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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION CREDO AND SPICER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 15 MAY, 2014

AT 10.00M

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THE COMMISSIONER: Yes, could Mr Koelma come back into the box please.

MR WATSON: I was start, there's just something I wasn't to say at the outset?

THE COMMISSIONER: Oh, I'm sorry, yes, go on.

10 MR WATSON: Yesterday there was an unfortunate moment, Commissioner, when I may have been indiscreet in something I said to Mr O'Mahoney and I'm afraid I can't retreat to the corner of calling the press hysterical in reporting it, in fact unfortunately their reporting was perfectly accurate. What I need to do is this, is apologise for that, I didn't realise it may be heard by others and I certainly apologise to Mr Koelma who I don't believe heard it said but may have seen it reported in places. I apologise for that.

THE COMMISSIONER: Thank you, Mr Watson. Yes, Mr Naylor.

20 MR NAYLOR: Commissioner, first of all could I thank my learned friend for the apologies that he's just issued, I want to draw to attention another media-related incident Commissioner - - -

THE COMMISSIONER: Yes.

MR NAYLOR: - - - that occurred yesterday afternoon. As Mr Koelma was leaving the Commission's premises he was surrounded unfortunately by a number of - - -

30 THE COMMISSIONER: He's not alone in that regard.

MR NAYLOR: - - - journalists and his face was struck by a camera lens when he was pushed in certain circumstances which was upsetting to him.

THE COMMISSIONER: Well, he can take appropriate action against those persons if he wishes, Mr Naylor, but I'm just curious what do you want me to do about it?

40 MR NAYLOR: I think I can do no more, Commissioner, than ask that appropriate restraint be exercised.

THE COMMISSIONER: All right. Well, I think the media will have heard that and they can take action accordingly.

MR NAYLOR: Thank you, Commissioner.

MR CONDITSIS: Sorry, Commissioner, could I - - -

THE COMMISSIONER: Yes, Mr Conditis.

MR CONDITSIS: Yesterday afternoon Counsel Assisting referred the witness, Mr Koelma, to part of the compulsory examination in June 2013 of Mr Spence and - - -

THE COMMISSIONER: Yes.

10 MR CONDITSIS: - - - indeed sought a lifting and obtained the lifting of a suppression order in relation to two pages of that, of that examination.

THE COMMISSIONER: Yes.

MR CONDITSIS: The Commissioner will note I objected at the time about that line of questioning and in any event as I understand prior, I won't say rulings, by my understanding was that when transcripts or part of compulsory transcripts would be referred to and the suppression order was lifted that those parts of the transcript would be made available to the relevant legal practitioners. I still haven't received it. I sent an email last
20 night and again this - - -

THE COMMISSIONER: What do you mean, the two pages - - -

MR CONDITSIS: Those two pages to which have been referred and in my respectful submission it should have been provided at the time, it wasn't and it still hasn't been. That was the first matter I wanted to raise.

30 THE COMMISSIONER: Yes. Mr Watson, do you have a copy of those two pages you can provide to Mr Conditis?

MR WATSON: No. I've some excerpts from Mr Spence that I was going to tender in due course. I mean, Commissioner, despite what my learned friend says there's no obligation on us to do that and the thing is it doesn't presently cause any unfairness to Mr Spence, he'll get to see it in due course.

MR CONDITSIS: Well, well, that's the, that's the unfairness.

40 MR WATSON: Sorry, it was his evidence, how could it be unfair for me to be quoting the man's evidence.

THE COMMISSIONER: Well, yes. In any event it was pages 109 and 110 that you were referring to was it, Mr Conditis?

MR CONDITSIS: Yes, your Honour, ah, Commissioner.

THE COMMISSIONER: Well, that's, that's only part of a number of a pages in relation to which a suppression order was lifted but in any event

you'll receive it in due course. What was the second part of your submission.

MR CONDITSIS: The second, the second aspect is this, or it's unrelated to the first, is that as the Commissioner would know my client, Mr Spence, has been on the witness list all week, he was here all day yesterday, he's here again this morning. There's been a late change which I only became aware of this morning yet again to the witness putting Mr Tinkler ahead of Mr Spence. I understand, Commissioner, you yourself have no control over that per se but - - -

THE COMMISSIONER: Well, I mean, insofar as I assume Mr Tinkler has to be brought forward to accommodate some - - -

MR WATSON: I was going to ask for submissions on this when I finish Mr Koelma actually.

THE COMMISSIONER: Oh, all right.

20 MR CONDITSIS: Well, I'll wait till then.

MR WATSON: I wasn't going to shut Mr Spence out.

THE COMMISSIONER: All right. All right.

MR WATSON: I do know that Mr Spence has been here for a fair while and - - -

30 THE COMMISSIONER: All right.

MR WATSON: - - - I do not know what Mr Tinkler's - - -

THE COMMISSIONER: Mr Tinkler's position is.

MR WATSON: - - - position is.

THE COMMISSIONER: All right. Thank you.

40 MR CONDITSIS: I'll wait till the - - -

THE COMMISSIONER: Right. Mr Koelma. Oh, sorry, Mr Henskens.

MR HENSKENS: Sorry, Commissioner, I had told Mr Watson I had an application to make.

THE COMMISSIONER: Yes.

MR HENSKENS: Commissioner, yesterday at transcript pages 4136 through to 4142 there are a documents that were marked MFI 1 to MFI 6 - -
-

THE COMMISSIONER: Yes.

MR HENSKENS: - - - which were said to be documents that were seized under a search warrant from Mr Hartcher's electorate office that were contained within a manila folder and similar evidence or similar statements were made about Exhibit S79 coming from a manila folder within
10 Mr Hartcher's office. Commissioner, I've sought access to or I seek access to MFI's 1 to 6 being documents which have obtained, have been obtained from Mr Hartcher's office according to Counsel Assisting and I also seek access to the original manila folder and its contents which is said to be the source of those MFI's and Exhibit S79 so that my junior and I may inspect the originals of those documents and the folder. That hasn't been agreed to so I, I formally ask you, Commissioner, to make orders that will facilitate that access.

20 THE COMMISSIONER: Well, I mean, until those documents become exhibits there is no obligation on the Commission to provide documents that are marked for identification to anyone including Counsel who might appear for interested parties, that's, that's a feature of the inquiry, Mr Henskens. We have the, we have the right to withhold material until we deem it appropriate to confront the witness with that material and that's when the material will become generally available as and when it's tendered.

MR HENSKENS: Well, in my submission this shouldn't be a memory test.

30 THE COMMISSIONER: It's not a memory test.

MR HENSKENS: These, these are, these are documents - as a matter of fairness these are documents which have its said to have emanated from Mr Hartcher's office. Now in order for me to get instructions on whether that's true or not and in order for me to get instructions on the documents I need to have access to them.

40 THE COMMISSIONER: Well, you'll get access at the appropriate time and then you can take instructions and if you need further time to get those instructions it will be granted. But as I keep saying, Mr Henskens, to invoke general notions of fairness doesn't really help. I mean, we acknowledge the Commission has an obligation to accord procedural fairness and the touchstone of procedural fairness is an opportunity to be heard if an adverse finding is foreshadowed by the line of the questioning undertaken by Counsel Assisting but there is no obligation on the Commission to provide advance of the material that's going to be produced in the course of the inquiry.

MR HENSKENS: Well, in my, in my submission, Commissioner, having regard to the way in which - the documents in Exhibit S79 were within the bundle that was put on the, the secure website on the business day prior to the commencement of this inquiry, this public hearing. The documents that are MFI 1 to 6 were not and we seek access to them. If, if there's been disclosure of part there should be disclosure of the whole and in my submission I should be entitled to look at the originals of those documents as a matter of procedural fairness.

10 THE COMMISSIONER: Well, no, I'm sorry, I don't accept that it is a matter of procedural fairness. The timing of the content and the - sorry, the timing of the disclosure of material and the extent to which the content of that material is disclosed is a matter for Counsel Assisting. There is, there is really no point in talking about procedural fairness in the context of any obligation to give advance notice of what Counsel Assisting proposes to use in the course of his questioning. As I said before when and if the material is tendered, if you need further time to take instructions from your client you'll be given it.

20 MR HENSKENS: All right. Well, can I just, in short, and I don't want to take a lot of time about it, but firstly I submit that it's not a matter of Counsel Assisting, it's a matter for you as the Commissioner to ensure that the processes of these public hearings are afforded procedural fairness.

THE COMMISSIONER: And I intend - - -

MR HENSKENS: Secondly - - -

30 THE COMMISSIONER: - - - to do that, Mr Henskens.

MR HENSKENS: And, and secondly I submit that having regard to Ainsworth v CJC and the other decisions that have decided, that this Commission is imposed with an obligation of procedural fairness, that access to these documents fall within that obligation and that I ought to be afforded access to the documents that I've sought access to no.

40 THE COMMISSIONER: All right. Well that application's noted and I reject the basis of the application. I simply note that in relation to the assertion that procedural fairness somehow compels this Commission to provide advanced notice of the material upon which any particular witness will be question that the decision of Justice Hunt in Donaldson v Wood of 15 September 1995 stands squarely against that proposition and as I said the application is noted and refused.

Yes, Mr Watson. Can we have Mr Koelma back into the witness-box.

Mr Koelma, the section 38 order and the obligation to tell the truth persists from previous days. Yes.

MR WATSON: Mk, did you ever pay Chris Hartcher any of the money of the Eightbyfive account?---No, I don't think so.

When you say that might you have done so?---I don't think so, I can't recall an instance where I would have ever have reason to do so.

10 Well so you would say in more likelihood no?---As far as I can recall, no.

Bearing in mind what's been said about procedural fairness so far. Just as a matter of procedural fairness I put to you that you did?---I can't recall an instance when I did.

Could the witness be shown Exhibit S9. Would you open that up at page 2545?---Sorry, which?

20 Page 2445 so, sorry?---Sorry.

2545?---Sorry, I think we're - - -

2545e. It's on the screen?---Yes.

You'll see here that this is an email apparently sent by Darren Webber to you on 18 May 2010. Do you see that?---Yes.

30 I'll now have you shown on the screen page 2546. This is a you'll see an invoice from Webbbson and you may recall this is quite different to the heading and the format of the letterhead of the later invoices that I've shown you or the more recently prepared invoices. Just look at the top of it, look at the screen. See where it says Webbbson, it's different?---Yes, I don't recall exactly what the ones yesterday look like but - - -
Well the other one spoke about electro technology for example it's different. Do you see that?---Yes.

And you'll see that this one's dated 17 May 2010 where as yesterday I was showing you an invoice dated 5 May 2010.

40 MR FERNAN: I object to that, your Honour. As I understand the invoice that was being shown was that which is Exhibit S13 at page 3694 and I understand that's the one that Mr, that Counsel Assisting is referring to and that doesn't bear the date 5 May 2010.

MR WATSON: So, sorry. I must say I'm doing it from memory and - - -

MR FERNAN: 17 May it bears the same date.

MR WATSON: Sorry, yes, it is you're quite right 17 May. I as mixing it up with something else but what I want to show you is this is that this is something which was sent through to you, Mr Koelma, by Mr Webber into 2010. You appreciate that don't you?---Yes.

Have a look what he's invoicing you for, do you see it?---Yes.

IT Consulting and Electro Technology advice. Do you see that?---Yes.

10 Well now do you appreciate that he was actually at the time invoicing you for IT Consulting and Electro Technology advice?---As I say I can't recall.

Look don't, please don't go to that don't recall without thinking. Look at it, it's an email to you dated 18 May 2010. All of us in this room we don't need to recall it we can read that it's obvious what it is. Don't you agree? ---Yes.

20 Why, why on earth were you paying Mr Webber for IT Consulting and Electro Technology advice?---As I say I can't recall this specific invoice and - - -

That's not the question. The invoice is there, the charge is there, you've said you've been paying the man money under his invoices. Is that right or wrong?---Yeah.

It's right?---Yes.

30 Why were you paying him for IT Consulting and Electro Technology advice?---Well I don't think that's accurate but it's - - -

What do you mean? I can read it there?---No, I mean I don't - - -

I mean is that how you spell it IT Consulting and Electro Technology advice?---I mean I don't think that's an accurate description of what he was providing.

40 Well then why were you paying the man on an invoice for the wrong thing? He's invoiced you for the wrong service. Why were you paying it?---Yeah, but there may have been a mistake in that particular instance. I can't - - -

What do you mean a mistake in that instance, a mistake by you or a mistake by him?---Well if I paid it with the wrong description a mistake by me.

And but he by the looks of it thought he was invoicing you fairly improperly for IT Consulting and Electro Technology advice, that's what it looks like doesn't it?---Yes, that's, yeah.

Well have you ever got to the bottom of this that you thought that you were getting from him acute specialist political advice on factual matters on the Central Coast and he thought he was providing you with IT Consulting and Electro Technology advice?---Well I don't think he did I think we're fairly clear about what he was providing and this description is not accurate.

10 Well who would know better when typing up the invoice as to what Mr Webber thought he was doing, you or Mr Webber?---Oh well Mr Webber but I, that's not, as I say that's not the understanding we had, that's not the advice he was providing that that description is not accurate.

Doesn't it show you that these invoices have been pulled together as some sort of shabby trick to justify the payments, that's the truth of it isn't it, Mr Koelma?---No, sir, I think it's just a mistake.

Well have a look at the invoice, what the business does, IT and electrical experts not political consultants, not PR not marketing?---No. He had had that business for some time I understand.

20 But what else could he give you? I mean the man had the business you say for some time which provided IT and electrical expertise. That's the only service he could provide you isn't it?---Well no, as I say that was the business that he had for some time and he was using - - -

Great. But we'll go on, Mr Koelma. Yesterday I was asking you about favours done for Australian Water Holdings and I'd taken you through the cash for question issue. Do you remember that?---Yeah.

30 I want to move now to the press release. Could the witness be shown Exhibit S3. I'm going to try and do this as quickly as I possibly can, Mr Koelma, but I've got to show you these things as a matter of fairness to you. Open it up at page 585. You'll see here on page 585 that Mr Di Girolamo is sending you a lengthy text message and in it he's suggesting wording in a document. Do you see that?---Yes.

And that was his proposal as to wording which should be included in a press release. Correct?---I'm not sure whether I requested wording or whether he - - -

40 Oh look that's not an answer to the question. Let's try and move quickly. He was suggesting to you wording to be used in a press release wasn't he? ---It looks like it, yes.

And then look at your response, you see that you're working out how a press release can be issued without treading on toes, trespassing into other peoples portfolios. Do you see that?---Sure, yes.

All right. This is about the preparation of a press release, do you agree?

---Yes.

Have a look at page 586. That's a start of an email chain, you'll see – well it's not the start it's, you'll see that you email Mr Hartcher on 20 July 2010 at 10.42 and you've put together a press release titled, "Green seats while Greenfield sites suffer." Do you see that?---Yes.

This is the press release that Mr Di Girolamo wanted, correct?---It's the press release that he contributed some wording to.

10

And he wanted?---I can imagine he would have been happy to see it sent, yes.

Why, why would he want it sent?---Um - - -

Can I suggest an answer to save time? He wanted it sent because it tended to advance the cause of Australian Water Holdings. Correct?---I don't know whether that would have been that specific but

- - -

20

All right. We'll do it the long way – you're going to be here all day again I'm afraid.

MR NAYLOR: I object, Commissioner.

MR WATSON: You go ahead and tell us why do you – I'm just going to ask the open-ended question.

THE COMMISSIONER: Yes. All right.

30

MR WATSON: Why do you think Mr Di Girolamo would be pleased that this would be issued, this press release?---Ah, politically it supports the position that he supported and commercially it does so as well.

In other words if this sort of thing gained traction, he and Australian Water Holdings might make money?---I'm not sure it's that direct but I suppose it's- - -

40

Then, Mr Koelma, what were you doing, what was your role in this sending this on to Mr Hartcher, who were you representing?---Um, my sending draft press releases to Mr Hartcher would have been a fairly regular occurrence.

No, I'm focussing on this one. Who were you representing when you sent this on to Mr Hartcher?---I'm not sure I was representing anyone, that's- - -

Well, what were you doing sending it on, Mr Koelma?

THE COMMISSIONER: Another way of asking that, Mr Koelma, is on whose behalf were you acting when you sent this on? You weren't doing it on a frolic of your own?---Well, I don't know about frolic but I would – it wouldn't be uncommon at all for me to gather information and draft a press release.

That's not the question, what is common or uncommon is not the question. The question is, in this particular instance on whose behalf were you acting? ---Ah, without more information I'd have to say my own.

10

MR WATSON: And then tell us if you're acting on your own why Mr Di Girolamo would be contributing to the wording of it?---I probably asked him to.

And what, you were just trying to do your own independent research and you thought, well, I know who I'll go to, it will be Nick Di Girolamo, did you?---I did so regularly, yeah.

20

That's just absurd, Mr Koelma. Isn't it plain that at this stage Australian Water Holdings, who were paying you money each month, you were representing them?---No, I wouldn't have seen it that way round, that's, that's not the- - -

What interest did you have then in this subject?---Um, I had an understanding of this subject and as- - -

No, you must have misunderstood me. What interest did you have in promoting this as a press release?---A political interest.

30

A political interest in this particular issue?---In this and a range of other issues, yes.

Utterly independent of your retainer by Australian Water Holdings, is that what you're telling us?---Ah, again I don't know the genesis- - -

THE COMMISSIONER: Mr Koelma, just stop for a minute, please, would you?---Sure.

40

This was done at a time when you were retained by Australian Water Holdings, was it not?---Ah, yes.

And part of your retainer was to, as you put it some time ago, offer strategic political advice?---That would have been part of it, yes.

And you were expected to advance the interests of Australian Water Holdings in offering that advice, weren't you?---(No Audible Reply)

Well, you weren't expected to damage their interests, were you?---No, obviously not.

Well then when you look at this chain of emails and what Counsel Assisting has asked you- -?---Ah hmm.

10 - - -this is entirely consistent with your retainer, isn't it, it's entirely consistent with what you were asked by AWH, you say, to do on their behalf?---Yeah, like I said, it's not inconsistent but I'm not – my, my suggestion is that it wasn't necessarily that he provided me with information in advance of this but that I may have spoken to him about an issue that I had seen and he provided information. I'm not disputing the fact that the information came from him to support my writing this press release.

And nor are you disputing the fact that essentially this was done at Mr Di Girolamo's behest- -?---I don't- - -

20 - - -as part of your retainer?---Well, no, I don't, I, I dispute the fact that it was at his behest or the – I don't know, as I say, I don't know the genesis of this conversation.

What, you don't know who came up with this idea?---Correct.

But you can't dispute that it may have been at Mr Di Girolamo's behest?
---It may have been, yes.

Right.

30 MR WATSON: Well, have a look at page 590. I just want to show you the press release was issued by Mr Hartcher, wasn't it?---Ah, I'm not- - -

Oh, well, have a look at page 590, man, it's headed "Chris Hartcher." It says down the bottom, "Chris Hartcher." What do you think?---No.

Let's try and move forward quickly. It was issued by Hartcher, wasn't it?
---It looks like it, yes.

Oh, it looks like it. Well, have a look at page 600 then?---Yes then it was.

40 Oh, good. Now, have a look at 600. Do you see down the bottom there's an email from you, Mr Koelma, to Mr Di Girolamo. Do you see that?---600.

Page 600, second half, email, you to Di Girolamo. Do you see that?---Yes.

What do these words mean when you've sent him a copy of it, "Hope it's still within useable timelines." What does that mean?---I don't recall that specifically, it's- - -

It's your email, Mr Koelma, the best person in the entire worlds is now sitting in the witness box with an opportunity to explain it. What did you mean?---I can't recall the conversation that I would have had within – I can speculate if- - -

What did you mean with the words you typed into your own computer?
---I don't know. Without any context I have no idea.

10 There is a context. Have a look at it. You're sending him a copy of the press release. Can you see that?---Yes.

You say you hope it's still within useable timelines. Obviously Mr Di Girolamo wanted to use the press release for something. Isn't that obvious?
---Yes.

Okay?---I- - -

20 So that's what it means. Mr Di Girolamo, you knew this, Mr Di Girolamo wanted the press release because he wanted to use it somehow?---I presume so, yes.

All right. Now, is this the picture, that while you're on a retainer to Australian Water Holdings, the probability is that Mr Di Girolamo urged you to put together a press release which would in due course be issued by Chris Hartcher. Do you accept that?---I, I accept that he would have been encouraging of that, I- - -

30 Well, you did it, not only encouraging but it happened?---Like I say, I'm, I don't know the background and it- - -

Sorry, don't worry about the background?---Well, I- - -

Just listen to me. Isn't it obvious from what I've shown you?---I don't think so.

40 Mr Di Girolamo was trying to get you to draw a press release which would be issued by Chris Hartcher. You've got to accept that, don't you?---(No Audible Reply)

Yes or no?---No, I don't- - -

All right. Okay.

THE COMMISSIONER: Mr Koelma, Mr- - -

MR WATSON: Well, Mr Koelma, we'll get the day off to a cracking start, you're just lying again, aren't you?---No, I've- - -

THE COMMISSIONER: Mr Watson, just pause there for a moment.

Mr Koelma, there is no magic in this. You are just being asked to look at documents, most of which are generated by yourself- -?---Sure.

- - -and answer questions based on the obvious interpretation of those documents. That's all you're being asked to do?---Well- - -

10 Is that so hard?---He, well, I'm being presented with an interpretation and I'm saying I can't confirm that that interpretation is necessarily correct.

I'm sorry, what other interpretation could there be?---Well, the, the- - -

Now, just a minute, just stop for a minute?---Sure.

20 You've just been shown an email chain, a press release, some text messages. Now, you go ahead and tell us what interpretation could be placed on those documents about what was occurring other than what Counsel Assisting has put to you?---Well, the, the premise of the proposition is that- - -

No, I don't want to know about the premise. I want to know what interpretation can you place on those documents other than what Counsel Assisting has been putting to you. This is important, Mr Koelma, I want to know what other interpretation you can suggest?---That I found information, I asked Nick for additional information, he provided it and thereafter encouraged the creation of a press release.

30 Well, I frankly think that you've, you've just agreed with all the propositions Counsel Assisting has put to you and I don't understand why it took us that long to get there?---The, the only, the only disagreement I think is in the interpretation of whether the idea started with me or with Mr Di Girolamo. I don't- - -

MR WATSON: All right.

THE COMMISSIONER: All right. Well, anyway, it could have been an idea that you both had at the same time?---That's also- - -

40 MR WATSON: Incidentally, you do know Mr Di Girolamo's given evidence about this and has agreed with the proposition I put to you, did you know that?---I wasn't specifically aware of that.

All right. Well, does that help you?---If he's accepted that that's the case and I've accepted that that's the case then- - -

Great?---I'm not sure what the- - -

Well, close up that volume. Could the witness be shown Exhibit S2. While Exhibit S2 is making its way to you, do you remember the first Freedom of Information application that you made through Charlie Lynn?---Ah, yeah, in general terms, yes.

Well, I'll help you in specific terms if - - -?---Sure.

10 - - - you need to but I was hoping that we could just do it without going to the documents. What happened was Mr Di Girolamo wanted to get documents from the Auditor General about Sydney Water, correct?---Ah, yes, that sounds familiar, I'm - - -

And what happened was the idea was that there would be a Freedom of Information Act application to get those documents, correct?---Ah, yes, that sounds correct.

And so the idea was that you, with the assistance of Greg Skehan, would draw up an FOI application?---Ah, yes.

20 And can you tell me is there any impediment to Mr Di Girolamo making that application in his own name, he can do that as every citizen of New South Wales can, correct?---I suppose so, yes.

And is there any impediment to Australian Water Holdings Pty Limited making that application in its own name?---Not that I'm aware of.

And is there any impediment to Tim Koelma making the application in his own name?---Not that I'm aware of.

30 Well, can you now explain to us the circumstances why the FOI application was not made in the name of Di Girolamo, Koelma or Australian Water Holdings?---Um, it wasn't uncommon for Members of Parliament - - -

No, no, no, you must have misunderstood me, I don't care what's common, uncommon, rare or like dirt, I want to know why the FOI application wasn't made in your name, Mr Koelma, or in Mr Di Girolamo's name or in the name of Australian Water Holdings?---Because making it via a Member of Parliament was seen as more effective.

40 Why? Are you saying that an FOI application made in your name would be treated differently to a Member of Parliament?---As I understand it they often are.

Well, what are you basing that upon?---Ah, on my experience of Freedom of Information applications.

Then why didn't you make it in the name of Christopher Hartcher?---Ah, that generally wasn't what was done ah - - -

Sorry, when you say it wasn't done are you saying that Mr Hartcher had some personal aversion to FOI procedures?---Um, no, not specifically and I understand he'd made them in the past.

All right. Well, why wasn't it made in the name of the Christopher Hartcher?---Ah, at that point the um, as I recall the Opposition had a system for centralising Freedom of Information applications um, and that was - - -

10 No, sorry, you must have misunderstood it. It was made in the name of Charlie Lynn?---Yes.

You were close to Mr Hartcher, why wasn't it made in the name of Chris Hartcher?---Because at that stage as I understood it there weren't Freedom of, well, Freedom of Information applications weren't being made by, in that way.

20 Well, how could it be made by Charlie Lynn?---Well, it wouldn't normally be made by Charlie Lynn either.

But you did, you used Charlie Lynn, you organised it with Zaya Toma? ---Yes.

So if it could be made by Charlie Lynn why could it not be made by Chris Hartcher?---Um, I don't think there was - the, the - my recollection is that there was a discussion at the same time about the potential need for whoever received the information to make a statement in the Parliament, either private Member's statement or - - -

30 THE COMMISSIONER: Well, that's not responsive to the question. I don't think you're going to get an answer, Mr Watson.

MR WATSON: No, I'll give up on that but I do want you to know what I'll be putting is that it was done this way deliberately to keep Di Girolamo's name out, Koelma's name out, Australian Water Holdings' name out and Chris Hartcher's name out of the picture, that's why it was done through Charlie Lynn wasn't it?---I don't think so, I think it was - it would normally have been done through the Leader of the Opposition's office.

40 Well, then tell me why it wasn't?---Um, I can't recall why in this particular instance it wasn't but that was the normal procedure for things.

Now, Mr Di Girolamo was riding this issue hard wasn't he, he was after these documents?---Ah, I can't recall the - - -

Well, then open up at page 342 and I'll help you?---Sure. 342?

342. It's on the screen. This is Mr Di Girolamo to you, he's following up on the FOI's, correct?---Ah, yep.

Now this was all done at the initiation of Mr Di Girolamo wasn't it?---Ah, yeah, I think my discussions were with Greg Skehan as well but I mean, yes, the - - -

All right. And then you're keeping him abreast of it, page 342, do you see that?---Yes.

10

Go to page 347, it'll come up on the screen, I think that will save a lot of time. These are at the same time emails or text messages on this issue showing contact between Mr Di Girolamo and Mr Hartcher, I just wanted to show that to you. Go to page 362?---Sorry, 3?

62, it'll come up on the screen?---Oh, I was looking at 347, I don't think 347's related but - - -

All right. Well, okay?---362?

20

62. Mr Di Girolamo to you again chasing up the FOI, do you see that? --- (No Audible Reply)

Do you see that?---Yes, yes.

And then page 363, Mr Di Girolamo to you chasing up the FOI, got it? ---Yes.

30

And have a look at 365. You following up with Mr Di Girolamo on the FOI, do you see it there?---Yes.

Go to 378. You'll see that this is a document which is the first page of the response to the FOI application, have you got it?---Yes.

You gave the information straightaway to Mr Di Girolamo didn't you? ---I, I may have done.

40

Oh, sorry, you may have done. Mr Koelma, you must be aware you gave the document straightaway to Mr Di Girolamo didn't you?---That seems likely, I, yes.

What else were you going to do with them?---Well, no - - -

He wanted them, it was his application, you got them for him didn't you? ---Um, yeah, my only - yeah, I don't know what timeframe the, was involved but yes, I - - -

You don't need to know a timeframe, as soon as you got it you passed it on didn't you?---Um, I got it and passed it on, yes.

Right. Well, look at page 499, it'll come up on the screen, I'm sure that's faster, 499, this is the text messages between you and Mr Di Girolamo, "Where are the docs," he asks, "Still waiting for the docs to clear Parliament. Will let you know as soon as I have them." It was being passed on to Mr Di Girolamo as a matter of some urgency wasn't it?---Yeah, yes, I was - - -

10

He wanted to use them didn't he?---He wanted them, yes.

And he wanted to use them to embarrass Sydney Water if he could, isn't that right?---I couldn't speak to his motivation but - - -

20

Oh, come on, you can't speak to his motivation? You were making this application through an elaborate means, bypassing using your own name, bypassing Mr Hartcher's office, going to Zaya Toma, organising for Charlie Lynn to make the application. You tell us what was the purpose behind making this? Just a desire, what to sit at home on a Saturday night and read Auditor General's reports?---Well, as I say, I'm not - I can't recall now a specific conversation about what he would have wanted them for but he clearly wanted them.

Well, let me give you a little help?---Sure.

30

Could it be so that the documents could be used to embarrass Sydney Water during the currency of the dispute between Sydney Water and Australian Water Holdings?---I suppose that's possible.

And the way that that was done I want to suggest to you was that Chris Hartcher was given information by Di Girolamo which Chris Hartcher then gave to the journalist Heath Aston, correct?---Ah, that's possible.

What do you mean possible?---Well, I don't, I don't recall but - - -

Oh, well, I'll help you in a moment - - -?---Sure.

40

- - - but I'm putting this to you, you're certainly not denying it are you?
---As I said it's possible, I mean - - -

And the idea was that Mr Hartcher would lay some groundwork with Mr Aston so that an article would be published embarrassing Sydney Water, that's the fact isn't it?---Like I said it's possible.

What else is possible?---Well, I'm, I, I don't recall a specific - yeah.

Have a look at page 513. This is telephone traffic between Mr Hartcher and Mr Di Girolamo following which there's telephone traffic between Mr Hartcher and Heath Aston the journalist. Do you see all of that?---Yeah.

You were working closely with Mr Hartcher at this time, voluntarily you say, but on the campaign trail. Correct?---Correct.

What else would Mr Hartcher, you nodded your head as you took a drink. Was that answer yes?---Sorry. Yes. Sorry.

10

What do you say, to the best of your recollection what was Mr Hartcher doing dealing with the journalist Heath Aston?---I, he dealt with Heath, well as I understand he dealt with Heath Aston and other journalists regularly so I, it's - - -

20

All right. Well, have a look at page – I want to make I clear, Commissioner, I'm not suggesting Mr Aston did anything wrong in any of this. Now Mr Koelma, page 516 may be able to help you. This is SMS traffic between you and Mr Hartcher and it's Mr Hartcher saying this, "Sun Herald tomorrow has your water story. I gave some quotes." And you respond, "Excellent. Excellent. He is a good journo. If it comes out well we should keep him in mind for other stories." What does all that mean?---Um, exactly that. I think he, if we got a - - -

30

No, but sorry, just have a look at the start of it. "The Sun Herald has your," your water story, Mr Koelma. What did he mean "your water story?" Was this genuine politicking by Hartcher or is he merely recounting a story on your behalf?---I'm not sure.

Oh come on?---Well I - - -

What do you mean not sure. He's saying, "The Sun Herald has your water story." What could that mean?---Well - - -

You planted the story with Mr Hartcher and he planted it with the Sun Herald. That's all it could ever mean isn't it?---That's possible, yeah.

40

Possible. What else is possible?---Well I, you're asking me if something, I mean, I'm not rejecting the proposition.

Good. Okay. Well let's agree that that's extremely likely to be the case, that Mr Hartcher was doing your bidding planting a story with the Sun Herald at your bidding?---Um, I don't know whether I gave the story to Heath Aston or whether - - -

Oh no - - -?--- - - - Mr Hartcher.

- - - it was given by Mr Hartcher. We can establish that. We've spoken to Mr Aston?---Sure. So it's - - -

And so the Sun Herald has your story. Mr Hartcher was planting a story with the Sun Herald at your bidding, correct?---I, yeah, I may have requested that, I may have given it to him to give to the Sun Herald, yeah.

Why?---Ah, it was a good story and - - -

10 What, a good story like - - -?---Politically.

Politically. Right. And is that your only motive?---Ah, it would have been my primary motive.

Right. Well what about this as an alternative motive? It assisted Australian Water Holdings in it's dispute with Sydney Water. Could that have been a motive?---I don't think that would have been a specific motive but it's - - -

20 Well, I thought we'd got to the point I was, oh, celebrated too early. I thought we got to the point where you agreed that the FOI application had been initiated by Mr Di Girolamo and the purpose most likely was to collect documents which could advantage Australian Water Holdings in its dispute with Sydney Water?---Well yeah, again I, the, the, it's, as I say it's not, I'm not sure what - - -

30 Well, let's just have a look at page 517. It may help you. You'll see there that the first two messages are between you and Mr Hartcher and Mr Hartcher is saying something about the Sun Herald page 21 and he's pleased that it's portraying him as Superman. Do you see that?---Ah, yes.

And then you get in touch with Mr Di Girolamo. Does that help you in thinking that Mr Di Girolamo might be interested in the story?---I'm sure he would have been.

40 All right. Well let's have a look at the, at page, if you wouldn't mind, page 522. There's the cartoon. We can see that. And we can see what the article's about. It's about the documents which have been got under the FOI application isn't it?---Ah, yeah. Without seeing the FOI application, yeah, I - - -

Now where did Mr Hartcher get that information from?---Um, again I don't know whether, I mean, you're suggesting that Heath Aston got it from Chris Hartcher so - - -

Yep?--- - - - if - - -

You can see Chris Hartcher's boasting in his text message to you that he has been quoted in the article?---He has, yes.

Yep. Right, okay. So he's obviously spoken to Heath Aston. That's apparent from the face of the document, right?---Ah, yes he's, yeah.

Now, where was Mr Hartcher getting the information from which led him for example to say that there was a systematic rewriting of an Auditor General's report? Where was he getting that from?---Well as I say I'm not sure whether I gave this information to Heath Aston or whether he gave the information to Heath Aston.

10

No. You see, Mr Hartcher is quoted?---But that doesn't mean he gave Heath Aston the story.

Well Mr, if you remember I showed you a text message where Mr Hartcher himself said, "I gave some quotes." Do you remember that?---He, he gave Heath Aston some quotes, yes.

Yeah, all right, okay?---That doesn't mean he - - -

20 Then where did Mr Hartcher the information from which allowed him to be quoted by Heath Aston?---Ah, he may have been given the information from Heath Aston or he may have been given information from me.

So are you saying that Heath Aston had access to the FOI information?---Ah, yeah. If it was provided to him.

30 Look, isn't this the case that Mr Hartcher was nothing more, nothing less than your mouthpiece taking the information which had been used by Di Girolamo and relaying it to a journalist. Isn't that the case?---No, like I say that's, that's - - -

So you tell us where you think Mr Hartcher got the information from?---(No Audible Reply)

It's not Heath Aston saying oh look, I'm going to quote Heath Aston. It's Heath Aston quoting Chris Hartcher?---Yeah, I think it's just a - - -

Oh, Mr Koelma - - -?---No, it's, it's - - -

40 - - - a bad start to the day. It's quarter to 11.00 - - -

MR NAYLOR: Commissioner - - -?---I think it's just a misunderstanding about - - -

THE COMMISSIONER: Let him finish. Let him finish. Go on.

MR WATSON: Yeah, go ahead?---I think it's just a misunderstanding about how the, this, the information would have come to be in Heath

Aston's possession. The vast majority of the time it would have been someone like me in a - - -

THE COMMISSIONER: We're not talking about the vast majority of times?---No, okay but - - -

We're talking about this particular instance?---And what I'm saying is I don't, I can't recall exactly how Heath Aston got this information, whether I gave it to him, he wrote a story and then contacted Chris for comments, or
10 whether um, I gave the information to Heath Aston and the information to Chris Hartcher and told Chris Hartcher that Heath Aston would likely be calling for some comments. There are - - -

Well I think, I think you agreed a short time ago, or at least you acknowledged that Counsel Assisting indicated to you that the Commission has spoken to Heath Aston and his account is that he received the information from Mr Hartcher. So where do we go from there?---And I'm not disputing that that might be possible. I'm just saying - - -

20 Well, not might be possible. That's what Mr Aston says?---Sure, and - - -

So - - -?--- - - - I don't, I don't - - -

If you don't, if you don't have a recollection either way and Mr Aston does - - -

MR HENSKENS: Well - - -

THE COMMISSIONER: - - - isn't it more than likely that that's where the
30 information came from?

MR HENSKENS: I object.

THE COMMISSIONER: I'm asking whether - - -

MR HENSKENS: Has there, has there been, has there been a statement served from Mr Aston. I mean, propositions are being put to the witness as to matters concerning Mr Aston. We haven't seen any statement.

40 THE COMMISSIONER: Well, that's neither here nor there.

MR HENSKENS: Well - - -

THE COMMISSIONER: Mr Watson suggested that to the witness. He didn't disagree with it.

MR HENSKENS: Well he doesn't know.

THE COMMISSIONER: Well we don't know, we don't know what he does and doesn't know. That's what we're trying to find out.

MR HENSKENS: Well, there's a great difficulty putting - - -

THE COMMISSIONER: All right, well look, yes - - -

MR HENSKENS: - - - positive propositions to a witness about things that someone else has said - - -

10

THE COMMISSIONER: Well I don't know that we can - - -

MR HENSKENS: - - - when there's no statement - - -

THE COMMISSIONER: - - - put positive propositions on any other basis, Mr Henskens.

MR HENSKENS: Well - - -

20

THE COMMISSIONER: But anyway, let's move on. We can, we can leave that one side.

MR WATSON: We can put that aside. Well, Heath Aston was involved in writing a second article at Mr Hartcher's behest. You know that don't you?--I think he was involved in a great many articles but, yes.

Well I'm talking about ones that are relevant to this inquiry you see, things about, that could be an advantage for Australian Water Holdings?---Ah, yes.

30

Look at page 533 for example, see Mr Hartcher's office in touch with Mr Aston. Do you see that?---(No Audible Reply)

It's on the screen?---Sorry.

All I want to show you is there's telephone traffic there between Mr Aston and Mr Hartcher's office. Got it?---Ah, yes.

Look at page 534. Heath Aston and CES. CES is Chris Spence, is that right?---Ah, as I understand it, yes.

40

And then have a look at 545. We've got Chris Hartcher's office and Tim Koelma making contact with Heath Aston. See that?---Yes.

What were you contacting him about?---Um, I met him to give him a story.

All right. Well you were giving him a story on what subject?---Um, on some information that I'd received from somebody at Sydney Water.

All right. Have a look at page 547. This is Mr Di Girolamo and yourself. Now Mr Di Girolamo's sending a text message to you, "What time are you seeing Heath tomorrow"?---Yes.

How would he know that you were going to see Heath? Were you seeing Mr Aston at the, were you being driven by Mr Di Girolamo to see Mr Aston?---Possibly not driven but he would have known or he clearly knew that I had, and I had told him.

10 Why? What was his interest?---It was a story that related to Sydney Water.

And you were planning it for Mr Di Girolamo weren't you?---Sorry.

You were planting it for Mr Di Girolamo weren't you?---Not for, no, not that I - - -

Well why?---Um, again I received information from somebody at Sydney Water and I contacted Heath Aston to give him that information.

20 Read on. You'll see that Mr Di Girolamo says, "I might get the other guy to call him just before you meet, is that okay." What's all that about?---Um - - -

Who's the other guy?---That may have been the person that I was speaking to at Sydney Water.

And so where did you get access to the information of a person from Sydney Water?---My recollection is that I got a phone number or I was asked if I would take a call from somebody at Sydney Water.

30 Who asked you to do that?---I think I got the phone number from Nick.

Nick Di Girolamo?---As far as I recall.

So this is all started by Nick Di Girolamo?---I'm not sure that he knew what the information was about that would have been well before - - -

40 Well sorry, he's saying he's got the contact with the other guy. Look, I might get the other guy, he wasn't just going to wander the streets of Sydney and hope he bumped into him he obviously had some means of contacting him?---Sure.

Do you see that?---Sure, yeah.

So Di Girolamo had the other guy. Who was the other guy?---A fellow from Sydney Water.

You know I mean most of us have got names. Did this other guy have a name?---Yeah, he told me his name was Robert.

Right. And what was his surname?---I didn't get his surname.

What was his position at Sydney Water?---I wasn't aware of his position.

Did you actually meet the fellow?---No, no, I only - - -

10 How old was he?---I, by the sound of his voice I would guess maybe mid 40s, I'm not sure I didn't meet the guy.

Well, sorry this is a source of information for you. How reliable did you think that was, a man, did you ask for his surname?---I may not have asked for this surname he, he was - - -

20 Well a man whose surname you did not know, whose age you did not know, whose position you did not know is contacting you and you're passing that information on are you?---Well he was giving me information that I understood - - -

No, just answer my question. A man, you didn't know his surname, you didn't know hat position he held, you didn't know how old he was, you didn't know anything about him, never met him and you were passing on information from him. That's right?---Yes.

And how reliable do you think that is that kind of information?---Well obviously that needed to be tested.

30 Well how did you get in contact with him?---I can't recall whether he rang me or whether I rang him.

So you must have had a telephone number for him?---I, yeah, I may have at the time I can't, as I say I can't recall - - -

Well what would have happen to that? We'd like to speak to Robert?
---Sure.

40 Well what happened to the phone number?---I don't have the notes that I, that I took or that I had at the time.
Why not?---I don't think I kept the notes that I have.

Why not? This is a pretty important issue isn't it?---It's important now but I, it - - -

It was pretty important then wasn't it?---Oh, it was just a guy at Sydney Water who had information.

Have a look at page 548. Mr Hartcher's electoral office in Terrigal is in touch with Heath Aston, see that?---(No Audible Reply)

See it?---Yes.

Have a look at 549, all on the same day and all within 30 minutes, Koelma to Hartcher, Koelma to Di Girolamo, Koelma again to Di Girolamo, Koelma to Heath Aston. This is what this conversation is about you're trying to give information to Heath Aston, is that right?---Yes, it's possible.

10

And the purpose of it is to embarrass Sydney Water isn't it?---No not specifically the purpose.

Well not specifically what was it then?---Well - - -

What was the purpose of it?---The information that I got had a number of, the information that I got had a number of different facets so I – in the first - - -

20 Was any of it good news for Sydney - - -

MR NAYLOR: Commissioner, I object.

MR WATSON: Sorry, go head?---I mean it had a number of different facets and I contacted Heath Aston to talk to him about the information that I had.

30 Was any of it good news for Sydney Water?---No, possibly – well probably not.

Absolutely not. It was all extremely damming and damaging for Sydney Water wasn't it?---It was from somebody at Sydney Water who wasn't happy with what was happening at Sydney Water.

And this is all at the time that Mr Di Girolamo is in locked in a bitter dispute with Sydney Water, correct?---I don't know about the contractual dealings of AWH but - - -

40 Have a look at page 550, at the same time Mr Hartcher's in contact with Heath Aston. Mr Hartcher was involved in this process of feeding this article to Heath Aston wasn't he?---No, again I, I - - -

What do you mean no? Are you saying he wasn't?---No, I'm saying I gave the information to Heath Aston.

No, I'm just not worried about that for a moment. Have a look at it, can you read that? Chris Hartcher is ringing Heath Aston. Do you see that?---Yes.

This is at exactly the same time that the article is being fed to Mr Aston isn't it?---Um, it's a couple of days later, yes.

And have a look at page 570. More contact?---That's not in here but - - -

All right. Well it's on the screen. Page 570 shows more telephone contact, mobile to mobile in this instance, Hartcher to Aston. Do you see that?
---Yes, a few days later, yeah.

10 Right all at the time that this article is being planted with Mr Aston, correct?---Yeah, within about a week of - - -

Well we'll get there. And can I just ask you something, did you say before that you didn't know whether or not Mr Di Girolamo was locked in a bitter dispute with Sydney Water?---I knew they were in a dispute but I don't know, I'm not aware of the exact timing of the various contractual negotiations.

20 Well you knew that there was a bitter dispute - - -?---I knew there was - - -
- - - at one stage or another?---I - well I knew there was - yes.

All right. Well close that volume up and could the witness be shown Exhibit S3. It'll come up on the screen but you tell me if, this one's the first page of the volume so I imagine it'll come up. Here we can see the article at page 571, Mr Aston's second article on the subject of Sydney Water's mistakes, errors and corrupt conduct. Do you see?---Yeah, I'm not sure if this is the second, my - - -

30 It is?---No, what - - -

I'll show you the first one. We don't need to go back to that Superman cartoon do we?---No, no, what I'm suggesting is I think there were, I think there was a reason that I had approached Heath Aston in particular and I think that that reason was that he had written previously about Sydney Water.

40 And when you look at it this is extremely embarrassing for Sydney Water and Dr Kerry Schott?---Yes.

And if you look at the very last sentence Chris Hartcher is again being quoted?---Yes.

And then if you look at page 573 we can see a follow up. And this is Mr Hartcher to you a text message, "Sun Herald gave us a good run." Do you see that?---Yes.

Now I'll just point out something to you, that this is on, sent you on the morning on 11 July, 2010 by Mr Hartcher, got it?---(No Audible Reply)

Have you got it?---Sorry, ah - - -

Well, it's - - -?---Oh, sorry, yes.

Yeah?---I can, yeah. Sorry, the first one - - -

10 The article was published in the Sun Herald on 11 July, 2010, the same day?---Ah, ah - - -

There's been time for Mr Hartcher to get out of bed, walk down the path, pick up the paper and send you a text message, do you see?---Yes.

"Sun Herald gave us a good run." Why is it "us"? What's the us about it? ---Ah, I think that may refer to him - - -

20 It doesn't refer to him, it refers to us, I'm asking you why does it refer to us? He's part of a team is he?---Um, no, I don't know whether that's him referring to himself in the - I don't know what that - - -

Well, it sounds - can I just ask you, do you accept this is a reasonable interpretation, The Sun Herald gave us a good run, he is including you in that, at least you, and - - -?---Oh, sure.

30 - - - there's part of a team for getting that article in the paper?---Oh, sure, I gave the article to Heath Aston and Heath Aston would have then contacted Chris for a comment, yes.

Well, the point is that that article was just really nothing more, nothing less than damaging to Sydney Water wasn't it?---Ah, yes, it was damaging to Sydney Water.

It wasn't, it wasn't political in the sense of Party political, it was just damaging to Sydney Water.

40 MR ALEXIS: Well, I object to that. My learned friend should with great respect look at the very last sentence of Mr Aston's article at 571 and 572, in particular the last - - -

MR WATSON: I'm so sorry, I'll withdraw that question, it was obviously out of line.

If you have a look at that article its several hundreds of words and there is one sentence which refers to Party political matters, correct?---(No Audible Reply)

Correct?---I don't know which line you're referring to?---Well, it's the very last line, it's the one that nobody bothers to get to by the time they've read the first couple of paragraphs if we believe, if we believe what we read in the press as to people's concentration of course?---I don't, I don't um - - -

You see, the point is really it's an article about abusing Sydney Water isn't it?---Oh, it's an article about Sydney Water and - - -

10 Yeah, goodo. Now go back to page 573. Mr Hartcher says that you should also get presumably the Sydney Telegraph and he says "That's about the same story you are getting ready for Nick," what's that about?---I have no idea what would have been in the Tele four years ago.

Who would be Nick, Nick Di Girolamo?---I, yeah, look, yeah.

Mr Hartcher was part of the team was he, part of the team?---Sorry, what's the reference to team?

20 No, I'm not talking about the text message, I'm talking about the fact of the matter, Mr Hartcher was part of the team, planting articles with journalists to embarrass Sydney Water to assist Australian Water Holdings, correct? ---I, I think that's joining the dots but it's - - -

Well, we join, that's what we do here, you know?---Sure. But that, I mean, that's not - I mean, I would have given it to, to the Sun, to Heath Aston and either told Chris to call Heath Aston to give him comments or told Heath Aston to call Chris Hartcher.

30 He's part of the team then, you agree?---Sorry?

He's part of the team?---He was part of the process of getting this, this story up and the - - -

And the purpose of getting the story up was to embarrass Sydney Water, correct?---Oh, not specifically but that would have - - -

Oh, come on, what else could it be for, just general interest, is that right? ---No, we were trying - - -

40 You were introduced to Robert by Di Girolamo, what interest did he have at this point of time?---Like I say, there was, there were a number of facets to the information that I got from Robert and this was one of them.

Oh, dear me?---This was - - -

Answer the question. We'll never get out of here otherwise. Di Girolamo's interest at the time was in damaging Sydney Water wasn't it?---Well, yeah, I'm - again I'm not sure why he - - -

Just say yes or no?---It's not a yes or no question, it's - - -

Yeah, it is but - - -

THE COMMISSIONER: Mr Koelma, can I ask you something else?---
Sure.

10 You were carrying out this function as it were as part of your retainer with
Australian Water Holdings, is that right?---Um - - -

Was this part of your media relations strategy?---No, not necessarily, the -
as I say the - - -

Well, when you say not necessarily, please, I'm having problems with this?
---Okay.

20 Were you doing this as part of your retainer with Australian Water Holdings
or were you doing this for some reason totally unrelated to that retainer?
---Look, it wouldn't have been unrelated but there's, there's clearly both a
political interest and a professional interest in this story.

Well, the political interest was yours and Mr Hartcher's?---Correct.

And the other interest was Mr Di Girolamo's?---Correct.

30 All right. Let me go back to the question. So partly you're doing this for
the media relations or media strategy advice or whatever you like to call it
on behalf of Australian Water Holdings?---Oh, it wouldn't necessarily been
on behalf of Australian Water Holdings but it was - - -

Well, I just thought you agreed that this is, this was part of your retainer
wasn't it? Media relations - - -?---No, not - - -

40 - - - strategy?---Yes, but not this specifically. What I'm - this was part of -
as I've tried to explain there were a number of facets of the information that
I got and they went to Heath Aston and Heath Aston determined that he
could investigate one of those aspects and so went to Thailand to investigate
this particular aspect and came back with this story.

Sorry, that just doesn't answer the question I asked?---Well, I'm - - -

You, this was part - - -?---I'm trying to provide - - -

- - - of your retainer with Australian Water Holdings, you've already said
that it was part of your retainer?---In part, yes.

Yes, all right. Now let me come to the next question?---Sure.

This person Robert about - - -?---Yes.

10 - - - whom you knew nothing, how did you ascertain that the information he gave you about what was happening in Sydney Water was reliable?---Well, at that stage I hadn't until - the, the idea of giving most of it to Heath Aston was to see if he could use his powers or ability as an investigative journalist or a journalist in general to, to look at aspects of the story or aspects of what was, what I'd been given and determine if any of it was accurate. Um, he - - -

No, just pausing there, so you at no stage determined if what this person Robert told you was reliable?---This was part of my process of determining if it was.

20 Well, don't you think a fairly significant part of determining whether it was reliable would be to meet with Robert and ascertain that he actually did work for Sydney Water and that he did know something about the operations of Sydney Water and in particular the CEO Kerry Schott and the manager, Mr Ron Quill?---Well, he was providing information that as I could see it could only have come from somebody inside Sydney Water plus - - -

How did you know that?---Well, it was information about the internal machinations of Sydney Water um - - -

30 But he could have been anybody. He didn't necessarily have to be someone working within Sydney Water?---No, not necessarily, he may have previously worked at Sydney Water or he may have received the information from somebody who worked at Sydney Water.

So you had no - the answer to my question is you had no idea and you took no steps to determine whether or not what Robert told you was reliable? ---No, giving the information to Heath Aston was my step to determine whether it was reliable, yes.

MR WATSON: So you must have given Mr Aston Robert's contact number?---Ah, I don't recall whether I did or I didn't, it may have been - - -

40 But you must have, if this was your filtering process you must have given Mr Aston Robert's contact number?---As I say I may have, I don't recall.

Well, how else could you have given sufficient information to Mr Aston for him to ascertain the truth or otherwise unless you gave him the source? ---Well, I didn't, I didn't give him the, I gave him the information that I had from the source.

Have a look at page 599, I want to move to another issue. Look, before I leave that one I suppose I should say this just to make it apparent. You see, the whole purpose behind giving this information to Mr Aston was to advance Australian Water Holdings' position against Sydney Water, that was the purpose of it, wasn't it?---No, like I say, the - - -

Don't, no will do and the point is that Mr Hartcher was involved in that, he was right up to his neck in it wasn't he?---No, he wasn't involved in - - -

10 All right. Have a look at page 599.

MR NAYLOR: I object, Commissioner. Could the witness please be given the option to answer the question.

MR WATSON: It's just yes or no, they're only Browne v Dunn questions.

THE COMMISSIONER: He's denied the proposition.

20 MR WATSON: Have a look at page 599, we'll try and move rapidly. This is on the issue of drawing the letter for Mr O'Farrell to resend to Australian Water Holdings, you were involved in that weren't you?---Ah, yes, I, I have drafted a letter.

Now, can you just tell us do you think that's a, you're an experienced expert in the matter of governance. Do you think that's good that a proponent for a PPP would write their own letter to be signed by the Opposition leader supporting there position? Do you think that's good Government?---I don't have a particular, well I haven't really thought about it. It was a - - -

30 Haven't thought about it?---Well it was a request from - - -

Well, think about it now?---Sure.

We can see it, if you want to look at it, page 628. This is your go at drafting a letter which would be signed by Barry O'Farrell, the effect of which was strongly to support the granting of PPPs over things such as supply of water and sewerage in infrastructure?---Yes.

40 Do you think that's good practice that the Opposition leader would be signing off on a letter which was drawn up by the proponent for the PPP?---I, it was the request as I understood it that had been - - -

No, I didn't ask you that?---Well I - - -

Is that good practice, Mr Koelma? You're the expert?---You're asking for my opinion?

Listen, you're the expert. You're the man who had a business which was charging these substantial retainers month in month out?---But you're asking me whether - - -

Yeah. Give us your opinion. You're the expert. Is that good do you think, good practice?---Yeah, I, well, I'm not sure there's particularly anything wrong with it. It's - - -

What, so that - - -?---That was - - -

10

Are you saying that the proponents could just model the laws to suit themselves, tailor the laws of New South Wales to suit their own case?

THE COMMISSIONER: Mr Watson, just pause for a moment. Mr Newlinds is on his feet.

MR WATSON: Oh, sorry. Sorry.

20

MR NEWLINDS: I only rise, I appreciate my client doesn't really have any interest in this but as Mr Watson has pointed out everyone in this room has a desire to escape at some stage and those instructing is are paying for us to be here and surely whether this is good or bad practice is ultimately a matter for you and - - -

MR WATSON: All right, that's a good point.

MR NEWLINDS: Yeah.

30

THE COMMISSIONER: Fair enough.

MR WATSON: Yep. I'll try and deal with this very quickly. You initiated a second FOI application on behalf of Di Girolamo didn't you?---(No Audible Reply)

Getting more documents?---Ah, I can't recall specifically but it's possible.

Well, it's at S3, 689 and 718. You did it through the office of Mr O'Farrell didn't you?---That would have been the normal process, yes.

40

Normal process. I thought a moment ago you sent it through Charlie Lynn and you're saying now that there is some process that it's got to go through Mr O'Farrell's office?---That was the normal process, yes.

Well then why didn't you do that in the case of sending the one through Charlie Lynn?---As I said I, I can't recall exactly why it went through Charlie Lynn but the normal process would have been for it to go through - - -

I'm trying to deal with this - - -?--- - - - O'Farrell's office.

- - - quickly. I think we've already agreed on it. The expression "friends" and "love", that means the clients of Eightbyfive, "friends"?---It depends on the context but yes, that's a term that I use.

And "love" is money?---Again, not necessarily but it's a term that I use.

10 And you knew all about the Mickey Tech scam didn't you?---Um, sorry, in -
- -

Well, you knew all about the Mickey Tech scam?---I knew about Mickey Tech but - - -

Well you knew all about the Mickey Tech scam, how it would issue fake invoices so that - - -?---No, I - - -

20 You deny that?---No, I thought that, I thought Mickey Tech was a, was Eak's small business.

Ray Carter told you didn't he, he asked you to prepare a draft invoice for Mr Ekarin - - -?---A template invoice, yes.

- - - so that they could give a dummy invoice to a company to cover for a donation. He told you that didn't he?---No I don't think he put it in those terms, that's - - -

30 What do you mean you don't think so?---Ah, he, Eak was starting a business, as I understand it he was starting a business and didn't have any understanding of what should be on a, on an invoice so Ray asked me to create a template invoice for, for Eak and I did.

Well, but at the same time he told you the purpose behind it was to issue a dummy invoice so that a donation for the Liberal Party from a prohibited donor could be covered, correct?---No. He told me that the purpose of the business was for Eak to start working in Australia.

40 Now let's move on to Kerry Schott. Could you close that volume up and we'll have you shown exhibit S2 for a moment. Keep S3 with you in the box because we'll go to it as well. I just want to show you in S2 page 535. It will come up on the screen I'm sure. And you'll see there that this is Mr Di Girolamo sending you a text message and you respond. Mr Di Girolamo's text message is about Ron. That's Ron Quill, correct?---I would assume so, yes.

What do you mean you assume so? It's got to be Ron Quill. Can't you just possible once give me an unqualified agreement?---(No Audible Reply)

Who else could it be, Ron Howard, the director? I mean, don't be silly. It's about Ron Quill isn't it?---I've literally just opened the page. I'm reading the very first line and you're putting to, putting questions to me already. Yes. If, in the context - - -

Yeah?--- - - - of that text message, yes.

And so he's telling you something which is as he describes it, "A very serious cover-up." What's that about?---(No Audible Reply)

10

Let me guess, you'll say you don't know. We'll move on?---Well, I imagine it's in reference to the first part of the email.

All right. Oh?---The first part of the text message.

A break through. Well the point is that, what's the very serious cover-up? A man retires, he's awarded a public service medal. What's the cover-up?-- -Ah, I'm not sure what the - - -

20

It's all about his retirement isn't it?---It looks - - -

Or the circumstances in which he separated from Sydney Water, correct?--- It looks that way, yes.

All right. Well then close that up and open up volume S3 again, this time at page 647. This is the famous black ops document?---Yes.

And here you are sending by email the document which starts at 648?---Ah, yes.

30

Now, I want to ask you first of all about the document which you attached. You typed that up didn't you?---Ah, yes. It's in a formatting that I would have used, yes.

You're the author of it aren't you?---Ah, I typed it up, yes.

You're the author of it as well aren't you?---Ah, in terms of form of words, yes. I, the information isn't mine but the letter is mine.

40

You typed it up on your own computer at home, correct?---Ah, yes.

And you knew when you were doing it you were making extremely serious allegations against Kerry Schott?---Ah, against a number of people but yes, she was one of them.

All right. Very serious allegations against Ron Quill?---Um - - -

Correct?---Yes.

And very serious allegations against Sydney Water?---Ah, yes.

And for example if we look at the, page 648, paragraph one it's on the subject raised in that text message sent to you by Mr Di Girolamo, that is the separation of Mr Quill from Sydney Water, correct?---Sorry, paragraph one?

Yes?---Which - - -

10

It says - - -?---Oh, number one? Sorry, yes.

Yes. It's numbered one. Do you see that?---Yes.

It's on precisely the subject raised by Mr Di Girolamo in his text message, correct?---Ah, it, yeah, that, in part, yes.

Did you get that information from Mr Di Girolamo?---Ah, no. I got that information from ah, Robert at Sydney Water.

20

Robert – no, well don't call him Robert at Sydney Water. We're not sure of that yet?---Okay. Robert who says he was at Sydney Water.

Well sorry, we don't even know whether it's, it's the man, the unknown male of unknown age who said that was Robert. That's all we know about him isn't it?---Yes. And said that he was an employee of Sydney Water, yes.

30

THE COMMISSIONER: Mr Koelma, just tell me this. Did you know at the time that you wrote that letter or compiled that document that it's an offence under the Act to make a complaint which is wilfully false or misleading? Did you know that?---I'm not sure that I knew that in particular, I - - -

You didn't bother to find out if there might be an offence of that nature?---I had spoken to somebody at um, at ICAC before typing this letter up or it - - -

40

MR WATSON: Did you identify yourself?---I can't recall, I, I - - -

Did you identify yourself?---No, probably not because I was - - -

Why not?---Well because I was talking about making anonymous complaint.

This is your anonymous complaint you're the anonymous complainant aren't you?---I, I asked what the process was for making an anonymous

complaint yes, and now I submitted this on behalf of well, on behalf of Robert from whom I received the information.

You didn't know whether this information was true or correct did you?
---Um, only in so far as - - -

No. Just answer my question. When you made the anonymous complaint you did not know whether the allegations were true or correct did you?
---No, not specifically.

10

Well it's not a question of not specifically you didn't know one way or the other whether they were true. Isn't that right?---Yes, that's correct I didn't.

Did you know when you made it that the effect of it could be to damage the career of Ron Quill very severely?---Um, yeah, I – well that wasn't a specific consideration but I suppose I, yes, I would have understood that that was - - -

20

Did you know that by making this complaint you could damage the career of Dr Kerry Schott very severely?---Yes, I suppose that's possible.

And did you know that you could damage the reputation and position of Sydney Water very seriously?---Yes, I suppose that's possible too.

And you did that not knowing whether the allegations were true or false?---I did that having, there was as I said - - -

30

Answer my question, you did that not knowing whether the allegations were true or false didn't you?---These? No, not specifically.

You're agreeing with me you did not know whether the allegations were true or false, is that right?---No, not specifically.

And you made it anonymously why could you not have made it in your own name, Mr Koelma?---They weren't my allegations.

Well that's beside the point or maybe it is the point they were your allegations?---Well they - - -

40

You were the one who typed it up. Why did you not put your name on it, Mr Koelma?---Because they weren't my allegations.

THE COMMISSIONER: Well why didn't you ask Robert to make the complaint if they were his allegations? Why did you take it upon yourself to make these allegations?---That was – looking back on it now I'm not sure why we came to that, he and I came to that um, conclusion but I mean I had, I had spoken to the ICAC about making an anonymous complaint I

understood the process for making an anonymous complaint um, and so determined that that was the appropriate course of action.

MR WATSON: Why did you make the complaint?---Because these were allegations that were left over from the information that I provided to Heath Aston.

Well but why did you feel the need to make a complaint to ICAC?
---Because they were of a serious nature and the regular refrain in political circles was if you have an allegation of corrupt conduct you should put it to ICAC.

But you didn't know whether the allegations were true or false?---As I said I didn't know whether these which were the, the rest of the allegations that I received were true or false, that's correct.

THE COMMISSIONER: Mr Koelma, the article written by Heath Aston said nothing about intimidation, jobs for the boys, preferential treatment and kick backs?---No.

Well these are allegations that stand completely apart and independent of what was written about by Mr Aston?---Correct, because the information - - -

Well then don't rely upon what you think was information coming from Robert that was subsequently investigated by Mr Aston - - -?---No, that's - - -

- - - this is an entirely different complaint?---That's not what I'm suggesting. There were, there were a series of, of allegations that were put to me or given to me um, by Robert and I'm not sure how many of those were given to Heath Aston but I, I understand it was more than, I recall it was more than one so a number of these were also given to Heath Aston and Heath Aston determined that the one that he could investigate with any, within his capacity was the one that related to the Thai venture and so he did so, he did he went Thailand and investigated that so - - -

Well, all right. Now, now answer me this at the beginning of the third paragraph the letter reads I am a long time employee of Sydney Water Corporation and then what follows represents those matters to be the views of a person who was a long time employee of Sydney Water, that wasn't you was it?---No, it wasn't me.

Well why did you use that terminology?---Because I was, I was effectively typing this up on behalf of Robert these - - -

Well why didn't you send it to Robert and suggest that he forward the letter?---I didn't have Robert's contact details and that, and as I said - - -

This is the person that you couldn't ring back and you couldn't speak to and you couldn't verify?---I don't, I don't recall whether I had his phone number at the time but I spoke to him a number of times, um - - -

What, are you suggesting on each and every one of those occasions he called you?---No, I can't, I don't have a specific recollection of having his phone number but I recall speaking to him a number of times.

10 No. My question was on each and every occasion you spoke to him are you suggesting he called you?---that's possible, yes.

And his number didn't come up in your mobile phone when he called?
---Um, yeah, look I don't know it's, it's four years - - -

It's all just a fabrication isn't it, Mr Koelma?---Absolutely not.

Robert didn't exist did he?---Absolutely not, he did.

20 MR WATSON: All right. Well - - -?---This - - -

Look did you run the draft pass Robert before you sent it?---I, I can't recall specifically but I may have read parts of it out or all of it out to him. I know that the making - - -

Then why wouldn't you have given him an opportunity to proof read the complaint?---(No Audible Reply)

30 It was after all according to you his complaint?---Sure, I, I understood - - -

THE COMMISSIONER: Are you suggesting that you may have read parts of it out to him and at that stage you didn't say look I'll send it through to you and you can forward it onto ICAC? You suggested a moment ago that you had read parts of it to him?---I may have I - - -

And at that stage you didn't suggest that you could send it through and he could forward it to ICAC?---No.

40 This is just completely and utterly incredible, Mr Koelma?---Look I, I don't know what to tell you. It's, it's - - -

Precisely, you don't know what to tell the Commission because it's a lie?
---It's absolutely not.

Well at least I've made it clear. I think we better close it off, Mr Watson.

MR WATSON: I think we've complied with Browne v Dunn between us, Commissioner. But if you go back to page 647 I'm still interested in some,

some of the material you sent onto your brother Eric. First of all why did you send it to your brother Eric?---Um, I can't recall specifically why I sent to, I – not sure I gave part of that process a great deal of thought, the, the – I think it was just a matter of convenience at the time, I - - -

So it was more convenient was it to send it onto Eric than for you to send it on?---Um, yeah, I can't recall the precise circumstances - - -

10 You were in Mr Hartcher's office when you sent this onto Eric, isn't that right?---I don't think I was.

Well you were in Erina?---Sure.

Where else would have been in Erina?---On the 7 September?

At the time this document was sent we can prove you were in Erina?

---Yeah, I was probably um, I was probably in Liberal House.

20 Right. That's across the road from Mr Hartcher's office is it, Liberal House?---In, in the campaign office, yeah, I may have been there.

Let's just, let's just have a look at the text that you sent onto Eric, "Hey bro, here's the letter we discussed" so you'd spoken to him about it?---I presume so, yes.

Well – oh good Lord?---Well I mean I can't - - -

30 Really. I've got to just give you a break, Mr Koelma. Why would you write that, here's the letter we discussed, was it just a joke?---No, as I say I, I can't - - -

Come on. And then you ask him to print and send it to the address. Is there something that could, would have stopped you from doing that?---Um, yeah, I'm not sure that I could print from where I was, if I was in Liberal House I probably wouldn't have been able to print, um - - -

40 Well, sorry, that's not an answer to my question. Is there some way that or thing that impeded you from printing it and sending it yourself?---No, not specifically.

Now, just have a look at this. You say to Eric, "No need to add anything, subtract anything or even read it." Those words suggest to me that Eric was free if he wanted to to add to it or to subtract from it. Don't you agree?

---No, I was just saying there wasn't a need to.

No, but you see the whole point is there was no need to suggests that there was the power to, he could do it had he wished.

THE COMMISSIONER: He could do it if he wanted a laugh apparently, he could have added something to give himself a bit of a humorous thought for the day?---No, I think that's in reference to reading it but - - -

No, no, "subtract anything or even read it though you can if you want a laugh" seems to suggest that he could do anything of those things?---Sorry, I think the part in brackets refers to reading it but - - -

10 All right?--- - - - I, I didn't specifically place a restriction on him doing so but there was - - -

MR WATSON: So he could have changed it, he could have changed the complaint to ICAC?---Well, it was a Word document, he could have theoretically changed it but it wasn't the point.

In fact, in fact he may have changed it?---I think that's unlikely.

20 Well, unlikely but he could have?---Yes, I, yes, it's theoretically possible but I think it's unlikely.

All right. Now just tell me this, why did you think it was funny, why would if he read it could he have had a laugh, what was funny about this, Mr Koelma?---I, I think there was at least some amusement on my part at the time, though they were serious, that this sort of thing could possibly be happening at the very high levels of a public service department.

30 That's not what you wrote, you wrote to him and said, and in effect you can read it and have a laugh if you want. What possibly could be funny about serious allegations of corruption against Mr Quill, Dr Schott and Sydney Water, what could be funny about it, Mr Koelma?---Again, I think it was - - -

Doesn't it suggest to - sorry, go on?---I think it was staggering at the time that those things could possibly be suggested and as I say my impression - - -

No doubt about that?---My impression at the time was that they were accurate and - - -

40 Well, based on what, you know that ICAC investigated them and found out that the allegations were 100 per cent utterly, absolutely false don't you, you know that now?---Well, I've since been told that but I've also - - -

Oh, dear me, you're going to say your private investigations have revealed otherwise, is that what you're going to tell us?---No, I'm saying at least part of those Mr Quill was asked about and he confirmed part of them and I'm not - - -

Oh, dear me, Mr Koelma, so you are saying Mr Quill's a crook?---No, that's not what I'm saying at all.

Are you saying that he confirmed corruption., he was corrupt are you?---No, I'm saying he confirmed - - -

Oh, dear me. Well, let's have a look - - -

10 THE COMMISSIONER: Sorry, what did he confirm, Mr Koelma?---Ah - - -

What did Mr Quill confirm?---My, my understanding, I don't have his testimony in front of me but that he confirmed at least the, the functional part of it but it was agreed that there was nothing, there was nothing - - -

Sorry, the functional part of what?---Of, of his having left and then um, having been re-employed um - - -

20 And that was, that was not corrupt, we've made that perfectly clear?---And I accept that.

Well, then sorry, he didn't confirm anything in the way of corrupt conduct did he?---I'm not suggesting he confirmed anything in the way of corrupt conduct.

30 Well, I thought you just did?---No, I'm saying he confirmed part of the, part of what had been put to me and the take from the person at Sydney Water was that, that, that their, their interpretation was that that it was corrupt conduct.

And you had no idea at all whether the circumstances under which Mr Quill left and was re-employed could be brought within the definition of corrupt conduct, none whatsoever?---No, I - - -

You just had some anonymous on the end of the phone telling you they thought it was corrupt?---Yes.

40 And was this the, the skill and attention that you brought to your media strategy advice that you gave to Australian Water Holdings or is this the kind of political advice that you would give to Mr Hartcher when you worked for him, is that the attention that you gave to these matters?
---Like I said there were a number of aspects to this - - -

MR WATSON: Oh, answer the question.

THE COMMISSIONER: Do you think if Mr Hartcher when you were working for him asked you for policy advice that you could ring someone whom you couldn't verify the identity of, couldn't determine where they

worked, what they did, what experience they had and simply accept what they said for the purposes of providing advice to a politician, is that what you're suggesting?---I didn't simply accept their advice, that's why I put - -
-

I'm not getting anywhere but anyway.

MR WATSON: Well, I do want to ask you, you see, about this letter to your brother Eric, the reference to black ops, we've heard all about that?
10 ---Sure.

Now you weren't suggesting that Eric was going to nail this to a tree in an electorate up there on the Central Coast are you?---Ah, no, I don't think so.

And black ops refers, doesn't it, to covert activities, illicit, underhand, off the books activities, that's what it means doesn't it?---Ah, that's, that's the - yeah, that would be the publicly accepted - - -

In light of all of your conduct you must concede now what was going on
20 here with the black ops is that you were knowingly making a false allegation against Mr Quill, Dr Schott and Sydney Water?---Absolutely not.

No, you're not conceding that?---Absolutely not.

All right. Well, you tell us why you were referring to this anonymous complaint which has been found to be utterly wrong, why you were referring to that in the context of black ops, Mr Koelma?---Again, I didn't know that it was wrong at the time and - - -

30 Oh, no, sorry, we know it's wrong now?---Sure, and I accept that.

Okay. Don't go back to that. I want to know what is the reference to black ops about in this context, what's that mean?---Again, I don't think I gave it a lot of thought but black ops was a, something light-hearted that effectively meant anything that was unsanctioned or, you know, not part of the, the normal political process and I would have considered that, you know, helping someone to make an anonymous complaint wouldn't have been part of the normal political process. The, the normal - - -

40 Let me just get something else straight, I rather understood from your evidence before that you'd been introduced to this person Robert by Mr Di Girolamo?---Ah, I, I don't know that it was introduced, I think I was - as I recall I was given contact details or he was given my contact details.

By Mr Di Girolamo?---That's my recollection.

All right. So Mr Di Girolamo ultimately stands behind this letter, correct?

MR ALEXIS: I object to that, I don't know what that means with respect.

MR WATSON: Well, I don't mean that he was actually standing there, I mean it's a piece of paper, you know what I mean, it was Mr Di Girolamo who initiated this letter wasn't it?---He initiated the contact with that person as far as I can recall.

No, listen to my question. Di Girolamo initiated this letter, the anonymous complaint to ICAC didn't he?---No, not specifically.

10

He was behind it?---No.

He was his idea?---Absolutely not.

He put you onto Robert, that led to this letter?---Ah, that was never the intention of my discussions with Robert.

20

Now, what did Hartcher know about it?---Um, I'm not sure that he knew much about it at all. He knew obviously about the, the, information that I had given to Heath Aston because Heath Aston then wrote his story and came back to Chris for comment. Um, but I don't recall ever specifically discussing this letter with him.

THE COMMISSIONER: Well, can I just go back to the answer you've just given. You said I'm not sure Mr Hartcher knew much about it at all, does that mean he knew something about it?---Well, he knew about some of the allegations because I put those to Heath Aston and he knew that Heath Aston was going to Thailand to look into them.

30

But the question was asked in relation to sending the anonymous complaint to ICAC?---About the anonymous complaint, no, I don't think he would have.

MR WATSON: All right. What do you know the FEF, the Free Enterprise Foundation?---Um, again, not a great deal. Um, as I explained I think on - I'm losing track of the days but ah, Tuesday I think ah, my - - -

40

You certainly knew about it at the time you were working in Mr Hartcher's office?---Ah, I would have - in 2011?

Yes?---Ah, I would have known about it after the - yeah, I think - - -

You knew about it before the State Election in 2011 didn't you?---As I said my, my recollection is that I had a discussion with um - - -

Can you answer my question? You knew about the Free Enterprise Foundation before the March 2011 State Election didn't you?---Ah, yes.

Great. And that was something you'd discussed in Mr Hartcher's office, correct?---Ah, I, I think so, in - - -

With members of Mr Hartcher's staff?---Ah, yes I think it was with Aaron.

And did you discuss it with Mr Hartcher?---Oh, not that I can recall but it's possible.

10 Now, even after the March – sorry, I withdraw that. As soon as Mr Hartcher was elected – I'll start again. As soon as the Coalition won Government in March, 2011 you were re-employed by Mr Hartcher on his staff is that right?---Ah, shortly thereafter, yes.

Yes, within days. It was early April?---Ah - - -

Isn't that right?---Yeah, I, yes. I can't recall the - - -

Well I can show you if you need to see it in - - -?---No, no, I - - -

20 - - - exhibit S3, page 746?---I accept that.

All right. Okay. Now, the fact is that you continued to bill Australian Water Holdings and bill Gazcorp through Eightbyfive during the time that you were employed by Mr Hartcher isn't that right?---Um, I think there were - - -

The answer's yes or no?---Ah, in relation to Gazcorp, yes. In relation to AWH no I don't think so.

30 Well, have a look at exhibit S3, page 746. This helps us put a date on it so that at least by 6 April, 2011 your email address has changed to the office of Mr Hartcher as Minister, correct?---Ah, yeah. Yes.

Go to page 753. 14 days later you're sending an invoice to Mr Di Girolamo at Australian Water Holdings, correct?---Ah, yes.

Go to page 754. You are charging Mr Di Girolamo nearly \$7,000 for work done during April, 2011, correct?---Ah, yes. It would have been up to April.

40

What was the work you were doing for Mr Di Girolamo during April, 2011, Mr Koelma?---Um, that would have been up to April, 2011.

No, it doesn't say that at all. Read it?---Well that's how, that's how I - - -

No, well we can track all the payments.

THE COMMISSIONER: It says month of April, 2011. What work were you doing for him in that month?---Um, I can't recall specifically but that, I wasn't, I don't think I, I got my email address um, before I was um, officially – I wouldn't have been - - -

10 Don't worry, you were employed by Mr Hartcher in his Ministerial office we think from about 4 April, 2011. Answer the Commissioner's question. It's got nothing to do with your email address. What were you doing for Australian Water Holdings during April, 2011?---Um, I don't think I was doing much of anything.

Well why were you billing him?---Um, I think that was, that was our, look, I was trying to - - -

Your agreement was that you would bill him for not doing anything?---Well no, our - - -

20 Was that it?---Our agreement was on a, a 12 month basis and I think the, April was the end of that agreement.

That's, that's ridiculous. I mean, you're just stealing money from the man are you? You know you'd taken up employment at Mr Hartcher's office?--- I was in the process of taking up employment with Hartcher's office.

No, with respect you're charging him for the whole of April. You were working for Mr Hartcher during this time weren't you?---As I say that was for - - -

30 Oh - - -?---Yeah, look I - - -

- - - anyway - - -?---There was obviously some crossover. I was, I was ending all of my agreements and um, going through the process of being employed by Mr Hartcher, yes.

We want to know was this the substance of your agreement, could you charge Australian Water Holdings even though you're not doing any work for them?---No, as I say I don't think that was the arrangement. The arrangement for that month was just the end of that agreement and - - -

40 Yeah, but the point is - - -?--- - - - it coincided with the - - -

- - - you said you were doing no work for them?---I don't think I would have done a great deal of work in that particular month but that was the - - -

And the point is you were charging them for the whole of the month for a typical retainer month, is that right?---Sure, yes.

So your arrangement was such that you could be paid even if you weren't doing anything for them, is that it?---It was a retainer so there was - - -

Well sorry, just answer the question. You could charge them even though you weren't doing any work for them?---In that particular month I suppose it's possible. I - - -

See, doesn't it just show you that this arrangement was a, just a device, a sham, a trick?---Absolutely – you're talking about a - - -

10

All right?--- - - - week of crossover between one job and another.

Oh, (not transcribable)?

THE COMMISSIONER: It's almost \$7,000 worth of "products and services as stipulated" and it's identical to the amount charged for the month of March?---And as I say it was a retainer agreement that I had which I understood, or I recall expired in April so that - - -

20

So you could charge for a month during which you were not performing the work as stipulated?---In, that's, as I said in this instance that's possible.

MR WATSON: Not possible. That's obviously what happened isn't it?---Well no, I'm saying it's possible that that was our agreement.

It's just not hypothetical. Anyway, close that volume up and I'll have you shown exhibit S4. While it's making it's way there, you see it would have been illegal for you to be doing that kind of work for Australian Water Holdings while on the Ministerial staff of Mr Hartcher wouldn't it?---I can't

30

speak to the illegality. I'm not - - -

Well, come on, I mean you must by now know the rules of public service employment that you must get permission before you can have external employment?---Ah - - -

Didn't you know that?---Yeah, well yes. That would have been - - -

Yeah. And what's more advising somebody who was, giving political advice to somebody who was in negotiations with the New South Wales Government at the same time that you were working for a Minister, that would have been, you'd understand, illegal?---Um, I, well I'm not sure I would have put it in those terms but it's - - -

40

Well I am and I'm asking you whether you disagree with it?---Sorry, can you - - -

It would be illegal to do it wouldn't it?---I'm not sure I understand the proposition.

Oh, okay. Well let's have a look in exhibit S4. Have a look at page 1201. Here's the reintroduction of Eightbyfive to the Gazals. Do you see that?---
(No Audible Reply)

Do you see that?---Yes.

And it's talking about the new management structure. Tell me what was that, who came in to manage Eightbyfive at this time, September, 2011?---
10 Um, I'd have to have a look at whether that coincides with the - - -

No sorry, it's your email?---Yeah, I - - -

“As discussed Eightbyfive now has a new management structure with new directors.” Tell me about that?---(No Audible Reply)

Who were they?---I think it was just the addition of my wife.

Sorry, we've heard from Mrs Koelma and she's told us that she did nothing
20 except a little bit of clerical work?---Sure.

It wasn't here?---But she was - - -

So who else was it?---She was - - -

There must have been a new manager in place?---No, she was a director of the trust.

No, no, no. It says new management structure. What was that?---I think
30 that was the trust.

I'm sorry, a trust can't manage anything. A human being can manage something. Who was the human being?---Sorry, I'm not - - -

There was no new management structure was there?---Well, the new management structure would have just been the, it moving over to the trust.

Have a look at page 1202. And I can tell you there's lots of these, there are invoices month in month out from September, 2012 – from September, 2011
40 until April, 2012. You'd accept that of course, wouldn't you?---Sure. Yes.

Well just look at page 1202. Who was it who was providing the public relations advice to Gazcorp under that invoice?---Um, I think it was just the, it was a, it was the, it was the ability to, or the availability of advice. It wasn't actual - - -

Okay, well if the advice was sought who was going to provide it?---Um, that never came up.

No, but it could come up. You've been paid \$2,000 a month for several months - - -?---Sure, but the agreement - - -

- - - and you said that this was because the advice had to be available. Who was going to provide it?---Ah, I suppose theoretically my wife.

So now - - -?---But it was never - - -

10 - - - your wife Tennille was going to provide public relations? Is she trained in that field?---No, it's - - -

And general governance, was she trained in that field, was she?---No.

And politics consulting, is she trained or experienced in that field?---No, as I say, that's not - - -

Media relations, was she trained or experienced in that field?---As I said, that's not the agreement that I had with Gazcorp.

20

Sorry, I don't understand. I'm looking at an invoice where you're being paid, you're charging, rather, \$2,000 for services which were agreed, public relations, general governance et cetera. Am I misreading the document, am I?---No, it's for the, for the availability of those services.

But who was going to provide the services in the event that Gazcorp called upon them?---Well, I understood that they weren't going to.

So this is a sham?---No, in this particular- - -

30

Well, sorry, how could, how can you invoice them for services when you know they're not going to call upon the services?---The agreement that I had with Gazcorp for those few months in 2011 was that they would remain or that they would become a client of Eightbyfive again or they would remain a client of Eightbyfive for the purposes of me being able to put together a package for somebody else to take on. My plan was to move the business on to somebody else.

40 THE COMMISSIONER: Onto who, Mr Koelma?---Well, at that stage that, that hadn't been determined. My, thereafter I set about discussing with people um, the prospect of continuing Eightbyfive without me ah- - -

Well, who, what people did you discuss this with?---I, I had discussions with ah, a number of other- - -

MR WATSON: Names, names?---Sure. I had a discussion with Nat Smith um, I had a discussion with a school friend of mine um- - -

And did he have a name? Most of us do. Robert?---No, it was a she and I'm- - -

Roberta? Go on, did she have a name?---Bethany, yes.

And did she have two names?---Bethany Shaw.

Bethany Shaw?---Yes.

10 And how do you spell Shaw?---S-h-a-w.

And so where does Bethany hail from?---Ah, she was a friend of mine from the Central Coast and um- - -

And what background in politics does she have so she could provide politics consulting?---No, she was a public relations consultant.

20 Well, hold on, but this whole thing is about politics consulting really and general governance, media relations, media monitoring. What experience did she have in those fields?---Ah, well, the latter half she had – as I say, she, she didn't end up – I – it was a discussion that I had with her not relating to these invoices.

Well, but why was Gazcorp paying you \$2,000 a month to have a chat to Bethany or Nat?---Um, as I say, that was the agreement that I had.

A bit generous, isn't it?---Sorry?

30 You had an agreement that they would pay you \$2,000 while you spoke to an old school mate?---Yes, with a view to, to moving the company and their patronage on to ah, to somebody else.

THE COMMISSIONER: I'm sorry, I thought a moment ago you said that you had, that you understood that with Gazcorp there was an agreement that they would continue to pay you for services that they wouldn't call upon? ---Yeah, I didn't, I didn't think they would, yes.

40 So if they weren't going to call upon them you didn't actually need anybody else to provide the services that Eightbyfive was set up to provide?---During that period, no.

MR WATSON: And remember you said the new management team was going to be your wife, remember that? Did that change, did it?---Sorry, in what sense?

Well, we've heard from you that the new management team was going to be your wife, Tennille?---Well, that was the- - -

Is that it, is that right?---We were the two directors of the trust.

Yeah, but she was going to take over the business and she was going to supply the services, you've told us that, haven't you?---Sorry, I'm- - -

All right. I think I've put it. I mean doesn't this show you, Mr Koelma, how untenable this is? Gazcorp are obviously just paying you under a sham arrangement?---Absolutely not, this was- - -

- 10 All right. I want to ask now, what could Gazcorp get from you of value?
---At, while they were, while I was contracted to them?

Yeah, during this period, while you're working in a New South Wales Minister's office. They were seeking support on Orange Grove still, weren't they?---Ah, I'm, yes, I presume they were.

And they could get favourable decisions which might have helped them get that. Is that right?---Favourable decisions from whom?

- 20 People like – look, I'll just think of a name, Chris Hartcher?---Um- - -

Is that right, they could get support from him, a powerful Minister?
---I think they had his support already.

All right. Where does Bethany Shaw practice her public relations art?
---Um, I – at the time I think she was, she'd finished her degree and she subsequently went overseas which was the reason that she wasn't able to
- - -

- 30 Does she live in Australia now?---I think she's returned to Australia, yes.

And where does she live?---Ah, on the north shore, I'd have to- - -

In Sydney?---Yes.

All right. Well, just, can you just tell me this. You were suspended from work in Mr Hartcher's office as a result of an intervention by the Electoral Funding Authority. Correct?---Ah, that was, yes, that's what DPC- - -

- 40 And at the same time that was, coincided with the end of the retainer with Gazcorp. Correct?---I think the – I think I'd spoken to them sometime before that about finishing that arrangement.

Just answer my question. It ended at exactly the same time, the payments from Gazcorp ended the same time as the EFA stepped in in respect of you. Is that right?---I'm not sure as to the date of payments but the arrangement ended before that.

Anyway, so when you were suspended after the EFA intervention, did you get employment?---Um, yes.

And with whom?---Ah, with ah, Nick Di Girolamo.

See, isn't this just a payback for the solid work you'd done for Australian Water Holdings over the years?---Ah, no. Well, it did, that- - -

That's enough?--- - - -didn't really, sorry, I'm- - -

10

Yeah, it was a payback for all the solid work you'd done for Australian Water Holdings. Isn't that right?---Well, we maintained a good relationship and he was willing to employ me thereafter.

Great. Thanks, Mr Koelma.

THE COMMISSIONER: Does anyone have any questions? Yes, Mr Alexis.

20

MR ALEXIS: Thank you, Commissioner. Mr Koelma, can I ask you a few questions and start at the end of the Eightbyfive AWH retainer. Do you follow?---Sure.

And in that respect, you recall not that long ago Counsel Assisting asked you about the work that you did for AWH, and I quote, "during the time that you were employed by Mr Hartcher." Remember that proposition being put to you?---I think that was, sure.

30

Could I just come to a bit of detail around the termination of the retainer and do so by reference to Exhibit S3 page 750, if that could be shown to Mr Koelma, please, Commissioner. That's S3, page 750. Now, Mr Koelma, I'm showing you this to provide you with a marker in time. You'll see that this is an email communication between Mr Di Girolamo and his then Executive Assistant on 8 April, 2011. Do you see the first email in the email string?---Ah, yes.

And the question is raised there, is he still under contract, he hasn't sent an invoice since February and Steve was just inquiring. Do you see that? ---Yes.

40

And Mr Steven Leihn I think was the in-house accountant at AWH that often followed you up in connection with invoices?---That's correct.

Is that your recollection?---Yes.

And just in that respect, because some questions were asked about that, did you understand that he did that because you were part of a number of regular EFT transactions that the company typically made in the middle of

each month?---I'm not sure about their transactions but I know I was one of a number of contractors, yes.

In any event, if you see Mr Di Girolamo's reply to his then EA, "I'll get back to you on that one," and you'll see that that's on 8 April, 2011?---Yes.

And of course perhaps by this stage there was still joy in the air having succeeded at the Election in late March of 2011, that's the Coalition I'm speaking of, of course. Do you recall that?---Yes.

10

And does that enable you to recall to mind that it was during the month immediately after the 2011 State Election, and I'd suggest sometime shortly after 8 April, that Mr Di Girolamo contacted you and you had a conversation about the bringing to an end of the Eightbyfive retainer? ---Ah, that's probably right, yes.

He said to you didn't he that as far as he was concerned you couldn't continue to be a consultant for AWH while you were working for Mr Hartcher in Government?---That's probably accurate.

20

Yes. And he said to you didn't he that he'd pay you for the month of April in effect giving you a month's notice of the termination of that contract, is that so?---That sounds right.

Thank you. Now can I come to the matter of some importance, Mr Koelma, and it concerns the letter to which Counsel Assisting asked you about that went via your brother to this Commission. You know the letter I'm talking about?---Correct.

30 Now can I just put these questions to you I'd ask you to give them thought and consideration before answering because it's important and Mr Di Girolamo's reputation on this subject matter may depend upon it, do you follow?

THE COMMISSIONER: I would have thought that all of the questions asked of this witness had some importance and that he was very well aware of the obligation to tell the truth in respect of each and every question that was asked.

40 MR ALEXIS: I don't doubt that, Commissioner.

THE COMMISSIONER: Go ahead.

MR ALEXIS: Mr Koelma, you never provided the letter that was sent to the Commission to Mr Di Girolamo either before or after the letter was sent to the Commission did you?---I don't recall doing so, no.

And you never spoke to Mr Di Girolamo about the content of the letter either before or after the letter was sent to the Commission did you?---I may have spoken to him about the allegations in general terms but I don't recall speaking to him about the letter specifically, no.

You never told him that you were in any way involved in the preparation or the dispatch of a letter containing complaints regarding Mr Quill and Dr Schott to this Commission did you?---I don't think I would have been that specific if I discussed it with him, no.

10

THE COMMISSIONER: I didn't hear that. You don't think you would have been that specific?---No.

In what respect?---In respect of exactly what I had done with those allegations.

Well you know don't you, Mr Koelma, that when Mr Di Girolamo was asked questions around this letter by Counsel Assisting earlier this week he denied having - - -

20

MR WATSON: Well I object to that. This is time for the positive case.

THE COMMISSIONER: Yes. Well I mean - - -

MR ALEXIS: Well the positive case is being put namely that it never occurred. I thought my questions had proceeded the question under objection would have made that quite plain.

THE COMMISSIONER: I think that's right.

30

MR ALEXIS: Thank you.

So, Mr Di Girolamo, you – Mr Koelma, I do apologise, you know don't you that earlier this week when the subject matter was raised with Mr Di Girolamo he denied having any communication with you around the content of the letter either before or after it was sent to the Commission, you know what don't you?

40

THE COMMISSIONER: Mr Alexis, I hesitate to interrupt but it is, it is important here to be absolutely precise because the witness has said that he may have spoken to your client about the allegations generally, you are now asking him a question that's framed in terms of the contents of the letter, they may be one in the same thing. I think you better frame the question in very particular terms.

MR ALEXIS: Yes.

Mr Koelma, you know don't you that Mr Di Girolamo denied having any communication with you regarding the content or the subject matter whether in specific terms or general terms as referred to in the letter that was sent to this Commission don't you?---I don't recall his testimony in particular but, yes.

Well you can take it from me that he did and fro those who have a particular interest in the matter it's at transcript 3900 from lines 25 to 50. Mr Koelma, I just want you to think about this and give it due consideration, may I
10 suggest to you again that you never spoke to Mr Di Girolamo about the content or the subject matter of the complaints contained in that letter either before or after the letter was sent to the Commission. Do you agree with that or don't you?---I would have spoken, again I would have spoken to him about the general, the general subject of the allegations in the context of the article that was written by Heath Aston but - - -

So is your recollection that in so far as the question of prospective complaints is concerned and by that I mean before the letter was sent to this Commission the conversation that you can recall to mind with Mr Di
20 Girolamo was in connection with the Heath Aston newspaper articles, is that so?---Yes, I would have discussed that with him.

And that's the only time in which the subject matter or the content of what then became the letter of complaint to ICAC was discussed. Is that so?
---Yes, that's possible.

All right, thank you. Now can I just come to some related evidence concerning the question of the telephone contact that you had with the person identified as a Sydney Water employee by the name of Robert. Do
30 you recall that?---Yes.

And I think your evidence earlier today was that before Mr Aston's Thai water article was published you'd received a telephone number and that's how it came to be that you were speaking to this gentleman Robert at Sydney Water. Do you recall saying that?---Yeah, as I said I don't recall whether I received a phone number or a phone call.

Right. Now could I suggest to you for your consideration, Mr Di Girolamo, Mr Koelma, I'm sorry I've done it again, but I can suggest for your
40 consideration that the contact, the means of contact with this gentleman Robert did not come to you via Mr Di Girolamo?---As I say my, my recollection is that it came about via a discussion with Nick but I'm not, I can't be certain about the circumstances.

I appreciate this happened a while ago but would you just mind considering this for me and perhaps what I need to do is to ask you to go to Exhibit S2 at page 521 and 522?---Sorry, you'll have to give me that page number again.

Certainly. 521 and 522. Now 521's helpful because it provides us with some timing, it's the email that learned Counsel Assisting took you to earlier which refers to the Sun Herald article published the day before that is on Sunday, 23 May. Do you follow?---Yes.

And if we look at the article on page 42, 522, thank you?---The following page, yes.

10 It would be obvious to the reader of that article wouldn't that Mr Hartcher had something to do with the information that it conveys in particular one sees in the third column in the large quoted words, some words that are attributed apparently to Mr Hartcher. Do you see that?---Yes.

You see that?---I do, yes.

20 Thank you. And anyone wanting to follow up as it were on the subject matter of this article might think that a very easy way to do that would be to ring Mr Hartcher's electorate office and speak to staff there about the subject matter of this article?---Yes, I suppose it's possible.

But if someone rang Mr Hartcher's electorate office and wanted to speak to someone about the comments attributed to Mr Hartcher as contained in this article then presumably they'd be put through eventually to you, is that so?

THE COMMISSIONER: What date is this article, Mr Alexis?

MR ALEXIS: 23 May 2010 a couple of months before the letter to the Commission.

30 THE COMMISSIONER: But, but I, I didn't understand this witness to be working for Mr Hartcher on 23 May 2010?

MR ALEXIS; No. Well Counsel Assisting I thought put that proposition many, many times and it was - - -

THE COMMISSIONER: Well can we clarify it. Were you working Mr Hartcher's office in May 2010?---No, not as an employee, no. I, I was - - -

40 MR ALEXIS: I think you've explained it to us a number of times, Mr Koelma, that contrary to Counsel Assisting's suggestion you weren't employed by Mr Hartcher as a staffer- - -

MR WATSON: Sorry, I didn't suggest that.

THE COMMISSIONER: I didn't think he did.

MR WATSON: You've got it all wrong.

THE COMMISSIONER: I didn't think he did, Mr Alexis, but the problem I'm having with this is, are you putting to this witness that the way in which he came into contact with Robert was because as a result of this article someone in Sydney Water rang Mr Hartcher's office? Is that what you're suggesting?

MR ALEXIS: I'm exploring with the witness what seems to be a very plausible means of contact being made between the Sydney Water employee and Mr Koelma, namely via Mr Hartcher's Electorate Office.

10

THE COMMISSIONER: Well, I just want to be clear, because that's what's confusing me. He wasn't working for Mr Hartcher at the time of this article.

MR ALEXIS: Well, with respect I think there's some confusion, and it's no doubt my fault, between what working for means and what being involved in the campaign means and other voluntary work that Mr Koelma I think has said many time he was engaged in from time to time.

20 THE COMMISSIONER: Well, you'd better lay the groundwork for that because I don't understand that, I don't understand that this witness has ever agreed that at a period of time when he was being retained by various business entities in his Eightbyfive capacity that he was also in effect fielding inquiries through Mr Hartcher's campaign office, but anyway, if that's the proposition, are you suggesting that's the way in which he could have come into contact with the person Robert?

MR ALEXIS: Yes, it seems entirely plausible to us that- - -

30 THE COMMISSIONER: All right. Well, do you appreciate that's a suggestion that's being put to you, Mr Koelma?---I don't think it's - it doesn't seem likely but I couldn't rule it out. I mean I- - -

MR ALEXIS: Can we just get clear before we come back to this point, Mr Koelma?---It would have been a very long way round, but okay.

As it was, but you were working I think in a voluntary capacity for Mr Hartcher's Electorate Office from time to time in the 2010 calendar year, weren't you?---From time to time, yes.

40

Yeah. And if either Mr Hartcher or staffers then working for him wanted your assistance on something, you would have naturally provided it, wouldn't you?---If I was asked, yes.

And if a communication was received by the office and the caller wanted to speak to someone about the comments attributed to Mr Hartcher in the Heath Aston article published in the Sunday newspaper and if they were

referred to you, then naturally you would have spoken to them, wouldn't you?---Yeah, again I suppose it's possible, yes.

It's just that you said in your evidence that you thought Mr Di Girolamo had been the means of facilitating the telephone contact with this gentleman in Sydney Water and I'm really just suggesting to you that it wasn't Mr Di Girolamo at all but it's entirely possible that the contact came as a result of Mr Aston's newspaper article published in the Sunday paper?---As I said, that was my recollection but of course it's entirely possible that- - -

10

THE COMMISSIONER: Sorry, when you say that was your recollection do you mean your recollection was that the contact details for Robert came through Mr Di Girolamo?---That was my recollection, yes.

MR ALEXIS: Yeah. All right. Well, can I just test that recollection with you, and I'm doing so because I'm going to suggest to you that your recollection is wrong. Do you follow?---I would accept that without you having to put- - -

20

Oh, well, thank you, but I think I need to do a little more than just accept that. Could Mr Koelma be shown please, Commissioner, Exhibit S81, S81. And, Mr Koelma, I think earlier in your examination you were shown this extract of your compulsory examination before the Commission on earlier occasions. Do you recall that?---Ah, yes.

And if you could look at the first page, and what I'll do is refer you to the pagination in the bottom right-hand corner. Do you see 702PT?---Yes.

30

All right. And you'll see that at the bottom of that page you were asked some questions around the letter to the Commission to which we've just referred. Do you see that?---Yes.

And who drafted it, et cetera. Do you see that?---Yes.

And then over the page you were asked about the employee, that's the employee from Sydney Water, and you refer to there to a fella by the name of Robert. Do you see that?---Yes.

40

"Robert who?" "Not sure." "And so did you contact Robert or did he contact you?" Do you see that question?---Ah, yes.

Thank you. And you've answered, "He contacted me." Do you see that?---Ah, yes.

And this was evidence that you were giving privately to the Commission back in February this year, not that long ago, is it?---Ah, that's correct.

Yeah. And then you see just above line 10 Mr Watson asked you why, that is why did he contact you. "I think he was told that I was someone who could help him make a disclosure, he wanted to report something to you." And then you see the question, "Who told him that?" And you see your answer, "I couldn't be certain but I would imagine that it was somebody that he had had some dealings with." Do you see that?---Yes.

10 So can I just suggest to you that when you were responding to Counsel's question and you were imagining that it was somebody that there had been some dealings with, would it be correct for me to suggest to you that you really just couldn't recall when asked and you were just trying to helpfully speculate?

THE COMMISSIONER: Well, Mr Alexis, I'm just wondering why then he goes on to refer to Australian Water in the context of someone he had some dealings with.

20 MR ALEXIS: Yeah, I'll come to that, I'll come to that. Well, let's go straight to it, Mr Koelma. You see the reference then, "And who could that be, Australian Water?" And then you see your answer at line 20 in answer to the question, "What connection did Robert have with Australian Water?" You say, "I'm not sure of his actual commercial connection but I understand that he had had some dealings with some people at Australian Water." Do you see that?---Ah, yes.

30 Right. And then at the foot of the page at 703PT you see your further evidence, "I think he," that is Robert, "was part of the team working at Sydney Water that had something to do with the negotiations- -" Over the page, "And what were they?" And you continued your answer, "- -with Australian Water." And then you picked up I think the answer to the next part of that question, "There were contractual negotiations that I understand had been happening since the mid nineties." Do you see that?---Yes.

Mmm. Then you see the question, "Who told you that?" And the question was then put, in effect, "Was it Robert?" And you say, "He may have but I'm not sure Australian Water had told me that as well." Do you see that?---Yes.

40 So can I suggest to you that at that point when you were giving this evidence back in February this year you were entirely unsure as to whether or not the information that you were responding to with these questions on that occasion had come from Robert or had come from Australian Water? ---Sorry, you might need to put that question again.

You were unsure as to whether the information that you were conveying in answer to these questions back in February had come from Robert or had come from Australian Water?---With regard to the contractual negotiations?

Yeah?---In, in that – sorry, I, I thought I had clarified that my understanding was that Australian Water or Nick in particular had told me about the contractual negotiations.

Yeah?---But, but- - -

Well, that’s really what I want to come to. When you answered the question at line 8, “Who told you that?” What you were being asked was, who told you about the contractual negotiations that had on your understanding been happening since the mid nineties. Do you see that at the top of the page?
10 ---Ah, yes.

And so when you answered Counsel’s questions and said, “He may have,” that is Robert may have- - -?---Yes.

- - -“But I’m not sure Australian Water had told me that as well.” What you were conveying then was that your understanding about contractual negotiations since the mid 1990s was something that you weren’t sure about but probably came from Australian Water as well. Is that right, is that how
20 we should understand that evidence?---Ah, yes, I think there, there should probably be a full stop between sure and Australian Water, but um, yes, my recollection is that Nick told me about, gave me a brief overview of the contractual negotiations.

Yep. And then Mr Watson went on to ask you about Australian Water’s voice, you responded with reference to Mr Di Girolamo, and you’ll see what you’ve said down to lines 12 and 13. Have you got that?---Yes.

So really the evidence that you gave on the earlier occasion was that Mr Di
30 Girolamo had given you the information about the contractual negotiations with Sydney Water’s, Sydney Water happening since the mid 1990s?---Yes.

You weren’t seeking to convey then that Mr Di Girolamo had in effect introduced you or provided contact details for this person named Robert, that’s so isn’t it?---Ah, no, not specifically but then I don’t, yeah, not specifically.

Yeah. And you’d now accept from me wouldn’t you that as you now try to recall as accurately as you can the correct position Mr Di Girolamo did not
40 provide you with any contact details for the gentleman named Robert at all, that’s so isn’t it?---Again, I wasn’t asked who gave me the contact details in the context of this but from what I can see um, that’s my recollection but I’ll accept that I couldn’t be certain about exactly when or where that happened or –

Would you accept from me that you could be quite wrong about this?---As I say, that’s my recollection.

Would you accept that you could be quite wrong about this?---I don't think I am but I, it's, as I say that's my recollection.

All right. Now, can I move to another matter. Could Mr Koelma be shown exhibit S2 at 337?---Sorry, the number.

337. And perhaps I should start at the beginning of the email string at 339. Now, this is an email string between you and someone called Jonas. Do you see that?---Ah, yes.

10

And having read the emails and the content of them it would appear at least to me that Jonas is a long term friend of yours?---Ah, Jonas was someone who had done, he was, he'd been on exchange to Australia and worked in Chris' office when I had worked in Chris' office in 2005 I think.

I see. So he was a friend from those early days, if I can put it that way?---Yes, we kept in contact thereafter, yeah.

20

Yeah. And you're obviously good friends with him because you're discussing in the emails all sorts of personal things including the birth of your son and the origins of his name and, apart of course from the weather and football and jobs and those sorts of things?---Yeah, they'd be the things we'd discuss, yeah.

Yeah. And you'll see that your email I think was in January, 2010 and he's responding to you and the email string continues until the email on 337 in March of 2010. Do you see that?---Ah, yes.

30

And in the course of those emails he's telling you about work prospects and an application that he's made to work with Volkswagen in Germany?---Ah sorry, yes, at the, yep, at the bottom.

And similarly if we look at the first email on 339 you're telling him that you're no longer working at Fisheries, you're back on the Central Coast, it's meant that you can do some work in Chris' office again. Do you see that?--Yes.

40

And so the connection I suppose between you was that you'd worked together in Chris' office previously, is that so?---That's correct, yes.

And should we understand that this was really a yarn that you were having with an old friend, perhaps if he was physically in Australia and not in Germany, the sort of yarn that you'd have over a beer on a Friday night?---That would be accurate, yep.

Yeah. And these emails really are best characterised as some friendly - - -

MR WATSON: Oh, look sorry, it's got to stop. Please get to the point.

THE COMMISSIONER: I'm sorry, just where is this going? I mean, we - -
-

MR ALEXIS: I'll be there in about one second.

THE COMMISSIONER: All right.

MR ALEXIS: And Mr Koelma - - -

10

MR WATSON: Maybe not a beer but a lemonade.

MR ALEXIS: - - - if you look at the email on 337 you'll see that as at
March, 2010 you're telling him, if you have the fourth paragraph, that
you're happy in your current position. Do you see that?---Yes.

And you tell him that that's more like a consultant or mercenary?---Yes.

"I do some work for a water company"?---Yes.

20

Do you see that?---I do.

And I gather when you've said that to Jonas you were telling him in the
typical way that you've told him things previously the truth about what you
were then doing at the time?---Yeah, that would be a, an accurate reflection
of - - -

30

Yeah. Well Mr Watson has been asking you many times about some
evidence to prove your innocence, objective material, documents, that sort
of thing. I suppose this is an occasion where in a - - -

MR WATSON: You've got to be joking.

MR ALEXIS: - - - in a purely - - -

MR WATSON: We've spent 10 minutes, Commissioner. Could you direct
Mr Alexis to get on with something relevant.

MR ALEXIS: Well - - -

40

THE COMMISSIONER: Anyway - - -

MR WATSON: I mean, that's just - - -

MR ALEXIS: - - - it is entirely - - -

MR WATSON: - - - nonsense.

MR ALEXIS: - - - relevant - - -

THE COMMISSIONER: Well, anyway - - -

MR ALEXIS: - - - in my respectful submission.

THE COMMISSIONER: Well, Mr Alexis, if the document - - -

10 MR ALEXIS: And I can explain why if I need to do.

THE COMMISSIONER: The document speaks for itself but in any event this another self-serving statement.

MR ALEXIS: Well - - -

THE COMMISSIONER: But the document speaks for itself.

MR ALEXIS: It's like a - - -

20 THE COMMISSIONER: It's not objective in the sense that it's come from another source other than this witness but I accept what you say and it'll be a question of weight at the end of the day.

MR ALEXIS: Yes. Yes.

MR WATSON: Sorry, it's been part of the opening that this man, Koelma was doing work for Australian Water Holdings.

30 THE COMMISSIONER: Anyway - - -

MR ALEXIS: (not transcribable)

THE COMMISSIONER: Anyway, we all get the point.

MR ALEXIS: Well - - -

MR WATSON: Dear me.

40 MR ALEXIS: Well, thank you.

THE COMMISSIONER: We get the point.

MR ALEXIS: Well, thank you. It's an occasion where the Commission might think - - -

THE COMMISSIONER: Well that's a matter for submissions.

MR ALEXIS: Well it is but that's the relevance and I'm responding to Counsels - - -

THE COMMISSIONER: All right.

MR ALEXIS: - - - suggestion that this line of questioning is irrelevant. Now Mr Koelma, while we have this volume could I ask you to, and I think in fairness, Commissioner, I should ask for the transcript from Tuesday to be shown to Mr Koelma because he's been in the witness box for some
10 time.

THE COMMISSIONER: Well what part of the transcript, Mr Alexis, if you can - - -

MR ALEXIS: Yes. It's - - -

THE COMMISSIONER: - - - give me a page reference?

MR ALEXIS: Thank you. It's page 4108 and 4109. And while that's
20 coming to you, Mr Koelma, if you can go to exhibit S1 at page 100. Now, have you got the transcript there, sir?---Ah, yes.

Thank you?---If I'm on the right page.

And I just want to draw your attention to the subject matter. If you've got 4108?---Yes.

At about line 40. Do you see that?---And the question's related to what I might call the working up of your consultancy service agreement with
30 AWH. Do you follow?---Yes.

And you'll see that Mr Watson puts to you at line 41, "This is Mr Hartcher getting back in touch with you suggesting an amendment to the agreement. Do you see that?" And there was then an objection. I won't take time on that. If you come over the page at 4109 and then after the reference to Monsieur Hartcher at line 15 you'll see the question, "And if you look down further down the email chain you're involving him, that's Mr Hartcher, at each step of the way in striking this agreement. Don't you agree?" You see your answer, "I sought his advice on the best form of the agreement." Do
40 you see that?---Ah, yes.

Now, can I just try and seek to understand whether or not the reference there to advice was to legal advice? Have you got page 100 open in S1?---Ah, no.

And in March 2009 you understood that Mr Hartcher had a legal background?---Ah, yes.

And at page 100 you'll see the email from you to Mr Hartcher and then at about the middle of that page you see the email in reply to you that indicates that he's looked at the proposed service agreement and then he suggests a clause stating and then sets out a provision about confidentiality, do you see that?---Yes.

10 So is that a matter to which you were referring when you said that you provided the proposed agreement to him for advice?---Ah, yes, I provided him with a copy that didn't include such a clause and he looked it over, suggested that clause and I included it.

Yeah. And without perhaps wanting to dwell too much on the seeking of strict legal advice, was Mr Hartcher someone that you'd developed a personal relationship with in the sense that he was someone who mentored you as young man?---Of course.

At about this time, particularly while you were working for him previously? ---Well, I - yeah.

20 And so were you sharing the proposed contractual arrangements with AWH with him not simply for the purpose of legal advice but general assistance that you could then receive from him about it?---Yeah, if there was anything else I suppose I, it was fairly open ended, if there had been any other advice I would have likely accepted that too.

This was your first foray into a commercial contract with a company in the private sector wasn't it?---Correct.

30 All right. Thank you, Mr Koelma. There's one other matter I wish to come to and I'll be able to complete it well before lunch, Commissioner. Mr Koelma, I'd like to go to your bank account if I could as it then was. Can the witness be shown Exhibit S12. Mr Koelma, if you could open S12 at page 3323 and from page 3323 we have I think extracted copies of the Eightbyfive bank account with the Commonwealth Bank, is that right? ---Ah, yes.

And we see on 21 April on page 3323 the first receipt from Australian Water, we see the second for example on the following page 3324, do you see that?---Ah, yes.

40 Now subject to one exception which I'll come to should the Commissioner understand that from the opening of this account in March of 2009 through until about April of 2010 the money coming in from Australian Water Holdings was the only money that was coming into the Eightbyfive account?---Look, without going through all the pages I'd have to, that seems likely, yes.

All right. Well, we've been through it, Mr Koelma, and subject to one exception that I'll come to that seems to be the position?---Sure.

Now should we understand that in relation to that consultancy income you regarded that as money that you could spend as you saw fit?---Ah, well, yes it was my income, yeah.

And you did so?---I did.

10 And if we look for example on the pages that are, that are open, 3323, 3324 and there are many other examples, it's fairly obvious isn't it that expenses were being paid out of the Eightbyfive bank account for car registration and fuel and insurance and like business expenses?---Sure, yeah.

And in addition to that you would typically transfer by way of electronic transfer sums of money from the Eightbyfive account to the joint bank accounts that you then held with your wife Tennille, is that so?---Yes.

20 And should we understand that in relation to the joint bank accounts there were at least two with the Commonwealth Bank, two separate bank accounts?---Ah, yes.

One that received I think your wife's teaching income?---That's probably right, yeah.

And moneys transferred into that account were then used to pay general living expenses?---Ah, yes, that'd be right.

30 And in relation to the other joint account that was an account typically used to pay your rent and some loan repayments?---Regular payments, yes.

Regular payments?---Yeah.

And in that sense the money that was transferred from the Eightbyfive account to that account was also used for general living expenses?
---Correct.

40 And should we understand that out of the joint account moneys there was never any occasion where any money was paid out of that account to either Mr Spence or Mr Webber or to Mr Hartcher?---Not that I'm aware of.'

All right. The exception that I was referring to appears on 3327, if you could go to that please, and you'll see on 10 July a receipt of nearly \$8,500 from what's described as New South Wales Parliament, do you see that?
---Yes.

Can you assist us with what that's in reference to?---Ah, that was a newsletter that I put together that was billed to the Parliament.

All right. Now if you could then come through please to page 3338 and just so we've got the timing of things clear, you had been on retainer with AWH for coming onto about a year by this stage?---Ah, thereabouts, yes.

You'll see for example on page 3337 a receipt of \$7,300-odd on 31 March, do you see that?---Ah, yes.

10 And then on 3338 you'll see that the balance of your account on 27 April was just over \$190 - - -?---Yes.

- - - immediately before the Gazcorp money came in on 3 May, do you see that?---Yes.

And you'll see that on the following day, 4 May, there was with the withdrawal of \$6,000 to which learned Counsel took you yesterday?---Ah, I, I think they're the same, yes, I think it was presented differently but I think they're the same.

20 In any event, I think that was the amount to which you gave evidence that you provided Mr Spence with \$6,000 and I think there was then a deposit of \$5,000 into his account on that day or the following day, you recall that? ---Yeah, that's what was discussed.

And if you turn over to 3342 that seems to indicate on 2 July the first receipt from the Patinack Farm company, do you see that?---Sorry, which page are we on?

30 3342, about halfway down the page, 2 July?---Yes.

Followed by the Gazcorp payment on 5 July, do you see that?---Yes.

MR WATSON: Commissioner, don't these documents - I mean, what are we doing? Having a competition reading?

MR ALEXIS: I'll be coming to the point momentarily if Counsel would be patient.

40 THE COMMISSIONER: Well, I mean, look all we've been doing so far is just getting the witness to read what are entries on a bank account statement. Can we just have the proposition put to him while he's got the document in front of him?

MR ALEXIS: Yes, and I'm endeavouring to introduce the point as quickly and as efficiently as I can, Commissioner.

Now, Mr Koelma, would you agree that the receipt from Gazcorp on 3 May on page 3338 and the following receipt from Patinack Farm in early July

2010 was the point in time where there was a significant change in the source of moneys that were received into the Eightbyfive account?

THE COMMISSIONER: Sorry, which point in time?

MR ALEXIS: Well from the pointing time when Gazcorp receipts came in and later the Patinack Farm receipts came in?---Yes, in terms of income.

10 And it was from that point in time and not before then that any monies were paid out of the Eightbyfive account to either Mr Spence or Mr Webber, is that so?---That's probably right, yes.

And from that point in time that is after the receipt of the first Gazcorp money and Patinack Farm money you continued to spend the AWH money as and when you saw fit?---Yes.

20 Because in so far as the Gazcorp funds and the Patinack Farm funds were concerned you knew that there would be obligations on you to pay Mr Spence and Mr Webber?---Yes, there were those obligations, yes.

Thank you, Mr Koelma.

THE COMMISSIONER: Anyone have any questions for Mr Koelma? I think Mr, sorry - - -

MR HEATH: Commissioner, Mr Heath is my name, I represent Mr Williams.

30 THE COMMISSIONER: Yes, Mr Heath. I'm sorry, I just couldn't see you beyond Mr Newlinds.

MR HEATH: Commissioner, I just have some short questions.

THE COMMISSIONER: That time of the morning when – yes, go on.

MR HEATH: It is. Everybody needs a sandwich, Commissioner. I will ensure that I'm short.

40 THE COMMISSIONER: Go on, Mr Heath.

MR HEATH: Mr Koelma, earlier on in your cross-examination you asked about your initial meeting with representatives from Buldev?---Yes.

And, and you said you met Mr Williams and that you met Mr Sharpe and you couldn't remember but it was possible that Mr Hartcher was there at the initial meeting. Do you recall that?---Yes, that's probably – yeah.

All right. Can I just ask you this, do you recall whether the meeting took place in a board room at Buldev?---I think it did, yes.

In the Newcastle offices?---Yes.

Does it also accord with your recollection that Mr Sharpe was present in the room possibly Mr Hartcher and later Mr Williams came into the room?---I couldn't confirm the order in which they came to the room.

10 You just don't recall, all right.

MS TIBBEY: Well I object, your Honour, sorry, Commissioner, because that's a compound question there and one which involves my client Mr David Sharpe.

THE COMMISSIONER: Well - - -

MS TIBBEY: And the evidence of that witness was not as said it was when one looks at the evidence in relation to Mr Sharpe it was that he was not
20 sure whether Mr Sharpe was there or not there.

Could we break it down please, Mr Heath, and we know – well I think you've got agreement that there was a meeting in the board room. Can you put to the witness in respect of each person who you say was present.

MR HEATH: Yes. Mr Koelma, on your transcript on 13 May, 13 May the question put to you was this, "Right, okay. So when you said to them it was Williams and somebody else? I think there was an initial meeting with Williams and a fellow by the name of Sharpe. You then go onto say, asked
30 "Where was the meeting held, and that was in the Newcastle office" you reply and, "Who else was there apart from Williams and Sharpe to the best of your recollection" you say, "I think just Williams and Sharpe" you were asked then, "What about Hartcher, what about Mr Hartcher. I don't think he was in the meeting itself. All right, might he have been there? It's possible, I can't recall." That was your evidence. Do you recall that?---(No Audible Reply)

I think you just confirmed to the - - -?---Sorry, yes.

40 I think you've just confirmed to the Commission your recollection as it took place in a board room?---Yes, as far as I can – yeah.

The question I was putting to you was does it accord with your recollection that Mr Williams came into the meeting while you were there, that is Mr Sharpe and if Mr Hartcher was there and yourself were present and Mr Williams came in later?---I really can't recall.

All right. Could I ask you just to have a look at or if you could be shown 2544.

MR WATSON: It's on the screen.

MR HEATH: It's in Exhibit S9. Mr Koelma, could you just have a look at this email please?---Yes.

10 All right. Does having looked at this email now does it accord with your recollection the initial meeting that you've referred to that I just took you to a moment ago took place on 17 May 2010?---There was clearly a meeting on 17 May, yes.

And is it likely according to your recollection that was the initial meeting that you had with Mr Sharpe and Mr Williams?---That's, yeah, that's possible.

20 Thank you. Could I ask you you also said in your evidence on the 14th and it's at transcript 4202 at line 17 to 20 and you said, "Well with Mr Sharpe" and you said you have spoken to him a couple of times. "Did you ever provide him with advice? Look it's possible, I can't recall a specific instance." And that was evidence you gave on the 14th, yesterday. And the substance of that evidence was that you had spoken to Mr Sharpe a couple of times I take it after the initial meeting that we've just discussed, is that right?---Sorry, I'm - - -

After your initial meeting with Mr Sharpe - - -?---Yes.

30 - - - and Mr Williams - - -?---Yes.

- - - you spoke with Mr Sharpe a couple of times after that occasion?---I think so, I'm not - - -

Do you recall, sir, whether those, those occasions were either on the telephone or in person?---Well like I say I think I had spoken to him at that meeting and I recall maybe speaking to him a couple of times over the phone, I'm - - -

40 After that meeting?---I, yeah, I would think so yeah, unless it was to arrange that meeting.

Could the witness be shown 2636. Still should be Exhibit S9. Could you just – this is an email chain, Mr Koelma, could you just go to the bottom of where the email chain starts and it's an email from you to Kellie Lowe, do you see that?---Sorry, it might be useful if I actually had this. Which, which number?

It's page 2636?---Yeah.

Have you got the email, sir?---I do.

Thank you. Could you go to where the email chain starts with an email from you to Ms Kellie Lowe?---Yes.

And do you see this is, this appears to be that you had conversations with Ms Lowe?---Yes, it looks like it.

10 And you understand, and you understood that she was the Executive Assistant to Mr Sharpe, is that right?---I'm not sure that I understood that when I sent this email but I got an email back from her so I - - -

Would you agree with me, sir, that certainly before this time you'd spoken to Mr Sharpe either in person or on the telephone after initial meeting?
---Yeah, that seems likely, I mean she sent me an email, yeah.

I have no further questions.

20 THE COMMISSIONER: Mr, oh sorry. Yes, before we go any further, Mr Newlinds, how long will you be do you think?

MR NEWLINDS: Three to five minutes but I'm happy to do it now or whenever's convenient.

THE COMMISSIONER: Well, Mr Henskens, how long will you be?

MR HENSKENS: I don't have anything, thanks.

30 THE COMMISSIONER: You don't have any questions?

MR HENSKENS: No, Commissioner.

THE COMMISSIONER: Anyone else, Mr McGrath? Oh - - -

MR McGRATH: Five minutes. Five minutes, Commissioner.

THE COMMISSIONER: All right. Well I think we'll take the luncheon adjournment, we'll resume at quarter to - - -

40

MR CONDITSIS: Commissioner, there's a significant transcript correction, could I just make it quickly now - - -

THE COMMISSIONER: Yes.

MR CONDITSIS: - - - or, or ask the Commissioner to - - -

THE COMMISSIONER: Well just tell, give me - - -

MR CONDITSIS: 4230.

THE COMMISSIONER: 4230.

MR CONDITSIS: At about line 40. It's an exchange between you and me yesterday afternoon, Commissioner, and it has Commissioner saying, it records the Commissioner, "Well that's just a statement of fact, Condit-
10 will really just listen it was actually Mr Watson that said, Well that's just a statement of fact Condit-
sis will really just listen." I didn't say that to you.

THE COMMISSIONER: Well I – all right then. I'll have that noted, Mr Condit-
sis.

MR WATSON: Yes, I accept, I accept that.

THE COMMISSIONER: Yes, I'll have that noted. I wouldn't have taken it that way anyway, Mr Condit-
sis.

20 MR CONDITSIS: Yes, thank you.

THE COMMISSIONER: All right. Quarter to 2.00.

LUNCHEON ADJOURNMENT

[12.49pm]