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PUBLIC
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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION CREDO AND SPICER

Reference: Operation E12/2107/0821

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 16 APRIL, 2014

AT 10.10AM

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

THE COMMISSIONER: Yes, Mr Watson.

MR WATSON: Commissioner, just before we resume the evidence, there's been a pretty substantial development on a significant matter overnight. I need to tender three pages, they're copies of a, of two documents. One is an envelope addressed, in we believe the handwriting of Mr O'Farrell, addressed to Mr and Mrs Di Girolamo, the second page is a copy of the front of a card emanating from the New South Wales Parliament and the third is a note we believe in the handwriting of Mr O'Farrell and on the card issued from the Office of the Premier of New South Wales, thanking Mr and Mrs Di Girolamo for their gift, being "A bottle of wonderful wine from 1959." I tender those documents.

THE COMMISSIONER: Yes. That will be Exhibit C115.

**#EXHIBIT C115 – COPY OF A CARD AND LETTER RECEIVED
BY NICHOLAS DI GIROLAMO FROM PREMIER BARRY
O'FARRELL THANKING HIM FOR HIS CARD AND BOTTLE OF
1959 WINE**

MR WATSON: Commissioner, can I just say this. We're trying to bring this matter to a close but it would seem as though we may need to recall Mr O'Farrell.

THE COMMISSIONER: Yes. Have some steps been taken to contact Mr O'Farrell through Mr Agius?

MR WATSON: Yes, and the other point I'd make is this, is that investigators from ICAC are speaking this morning to the Managing Director of the courier company and getting some further information from him, so it seems only appropriate to defer further examination of Mr O'Farrell until such time as we have that additional information.

THE COMMISSIONER: Thank you.

MR WATSON: I appreciate that this is a fairly significant matter, but nevertheless - - -

THE COMMISSIONER: It has to be done I think.

MR WATSON: I recall Nicholas Di Girolamo.

THE COMMISSIONER: Yes, Mr Di Girolamo, could you come back into the witness box, please.

<NICHOLAS ANTHONY DI GIROLAMO, on former oath [10.11am]

THE COMMISSIONER: The section 38 order that I made continues to apply, as does your obligation to tell the truth in these proceedings?
---Thank you, Commissioner.

SECTION 38 ORDER CONTINUES TO APPLY

10

Thank you. Yes, Mr Oslington.

MR OSLINGTON: Before your counsel objected yesterday, and I'm not critical of that, I was asking you for your acceptance that during 2007 and 2008, Rouse Hill Infrastructure Consortium Pty Limited's sole source of funds was money derived from Sydney Water under the RFH3 reimbursable contract. And I want to ask that question again, subject to one exception. There was about 100, 120-odd thousand dollars reimbursed during that
20 period, during the latter part of that period by Australian Water in respect of the shared office expenses agreement. So with that exception, do you accept that during 2007 and 2008 the sole source of income of RHIC Pty Limited as it then was, was money derived from Sydney Water?---No.

All right. Where else do you say any money came from?---From my recollection, Mr Oslington, without having the exhibit that identifies various moneys going in, I think there was the \$633,000 from an account that was closed down that belonged to RHIC in April of 2008, sir, and I think there were some other incidentals that may have been referred to previously, but
30 other than those two exceptions I accept what you're saying.

I will come to the 600-odd thousand dollars in a moment. Have you seen Mr Chadban's notes on that 600,000?---I don't recall.

That 600,000 in fact was interest earned on the facility which whilst in place was invested with First Colonial, wasn't it?---I don't know the details of that, that money, sir.

And that, and that facility or that interest was properly money of AWH, wasn't it?---I'm assuming it was money properly of AWH, yes.
40

I'm sorry – I'll withdraw that question. That money was properly money of Sydney Water, wasn't it?---That is not my understanding.

Well, what is your understanding of it?---That it was money that was in a bank account that belonged to RHIC from previous stages that was being closed and the money was being redirected to another account of RHIC.

That was the information that I received from Mr Rippon and Mr MacGregor Fraser.

Commissioner, rather than take the witness to Mr Chadban's notes about that, because apparently he hasn't seen them and doesn't refer to Mr Chadban, the notes relevant to this are in Exhibit 21, C21 towards the foot of page 4174. It's picked up again about halfway down page 4178 and again about one-third of the way down page 4179. And just one other thing from yesterday, I drew your attention to Exhibit C86, C86 which is a
10 collection of the MBT certificates for each month in 2007 and the documents described as profit and loss statement during 2007, and I sought your concurrence that they showed that Rouse Hill Infrastructure Consortium Pty Limited's total expenses for each of those months was an amount equivalent to the MBT certified amount. Do you recall that?
---I think so, yes.

And do you agree that that is correct?---(No Audible Reply)

Would you like to see the exhibit again?---If you don't mind. I'm happy to
20 take your word for it, Mr Oslington, but if you want me to look at the exhibit, I'll look at the exhibit.

Because you see what is described as the profit and loss statement for each month is under the heading of Rouse Hill Infrastructure Consortium Pty Limited?---I do recall that, sir.

Yeah. And Mr George said he prepared that?---I do recall that too, sir.

Yes. So either Mr George got the so-called profit and loss statement, which
30 is really a list of expenditure, wrong, or the total expenditure each month was equivalent, of Rouse Hill Infrastructure, was equivalent to the amount certified. Do you accept that?---Can you just put that second part of that proposition to me again, sir?

Unless Mr George got his profit and loss statements wrong, those documents show that each month the total expenditure of Rouse Hill Infrastructure Consortium Pty Limited was equivalent to the amount certified by Mr George.

40 MR ALEXIS: Well, I object to the question because it contains an important assumption, namely that the profit and loss statement from month to month was precisely the same as all of RHIC's operating expenditure for that month.

MR OSLINGTON: Oh, look, I object to this. Really, it is an interruption.

MR ALEXIS: Well, it's not an interruption, with respect, because the assumption is as I've stated it and the witness hasn't agreed with that assumption so- - -

THE COMMISSIONER: Well, can we, can we build that assumption into the question? If the witness doesn't agree with it, that's one thing, but it has to be put, doesn't it, because it may be a finding ultimately that is made.

10 MR ALEXIS: But, Commissioner, there is no issue that there is equivalence between the certified amount and the amount of expenses listed on the profit and loss statement. There's no question about that.

THE COMMISSIONER: No, that's right.

MR ALEXIS: Nor could there be.

THE COMMISSIONER: That's right.

20 MR ALEXIS: But my learned friend has built into his question the assumption that Mr George's P&L statement for the month is the equivalent of all of RHIC's expenditure for that month. Now, as a matter of fact, Mr Di Girolamo has not accepted it and if he wants to put the question in the way that he did- - -

MR OSLINGTON: Well, I'm not sure- - -

MR ALEXIS: - - -then he needs to make good that factual premise before he puts the question that way.

30 MR OSLINGTON: My learned friend needn't, needn't assert in his objections what he believes Mr Di Girolamo's evidence was. The profit and loss statements are headed Rouse Hill Infrastructure Consortium Pty Limited- - -

THE COMMISSIONER: Yes.

MR OSLINGTON: - - -without qualification.

40 THE COMMISSIONER: It's a question that's framed in terms of the face of the document, Mr Alexis, I don't see any problem with, with framing the question based on what the documents purport to represent.

MR ALEXIS: There's no difficulty with that provided it's understood by the cross-examiner that Mr George's evidence was that this was the - - -

MR OSLINGTON: I'll ask another question, I'll ask another question.

MR ALEXIS: This was prepared based on material that he was provided.

MR OSLINGTON: I'm limited in time, I'm withdrawing the question.

THE COMMISSIONER: I understand that.

MR OSLINGTON: I'm asking another one. Do you have any basis for asserting that any of Rouse Hill Infrastructure Consortium Pty Limited's expenses during 2007 were met other than from the amounts paid pursuant to the certifications for that year?---No, unless the bank accounts showed otherwise.

Thank you. Thank you. Now could I go to Exhibit 54 and I'd asked if you be given a copy. I'm sorry, before I do that Counsel Assisting provided me and Mr Alexis this morning with a listing of the shared office expenses which I referred to earlier - - -

THE COMMISSIONER: Yes.

MR OSLINGTON: - - - and there's been some amendment, some addition made to that to bring it to about \$120,000. I don't know whether - I'll tender that in due course or perhaps Counsel Assisting wants to get the document completely tight rather than handwritten annotations.

MR WATSON: What I'll do is I'll have the accountant Mr Lockley who prepared it for me hears this and I'll ask for somebody to come down and collect the one with handwritten annotations - - -

THE COMMISSIONER: And then it can - - -

MR WATSON: - - - so that Mr Lockley can check whether or not they should truly be amendments made to the document. Thanks.

THE COMMISSIONER: All right, thank you.

MR OSLINGTON: All right. Now do you have Exhibit 54?---No, I think it's on its way.

All right. And I would ask that you also be given Exhibit C49 page 298. Whilst that's being fetched I'm told that Exhibit 54 is a document prepared within ICAC from contemporaneous records. I'm also informed that the exhibit does not list all of the payments made by Australian Water during the period to which it relates.

MR WATSON: That's correct, I confirm that.

THE COMMISSIONER: Thank you.

THE WITNESS: What page number sorry, Mr Oslington, in C49?

MR OSLINGTON: Page, page 298?---Yes, I have that.

Then go to the second page of Exhibit 54 and you will see on the 10 June 2008 a deposit of 176,000, the source of the deposit being RHIC Pty Limited?---I see that.

10 And that's a deposit in payment of the tax invoice Exhibit C49 at page 298 issued by Australian Water to Mr Rippon of RHIC isn't it?---That's correct.

And the description of the invoice describes it as being for the period March April 2008?---That's correct.

20 And it records services rendered by Australian Water Pty Limited in providing assistance advice from attendants at meetings for and on behalf of RHIC for the following matters, review and appraisal of project documentation, briefings and meetings with Allen Arthurs Robinson, discussion with RHIC and RH3 and detailed review of correspondence from Sydney Water, drafting and settling letters to Sydney Water, funding strategies for RH3 and it says that services were provided from 1 March to 26 April \$160,000. Who, who in Australian Water provided those services?---Predominately it would have been me and my assistant.

So in March and April in addition to receiving the \$275,000 a year from AWH and possibly another 13 and a half thousand dollars a month from AWH you effectively receive this additional \$160,000?

30 MR ALEXIS: I object to the question. The documentation makes it crystal clear that this was received by - - -

MR OSLINGTON: All right, I'll withdraw the question, I'll withdraw the question, Mr Alexis.

MR ALEXIS: - - - a company Australian Water not Mr Di Girolamo.

MR OSLINGTON: Could Mr Alexis sit down seeing I've withdrawn the question?

THE COMMISSIONER: Yes, all right. But it's, it - yes, look in any - - -

40 MR ALEXIS: Well, I'm sorry, but I do - - -

THE COMMISSIONER: Well, all right, all right. We would move a lot more quickly if we just got to the question that is being asked and Mr Oslington has withdrawn it, so we'll go to the next question. Thank you, Mr Oslington.

MR OSLINGTON: The source of your \$275,000 a year from AWH during 2007 was Sydney Water money wasn't it?---Yes.

As was if it was paid the 13 and a half thousand dollars a month?---If it was paid, yes.

And this \$160,000 the source of that money was Sydney Water wasn't it?
---Yes.

Thank you. And then the next invoice is at page 400 of C49?---400, Mr Oslington?

10

Page 400?---I have that.

And - - -?---The same would apply, Mr Oslington.

Thank you. And that's an invoice for at least so far as your involvement is concerned 216,000 odd dollars?---Yes.

20

So for March, April, May and June in substance the income from Sydney Water – I withdraw that. Your income from AWH funded by Sydney Water was your \$275,000 a year plus possibly 13 and a half thousand dollars a month plus the amounts on these two invoices?---No, I don't – I think the 275 was for the period 1 February '07 to 1, to the end of February '08 for that 12 months.

I see?---And then April, March going forward then in relation to these invoices, Mr Oslington.

30

March going forward. Well what were you paid by, by AWH from March 2008? I thought you, I - - -?---No, no, no, no, no. I'm saying, I'm saying the 275 related from February to February.

I see. But I thought you said you transferred to AW to AWH in June?
---That's correct.

Are you saying you went without pay from AWH?---No.

For a number of months?---No.

40

Well just come back to Exhibit 54. You've no doubt examined this exhibit have you?---I have.

You haven't?---I said I have.

You have, yes. Just, just take for instance the period from 10 October 2007 through to the end of the year, you on a regular basis are being paid substantial sums of money, sometimes in sequential days by Australian Water aren't you?---I accept that.

It has the appearance of you treating the Australian Water account as your own personal bank account doesn't it?---I disagree.

Well on 13 November for instance you're recorded as withdrawing 25,000, the following day on 14 November \$23,438.50, the day after that the 15 November 6,000.

10 Do you have any recollection of what those withdrawals were made for?---I would have assumed it would have been my pay.

Why was it withdrawn with such frequency and such large amounts, it can't be housekeeping money surely?---No, but I think there was a limit on the account, you could only transfer \$25,000 at one time per day.

You weren't using any of it for gambling were you?---No.

Were you short of money at that time?---No.

20 You were coming short of money towards the end of 2008 weren't you?---I disagree.

Well, you had to borrow money to contribute to the company towards, or when was that 2010? When did you borrow money?---I think it was 2010.

You were becoming short of money then weren't you?---The company was yes.

30 And you were too weren't you?---Well I'd have to look at the circumstances of what was going on in 2010.

Well you had to borrow money from Eddie Obeid to lend to the company to pay it's tax rather than drawing on any asset or funds of your own, didn't you?---Yes.

And that's because you didn't have any available assets or funds of your own to contribute isn't it?---I had assets.

40 Liquid assets which you could realise?---I'd have to go through all my accounts but I accept the proposition that I needed to borrow money yes.

And you were absolutely confident at that stage that you would get the PPP through weren't you?---I was hoping I'd get the PPP through, yes.

You had a high degree of confidence didn't you?---I had a degree of confidence yes.

And you believed that once the PPP is through AWH would be in a solid financial footing in a capital sense that you would have access, ready access

to substantial funds and that the convertible note holders would then be satisfied?---Yes.

And with the PPP through you'd essentially have Sydney Water off your back?---It would change the relationship, yes.

And you were simply trying to hold things together in the confidence that the PP (as said) would get through and solve your problems?---Well, the PPP was the target of what the business wanted to achieve.

10

And during that time drawing large sums of money from AW and AWH to fund your own lifestyle?---I don't accept that Mr Oslington.

You were having difficulty funding your lifestyle in 2010 weren't you?---I don't accept that Mr Oslington.

All right. Now - - -

20 THE COMMISSIONER: Was your employment with the company your only source of income, in other words, you didn't have any other source of income from consultancies or things of that nature?---Not at that time Commissioner.

MR OSLINGTON: Did you have any investment income?---It wouldn't have been significant.

Did you have any investments beyond your investment in AHW?

30 MR ALEXIS: I object.

THE COMMISSIONER: I'm sorry, I didn't hear that.

MR OSLINGTON: Did you have any investments beyond your investment in AWH?

MR ALEXIS: I object to the question. There needs to be an end to this, with respect, I mean - - -

40 THE COMMISSIONER: Well, what's wrong with the question, it's not objectionable as to form.

MR ALEXIS: Well, it's entirely irrelevant Commissioner.

THE COMMISSIONER: Well, I don't know that it is, because the proposition's been put that, that he was essentially using the company account as his personal bank account, it follows, does it not, that we're entitled to determine whether or not there could have been any other sources of income.

MR ALEXIS: Well, that was asked and he - - -

THE COMMISSIONER: And he said it was negligible.

MR ALEXIS: And it was negligible and - - -

MR KOSTOPOULOS: Commissioner, doesn't it also go to motive, I mean goodness.

10

THE COMMISSIONER: In any event, I'll allow this one further question on the subject Mr Alexis and then we can finish it.

MR ALEXIS: Thank you.

THE COMMISSIONER: Yes, Mr Oslington.

MR OSLINGTON: Can you answer the question?---Can you repeat it sorry, Mr Oslington.

20

Did you have any substantial investment, investments other than your investments in the Australian Water companies?---Not substantial, no.

Now, at page 2452 of the transcript, and I, you probably needn't go to it, Mr Watson was asking you questions about the normalisation by Mr Groom and you said at about line, you were asked this question at line 20, and the date of that invoice from the courier, ha ha.

MR ALEXIS: The wrong place. I think it's 2245.

30

MR OSLINGTON: 2245 thank, you. At 2252 you were asked about normalisation so a purchaser would say I'm not paying any more than \$350,000 for a director's salary, in your case and in the case of Mr Rippon he's actually not contributing anything so I regard him as excessive to requirements and in effect, and you said, "The uniqueness being that the directors were also the shareholders therefore they profit." Do you recall giving that answer?---I do.

And the director's your referring to were the director's of RHIC, correct? ---Yes.

40

And they are in the unique position in that they are also the shareholders therefore there would be a profit, correct?---There could be a profit, yes.

And indeed, your answer was, the uniqueness being that the directors were also the shareholders therefore, they'd be a profit and they'd obviously should be, therefore there would be a profit, correct?---Yes.

So therefore your understanding was that within the payment to the directors being shareholders there was a profit element?---Yes.

And I think you agreed with me the other day that a common way or not an unusual way in which private companies running a business choose to take their profit is rather than take it by way of dividends out of profit of the company that which would otherwise be recorded on the profit is added to the directors salary?---I accept that proposition that you put to me Mr Oslington.

10

And that essentially based upon the answer I've just taken you to was the position with RHIC, wasn't it?---Yes.

So it would be quite untrue to say if that position existed that RHIC was a not for profit company, wouldn't it?---No, that would not be untrue.

20

Because you see - - -?---Because you can't have both, you can't have, I've accepted your proposition Mr Oslington but you can't have both, you can't be saying well, either the company makes a profit and you set wages at a particular level or alternatively the wages or the salaries include a profit element.

So you claim do you, even though there's this unique profit element in the director's salary it is still correct to call the company a not for profit company, is that what you're saying?---I'm saying that's how the company traded.

30

Are you saying it is correct in those circumstances to describe the company as a not for profit company?---Yes.

That's just being tricky and deceptive isn't it Mr Di Girolamo?---I reject that.

I can take you to it if you like but, in the submissions prepared by Mr Lockhart on instructions from Allens before Mr Easton on a number of occasions in those written submissions it was asserted that RHIC was a not for profit company, do you recall that?---Yes.

40

And you carefully looked at and reviewed those submissions and knew that submission was made?---I don't cavil with the submission.

And you didn't say anything in those submissions or didn't cause anything to be included in those submissions to disclose that in fact the profits were distributed to the shareholders, did you?---Those accounts don't show profits being distributed to the shareholders.

No, but you've just agreed that the uniqueness of RHIC was that what otherwise would have been profit of the company was distributed to or paid to the shareholders by way of salary, haven't you?

---I was accepting your general proposition in that regard.

No, you weren't, you agreed that in relation to RHIC what otherwise would have been profit of RHIC was in fact added to the shareholders' salaries?

---I'm struggling with the bit added, the salaries had been set.

10 It was included, all right, included?---The salaries had been set, Mr Oslington.

Included in the shareholders' salaries?---I'll accept that proposition, yes.

So what otherwise would have been profit of RHIC was included in the shareholders' salaries. You accept that?---Yes.

And you said that that didn't then disqualify RHIC as being described as a not-for-profit company, didn't you?---I said that.

20

But in fact the profit, the profits or earnings of RHIC were distributed to the shareholders at RHIC within their salary, weren't they?

MR ALEXIS: Commissioner, can I object? We've had this I think at least four times and it's been accepted. I'm not sure why we need it a fifth time.

MR OSLINGTON: This is another interruption. I've got a limited time.

MR ALEXIS: I do have my eye on the time, Commissioner.

30

MR OSLINGTON: Now, will you answer my question or have you, or have you forgotten it?---Well, I- - -

THE COMMISSIONER: Well, go on, Mr Oslington, ask it again. We have to keep it moving.

MR OSLINGTON: In fact the profits or earnings of RHIC were distributed to the shareholders through their salary, weren't they?---Yes.

40 So it would be false to state that it is incorrect to suggest that profit or earnings are made or distributed to the shareholders or executive directors of AW, wouldn't it? AW meaning AWH?---I've lost the question.

It would be false to assert this quote, and I'm quoting from the submission, "It is also incorrect to suggest that profit or earnings are made or distributed to the shareholders or executive directors of AW," meaning AWH?---I don't accept that.

And I suggest that that statement included in the submission to Mr Easton was a bit of deceptive trickery on your part?---No.

I'm not sure whether that submission is in evidence. We have folders and I'll give it to Counsel Assisting.

THE COMMISSIONER: Thank you.

10 MR OSLINGTON: The passage I refer to, I refer to is on page 4 of the submission, at page 13 it's the RH3 reply to Sydney Water decision paper on schedule 1, paragraphs 3 to 7, 23 November, 2009. And AW is defined earlier in the submission as AWH.

Now, yesterday you referred to the project budget as some sort of justification for the, as some sort of justification for the high level of salaries paid. Do you recall that?---Yes.

20 And the invoices under dispute by Australian, by Sydney Water were invoices in which you were essentially seeking a top-up of the budget because you'd spent the budget and wanted more money. Correct?
---A reallocation, yes.

Yes. And would you go to volume 3 or probably Exhibit C3, to pages 883?
---Thank you very much. 883?

To page 883, which is schedule 3 to the RHI3 Deed, headed Former Project Budget. On that page about halfway down there's RH3's cost of operation recorded at 15 million 490 thousand. Correct?---Yes.

30 That tells you nothing about the salaries being paid to executives and directors, does it?---No, that's the budget that's agreed to and the salaries are contained with that category.

And the salaries aren't recorded anywhere in this budget, are they?---No.

And then if you go to page 886 there's some refinement of the budget cost categories?---Yes.

40 Including management and administration but there's nothing in that, in other words there's a broad scope breakup of the 15 thousand 490 thousand dollars (as said) isn't there?---Of the 15 million.

And that tells you nothing about the salaries being paid to Mr Rippon, you or Mr Mackenzie Fraser (as said) does it?---Not individually, no.

And not even collectively. Correct?---This was the breakup that was agreed to between the parties under the contract.

Not even collectively. Correct?---Ah, well, the salaries were included in these categories.

THE COMMISSIONER: But it doesn't refer to them separately is what's being put to you, that's what's being put?---No, not separately.

No.

10 MR OSLINGTON: Nor are they, nor are they referred to collectively, are they?---(No Audible Reply)

THE COMMISSIONER: As salaries?---No.

No.

MR OSLINGTON: So there's nothing in the project budget to inform the reader of the sort of salaries being paid?

20 MR ALEXIS: I object to this.

THE WITNESS: The project budget shows what the, what the bargain was reached between the two parties, Mr Oslington. I have tried now for a number of days to explain that. The project budget sets the parameters. I can take you through the, through the contract and demonstrate to you how it worked if you so choose. Category 13.1(b) II(F) is cost of operations. Within that the two parties, the bargain they reached was executive salaries would be within those costs of operations.

30 MR OSLINGTON: And- - -?---The bargain went further, sir. The bargain did not require RHIC or its executives, as I understand it, to disclose individual salaries. That proposition was in our submissions that you have referred to before the preeminent expert, Mr Graham Easton, and as I understand, the decision that he reached on 16 January, 2010, he accepted that proposition.

THE COMMISSIONER: Well- - -

40 THE WITNESS: And what he said was that pursuant to 13.1(b) II(J) a budget reallocation will occur when the, when the category 13.1(b) II(F) cost of operations is out of petrol.

THE COMMISSIONER: Now, Mr Di Girolamo, before you go any further, we appreciate that you're trying to explain these things but unless you answer the question it's going to take a lot longer. But just in relation to what you said a moment ago, when you suggested that the bargain between the two parties included an agreement as it were or a term as it were that the salaries of directors need not be disclosed, where did that come from? ---That was the very genesis of the relationship as I understood it.

Well, but you said the bargain included that term. Was this something that you gleaned as a term of the agreement before you came on board?---As a term of the arrangement before I came on board, from day 1, from inception.

Well, who told you that that was the term of the arrangement?---My two fellow directors who had been t here from day 1.

10 Did you ever see that term in writing anywhere?---It's the way the parties had traded from day 1, Commissioner.

Well, the answer to that question then is no?---There's no term, there's no, there's no specific term that said specifically that.

And did you ever discuss with anyone from Sydney Water the fact that there might have been a term in the original agreement that did not require you to disclose salaries?---We discussed that as a general proposition, yes.

20 But that was later on after you were in dispute with Sydney Water? That was, that, that - - -?---That's when the issue arose.

Yes?---Yes.

But all along you're proceeding on the assumption that it was a term of the agreement that you were not required to disclose directors salaries?---Yes.

MR OSLINGTON: And you were simply taking advantage of that, of that term - - -

30 THE COMMISSIONER: If there was one.

MR OSLINGTON: - - - if there was one to commit a fraud on Sydney Water by concealing - - -

MR ALEXIS: I object.

MR OSLINGTON: - - - payments.

40 MR ALEXIS: I object.

MR OSLINGTON: I'm going to put, I'll be - - -

THE COMMISSIONER: Well he's got to put the question, Mr Alexis.

MR ALEXIS: Well he can't improve by my learned friend completing it because it proceeds on an utterly false premise, and is it seriously suggested

that the project budget that we see relevantly exposed at page 886 just came out of thin air?

THE COMMISSIONER: No, that's not what's being put. What's being put is that this witness relied upon an alleged term in an agreement which he says did not require him to disclose salaries in order to perpetrate a fraud of Sydney Water, that's what he's putting.

MR ALEXIS: Yes, but - - -

10

THE COMMISSIONER: What's wrong with that?

MR OSLINGTON: Well I was going to finish the question.

MR ALEXIS: Well it proceeds on the - - -

MR OSLINGTON: To commit a fraud on Sydney Water by concealing the level of payments being paid to directors and other unauthorised payments being charged?---I don't accept that.

20

MR ALEXIS: My learned - - -

MR OSLINGTON: That's, that's my complete question.

THE WITNESS: And I just don't accept that, Mr Oslington, I'm sorry.

MR ALEXIS: Commissioner, my learned friend should well understand that there was documentation provided and dialogue that led to the parties ultimately - - -

30

MR OSLINGTON: The question's been asked and answered.

MR ALEXIS: - - - agreeing the project budget.

MR OSLINGTON: The question's been asked and answered.

40

THE COMMISSIONER: But the project budget, Mr Alexis, is an entirely separate question from whether or not there was this so-called term in an agreement that existed before Di Girolamo came on board, that essentially was accepted by Sydney Water to the effect that the salaries paid to directors need never be disclosed. Now that, that's a separate question and, and that was proffered by Mr Di Girolamo. So the question's been asked and answered, it can't lead to a proposition, it's been denied by the witness.

MR ALEXIS: May it please.

THE COMMISSIONER: Yes, Mr Oslington.

MR OSLINGTON: Yesterday at 242, at 2426.30 I asked, I asked you about Mr Chadban and his evidence and what is recorded in his diary about non disclosure instruction given by you and you provided an answer to me yesterday, I then drew your attention to your Counsel's cross-examination of Mr Chadban on the topic and you told the Commissioner that that cross-examination accorded with your instructions. Do you recall that?---Yes.

10 And you told me that you heard Mr Chadban give his evidence but you claim that you also heard not in evidence presumably Mr Chadban saying that we ended up taking out those expenses. Do you recall giving that evidence?---Yes.

That was never put by your Counsel to Mr Chadban was it?

MR ALEXIS: I object. I did. It's at page 1083.

MR OSLINGTON: What page?

20 MR ALEXIS: 1083 and I don't have it in front of me but my recollection is about point 3 on the page.

THE COMMISSIONER: All right. Well the record will speak for itself I think.

MR ALEXIS: Thank you. Yes, I'm sorry, I withdraw that. It's 1083 between lines 20 and 30.

THE COMMISSIONER: Thank you.

30 MR OSLINGTON: And I suggest your evidence given in answer to my question was simply false?---I disagree.

It's an example of you trying to avoid conceding the accuracy of fairly clear evidence from Mr Chadban that paints you in a bad light?---I disagree.

40 And I also asked you yesterday, or I'll ask a fresh question, do you claim that if you had disclosed the level of Mr Rippon's salary to Sydney Water during the course of the dispute Sydney Water would not have been aghast at that - - -?---I don't know the answer to that.

Well yesterday you said you dispute the proposition that they would have been aghast?---I'm happy to go to the transcript, Mr Oslington, I don't know how to answer a question that wasn't made and I don't know what Sydney Water may or may not have been thinking.

But surely you gave some thought at the time as to what the result of disclosure to Sydney Water would be of the information they were

requesting?---My thought process was around the fact that we were acting within the confines of the contractual relationship, Mr Oslington.

You realise that is totally inconsistent if you told Mr Chadban not to disclose during the course of the dispute those charges he'd identified as being inappropriate don't you?

MR ALEXIS: Well I object to that because it's not Mr Chadban's evidence. My learned friend should look at 1082 and 1083 again.

10

MR OSLINGTON: If you told Mr Chadban during the course of the dispute not to disclose the incorrect charges he had identified that would be quite improper on your part wouldn't it?---If I had?

Yes?---Yes.

And what Mr Alexis put to Mr Chadban recorded at 103.2 and I quote, "And what he said to you is look, just leave it in for now and we'll concede it later because we're going to then negotiating the resolution of this dispute with Sydney Water." Is that what you claim you said to Mr Chadban?
20 ---Words to that effect, yes.

So you wanted to keep, you didn't want to weaken your negotiating position on that version anyway but disclosing incorrect charges?---I don't accept that.

Well why else would you have told Mr Chadban to leave it in for now because we're going to be negotiating the resolution of the dispute?---The intent was it was going to be disclosed, he was the person who was
30 responsible for, for that um, dispute at that point in time and as I understand it they came out.

THE COMMISSIONER: But, Mr Di Girolamo, there could have been no basis at all in the first place for leaving those charges in, they weren't related to, to stage 3 works?---Commissioner, I don't recall the full end of that discussion with Mr Chadban.

Well that - - -

40 MR OSLINGTON: According - - -

THE COMMISSIONER: Anyway, go on.

MR OSLINGTON: According to the question asked by your own Counsel which you said was on your instructions you told Mr Chadban to leave it in for now. Was that a true answer, was, was that true?---That was based on - - -
-

Was that correct?---Sorry?

Did you tell Mr Chadban to leave it in for now?---I may have said words to that effect. Like I said I did not have a clear recollection of this conversation.

Well your Counsel - - -?---There was no intent on my part to hide or disguise those charges. If those charges in 2009 it shouldn't have been there, they should have come out.

10

Why did your Counsel put to Mr Chadban that you said, "Just leave it in for now"?---Maybe you need to ask my Counsel.

But you've already agreed - - -?---Well I accept, I accept that.

- - - that the question accorded with your instructions?---I don't know how to answer, how else to answer it, Mr Oslington.

20

THE COMMISSIONER: Just a minute. The problem, Mr Di Girolamo, is this. Regardless of whether or not you said words to the effect of leave it in for now because we might be conceding it later on in the negotiations, the principal point is the one I put to you a moment ago. These charges should never have been included in the first place because they didn't relate to stage 3 works, which is what Mr Chadban was pointing out to you?---Yes. And I was reconstruction, reconstruction my recollection based on what he had written down. I had no recollection of saying to him, leave them in.

30

Well, all right, I accept- - -?---But that's, that's, that's the situation, Commissioner.

All right. I accept that, but, but, but what do you say to the proposition that the charges should never have been put in there in the first place, which was what Mr Chadban was pointing out to you?---They should never have been in there.

Yes?---I accept that.

Right?---Absolutely.

40

MR OSLINGTON: And they should have been taken out the moment you learnt of them, shouldn't they?---Yes.

And they weren't, were they?---I don't know. I don't recall that. I'm going on a note in someone else's diary.

THE COMMISSIONER: I think the witness can't contradict you, Mr Oslington.

MR OSLINGTON: Mmm.

THE COMMISSIONER: On that score anyway.

THE WITNESS: And I don't want to contradict because I don't know.

MR OSLINGTON: Now, concerning your involvement with the invoices – are these in the exhibit? Maybe it's sufficient on the transcript. Can I show you tax invoices from Australian Water Holdings Pty Limited to Rouse Hill Infrastructure dated 16 January, 2008, 12 December, 2008, 20 January, 2009, and just look at them. These are all tax invoices signed by you, aren't they?---(No Audible Reply)

They're similar to all of those invoices in 2008 that Mr Rippon was meant to sign but apparently didn't get (not transcribable) to do so, except for one, one month?---Yes, I signed those.

And you would have been right on top of the finances of AWH at that time, wouldn't you?---Yes.

And you would have been right on top of what had been invoiced, wouldn't you?---I would have been on top of what I signed in relation to the payment schedules.

Well, who took responsibility for what was given to MBT for certification? ---I thought we discussed the process.

Who took responsibility for what was given to MBT for certification during 2007 and 2008?---Mr John Rippon.

What, the director who's sick and can't come here?

MR ALEXIS: I object to that.

MR OSLINGTON: Mr Rippon wasn't in all the time in 2008, was he? ---Sorry, you said 2007/2008. He was the CEO of RH3 and he was seeing the invoices that were going through and he would have been, it would have been his responsibility in relation to the documentation that was going, being prepared by people within the internal accounting team of RHIC and RH3.

You said, you said yesterday, recorded at 2436, that you didn't ever direct your PA to forward invoices to MBT for certification. Do you recall giving that evidence?---I do.

But we've already seen that you have signed some expense memoranda for, for Australian Water which were passed on to MBT, haven't we?---Yes.

Who takes – was that a mistake or - - ?---I thought I explained how I thought the mistake occurred.

But you signed it?---As AW Pty Limited expenses, yes.

Jo Power has said at 1464.19 that your expenses were dealt with by your PA and not by her. Is that correct?---Yes.

10 Well, what instructions were given to your PA as to how your expenses should be dealt with?---When?

In 2007 and 2008. Were there different instructions at different times? ---In November and December there was a change. That's the change that I was referring to, Mr Oslington.

20 THE COMMISSIONER: No, no, Mr Di Girolamo, the question was, what instructions were given to your PA in 2007 and 2008 with respect to the furnishing of your expenses through to the accountants. That was the question. What instructions did you give your PA about that?---In relation to Australian Water Pty Limited they would have been sent to the accountant in the time frame that had been agreed with MBT.

No, but I'm sorry, you're missing the point. What instructions did you give her, did you say, here, I'm going to give you all the invoices for my expenses, please forward them to MBT? Is that what you said to her? ---In relation to Australian Water Pty Limited, that, I imagine I would have. I don't have the direct recollection of saying it, but yes, that would have been the case.

30 MR OSLINGTON: And just have a look at Exhibit C48 at page 271, and I'll only be a couple of minutes, Commissioner.

THE WITNESS: Can I return the others, Mr Oslington? Do you want- - -

MR OSLINGTON: Yes. Unless you have C48 there?---I have C48.

Page 271, which is not a, not an invoice for November or December 2008, it's dated 4 June, 2007. See that?---Yes.

40 It's an invoice from Australian Water. See that?---Yes.

And it's signed by you and Mr MacGregor Fraser?---Yes.

And ended up being certified by MBT?---Yes.

How did that come about?---I think this relates to the new premises, so it would have been an amount that Australian Water had paid and was seeking reimbursement for the shares that would be attributable to RHIC.

Is that, that something you satisfied yourself of at the time?---If I'm correct, yes, I would have.

But I thought the reimbursement was made through that payment of 400,000-odd dollars recorded in Exhibit 54. Do you want to see Exhibit 54 again?---There may have been different amounts for different things.

10 Well, there might have been double counting?---Well, not that I was aware of.

It wouldn't have concerned you if there was, would it?---I don't accept that, Mr Oslington.

Thank you, Commissioner.

MR KOSTOPOULOS: Commissioner, the usual sequence has always been Counsel Assisting, Mr Oslington and I. I'm actually very crook at the moment and I just want to go get some medicine. Could I have just an
20 indulgence for 15 minutes?

THE COMMISSIONER: Yes, I can see that, Mr Kostopoulos. You do what you need to do.

MR KOSTOPOULOS: Thank you.

THE COMMISSIONER: Mr Cotman, did you want to ask some questions?

MR WATSON: I just want to interrupt, I'm so sorry, Mr Cotman. The
30 Premier, Mr O'Farrell, will be recalled at noon.

THE COMMISSIONER: Thank you.

MR WATSON: And I'm sorry, Mr Di Girolamo, but there are reasons which have persuaded me that it's important to interpose Mr O'Farrell. And there's two things arising out of Mr Oslington's cross-examination.

THE COMMISSIONER: Yes.

40 MR WATSON: Could I tender those documents to which he referred which are the position papers filed on behalf of Australian Water Holdings in the expert determination before Mr Easton. They're available on the Website already, we've updated them while the evidence went on.

THE COMMISSIONER: Yes. That will be Exhibit- - -

MR ALEXIS: Can I, because I haven't seen the folder, Commissioner, whether they include the submissions from Sydney Water to which I think Mr Oslington was referring to a submission in reply?

MR WATSON: No, it was an Australian Water Holdings submission in reply, but I should say to my learned friend it doesn't include the Sydney Water submission and if he wishes that to be tendered I'm very happy to do it.

10 MR ALEXIS: Well, it should be because it sounds like the argument around non-for profit was in response to a Sydney Water submission and therefore the Commission, should have, together with AWH's submission in reply the submission to which it was replying to.

MR OSLINGTON: I should indicate I'm only relying on it for the references in it to RHIC being a not for profit organisation and the passage that says it would be incorrect to say et cetera, the directors are taking a profit, I've identified the passage I rely on.

20 MR ALEXIS: (not transcribable)

THE COMMISSIONER: Just in case we need more paper to drown in I'll mark the submissions from AWH and Sydney Water Exhibit C116.

#EXHIBIT C116 – FOLDER OF DOCUMENTS RH3 POSITON PAPERS BY RH3 AND SYDNEY WATER CORORATION IN THE EXPERT DETERMINATION OF MR GRAHAM EASTON PRODUCED BY SYDNEY WATER

30

MR ALEXIS: Thank you Commissioner.

MR WATSON: I'm a bit tentative now of getting up and putting more paper in Commissioner, but it is a pretty important piece of paper. We've had – and I'm grateful for it – tremendous co-operation from the courier company, Direct Couriers, they went through their records and they were able to produce something for us. I'll just, I'll tender it but just before I do so, I just explain what becomes apparent from it that a courier department
40 on 20 April 2011 from Bella Vista, it left at 3.38pm and arrived at Roseville, Mr O'Farrell's address at 4.31pm and the parcel was left, here it's expressed, left as directed which is at the front of the door by the looks of it. The parcel was one bottle of wine and it was addressed to Barry O'Farrell. I tender a three page document produced by that courier company. Commissioner, while that's just being marked I'll also say this, we were able with their assistance to get the name of the particular courier driver, he's already been spoken to by ICAC investigators but he, and this is unsurprising, he had no independent recollection.

THE COMMISSIONER: Thank you. That will be Exhibit C117.

**#EXHIBIT C117 – COPY OF DIRECT COURIERS JOB BOOKING
FROM BELLA VISTA TO ROSEVILLE – PACKAGE WITH WINE
LEFT AT FRONT DOOR ON 20 APRIL 2011 AT 16.31 HOURS**

THE COMMISSIONER: Yes, Mr Cotman.

10

MR COTMAN: Yes, thank you Commissioner.

Mr Di Girolamo, does it follow from the answers you gave to Counsel Assisting and to my learned friend Mr Oslington that the payment to directors in relation to AWH contained a profit component, a distribution of profit component that if one became a shareholder in the company and you were not a director, in order to enjoy a return on your investment you'd have to receive monies from a director?---No.

20 Or alternatively, they enter into some similar arrangement such as a consultancy agreement?---No.

And of course in the heads of agreement that the Commission has seen in respect of the dealings with your shares, you agreed to pay \$300,000 per year, did you not?---I think I agreed to try and procure consultancy agreement.

And you also agreed to pay \$300,000 per year, did you not?---Oh, the interest payment?

30

Yes.---Yes.

And what I want to suggest to you is it would be open to the Commissioner to conclude that that might be a mechanism by which an incoming shareholder was to receive a share of profit?---I don't accept that.

I see. Now, you were asked some questions, sorry, in November 2012, this is in Volume 22 at 4268, you were drawn into existence a document yourself recording that there had been a loan the company Australian Water Holdings by Obeid interests, did you not?---That was a draft document that was incorrect.

40

Thank you. And of course, it was a draft document that followed on from what had been communicated to you as a director by the chief financial officer in October and November 2011 being two payments by Calvin Holdings then following a third payment, then following that a third payment by Calvin Holdings two are on behalf of Australian Water Holdings, is that not right?---That's correct.

And of course, in February 2013 Mr Young of Sydney Water wrote to Australian Water Holdings inquiring, amongst other things, whether there had been a lending of monies to Australian Water Holdings by an Obeid interest, didn't it?---Yes.

And were you party to the draft of the reply or more so I'd say, replies to that correspondence?---I think some instructions were sought from me, yes.

10 Yes. And was it you who gave instructions to say that any monies from the Obeid interest coming into Australian Water Holdings had done so through loans made by you?---I think that would have come from Robert Groom.

I see. Robert Groom being also the person who had recorded, for example, in Volume 22 at 4028 that there was an investor loan of \$458,000 as at October 2011, do you recall that?---Yes, I do.

And of course, recording loans from you to the company under the heading of loans from shareholders, wasn't he?---I think that's right, yes.

20

And of course, recording explicitly in Volume 22 at 4025 that an investment loan of \$58,000, this is in November, had been received from Calvin Holdings on 5 October?

MR ALEXIS: I object to that. If my learned friend had turned up the page of the document and in fairness, I think Mr Di Girolamo should be shown the page, I appreciate my learned friend's trying to be efficient, is he referring to the ledger recording shareholder loans which I have drawn attention already which records these amounts - - -

30

THE COMMISSIONER: Well, look anyway, we'll get Mr Cotman to show him the Exhibit. Mr Cotman, sorry, could you identify the Exhibit.

MR COTMAN: Volume 22, Commissioner, page 4025 and 4028, 4025 to start with.---Sorry Mr Cotman, was 4025?

Yes.---This volume starts at 42 - - -

I'm sorry Volume 20, I'm so sorry.---It's okay. Yes.

40

4025 we're looking at the November CFO report - - -?---Yes.

- - - which you no doubt saw as a director at about the time that it was presented by Mr Groom?---Yes.

And the second bullet point under cash flow he records the investment loan? ---Yes.

And indeed if you want to see the \$400,000 loan, if you go to 3983.---Yes.

You will see he records the \$400,000 investment loan received from Calvin Holdings?---I see that.

Coming back if you can to 4028.---Yes.

Two thirds of the way down the page we have an item loans and borrowings, is that right?---Yes.

10

Which is broken out the sum of \$1,480,000 odd is broken out to include \$458,000 loan from investors.---I see that.

And that of course is a reference to the Calvin Holdings lending's, is it not? ---The money that came through them, yes.

I see. That's the same money that you erroneously recorded in your note of November 2012 as being a lending from the Obeid interest?---No.

20 I'm sorry?

THE COMMISSIONER: Are you saying it's not the same money?---I thought he said erroneously.

MR COTMAN: Well, you said earlier that in error, you prepared a document in November 2012 - - -?---My apologies, I don't have the document in front of me, sorry, there's two documents at that time, so, I think now, we're on the same page, my apologies.

30 And of course, on that same line is recorded a \$625,000 loan from Australian Water?---Yes.

This is the company that ran out of money back in about 2008, is it not? ---Yes.

40 And assume that the first mention of a loan from Australian Water is in the 2010 accounts of Australian Water Holdings as here in the balance sheet in October 2011, can you explain to the Commissioner, how a company without funds made a lending of \$625,000 to Australian Water Holdings or it's subsidiaries?---I can't at the moment.

Because Australian Water was not a subsidiary or a company which would be accounted for within the Australian Water Holdings Group would it?--- I'm not sure about that.

Well it wasn't a subsidiary so it certainly wasn't in the consolidated accounts was it?---No, but at some point in time I think Robert was looking at consolidating it altogether.

Well - - -?---So I'm just not sure, I'm just not sure what that was referring to.

Well might it be this that charges were being raised on Australian Water Holdings by Australian Water and recorded as a loan or as indebtedness of Australian Water Holdings to Australian Water?---I don't think so.

10 Well there's no cash to lend was there?---Like I say I can't explain it.

No. And of course so short of cash was Australian Water that Australian Water Holdings was providing money to Australian Water to pay its tax bill wasn't it?---I can't recall that but I accept if you say that.

Well if you look up the top of this very same page. Do you see the last item under current assets loan to Australian Water \$433,000? 90,000 payment for Australian Water's payroll tax. Do you see that?---Sorry, where, where are you referring?

20 Up the top of the same page 4028 under the heading "Current assets" do you see the item loan to Australian Water, \$422,000?---Sorry, I'm just not seeing it. Oh, loan to - - -

Immediately above the heading "Total non current assets"?---I see, I see that now, yes.

30 There's recorded the proposition that a 90,000 payment of Australian Water's payroll tax has been made by Australian Water Holdings. Do you see that?---I do.

So can you recall any explanation as to how it was that Australian Water is recorded as having lent to Australian Water Holdings in this, at this time \$625,000?---I can't as at this time.

Now you had estimated the North West sector development work to be worth about \$1.2 billion had you not?---Our organisation estimated that, yes.

40 Yeah. And that was at about 2007 you derived at that estimate?---I don't recall specifically, I think GHD did some work um, for us in relation to, or a company called Davis Langdon may have done a technical um, evaluation of the amount of work to perform to complete the water infrastructure to be delivered in the North West Growth Centre.

And when you say the water Infrastructure you mean the recycled system that you anticipated being introduced into that area?---It would have been the dual reticulation system, yes.

Yes. And of course when it came to package 3 Sydney Water explained to you that they did not wish to do recycled water systems into the balance of the North West, isn't that right?---That's my recollection, yes.

Indeed that was one of matters that you were complaining to the Premier and anyone else who would listen to that Sydney Water should be directed to install reticulated recycled systems into the North West weren't you?---It was a significant change in policy, yes.

- 10 Yes. And it significantly reduced the scale of the work that was going to be done in the North West didn't it?---It would have, yes.

And the next matter was that Sydney Water told you that because of water efficiencies due to the changes and housing and construction and water systems within houses and the like, the size of the mains that needed to be put in was reducing, didn't they?---I don't recall that.

- 20 They also told you there was a prospect of individual developers doing work in the North West sector to install their own water and sewerage systems as part of their development work, is that not right?---I don't recall specifically other than that I believe it was something in relation to Marsden Park there was some employment land there, um, where the, where the developer may have been doing something himself or itself.

The downside of it was that Mr Young as part of the negotiations with Mr Costa informed Mr Costa that the amount of work in the North West was going to be considerably reduced from what had been anticipated in the past didn't he?---I wasn't privy to the direct discussions between the two.

- 30 Did you read the email of the 11 December 2011 that Mr Young sent to Mr Costa explicitly saying that?---I, I would have, I don't recall it here but I would have read it.

Right. So it was quite clear to you in late 2011 early 2012 that the amount of work that might be possibly be done in the North West was going to be something significantly less than \$1.2 billion wasn't it?---Yes, it would be less.

- 40 Right. And of course you sent a letter to your convertible note holders telling them that under the new arrangements with Sydney Water you expected \$100 million of the income to flow over 25 years didn't you?---I may have, yes.

And that of course at 8 per cent which was the rate that you now expected to earn implied \$1.2 billion worth of work over the next 25 years didn't it?---I don't recall the calculation.

Right. But as a matter of maths that's obvious isn't it?---If the maths is right, yes.

And you also told them that on the strength of this you accepted to earn 25 per cent profit on the new Sydney Water contract didn't you?---Yeah, I think that was the, the estimate that we had, yes.

10 And Mr Rippon of course in volume 20 at 3997 was pointing out to you that you would be struggling to make a profit on small packages over a long period of time wasn't he?---I don't recall it.

Mr Rippon was complaining bitterly to you that if you abandon the PPP and went onto an 8 per cent contract deemed project management for Sydney Water you might not be able to make money didn't he?---He had an issue with um, giving up the PPP.

20 Yes. And part of that issue was he could see that you couldn't make money in significant amounts on the strength of an 8 per cent project management contract with Sydney Water in the North West didn't he?---I don't recall that directly, I thought his issue was more the fact that we were giving up the ability contractually to do the PPP and he wanted to um, make sure that in the new agreement that if um, Sydney Water was going to be looking for private funding of that area that we would still be the first port of call. That's my recollection.

And Mr Costa said you've got to be dreaming didn't he?---No, I thought Mr Costa negotiated that in.

30 I see, all right. Well any even the fact of the matter is you took it upon yourself to tell the convertible note holders that you considered the company now to be worth \$75 million off the strength of the new contract that had just been done with Sydney Water didn't you?---I don't recall.

You don't recall saying that?---I may have.

Well volume 20, 4126 is one of your letters to the convertible note holders? ---Do you want me to go to the letter?

40 Well - - -?---If that's what I said that's what I said.

If we, if we find it recited in there the idea that the company on the strength of the Sydney Water contract was worth 75 million I want to suggest to you that was a complete nonsense wasn't it?---I don't accept that.

And certainly it was a completely nonsense either on the basis you were going to earn \$100 million from the contract or on the basis that the contract would yield 25 per cent profit. That's right isn't it?---I don't accept that.

And well, can we accept this, that having you, you having addressed your mind to the serious question of what you could honestly tell your convertible note holders came up with the series of letters that we find in volume 20 for example at 4126. Is that the idea?---What I'm having difficulty with, Mr Cotman, is that I recall the actual contract stipulated a payout of the contract if Sydney Water chose to terminate and that that would have governed value that we would put in the contract.

10 So you weren't valuing the company on the basis that it would operate under this contract for the next 25 years, you were valuing the company on the basis that Sydney Water would get rid of you. Was that the idea?---No, no. What I'm saying is that, that would have been a mechanism or a factor in terms of how we would have been valuing the company and the contract, sir.

20 So we should find some correlation between the 75 million and the termination for convenience provision. Is that right?---I, that's just, that's something that's in my, in my mind at the moment without going back through everything, sir.

20 Yes, because everything else that we've discussed doesn't support anything like a \$75 million valuation, does it?---Well, I haven't gone through it all, sir.

I can imagine. Thank you. I have no further questions.

30 MR WATSON: Just before anybody else gets up, Commissioner, I just want to correct something. I've been informed while I've been sitting here that there is some suggestion being made that ICAC had access to that information relating to Mr O'Farrell, the card, and sat on it, held it back until Mr O'Farrell gave his evidence.

THE COMMISSIONER: Where is that suggestion coming from, Mr Watson?

40 MR WATSON: I've just been told that that suggestion's about, I can't go to the detail of that, mainly simply because I don't know, but if it is being said, it's false, it shouldn't be said, and quite frankly – and I think I probably speak on behalf of everybody at ICAC – I resent it if it is being said and I can tell whoever wants to know in the world that ICAC acquired the information at 9.17am this morning.

THE WITNESS: I would resent that too, Commissioner.

THE COMMISSIONER: And I can also verify that the email to ICAC came onto my desk at 9.20am this morning and that it was sent through partially I think from Mr Alexis to Mr Watson, as I understand it, at that

time and prior to that time no one had any knowledge that that document even existed.

MR WATSON: Thank you.

THE COMMISSIONER: Anyway, the record's been set straight. Yes. Now, someone at the back of the room? Yes.

10 MR RICH: Thanks, Commissioner. I have a few questions for Mr Di Girolamo.

THE COMMISSIONER: Could you please speak into the microphone. It's difficult to hear you.

MR RICH: I will try. I hope you'll excuse my bending over the desk?--- It's okay.

20 Mr Di Girolamo, my name is Rich and I appear for Robert Groom?---Yes, Mr Rich.

Now, might the witness be given a copy of Exhibit C17, please.

THE COMMISSIONER: Yes.

MR RICH: Mr Di Girolamo, kindly go to page 3566 please. Do you recognise that, sir, as the operative terms of the Heads of Agreement dated 4 November which you were asked some questions about the day before yesterday?---Yes.

30 All right. At transcript 2312 you were asked the question, what was the problem with the consultancy arrangement, which is mentioned in clause 3.2 of that document you have in front of you. Do you remember?---Not precisely, Mr Rich.

All right. Do you remember being asked about the consultancy arrangement in that document?---I do, I do recall being asked about it, yes.

40 You answered, "Well, I had to go back to Australian Water to make sure they were happy with the consultancy arrangement." At transcript 2312, line 14, you went on to say, "I think I spoke to Robert Groom." You then said, "I think I spoke to Robert along the lines of the cost of it and he thought it would be very tight to put another consultant on." Later in your evidence at page 2318 you said you could not recall when you had that conversation with Mr Groom. Do you recall that evidence, sir?---I do.

Now, you never sought Mr Groom's approval or permission to enter into an employment or consultancy agreement with Eddie Obeid Junior, did you? ---I'm not sure it would have been approval.

The answer to my question is yes, isn't it, you never sought Mr Groom's approval or permission to enter into an employment or consultancy agreement- -?---I, I, I accept that.

- - -with Eddie Obeid Junior?---I accept that.

Right. You didn't ask Mr Groom to ratify any contract you had signed for the engagement of Eddie Obeid Junior, did you?---Correct.

10

Now, could the witness please be given Exhibit C22. Now, would you mind going to page 4268 within that bundle please, sir?---Yes.

Now, you, that's the draft agreement dated 20 November, 2012. Do you recognise it?---Yes.

20

Now, at transcript 2334 you were being asked about paragraph 1 of that document and you said, "On checking with Robert Groom those recitals were false." You went on to say, "Robert said we, meaning AWH, have not treated the Obeid Corporation funds as direct loans." Do you recall saying that, sir?---I do.

Now, you knew as a fact, didn't you, that the \$486,000 which had been contributed by Obeid-related entities had been reported to the Board as investor loans made directly to the company by an Obeid-related entity, didn't you?---I don't accept that.

30

Well, might the witness be shown Exhibit C20 please?---Do you want me to keep the other volume here as well?

If it's not too inconvenient you might just retain it there, sir. Now, would you kindly go to page 418, sorry, 4018 within this bundle?---Yes.

Do you have there a copy of the minutes of the meeting of the Board on 3 November, 2011?---Yes.

And you were present at that meeting, weren't you, sir?---I was.

40

If you go ahead to page 4021 you'll see item 5 of the minutes records that the CFO's report was taken as read and noted by the Board?---Yes.

Do I take it that you read the CFO report to that meeting as at that date? ---Yes.

All right. If you'd kindly then, sir, go back to page 3983 within this same bundle, that's 3983, you'll find I hope the CFO report dated 3 November, 2011. Do you see it?---Yes.

All right. Now, I think you've been asked some questions about this as recently as today?---Yes.

You'll see the second bullet point under the heading Cash flow, "Investment loan of \$400,000 received from Calvin Holdings Pty Limited." Do you see that?---Yes.

You knew when you read that that Calvin Holding Pty Limited was an entity associated with the Obeid family, didn't you?---Yes.

10

Right. Now, look at the next page for me if you would, please, sir. You'll see a statement of cash flow for the period to December 2011. Is that right? ---Yes.

And if you have a look in the item about three-quarters of the way in the table, loans from investors, you'll see a figure of \$500,000 and I'd ask you to assume that that's the money which had been contributed by Redmyre, Joey Georges' company. Can you make that assumption?---I will.

20

All right. And the \$400,000 which has been entered for September you understood was the \$400,000 received from Calvin Holdings, didn't you? ---Yes.

All right. And if you turn over to page 3986 within the very same report, you should find the consolidated balance sheet. Do you have that page? ---Yes.

30

If you go about two-thirds of the way down the left-hand side you'll find the items, loans from shareholders and loans from investors. Do you see them? ---Yes.

Right. Now, firstly the loans from investors, you'll see there's the 500,000 and the \$400,000 that we've just discussed?---Yes.

Right. And they're broken up in the narrative that one finds in, on the right-hand side of the column, \$500,000 investment from Redmyre Holdings. Do you see that?---Yes.

40

400,000 investment from Calvin Holdings. Do you see that, sir?---I do.

And you understood and recognised that was being reported to the Board as a separate item from the loans from shareholders reported immediately above it which include a \$750,000 loan from you. Do you see that?---Yes.

And you understood that to be what can colloquially be described as the McGuigan money, didn't you?---Yes.

Right. Now, come back to my question, Robert Groom had told you and the other members of the board I his CFO reports that the \$486,000 were investor loans made to the company by Calvin Holdings, hadn't he?--- That's how he recorded it, yes.

Right. And you understood that and knew that, didn't you?---Well, that's how he recorded it in those documents, yes.

10 Now, Mr Groom didn't tell you something contrary to his own board reports did he?---When?

Ever?---Mr Groom recorded and told me that those amounts of monies were being attributed to my personal loan account.

Mr Di Girolamo you knew, and Mr Groom had reported to the board that those monies had been recorded as investor loans made to the company by Calvin Holdings, didn't you?---I see that in the documentation.

20 Right. And it's the case, isn't it, that by November, 2012 when you were preparing the draft agreement in Volume 22 at page 4268 that the loans totalling \$486,000 had already been converted to shares in your name, hadn't they?---I don't recall that I'm sorry.

All right. Now, you were asked some - - -?---They were converted at a time when Mr Costa was the chairman, I believe.

The conversion was done in May or June of 2012 wasn't it?---I don't recall, I'm sorry.

30 All right. The documents will tell us when it was, correct?---Sure, yes.

Now you were asked some questions a moment ago about the correspondence between Australian Water Holdings and Sydney Water which occurred I think in 2013, do you remember those questions?---Yes.

Please pick, I'm sorry, you can't pick it up. Might the witness please be given Volume 22, Exhibit C22 please.---I already have that one.

40 You have that one, thank you. Kindly turn in the first instance to page 4348 within that bundle.---4348.

4348.---Yes.

Now, you recognise that don't you, as one of the letters from Sydney Water which you are being asked about a moment ago by my learned friend Mr Cotman, do you not?---Yes.

It's addressed to you isn't it?---Yes.

You received it didn't you?---Yes.

You read it at about the time you received it, didn't you?---Yes.

Right. Now, have a look if you would please, at the questions five and six on page 4348 and you'll agree with me having read them that they ask for details of any loan or similar agreement, past or current, between Mr Di Girolamo and any member of the Obeid family, do you see that sir?---Yes.

10

And further, whether AWH had benefited in any way from such a loan, do you see that?---Yes.

And if you'd kindly go over the page I direct your attention to questions, 10, 11 and 12.---Yes.

Just have a look at them and in particular I direct your attention to question 12 and the reference to press reports of a personal loan from Eddie Obeid Junior to Mr Di Girolamo, do you see that?---Yes.

20

Right. Now, please go to page 4396 within this bundle. I'm sorry start at 4395.---Yes.

That's the reply to Sydney Water's letter that I've just taken you to, isn't it? ---Yes.

And you've already agreed that you gave some instructions in relation to the content of that reply, haven't you?---I gave some instructions but I wasn't the author of the reply.

30

Well, if one has a look, firstly, at page 4395 under the heading questions five and six, you see the statement, Mr Di Girolamo has publically acknowledged that he has a personal loan from Eddie Obeid Junior, do you see that?---Yes.

And that was true wasn't it?---Yes.

Right. You had made statements to that effect, had you not?---Yes.

40 Right. On page 4396 under the heading questions 10, 11 and 12, do you see what is written there sir, Mr Di Girolamo had advised that he directed the sum of \$486,000 from his loan from Mr Eddie Obeid Junior, do you see that?---Yes.

To AWH as a loan from Mr Di Girolamo to AWH.---Yes.

Right. That was you who provided those instructions wasn't it?---My understanding was that it was accepted by everyone as a fact, yes.

THE COMMISSIONER: No, no, no, that was you who provided the instructions that appear in the paragraph.--I don't specifically recall but I would not deny that I provided those instructions.

MR RICH: The answer to my questions is yes isn't it?---(No audible reply)

10 THE COMMISSIONER: He says that he doesn't deny that he would have denied that he would have provided those instructions but he doesn't specifically recall.

MR RICH: Your Honour, if the Commission pleases. You told my learned friend Mr Cotman, a moment ago sir that Robert Groom provided instructions in relation to this reply that the loans from the Obeid entity were from you rather than an Obeid entity, do you remember saying that?---My recollection is that Robert Groom was involved in providing instructions vise ver in response to this letter.

20 That's not my question.---Sorry.

Now, I don't have a transcript here but you told my learned friend a moment ago that it was Mr Groom who provided instructions in relation to the reply to the Sydney Water's letter that the \$486,000 loans came from you rather than the Obeid Corporation, do you remember giving evidence to that effect?---Yes, I do.

That was incorrect wasn't it?---No, I maintain that.

30 You gave the instructions and that's why it says on page 4396 Mr Di Girolamo has advised, isn't it?---I read what it says Mr Rich and I maintain my position.

Right. You see what it says is that Mr Di Girolamo has advised that he directed the sum of \$486,000 from his loan from Eddie Obeid to AWH, now the only people who would know whether you personally directed money from your loan from Mr Eddie Obeid to be paid to Australian Water Holdings would be you or Eddie Obeid, correct?---And the CFO who's recording it on the ledger.

40 The CFO had recorded it as an investor loan from Calvin Holdings?---Under my loan account.

MR ALEXIS: I object to that.

MR RICH: You keep referring to your loan account.---It was his document Mr Rich.

Well, when you say your loan account, do you mean the document, I'm sorry, might the witness be given Volume 20 if he doesn't already have it.--- I have Volume 20.

Right. Page 4064, could you turn that up please.---Sorry.

4064.---Yes.

10 Right. Now is that the document you refer to as your loan account?---That's as I understood it, yes.

Right. You see the heading in the right hand column at the top of the page?
---Yes.

What does it say?---Loan from investors.

Right. That's, that's the titled ledger from which this page comes, isn't it, loans from investors?---Yes.

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

THE COMMISSIONER: Thank you Mr Rich. Yes, Mr Kostopoulos.

MR KOSTOPOULOS: Thank you Commissioner, if you just bear with me.

THE COMMISSIONER: Thank you.

30 MR KOSTOPOULOS: Mr Di Girolamo, can I ask you this, did you attend the office of Mr Anthony Karam in April at Granville and have a discussion with him?

THE COMMISSIONER: Are we talking April this year Mr Kostopoulos?

MR KOSTOPOULOS: April 2011.---I don't recall, I may have.

You may have?---Yeah.

40 Let me put this to you. Did you tell Mr Karam at his office that you had sent a bottle of Grange to Barry congratulating him on his election win?---I don't recall doing that or saying that to him.

Well do you deny it?---I don't recall it.

So you don't deny it, is that correct?---I don't recall it.

Why are you behaving like that, witness?---No, sorry, I've got something in my throat.

I beg your pardon? Are you just making fun of my illness? Do you, do you
- - -?---No, I said I had something in my throat.

Are you making fun of my illness are you?---No.

THE COMMISSIONER: Can we move on, Mr Kostopoulos. He says he
doesn't recall telling Mr Karam that he'd given Mr O'Farrell a bottle of
Grange.

10 MR KOSTOPOULOS: And then a second part of the conversation went
along these lines didn't they, Mr Di Girolamo, that you also told him in the
course of conversation after salutations and general discussions that Barry
had committed that in the first 100 days of office he would approve the PPP
with AWH?---No, I don't accept that.

Do you deny it?---I deny that.

Yes, thank you. Now, Mr Di Girolamo, can I just ask you, there's four
topics I'm going to put to you, sir?---Sure.

20

The first one is this, when you were negotiating with BG&E as the CEO of
AWH in late 2011 and up to 2012 you knew that subject to certain terms
and conditions \$5 million was going to be injected into AWH by BG&E?
---At which point in time, sorry? Just the, the timing?

2011 to 2012 when you were negotiating as CEO?---Yes.

They were going to inject \$5 million, correct?---I believe so, yes.

30 Right. It was corporate shenanigans by you wasn't it in not paying the
shareholders of AWH they're my clients and I didn't announce it 'cause you
know that, after receiving the cash injection by BG&E you could have paid
them couldn't you?---I don't believe that was the bargain that we struck with
BG&E.

I'm not interested in BG&E. You as the CEO could have paid out the
shareholders couldn't you?---No, because I wouldn't have been able to
receive the \$5 million.

40 Now let me ask you this, a few more topics. Counsel Assisting was a bit
kind with you on C19, 3932. I want to direct your attention to that witness.

THE COMMISSIONER: 3932?

MR KOSTOPOULOS: Yes. In C19. This is the email from you to Mr
Alan Jones?---39?

32?---I have that.

Yes, thank you. Now forget the document for a moment I'm going to ask you a pre-emptive question, you had a gaggle of lobbyists employed by you didn't you from time to time?---We did employ a number of - - -

Yeah. All Liberal Party?---I'm not - - -

Liberal Party sympathisers, Mr Di Girolamo, correct?---Incorrect.

10 Who else did you have?---I think there was a company called CPR which had affliations with the Labor Party and I think Jackson Wells um, obviously Kerry Sibraa had affiliation with the Labor Party.

Forget about them for a moment, the rest of them all Liberal Party?

THE COMMISSIONER: I think the answer to that might be, yes. Go on.

MR KOSTOPOULOS: Thank you, Commissioner, but - - -

20 THE WITNESS: Process of elimination.

MR KOSTOPOULOS: - - - but I want it to come from the witness, Commissioner, thank you.

THE WITNESS: Sorry, I would accept that, Mr Kostopoulos.

MR KOSTOPOULOS: Now if you had all this gaggle of lobbyists in the Liberal Party - - -?---I wouldn't refer to them as gaggle, I don't mean to interrupt you but - - -

30 Well I am?---Okay.

You can reject that?---I reject that.

Thank you. The Liberal Party sympathisers were now lobbyists, Mr Nick Di Girolamo, you had them all on the payroll, correct?---We retained lobbyists - - -

You had them on the payroll, yes or no, one or the other?---Yes, sir.

40 Thank you?---That's okay.

Why did you engage yet a further Liberal Party lobbyist in the form of Mr Alan Jones? Was he on the payroll as well?---No, he was not.

Right. Now let me take you to the last page 3933?---Yes.

Look at the last entry?---Yes.

Who was going to pay for lunch, you out of your pocket or AWH?---It could have been either.

Well let, let, let's find out, I want to know today. Who paid for it?---We didn't have lunch, sir.

Well, who were going to pay for it?---I don't know we didn't have lunch.

10 Well did you have discussions with Mr Jones after this email dated the 20 September 2011?---I don't believe so.

Now the PPP wasn't going well was it at that stage?---Um, I'd have to refresh my memory.

Well was it or wasn't it?---No, no, you're correct.

Wasn't going well was it?---No, in relation - - -

20 So you tried the Labor Party, you tried the Liberal Party, you tried some media outlets and you weren't getting anywhere, is that what happened? ---No, I don't accept that, sir.

Let me put this to you, I want to suggest to you that by going to Mr Jones you displayed a shallow and manipulative individual style having failed to get your way you tried a cunning interplay between Labor and Liberal Governments and oppositions to approve the PPP and when that failed as an act of desperation you contacted your old mate mentor and confidant Mr Alan Jones, is that correct or not?---No, and I don't think Mr Jones was my mentor or confidant either.

30 Well what was he?---He was someone that I knew and obviously was a media - - -

Look must I suffer, Mr Di Girolamo, let's go to the document again, 3932?--Yes, sir.

40 Look at what you attached for goodness sakes private secret business to Mr Alan Jones involving my clients' money and shareholders and directors of AWH. Who told you to do that?---I was the CEO at the time, sir.

So you took it upon yourself, is that right?---I did.

That is an act of treachery, Mr Di Girolamo, to your, to not only the shareholders but the directors to breach that confidence.

MR ALEXIS: Well I object to the question and - - -

MR KOSTOPOULOS: Well I press it.

THE COMMISSIONER: Well it was a statement more than a question. Do you - - -

MR KOSTOPOULOS: No, I've asked, Commissioner, and I press it.

That was an act of treachery wasn't it?---I don't accept that.

10 Let me ask you this, Mr Di Girolamo, let's assume Alan Jones in his wisdom decided to give it to Hadley to Singleton and perhaps even to Gai Waterhouse. What would you have said about that?---Um, I'm just not sure how to answer that, Mr Kostopoulos.

THE COMMISSIONER: I think the point is, Mr Di Girolamo, that there is nothing in the email itself which enjoins Mr Jones to any confidentiality in relation to the information that's contained within it. Is that so?---I think the second paragraph "I refer to I need to raise another matter with you in a highly confidential basis", Commissioner.

20 And so you expected Mr Jones to keep that, that - - -?---Yes, Commissioner.
- - - information following that paragraph confidential?---Yes.

All right. Thank you.

MR KOSTOPOULOS: Let me just test that for a moment, Commissioner, thank you.

30 Mr Nick Di Girolamo, when you were negotiating with others to invest in the company didn't you ask them to sign non confidentiality clauses like all good lawyers do?---Confidentiality agreements, yeah, there were times - - -

Yeah. Why didn't you do that with Mr Jones?---Obviously I didn't think it was necessary.

That was bad lawyer-ring wasn't it?---I don't accept that, sir.

Well it was bad CEO-ing wasn't it?---I don't accept that either, sir.

40 Mr, Nick Di Girolamo, when applying your professional skills this is the last topic and I'll leave you alone. Do you understand that?---Yes, sir.

Thank you. When you were applying your professional skills acquired in the law and your leadership skills as a managing partner of Colin Biggers & Paisley did you then transmute and apply those skills as the CEO of Australian Water then Australian Water Holdings Pty Limited from 2006 to 2013? I'm sorry, transcript reporters, but my voice is running out and I have to do this as efficiently as possible, when at the last date I mentioned to

you you resigned as a director of AWH? You follow the question without my commentary?---I just missed that last bit, sir.

Righto, let me do it again. Did you apply your skills when you were at - - - ?---Yes, I did apply my skills.

Are you sure about that?---Yes.

10 Righto. When you were at Colin Biggers and Paisley was the partnership of Colin Biggers & Paisley a corporation with the meaning of the Corporation Act when you left it as a managing partner of Colin Biggers & Paisley in 2006?---It was a partnership?

Was it a corporation?---I don't - - -

THE COMMISSIONER: No. I take it that it was just a partnership, yes? ---I believe so, Commissioner, I'd have to check.

20 MR KOSTOPOULOS: But as a partner in a partnership you applied the same skill set as a director of a company?---I would accept that, sir.

Yeah. Same trust?---Yes, sir.

Same duty of fidelity?---Yes.

Same honesty?---Yes.

Same integrity?---Yes.

30 Mr Di Girolamo, as you sit there today – and I've seen your demeanour – you're not a very honest man, are you?---I don't accept that, sir.

Between 2006 to 2013 did you at any time during that period seek medical assistance for any diagnosable psychiatric or psychological condition?

MR WATSON: I object to that.

MR KOSTOPOULOS: And I press it.

40 THE WITNESS: Commissioner, I have almost now a bit, bit too much, Commissioner, I've - - -

MR KOSTOPOULOS: I press it, Commissioner.

THE COMMISSIONER: All right. All right. Mr Kostopoulos, back off.

THE WITNESS: Come on, mate.

THE COMMISSIONER: All right. There is no suggestion from anyone that this witness suffered from any such condition. You've covered your bases in respect of your previous line of questioning and I don't think we need to go any further than that.

MR KOSTOPOULOS: Thank you, Commissioner, and I apologise unreservedly.

10 Can I put this to you and I'll finish, Mr Di Girolamo, because there's more important people to come before the witness box today. Can I put to you that your wanton disregard for your responsibilities and duties as a CEO and director of AWH and Australian Water Holdings and the way that you've approached your evidence today and yesterday and your demeanour is appalling?---I don't accept that, sir.

You've shown a lack of remorse or guilt for what you've done.

MR ALEXIS: Well, I object.

20 THE COMMISSIONER: He doesn't accept that he's done anything wrong at this stage.

MR KOSTOPOULOS: Oh, yes, I'm sorry, I'm sorry, Commissioner, I apologise again.

30 From the time you resigned as a director of Australian Water Holdings in 2013 you did so as nothing more than a coward to escape the criticism of those who trusted you in AWH and in preparation of you giving evidence at ICAC?---I don't accept that, sir.

Could I suggest to you that presently as you sit there in the box you're untruthful and you display all the hallmarks of a liar?---I don't accept that, sir.

40 Can I further put to you this, that having agreed, if I could put this, that you've applied a rational business mind and no – I'll withdraw that – and the way you have operated AWH as a CEO, you've done so unethically and improperly to gorge the money invested in your company from dear and longstanding friends and family?---I don't accept that, sir.

Involving Mr de Aboitiz, a 40-year-old, 40 years long-term friend. What do you say?---Oh, sorry, I thought you were still going. My apologies. I don't accept that.

Mr Karam?---I don't accept that.

And particularly- - -

MR ALEXIS: Commissioner, we know who the convertible note holders are, I'm not sure that Mr O'Farrell needs to be delayed.

MR KOSTOPOULOS: Listen, is that an admission, Senior Counsel, sorry, is that an admission today by conduct that they're convertible note holders because we're shareholders and I've deliberately said and shareholders.

10 THE COMMISSIONER: Mr Kostopoulos, the witness I think has denied the propositions that you put – and can I just say this, I understand that you're putting these propositions because you intend to make submissions to that effect and so you're putting them in fairness.

MR KOSTOPOULOS: Yes.

THE COMMISSIONER: But I think the spirit of the statements that you are putting have been comprehensively put and rejected by the witness, so I don't, I'm not going to hold you to any- - -

20 MR KOSTOPOULOS: Browne v Dunn.

THE COMMISSIONER: - - -transgression of the rules of Browne v Dunn.

MR KOSTOPOULOS: Browne v Dunn. Thank you. Can I put this last question and I'll sit down and save my voice, and I know you're trying to save my voice too, Commissioner, but can I put this. Might I suggest to you in Australian terms you've ripped off Mr Oslington's client Sydney Water, that is the taxpayers of New South Wales, to enjoy the benefit at other people's expenses of gross follies, good times, sex, gambling, alcohol and rock and roll?---I reject that.

30 Thank you, Commissioner.

MR HARRIS: Commissioner, if I may, my name is Harris for John Wells.

THE COMMISSIONER: Well, can we have – we'll have to defer that I think because I think there may be the need to interpose Mr O'Farrell at this point.

40 MR HARRIS: Thank you.

THE COMMISSIONER: Is he here, Mr Watson?

MR WATSON: He's just on his way here, he'll only be a few moments.

THE COMMISSIONER: All right. Well- - -

MR WATSON: Maybe if Mr Harris is very brief?

THE COMMISSIONER: Mr Harris, how brief will you be?

MR HARRIS: Oh, relatively brief.

THE COMMISSIONER: Well, I'm sorry, that's not good enough. You've got to give me some idea of how brief is relatively brief.

MR HARRIS: Five minutes, five minutes perhaps at the most.

10 MR WATSON: I think we'll just take Mr O'Farrell.

THE COMMISSIONER: Yes.

MR HARRIS: Thank you.

MR WATSON: It's important that we get his evidence in and out.

MR KOSTOPOULOS: Sorry, Commissioner, might I be excused?

20 THE COMMISSIONER: Yes, thank you, Mr Kostopoulos.

MR KOSTOPOULOS: I'm sorry, I don't mean to be rude.

THE COMMISSIONER: You're excused.

MR KOSTOPOULOS: Thank you.

THE WITNESS: Do you want me to step down, Mr Watson?

30 THE COMMISSIONER: Mr Di Girolamo, can you step down, please, and just take a seat before we go any further.

THE WITNESS STOOD DOWN

[12.05PM

THE COMMISSIONER: While we're waiting, can I inquire, after Mr Harris has his few questions, who else is yet to come, Mr Littlemore, I think you need to ask some questions?

40

MR LITTLEMORE: Yes, I'll be short though.

THE COMMISSIONER: You'll be brief you mean?

MR LITTLEMORE: My brother's six feet six.

THE COMMISSIONER: You can't change your height, Mr Littlemore. Ms Williams, how long will you be?

MS WILLIAMS: I expect about 20 minutes, no more, Commissioner.

THE COMMISSIONER: Is that it? No.

MR TYSON: Commissioner, Tyson for Mr Tripodi. I'll be less than 10 minutes, less than 10 minutes.

MR BOWE: I stick by about 10 minutes.

10 MR TAYLOR: Commissioner, Taylor, solicitor for Mr Sibraa. I estimate 10 minutes.

THE COMMISSIONER: 40, so we're, we're, we're at least a further hour before Mr Alexis gets a chance.

MR ALEXIS: And, Commissioner, if it's of assistance my estimate hasn't changed.

THE COMMISSIONER: No, I understand that.

20

MR ALEXIS: I would like to try and move through the material that I propose taking Mr Di Girolamo through within about an hour, it might be an hour 15.

THE COMMISSIONER: All right.

MR ALEXIS: Of that order.

30 THE COMMISSIONER: All right. Thank you. Yes, thank you. Yes, Mr O'Farrell, could you please come forward and take a seat in the, in the box.

Just take a seat. Mr O'Farrell, the section 38 order that I made yesterday continues to apply, as does your obligation to tell the truth in these proceedings. Thank you.

Yes, Mr Watson?

PREVIOUS SECTION 38 ORDER APPLIES

MR WATSON: Mr O'Farrell, I'll show you the originals of the documents that were recovered overnight and I'll just ask you to have a look at them and just confirm it is your handwriting and they were your documents. Is that right?---Yes.

10 Well, Mr O'Farrell, it's in a pretty sad position that we are now. I've got to ask you, why should the people of New South Wales, why should they not think that you didn't give honest evidence yesterday, Mr O'Farrell?
---Well, I certainly tried to give ah, ah, accurate evidence to the best of my recollection. Can I say, Counsel, that in the days since I've been back from China when this matter was first raised with me by my Counsel, it went from boxes of wine to box of wine to yesterday a bottle of wine. It went from a date that was allegedly in June to May then April then back to May and yesterday to 20 April. I gave this matter thought, I considered what I'd been doing and I gave yesterday my best recollection of that, of that, which clearly was mistaken. And, Commissioner, I certainly regret that. Ah, as a
20 strong supporter of this Commission I've always urged people to come forward fearlessly, frankly and give honest evidence and that's what I believed I was doing yesterday, but the regret for me, Counsel, is having seen the letter, having seen the envelope, it still does not spark a recollection. Can I just have 60 seconds more? When the issue around Easter was raised with me by my Counsel because you'd narrowed down your dates, I looked at my diary and, you know, if you'd asked me a day or two before what I'd done in Easter 2011 I might well have remembered that we spent it on the Gold Coast. When I saw the diary, when I saw the
30 written diary I remembered a number of things about that holiday, not the least being that my eldest son told me on that occasion that his career post school would be the Army, which thankfully he's pursuing. I look at this note, I look at this note, I read the note, I accept that it is my handwriting and I still have no recollection about the receipt of a gift or the bottle of wine.

Well, have you got any idea what could have happened to the wine? I mean - - -?---No.

40 - - -it would be a very unusual bottle to open over a spag bol on a Friday night, you'd agree?---I, I cannot speculate. You know, if, if, if ah, if my mistaken recollection yesterday, which I gave in good faith believing it was an accurate recollection, you know, and as I say again, I look at this today, I look at this today and it still does not jog a memory about either a bottle of wine on a porch, because I understand now the evidence is that it was left on the porch, or what happened to that bottle of wine.

It seems, I was going to take you to this, and perhaps Mr O'Farrell could be shown Exhibit C117 while I ask the question. It seems from records that it

was left on the porch and probably left in the evening of 20 April, by the looks of it, which means there's now a very good chance that the call that was made at 9.30pm on that evening must have been a thank you call, don't you agree?---Well, I stand by the evidence I gave yesterday, Mr Watson, which is that I don't know about that call and I now accept that my recollection yesterday when I said that I had no memory of receiving such a bottle of wine is mistaken. But Mr Watson, my frustration today is having seen the note, having seen what would on any other occasion have been a very good memory jog is not the case. I do make the point that this
10 happened within two and a half weeks or so of coming to office. I said yesterday in response to a question from my counsel that's that an interesting and extraordinary circumstance, you've come out of a campaign into government, for almost a week the Deputy Premier and I were ministers for all of New South Wales. We had to put together a Ministry. We had to deal with the volume of work that victory brings, a defeat is always more silent. You have to deal with the administrative matters of government. We had some issues within my family where my father-in-law passed away at that time after a car accident, having fallen ill on election night. All of those issues, but none of that, none of that retracts from the fact that I am sorry
20 Commissioner, that information that I gave to this Commissioner yesterday has proven to be inaccurate. It is a matter that I deeply regret as someone who has always defended this institution. But I say again Counsel Assisting, I look at this note, I it is clearly in my handwriting, it has gone nothing, it has done nothing to refresh my memory about the delivery or the, or the, or the destiny of that bottle of wine.

MR WATSON: Thank you Mr O'Farrell. I've got nothing further for Mr O'Farrell.

30 THE COMMISSIONER: Mr Alexis, you don't have any questions?

MR ALEXIS: No questions.

THE COMMISSIONER: No other questions. Thank you Mr O'Farrell, you may step down you're excused.

MR AGIUS: Might I ask some - - -

40 THE COMMISSIONER: I'm sorry Mr Agius.

MR AGIUS: Premier, it's not been put to you by Counsel Assisting but you have acted in a corrupt way or that you have done anything untoward - - -

MR KOSTOPOULOS: I can't hear Mr Agius, I'm sorry.

MR OSLINGTON: Use a microphone.

MR AGIUS: I'm sorry.

THE COMMISSIONER: You might need to start again Mr Agius.

MR AGIUS: It's not been put to you by Counsel Assisting that you have acted in a corrupt way or given Australian Water Holdings any advantage, that's not been suggested to you but - - -

MR WATSON: It will not be suggested - - -

MR AGIUS: I'm sorry.

10

MR WATSON: It will not be suggested either.

MR AGIUS: I'm indebted for that. But less there be no doubt about it at all and accepting this note on it's face and that you did receive of '59 vintage Grange, did you at, did you ever at any time exceed to any request by Mr Di Girolamo or anybody else to give AWH any special assistance?---I'm please to say, Counsel, people don't have to rely on my recollection of this matter, the fact is that the records show that the dealings with Australian Water Holdings were done appropriately, done on the basis of Departmental
20 advice, done on the basis of the issues being handled by the Board of Sydney Water. We know the evidence of the chairman of Sydney Water and the managing director of Sydney Water, they made those decisions commercially without political pressure and I've characterised outside of this chamber all of those decisions arms length and the net outcome of that decision, contrary to the Channel 10 report last night was not a green light for AWH but that was a final stake through the heart of the public/private partnership proposal. So Mr Agius, can I say and you may want me to speculate, can I say at no stage do I recall Mr Di Girolamo ever raising with me the bottle of wine in seeking some special favour as a result of it. I can't
30 remember that being asked for, I know and the record demonstrates that none was given.

So we know from the meeting notes to the extent to which they have any accuracy of the 27 May that arrangements were made for then Minister Pearce to attend that meeting?---That was a scheduled meeting with Minister Pearce. It was not a surprise call to anybody's office and he was a few minutes late because of a division in the Legislative Council but it was a meeting that took place in the usual meeting room with the usual people present for a meeting and I reject his characterisation although as I said
40 elsewhere yesterday, I understand his disappointment with me about actions I took last year.

But you were intending to do any special favours for Mr Di Girolamo would you have arranged for so many witnesses to be present during your first meeting with him after 18 April letter?---Well, you know, with all due respect Mr Agius, there are other people who have sat into this room who have probably given more thought to those sorts of issues, I haven't given any thought to it. It was a regular meeting on a regular issue that resulted in

regular practice being applied to this matter that resolve, that was ultimately resolved on the basis on Departmental advice by Sydney Water. A board chairman who was appointed by my predecessors, a board dominated by appointees by my predecessors and as I've said, the evidence of Mr Parry and Mr Young is that no political pressure was brought to bear.

10 I just want to go back to the wretched bottle of wine. In the early days of the new government, was it common for you to receive letters and notes and small gifts to mark the fact that you had taken government after 16 years in opposition?---There was an avalanche of letters of emails and there was one or two small gifts including smaller value bottles of wine bottles of wine that I'm more familiar with the value of than a 1959 Grange.

20 And did you have your staff check the value of the box of wine or other wine that came to your office?---I remember, I remember and thankfully so does a staff member remember that a box of wine did arrive, I think a bit later than the period we're talking about from Hunter Valley Wine interests, she checked the value of wine and the wine was valued at \$30 per bottle, it was a dozen bottles of wine which means that it was below the limit and was dealt with appropriately. It was a box of wine that went to my office in town.

30 What was your habit in relation to responding to messages of congratulations and the odd gift?---Well, they're appropriate to responses were made, so if they were email responses, if they were email congratulations, usually the email system would be used. Some people had my old opposition leader's email address and I would respond to those otherwise, handled by my staff. Letters were done in the usual way and the odd gift, there would be, there would be a note that was then handed to my staff to be posted.

A note from you?---A note from me where I was able to, I do try, I do try to keep up that correspondence.

So this is a practice you would have been aware of when you were giving evidence yesterday?---Yes, and I regret, as I said, to Counsel Assisting that having seen the note, it still does not job my memory about delivery around Easter 2011 or around what happened to the bottle and it's contents.

40 Thank you, thank you Commissioner.

THE COMMISSIONER: Yes, I'm sorry Mr Agius for not acknowledging that you were entitled to ask some questions. Nothing arising Mr Watson?

MR WATSON: No, nothing arising. May Mr O'Farrell be excused.

THE COMMISSIONER: Thank you Mr O'Farrell you may step down.

MR WATSON: Thanks for coming today Mr O'Farrell.

THE WITNESS EXCUSED

[12.18PM]

MR WATSON: I recall Mr Di Girolamo.

10 THE COMMISSIONER: Yes, Mr Di Girolamo could you come back into the witness box please.

MR AGIUS: Might we be excused now Commissioner.

THE COMMISSIONER: Yes, thank you Mr Agius you are excused.

<NICOLAS ANTHONY DI GIROLAMO, on former oath [12.18pm]

THE COMMISSIONER: Yes, Mr Harris.

MR HARRIS: Commissioner, thank you.

Mr Di Girolamo, my name is Harris and I represent John Wells.---Yes, sir.

10 Could I take you please to some evidence that arose on Monday afternoon of this week, 14 and specifically I wonder whether Mr Di Girolamo could see Exhibit C11 please and the pages 1772, just for the record, the relevant evidence on Monday afternoon is in the transcript page 2360 and following, page 1772 please.---Yes.

And you'll see, if you would please, again, paragraph 3 of the CEO report of Australian Water to do with the PPP?---Yes.

20 We understand that the Minister for Finance and Infrastructure Mr Tripodi at that time had received in early November the opinion of the Solicitor General et cetera and down the bottom of that paragraph the words, "we further understand that the Solicitor General agreed," and so on. The next paragraph that I'll refer you to please, "The Ministry informed us informally," et cetera. Thank you.---Yes, I see that, sorry.

30 Counsel Assisting had asked you certain questions and you'd said initially, "I think that came from Kerry Sibraa" and to compress this somewhat I, it was pointed there could be a problem with that you said then "I think I got that information from John Wells who got it from Kerry Sibraa" and over the page in the transcript which you don't have I know, 2361 you said, "Well, I believe it was coming from" and Counsel Assisting put it to you, "John Wells?" and you said, "Yes." Do you remember and I'll remind if you're having trouble that the Commissioner asked you further about that and you said in relation to Mr Wells, "That's my recollection but I do not deny that perhaps I found out from the Minister's office myself." Now I'm just quoting you the transcript. Would you agree that the most likely source of this information referred to in that exhibit is in fact yourself rather than John Wells?---No. My recollection was based on other documents and reports that I'd received from Jackson Wells, if my memory of the evidence
40 that I gave is, is, is correct.

All right. Well I put to you that in fact it was through your own contacts that that, that information came and not via John Wells?---I would have to then refer you to – I'd say no to that but I'd refer you then to page 1773 in the second paragraph on that page.

"We have asked Mr John Wells of Jackson Wells to arrange a meeting"?
---Correct.

- - - with Minister Keneally?---Correct.

That's something else again thought isn't it?---No, but it's, it is, it is something else it's within the same context of what was going on, sir, okay.

But it is not the source of the information is it? It's something to - - -?---No, I - - -

10 What you're referring there to is, sorry to cut across you?---That's okay.

Is something that's going to be done in response to the information that you received isn't it?---It is but I maintained the evidence that I gave.

All right, thank you. The next document if we could please is in volume C12, Commissioner. I've finished with C11, thank you.

20 C12, please. Thank you. And, Mr Di Girolamo, would you please look at page 2178 if you could. Again this is something that arose here on Monday afternoon, the transcript at page 2363?---I have 2178.

And there's a paragraph, it looks like 4.4 I think PPP proposal?---Yes.

And this refers to the Department of Premier and Cabinet's letter dated 1 June dated 2010 was discussed because these are the minutes aren't they that we're looking at here?---So this is not the report. Yeah, these are the minutes of the board meeting as, as - - -

30 These are the minutes of an Australian Water meeting of 30 June 2010?
---That's correct.

Discussing a letter and in that paragraph at 4.4 it says it was "It was noted by the CEO", that's yourself isn't it?---Yes.

"That the position taken by the Director General of the DPC is completely at odds with the office of Minister Kelly." I would put to you simply, sir, that that information about the position of the Director General versus Minister Kelly was information that did not come to you from John Wells?

40 ---I maintain the evidence I've given.

You had said hadn't you on, you may not remember, said previously "It would have come from him." Had you not said that?---I don't recall but I accept what you're saying to me.

All right. Thank you. And the final matter, Commissioner, please, I've finished with C12 is C13, please. Please go to page 2299 of C13. And again this is a matter that was canvassed on Monday afternoon of this week 14 April, yeah. Could I refer you please to the very bottom of that page, Mr

Di Girolamo, paragraph 3, heading is “PPP proposal NWGC” and it’s the final sentence I just refer you to may I and I’ll quote it, “I understand that Minister Kelly is seeking approval from the Budget Committee of Cabinet with a state to enter into direct negotiations with AWH”?---Yeah, I see that.

Yeah. And where it refers to in, that’s your report isn’t it?---That is my report.

And so the words “I understand” is yourself isn’t it?---Yes.

10

And again I put to you that the source of information that led to that understanding on your part was not Mr Wells?---Again I would maintain the evidence that I provided previously.

Commissioner, thank you, I’ve nothing further.

THE COMMISSIONER: Yes, Mr Littlemore.

MR LITTLEMORE: I’ll ask you some questions concerning my client Edward Obeid senior?---Yes, Mr Littlemore.

20

Sir, at the time you first spoke to him about Australian Water Holdings and Sydney Water the subject of contention between those two companies was centred upon the other stages deed wasn’t it?---I’m not sure that there was a, that there was contention the first time I spoke to him, um, but when there was a point of contention yes, it was in relation to the other stages deed.

The first conversation you had with him was what, in 2007?---I thought it might have been earlier than that.

30

All right. But getting back to the other stages deed and when that did become contentious the dispute was as to the parties respective rights under that deed what the Commissioner called yesterday the impasse?---Yes.

Sydney Water put a proposal to your company in December of 2007 that was you contend in contravention of the company’s rights in that it limited your role in further capital works in the North West Growth Centre. That’s true isn’t it?---That’s correct.

Mr Watson put to you that the dispute was “raging” in 2007/8. Was that how you would describe it?---Yes.

40

Dominating all else at Australian Water Holdings?---Yes.

Your feeling was that Sydney Water was intractable wasn’t it?---Yes.

And maliciously frustrating Australian Water Holdings?---Yes.

And that you could simply not get any comprise out of them?---It was being very difficult.

For that, is that the reason you sought to put your case before Ministers of the New South Wales Government?---After seeking the advice of Mr Walker.

10 Not so much as going over the heads of Sydney Water but going around them would you say?---Well the advice from Mr Walker was quite specific, he, he actually provided advice that we should seek a Ministerial direction from the two shareholding Ministers.

And to get access to those Ministers you sought personal meetings by approaching Edward Obeid junior and asking him whether he could enlist the help of his father?---At first instance.

Yes. That was arranged in relation to a number of meetings wasn't it?
---Yes.

20 Did you ever brief Mr Obeid senior on the matters in contention between your company and Sydney Water?---At a very high level.

What do you mean by that?---I would have outlined what the issue was. So you mean compendiously or in a, in a somewhat superficial way?---I wouldn't have gone into great detail.

Did you ever seek to persuade him to the merits of your case as opposed to explaining why you wanted access to Ministers?---I probably did outline what the position was, yes.

30 Was it your intention to make him a lobbyist or advocate for your company?---I don't, I don't - - -

See what I want to suggest to you - - -?---I don't think he was a lobbyist for, for, for the company he was someone who, who in essence um, teed up the first meeting that we had with Michael Costa at that point in time.

40 You saw that Mr Sinodinos wanted to describe himself at one stage as door-opener. Did you see that evidence?---I understand that, yes.

Is that, I mean if you choose between a door-opener and a lobbyist, where would you put my client, in your dealing, in your intention?---Would have been more the door-opener.

When you met Mr Costa, Phillip Costa, it is the case isn't it that Mr Obeid did no lobbying at all in your meeting with the Water Minister?---I don't have a complete recollection of who said what at that meeting other than

what was in my file note, but I don't recall Mr Obeid Senior having an active role in the merits of what I was putting forward, no.

Well, you didn't need him as an advocate, did you?---No.

And you didn't need him as an advocate when you spoke to Michael Costa?
---No.

10 And I don't know if you saw or, sorry heard or read Mr Michael Costa's evidence, but he described Mr Obeid's conduct as merely facilitating the meeting. Would you agree with that?---I wouldn't cavil with what Michael Costa said in that regard.

And that remains the case, doesn't it, that Mr Obeid opened doors certainly but did not lobby in relation to any meeting you had with any Minister?
---I would accept that.

20 Insofar as it may be asserted that my client sought an outcome favourable to Australian Water Holdings by introducing you to Ministers, I put to you that you saw or heard nothing that would indicate that the outcome he sought was any more than your right to put your company's case?---Correct.

Which became a case for modernising, as you called it, the contractual arrangement?---That's the direction that the Minister, or sorry, the Treasurer at the time wanted us to head in.

Those are the questions, may it please you.

30 THE COMMISSIONER: Thank you, Mr Littlemore.

MR TYSON: Mr Di Girolamo, my name is Tyson, I appear with Mr Pike for Mr Tripodi, the Infrastructure Minister in 2009. I want to just follow on from something Mr Harris questioned you about and also some evidence you gave on Monday during a cross-examination. On Monday it was suggested to you that Mr Kerry Sibraa came on the scene when his old mate, Laurie Brown, became involved in the AWH PPP. Do you remember that?--I, I don't recall it but I, I accept what you're saying to me.

40 All right. Well, you're aware aren't you that Mr Sibraa was in fact involved in respect of the AWH PPP at an earlier time, that is before Minister Kelly became the Infrastructure Minister?---I'll accept that, yes.

Could the witness be shown volume 17, Commissioner?---Thank you.

And if you go, please, sir, to page 3477?---Yes.

And you'd agree that's a file note of a meeting that you attended on 23 September, 2009?---Yes.

And present was Mr Sibraa, Mr Wells and another person?---Benjamin Haslem.

Right, correct. And are you also aware of Mr Sibraa's oral evidence before the Commission that he billed AWH over a 13-month period that ended in September 2010?---I heard that evidence, yes.

10 Right. And he described his job for AWH as involving establishing person to person contact and organising meetings. Is that a description of his role that you would agree with?---Can you just repeat the first part of that?

So Mr Sibraa, when he gave evidence, he described his role for AWH in respect to the PPP as a, as organising meetings and establishing person to person contact. Is that a description of his role with which you would agree?---Um, I'm a little bit troubled by the phrase, establishing person to person contact. If that's a reference to him attending meetings then I would accept what you're saying.

20 Yeah. Him trying to establish meetings with Government Ministers on behalf of AWH?---He was attending those meetings, yes.

Correct?---Sorry, yes.

And are you aware that in late 2009 Mr Sibraa had tried to arrange meetings with Mr Tripodi's Chief of Staff and Mr Tripodi and that those requests had been rejected on the basis that the Minister's office was waiting for the Solicitor-General's opinion?---I don't recall that. It may have occurred but I just don't recall as I sit here.

30 Yeah. But you certainly agree that Mr Sibraa was working at that period in late 2009?---Oh, yes, yes.

And you certainly agree that he was trying to arrange meetings with members of Government on behalf of AWH?---Yes.

And you certainly agree that you were getting reports through Jackson Wells as to the results of Mr Sibraa's work?---Correct, or information like in this file note.

40 Correct. And you know that there's evidence that does suggest that Mr Sibraa had meetings with Laurie Brown when he was the Chief of Staff?---Yes.

And you're aware that there's no evidence to suggest that Mr Tripodi's Chief of Staff or Mr Tripodi had any meetings with Mr Sibraa?---Are you saying that there's been no evidence of that?

Yes. You agree with that, don't you?---Um, as far as I know.

Right?---In terms of here.

And it was conveyed to you at the time that the, that the Minister's office was waiting for the Solicitor-General's opinion?---In this meeting?

In or about late 2009?---I think that's a file note of this meeting. Sorry, I think I'm recording that in this file note.

10 Now, can the witness be shown, Commissioner, volume 11. Can you go please, sir, to page 1773?---Yes.

And that's a -- if you go to the previous page you'll see that's the second page of a CEO report dated 23 November, 2009?---Sorry, I was on 1773.1. Oh, 1773, yes, I have that.

1773. And just familiarise yourself with the fact that that's the second page of a CEO report that begins on page 1772. I want to ask you on page- - -? ---I, I, I think I just got taken to this before by- - -

20

Yeah, sure. Yeah. You'll see that second paragraph there, "We've asked Mr John Wells of Jackson Wells to arrange a meeting with Minister Keneally as a matter of urgency. We are desperately trying to have BCC approval before Christmas." Do you see that?---I do.

And that's an accurate description of AWH's position in November 2009? ---Yes.

30 And one of the tasks that you set for Jackson Wells at that time was to arrange a meeting with Minister Keneally's office?---That's as I have recorded yes.

And what AWH wanted to do, to be more precise, was to meet with Minister Keneally's Chief of Staff, Mr Tony Pooley?---The reference there is to the Minister herself.

Yeah, but, but you, you know in fact that one of the things that AWH wanted to do at that time was meet in the first instance with Mr Pooley? ---I, I wouldn't reject that.

40

Okay. Well, you certainly saw good sense at the time to try to establish a meeting with Mr Pooley?---Yes, I, I, I would accept that.

And that would have been your own decision to do that?---Yes.

Perhaps in fairness with you, with the benefit advice of Jackson Wells? ---I think I, yeah, yeah, that's fine, yeah.

Correct. And just perhaps if you close that volume for a moment please, and if the witness can be shown again volume 17. If you can go please, sir, to page 3523?---Yes.

You'll see there that's a note in your writing, isn't it?---That is my handwriting.

10 And it looks like there there's a telephone attendance where John Wells has reported to you that Kerry has, that Kerry was up to Tony Pooley, Chief of Staff to Ms Keneally. You see that, don't you?---That's right. COS was my acronym or my abbreviation for Chief of Staff.

Correct. And then if you look over the page at page 3524 you'd agree it looks like then there's a second contact between yourself and Tony Pooley directly?---Well the, in the first file note it would appear that I, I, Mr Wells has given me Mr Pooley's phone number so as, as a result of receiving the phone number um, I've then called it appears Mr Pooley.

20 Correct. And that, and that happened soon after Mr Wells passed on that information to you?---The dates are the same date.

Now you certainly had a practise in 2008 and 2009 of taking file notes of significant conversations you had with people in relation to the AWH PPP? ---That would have been my practise, yes.

And indeed part of your training for many years being as a solicitor to take file notes of significant conversations?---That's correct.

30 Now do you recall you had a conversation with Brian McGlynn on 5 June 2009?---If you can show me the conversation? I mean I'm sure I did.

Well certainly to take it step by step you certainly remember speaking to Brian McGlynn?---I do indeed.

And could you go please still looking at volume C17 if you can go to page 3419?---3419. Yes.

40 And again you would recognise that's a file note of a telephone attendance that you had with Mr Brian McGlynn on 5 June 2009?---Sorry, can you just repeat the number again? I've got the wrong page.

3419?---Yes, I do.

And do you recognise that as a file note in your handwriting?---Yes, it is.

And it's of a telephone attendance with Mr Brian McGlynn?---Correct.

And to the best of your recollection is that an accurate record of what was said in that conversation?---I would hope so, yes.

So in the first paragraph the first bullet point you see there he says, “He confirmed that Government has an appetite to advance a PPP.” Do you see that?---Yes.

And you agree that that’s what he said to you in that conversation?---Yes.

- 10 And when you see the reference to the term Government would it be right that you would understand that term to also, that that would include Ministers?---It would include the bureaucracy and, and the Ministers, yes. Correct. So that would have been something that led you to believe at that time that the relevant Ministers who at that time was Mr Tripodi had a, had a commitment to um, advancing the PPP?---Yes.

And that was material that was conveyed to you by Mr Brian McGlynn?
---Yes, ‘cause I’ve said he confirmed.

- 20 Right. And certainly then if you just before we leave that document can you look at the last bullet point please?---Yes.

And it says there “If he’s happy” and that he is Mr McGlynn, “If he’s happy with the term sheet then we’ll seek approval from Budget Committee of Cabinet that will be the process going forward.” Do you see that?---It’s then he’ll he will.

He will, yes?---Yeah.

- 30 Yes. And that again is something that was said to you by Mr McGlynn in that conversation?---Yes.

And again if you keep that volume with you, Mr Di Gironamo (as said) if you go to page 3421, have you got that page?---Yes.

Email? Can you see at the bottom of that page there’s an email that you’ve sent on 5 June at 10.00am?---Yes.

- 40 And you see there in the content of the email you say “I’m very pleased to confirm that I’ve just received a call from Brian McGlynn of the Department of Premier and Cabinet”?---Yes.

Do you see that don’t you?---I do.

So, and that particular email you’ve sent it to a number of the firms that were advising Australian Water Holdings at the time and also to your fellow directors Mr Chadban and Mr Mansour?---Yes, and Macquarie Bank were,

were one of our financial advisors, equity raisers and Mr Lannon was our advisor from a financial modelling point of view for PWC.

And you'd agree wouldn't you that following that contact that you had with Mr McGlynn were you optimistic about the prospects for the Australian Water Holdings PPP?---Yes.

10 Right. Now I just want to go to another topic. You may be aware that there's an exhibit before this inquiry Exhibit 94 which records telephone contact between yourself and Mr Tripodi?---I'm aware of that.

Now have you had the opportunity to analysis that exhibit in any detail? ---I've looked at it, yes.

Right. So you certainly agree wouldn't you that during the time that Minister Tripodi was the Infrastructure Minister that record shows only one telephone contact between yourself and Mr Tripodi?---I'll accept that.

20 And you'd also accept then it shows a three, three text messages that were sent on 16 November 2009?---Accept that.

Which was the day after I think it'd been announced in the Sunday newspapers on the 15th that Minister Tripodi was losing his position in the Ministry?---Yes.

And then you'll recall as well that that Exhibit shows that there was in fact no telephone contact at all between the two of you for the next six months in 2010?---Yes.

30 And you'll recall that the exhibit also shows that it was really subsequently in 2011 including when Mr Tripodi left politics that there was more extensive contact between yourself and Mr Tripodi?

MR WATSON: Just in the interest of getting this going what do those, sorry.

40 THE COMMISSIONER: Yeah, look, Mr Tyson – I don't know. Mr Tyson, look these are all self serving questions on the face of the documents. I mean can't we ask this witness something that elicits new information?

MR TYSON: Yeah, okay. Okay. Well I want you to be, I want to try to ask you to be as precise as you can in terms of recalling the amount of contact that you had with Mr Tripodi. Now you understand that Mr Tripodi was the Infrastructure Minister from September 2008 to November 2009? ---Yes.

Right. Now in that period of time how many times did you have contact with Mr Tripodi?---I can't recall specifically other than what's in my file note.

Well in terms of your file notes with Mr Tripodi you've got one file note of a, of a meeting with Mr Tripodi in May 2009?---Right.

And, and do you recall any other contact between yourself and Mr Tripodi - - -?---No.

10

- - - in the period when he was Minister? None?---No.

So to use words such as you had lots or oodles of contact with Mr Tripodi when the time he was Minister that would be incorrect?---(No Audible Reply)

Those sorts of words would be incorrect and inaccurate?---When he was the Minister?

20

Yes?---I'm not sure the question was, well I don't want to say anything if I'm - - -

Yeah. But it would be wrong to, to say that during the time he was Minister to apply words such as lots or oodles of contact.

THE COMMISSIONER: I don't think the question was framed in terms of when he was Minister but never mind.

30

THE WITNESS: And that was my point.

THE COMMISSIONER: Again that's a matter for submission, isn't it, Mr Tyson, whether this witness agrees with you or not.

MR TYSON: Okay. But try to be as precise as you can. During the time that Minister Tripodi was the Minister you recall quite minimal contact with him?---Yes.

40

And to use a word "constant" to describe your contact with Mr Tripodi would involve an exaggeration and would not be accurate?---I wouldn't accept it.

You wouldn't accept the word "constant"?---Correct.

Correct. Thank you, Commissioner.

MR WATSON: Well, sorry, it came from the Mr Di Girolamo's notes.

THE COMMISSIONER: Yes, well anyway never mind. He's not accepting it now but let's go on.

THE WITNESS: In relation to personal I think.

THE COMMISSIONER: Mr Bannon.

MR BANNON: Mr Di Girolamo, you were asked yesterday some questions as to whether you thought Mr Sinodinos would have been aware of the
10 donations by AWH to the Liberal Party. I just remind you of the evidence
you gave in response to those questions. You said, "I would have thought
he would know that they were donating money to the Liberal Party" and
then you were asked "Why would you think you would know that?" answer,
"Because of his position on the board", question "Well was it discussed at
board level?" answer "I would have thought it would have been part of the
financials", question, "Was it discussed at board level? I don't specifically
recall a board meeting where it was discussed", question, "So these were
decisions, some of them being \$30,000 decisions were these being discussed
20 at board level? I would have thought they would be." Do you remember
giving that evidence?--I do.

I take you you'll appreciate that part of the exhibits before the Commission include all the minutes or draft minutes as such as they are of all board meetings attended by Mr Sinodinos?--Yes.

To maybe take it without suggesting you memorised all of those you're at least generally familiar with their content?--I am.

30 And are you able to agree that none of those minutes record any discussion or approval or reference to Liberal Party donations?

MR KOSTOPOLOUS: Well I object, Commissioner. There's draft minutes, the prominence of the minutes aren't, haven't been adopted and that's an unfair question. He can put the minutes that have been adopted not the draft minutes, I object to that.

THE COMMISSIONER: Well in so far as there are minutes draft or otherwise they don't contain any discussion of that matter.

40 MR BANNON: I think you agreed with that did you?--I thought you said drafted minutes, in any event, those words aren't in those minutes.

Yes. And may we take it, you agree that reflects the answer you gave yesterday that you don't recall, specifically record a board meeting where it was discussed.

MR KOSTOPOULOS: Well, again, I object Commissioner, that's the very vice I that I keep on objecting to. Some of them are draft minutes, it can't

be some ledger domain by Senior Counsel that they're adopted there and there's no mention.

THE COMMISSIONER: Well, the last question though Mr Kostopoulos had nothing to do with the draft minutes, the last question was that he understood Mr Di Girolamo was unable to specifically recall discussions about Liberal Party donations in the course of board meetings.

10 MR KOSTOPOULOS: Yes, Commissioner, thank you, I've objected.

THE COMMISSIONER: Right.

MR BANNON: And that's the case, isn't it?---I accept that Mr Bannon.

And to be fair, you're not in a position to say to the Commission that in fact donations were discussed at board level with Mr Sinodinos, that's right isn't it?---That's right.

20 THE COMMISSIONER: Or that they were not for that matter.---Or that they were not because - - -

You don't know one way or the other.---Correct.

MR BANNON: But you can't provide a positive recollection to the Commission for that notice can you?---No.

I'm not suggesting that they needed board approval or that that wasn't something within your remit as CEO?---Correct.

30 And may be take it, you thought it was within remit as CEO?---Yes.

I'm not suggesting it's anything inappropriate by - - -?---I understand.

- - - making the decision to donate. Can I just take you back to another part of that evidence you gave, you said, "I would have thought it would have been part of the financials," again, may we take it, you can't point to any particular financial that went to the board while Mr Sinodinos was a member which records or refers to a Liberal Party donation, do you agree with that?---I agree with that.

40

And would you agree that in so far as draft profit and loss statements or cash flows statements were contained in a CFO statement and we looked at, one was referred to this morning, there was no line item referring to donations to any party, are you able to accept that?---I'm accepting that.

May we take it, you'd expect that that apply to any CFO statements that went to the board?---That would have been his usual practice.

And from time to time we do see in some of the CFO statements, is this right, that unpaid liabilities were recoded and one example which has been referred to is a tax liability?---Yes.

Obviously, a Liberal Party donation was never reported, was never regarded as an unpaid liability was it, either the donation was made or it wasn't made?

---Correct.

10 And again, to be fair, as you sit here, you're not able to positively say to the Commission that there was in fact any financials which referred to a Liberal Party donation - - -?---Not in Mr Groom's - - -

- - - during Mr Sinodino's time?---Sorry, I apologise for interrupting you. Not in those CFO reports.

Yes. Or any other financial that you can think of as you sit there now?---No.

20 In other words, you agree with me?---I accept what you're saying.

I will move to another matter. You would agree that, if you take it from me that Mr Sinodinos was appointed as a director in November 2008, I think the first meeting which he attended was 25 November 2008 and the next one 20 March 2009, would you agree that by late 08 and early 09 already the dispute in relation to payments was well advance between AWH and Sydney Water?---Yes.

30 And are you able to recall that the board was told, for example, in March 2009 that the matter was already in the hands of Allens lawyers?---I would accept that.

Yes. And indeed, the very next meeting, the board meeting attended by Mr Sinodinos in 28 April 2009 there was a report to the board that the advice from Allens is that your company would be successful in the claim in relation to the dispute in relation to payment?---I accept that.

40 May we take it was it your view as a CEO and did you convey this to the board that you thought that the company would successful in those claims? ---Yes.

Did you ever, did you ever suggest, I take it from your evidence, that any of those claims, were claims which you regarded as inappropriate?---No.

And did you confirm to the board - - -?---No.

- - - that the claims were justifiable in your view?---Yes.

Just lastly, could I just ask you briefly this. Does it accord with your understanding that any determination by the expert Mr Easton required a party to pay more than \$250,000 was not a binding determination?---Under the Stage 3 Deed, my recollection Mr Bannon, is that there was a dispute, a notice of dispute had to be served, an expert determination but I think there was a right of appeal if the dispute value was greater than that amount.

10 Yes. And I think that may we take it, I think you can take it from me that the clause does say that it's not binding if it's more than \$250,000 but may we take it you would have been aware of that - - -?---Yes.

- - - at the time during 2008, 2009, 2010?---I think, my apologies again. I think we actually got advice to that effect.

Right.---Well, that was outlined to us in, in an advice.

20 And we know that the claims are the subject of the Arbitration throughout 2009, 2010 were always well in excess of \$250,000 and in fact, the total claim was in the order of \$1.6 million.---That's correct.

And the ultimate determination handed down was about \$1.2 million, or something in that order?---I thought it was in the vicinity of \$1.1, \$1.2 million.

30 All right. Did you always understand that it was an option to either party in particular, Sydney Water during that time that if the determination came down for more than \$250,000 that they could go to the court and seek, for example, a declaration against RH3 company as to whether any payments were payable?---I thought both parties had a right of appeal.

And that was a procedure which would be a simple procedure for any remotely competent litigation lawyer to commence proceedings in the construction list or the commercial list?---Yes, if you wanted to run the risk of an appeal you could go to the Supreme Court and appeal the decision.

And in that proceeding that the, a subpoena could have been issued to Australian Water by Sydney Water claiming any documents that they didn't have?

40 MR KOSTOPOULOS: Commissioner, I object, we're going now through the practice and procedure of the Civil Liability Act, really.

THE COMMISSIONER: Mr Kostopoulos, just take a seat for a moment.

MR KOSTOPOULOS: Yes.

THE COMMISSIONER: Mr Bannon, all of those can be, I suppose, put by way of submission but we're now straying into entirely speculative areas,

aren't we? I mean, none of this occurred, I appreciate that it could have but whether or not it was simple, whether or not it was straight forward I can guarantee you it would have certainly contributed to further delay in respect of the resolution of the dispute but - - -

MR BANNON: The additional piece of evidence is the state of mind of this person, the only thing I want to establish is whether he was aware that there was at the time a simple procedure that - - -

10 THE COMMISSIONER: He said that he was.

MR BANNON: Yes.

THE COMMISSIONER: He said that he was.

MR BANNON: But the extra step is as part of that procedure a simple step would have been for Sydney Water to issue a subpoena which would have obliged the production on a compulsory process of any documents they said he didn't have.

20

THE COMMISSIONER: Well, I mean, he was a managing partner of a major law firm, I'd be horrified if he didn't know that. Anyway, go on.

MR OSLINGTON: It's hard to see this relevance of this witness's knowledge on those matters as relevant to Mr Bannon's client quite frankly.

MR BANNON: I accept that, I accept that and we trust, I shouldn't say trust, it will be our submission that at this level of detail it doesn't concern my client but I just, one doesn't know and I - - -

30

THE COMMISSIONER: I don't think it will concern your client because this about decisions that were considered by the CEO to be relevant at the time.

MR BANNON: I'll just put it very brief, I'll wrap it up very quickly and I can do it very quickly to the extent that it may be tangentially relevant to my client I wish to put it if I may. Under that compulsory process the documents which I think you took the view on legal advice, didn't have to be provided to Sydney Water, would have to be provided under a subpoena, agree?---That may be the case.

40

But confidentiality provisions could be secured if need be?---Yes.

Did you assume at all relevant times that Sydney Water was advised by competent legal people?---I've got no doubt they were.

MR KOSTOPOULOS: I object, that's offensive actually.

THE COMMISSIONER: Well, look, just a minute.

MR BANNON: I have one more question.

MR OSLINGTON: Whatever it is, the last questions have no remote relevance to - - -

THE COMMISSIONER: It isn't, it isn't relevant really.

10 MR OSLINGTON: Mr Sinodinos never - - -

THE COMMISSIONER: Mr Bannon, you're not going to make a submission are you, well I'm asking, are you going to make a submission that the conduct of this dispute by Sydney Water was in some way incompetent or that they were badly advised?

MR BANNON: No.

20 THE COMMISSIONER: Well then - - -

MR BANNON: The point is this, if I can just put the point is that it's been suggested that Mr Di Girolamo is setting about to perpetrate a fraud by not providing certain documents through this arbitration process. If it be the case as it was at any year 101 lawyer would know that at the end of the process if they were unsatisfied under compulsory process these documents would be obtained then in then in the mind of this person it would be the most ridiculous attempt at fraud one could imagine because documents would come out.

30 THE COMMISSIONER: That's entirely, that's entirely speculative but in any event I don't see why couldn't make that submission in general terms but, but the question relating to the suppression of the or the withholding of the director's salaries from Sydney Water wasn't confined to the determination, it was put in terms of the whole passage of the dispute from start to finish.

40 MR BANNON: Yes, and my question was directed to the arbitration process 'cause that - as I say, I hope, I trust it won't have any effect on my client but that was my, my client's involvement was only when it was already in arbitration anyway.

THE COMMISSIONER: Yes. All right. Well, I don't think- - -

MR BANNON: That was the only reason why I- - -

THE COMMISSIONER: I don't think you need to put it, but- - -

MR OSLINGTON: And then might I add, Commissioner, the fraud continued until quite recently when ICAC finally obtained the material and we could see what was hidden.

THE COMMISSIONER: Anyway- - -

MR WATSON: And also the 101 lawyer probably would have read the case of Scott v Avery just before they got to this.

10 MR KOSTOPOULOS: And, Commissioner, sorry to add to the cacophony but unless there's some knowledge on the part of Mr Sinodinos, what's that got to do with his client, really, I mean this is so irrelevant and I object to it.

MR BANNON: No, I, I, I, I, I accept that and I suppose it's belts and braces.

THE COMMISSIONER: Yes.

MR BANNON: But I, I, I- - -

20

THE COMMISSIONER: Are we done?

MR BANNON: To the extent it becomes relevant we'll put everything in writing. It may not be a submission we need to make.

THE COMMISSIONER: I think that would probably be a good idea.

MR BANNON: Thank you.

30 THE COMMISSIONER: I'm sorry, can I just say what I propose to do, and there's a limit to – there really has to be a limit to this. I know I said we'd sit until we finish today, but Mr Alexis is clearly going to need an hour. What I propose to do is adjourn at quarter past 1.00 and then resume at 2 o'clock. So Ms Williams, you'd better have your go now.

MS WILLIAMS: Yes, Commissioner. I did see Mr McGrath rise first, I'm obviously content for him to go first, I don't mind.

40 THE COMMISSIONER: All right. Mr McGrath, can you, can you start your questions.

MR McGRATH: Yes, Commissioner. I'm appearing for Dr Kerry Schott and Mr Ronald Quill. I just want to get, clear up some evidence that you gave two days ago. You mentioned in your evidence that you had had a conversation with each of Dr Kerry Schott and Mr Quill about the alteration in the status of RHIC from being not-for-profit to being for-profit. Do you remember giving that evidence- -?---Yes.

- - -a couple of days ago? Now, when is that you say that you had those conversations?---So it would be in the period of May to July of 2007.

And were the conversations with each of them separately or were they both together?---I can't precisely recall.

And to the best of your ability can you state the substance of the conversation that you had with them?---The conversation was arising at that time because there was a discussion about the next proposal for the next
10 stage of works and what was being put to me um, and I think Mr MacGregor Fraser may have been with me, was that Sydney Water wanted to move away from the cost recovery model into one that was more profit and loss.

THE COMMISSIONER: Sorry, Sydney Water wanted you to move away?
---The next, the next, yes, because- - -

From a cost recovery model to one that was more profitable for you?
---No, no, no, that, that had to be profit and loss because the next package of
20 works, the next proposal that was going to be put to us was not going to be the same as the stage 3, stage 2 or stage 1.

Right?---It was going to be a new type of proposal.

MR McGRATH: So- - -?---So within the confines of that it would change the manner in which we would operate.

So is the effect of your evidence that you did not say to them that you had moved away from a not-for-profit model at that stage?---I can't recall that
30 precisely.

Well, if your evidence is that you were saying that you were responding to their desire for the next package 1 works, it would be the case wouldn't it that you had not then at that time moved away from the not-for-profit status?---I would accept that.

Now, you recall that responsibility for the RHIC contract passed into Mr Quill's section of Sydney Water in about mid 2007?---Thereabouts, yes.

40 Yes. And it became- - -?---I think it might have been before that, sorry, but in any event, months, month.

During 2007 you would accept?---Yes.

Now, it was immediately clear to you at that time that Mr Quill brought a change of attitude on the part of Sydney Water for its dealings with RHIC, didn't he?---Yes.

And both he and Dr Kerry Schott together started to ask you questions about the substantiation of costs under the stage 3 works, didn't they?---Ah, they weren't asking me those questions. The, the correspondence was with I believe Bill MacGregor Fraser in relation to reallocation of costs.

Yes. So you became aware that that was one aspect of their change of attitude, to ask those questions of your company?---Yes.

10 They also took a change in approach in relation to the awarding of the next stage of contracts, didn't they?---Yes.

And that was something that caused a great disquiet on your part, wasn't it? ---Yes.

Now, you commenced to write in quite, quite severe terms to Dr Schott in relation to those changes of attitude, didn't you?---Yes.

20 You used words along the lines of, and this became quite a repetitive thing on your part, that what they were doing was commercially frustrating RHIC?---That was the position that we took, yes.

Yes. You used that language to her about her change of attitude?---Yes.

And you also used that language didn't you when you were approaching the politicians at that time, being both, being Mr Rees as Water Minister at that time?---I believe so.

30 You also accused Dr Schott and, well, through, you accused Sydney Water through Dr Schott of having breached the Other Stages Deed in relation to their change of attitude. Do you recall doing that?---Ah, we wrote to Sydney Water saying that we believed they were in breach of the Other Stages Deed, yes.

Yes. And that they were taking a commercially untenable approach?---Yes.

You also accused Dr Schott of having misled you in relation to the change of approach. Do you recall doing that?---I'd have to look at that specifically.

40 Right. You also accused Dr Schott of being anti-competitive in her attitude towards you?---I was concerned that Sydney Water was being anti-competitive.

And you used language of that type in relation to all your communications with the politicians you were approaching about the issue at the time, didn't you?---When I was complaining, yes.

Yes. In fact you went so far as to state to Dr Schott that she was threatening the very existence of RHIC in relation to the change of attitude that she had?
---Yes.

Do you recall that?---Yes.

And you were saying to both her and also the politicians you were approaching that people's livelihoods were also at stake by this change of attitude?---Yes, because the company was being in essence frustrated.

10

Yes. Now, you would agree with me wouldn't you that all of those terms that you used in relation to Dr Schott's change of attitude and Mr Quill's change of attitude, that's quite strong language on your part, isn't it?---Yes.

And you made the same complaints about the way Dr Schott and Mr Quill were behaving in your discussions with Mr Rippon at the Board?---I think Mr Rippon was advocating that view even stronger than I was.

20

Now, did you desire that Dr Kerry Schott should be removed from her position to enable you to deal with the issue that had arisen from her change of attitude?---No.

Did you in any of your discussions internally or RHIC refer to Dr Schott as, "the bitch"?---No.

Did you condone the use of that language inside RHIC- - -?---No.

- - -in relation to Dr Kerry Schott?---No.

30

Well, perhaps I just have a document shown to you. Could I ask that volume C17 be put before the witness, please?---I have C17.

Could you please turn to page 3576?---I have that.

And I want to direct your attention to the email that starts about a third of the way down that page. You'll see it's from John Rippon and you're amongst the recipients, together with the other members of the Board?
---Yes.

40

Now, you see the first sentence then there, it says, "Sounds good, if only the bitch was gone we could deal with these guys." Do you see that?---Yes.

Now, your response is recorded directly above that statement. Do you see that?---I do.

An email from you where you say, "Agree on all fronts."?---I see that.

Now, would you agree with me that you were condoning two aspects of that first sentence, first that you wanted Dr Kerry Schott gone? Do you agree that, with me in relation to that?---Not really, no.

Would you also agree with me that you were condoning the use of the word “bitch” to describe Dr Kerry Schott?---No, I wasn’t condoning it but I regret not saying something about it.

10 Well what else - - -?’Cause you never would, ‘cause you never would find an email where I would refer to Dr Kerry Schott or anyone else like that.

Well could you please explain to the Commissioner what your words “agree on all fronts” mean in relation to the email that you were responding to?---I was agreeing with Mr Rippon.

20 You agreed with all the language that he had used there including the use of the word “bitch” to describe Dr Schott?---Um, like I said I regret using the words “agreement and all fronts” in relation to that language, that’s not language that I’ve ever used in an email in relation to any person.

And you were also agreeing weren’t you with the idea that you wanted her gone?---It wasn’t a matter of Dr Schott going, she wasn’t going anywhere she was a highly regarded senior bureaucrat within the confines of the New South Wales Government but we were trying to ascertain was to get a result through the politicians either a yes or a no and that’s what we were struggling with.

30 So would you agree with me that you wanted Dr Kerry Schott out of the way in your dealings with Sydney Water?---Dr, Dr – the idea that Dr Schott was going to go out of the way as far as I concerned was completely unrealistic. The Government was not going to do anything in relation to Dr Kerry Schott and - - -

40 THE COMMISSIONER: Would you have, would you have endorsed the expression of the view that if Dr Schott was not there it would have been easier to deal with other people at Sydney Water?---I’m not so sure about that. The position, Commissioner, was that the relationship between RHIC and Sydney Water went up and down from time to time depending on different managing director’s views of the contract.

MR McGRATH: Did you see as one of the strategies that you could use if Dr Schott remained in her position was that you would deal instead above her head with the New South Wales Government to get what you wanted? ---The view that I came to was that I would seek advice in relation to the contractual interpretation of the other stages deed which I did from Brett Walker and James Lockhart as a result of that advice their advice was that we should intervention by way of a Ministerial direction and I think it’s section 20(b) of the State Owned Corporations Act and that’s the way that

we should behave because his view was that that there was a breach and that the public tenders were misleading the public.

Now what about Mr Quill, was he someone that you wanted gone as well?
---Mr, Mr Quill um, was someone who we perceived to have been difficult.

And you wanted him gone didn't you?---Again it's the, it's the, it's the same, same position. I don't believe that you could go to a politician and say to that politician you should sack or get rid of two senior people like Dr
10 Kerry Schott and Mr Ron Quill, they were highly regarded and entrenched bureaucrats and any suggestion that we could do that I think was a fantasy.

Now, you had Mr Koelma in your office from time to time didn't you?
---Yes.

And you communicated with him in relation to your frustrations as you saw them of dealing with Dr Kerry Schott?---Yes.

Now, what do you know about a complaint that was made in relation to Mr
20 Quill concerning the circumstances in which he retired from Sydney Water and was then subsequently reemployed?---Only what I've heard.

MR WATSON: These matters are going to be covered in Operation Spicer, Commissioner.

THE COMMISSIONER: They will be covered again, Mr McGrath. Do we need to do it here?

MR McGRATH: Well, I wasn't sure whether I would get the opportunity to
30 question this witness in relation to those things.

THE COMMISSIONER: I think you will.

MR WATSON: I promise Mr McGrath I'll do it for him.

THE COMMISSIONER: Yes.

MR McGRATH: Yes. Thank you. Nothing further.

40 THE COMMISSIONER: All right. We might take the luncheon adjournment and resume at 2 o'clock. Thank you.

**AT 1.14pm THE MATTER WAS ADJOURNED ACCORDINGLY
[1.14pm]**