that letter or the substance of that letter at around the time it was sent?---I don't recall it from that time and I don't recall being aware of it.

30 Right. Do you, does that mean that you were not aware of it or you just can't remember?---Well, I believe I'm not aware of it but- - -

Okay. Well, you've told us I think very emphatically that one of the reasons you were prepared to allow the Parkview profile to go forward in the way it did was because you understood it was only going to be published in the UAE?---Yes.

This document if sent was obviously going to be published to Chesterton's in Sydney?---Yes.

40 So a very big difference?- - - Yes.

Don't you think in those circumstances if you knew that your name was going to be used in it, that is something you would remember?

I think I would have objected to it.

Mmm.

But, you know, I am aware, I was aware at the time that they were approaching Chesterton's to get a licence but I didn't necessarily know how they were going to do that and what was involved in putting a proposal to Chesterton's.

Mmm. Well, there's a very big difference between the two. You knew that they were going to talk to Chesterton's?---Yes.

10 But if we look at this letter, halfway down 201- - -?---Yeah.

- - -it's telling Chesterton's that we, that is, and you notice it's on AWT's letterhead?---Yes.

We intend to use our most senior personnel on the project and these include, and the first person mentioned is Karl, Karl Kazal and then over the page the last person mentioned is you?---Yes.

20 So Chesterton's are being told that you and Mr Karl Kazal are senior personnel of AWT- - -?---Well- - -

- - -as at- - -?---If I may, there's also an email that was in this evidence that showed that, from Mr Willoughby to Chesterton's that said I was the current executive director at SHFA.

All right. Well, thank you very much for that, but- - -?---So I'm just saying that there was different communications to Mr Stokes so Mr Stokes should have been aware of my status.

30 What I'm trying to establish is, did you know this letter was sent at around the time it apparently was sent?---I don't recall the letter, no, no.

THE COMMISSIONER: You don't recall, you don't, you know, is your evidence that you know nothing about this letter?---I have no recollection of it being prepared at the time.

And are you, do you have no recollection of any letter of the, of this kind being sent to Chesterton?

40 In relation to AWT, yes. All I remember is stuff to do with Parkview.

Sorry, when you say yes, what do you mean?---Well, I'm agreeing with you, I don't have any recollection of anything to do with AWT.

Right.

MR NEWLINDS: Right. Well, let's forget it's got, it's got, it's on AWT's letterhead but assume this letter was written on Parkview's letterhead. Were

you aware that such information was being provided to people at Chesterton's?---No.

Are you prepared to categorically say you did not know or is the best you can do is to say I can't remember?---I'll say I can't remember but I'm strongly leaning towards no.

THE COMMISSIONER: Because if you knew you would have objected?  
---Yes.

10

And you didn't object?---No.

MR NEWLINDS: Because you would have seen a distinction between on the one hand putting forward such notions to people in the UAE and on the other hand putting it forward to people in Sydney?---Yes.

Now, can I ask we bring up number 210 please.

20 THE COMMISSIONER: Mr Korn, if, if we do come to any letter or document which you say is subject to privilege I'm sure you will be alert to tell us because I don't want that to go by default.

MR KORN: They're all in volume 3 I think.

MR NEWLINDS: We've got 210. Now, can we have a look at this, please, Mr Kelly?---Yes.

It's an email from Clint Willoughby- - -?---Yes.

30 - - -to a Mr Fiddes at somewhere called King Sturge?---Yep.

Now, do you know, did you know of a Mr Fiddes at the time, that is April '0-7?---No, I've never heard of him.

THE COMMISSIONER: I beg your pardon?---I've never heard of him so, no.

40 MR NEWLINDS: And this email is copied in to Charif and Karl Kazal at their AWT email addresses and can you see halfway down the letter it says, "Our team includes" and then your name and Mr Kazal's are put forward as part of the team?---Yes, that's the one that I said mentions I was a current executive director.

THE COMMISSIONER: Sorry, I can't hear you?---Sorry, I'm saying that's the one that I mentioned just a minute ago says that I was a current executive director so it wasn't hiding the fact that I wasn't with them yet.

MR NEWLINDS: Okay, thanks a lot for that, the question is did you know - you're not a recipient of this email, my question is did you know about this email or the substance of its contents in or around April 2007?---No.

Did you know that Clint Willoughby was putting it out to people that you were a current executive director with the Sydney Foreshore Authority, had been managing major government assets in or around the Sydney CBD and that you were part of the term?---No.

10 If you had known about that would you have done something about it?  
---Yes.

THE COMMISSIONER: You would have objected, I take it, to Mr Willoughby?---Well, again in the context where it says there current executive director, I wouldn't have had a problem with that.

MR NEWLINDS: But what you would have had a problem with, if your evidence is correct, is you being described as part of our team?---Yes.

20 THE COMMISSIONER: And you would have objected to that?---Yes.

And you did not?---Correct.

Because you didn't know?---Yes.

MR NEWLINDS: If we can go to 213, please, it's a letter unsigned from Charif Kazal or an email unsigned from Charif Kazal to Mr Rabih Karam at Seba bearing the date 27 April, 2007, do you see that?---Yes.

30 And if you go down to the paragraph towards the bottom of that page which has the bullet points in it, you can see that that starts off with our team and then the bullet points represent various people, one of whom is you?---Yes.

Were you aware of the contents of that letter either as a draft or a final at or around April 2007?---I don't recall.

Did you, were you aware that Charif Kazal was describing you as a member of the team to people at Seba, now remember Seba is a UAE organisation?  
---Yes.

40 So you probably would not have objected to this if you knew about it?  
---Probably.

Is that fair?---That's fair.

The question is did you know about it?---I don't recall. I should highlight that I don't have any of the emails from back in those days.

THE COMMISSIONER: I know but your answer I don't recall I certainly understand but the, the document contains material that's not true that concerns you so are you saying that it didn't really make an impression on you, it something that was relatively unimportant and you can't recall it? ---No, I'm saying I don't recall. Mr Karam was someone that we dealt with on a, you know, a weekly basis for a couple of years so I, I just don't remember that level of detail from back then.

10 But this is not just a level of detail, is it?---Well, it is in - - -

You regard it as a level of - I don't, I just want to understand precisely what you mean. In the letter it says something which you say is untrue?---Yes.

Reflecting on you?---Yes.

And you describe that as a level of detail do you?---No, I'm saying I can't recall one letter from another that might have gone to Mr Rabih Karam over, you know, the last four years.

20 Yes, but is, would the, would this untrue statement in the letter not ring bells with you?---It probably would.

But it rings no bells?---No.

Yes, thank you.

MR NEWLINDS: Can we go to page 218 please, it's the front page I think of one of your notebooks?---Oh, okay, yes.

30 Is that, that right, that's what it looks like?---It's just a black page so - - -

Well, it's got Andrew Kelly with some dates written in the top right-hand concern so I'm assuming it's from your notebook?---I'm assuming it is, it's not my writing.

Can we look at 209 that might help?---That's my writing, yeah.

40 Okay. So this, this, these appear to be your notes from meeting of the Executive of 7 May, 2007?---Yes.

And about, it's a little bit hard to read but can you see I think it's the third entry 91 George Street seeking Thai cum chocolate store, change of use permission AK advised that shouldn't go to Board unless arrears paid? ---Yes.

And then to the left of that it says AP to note?---To the right it says - - -

To the right of that it says AP to note?--- - - - “GM Rocks” which means that’s who brought it up.

THE COMMISSIONER: I beg your pardon?

MR NEWLINDS: Where does it say that?---I said to the left it says “GM RX” which means the GM The Rocks and that’s who introduced the subject.

THE COMMISSIONER: GM The Rocks?---Yes.

10

What’s that mean?---Well, reporting to the CEO there was four executive directions of which I was one and there was two precinct general managers, one for The Rocks and one for Darling Harbour.

And GM?---General manager.

And what does that denote, that note? What does GM The Rocks denote? ---It means that at the executive meeting the general manager for The Rocks raised that 91 George Street was seeking a change of use permission.

20

I see.

MR NEWLINDS: And some, and this is Costi’s, what had been Costi’s? ---Yes.

And what had happened? Had it become a Thai store? Did they want it to become a Thai shop and a chocolate shop? It doesn’t sound very appetising, does it?---Yes, an odd combination. It was seafood, they took it over as seafood, it operated as seafood for, I can’t remember, three or six months then it closed and then this was them coming to say, well, the seafood was failing, we want to do a different use.

30

We want to do a chocolate shop and they owed some money did they? ---Well, their arrears, at, at the start of the meeting there was generally the, you know, tenant arrears report would be the first thing looked at so - - -

THE COMMISSIONER: Is that arrears in respect of rental?---Yes.

40

MR NEWLINDS: And your position was it should even go to the Board until the arrears are cleared?---Yeah, unless they, you know, sort that out.

THE COMMISSIONER: And sorry, “AP to note” means?---AP stands for Andrew Peters who was the person who was responsible for leasing and sorting out lease documents.

So is this, is this a kind of a diary, Mr Kelly?---Yes, it’s, it’s a notepad I would taken to meeting to scribble down what was discussed.

Right.

MR NEWLINDS: Can I ask that document number 220 be brought up please and I should point out to you that this is an email and you're not a named recipient but can we just look at its contents, it's from Nadine Burch who I think worked for Rodric David, is that right?---No, she worked for Charif Kazal.

10 She was a Charif Kazal person. She's writing to Mr David and copying in Charif Kazal and its 11 May?---Right.

Do you see that?---Yes.

And she's recording, "Charif asked me to forward the copy to be included in the Parkview document under the section Parkview directors. I have attached a word file with both of their abbreviated profile. He also requested a Parkview business card to be produced for Karl Kazal ASAP, it should read Karl Kazal, MBA Marketing. The other item Charif requested is that you set up email accounts for Charif and Karl at Parkview similar to  
20 that, similar to what we had done for you, Clint, Andrew and Peter at AWT, for example all incoming emails to rodric@AWtrading.biz get automatically sent on to r david@pview." Do you see that?---Yes.

Now, was it the case that some time prior to 11 May, 2007 there had been arranged for you an email address which was something like andrewkelly@awt.biz?---Based on what I've seen in the evidence, yes.

30 Don't worry about based on what you've seen in the evidence, do you remember that there was an arrangement - - -?---Well, the arrangement for it being set up, no.

Do you recall it being set up?---I don't specifically and it's only reading the evidence that its, you know, come back to me that, that it was set up and forwarded to my home email address.

And the, but for all intents and purposes as far as someone sending the email was concerned, they were sending to you at AWT?---Yes.

40 But unbeknownst to them it was then directed to your home email address? ---Yes.

THE COMMISSIONER: Why wasn't it addressed directly to your home address?---So that I saw whatever was sent there.

Why wasn't it directed to SHFA?---Because that's a work matter.

So this is something that you wanted kept concealed from SHFA?---Yes.

MR NEWLINDS: But also isn't it clear that you wanted people who were writing and receiving emails from you to think that you had some official involvement with AWT?---Yes, my understanding in putting the pieces together is that it relates to the AWT communications with Seba saying that, you know, this is the team and if you want to contact them here's their email address.

THE COMMISSIONER: This supports the profile?---Yes.

10 MR NEWLINDS: But undoubtedly you knew about this at the time because when you look at some later documents you were receiving and sending emails via this mechanism, is that fair?---Receiving via this mechanism but replying from my home one.

But once again it's automatically set up so that when the recipient gets it they don't know it's coming from Andrew and Lorraine Kelly at home, they think it's coming from Andrew Kelly at AWT?---No. People sending it to the address would think they're sending it to the address but when I reply from my home it's a reply from my home.

20

Now, can you go to 227. It's another letter to Rabih Karam. We might call him Mr Karam. It's another letter to Mr Karam, it's not signed but it bears the signature or it has over the signature position Charif Kazal's name at 228, do you see that?---Yes.

Now, do you know anything about metadata?---I've heard the word mentioned before but I couldn't recall what it means.

30 Now, I'd like to show you page 229 which apparently is not in the folder so if we can bring it up on the screen. It's not in a hardcopy form. Just have a look at the screen for the moment?---Yes.

Now, no one would criticise you for saying that you didn't understand any of this but if you look down the left-hand column until you get to the word "author", do you see against that word is your name Andrew Kelly?---Yes.

And if you move one, two, three lines further down - - -?---Yes.

40 - - - do you see that there is company Sydney Harbour Foreshore Authority?---Yes.

Do you have it in your folder?---Don't think so.

Someone's written on mine (not transcribable), that's all. Now, Mr Kelly, I'm told that what that all means is that the computer that created the email at 227 and 228 has recorded that the author of that document was yourself and that the computer it was created on was a computer at the Sydney Harbour Foreshore Authority. Now, to be fair to you I think what that

means is that whoever the author was had access to your password and that particular computer and if they're using that password it would still record you as the author. Do you understand that?---Yes.

Now, having had that pointed out to you are you able to assist us in telling the Commission whether you had anything to do with the creation of the document at 227 and 228?---I certainly recall preparing questions for the UAE so, you know, I believe in the least that those questions would come from me and yes, it is possible that it was done, you know, at my work  
10 computer if that's the only option, if it's not the file could've been created somewhere else and saved there or a folder was created there, it was redone template-wise which I often do but - - -

THE COMMISSIONER: I think, Mr Newlinds, is it correct to say that evidence will be tendered to support the proposition you've just put to Mr Kelly?

MR NEWLINDS: That is the anticipation.

20 THE COMMISSIONER: I'm talking about the proposition about metadata.

MR NEWLINDS: Yes. Down here at the moment I haven't seen that evidence though but that - - -

THE COMMISSIONER: But it's coming?

MR NEWLINDS: That is my understanding.

THE COMMISSIONER: In other words you have oral instructions to that  
30 effect?

MR NEWLINDS: I do.

THE COMMISSIONER: But the written evidence will be coming?

MR NEWLINDS: Yes. I actually have instructions that anyone who knows the slightest thing about computers just knows this but that doesn't include me. Now, I suppose I should ask you, did you have a laptop from SHFA at the time?---I'm just trying to remember. I had laptops and I had desktops, I  
40 can't recall exactly at that time, I had, you know, a personal laptop at home which would've been mine but I think at SHFA I had a desktop.

THE COMMISSIONER: And, sorry, the laptop wasn't given to you by SHFA, that's your personal property is it?---It's one, you can purchase it through SHFA.

MR NEWLINDS: So if you had a laptop at the time it may well be the laptop?---Well, the question I'm asking that I'm not sure of is it also could

be that I created a file at some date such as whatever's on there and it could've had the questions which could've been sent to someone else who then could've put it on a letterhead it would still show the original file as being created by me.

If it be the fact that you had an involvement in the creation of this document - - -?---Yes.

10 And I'm just reminding you the trip to Dubai was on 26 May to 2 June?  
---Yes.

It tends to suggest that you had more involvement than your memory suggests prior to the trip?---No, as I said I recall certainly putting questions together for Seba.

THE COMMISSIONER: Are you disputing, I thought that you were accepting - - -?---I'm (not transcribable).

20 - - - this letter was written by you but I'm not sure if you're now saying, if I misunderstood you, Mr Kelly?---Well, what I'm saying - - -

This is the letter at page 227, an incorrect - - -?---Yes.

I thought that you accepted that you were the author of the letter and not necessarily the person who put it on the letterhead from what you've said but that you were the author of it, do I misunderstand you?---No, I'm saying I certainly remember doing questions for Seba and I may well have done the letter I just don't recall for certain.

30 MR NEWLINDS: Can we go to page 231 please?---Yes.

We're back to the old Costi's letter, chocolate shop?---Yes.

And there is a discussion paper which starts at 231 and goes through to 234?---Yes.

Which is not signed by anyone. Would you look at 234?---Yes.

40 And may I take it that you would've had some hand in preparing at least the information that found its way into that document?---No, not at all.

All right. Who can you tell us was involved in preparing that document?  
---It would've been prepared by the General Manager of The Rocks or her Property Manager.

And that was Debra Dawson at the relevant time?---Yes.

And if we look at 235 please?---Yes.

It's an email from Debra Dawson to Andrew Peters at SHFA - - - ?---Yes.

- - - cc'd into Bryce Cunynghame. Who was Andrew Peters at the time?  
---He was responsible for leasing.

10 And what Debra Dawson says is that "Following our discussion yesterday" so she's had a discussion with Andrew Peter she's advised Charif that "In order to consider the change of use, extension of term and lawful abatement request we will require a market valuation for the property recognising the change of use on the upper levels. This would mean that the paper would not be listed until the June Board meeting."?---Yes.

And then over the page at 236 the email we just looked at, then go to 16 May, 2007. At 236 we have Andrew Peters sending an email to yourself and Debra Dawson, is that right, DD and AK?---Yes.

20 "I've tried to contact you to discuss the above Board paper." And then a little bit further down, "I", that is Andrew Peters, "cannot support the recommendation on the basis that" and he sets out a basis, he awaits a response?---Yes.

So the position as at the 16 May or thereabouts 2007 (not transcribable) there was pending an application by the Kazals to firstly, change the permitted use in relation to 91 George Street?---Yes.

Secondly, obtaining abatement of rent in relation to that same property presumably because it had been empty for a while.---Yes.

30 And thirdly, to extend the term of the lease presumably because they were saying they'll have to spend a lot of money to fit it out as a chocolate shop?--Yes.

And all of that was under consideration by SHFA but the position, as at 16 May, was that it had not been agreed to?---That's right.

And all of that was happening with at least some input from you?---I believe there was no input from me at the time.

40 Well, you were then copied in - - -?---Yes.

- - -by Mr Peters and being told why he didn't support the proposal?---Yes.

And you were aware Debra Dawson - - -?---Had raised it.

- - -had an issue with the proposal?---And I said it shouldn't go up before all these issues were sorted.

And you said it should not go up at all to the board to the arrears of rent was sorted out.---Yes.

So it's not right that you had nothing to do with it, you did have input and you had put forward your position and recorded it in your notebook?---(not transcribable) preparing the paper.

Sorry?---I had no input into preparing the paper I commented on it at the executive meeting.

10

But the proposal from the Kazals or the request was something that had come within your daily work - - -?---No.

At least in terms of your position being - - -?---It went to the General Manager who was responsible for the change of usage.

And you said to the General Manager, I don't think this should go to the board at all until the rent arrears are cleared up.---I was offering my opinion, yes.

20

And you're the manager of the tenancies?---Well, again, there was separation of duties involved and the General Manager was responsible for those issues and from what I can recall at the time, the property managers were reporting to the General Manager as well. Things changed over the course of SHFA's - - -

THE COMMISSIONER: Did the General Manager report to you?---No, the - - -

30 MR NEWLINDS: Are you sure you're not distancing yourself from involvement in this because you know that all this - - -?---I'm merely stating the facts.

Just let me finish. That all of this, that is, the Kazal's application and the various non-decisions within SHFA were happening at a time when you knew that within a week or so you were about to fly out to Dubai with Charif Kazal?---No.

40 Because ordinarily you would have an input into this sort of decision, would you not?---No.

Ordinarily your views would be sought, would they not?---I'm only contacted as a process to alert him as to what's going on which is why I co-sign a board paper if it goes up.

So why do you say ordinarily your views would not be sought, you're the person in charge of the tenancies aren't you?---Well, like I said, not exactly because over the course of time the structure changed from when I started

running the division later on and you know, there was a period which I think includes this where the property managers reported to the general managers of the precinct and were taken out (not transcribable) they're the one's that dealt with the tenants on most of the day-to-day issues and this sort of stuff was a day-to-day issue that went to the General Manager.

10 THE COMMISSIONER: So just, how do you come about that you sent in a written, that you recommended that it shouldn't be dealt with until the rent in arrears were paid?---Because a process for all board papers required decisions effectively that went to the board, went to the executive meeting first so that the executive were all aware that it was proposed to go up. And I merely commented at the time having seen the arrears report at the start of the meeting that before you put that paper up you should sort out the arrears.

MR NEWLINDS: But the paper had a position for you to sign on it?---Yes.

Andrew Kelly, signature?---That's so that I was aware of what was going on because we could have been doing other tenant related issues that did affect.

20 Did it go to the board without your signature on it?---Generally, no, but it could have, if I wasn't around to sign at the time or whatever.

And wouldn't you be the person who would speak to the issue at the board level?---No, the general manger would have.

And wouldn't you be the person who was concerned if there was an empty shop down there in George Street?---Well, like all managers, yes, we wanted to sort out vacancies.

30 Because that's bad, not just in the sense that the tenant might stop paying rent, it's a bad look for the whole precinct, is it not?---Yes, it is.

Other tenants hate it when there's shops nearby that are empty?---That's correct.

The whole place has a smell of failure about it, does it not?---Yes.

40 Now that was something that you would be vitally interested in?---I was interested in it, yes.

And you don't seriously suggest that that recommendation would ever have gone to the board without your signature on it, do you?---No, I'm saying absolutely it could have, there were times when certain people whose name were put on a front of a report didn't sign it because they weren't (not transcribable) or the speaker to the report, and if we couldn't get them to sign, they didn't.

And when did this change in structure or chain of command actually happen, Mr Kelly?---You'll have to speak to HR.

Well, I'm asking you. You're the person who certainly at earlier points in time was definitely responsible for decisions such as this correct?---Not necessarily for this, but I was responsible for these- - -

These types of decisions?---Decision type issues.

10 THE COMMISSIONER: Who was the general manager who you say was responsible and not you for this?---Debra Dawson.

MR NEWLINDS: Well, let me ask you, when was it that you say that your job description or responsibilities changed?---I'd be absolutely guessing but it was a considerable period and it would have been probably the last at least twelve months while I was at SHFA.

20 Okay, well you left on 4 April.---I actually left in March. May 07 so that would have, included the period where the property managers no longer reported to me.

And is this change in responsibility to your understanding documented anywhere?---It would be documented at SHFA, yes.

Where would we find it?---The HR department should have organisational structures. Those documents used to also be put up on the website so, I'll have to have it there.

30 Did your title change?---My title didn't change but there would have been some communication done. There was, I recall an announcement by the CEO that explained the change in the organisation structure and how it was going to work.

Were the Kazals told about any of this?---I imagine they would have been made aware of it like others.

Did you tell them?---No. It would have been communicated by the property managers.

40 THE COMMISSIONER: Mr Newlinds are we getting to a time where - - -

MR NEWLINDS: We are yes. Could we break now and - - -

THE COMMISSIONER: There's just a couple of matters I just want to deal with.

Mr Kelly, there's something, I'm still troubled about 99 George Street, troubled in the sense in that I'm not sure that I understand the process. I

take it when remedial works are carried out to one of these buildings in The Rocks which are rented it, one of the reasons why you need to have somebody from SHFA there is to see exactly what the condition was before the work was carried out.---Yes.

Because if the work is carried out without knowing that you're largely dependent on the word of the tenant alone.---There's that, but we also did have for a lot of properties and I couldn't quote which one - - -

10 I'm not understood - - -?---There are graphic records as well.

I'm just talking about in general Mr Kelly, I see.---(not transcribable)

Let's take 99 George Street, did you have photographic records there?---I can't recall which ones we did but for say half the properties we had.

I understand. But you haven't mentioned photographs before in relation to 99 George Street, did you look at photographs of the condition before works were carried out on 99 George Street?---No, if I've not signed it, I wouldn't know.  
20

So, so you were dependent solely on the word of the tenant as regards to the prior condition and the work necessary to renovate or remedy the building less the defects. Is that right?---Not necessarily, as part of the process where they got (not transcribable) consent, it may well have been that the facilities manager had the heritage manager looked at the property.

Did the heritage manager look at the property beforehand here?---I don't know.  
30

Was that discussed with him?---I don't recall. You're going back four years, I don't remember (not transcribable)

I understand that. Did you tell me the name of the heritage manager?---Yes, Ian Kelly – no relation.

The, if you didn't know the prior condition how are you – I assume that the decision to pay something in order to avoid litigation became extremely discretionary?---I wouldn't say extremely discretionary because it was clear because it's an old building where work had been tell, if you suddenly go from a hundred year old floor to a new floor it's clear and you can look at the QS report which identifies, you know, QS identifies the invoices that have been paid and the likes looks at what the builder says they did and says, yes that invoice (not transcribable) represents - - -  
40

But you had no idea as to whether that was necessary or not?---Well, in terms of necessary, if they started doing works and as a result of it things were falling down and had to be fixed- - -

But something- -?- -it relies on a builder and a QS to, you know, substantiate that it made- - -

But if something was say shabby or, not shabby but the tenant didn't like the colour and wanted to change for that reason, you'd have no idea whether the change was required by reason of the condition or not, would you?---Well, you would have an idea?

10 Why?---Because they would have put in an application at the start saying, for the bulk, of the works, I mean there was over \$1,000,000 worth of works actually done, so it's only part of it that wasn't explained and, you know, it would be obvious to those that know the buildings and would have inspected them for other reasons on an ingoing periodic basis what the condition would be and whether that was a valid claim.

I take it it wasn't obvious to you?---It wouldn't have been obvious to me, which is why I would have spoken to the likes of the heritage guy who'd been there- - -

20

And why was it, why would it have been obvious to the heritage man?  
---Because they deal in things like conservation management plans which are prepared for all properties and are intimately involved in, you know, assessments of the condition of everything from walls to roofs, to doors, to windows.

But surely he would, accepting all that as being correct, surely he would not be able to make any reliable assessment unless he knew the condition before the work started?---No, that's what I'm saying, they do have processes that  
30 look, you have conservation management- - -

But did he do that?---Well, I'm saying I don't recall (not transcribable)

Did you check it?---I may have.

Is there, would there be a record of this?---Well, he still works there so ask him.

40 No, a written, is it part of the process at SHFA to create some kind of record of the condition so that there would, people would know that some kind of rational attempt was being made to determine how much should be paid?  
---Yeah. Well, there are conservation management plans that document the age and condition of buildings, there are also maintenance plans that the facilities team do that may include photographic records if it was one of the buildings that was done, and those people are also intimately involved in dealing with the building and you have people who are effectively quasi account managers that look at these buildings from time to time because they're in there for other things of a minor nature and are able to recall the

state of the building and you've got QS that verifies it against the invoices actually supplies.

You've mentioned those people a number of times. As far as I understand you, only one person did you consult?---I consult, yes, the heritage person, 'cause we already had a QS- - -

And you- - -?- - -that verified the cost.

10 Yes. I'm more interested to know whether the work was necessary?---Well, you know, it something that, you know, would have stood out. If it was for something that was purely cosmetic the heritage person- - -

Stood out?---Yes. You're, you're saying if it's not something that required doing and I'm saying if it was something that didn't require doing the heritage team would have said, we wouldn't have approved that.

20 How would the heritage team know if the work had been done without them inspecting it beforehand and looking at it for the first time when it had all been completed?---Because they'd have a conservation management plan which is often hundreds of pages long about that individual property and its age, condition and status in terms of heritage- - -

So for the heritage man to be able to give you reliable advice he'd have to go through a document carefully that was hundreds of pages long?---Well, he would have done that as part of the landowners' consent process and his role in the project.

30 Landowners' consent process?---Yes, when we- - -

And was there landowners' consent?---Yes.

Landowners' consent to what?---It's a process where that's given before they can lodge a DA to do the works at the start.

40 But I thought they went ahead without authority?---No. They got a DA, as part of the works they did, additional works were done because some of the works that they had approval to do uncovered greater problems once they took walls off and things like that.

All right. So, so we need to find out whether the, whether the person who you spoke to did all this preparatory work before speaking to you and we should ask him?---Yes.

Very well. Yes, thank you, Mr- - -

MR KORN: Just one housekeeping matter, Commissioner. Page 376, Mr Kelly was taken to as my client's then credit card statement. And I know

it's inadvertent but there's an account number there and the document's now public. I was just wondering if we could get some substituted and have that blanked out. He can do it with- - -

THE COMMISSIONER: Well, I'll make a Suppression Order, Mr Beech-Jones. There will be an order that there be no publication whatever of Mr Kelly's credit card number and address.

10 **SUPPRESSION ORDER, MR BEECH-JONES. THERE WILL BE AN ORDER THAT THERE BE NO PUBLICATION WHATEVER OF MR KELLY'S CREDIT CARD NUMBER AND ADDRESS.**

MR BEECH-JONES: Thank you, Commissioner. Maybe the one in the public gallery can be swapped, a blank one just (not transcribable).

20 THE COMMISSIONER: Yes. Yes. We will attend to that. Mr Beech-Jones, while you're on your feet there will be matters that have been raised with Mr Kelly about which you would have no instructions because they were raised without you knowing about them so there is no objection from the Commission's point of view for you speaking to your client about those matters and taking instructions.

MR BEECH-JONES: Thank you, Commissioner. In terms of the timing, because I wasn't here this morning I may need to do that tomorrow morning on the assumption that the transcript goes out tonight.

30 THE COMMISSIONER: We won't stop, Mr Beech-Jones, we will start at - - -

MR BEECH-JONES: (not transcribable).

40 THE COMMISSIONER: What I'm indicating, we have had problems, I certainly regard the treatment of a person who's giving - is in the process or in the course of giving evidence as we enter examination as in a trial and it's then the convention that that person's legal representatives do not discuss the evidence with him until he's finished. What I'm endeavouring to say to you is that while that convention applies as far as I'm concerned are at liberty to speak to Mr Kelly about any matter which was raised today for the first time and about which you could've had no prior knowledge.

MR BEECH-JONES: Can I say two things. I won't use that, I'll only use that sparingly and the second problem I personally have is I wasn't there for the private examinations, transcript have been requested but refused so when we say previously raised - - -

THE COMMISSIONER: Raised, I understand that. I understand that that you can take that broadly.

MR BEECH-JONES: If the Commission pleases.

THE COMMISSIONER: Yes.

MR KORN: Did you indicate a moment ago that there would be a transcript of today's proceedings available today or this evening?

10

THE COMMISSIONER: There should be. I'm not sure whether it will be, it will certainly be available, I'm not sure when and it might be available this evening, I'm not sure what arrangements have been made. I understand it should be available. Yes, the Commission will adjourn till 10.00am.

**AT 4.08 THE MATTER WAS ADJOURNED ACCORDINGLY**

**[4.08pm]**