

**REPORT OF PROCEEDINGS BEFORE**

**PRIVILEGES COMMITTEE**

**INQUIRY INTO THE 2009 MOUNT PENNY RETURN TO ORDER**

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**At Sydney on Monday 26 August 2013**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

The Hon. T. J. Khan (Chair)

The Hon. D. Clarke

The Hon. G. Donnelly

The Hon. J. A. Gardiner

The Hon. M. R. Mason-Cox

Reverend the Hon. F. Nile

The Hon. J. Buckingham

**CHAIR:** Welcome to the fourth day of the hearing of the Privileges Committee inquiry into the 2009 Mount Penny return to order. My name is Trevor Khan and I am the Chair of the Committee. Before we commence the hearing, I would like to address some procedural matters. The Committee is holding a public meeting today, which means that the media or members of the public will be in the room. The transcript of evidence today will also become public. Witnesses who appear before parliamentary committees are protected by parliamentary privilege. This means that what is said cannot be used against a witness later in court proceedings. Our terms of reference require the Committee to inquire into and report on the failure to provide documents in the return to order tabled in the Legislative Council on 26 November 2009 concerning the Mount Penny mining exploration licence and tender process. This includes documents identified in the document comparison matrix provided by the Commissioner of the Independent Commission Against Corruption and tabled in the Legislative Council on 14 March 2013.

For the information of witnesses, I indicate that at a deliberative meeting prior to the commencement of this hearing the Committee resolved to make public the report by Maddocks Lawyers, provided by Industry and Investment NSW. The Committee has also decided to publish the annexures. For the purposes of today's hearing, it is likely that the report will be described as the Maddocks report.

As to broadcasting guidelines, the Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its proceedings. Copies of guidelines governing the broadcast of the proceedings are available on the table by the door. In accordance with the guidelines, a member of the Committee and witnesses may be filmed or recorded. However, people in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

In relation to the delivery of messages and documents tendered to the Committee, witnesses, members and their staff are advised that any messages should be delivered through the Committee clerks. I also advise that under the standing orders of the Legislative Council any documents presented to the Committee that have not been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or any other person. After being sworn in, I will invite witnesses to make a short opening statement. If they have copies of statements they would like to provide to members of the Committee that would be very much appreciated. Members of the Committee will then ask questions. I remind everyone to please turn off their mobile phones. The Committee has resolved that any answers to questions taken on notice during the hearing must be provided within 21 days.

**DAVID MICHAEL BLUNT**, Clerk of the Parliaments, Legislative Council, sworn and examined:

**CHAIR:** Mr Blunt, would you like to make an opening statement to the Committee?

**Mr BLUNT:** Mr Chair, I am really in the hands of the Committee. I am conscious that members of the Committee only received my submission late on Friday. I am really in the hands of the Committee to make the best use of the time. I have prepared an opening statement. Perhaps I could make the statement and if you want to ask questions then, please do. Otherwise, if you would like me to take the Committee through the submission after the opening statement, I am happy to do that as well.

**CHAIR:** I will invite you to do so in the context that some members were not aware that they had received your submission on Friday afternoon.

**Mr BLUNT:** Thank you. Before commencing with the opening statement proper I make two acknowledgements. Firstly, as highlighted in the covering letter to the submission, I acknowledge the assistance that I have received with the drafting of the submission from Ms Susan Want, Director of Legislative Council Procedure, and the editing assistance of Rachel Callinan, Usher of the Black Rod. We have tried to have a bit of a Chinese wall in the office so that those of us who have been working on the submission have not been involved with the secretariat side of the committee's work over the past few weeks, and vice versa. It is very fitting that Ms Want had a significant role in the submission. As many of you are no doubt aware, she has been providing expert drafting assistance to members in relation to their notices of motions for orders for papers for many years. Her procedure team, her table office team have established very effective administrative procedures for the handling of the volume of documentation that comes in with returns to order.

The second acknowledgment that I wish to make is to Mr Paul Miller, General Counsel, who is one of the authors of the Department of Premier and Cabinet submission. I hope this will not be the kiss of death for him. A week would not go by where I do not have considerable contact with Mr Miller in relation to a whole range of matters, including orders for papers. His legal branch and the staff of the department of the Legislative Council have developed a very close and effective and professional working relationship. We represent very different interests—two different arms of government—and do not always agree. When we do not agree, we do that with due respect. I certainly acknowledge that although I will be urging the Committee to be cautious about some of the suggestions in the Department of Premier and Cabinet submission, I recognise that they have all been made in good faith.

Turning to the submission itself, it is in three parts. Firstly, on pages 1 and 2 there are some general comments about the order for papers power and process and some statistical information. There is also an attachment, which provides information on every one of the orders for papers made since 1999. I trust the Committee will find that is useful information. Secondly, the submission makes observations about what appear to be perhaps assumptions or at least the foundations or recurring themes in the Department of Premier and Cabinet submission. Thirdly, perhaps of most interest to you, comments are provided on each of the 20 suggestions made by the Department of Premier and Cabinet. The orders for papers power is an extraordinary power. Its existence has been recognised at law as reasonably necessary for the Legislative Council to fulfil its constitutional roles of legislating and holding the Executive Government to account.

On 14 March this year, on the day that he tabled correspondence from the Independent Commission Against Corruption indicating those documents identified by the Commission as falling within the terms of the 2009 Mount Penny order, but which had not been provided in the return, the Hon. Don Harwin, President of the Legislative Council, stated:

... the exercise of that power [that is the power to order the production of documents] has been a fundamental part of the work of this House, in holding the Executive Government to account ...

He further stated:

As your President I regard the privileges and powers of this House as matters of vital importance. It is essential that this matter be dealt with in a way that upholds the dignity, role and powers of the House.

The order for papers process has become one of the key means by which the Legislative Council exercises its constitutional role of holding the Executive Government to account. To place this in a wider context, I quote

Harry Evans, the former Clerk of the Australian Senate, who, in 2006, wrote about the remarkable boldness of the Legislative Council in attacking Executive prerogatives and dragging reluctant governments to account.

**The Hon. JEREMY BUCKINGHAM:** Hear! Hear!

**Mr BLUNT:** He stated:

The [New South Wales Legislative] Council has reaped the reward of being more courageous than its Federal counterpart and indeed than any comparable House. It is a world leader in this area; in some respects ahead even of the United States Congress which has not found a satisfactory solution to claims of executive privilege except its power to impose political penalties if it does.

This reward that Harry Evans talked about is of course the legacy of the careful and courageous decisions taken by members in very tumultuous circumstances in the late 1990s. I trust the Committee will indulge me, however, if I also take the opportunity to pay tribute to the contributions that my two immediate predecessors made in supporting past presidents and members as they went along that journey towards the Egan case and the implementation of the powers and processes that have been put in place since then. I would submit that it is all of our collective responsibilities around the table to continue to protect and implement that legacy that we have been left with.

Turning to the submission, I do need to make one correction. I take the Committee to page 2 and the paragraph headed, "Calls for papers since 1999". The submission states that there have been 297 orders for papers since 1999. With the order for papers that was agreed to by the House last Thursday concerning the Ernst and Young document on caseworker numbers, the number of orders is now 298, and as of today the House has received 297 initial returns. While on page 2 and those statistics, I would like to make a couple of comments about some things that those statistics might tend to show. They do show that the number of orders for papers made by the House has tended to vary from year to year. It is clear that it reached a peak in 2005 and 2006 and again in 2008 and 2009. In fact, the submission of the Department of Parliamentary Services seeks to place the Mount Penny return in the context of a particularly busy year in 2009 with 30 orders for papers.

The reasons for those variations in numbers are not immediately obvious. However, I do think that some of the concerns about the process that are sometimes expressed from within the public sector and certain commentators, and perhaps hinted at in the submission of the Department of Parliamentary Services, do at least stem, to some extent, from the experience of the public sector back in 2005 and 2006, rather than contemporary practice with orders for papers. It is acknowledged that there were some early papers that were extremely broad in their scope and which imposed administrative burdens upon the public sector, such as the order concerning the Millennium trains back in 2003. However, even with that return to order, which included well over 100 boxes of documents, it does need to be placed in the context of the scale of the project that was being examined in that case—a major capital project worth hundreds of millions of dollars.

I also suspect that there were some orders made during that period where the documents could have been obtained through less extreme mechanisms than an order for papers. I comment that whilst the order for papers process does not exist in order that community groups may avoid the expenses associated with freedom of information or Government Information (Public Access) Act applications, which may have been behind a small number of orders during that period, of course, one of the most obvious ways for an Executive Government to avoid numerous orders for papers is to have a culture of open access to government information. There has no doubt been considerable progress in that area since 2005 and 2006, with the passing of the Government Information (Public Access) Act.

It is also acknowledged that during 2005 there were three occasions on which the House in quite extraordinary circumstances did resolve to effectively delegate the determination of privilege claims to the Independent Legal Arbiter. However, such delegation has not occurred since then, and I cannot foresee it happening in the immediate future. The use of the order for papers process has been refined since 2005-06. It is now very rare for an order for papers to be proposed in a notice of motion without the member seeking drafting assistance and great care being taken to ensure that on the one hand the order captures as best it can the documents the member is seeking and, on the other hand, the consciousness of the need to confine the coverage of the order in order to minimise imposing unnecessary administrative burdens on the public service, or capturing extraneous information.

It is my submission that a considerable body of precedent has now been established with standard forms of terminology used in orders, and pretty much common ground between the Legislative Council and the

Executive Government as to the meaning of those terms. The return of documents in now 297 instances and the relative infrequency of any contention following the return tend to suggest that the rules are now fairly well understood by all involved. Furthermore, a considerable body of precedent has now been established in relation to the role of the Independent Legal Arbiter, and the sorts of tests that are applied by the arbiter in evaluating and reporting to the House on privilege claims in order to assist the House to make determinations whether documents should be made public where there is a disputed claim of privilege.

The process is now well developed and has proved to be an effective mechanism to assist the House to balance competing public interests between disclosure of government information and the need for some papers to remain confidential in the public interest. As stated before, I cannot help but feel that some of the concerns about the order for papers process implied in the submission of Department of Parliamentary Services stem from experiences a number of years ago. I suspect though there are also a small number within the public service who have never really accepted that the Executive Government lost the Egan cases and have never really accepted the umpire's decision in those cases. But I think it is a very small number now.

Fundamentally it is submitted that the order for papers process is effective; it is not broken and therefore does not require significant reform. It is an extraordinary power and not to be used lightly. It is submitted though that that is well appreciated by members and is demonstrated in the contemporary operation of the process. Therefore, while qualified support is given to a number of the suggestions put forward by the Department of Parliamentary Services, particularly those that may assist public service departments and agencies with regard to their internal procedures in relation to responding to orders for papers, changes to Standing Order 52 are not supported.

Standing Order 52 sets out the procedures that are followed in the House in implementing and applying the order for papers process that has been recognised at law. The standing orders should continue to facilitate the effective use of that power. It would be perverse, in my submission, if changes were made to Standing Order 52 that in any way restricted or constrained the House in its exercise of this important power. It is submitted that changes to the standing orders, including Standing Order 52, should only be considered where there is a clear demonstrable need and where such changes will do no harm to the ability of the House to hold the Executive Government to account.

One example of a suggestion to which qualified support is given is suggestion 14 that 28 days become the default period for the return of documents. There is no need, however, to prescribe such a position in the standing orders. It can be introduced through the drafting of notices of motions, and where it is not included in those notices of motion, for instance, where the original notice prescribes a different return period, seven days or 14 days, members may choose to raise questions about the return period in debate on the motion for an order for papers. Twenty-eight days as a return period, rather than 14 days, would recognise the administrative burden that an order for papers may impose and also recognise some of the issues that have been raised with the Committee during the course of this inquiry.

However, there will be some circumstances in which 28 days is too long. There may, for instance, be legislation before the Parliament in relation to which documents sought through an order for papers may be relevant and, with the average time for legislation being before the New South Wales being in the order of about 30 days, the return period of 28 days may be too late for those papers to come in and inform debate. If 28 days is accepted as a default period there will need to be circumstances in which other periods are applied.

There was also, for instance, a recent example in the order for papers the heritage order on the property Peroomba where no relevant documents were returned in response to the initial order due to a technicality; however, the relevant agency having already identified the relevant documents and being ready to return them, it was perfectly in order in that case and created no additional burden for the return period in the subsequent order to be reduced to 24 hours. That is an example of one of the suggestions where qualified support is given.

On the other hand, the submission argues that four suggestions, in particular, could have a negative impact on the ability of the House to hold the Executive Government to account and which, it is submitted, should be approached with great caution. They are suggestions 1 and 2, which go to the justification for orders for papers and seek to prescribe additional tests for orders to be adopted and to limit the purposes to which documents that are returned can be used. Suggestion 3 seeks to limit the access of the House and its members to documents that are the subject of a claim of privilege. Suggestion 6 seeks to have Standing Order 52 amended in a way that would define the scope of Cabinet documents in a way that prescribed that they are not required to be

produced in response to an order for papers. I would be happy to elaborate on the concerns about each of those four suggestions. Are there any questions at this stage?

**The Hon. MATTHEW MASON-COX:** Is that not suggestion 8 in relation to Cabinet documents?

**Mr BLUNT:** There are a couple of suggestions which touch on Cabinet documents.

**CHAIR:** No. 8 is the one we are talking about.

**Mr BLUNT:** Yes, you are quite correct. Suggestion 8 is one of the four of significant concern. Mr Chair, would you like me to elaborate on the concerns about those particular matters?

**CHAIR:** Yes.

**Mr BLUNT:** Turning to suggestions 1 and 2, I guess in a nutshell my submission there is that these are the sorts of matters that can be raised in debate in the House on a motion for an order for papers being moved. There is no doubt that some of those issues that are highlighted in suggestions 1 and 2 are, from time to time, concerns that some members of the House may have about a particular order. An order for papers is only agreed to by the House when the member who has given the notice of motion and who is proposing the order is able to convince the majority of members to support the resolution. In my submission, there is already plenty of scope for members who have any concerns about the proposed order to raise those matters in debate and, if necessary, address them through the moving of amendments to such an order.

**Reverend the Hon. FRED NILE:** Most of them are done formally though so there is no debate.

**Mr BLUNT:** That is a good point. There is, however, nothing in the standing orders that requires that to take place. It appears to be a trend that has developed in recent times. Even where orders are moved formally—perhaps contrary to the standing orders because when a matter is dealt with formally it is meant to be dealt with not only without debate but also without amendment—a practice has developed in the House where matters considered formally can be subject to amendment and are often subject to amendment. For instance, it is not uncommon for there to be slight amendments or slight variations to the terms of a motion for an order for papers even when it is dealt with formally, whether that be dealing with the return period and changing it from seven days to 14 days or some longer period. In the case last week of the most recent order, an entire paragraph was omitted at that stage. So I acknowledge what you say: often orders for papers are being dealt with formally. But by way of practice there is still an opportunity for them to be tweaked and improved at that stage.

**CHAIR:** I would like to go to what was recommendation 2 on page 7. How would that work in terms of documents that are not privileged and are accessible to not only all members but also members of the public, that is, the press?

**Mr BLUNT:** That recommendation is one that is not supported. I really cannot see how it could operate in practice.

**CHAIR:** Our court system is different because generally where documents are subpoenaed or discovered, which is what they are referring to, those documents are only available to the parties—that is, many of those documents are never published as such because they are never tendered in court. Even if they are tendered in court, it requires the registry to allow access to the document for it to be used, essentially for other purposes. But where there is a return to order and access is allowed to those documents, it is quite a different process from a court process in that it is not only the person who moves for the order but rather all members of the House and a wide group of the public who then have access to the documents. So I do not know whether they have actually thought through the difference between the court and the return process.

**Mr BLUNT:** That gives me an opportunity to address what appears to be another concern or assumption that is made in the Department of Premier and Cabinet [DPC] submission about the public release of documents returned to order. I would like to place this on the record to make it abundantly clear. Documents that are tabled in the House by the President, a Minister or the Clerk are public under Standing Order 54. Wherever possible, those documents that are made public by the standing orders are published on the website of the Legislative Council in order that members, members of the public and the media can easily access those public documents. Some documents tabled in the House and made public by an order of the House, including the vast volume of documentation returned to an order for papers, are generally available only in hard copy. The

process that we follow is that, upon receipt of a return to order, the correspondence from DPC, the index of documents—including both the index to public documents and the index to documents over which there is a claim of privilege—and any claim of privilege are immediately scanned and uploaded onto the Legislative Council tabled papers database, at which time they are publicly accessible.

However, unless the volume of the documents returned are provided in a digital format, the department is currently unable to make those available online. Consequently, interested members of the public and the media must attend the Table office to view those documents. We do have photocopy facilities available there but those documents cannot be removed of course. Therefore we have a stream of people coming in to view those documents in the office. Documents are made publicly available in the same way as for any other tabled paper. There are no specific arrangements made in relation to documents provided with a return to order separate from any other tabled documents. As soon as a return is received, we notify the member who has proposed the order for papers and the House is advised when the House next sits.

I should also point out that the Department of the Legislative Council now has a Twitter account. We have had one return to order received since that account was established and we did publish on Twitter the fact that that return had been received.

**CHAIR:** Do you think it might be appropriate to notify all members of the receipt of a return?

**Mr BLUNT:** We can certainly look at that as a tweak to the process. We felt we have an obligation to the person who initiated the process, particularly when the House is not sitting and may not be going to sit for some time. I would be happy to take that on board.

**The Hon. MATTHEW MASON-COX:** It is an order of the House.

**Mr BLUNT:** Yes, it is an order of the entire House.

**Reverend the Hon. FRED NILE:** A copy of the notice could be sent to all members.

**The Hon. MATTHEW MASON-COX:** Would that cause a problem with your procedures?

**Mr BLUNT:** I do not think so. I will take that on notice and get back to you. I cannot imagine that there would be any administrative issues. It is a fairly well-worn path though so I would like to have a look at why that distinction was made initially that notification would be given to the member initiating the order rather than everyone at the same time.

**CHAIR:** To use the Mount Penny example, that was a motion moved by the Hon. Duncan Gay; and yet I can think of people in a number of other political parties in the upper House who were equally interested in that return beyond just that one National Party member, or a Coalition member for that matter. So it seems to me that there is an interest that extends well and truly beyond the individual member.

**Mr BLUNT:** Of course in that case, as in other cases, the rest of the House find out about it when the documents are then tabled in the House and the House is notified.

**CHAIR:** Of course.

**Mr BLUNT:** Nevertheless, I take on board the suggestion that has been made. Coming back to suggestions 1 and 2, the other reason I am urging some caution in relation to those is that there seems to be an assumption that the purposes for which documents that are returned to order are used can be easily compartmentalised and limited—for instance, to a committee inquiry. According to the Egan cases, the power exists to enable the House to undertake and fulfil its role in the system of responsible government including—and the High Court put it in these very strong terms—the "superintendence of the executive".

As concepts such as responsible government, holding the Executive to account and, certainly, the superintendence of the Executive are complex and somewhat imprecise concepts, it seems that it would be inappropriate to seek to limit the use of return powers to only some specifically limited purposes. There are numerous examples of the consequences of orders for papers having an impact on government policy: sometimes providing the impetus for a new committee inquiry; sometimes being of great assistance to an individual member or a number of members in pursuit of maladministration or misconduct in a particular area.

So to confine the use in a very prescriptive way I think would have a negative impact on the ability of the House to hold the Executive to account.

**The Hon. MATTHEW MASON-COX:** I suppose the point is: Who determines what is genuinely necessary? That is a rhetorical question in some ways, but it is also a subjective standard, is it not?

**CHAIR:** And it could lead to the oppression of the minority by the majority if it were the House that made that decision.

**Mr BLUNT:** Parliamentary democracy and responsible government are somewhat untidy processes and concepts. It is difficult to nail them down to very prescriptive lists or checklists. Ultimately it is a matter for the House to determine whether to agree to a proposed order for papers or not.

**Reverend the Hon. FRED NILE:** It depends on who has the numbers in the House.

**CHAIR:** It is an interesting question at the moment.

**The Hon. MATTHEW MASON-COX:** That is democracy at the very heart of government.

**The Hon. JENNIFER GARDINER:** Mr Blunt, given that we are actually talking about a submission from the DPC, which you would think would have studied these matters, is there any suggestion as to how it is better understood in the public service as to the source of the power of the Legislative Council to call for the documents—that it is not Standing Order 52; it is the law of the land.

**Mr BLUNT:** In addition to the suggestion—I think it is suggestion 14, of having 28 days as the default return period—there are a number of other suggestions in the submission to which qualified support is also given. They are the ones towards the end which relate to training for the public service and the provision of fuller and better information to agencies through the Department of Premier and Cabinet [DPC]. As I stated in the submission, and as I am on sure I can state on behalf of the Department of the Legislative Council, we would be only too happy to assist DPC with that process of informing, training and educating the public service in relation to these matters. The offer is there.

**CHAIR:** Thank you. I note the time.

**Mr BLUNT:** And I am very conscious that I am the support act.

**CHAIR:** As Mr Paterson is sitting in the back of the room I do not want him to feel that he is anything but as welcome as you are before the Committee. It may well be that we will call you back for a further round, but I thank you and Ms Want for the quality of your submission. As I said, although I am not supposed to disclose what happens in deliberative, I have little doubt that many of the recommendations contained in your submission will find their way into at least the draft report for consideration by the Committee. Thank you very much for now. I suspect we may see you again.

**Mr BLUNT:** Thank you.

**(The witness withdrew)**



**MARK PATERSON**, Director General, NSW Trade and Investment, on former oath:

**CHAIR:** Good morning, Mr Paterson. Thank you for coming back, and welcome to the fourth day of hearing of the Privileges Committee's inquiry into the 2009 Mount Penny return to order. Before we commence the hearing I will address some procedural matters. The Committee is holding a public hearing today, which means that the media and members of the public may be in the room. A transcript of your evidence will also be made public. Witnesses who appear before parliamentary committees are protected by parliamentary privilege. That means that what is said cannot be used against them and you later in court proceedings.

Our terms of reference require the Committee to inquire into and report on the failure to provide documents in the return to order tabled in the Legislative Council on 26 November 2009 concerning the Mount Penny mining exploration licence and tender process. This includes documents identified in the document comparison matrix provided by the Commissioner of the Independent Commission Against Corruption and tabled in the Legislative Council on 14 March 2013.

I indicate that at a deliberative meeting prior to the commencement of this hearing the Committee resolved to make public the report by Maddocks lawyers provided by NSW Trade and Investment. The Committee also considered the question as to whether the annexures should be public or otherwise and resolved because of the calling of subsequent witnesses and the terms of reference of the Committee that it is appropriate that those annexures be published at this stage. The Committee has resolved that any answers to questions taken on notice must be provided within 14 days. Mr Paterson, it is not necessary that you be re-sworn as you were sworn on a previous occasion to give evidence on matters relating to this inquiry.

Mr Paterson, I will start by thanking you for a couple of things. Firstly, I thank you and your department, in particular your legal department, for the work done in the preparation of what we will describe as the Maddocks report. There were some questions and I think no-one should have any doubt that it is a useful document, although it may be that some or all members of this Committee do not necessarily agree with all of the conclusions that are drawn at this stage. Nevertheless, it is a very useful document to the Committee. I also thank you for the delivery of the material on Friday, including the CD. It gave me an interesting Sunday afternoon read. I am grateful for the extent to which you have gone. Again, having reviewed particularly the work done by the legal department they are to be congratulated on the thoroughness with which they have approached the matter. Those are my preliminary comments. We will start with questions from Mr Buckingham, unless you would like to make an opening statement.

**Mr PATERSON:** It may be useful if I do that, Mr Chair. I just wanted to clarify a point that you made in your opening remarks where you said that the Committee had resolved to the make the Maddocks report public. I think you said that you had also resolved to make the annexures public. One of those annexures is an annexure that identifies the names of the witnesses in the Maddocks report. Is it clear that you are proposing to identify the names of the individuals who you will in some cases be taking evidence from in camera later today?

**CHAIR:** That is a correct. We will make public Annexure A and annexure B.

**Mr PATERSON:** We committed at the last hearing to undertake the report that you have referred to as the Maddocks review to examine, at a step removed from the department, the circumstances that led to the nature of the response on the call for papers back in 2009 to examine what the circumstances were at the time to the best of their ability based on the information that was available on recollection to the individuals who were affected by those. It seems to me that the Maddocks report makes clear a number of things. It makes clear that, one, that there was no formal policy position of the department as it existed at the time in relation to responding to Standing Order 52 requests. It is clear also from that report that the review was seeking documents on a variety of different systems, because the department was in a state of flux in relation to its coverage areas and it has been in a continuing state of flux since that time in terms of the areas of responsibility and the systems that underpin it.

It is also clear from the report that staff were not particularly clear on who was responsible for which part of the examination. Some staff had a view that individuals were coordinating a response to the council's request and others had the view that they were undertaking the examination. I think that has in part contributed to the nature of the response that was provided. It appears to me, with the benefit of hindsight, that some staff who were involved in that examination were staff who were not aware of the circumstances associated with

Mount Penny and related matters and that some of the staff who may have been aware of those circumstances were not involved in the collection of the materials that were responded to in the papers.

It is also clear from the time line that was outlined in the Maddocks review that, notwithstanding a 14-day time period, the reality of the passing of documentation and the required time to have the matters back before the Department of Premier and Cabinet [DPC] meant that it was not 14 days but seven, because the request was received on a Friday afternoon with a request to provide the response back to DPC the following Friday. It is not explained, nor do I understand how it occurred, but it would appear that the internal passage of the request for the information went to the officer who was deemed at the time responsible for preparing the response. He received it not immediately after it was received in the department on the Friday but on the following Thursday, which means that the response to the call for papers was made in a 24-hour period between that Thursday and the Friday that it was required to be back at DPC. There was a very narrow window of opportunity and I think that that time line is reflected in the attachment to the Maddocks review.

It is also clear from that review that what appears to have occurred at the time was that there was a call for papers and it was not clear what "papers" meant in that context. There being no formal policy position in the organisation and it not being clear in the request for the call for papers, there was no searching of email records undertaken at the time. The call for papers meant that people reflected on our TRIM record systems as they operated at the time and did not search email records. That in large measure explains the gap between those papers that were subsequently identified by the Independent Commission Against Corruption [ICAC] in its matrix and those papers that did not come to the Legislative Council in response to the call for papers in 2009.

The Maddocks report also indicates that the geographic separation of staff between Sydney, Orange and Maitland—Orange being the location of the information technology and related professional staff, Sydney being the location of the senior executive at the department as it existed at the time and those who were responsible for coordinating the response, and Maitland being the people responsible for mineral resources activities—may well have contributed to the nature of the response that was provided, particularly given that very short turnaround time between the Thursday and the Friday. It does not appear to me as though there was any particular verification process undertaken. Given the shortness of time, it does appear from the Maddocks report that the priority of the department was responding on time. The urgency of the turnaround time meant that the collection of material that was undertaken was signed and submitted within the time frame given that that is where the attention was given.

My recollection is that at the last hearing of the Committee I indicated that we would clarify the policy position inside the department. I think I committed to the Committee that we would do that. I have issued a formal policy in relation to Standing Order 52 requests. I have advised all staff in the organisation by an all staff email from me. It has been referred to in our internal communications, both in a regular communication that goes out to all staff called "Max Express" and an "Integrate" newsletter that talks about the things that we are doing to better integrate the organisation and to match our systems to the nature of the organisation that we currently have. That too has referred to the policy position that has been issued. There was no formal policy position in the department as it existed at the time of the call for papers. We have, since the last hearing, confirmed the policy position and issued that formal policy to staff.

There is one piece of documentation or group or documents—if I can call it that—that the Committee requested after the last hearing that has not yet been provided, which is the most recent request of the Committee. That was that after we submitted the Maddocks report a formal request was made of supporting documents that Maddocks may hold, witness statements and notes taken and the like. We were asked late last week to request that of Maddocks. We have made that request and I am hopeful that we will be in a position to provide to the Committee those documents later today. I am not in a position to table those documents at this time. I have not seen the documents personally, so they are not held by me. I am not holding them back from the Committee. There is nothing that I know of or have seen in those documents, as I have not seen any of the documents that were subsequently requested. I had seen the Maddocks review. The copy of the Maddocks review that I have seen, you have seen. I am happy to respond to questions now.

**CHAIR:** The interpretation of documents seems to be one of the issues. Would there have been any issue as at 2009 as best as you would have been aware with regard to the definition of documents that would have been applied by departmental officers when responding to a freedom of information [FOI] request?

**Mr PATERSON:** I cannot answer that. As the Committee is aware, I was not in the department at the time. I was not in the New South Wales public sector at the time so I cannot, with any confidence, assert a

position that might have been in the minds of individuals. It is clear that the reference to a call for papers has influenced the nature of the search that was undertaken at the time. It is viewed as a call for papers and I think that the Maddocks report refers to that call for papers, and that influenced the nature of the response.

**CHAIR:** I will ask one of the Committee clerks to show you the letter that Mr Taylor sent to Mr Duffy on 19 November. It is referred to in annexure B. That was the one that we have already seen. I think it is about the second paragraph.

**Mr PATERSON:** Yes.

**CHAIR:** What it talks about is all documents.

**Mr PATERSON:** Yes.

**CHAIR:** It does not talk about it in terms of a return to papers, but it talks in terms of all documents.

**Mr PATERSON:** I accept that.

**CHAIR:** Right. The theory that a call for papers influences it, I hear the theory. But the email talks in terms of the necessity of producing all documents. I am just wondering this: If you take the email from Mr Taylor to Mr Duffy on its face, to fall into error and exclude emails would mean that you would have to come up with an interpretation that a document does not include an electronic document. Would that not be right?

**Mr PATERSON:** Well, I can only comment on the material that has been produced in response to the request of the Committee and it is clear that Maddocks is of the view, having examined all of the detail and undertaken all of the witness examinations that they did, that the call for papers influenced the nature of the search that was undertaken. An email to Mr Duffy—Mr Duffy did not undertake the search so this email alone may well—clearly documents were not provided to the Committee or to the Council at the time. That is clear. It is also clear that there was a very narrow window of opportunity in the time frame to be able to respond to it, but it is equally clear that the search that was undertaken did not search email records. I can only conclude, based on the best available information to me, that they did not search email records because there was a perception that it was a call for papers.

**The Hon. JEREMY BUCKINGHAM:** Mr Paterson, based on the Maddocks review, are you satisfied as per finding 6.1, that there was no intentional withholding of documents or impropriety at all by departmental staff in this matter?

**Mr PATERSON:** I am satisfied that, based on the advice of this independent inquiry, that that is the conclusion. There has been no evidence presented to me, either through these proceedings or to the best of my knowledge through any of the Independent Commission Against Corruption [ICAC] proceedings, which would support a proposition that there has been any impropriety or any intentional withholding of information.

**The Hon. JEREMY BUCKINGHAM:** Do you take that position despite the fact that the review did not interview Mr Taylor at all?

**Mr PATERSON:** Yes, I do take that view.

**The Hon. JEREMY BUCKINGHAM:** Do you think that the case would be a lot better if you had interviewed such a key person?

**Mr PATERSON:** Well, I think that it is quite clear from the report that Mr Taylor was absent on leave at the time that the inquiry was undertaken.

**CHAIR:** Mr Taylor.

**The Hon. JEREMY BUCKINGHAM:** Mr Taylor.

**Mr PATERSON:** Mr Taylor, sorry, was absent on leave at the time the review was undertaken. But do I have confidence that the conclusion would stand, whether they had spoken to Mr Taylor or not? The answer is yes.

**The Hon. JEREMY BUCKINGHAM:** On 6.2.1 of the Maddocks review, it says, "According to many of the people we interviewed" at paragraph 2.1 "the mineral resources division of the department was under-resourced and had been stripped of senior management. The lack of adequate resourcing may have made locating documents and undertaking thorough searches more difficult."

**Mr PATERSON:** True.

**The Hon. JEREMY BUCKINGHAM:** "That is, already busy people asked to identify relevant documents."

**Mr PATERSON:** I am sorry, you have referred to paragraph 6.2.1—

**CHAIR:** It does not say any of that.

**Mr PATERSON:** —and then the words that you—

**The Hon. JEREMY BUCKINGHAM:** I am sorry, 6.2.10.

**Mr PATERSON:** Oh, sorry, point 10, right.

**The Hon. JEREMY BUCKINGHAM:** He is talking about the mineral resources division being understaffed. How do you think that influenced the search?

**Mr PATERSON:** It is very difficult for me as an outsider to reach a conclusion of that. One, it is an expression of personal view. It would not be the first time that I have heard views inside public sector agencies or departments that they felt that they did not have adequate resources. The mere fact that this is recorded there, one, does not make it right. The mere assertion that there were inadequate resources or that they had been stripped of senior management does not make it right. It is an observation by an independent reviewer based on the information that was provided to them.

**The Hon. JEREMY BUCKINGHAM:** But is it not the case, though, that the rest of the review actually asserts that there was not actually a search done by most of the people in that division; that the request to comply with Standing Order 52 went to Mr Duffy and then on to Mr Hughes, but then it did not go down into the rest of the mineral resources division?

**Mr PATERSON:** I think it is clear from the email that the Chair referred to earlier, and that he provided me with a copy of, that it went to Mr Duffy and to Mr Hughes and to Mr Heffernan and to Phil Anquitel and to Sara MacWilliam—many of those are people who are likely to appear as witnesses—but it is clear that the examination of the records that were subsequently produced was not undertaken by Mr Duffy. It is quite clear that that is the case. Others were copied in on that exercise at the time. It would be unusual in any department of State for a person occupying the position of deputy director general, which I think he occupied at the time—

**CHAIR:** He did.

**Mr PATERSON:** —him undertaking an examination or a search of documents. That would have been undertaken by others in the organisation.

**CHAIR:** But is it unusual or not that he being the recipient of the email from Mr Taylor there is no apparent record of him having done anything. He is deputy director—minerals, yet there does not seem to be any record—any written record of any sort—of anything having been done at all.

**The Hon. JEREMY BUCKINGHAM:** He does not contact the executive director of minerals, Mr Mullard. You do not think that that is unusual?

**Mr PATERSON:** Look, I think the circumstances in which the request was made—and it is worth noting that the email we are referring to was dated 11.18 a.m. on 19 November.

**CHAIR:** Yes, I am alive to that.

**Mr PATERSON:** The request for return of papers was to occur the following day, so we were required to provide it to the Department of Premier and Cabinet [DPC] on 20 November. The 19th, I think, is the Thursday and we were required to provide it to the Department of Premier and Cabinet on the Friday. I think you will find that it is the very circumstances and the time frame that occurred in relation to it.

**The Hon. JEREMY BUCKINGHAM:** Well, that is not clear, is it, as you have just—

**Mr PATERSON:** Yes, it is clear—

**The Hon. JEREMY BUCKINGHAM:** Well, no, because—

**Mr PATERSON:** —because if you have a look at the second-last paragraph—

**The Hon. JEREMY BUCKINGHAM:** Sorry, Mr Paterson, that is not clear because Susan Janis in your annexure B says it is not clear but she possibly sends notification to Taylor on the 19th of the 11th.

**Mr PATERSON:** Yes, but you asked a question about Mr Duffy.

**The Hon. JEREMY BUCKINGHAM:** I am just trying to determine when he actually—

**Mr PATERSON:** Well, you can ask him what he did at the time, right?

**The Hon. JEREMY BUCKINGHAM:** In terms of the Maddocks review—

**Mr PATERSON:** The point that I am making—

**CHAIR:** Jeremy, do not talk over the top.

**Mr PATERSON:** The point that I am making is that it is quite clear on the document that the Chair provided to me, which we have provided to the Committee, that Mr Taylor made that request at 11.18 a.m. on 19 November. It is equally clear from that same document in the second-last paragraph, "DPC requires our response by the close of business on Friday 20 November."

**CHAIR:** Mr Paterson, I am alive to the time frame, but what I am getting to is paragraph 4.3 of the Maddocks report.

**Mr PATERSON:** Yes.

**CHAIR:** This goes to an issue that does not deal with time frames but it relates to a deliberate approach being taken by officials, it would seem, within your department.

**Mr PATERSON:** I read 4.3, Chair, to be the view of a staff members was that documents did not get produced that would then have to become part of the record. Because where does it end in terms of producing documents? There is a serious question, I think, that would need to be asked as to whether those subsequent documents are in fact consistent with an order for the production of papers. I know the request is made for them, but I think there is a serious question as to whether any subsequent documents are consistent with a call for papers. But putting that to one side—

**CHAIR:** I think you will hit bone if you try to argue that.

**Mr PATERSON:** Oh, no. Well, I may well do.

**CHAIR:** It is the practice of many departments, in responding to orders for papers, that they produce the documentary trail of inquiry that is made for documents in compliance with Standing Order 52.

**Mr PATERSON:** I accept the point that I make, Chair. I just think that there is an arguable position as to whether—the fact that people do it and the fact that it is requested, I acknowledge both of those points.

**CHAIR:** No, it is not requested. It is ordered.

**Mr PATERSON:** Yes.

**CHAIR:** It is ordered.

**Mr PATERSON:** Yes. Well, I do think that there is an arguable position as to whether that order would stand up. But this thing has been tested in another place on some of these issues. It has not been tested in another place on all of those issues. But I do not rely—

**CHAIR:** The Crown Solicitor has lost it basically every time he has tried it.

**Mr PATERSON:** Well, I do not seek to rely on the point. I just make the point that there was no policy document inside the organisation on how these were to be dealt with, so there was no policy position inside the organisation on whether people did or did not do this. This is an expression of view of an individual at the time, fairly recorded by Maddocks in the review. I do not demur from any point that is made in the report. I provided it unaltered in the way that it was provided to me.

**CHAIR:** I am not suggesting that.

**The Hon. JEREMY BUCKINGHAM:** Thank you, Chair. Mr Paterson, the Maddocks review says at 6.2.4, the second paragraph, that many people interviewed, in paragraph 2.1, were "surprised that witness M—Mr Mullard—was not involved in the department's response to the order; i.e. not copies in on the email for witness A on 19 November 2009 or not forwarded the email by witness G", and further, "A witness M—Mr Mullard—agreed that ideally the order ought to have been brought to his attention." Is the assertion of this review and yourself that Mr Mullard had no role, did not take part in complying with the order at all, and was unaware of the order at all?

**Mr PATERSON:** I cannot—I clearly cannot comment on what was in Mr Mullard's mind, and that is a question that you are in a position to put to him directly. I think that 6.2.4 does reflect the fact that witnesses were surprised that he was not involved in the apparent chain of documentation at the time in responding to the request, and I accept that position. I too am surprised that he was not involved.

**The Hon. JEREMY BUCKINGHAM:** You accept that he was not involved.

**Mr PATERSON:** On the face of it, that certainly appears to be the case. I made the point in my opening remarks that it does appear, on the basis of the Maddocks review, that some staff who did not know about the circumstances were involved in the search and some staff, who might have been aware of the circumstances, were not involved in the search. It does seem to me that, on the face of it, Mr Mullard was a person who may have been able to provide material that was not provided at the time.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Reverend the Hon. FRED NILE:** How many calls for papers do you think occurred for the period from 1999 until now—just roughly?

**Mr PATERSON:** I cannot answer that question off the top of my head. It is not a common thing. I think Mr Taylor, who has responsibility in this area—this may have been his second call for papers. One of the challenges that I think is highlighted in the Maddocks review is that after this period of time there have been an extraordinary number of requests made for information in relation to these issues from the Independent Commission Against Corruption, and we provided in our response to the Committee the very large number of requests in various forms that came to us from the Independent Commission Against Corruption on searching documents, searching records, searching systems, and it means that individuals' recollections of an isolated incident in 2009 may be blurred by all of the subsequent requests and examinations that were undertaken. I think the Maddocks review does say that nobody interviewed had an explicit recollection of this particular call for papers, so they did not have a front-of-mind recollection of all of the circumstances, so they too had to rely on the documentary trail.

**Reverend the Hon. FRED NILE:** The purpose of my question is to ask why—and you stated this yourself—there was no policy position in regard to calls for papers when in the department in that period from 1999 until recently there were 298, nearly 300.

**Mr PATERSON:** That is not 298 to that department. That would have been 298 calls for papers across the New South Wales public sector.

**Reverend the Hon. FRED NILE:** That is the point I am making. The whole public sector would have been alerted with all those hundreds of calls for papers.

**Mr PATERSON:** Not necessarily. If all of those calls for papers were directed at other agencies, then it would not necessarily—

**Reverend the Hon. FRED NILE:** But the point is that if it is publicised, and often they are publicised, someone in the department would say, "Do we have a policy to deal with this?" "No, we don't." I cannot understand why a policy was not devised on how to handle corporate papers; it just seems to be such an omission.

**Mr PATERSON:** It is clear that there was no policy. I cannot explain why there was no policy at the time; I was not here, so I cannot give you evidence as to why there was not. There is one now. I have ensured that there is one and we have published it widely inside the organisation, but I cannot explain to you why the department as it was then configured did not have a particular policy position. But I would say to the Committee that it would be my view that it was not a common feature of requests for information. Freedom of information [FOI] and Government Information (Public Access) [GIPA] style requests were a relatively common feature, but calls for papers were not a common feature of activity in the department as it was then configured.

**Reverend the Hon. FRED NILE:** Do you think that the director general of, say, the Premiers Department should have sent some sort of instruction to all government departments to help establish a proper policy?

**Mr PATERSON:** I think it is easy to look back on these things. There are an extraordinary number of circulars and policy positions directed to all manner of different parts of activity issued by Premiers, issued by Treasury, issued by Finance and Services, issued by other parts of government, about processes and procedures. Partly, with a huge array of things, people may well lull themselves into a sense of security that all of the stuff is covered somewhere in the policy documentation. It is only when you look back and you try to examine the circumstances that resulted in a particular outcome that you can sometimes highlight that there are gaps in that process, and we have tried to address that gap. But can I say that a formal process at the time would have

resulted in a different outcome? I cannot say that with confidence. I just know that there was not one at the time and we know that with hindsight, and there is one now.

**Reverend the Hon. FRED NILE:** It is probably subjective to ask: Does it reflect in some ways a lack of concern about what is actually happening in the Legislative Council; it is not a priority for members of the public service?

**Mr PATERSON:** I do not think that you can reach that conclusion.

**The Hon. GREG DONNELLY:** In regard to the policy that now operates, you are satisfied that that has been developed and is a robust policy?

**Mr PATERSON:** I think all of these things will be tested. I have a personal aspiration for brevity where that can be achieved to ensure that people read it and understand what it means. The more detail you provide in a policy, the less chance it will be read and understood by the large number of people, and the less chance that you will have it followed. I think if we can identify what our core policy position is and both the accuracy and timeliness of responses and do that in the briefest way that we can, it has the best chance of being followed inside a public sector organisation.

**The Hon. GREG DONNELLY:** In terms of assistance that you obtained in the development of that policy, who did you engage to assist you in the development of that policy?

**Mr PATERSON:** We took advice. We had regard to the circumstances that had arisen as part of this inquiry and clearly our response to the earlier call for papers, so that gave us an opportunity to focus some attention on where the policy needed to address its attention. We engaged with the Department of Premier and Cabinet [DPC], who are the people who coordinate the returns for calls for papers, and we produced the policy position.

**The Hon. JENNIFER GARDINER:** Do we have a copy of your current policy?

**Mr PATERSON:** Yes, you do.

**CHAIR:** In fact, I think the member might have shown it to Chris Eccles.

**Mr PATERSON:** In the batch of papers that we have provided, the big bundle, it is behind tab 6 and it was issued on 4 June. I am happy to hand over a copy.

**CHAIR:** No, I have one.

**The Hon. MATTHEW MASON-COX:** Did you seek advice from the Parliament or the Clerks in relation to this policy?

**Mr PATERSON:** Not that I am aware of.

**The Hon. MATTHEW MASON-COX:** Just the Department of Premier and Cabinet?

**Mr PATERSON:** Yes.

**The Hon. MATTHEW MASON-COX:** In relation to what it says about Cabinet documents—that documents clearly identified as Cabinet documents are not within the scope of Standing Order 52 or documents created for the dominant purpose of being submitted to Cabinet must not be produced, whether or not they were submitted to Cabinet—can you explain to me how you would go about determining what the dominant purpose would be and how you would identify those documents in the normal course of events?

**Mr PATERSON:** On a case-by-case basis. You would have to look at the facts that applied at the time and if there was a doubt as to the application of that part of the policy I would expect it to be taken up so that a proper determination could be made. But you would examine it on a case-by-case basis.

**CHAIR:** How did you come to the conclusion that a dominant purpose test was the appropriate test to apply to Cabinet documents?



**Mr PATERSON:** I think that has been the practice and that would have been the guidance that was provided to us by the Department of Premier and Cabinet. I can stand corrected on that, but I believe that to be both the practice and the advice that we would have received at the time.

**CHAIR:** Your legal department would have liaised—

**Mr PATERSON:** Engaged, yes.

**CHAIR:** I am not trying to be tricky.

**Mr PATERSON:** No, no.

**The Hon. MATTHEW MASON-COX:** In your experience, would it be the normal practice for documentation that is being prepared in contemplation that it might go to Cabinet—it may not, but it might—to be labelled "Cabinet-in-confidence"? Is that the normal practice in the production of documents?

**Mr PATERSON:** Generally speaking, a document that is intended to go to Cabinet requires appropriate protections and a "Cabinet-in-confidence" marking should be applied. Do I think that is applied without fail in every circumstance? I would be surprised if it was, but it is certainly the clear intention.

**The Hon. MATTHEW MASON-COX:** The concern I have is that if that is the case with a document where it is the dominant purpose or may be provided to Cabinet, the default position that a public servant might take is to essentially put that label on pretty much every document that goes up the line in order to protect that document from any Standing Order 52 process. Is that a concern you might have?

**Mr PATERSON:** No, it is not, and it certainly would not be borne out by the facts, so I do not believe that there is a—and I will use a word, but I know you did not use it—there is no conspiracy of the public service not to provide documents in relation to Standing Order 52.

**CHAIR:** You might like to have a look at the grey nurse shark return to order where there was a considerable issue. I think it was that one, because it was a Department of Primary Industries one. There was a question with regard to Cabinet-in-confidence documents there and certainly a much more restrictive approach was taken than the one you are asserting now.

**Mr PATERSON:** There may well have been, but the proposition that I am putting is that I was being asked a question as to whether—and I am paraphrasing the question—there is or a practice could develop where people marked all documents or many documents "Cabinet-in-confidence" for the sole purpose of avoiding production for a Standing Order 52 call for papers, and I say in response to that that the facts do not support that. The overwhelming majority of documents that I see are not marked "Cabinet-in-confidence" without question and I see no evidence of public servants at any level inside the organisation marking documents "Cabinet-in-confidence" other than where those documents are intended for consideration by the Cabinet. So there is no pattern of behaviour. I have seen thousands and thousands of documents in the time that I have been undertaking this role and the overwhelming majority are not marked "Cabinet-in-confidence".

**The Hon. DAVID CLARKE:** Mr Paterson, a general question: Would you agree or disagree that the papers that were not produced in the call for papers were on the whole or significantly papers that pointed to impropriety?

**Mr PATERSON:** Given the choices that you put to me, I would disagree.

**The Hon. DAVID CLARKE:** Is there another choice?

**Mr PATERSON:** No, you asked do I agree or disagree that the documents on the whole led one to a conclusion of propriety or impropriety, if that is the essence of it. I do not believe that the documents that were not produced on balance led one to a conclusion of impropriety on the part of the public sector, if that is—

**The Hon. DAVID CLARKE:** No, that is not the question. Do you believe that there were a significant number of documents among those found not to have been produced that pointed to impropriety?

**Mr PATERSON:** I would need to take that on notice. I have not tried to look at the documents through that lens and before I responded to your question I would want to have a look at the documents through that lens.

**CHAIR:** Could I invite you, in looking through that lens, to start by simply looking at the findings of the Independent Commission Against Corruption on or about pages 61 and 62 in the chapter headed, "The Minister seeks briefing", chapter 14.

**Mr PATERSON:** But that is a conclusion of ICAC, which had the benefit of having sat through an extraordinary number of both in-camera and public hearings, interviewed a whole range of witnesses, examined an extraordinary array of documents and it reached conclusions. I am being asked whether I have a personal view in relation to a snapshot of some documents—that is, those documents that were not supplied in response to the return to order. That is a very narrow group of documents; not the conclusion that would necessarily have been drawn by ICAC. I do not demur from the conclusions drawn by ICAC. What I am saying is that I would need to look at the explicit documents referred to by Mr Clarke to see whether I would reach a conclusion based on those documents.

**CHAIR:** One of the problems in this exercise is that the documents that were missing, for instance, were the documents that demonstrate how the Mount Penny exploration licence started to be talked about. The approach that was made—which is demonstrated in the early emails—from the Minister's office to get a briefing on Mount Penny and the like; and emails back expressing a concern about, putting it in a generalised sense, Mount Penny being included—I think Ms Wiles, if I remember correctly. All those materials that indicated that this was perhaps a less than regular approach are missing. They would have sent alarm bells ringing if they had been produced.

**Mr PATERSON:** I think it is fair to say that what I did—and you know that I was not around at the time so I have no firsthand knowledge of any of this.

**CHAIR:** I do.

**Mr PATERSON:** What I did was to commission an external review, not an internal review, that had access to anybody it wanted to speak to and had access to the documents that could be produced at the time. So we undertook an external review to satisfy ourselves as to what occurred and why it was responded to in the way that it was responded to. I do not hide from the fact that there were no emails produced as part of that return that might have led somebody else to other conclusions but they were not identified at the time.

**The Hon. DAVID CLARKE:** Would you agree that if a significant number of documents were not produced that pointed to impropriety that that in itself is a significant matter?

**Mr PATERSON:** I think it is a significant concern.

**The Hon. DAVID CLARKE:** "Concern" is a better word, "significant concern".

**Mr PATERSON:** Then I look at what was done at the time inside the department because there was no withholding of this information when requests were made explicitly from ICAC.

**CHAIR:** With respect, of course there was not. Apart from the fact that there had been a change of government, we all know that if you do not produce to ICAC you might end up in jail.

**Mr PATERSON:** No, I think what happened was that whole mailboxes were sought and provided. Then there was a forensic examination of huge volumes of documents, which identified these things. The documentation that is before the Committee demonstrates all the requests that came from ICAC and the nature of those requests. I do not think that it is solely a motivation driven by ICAC's powers; I think that it was the nature of the request. It does seem to me, on the face of it, and on the evidence that is before the Committee, that a call for papers—in a handling sense—was received on one day and it was produced on the following day. That is what the facts tell us. The individual who coordinated the response received it on 19 November 2009 and actioned it and supplied the response on 20 November 2009. I think that had more to do with the nature of the response than anything else.

**The Hon. DAVID CLARKE:** A lot of papers were produced—

**Mr PATERSON:** I think a remarkable number of papers were produced given the timeframe.

**The Hon. DAVID CLARKE:** —but of those that were not produced a very significant number point to impropriety.

**Mr PATERSON:** And the point that I would make, and I have made before, is that the documents to which you refer were emails.

**CHAIR:** No, they were not.

**Mr PATERSON:** In the main.

**CHAIR:** The bulk were but, for instance, I think there are two ministerial briefings—

**The Hon. JEREMY BUCKINGHAM:** Eight letters and one submission.

**Mr PATERSON:** Which do not appear to have been recorded on our TRIM systems at the time.

**CHAIR:** That is right. But it is not only emails that are missing.

**Mr PATERSON:** No, but it is overwhelming emails, which is the point I just made.

**The Hon. JEREMY BUCKINGHAM:** Are you asserting that a search was never done of Mr Mullard's inbox or sent items in response to the order?

**Mr PATERSON:** That is my understanding. My understanding is that there was not a search of any inboxes at the time.

**The Hon. JEREMY BUCKINGHAM:** Of any departmental staff?

**Mr PATERSON:** That is right. That is my understanding.

**The Hon. JEREMY BUCKINGHAM:** How did you come to that understanding?

**Mr PATERSON:** Because that is the conclusion that Maddocks reached having undertaken an independent review. That is why I said earlier the call for papers appears to have influenced the nature of the search that was undertaken at the time.

**The Hon. JEREMY BUCKINGHAM:** You would be surprised if there were departmental staff who had done searches?

**Mr PATERSON:** To the best of my knowledge—and I will stand corrected—the search that was undertaken, based on the call for papers at the time, searched in the main our TRIM records and, to the extent that it could, hard copy records at the time. To the best of my knowledge it did not search email records, inboxes or sent items, at the time in response to SO 52.

**CHAIR:** If that reasoning applies that it was the shortness of time and that no searches were done, that same shortness of time did not exist when the Clayton Utz review was put together, did it?

**Mr PATERSON:** Clearly not.

**CHAIR:** And yet when the Clayton Utz review was done in about April, or the preparation for Clayton Utz to be briefed, I think we will be fairly safe in concluding that Clayton Utz were not provided with any of the emails or any of the documents that would have demonstrated that Mr Macdonald or Mr Macdonald's office was creating the name Mount Penny—whether from an atlas or otherwise—requesting briefings and having the staff running around in May of 2008 getting the briefings together so that subsequently we could get a Mount Penny exploration licence put out to tender. That could not have been provided to Clayton Utz either, could it?

**Mr PATERSON:** That is a very complex question.

**CHAIR:** It is.

**Mr PATERSON:** With respect, I am not going to give a glib answer to it. I will have a look at the nature of the question you have just put and seek to respond to it.

**CHAIR:** Just so it is clear, and I raised it before, it very much concerns me that a month before ICAC starts issuing its section 22 notices Clayton Utz is providing a report to this Government and in that interim report it essentially says nothing was done wrong in terms of the Mount Penny exploration licence process. That stands in stark contrast with this little tome: the ICAC report, which clearly concludes, and I would have thought on the evidence that was provided very justifiably, that this was an abhorrent and corrupt process. The problem I have is if the Clayton Utz report was prepared for this Government without the time pressures that you say is the explanation—

**Mr PATERSON:** No, I said it is in part the explanation.

**CHAIR:** —then one has to ask the question why did not Clayton Utz—

**Mr PATERSON:** I said it is in part the explanation. I think I also asserted upfront that the call for papers influenced the nature of the search that was undertaken and that there appears to have been no search of email records.

**CHAIR:** I will just finish the question so that it is clearly on the record. Why did the department not provide to Clayton Utz all relevant documents to allow them to undertake the inquiry that led to the Clayton Utz report of November 2011? That is what I leave you with.

**Mr PATERSON:** I will take that question on notice.

**The Hon. JEREMY BUCKINGHAM:** It is your understanding that no emails were provided in response to SO 52?

**Mr PATERSON:** I do not think I have gone back and looked at every document that was provided at the time. My understanding is that other than documents that might have been provided at the time that were part of the email record associated with responding to the report, I do not think there were any emails provided at the time unless they were registered on TRIM. The registration of documents on the TRIM systems appears to not pick up the majority of email traffic that would have gone on at the time. It does appear to me that the only electronic records that were searched at the time were the TRIM systems; therefore, if there were any emails provided at the time they would only have been emails that were recorded on the TRIM system, not emails from any mailbox, either inbox or sent box.

**The Hon. JEREMY BUCKINGHAM:** So some searches were done of emails on the TRIM system—

**Mr PATERSON:** I have made that point a number of times. They searched the TRIM systems at the time in the call for papers. That is what they did search. So it wasn't that they did not undertake a search; they undertook a search with a mindset of a search for papers and they went to the TRIM systems. They did not go at the time to the email records.

**The Hon. JENNIFER GARDINER:** In the new document: June 2013 policy, we have gone from using the language of call for "papers" to call for "documents"—presumably so that it is clearer?

**Mr PATERSON:** Yes.

**The Hon. JENNIFER GARDINER:** You do not get to any definition of documents until halfway through page two, which is the first time that emails are mentioned. Given the focus of this inquiry and the one before, perhaps it should be made clearer to departmental officers up front that "documents" includes electronic records—that is, emails.

**Mr PATERSON:** I understand why you hold that view but it is the third point in the procedure so one would hope that people looking at the policy document look at the scope, the requirements, but they also look at the procedures. I would have thought that having a stepped procedure component in the policy document guided

people. It makes it quite clear under point three, that they must undertake searches through TRIM, physical file holdings, individual and branch computer drives, electronic and pocket diaries, notebooks, emails et cetera. So it is making it quite clear that we expect there to be a search undertaken of all of those records. If the Committee reaches a conclusion that I should somehow recast it, I am happy to do so. It is not intended to make it opaque; it is intended to try and address the circumstances that have arisen where we did not undertake at the time the searches that would have produced documents from those systems. We did not do it. I was not here. We did not do it. I have sought to correct the position. I am happy to adjust it if that is the wish of the Committee.

**The Hon. MATTHEW MASON-COX:** I understand that you were not there but from looking at the top line of your time chart, annexure B to the submission—

**Mr PATERSON:** That is a document produced by Maddocks as part of its review, yes.

**The Hon. MATTHEW MASON-COX:** That refers to Leigh Sanderson of the Department of Premier and Cabinet sending a fax outlining the terms of SO 52 to Director General Richard Sheldrake on Friday 13 November 2009. Then it seems to go into stasis for a while through a range of hands but does not get to the person who is assigned or expected to facilitate the actual production of the documentation: Mr Ron Taylor, who sends an email out on 19 November—a date that you have repeated a number of times. Can you give me a better understanding of what was happening between the date the department first received it, on 13 November, and the date when action started to move on 19 November?

**Mr PATERSON:** I would love to be able to explain that to you; I can't and neither could Maddocks having undertaken the review and having looked at all the documents. It is a glitch. Part of the issue is different locations, different buildings—different physical locations between Orange, Maitland and Sydney.

**CHAIR:** That cannot be the explanation why it takes so long to get from Mr Sheldrake to Mr Taylor, surely?

**Mr PATERSON:** You would in normal circumstances think not, but clearly Maddocks was unable to find an explanation for that.

**CHAIR:** That might be right, but you cannot throw Orange and Maitland into a communication between Mr Sheldrake and Mr Taylor.

**Mr PATERSON:** Well, you can to the extent that the electronic systems were at that time headquartered in Orange. All of the main mail servers were located in Orange. I cannot provide an explanation to the Committee and I do not pretend to provide one to the Committee. I have said I cannot explain that reason. I wish I could explain that. Maddocks, in undertaking the independent review, cannot explain it.

**The Hon. JEREMY BUCKINGHAM:** They did not talk to Taylor?

**Mr PATERSON:** It is a touch wry that the request was received on Friday the thirteenth. It does not appear as though things went overly well from there.

**The Hon. DAVID CLARKE:** "Glitch" is a very moderate word, is it not, to describe what happened?

**Mr PATERSON:** Well, I am a moderate person.

**The Hon. MATTHEW MASON-COX:** So there were six days—

**The Hon. DAVID CLARKE:** These actions may not be moderate actions.

**CHAIR:** We are 15 minutes over time. We have to allow Mr Paterson to go. Thank you for coming along. You have been forthright, as usual.

**(The witness withdrew)**

**The Committee adjourned at 11.45 a.m.**

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**IN-CAMERA TRANSCRIPT RESOLVED TO BE PUBLISHED BY THE  
COMMITTEE ON 29 AUGUST 2013.**

## **PRIVILEGES COMMITTEE**

### **INQUIRY INTO THE 2009 MOUNT PENNY RETURN TO ORDER**

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**At Sydney on Monday 26 August 2013**

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**The Committee met in camera at 11.55 a.m.**

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#### **PRESENT**

The Hon. T. J. Khan (Chair)

The Hon. D. Clarke

The Hon. G. Donnelly

The Hon. J. A. Gardiner

The Hon. M. R. Mason-Cox

Reverend the Hon. F. Nile

The Hon. J. Buckingham

**CHAIR:** Welcome, Mr Duffy. Welcome to this hearing of the Privileges Committee inquiry into the 2009 Mount Penny return to order. My name is Trevor Khan and I am the Chair of this Committee. Before we commence, I would like to address some procedural matters. The Committee is holding this session of the hearing in camera, which means that at no time will any media or members of the public be in the room. The transcript of your evidence today will also be confidential. However, after reviewing the transcript, the Committee may decide at a later date to make some or all of your evidence public. Normally the Committee would do so in consultation with you. Witnesses who appear before parliamentary committees are protected by parliamentary privilege. This means that what is said cannot be used against them later in court proceedings. Our terms of reference require the Committee to inquire into and report on the failure to provide documents in the return to order tabled in the Legislative Council on 26 November 2009 concerning the Mount Penny mining exploration licence and tender process. This includes documents identified in the document comparison matrix provided by the Commissioner of the Independent Commission Against Corruption and tabled in the Legislative Council on 14 March 2013.

For the information of all witnesses, I indicate that at a deliberative meeting prior to the commencement of this hearing, the Committee resolved to make public the report by Maddocks Lawyers, provided by Industry and Investment NSW. We will refer to this report as the Maddocks report. The Committee has also published annexure A and annexure B. At the commencement of your evidence I will invite you to make a short opening statement. If you have copies that you can provide to members of the Committee, that will be appreciated. Members of the Committee will then ask you questions. I ask that everyone turn off their mobile phone or at least put them on silent. The Committee has resolved that any answers to questions taken on notice during the hearing must be provided within 21 days.

Evidence in camera by **MARK MARTIN DUFFY**, former Deputy Director General, Industry and Investment NSW, sworn:

**CHAIR:** Mr Duffy, would you like to make an opening statement?

**Mr DUFFY:** Yes, I would. I thank you, firstly, for the opportunity to be able to be here today to respond to the Maddocks report and also to help the Committee to understand the circumstances more generally around these events and my involvement in them. I invite you to interrupt me whenever you would like to. I spent a lot of time on the weekend going through the documents and the report. I am no longer working in the public sector, so I did not have access to my diaries or any of the material that might have been helpful, but I have been able to piece together, with the report, some helpful clarification on what Maddocks have put to you. If you are happy for me to roll through the report and some background, please interrupt me if I am not making myself clear.

**Mr DUFFY:** So in terms of my involvement in the process, according to the records, as best I can piece them together from your report and from the ICAC report, the events surrounding the establishment of the Mount Penny exploration licence took place over the period from June 2008 to 19 June 2009, according to ICAC when the exploration licences were awarded to Cascade Coal. As I recall, earlier in that year the Government had made an announcement about the dramatic restructure of the New South Wales public sector and the establishment of 13 new super agencies, I was effectively the Director-General of the Department of Water and Energy [DWE] until 27 July 2009, when the New South Wales Government reform initiative was formalised with the Public Sector Employment and Management (Departmental Amalgamations) Order 2009.

So for the entire period of the actual contemplation and process of issuing the leases I was neither involved in the Department of Primary Industries nor had any exposure whatsoever to the Division of Mineral Resources, as it was called. My department was abolished and I was demoted to the position of Deputy Director General for Minerals and Energy within the new department Industry and Investment NSW. The Department of Water and Energy was broken up, with the new Office of Water going to the Department of Environment, Climate Change and Water [DECCW]. My task was to bring together the energy and resources functions to create a new Division of Minerals and Energy within the new super department of Industry and Investment NSW. My focus in the early months, apart from the day-to-day issues that were occurring in the Energy portfolio—and there was a bit of excitement around Energy policy on various fronts there as I recall—was basically transitioning out of the old department. There were all sorts of allocation of people, resources, responsibilities, finances and all the rest of it. It was about building the new agency as well as getting on top of the many complex issues involved in the mineral resources sector in New South Wales.

It is worth noting as an aside that, by and large, the reform process was a process of gluing agencies together. I was in the unfortunate position where, as best as I can tell, the only agency that was broken up in that process was the Department of Water and Energy. I will explain a little later on why I was on the old IT system. Presumably Industry and Investment were working out, in an orderly way, how to coordinate the big guys and all the new bits of the department that were coming in on a whole lot of levels. We were pretty well contained and so I continued using that old IT system. That was for no other reason than that it was actually a better system. It had better email. I think they used Lotus Notes in Industry and Investment NSW whereas we had Outlook. It was a good small IT system that worked. So I stayed on it for no other reason than that it was a twentieth order issue to move off a system that worked and get onto a new one. Notwithstanding that we had this new organisation and Minister Macdonald was aware that he had a new officer, a Deputy Director-General for Minerals and Energy, he and his office continued day-to-day business as if no real change had occurred.

**CHAIR:** Does that mean in terms of communications over mineral issues, notwithstanding your presence now in the middle of it—I take it in an office in Sydney—that what Mr Macdonald and his office were doing was going directly to Brad Mullard?

**Mr DUFFY:** I could not really put it any better myself—that was exactly the situation. He continued dealing directly primarily with Mr Mullard and routinely excluded me from the information loop in relation to Mineral Resources. Needless to say, the arrangement bothered me greatly. Among other impacts, it left me highly exposed. I carried a title but was not being informed on day-to-day issues between the Minister, his office and the department. I do want to stress this: I do not blame Mr Mullard or Dr Richard Sheldrake in any way for that situation. It was clearly the Minister's preferred modus operandi.



I spoke about it, particularly with Mr Mullard, on a number of occasions. He agreed that the arrangement was uncomfortable and unsatisfactory for him as well as for me. We resolved that the best way to manage the situation, at least in the interim, was for Mr Mullard to provide me with regular updates on these discussions and proposed agency responses. Obviously this was far from normal—let alone an ideal arrangement. I have an enormous regard for Brad Mullard's integrity, honesty and technical expertise, and I was not in the mode to be confronting Minister Macdonald about his processes in this regard.

**CHAIR:** I take it from your observations that really Dr Richard Sheldrake was in a no more informed position than you in regard to the minerals issues?

**Mr DUFFY:** If you look at the list of the agencies that came into this super agency and the issues that Richard had to carry and get on top of, you would see that he very much had to be a generalist. It was an enormous swathe of portfolios for any one human being to get their head around in any detail. I am not going to criticise the model, but certainly it was likely to lead to situations like this—where the guy at the top just cannot have deep ownership of the issues happening inside the place because the territory is so wide.

**CHAIR:** I suppose what I am getting at as well is that Minister Macdonald's office was cutting out of the loop not only you on the minerals issues but also, whether intentionally or otherwise, Mr Sheldrake in the same way.

**Mr DUFFY:** I do not want to reflect on things that I am not aware of. But I certainly would not disagree with that proposition from what I observed. I suspect that the Minister and Richard on a whole range of issues, given that he was a director general and that the Minister had responsibility for such a wide part of the portfolio, had more face-to-face time, and may have picked up some of these issues. I was not privy to a lot of those conversations, almost by definition.

**The Hon. MATTHEW MASON-COX:** Did you take that up with the Minister, the Minister's office or Richard Sheldrake?

**Mr DUFFY:** I spoke to the Minister's office. I spoke more to Brad about it because in a sense he was also feeling very exposed about it. If you want to look at an innocent analysis of it all then you might say the Minister was in a hurry, he had a relationship with a technical expert and he had his own deep understanding of the portfolio. So to drag in someone who by definition was not up to speed on the technical issues was going to slow the process down. There is some truth to that. Whilst you are ramping up your knowledge of any area you are going to be asking questions—whereas they were probably used to having direct conversations, making direct phone calls and getting responses from what really was a fairly independent unit within the place, and so it remains to this day. These technical experts sit in Maitland and deal with the industry. I have not sought to break that up because at the end of the day I see that proper delegation is not a bad thing—it is about information flows.

So I never complained to anyone about a Minister or his office going directly to officers below the director general or the deputy director general because as long as people know about that it allows a good flow of information. As long as you know what information is flowing, it is not a bad thing—it speeds up the process for the Minister's office to be able to talk to officers at levels below the director general or deputy director general. Again, given the broadness of these organisations and the number of issues that officers are dealing with, as long as the information flow is known to the hierarchy of the department, I do not have a problem with the Minister's office, any Minister for that matter, approaching officers below the level of the director general.

**CHAIR:** That may turn out to be the \$64,000 question in this exercise.

**The Hon. JEREMY BUCKINGHAM:** Mr Duffy, are saying that you had regular updates from Mr Mullard?

**Mr DUFFY:** Yes.

**The Hon. JEREMY BUCKINGHAM:** So did you have a close working relationship with him?

**Mr DUFFY:** I think we did develop a close working relationship. I was comforted that whenever he thought there was something that I needed to know he would bring it to my attention.

**The Hon. JEREMY BUCKINGHAM:** And vice versa, I am sure.

**Mr DUFFY:** Yes, to the extent that I was actually giving him information.

**The Hon. JEREMY BUCKINGHAM:** What form did these regular updates take? Was it just a phone call?

**Mr DUFFY:** Depending on the urgency of the situation, it might be a phone call. But we did have relatively regular face-to-face meetings. We were in touch a number of times each week.

**The Hon. JEREMY BUCKINGHAM:** But you did not communicate via emails, memos or that type of communication?

**Mr DUFFY:** I saw maybe 60 or 70 emails a day, and I am sure that I would have communicated with Mr Mullard via all forms of communication. We all had BlackBerrys, we all had mobile phones and we all had landlines. So we would have been using the broad spectrum of communications. Brad was on the road a lot. Although he was based in Maitland, he would be driving up and down the F3 a lot. So a lot of the conversations we had were by phone—that was effectively his mobile office. He would have been spending maybe eight hours a week on the F3 coming up and then driving back down after various meetings.

I think my statement helps you to understand two things. Firstly, I had no involvement in the initial process. I was not even in the department initially. Secondly, the communication about issues going on within the department was coming to me via Brad. As I said, that was the modus operandi that the Minister adopted. I will move on to the Maddocks report. Maddocks only provided me with one email. I assume the Committee is comfortable if I use names here rather than talking in code.

**CHAIR:** You would understand that not everyone is entirely happy, but we have decided to use names. We cannot take evidence on this matter and talk in code.

**Mr DUFFY:** I am very happy with that because I think the code is very confusing for you—and it is confusing to me. Ron Taylor sent me an email dated 19 November at 11.18 am. The chart at the back of the Maddocks report says this email was sent at 10.18 am, but I have a copy of the email and it is from 11.18 a.m.

**CHAIR:** As do we.

**Mr DUFFY:** Good. That was cc'd to William Hughes and my executive assistant Sara MacWilliam, Phil Anquetil and Tony Heffernan.

**CHAIR:** You have told us who your executive assistant is. Who were the others you mentioned in that list?

**Mr DUFFY:** Tony Heffernan was on the finance side of the Department of Primary Industries [DPI]. I think, I am not quite sure, I think he was reporting to Jeannine Biviano, who is mentioned further down the track. I am not quite sure of their role in it. I make no comment upon their role in it. Phil Anquetil was basically the executive officer for Richard Sheldrake's office as the director general.

**CHAIR:** I will stop you there, if you do not mind. Where did William Hughes fit into the scheme of things?

**Mr DUFFY:** Effectively I regarded William as reporting directly to Brad. He was basically Sydney based, but he did sometimes go up to Maitland. He was the chair of the committee that was determining these leases, as I understood it. There may be some explanation there about assumptions and responses to emails—in terms of your own involvement you might tend to get a bit more focused on your own documents in this event and that may explain the lack of communication. William was a young man who worked hard and Brad respected him. Effectively, because he was in the Sydney office for most of the time, he became a bit of a link person between me and Mr Brad Mullard.

**CHAIR:** So he had direct communications with Brad?

**Mr DUFFY:** Absolutely. That was a tight relationship.

**CHAIR:** I do not really want to throw you off your stroke because you are doing well, but I will take you back to this point. Were you alive to the fact that an SO52 was on the boil?

**Mr DUFFY:** No. I did a search on this back in the media, to the extent that my Google allowed me to do that, and I could not find this reported anywhere in the press. Because it related to something that was obscure in my mind, because I had nothing to do with Mount Penny, I suppose in all the other noise that was going on—I think we lost the Minister two days before this email arrived—and while we looked calm on the surface, like the duck underneath we were scrambling. We were scrambling to prepare for a new Minister, amongst other things. As I recall it, the Government was in turmoil.

**CHAIR:** If we go back one week earlier to before the order was made, so before any Ministers got it in the neck, there was an article that appeared in the *Australian Financial Review*. Where you alive to that?

**Mr DUFFY:** I was alive to that. I was refreshed by Anne Davies's comment in one of the *Sydney Morning Herald* articles after the Independent Commission Against Corruption that the *Australian Financial Review* had written an article which I think I recall saying something along the lines of Eddie Obeid was fighting to have mining stopped on his property. I think that was his response to the suggestion that there was coal on his property. I did not connect Mount Penny to Cherrydale, because the Mount Penny thing was not in my consciousness. It was just one of those articles around that I thought sounded strange, but I did not dwell on it.

**CHAIR:** What you have got at that stage is an article appearing that identifies a significant figure in the Labor Government and it relates to an area which is actually under your control.

**Mr DUFFY:** Technically that is true.

**CHAIR:** Not technically; it was in fact under your control.

**Mr DUFFY:** Certainly on paper it is under my control, but, as I am trying to explain to you, the resolution of the exploration licence [EL] happened before I arrived. There had been no communication with me about that issue as best as I can honestly, hand on the Bible, say to you. I have got no recollection of being briefed about the issues attached to Mount Penny. None.

**CHAIR:** I will put this to you, because I think it is only fair. At least on four occasions in 2007 and 2008 you met with Eddie Obeid, did you not?

**Mr DUFFY:** I have not seen the reference to diary entries in relation to that. I read that—

**CHAIR:** A Kate McClymont article.

**Mr DUFFY:** I read that somehow I had regular meetings with Eddie Obeid. I was deeply involved in the discussion about the electricity privatisation. I think the then Premier Morris Iemma had expressed somewhere along the line that Eddie had been round his house every night. There is no doubt that Eddie Obeid, representing large numbers within the Government, was involved in the discussions about how the Australian Labor Party [ALP] would deal with the privatisation issue. I was the deputy chair, with John Pierce, on the steering group. We had Treasury and the department of energy working on the privatisation issues.

I am sure that Morris Iemma would have been aware if he did not commission me to have conversations with people to assist them in their understanding about what the Government was trying to do in relation to electricity reform. I will put my hand on my heart again and say at no time did I have any discussion with Eddie Obeid in relation to these matters. The only discussions I would have had with him—and I do not confirm four meetings, I have got no recollection, but I definitely had met with Eddie Obeid I would believe in that period in relation to electricity privatisation.

**CHAIR:** Let me assist. His diary discloses that on 1 March 2007 you met with him at the Sydney Hospital cafe. On 11 March 2007 the diary reveals you met with Costa, Tripodi and John Robertson. Do you remember that?

**Mr DUFFY:** I remember a conversation, I believe that was about electricity reform, the first one—was he the Treasurer in 2006—with Costa, the Treasurer. I believe that would have been about electricity.

**CHAIR:** On 11 February 2008 his diary reveals you met on the corner of Park and Castlereagh Streets.

**Mr DUFFY:** Eddie Obeid?

**The Hon. MATTHEW MASON-COX:** Just randomly?

**CHAIR:** No, his diary reveals: 11-02-08 corner of Park and Castlereagh Street. Does that ring a bell?

**Mr DUFFY:** No.

**CHAIR:** And on 12 August 2008.

**Mr DUFFY:** Again, I have got no recollection. I do not have a recollection of the John Robertson meeting. I have a recollection of a meeting at the Intercontinental, I think it was, and I believe the discussion was about electricity.

**CHAIR:** Was that with Robbo?

**Mr DUFFY:** I do not recall John Robertson being there.

**CHAIR:** Costa, Tripodi?

**Mr DUFFY:** I believe that Costa was there.

**The Hon. JEREMY BUCKINGHAM:** Mr Duffy, you say that you have got no recollection of discussing the Standing Order [SO] 52 request and that it was a busy time. Are you aware that the department prepared a speech opposing the SO 52?

**Mr DUFFY:** No, sorry, just for the record, I was aware on the day that there was an SO 52 in process. I am not saying I was not aware that this process was going on; I had an email saying it was on.

**The Hon. JEREMY BUCKINGHAM:** On the day that notice was given?

**Mr DUFFY:** I saw nothing and nothing was referred to me about the department preparing a speech opposing the SO 52. Nothing.

**CHAIR:** Again, I am not doubting what you say, but if a speech exists, and it does, and it is approved by Brad Mullard on 11 November 2009 and it is approved beneath that "PMESO Sydney", what does that mean?

**Mr DUFFY:** I am not exactly sure what that reference is. But, I mean, I will stand corrected if my signature is on any brief.

**CHAIR:** If your signature was on it I would put it to you.

**Mr DUFFY:** And I would concede it. Again, it goes back to the earlier point I was making. Information—and I did not discourage it—of a relatively non-controversial nature, and in retrospect this is not non-controversial, but it may have been that this was very much a process that the department may organise notes on a daily basis when Parliament is sitting to Ministers and they would not go ordinarily to the director general or the deputy director general because that would just necessarily slow things down.

**The Hon. JEREMY BUCKINGHAM:** Once the House had resolved to support the SO 52 you did not discuss it with Minister Macdonald's office?

**Mr DUFFY:** Again, to the best of my recollection, there was no conversation until I saw this email. Yes, I did recall at the time, and I do recall in retrospect, seeing the *Australian Financial Review* article but I did not connect it in my head to the thing called Mount Penny, because it just seemed like an unusual story.

**The Hon. JEREMY BUCKINGHAM:** For the record, what do you mean when you say "this email"?

**Mr DUFFY:** This email is 19 November 2009 at 11.18 a.m.

**CHAIR:** A little bit earlier in your evidence when you said you got an email with regard to the SO 52, that is not the 19 November one; there was an earlier one, was there?

**Mr DUFFY:** No. The single document that Maddocks provided me is the copy of the email.

**CHAIR:** I am not doubting that is the only thing; I have seen some of the material they provided you with. But at the time when the SO 52 went through do I take your evidence to be that you knew that was happening at the time?

**Mr DUFFY:** No. I was not focusing on—with no disrespect to the Legislative Council, I do not know what time of day it went through. I did not see a report in the *Sydney Morning Herald*, not that I religiously read the media. It depends on how much work I have.

**CHAIR:** And you did not get an email or anything else then?

**Mr DUFFY:** No.

**The Hon. DAVID CLARKE:** Until the 19th?

**Mr DUFFY:** Until the 19th.

**The Hon. DAVID CLARKE:** Were you uncomfortable about the little time that was left to respond?

**Mr DUFFY:** If I can just take you to the flow, I was about to say that I do not actually recollect when I read it, but the flow says that at 11.25 a.m. I passed it on to Karen Smith. It took me seven minutes. I think that might indicate the degree to which I responded to that email with seven minutes.

**The Hon. DAVID CLARKE:** How much time was left to respond?

**Mr DUFFY:** Effectively, a day.

**The Hon. DAVID CLARKE:** You would have had a great discomfort with that, would you not, particularly in your important position?

**Mr DUFFY:** I would have if I had assumed that everyone in the department had not already received it. From my point of view, as per the general tone of the communications process, I presumed I was cc'd in as a courtesy.

**CHAIR:** But you were not cc'd.

**The Hon. JEREMY BUCKINGHAM:** It was directly to you.

**Mr DUFFY:** I understand in retrospect that is absolutely correct. I assumed though that that was one email of a number of emails that had gone out to pertinent people in the department.

**The Hon. DAVID CLARKE:** Many of the pertinent people were people underneath you.

**Mr DUFFY:** Yes. For instance, I would have assumed that Brad Mullard would have been the primary candidate in the loop.

**The Hon. DAVID CLARKE:** Was it open to you to come back and say, "We just don't have sufficient time. Can we have more time to respond?" You have been involved in SO 52 requests before, have you?

**Mr DUFFY:** We have been involved in freedom of information requests. There may have been one SO 52.

**CHAIR:** Did you have Tillegra Dam?

**Mr DUFFY:** For Tillegra Dam there may have been one, but I believe that basically the officers deal with it and take the report back to the director general.

**The Hon. DAVID CLARKE:** Do you provide emails when you get an SO 52? Is it part of the normal course that you would give emails?

**Mr DUFFY:** I would have generally thought that my response to these things would have been to go to my executive assistant [EA] and say, "Could you please go through my emails and see if there is anything pertinent to the report?"

**The Hon. DAVID CLARKE:** It would include emails?

**Mr DUFFY:** In my mind I would read "documents" as saying anything that was pertinent to the inquiry.

**CHAIR:** Which would include emails?

**Mr DUFFY:** Yes, I would have thought that.

**The Hon. DAVID CLARKE:** There was one day to go, and I guess I would have been panicking in that situation. Did it come to your mind that one avenue open to you would be to seek more time to properly fulfil that request?

**Mr DUFFY:** First of all, in retrospect you can see that there was a six-day delay where the communication sat elsewhere. Let me just answer this way: In the circumstances where the communication was effectively bypassing me, I assumed that Brad Mullard had a copy of it. I assumed that Will Hughes had a copy of it. In other words, the people at the department at the level of involvement had copies of it and that my EA and Karen Smith would have come back to me and probably said, "There is nothing in your emails or in TRIM or anything that has anything to do with you," and that the process gathers up and then reports to the director general.

**The Hon. DAVID CLARKE:** Where was Brad Mullard in comparison to you?

**Mr DUFFY:** He was a direct report one level below me.

**The Hon. DAVID CLARKE:** He was under your control?

**Mr DUFFY:** He was a direct report to me one level below me.

**The Hon. DAVID CLARKE:** Who sat on this request for that number of days?

**Mr DUFFY:** If you look at annexure B, and it is quite well set out to understand the flow, Lynn Lovelock faxed the order at 11.23 a.m. on the 12th to the then director general of Premier's. Then the next communication was Leigh Sanderson from Premier's at 1.03 on Friday the 13th to Richard Sheldrake. Then on that day was provided a copy of the fax setting out the order between the 13th and the 19th. It is at that juncture that it is parked there for six days. I would have thought, and I think Maddocks picked it up, that regardless of what waylaying took place if the Legislative Council has asked for a certain date, and particularly if the thing had sat inside the department for that period of time, you would be uncomfortable coming back to the Legislative Council and asking if we can extend our time.

**CHAIR:** You had started to say what you actually did. That is, you got the email and what precisely did you do from there?

**Mr DUFFY:** As well as I can recollect I passed it on to Karen Smith and she—

**The Hon. MATTHEW MASON-COX:** She is your EA?

**Mr DUFFY:** No, Karen Smith was a legal person. She is now a senior legal person in the Department of Premier and Cabinet [DPC]. She is an extremely professional woman and an extremely thorough woman and had dealt with these matters. Generally when something like this would come in, Karen Smith would manage them for me inside the place. Whilst I do not recall what our actual conversations were, we were on the same floor so apart from bouncing the initial email to her presumably we had a conversation that day along the lines of we are presuming that the head office, if you like, was running the process, that there is nothing in my email tray or TRIM relating to any documents that I had, which is not surprising given that I was not part of the department and had no involvement in the process. I think that is what would have happened. Because I presumed that Brad Mullard was in the loop, as well as Will Hughes, I assumed that the process was being managed as it normally was, as all the other witnesses assumed it was, by the department itself, by the super department.

**CHAIR:** Can I take you to the sixth paragraph of the email?

**Mr DUFFY:** Yes.

**CHAIR:** It commences as "Deputy Director General Minerals and Energy".

**Mr DUFFY:** Yes.

**CHAIR:** "You are requested to make the necessary inquiries within your area of responsibility"—

**Mr DUFFY:** Yes.

**CHAIR:** —"for any and all related documents."

**Mr DUFFY:** Yes.

**CHAIR:** "This will allow Industry and Investment to demonstrate full compliance with the orders." Are you saying that those words only meant that you had to check what documents you had generated?

**Mr DUFFY:** No. I think those—and I am absolutely not going to shift any responsibility in any part of this conversation to anyone else because I do not have, as with every other witness who responded to the matter, I have got no real recollection of the facts of the day, except what we can reconstruct. I presume I would have asked Karen to look at and to make any inquiries and to come back to me if there was anything else we needed to do.

**CHAIR:** Sure. And Karen being a lawyer—

**Mr DUFFY:** Yes.

**CHAIR:** —would have read those words—and we have not heard from her yet—and would have applied, one takes it, a reasonable interpretation by an intelligent lawyer—

**Mr DUFFY:** Yes.

**CHAIR:** —on what those words would mean.

**Mr DUFFY:** Yes. I definitely—you know, I cannot speak strongly enough about her professionalism and thoroughness.

**The Hon. JEREMY BUCKINGHAM:** Are you asserting that, considering the Maddocks review, Brad Mullard would never have known that SO 52 was occurring?

**Mr DUFFY:** No, no, I am not saying that. I am saying—maybe if I can get back onto my opening statement.

**CHAIR:** Sure

**Mr DUFFY:** I worked on the assumption, I worked on the primary assumption, given the information flows, that Brad overwhelmingly would have known, and that is my surprise. My surprise is that Brad Mullard was not the first person to receive the communication about the order 52.

**The Hon. JEREMY BUCKINGHAM:** But considering what you now know—

**Mr DUFFY:** Yes.

**The Hon. JEREMY BUCKINGHAM:** —that is what you assumed at the time.

**Mr DUFFY:** Yes.

**The Hon. JEREMY BUCKINGHAM:** But considering what you now know, is your understanding that he did not know; he was not informed?

**Mr DUFFY:** Well, I think until the end and, again, I have met few people who work harder than Brad Mullard. If you go back to the annexure B, it is very important, I think, reinforcement of what I have been saying or trying to say here today. If you go down to the penultimate line and you roll through it—

**The Hon. JEREMY BUCKINGHAM:** Yes, Brad Mullard is listed there.

**Mr DUFFY:** Yes, but that says two things to me. First of all, once whoever had realised that the thing had not been actioned—and maybe there was some panic in some quarters about the fact that there was only a day left—

**The Hon. JEREMY BUCKINGHAM:** Yes, Ron Taylor.

**Mr DUFFY:** Well, I am not saying who might have been nervous about the situation, but ordinarily—and I think all the Maddocks report says—ordinarily you would assume Brad Mullard would have been primarily emailed in. But once they got back to normal transmission, I am not in the loop, but Brad is. And that is the way I understood the process to work; that is to say, I had nothing to offer.

**CHAIR:** Do not be interrupted.

**Mr DUFFY:** I had nothing. I had no exposure to the issues. We probably put in a nil return, or whatever, and the people left over were those people, and Brad was emailed. Now, I guess the point I am making is that at 10.23 on the 23rd, Brad received an email. I do not know how long it was before Brad got to that email before he had a chance to say, "Hang on a minute. I haven't—no-one's raised this with me." So I do not know. The fact that he received an email does not mean that you can say that any particular time before it was sent off that Brad was in a position to say, "Well, hang on, no-one's asked me about this." I do not know what he was doing. I do not know if he was in the city.

**CHAIR:** Sure. Those are questions that we need to ask him.

**Mr DUFFY:** Yes.

**CHAIR:** All right. Have you got anymore in your opening statement at 12.32?

**Mr DUFFY:** I do. You have actually done—you have picked up a lot of the issues that I wanted to touch on with you, but if I can just go back to—you certainly picked up the issue about the time frame. I guess what I want to do is just make a couple of observations about the report itself because the report writes things in a way that would allow various interpretations. I want to clarify just a couple of those.

**CHAIR:** Yes.

**Mr DUFFY:** Firstly, at 2.4, the report says, "The events the subject of the review occurred in November 2009, some four years ago." It goes on to say, "The department staff was interviewed; uniformly had very limited memory of their involvement in responding to the order. In fact, none of those staff members could actually recall their involvement in that process."



**CHAIR:** I have that underlined.

**Mr DUFFY:** So do I.

**CHAIR:** And can I say I have the word "unbelievable" next to it.

**Mr DUFFY:** Well, from my point of view, given the swirl of the events of the time and given that in retrospect this is a major issue, but if there is another freedom of information [FOI]—you have got to understand how much information and how many issues bombard a department or an agency on a daily basis. In retrospect there is no doubt there is a major issue for you because it is an affront to your processes in that you have asked for material and it has not appeared here, and I understand that. You had an Independent Commission Against Corruption [ICAC] with findings of corruption, so in retrospect this is a major issue. But at the time it is possible to see a department in transition, a Minister falling over—I think the Government collapsed a week or so later—and the place was under enormous stress and pressure; no doubt about it.

From my point of view it was the worst period of government I have ever seen since I have been involved in New South Wales, since 1985—undoubtedly the worst period of government I have ever seen. It was extremely difficult for bureaucrats to cope with the uncertainty and the chopping and changing. We had one Minister for 18 days. Try gearing up to get a Minister up to speed in 18 days and then he is gone and then we have a new Premier. I have never seen anything like it. To me, again, and ordinary, stable State, I would have much more sympathy for the questioning about that. But the fact—no-one has caucused—I have not spoken to any other person prior to reading this or giving evidence to Maddocks, and that was exactly my view as well. Basically these are processes which, in retrospect, of all the processes that go through a department—in retrospect, this one has holes in it. I suspect that the biggest hole is that the time frame was such that people realised that something that should have gone a long time earlier, all of a sudden there are people with very little time to scramble and without thinking basic things, like, "Who should get this primarily?", it went out. That is my sense of it.

**The Hon. DAVID CLARKE:** But you could have asked for an extension?

**Mr DUFFY:** Well, I possibly could have asked for an extension. But, again, in retrospect, you would have done that. In retrospect, you would have done that. But in prospect, particularly with my perception of the issue and my lack of involvement in the initial issue, it was not ringing those sort of alarm bells—it was another—it was a process that I presumed the department was dealing with and was making inquiries inside the department and gathering them all up to Mr Taylor and providing the director general with a collected set of documents that he would sign off on. And the fact that there are documents missing is obviously an embarrassment to the department and an affront to the Legislative Council, who passed a resolution—I understand that—but at the time, the place was in turmoil.

If I can just pick up a few other points, just to confirm: Although you find that difficult to accept, that is a broad-based response from all those people who I regard, from what I read from Independent Commission Against Corruption [ICAC]—all of the people from the department, the commissioner went out of his way to say, were honest hardworking people. That was my sense of it. From my own experience, the lack of specific recollection of this would partly be explained by the circumstances I have just outlined to you. They were extraordinary days in government in New South Wales.

**CHAIR:** Could I just say that what I have next to the comment "unbelievable" was the final sentence; that is "Not one of those staff members could actually recall their involvement in that process." Could I say that, on the basis of your evidence, I still find it unbelievable because you have actually given an account, although not complete, of your involvement in the process.

**Mr DUFFY:** Can I say that I have spent three days solid trying to reconstruct, without diaries or emails in front of me, but to try to read an 11-page report, a one-page email, your report, the Independent Commission Against Corruption [ICAC] report and everything I could find on the internet to try and reconstruct an explanation to you that would, on my oath, be as best an explanation to you of the process and the circumstances surrounding it—

**CHAIR:** Well, I am certainly not being critical of you, Mr Duffy—far from it.

**Mr DUFFY:** I take this very seriously. I think the outcome is obviously very serious but also the need going forward to find processes which make sure this does not happen again, and that there are policies in place, and a very strong understanding within departments about what everyone's responsibilities are and what the communications framework is and what the sign-offs are, all these things are very important in future. I think what you are doing is very worthwhile, and in no way do I criticise the line of questioning you are taking. You are trying to get an understanding of what happened and you are dealing with people who, I think quite honestly, are saying, "We—in all the noise that was going on around the place—we can't put our hand on our hearts and say exactly what happened on that day."

If I could just roll on to a couple of other issues on the report that I think are worth making. The issue about the email, I think I have expressed to you the same surprise, which I think all of the other witnesses in the department had also expressed to Maddocks, but Maddocks gives two propositions. One of them is that either they are surprised that it was not copied in on the email from what you say, i.e. that Brad Mullard was not copied in on the email from witness A, or B, that I did not forward the email to witness G.

**CHAIR:** This is 6.2.4, is it? Is that where you are?

**Mr DUFFY:** Yes. I am sorry, down the bottom.

**CHAIR:** No, that is all right.

**Mr DUFFY:** I guess my point to you, in light of what I have said to you about the circumstances, is I agree with all the other staff, that it was obvious in retrospect if there was a proper timing, that the discussion between Mr Taylor and Mr Anquitel would have identified Brad Mullard as the primary recipient of the email. I think everyone would agree with that, and I think annexure B demonstrates that when everyone had calmed down a little bit, the proper people to send the draft to included Brad Mullard. That would have been my overwhelming assumption at the time because that was the way that he was seen as, effectively, the person who was leading the department or the division of resources in relation to these matters. As I have said, the Minister himself—

**CHAIR:** But it is broader than that, is it not? He was essentially leading the division, full stop.

**Mr DUFFY:** Well, it is true that I was basically reduced to being more of the manager of the implementation, the establishment, of the new division rather than running the place day to day. That is absolutely true, and it was not my choice but that was the way circumstances unfolded at that stage. So it is not unfair to categorise it that way. I do not mean to put Mr Mullard in it by saying that.

**CHAIR:** No, no, no.

**Mr DUFFY:** It was not his choice to operate that way. He understood the value in having proper processes in place, no doubt. I want to pick up the issue about the emails because we might have touched on it before, but there is some suggestion in 2.5.1 that they got no emails from witnesses E and G; in other words, from myself and one other, in 2.5.1.

**CHAIR:** Yes.

**Mr DUFFY:** They were initially told that the explanation for the lack of emails on the archive server was that those individuals or someone with access to their account must have personally deleted emails before they ceased employment with the department. That sentence suggests that either my emails were deleted before, or somebody had deleted my emails, but then they further go on to say, as it turns out I wasn't even on the system. So I want to just clarify the point that I did not delete any emails on any system. I was not on the system that they were looking at.

**CHAIR:** Are you saying that your emails are somewhere, if I could describe it thus, in the ether on some other server in this place?

**Mr DUFFY:** No. If you follow, if you track that through—so I just want to clarify firstly that that paragraph is later qualified by the following paragraph by saying, "We were informed on the 12th of July that IT had ascertained after further inquiries that witness G had been using an email archive located on the IT system of another department." I want to dispel any suggestion that I deleted any emails. There were no emails on the

system. There were no emails of mine on the Department of Primary Industries [DPI] system because I was not on their system. My emails were on the water and energy system. As I tried to explain to you earlier, I had not translated out of the water and energy system onto the Department of Primary Industries [DPI] system. Then it goes through basically what seem to be IT technical issues about poor backup tapes and whatever. Again, that is no reflection on me, I do not run IT. So I guess my point is that there is no intention here to hide emails by me or whatever. I have no interest in not providing the full information that was available to me at the time or since.

**CHAIR:** Clearly you left the department long before our inquiry got underway. That is correct, is it not? You have been out since—

**Mr DUFFY:** Seven months. I finished with the Department of Trade and Investment, Regional Infrastructure and Services [DTIRIS] at the end of January.

[REDACTED]

[REDACTED]

[REDACTED]

**Mr DUFFY:** I am disturbed about the tonality of some of the Maddocks thing. I would have liked to have seen this report before it was finalised because you are now going to release this.

**CHAIR:** We have.

**Mr DUFFY:** Yes, so if I was a journalist I would say, "It looks like Duffy has cleaned out his emails and has deliberately not handed on an email which he should have done, and as a result he is the cause of the problem", which is a very long way from the facts, as I understand them to be. I appreciate your comments and I have to take my chances. If you work in these circumstances you take the good with the bad. I wonder if I can just roll on to a few other points. Obviously we have talked about the timeframe, and this is probably where I can finish if you get an understanding of what I am saying about the emails. That was my serious concern. There was no attempt by me—in fact I had conversations with our IT people about the backup tapes because I thought that the staff should know that anything they put in an email is backed up at 5 o'clock and there is no way of getting it out, and I wanted people to know that and be careful with email.

I actually thought these tapes were backed up anyway, so I am surprised to learn that they were not all being backed up. My understanding was that if you write an email and make a mistake, you need to get it off the system immediately because at 5 o'clock it is on a tape and that is it forever. Each day the system is backed up, so you can never escape a foolish statement or a tasteless joke or whatever—don't go there. I had conversations with my IT people about making sure that the staff knew that, to be very careful because there are backup tapes and they are there forever. That was my understanding of it. So the idea of clearing emails out is pointless if you believe they are on a tape.

**CHAIR:** My understanding is that the system is in a better state now than it was at the time of this, but of course that will become clearer.

**Mr DUFFY:** Yes. I suppose I just want to stress to you that in no way did I go into the email system and try to cleanse the system. I was not on the system that they were talking about and I think that could have been worded better because their real discovery was that I was not on the system, and there was nothing nefarious about not being on the system. I am technologically illiterate. I hate making changes, I hate changing email addresses—I hate all of that stuff—and the system worked really well and no-one was saying, "Get off it", and that is why I stayed.

**CHAIR:** And your further point is that when you left you did not sanitise your email account.

**Mr DUFFY:** No, not at all. In fact I was not even allowed to take emails with me. I asked on exit could I take emails with me and they said, "No, if you want them for any reason they are on a tape, you can come and get them, but we don't think you should take them with you." That was the message. I do not want to be

frivolous when I finish this, but I want to help and just share an analogy with you about this because I think it works on a number of levels. I spend two or three times a week on a tennis court playing doubles and the analogy to me about the situation is this: When two doubles players are playing together and they do not know each other's game all that well, if someone hits a ball straight down the middle of the court, one of them says, "He's going to hit it", and the other bloke says, "He's going to hit it", and the ball goes straight through because both of them respond on a false assumption. That is analogy number one here, that I assumed overwhelmingly—and I think most of the staff would have rightly assumed on the process as they knew it—that Brad Mullard would have been the first person to receive that email.

The second point is that, on the tennis court, if someone in front of you in a doubles game goes for the shot and misses it then even though you have assumed he has gone for that shot and you relax, if you have time you can scramble and pick it up. I do not think the situation here was that people had time to reflect, because it was not until late in the piece. I do not know whether Brad saw that email on the 23rd, I do not know when he saw it or what his response was, and I obviously do not talk on his behalf, but there was no time to respond to the fact that he did not get it, so we had better deal with it. I did not know that he did not have it even on the 23rd because I was not even cc'd on that report. My final point is: no review by the division head. That was not my choice; I was not even cc'd into the review. I did not see the draft. If I saw the draft, as we have gone to in annexure B, if I had been in that loop, even if Brad did not see it, if I had read through the draft, if it was obvious on the draft, I would have asked "where is the material that we would have expected from Brad?" But I did not even see the draft, I did not have a chance at the penultimate point of saying, "It doesn't look like there is anything here from Brad." I never saw the report, so I did not even have the chance to pick it up. Even if I had seen the guy in front of me had missed the ball, I could not respond to it.

**The Hon. JEREMY BUCKINGHAM:** Did Mr Mullard ever contact you after that point to discuss the SO 52 and the contents of it, and the fact that his emails had not been provided, or any other matters in relation to it?

**Mr DUFFY:** No, he did not, and again if you go back to the circumstances, that conversation may not have happened with me because he would not have assumed that I was the primary source advising him. The way the process was he, like everyone else, probably would have assumed that he should have been cc'd indirectly or directly got the copy of the email. He would not be looking to me to do that because our practice was that information was not regularly flowing through from me to him, as I tried to put to you at the front of this conversation.

**The Hon. JEREMY BUCKINGHAM:** In short, he never raised issues with you subsequent to the return being sent to the Department of Premier and Cabinet about the documents he had not provided or the fact that he was not contacted?

**Mr DUFFY:** I cannot say with my hand on my heart whether he contacted me or not. I do not recall the conversation. I certainly do not deny the possibility that it took place, but I cannot recall. From my point of view, at the level of the Director General or Deputy Director General, you are dealing with so much information and so many decisions that are made in a very short time space about who should take that document, how we should respond to that, should I sign off on this file—we would daily see files like this. Inevitably, I understood that you would die if you tried to be on top of every single thing. You had to make a risk assessment, that some things you would sign off on that you were not 100 per cent sure of, some things you would send to someone and in retrospect you sent it to the wrong person, and in my case this would be one of the very few circumstances where, in retrospect, I would have put more belts and braces on this, but given all of the circumstances and my understanding of the communication framework, I was not aware that Brad did not receive the email, and that to me is—

**The Hon. JEREMY BUCKINGHAM:** And you were not subsequently informed of that by him?

**Mr DUFFY:** No, because probably what happened, if you think about it, is that Brad may well have assumed that his emails were picked up by other emails from other email senders within the department—and I am not saying he did do that because I have not had the conversation with him about it, but a box has gone through, up to the committee and our EAs and others around the system—

**CHAIR:** The problem is that if what the draft response means is the table of documents, if that is what we are to take it to be—

**Mr DUFFY:** Yes, and some covering.

**CHAIR:** —you would have to come to the view that that could not be his reasoning process because it is just so deficient in absent documents. Speaking for myself, I would find that a difficult proposition to accept.

**Mr DUFFY:** Again, you will take Mr Mullard as you find him, and I find him an extremely professional, very hardworking and honest person, so that is a conversation that I should not second-guess in any way.

**CHAIR:** That is fine, we will deal with that in the fullness of time.

**The Hon. MATTHEW MASON-COX:** Could I ask who Phil Anquetil is?

**Mr DUFFY:** Phil Anquetil was the Executive Officer of the Office of the Director General.

**The Hon. JEREMY BUCKINGHAM:** I have not seen the email that you sent to Karen Smith, but do you recall why it was, because I assume you had a number of these orders to respond to, that you contacted Karen Smith in regard to this one? What advice were you seeking?

**Mr DUFFY:** A department operates on a process of delegation, so if you have someone in the office that you understand to be an expert on these sorts of processes, you would ordinarily say—my job is to find the right person in the agency to manage this issue and Karen was the right person.

**The Hon. JEREMY BUCKINGHAM:** Were you asking her to manage the issue or were you asking her to enact it, to follow through on the order, or were you asking her for advice on how you should respond?

**Mr DUFFY:** I presume it was probably a function of both. The email that I have allegedly sent, according to this chart, has not been provided to me from Maddocks and I have not got access to it myself, so I do not know what I said. But given that she was on the floor, I might have just bounced the Ron Taylor email directly to her and she was just down the passageway, just down the hallway, so we might have had face to face once she had looked at it rather than anything in particular being in the email. Ordinarily a request for an FOI would come in and then I may never see it again because it goes to the director general for sign-off. As Maddock says, the overwhelming sense that everyone had in this process was that Witness A was considered by those within the department to be responsible for coordinating responses to requests for information, be it a Standing Order 52 or GIPA request. The usual practice consisted of Witness A sending the request to those areas of the department which were relevant to the request, invariably with guidance from Witness L as to the most appropriate recipients. That, I believe, would be the understanding that most people had in the place, and I think that that reassessed itself in annexure B when they sent the draft back. In other words, I was not in the loop, but Brad was.

**CHAIR:** Were you still with the department when the request was made of Clayton Utz for the preparation of a review of the Mount Penny exploration licence allocation process?

**Mr DUFFY:** Was I still in the department? Yes, I believe Minister Macdonald—

**CHAIR:** No, this was when Minister Hartcher took over, after the change of Government.

**Mr DUFFY:** That is right, sorry. Mr Hartcher wrote to me indicating that Clayton Utz were to be engaged and I was to give them full assistance, so the answer is yes, I was in the department when Clayton Utz were engaged.

**CHAIR:** Having read the review, the preliminary report as it is described, dated 4 November 2011, it stands in stark contradiction to the evidence that was given to the Independent Commission Against Corruption and the conclusions about the Independent Commission Against Corruption with regard to the process that was undertaken. Essentially the Clayton Utz report says nothing untoward. Are you able to assist as to what documents were provided to Clayton Utz that would allow them to have come to the conclusion that there was not something decidedly odd about this Mount Penny exploration licence process?

**Mr DUFFY:** I believe that Clayton Utz went up to Maitland and had access to all the documents in the system. That is my understanding. It seems to me, though, that there is a very big difference between a law firm

asked to do, with a limited budget, an examination of these issues, and then having the interconnected and very well-resourced processes that allowed the Independent Commission Against Corruption to come to a different conclusion. So just on the face of those two findings, in a sense I do not find it odd that a much more intensive, resource-rich inquiry that has access to telecommunications—in other words, we are all dealing in email land here, and that is another point I wanted to make. Emails are only one form of communication. I think Maddocks makes the point that in reconstructing this we are just drawing on documents that are in the system. We do not know about telephone conversations otherwise.

**CHAIR:** No we do not. But what we do know in terms of the Mount Penny exploration licence process is that it started on or about 8 or 9 May with a request coming from Minister Macdonald's office into the department for a briefing on Mount Penny. That is, this was not, as the Minister had asserted in the House, a hands-off process being essentially managed by the department. There was a whole string of emails at the very start that, I would suggest, if they had been included in the call for papers, for instance—and I am suggesting in the review process—would have caused alarm bells to ring as being an aberrant way for the process to have been initiated at the very least, including that there are emails coming back saying, "This is not quite right".

**Mr DUFFY:** I can only agree with you when I have seen that communication since and, to be frank, I read some of that for the first time over the weekend. Again, I suppose I was comforted by the Clayton Utz report; I thought they had access to the system and it turns out obviously that they did not have access to all the material that was subsequently available through the ICAC processes of discovery. But certainly none of that was in front of me when this issue came through. So I can only reiterate that my process was I was not engaged in any way at the front end of this. Yes I do recall—certainly in retrospect, having read the Anne Davies prompter—reading that *Financial Review* piece. Again, 20/20 vision is perfect but at the time—every morning we get clippings that big, which include all the regional; so, assuming you had nothing better to do, you might actually read them. But very often I would have, at the end of the week, a foot-high stack of clippings that I never got around to reading.

As you concentrate more and more information into fewer and fewer bodies then they are necessarily triaging the depth they can go to on any stuff in front of them and in my last year, dealing with a broader part, I was responsible for Minerals and Energy as well as Liquor, Gaming and Racing, the cultural institutions, State and Regional Development and all those investment attraction issues, and I know what happens: you will die if you try and get on top of all that material. You have to try and find a way to guide what you believe to be the issues that you spend your waking time on and focus on those ones and try and give guidance to people in your delegations as best you can. You will make mistakes inevitably. If I have not made it clear: I am not a fan of these amalgamated structures. I think Ministers deserve to have a director general directly to them; Ministers deserve to be able to represent their portfolio in the budget committee; they should have their own budgets.

This system is going to create pyramids and information breakdowns. I have never seen an analysis that talks about what the real economic benefits of this economy of scale is, but I can see on a day-to-day basis how frustrating it is for everyone involved and I am not a fan. I believe that a Minister should have a director general; they should be able to go to the budget committee and they should be responsible for their area, and that is not the situation we currently live in. It is not the fault of this Government; it was inherited from the previous Government, and many governments are doing it under the false belief that you cannot get economies in back office without basically removing real responsibility from Ministers.

**The Hon. MATTHEW MASON-COX:** With the exception of those comments you have made to clarify sections of the report, can the committee take it as read that you endorse the findings and contents of the report?

**Mr DUFFY:** We are in the world of looking at human failure, communications failure and bureaucratic failure, in a world where they found no evidence of impropriety and intention of withholding. I think that is a very important finding for the integrity of the agency going forward. I had to organise counselling for people who are private public servants who are not used to public speaking, who are not used to being cross-examined, who do not seek to be leaders, who are just doing their job in very difficult circumstances where the local communities are dark on them, the environmentalists are dark on them, the industry is dark on them. They are in a lose-lose-lose situation but they are just trying to do their job and they are dragged in and do not know what is going to happen to their career or reputation. So that finding, to me, is very important. No-one has intentionally done anything wrong—I completely believe that.

I agree with Commissioner Ipp that the people in the department are good people but they have been denuded of resources over a period of time. We have had a resources boom and we have lost a huge amount of resources in the resources department. It is bizarre to me that you would have a situation where you are denuding resources when the community expectations are for engagement, when the environmental expectations are for much greater involvement in documentation and analysis and reporting and all the rest of it, and yet you have denuded, over a period of time, the department. So those people, under the biggest resources boom the country has ever had, have been denuded resources and they work extremely hard. In a sense I am no longer there but I will defend them for ever for their professionalism and dedication in a very difficult situation.

[REDACTED]

[REDACTED]

[REDACTED]

**CHAIR:** I think that is a good point to call it quits. Thank you for giving your evidence today. I think you have done yourself proud. As previously indicated, the transcript of your evidence today will also be confidential. However, after reviewing the transcript the committee may decide at a later date to make some or all of the evidence public. All of it will not be made public. There are some personal things that you have discussed that I suspect will be appropriately redacted, including your last comments, out of courtesy to you. Could you please indicate if there is any evidence that you have given today—and this is on the run I know—that you would prefer not to be made public?

**Mr DUFFY:** I have to walk a fine line between looking at this information and thinking to myself: only one thing had to happen here for this to have worked out differently, which was that we all had enough time not to panic and make the right decisions about who this should have gone to. I regard that circle on my document about six days as the cure here, because there would have been enough conversation— notwithstanding that we were getting ready for a new Minister and all the noise that went on around that particular week. Two days earlier it does not get that much more traumatic than seeing the removal of those Ministers.

If we had received the document, and everyone had calmly said, "Who should get this document?" then everyone who should have got the document would have had the document and we would have had plenty of time to get the report back. I regard that as being a major difficulty for the process. I think the fact that there is no policy obviously makes it worse. There was no assumption it would come back, there was no assumption that they were signed off. But I do not criticise anyone for that. Richard Sheldrake was dealing with a major transformation—I would not have wished that on my worst enemy. You are trying to govern in the latter part of a government with all that other stuff going on and you are trying to build what should have been a building process on the other side of an election: a new government should have made its decision about what it wanted to do. So the whole idea of doing it at that time was a major distraction for the bureaucrats and the Government involved when they are trying to race around and deal with all the other issues that are in front of them. So the timing of a restructure was very poor. As I say, I think these organisations are enormously difficult for even the most professional, hardworking, dedicated, intelligent people to manage.

**CHAIR:** Thank you. As I say, you have done well. I think we will be in touch with you relatively quickly in terms of the transcript so that you have got the opportunity of seeing what our views are.

**Mr DUFFY:** Are you suggesting that I may have an opportunity to respond to your transcript?

**CHAIR:** Yes, I am. We will let you know what we think.

**Mr DUFFY:** I thank all of you. You have an important task to do to get to the bottom of all of this and I can tell that you are frustrated not just by the initial result but by the perception that people are not being frank with you. But I hope I have helped you understand, from a bureaucrat's point of view, how tumultuous the circumstances of that time were.

**(The witness withdrew)**

**(Luncheon adjournment)**



**CHAIR:** I welcome Mr Mullard to this hearing of the Privileges Committee inquiring into the 2009 Mount Penny return to order. Before we commence I would like to address some procedural matters. The Committee is holding this session in camera, which means that at no time will any media or members of the public be in the room. The transcript of your evidence today will also be confidential; however, after reviewing the transcript the Committee may decide at a later date to make some or all of the evidence public. Normally the Committee would do so in consultation with you. Indeed, in all likelihood you will receive the transcript with the Committee's suggestions as to redactions—if the Committee decides to do some—and comment will be invited from you. The Committee will then hold a further meeting to decide the course of action but you will be consulted at least to that extent.

Witnesses who appear before parliamentary committees are protected by parliamentary privilege. This means that what is said cannot be used against you later in court proceedings. The terms of reference require the Committee to inquire into and report on the failure to provide documents in the return to order tabled in the Legislative Council on 26 November 2009 concerning the Mount Penny mining exploration licence and tender process. This includes documents identified in the document comparison matrix provided by the Commissioner of the Independent Commission Against Corruption and tabled in the Legislative Council on 14 March 2013. That document comparison matrix appears on the Privileges Committee website for review.

For the information of all witnesses, I indicate that at a deliberative meeting prior to the commencement of this hearing the Committee resolved to make public the report by Maddocks lawyers provided by NSW Trade and Investment—referred to as the Maddocks report. The Committee also resolved to publish annexures A and B, with annexure A identifying the names of each of the people interviewed, including your good self, Mr Mullard. That has been done simply because to try and do this without identifying the people involved creates nonsense in the process and, frankly, does as much a disservice as publishing the names. At the commencement of your evidence you will be invited to make a short opening statement, if you wish. If you have copies of that opening statement for the information of members of the Committee it would be appreciated, although not compulsory. Committee members will then ask you any questions. The Committee has resolved that any answers to questions taken on notice during the hearing must be provided within 21 days.

Evidence in camera by **BRAD WILLIAM MULLARD**, Executive Director, Mineral Resources Development, NSW Trade and Investment, sworn:

**CHAIR:** Before we commence I want to check if you have had access to a copy of the Maddocks report and if you have had the opportunity of reading it?

**Mr MULLARD:** That is correct.

**CHAIR:** Would you like to make an opening statement?

**Mr MULLARD:** No, I am happy to take questions.

**Reverend the Hon. FRED NILE:** On what date did you first become aware that an order for papers had been passed regarding Mount Penny? Do you remember?

**Mr MULLARD:** No, I cannot. In fact, I do not recall actually being aware of it until perhaps much, much later.

**Reverend the Hon. FRED NILE:** How did you become aware of it then?

**Mr MULLARD:** I am not sure. I cannot remember any date of when I became aware of it, no.

**Reverend the Hon. FRED NILE:** Did you prepare the draft speech for Minister Macdonald opposing the motion for the order for papers?

**Mr MULLARD:** No, I did not.

**Reverend the Hon. FRED NILE:** Do you know who prepared it?

**Mr MULLARD:** I do not know precisely. I believe it was prepared by one of the department's media policy writers, speechwriters.

**Reverend the Hon. FRED NILE:** Do you know how it got into the original return? You never had any handling of that document at all?

**Mr MULLARD:** I was referred to that document later on when we were asked. The normal process is—can I explain the normal process?

**Reverend the Hon. FRED NILE:** Certainly.

**Mr MULLARD:** The normal process was that if a motion was being put forward we would be advised of what the Government wanted to do—whether they wanted to oppose it or not. Then we would get a request. I personally would not have written the speech but I might be asked to facts check it. So it would normally be referred to me before it went through to the Minister's office.

**Reverend the Hon. FRED NILE:** So you approved it on that occasion?

**Mr MULLARD:** I believe I did look at it on that occasion, yes.

**Reverend the Hon. FRED NILE:** Did anyone in the department preparing documents for the return discuss with you what documents were to be included? If so, did it occur to you that you should also be providing documentation?

**Mr MULLARD:** It was not discussed with me—I was not made aware of the order at that time.

**Reverend the Hon. FRED NILE:** Did you contribute documents, including emails, to any other orders for papers other than the 2009 Mount Penny order? Were you involved in deciding what would be included?

**Mr MULLARD:** Can I clarify? Are you talking about ICAC orders or parliamentary orders?

**CHAIR:** The SO 52.

**Mr MULLARD:** Specifically related to Mount Penny?

**Reverend the Hon. FRED NILE:** Yes.

**Mr MULLARD:** No, I was not involved that I am aware of. I have got no recollection of providing any documents related to Mount Penny.

**The Hon. DAVID CLARKE:** You received no email advising you that there was an SO 52?

**Mr MULLARD:** I have no recollection of an email coming to me about the order 52.

**The Hon. DAVID CLARKE:** But that is something you can check quite easily?

**Mr MULLARD:** I did check and there is no email that came to me about the order 52.

**Reverend the Hon. FRED NILE:** Do you think it is strange that as Executive Director of Mineral Resources Development you were somehow left out of the loop?

**Mr MULLARD:** I think it is strange, yes.

**Reverend the Hon. FRED NILE:** Were you disappointed then—more than strange—that you were being bypassed in a way?

**Mr MULLARD:** I was bypassed but there might be an explanation as to why that occurred because of the timeframes.

**Reverend the Hon. FRED NILE:** Because of the?

**Mr MULLARD:** The timeframes. On 19th, when I checked my diary, I was actually not in Sydney. I was actually in Canberra on 19th. I believe that was the date when the request came in, so it went to other people. It didn't come to me.

**Reverend the Hon. FRED NILE:** Is there any explanation in your mind as to why the whole response was so slow? I know they are saying now that they responded rapidly, within 24 hours, but why the delay for a 14-day return? Where did the other 12 days disappear to?

**Mr MULLARD:** I have no idea. Normally it would come to Ron Taylor. He would coordinate the response and send it out to the appropriate people. As I understand it, he did not get it until basically when there was virtually 24 hours to go.

**Reverend the Hon. FRED NILE:** Did you have any role in creating the name Mount Penny. It seems to have appeared out of the blue. Was that a genuine mining description?

**Mr MULLARD:** No, it was not. The Mount Penny description was actually devised by the Minister.

**Reverend the Hon. FRED NILE:** It had no reference to any of the coalmining licences or exploration licences?

**Mr MULLARD:** Mount Penny was unknown to the department until the Minister requested information on it.

**Reverend the Hon. FRED NILE:** Were you the person who got the request?

**Mr MULLARD:** I was not the person who got the request. I believe it was Rob Larkins who got the request. This was all in evidence at the ICAC inquiry. It was not unusual for the Minister to request information on different areas. He would quite regularly have meetings, which the department was not party to, and he would request information on items. It was not unusual I shouldn't say—it was not common but it was not unusual that he would request information. The department would not normally be advised of why that was the

case. We assumed at the time, or at least I assumed at the time, that someone had spoken to him about an interest in the area—like a mining company—and he was wanting some information on it.

**CHAIR:** It may have been someone speaking to him about an interest in the area, but not a mining company.

**Mr MULLARD:** I know that now, but at the time that was not our expectation.

**CHAIR:** It was not in contemplation.

**Mr MULLARD:** Yes.

**The Hon. JEREMY BUCKINGHAM:** You said that you were not made aware at all at that time.

**Mr MULLARD:** At the time the order was passed, that is correct. We were aware that a proposal was going forward because, as I said, we were aware that the Government had asked for a speech. I was aware of that, but I was not aware that it had actually been passed.

**The Hon. JEREMY BUCKINGHAM:** And you found that out only some time later?

**Mr MULLARD:** Yes, that is correct.

**The Hon. JEREMY BUCKINGHAM:** Can you recall how much later that was? Was it weeks or months?

**Mr MULLARD:** It could easily have been; I do not recall specifically. To be honest with you, it may not have been until this issue came up about the discrepancy.

**The Hon. JEREMY BUCKINGHAM:** So you did not have any discussion with Mark Duffy in relation to this at the time?

**Mr MULLARD:** No.

**The Hon. JEREMY BUCKINGHAM:** Did you have any discussion about it at the time with Ron Taylor?

**Mr MULLARD:** No.

**The Hon. JEREMY BUCKINGHAM:** Did you have any emails from Ron Taylor requesting documents?

**Mr MULLARD:** No.

**The Hon. JEREMY BUCKINGHAM:** Did you receive any emails from Ron Taylor requesting that you review the documents that were going to be provided?

**Mr MULLARD:** I was cc'd an email, but I am not sure from whom. When I went back and checked my email, I was cc'd a response. I think that was on the Monday.

**The Hon. JEREMY BUCKINGHAM:** You said, "When I went back and checked". Did you miss that at the time?

**Mr MULLARD:** During that time I was cc'd; it was not marked for me to review or anything like that as far as I am aware. I was not in the Maitland office at that time. I am based in the Maitland office, but I was not around there very much. In fact, during the critical week I was in Canberra, then in Newcastle and then in Sydney. So I was not in the office throughout that period. I would normally not have emails referred to me if I was just cc'd. They would normally not be brought to my attention. I do not personally go through all my emails; I relied on staff to do that because I was out of the office at that time.

**CHAIR:** Was the person you relied on Tim Heffernan?

**Mr MULLARD:** No.

**The Hon. JEREMY BUCKINGHAM:** Was it Patricia Madden?

**Mr MULLARD:** Yes.

**CHAIR:** So Tim Heffernan reported to you?

**Mr MULLARD:** I do not believe so.

**CHAIR:** You do not believe so?

**Mr MULLARD:** I do not know the name specifically.

**CHAIR:** I might be wrong.

**The Hon. MATTHEW MASON-COX:** What about William Hughes?

**Mr MULLARD:** William Hughes reported to me.

**The Hon. JEREMY BUCKINGHAM:** You were sent an email at 10.23 on 23 November 2009 by Ron Taylor attaching a draft response to the order. Did you ever see that email?

**Mr MULLARD:** Not at that time, no.

**The Hon. JEREMY BUCKINGHAM:** When did you ultimately see it?

**Mr MULLARD:** When I went back and checked after I had been called to the hearing.

**The Hon. JEREMY BUCKINGHAM:** Which hearing?

**Mr MULLARD:** This one.

**The Hon. JEREMY BUCKINGHAM:** So it was only in 2013 that you went back and saw that?

**Mr MULLARD:** Yes.

**CHAIR:** Does the name "Tony Heffernan" mean anything to you?

**Mr MULLARD:** He did not report to me. He was in charge of corporate services and he was based in Orange.

**The Hon. JEREMY BUCKINGHAM:** So none of your staff did any searches of your inbox, your sent items or your documents to comply with the SO52?

**Mr MULLARD:** Not that I am aware of. I probably would not have done the searches personally. Had I been aware; I would have got my staff to search the inbox.

**The Hon. MATTHEW MASON-COX:** That would have been Patricia Madden.

**Mr MULLARD:** Yes, she would normally undertake that work. They would compile what they found. They would normally run it past me and say, "This is what we have found and this is what we will submit." I would normally agree to that. That would be the normal process.

**The Hon. DAVID CLARKE:** I am confused. What did you receive on 23 November 2009?

**Mr MULLARD:** I can show you. I brought a copy along.

**CHAIR:** That would be very useful because we have not seen it.

**The Hon. JEREMY BUCKINGHAM:** Are you surprised that you were not contacted by Mr Hughes or Mr Taylor directly seeking any documents, emails or other material that may have been captured by the SO52? Can you elaborate on that?

**Mr MULLARD:** Yes, I am very surprised I was not referred to by someone. I would have thought I should have been. The only explanation I can think of is that they may have been aware that I was not in the Maitland office that the time. They also would have been aware that the main person who was involved in the Mount Penny tender process was William Hughes. He chaired the committee. The only explanation I can give is the short time frame. William Hughes was obviously one of the key players and it was referred to him as someone who they knew was involved very heavily in the Mount Penny tender.

**The Hon. JEREMY BUCKINGHAM:** Were your emails not forwarded to your BlackBerry?

**Mr MULLARD:** I went through my emails and I never received one about this on the 19<sup>th</sup>.

**The Hon. JEREMY BUCKINGHAM:** What about on the 23rd?

**Mr MULLARD:** I do not recall seeing it on the 23rd.

**The Hon. JEREMY BUCKINGHAM:** But you cannot rule that out; you may have been sent it.

**Mr MULLARD:** It obviously came to into my inbox, but it was marked as almost a "for information" item. I would normally rely on the people at the office to bring those things to my attention if action was required.

**The Hon. JEREMY BUCKINGHAM:** And that did not happen?

**Reverend the Hon. FRED NILE:** I would like to clarify something. You were away that week in Canberra. Were you engaged in work for Trade and Investment or were you there in a personal capacity?

**Mr MULLARD:** I was involved in meetings on the 19th. I was giving evidence to a Senate inquiry.

**Reverend the Hon. FRED NILE:** In Canberra?

**Mr MULLARD:** Yes. On the 20th I was tied up doing interviews at the University of Newcastle. On Monday, Tuesday and Wednesday I was in Sydney. I may have been in Maitland briefly on 23rd, but I was travelling to Sydney. My diary says I was in Sydney on those days.

**Reverend the Hon. FRED NILE:** You were not in your office. I am a very suspicious person. Do you think you might have been sent away so that you were not your office when this Mount Penny issue came up?

**Mr MULLARD:** I do not believe so. The Senate inquiry was arranged well before the order was issued. The other items in my diary would have been longstanding items. It was a busy week. We had a new minister. In fact, earlier in the week I was on my way to Gunnedah and I was called back to meet Minister Primrose, who had just been appointed. One of the main reasons I was back in Sydney again the following week was to meet with Minister Primrose.

**The Hon. JEREMY BUCKINGHAM:** Did the call for papers come up at those meetings?

**Mr MULLARD:** No.

**The Hon. MATTHEW MASON-COX:** How would you characterise your relationship with Mr Duffy?

**Mr MULLARD:** I was based in Maitland. I think I had quite a good relationship with Mr Duffy. I dealt with him regularly, but because I was in Maitland I was not in his pocket either.

**The Hon. MATTHEW MASON-COX:** How regularly would you meet with him in person?

**Mr MULLARD:** Maybe once every couple of weeks.

**The Hon. MATTHEW MASON-COX:** How regularly would you speak to him on the phone?

**Mr MULLARD:** Maybe once a week.

**The Hon. MATTHEW MASON-COX:** I understand that there had been a restructure of sorts—the Office of Water and Energy came into the department and Mr Duffy was appointed as the deputy director general. How were the day-to-day operations of the minerals division discharged? Who was in control? Who ran it on a day-to-day basis?

**Mr MULLARD:** Probably me. However, most items were going through Mark Duffy and he would refer them to me. William Hughes was based in Sydney. I think Mark Duffy probably used him more often because he was face to face with him and dealt with him directly on a lot of issues rather than necessarily going through me.

**The Hon. MATTHEW MASON-COX:** And William Hughes would presumably have discussions with you.

**Mr MULLARD:** On occasions, depending on the issue and how important it was. If it was something he could deal with, he would.

**The Hon. MATTHEW MASON-COX:** How would you characterise your relationship with Minister Macdonald?

**Mr MULLARD:** I got on reasonably well with him at a technical level. I would normally only be brought in if technical issues were involved. Richard Sheldrake had more to do with the Minister at that time in that he had direct meetings with him. I would be contacted if items needed to be discussed. I do not believe Mark Duffy had a lot to do with the Minister at that time. I do not know how well Mark Duffy got on with the Minister; I do not think it was a good relationship.

**The Hon. MATTHEW MASON-COX:** How often would the Minister contact you directly?

**Mr MULLARD:** Rarely. Most of the contact I had was with his staff. His staff would contact me on occasion, mainly with requests. They used to contact a range of officers in the department depending on whom they were dealing with. They would talk to William or other officers.

**The Hon. MATTHEW MASON-COX:** Who in the Minister's office contacted you?

**Mr MULLARD:** James Gibson.

**The Hon. MATTHEW MASON-COX:** If he contacted you would you report to or inform Mr Duffy?

**Mr MULLARD:** Normally, yes. It would depend on the item and if it related to something I believed Mark needed to be informed about. If it was a fairly basic request, perhaps. If it was something I dealt with over the phone, I would not contact him. But if it required a written response it would normally go through Mark Duffy.

**The Hon. MATTHEW MASON-COX:** If you received an email from Mr Gibson about Mount Penny, a licence, a tenement or something of that nature would you have informed Mr Duffy about that information or request?

**Mr MULLARD:** Normally, yes. It would depend on the content, what it related to.

**The Hon. MATTHEW MASON-COX:** Do you recall informing Mr Mark Duffy about that particular instance when Mr Gibson requested information from you by email?

**Mr MULLARD:** About what?

**The Hon. MATTHEW MASON-COX:** About Mount Penny.

**Mr MULLARD:** If you are referring to earlier on, Mark Duffy was not there until later.

**CHAIR:** He was not there until July 2009.

**Mr MULLARD:** I had virtually no contact with Mr Duffy about Mount Penny because he was not involved at that time. Earlier on—when those emails were coming in—the dealings were through the previous director general, Alan Coutts.

**The Hon. MATTHEW MASON-COX:** Would you have cause to speak or communicate with the director general about an issue like that?

**Mr MULLARD:** Not me directly. I would normally be talking to the deputy director general, Alan Coutts.

**The Hon. MATTHEW MASON-COX:** Is it fair to say that in your division as the executive director you had the day-to-day control, pretty much ran things and reported as you saw fit to the person directly above you in the chain of command?

**Mr MULLARD:** That is right.

**CHAIR:** Can I clarify this: In respect of a SO 52 or any request for papers/documents, your understanding was that documents certainly included electronic records such as emails. Is that right?

**Mr MULLARD:** Yes.

**CHAIR:** Do I take it that that view—that is that emails are a document—would have been a view that was widely held in your division?

**Mr MULLARD:** I believe so.

**CHAIR:** Indeed, one of the reasons for that would be that so many of the documents were actually soft copy documents that were transmitted. That would be right, would it not?

**Mr MULLARD:** A request for documents: I would not draw a distinction between electronic documents as opposed to hard copy documents.

**CHAIR:** Indeed. To draw a distinction in the last 20 years would be almost ludicrous, would it not?

**Mr MULLARD:** Well, I would not do it.

**The Hon. DAVID CLARKE:** It is the standard view.

**Mr MULLARD:** Yes.

**The Hon. DAVID CLARKE:** It is the standard practice that it automatically includes emails, does it not?

**Mr MULLARD:** That would be my view.

**The Hon. DAVID CLARKE:** Yes.

**Mr MULLARD:** Other people might have a different view, but my view would be that if I received an SO 52 for documents and I was undertaking a search, I would be certainly looking at electronic documents: emails and so on.

**Reverend the Hon. FRED NILE:** Request for papers, not documents. That is where the confusion has been.

**Mr MULLARD:** I would tend to err on the safe side and say that papers would include emails.



**CHAIR:** The problem we have got is that there are some 109 emails that have not been produced. For half of those 109 you have either been the initiator of, the recipient of or cc'd, and there are also various officers in your division who have initiated emails or received emails who have not been captured by this process. What is your explanation for such an effective non-disclosure of electronic documents?

**Mr MULLARD:** My only explanation has been clearly a failure of process. It was contributed to, however that failure occurred, when people became aware of it, there was an incredibly short period of time and I think, for whatever reason, people focused on the files and the hard copy and they did not do a search of electronic media. Now, I do not know why they did not.

**The Hon. JEREMY BUCKINGHAM:** Mr Mullard, your position is that you did not know that the House had resolved to support the call for papers. At any period up until the 23rd, you were not informed, you did not know. On the 23rd when you were emailed that draft response, you did not see that and you cannot recall—

**Mr MULLARD:** Well, it was not brought to my attention, that is right.

**The Hon. JEREMY BUCKINGHAM:** You cannot recall when you did see it?

**Mr MULLARD:** No.

**The Hon. JEREMY BUCKINGHAM:** You said earlier that it was only this year that you saw it and you cannot recall when you were actually informed that the House had resolved the call for papers?

**Mr MULLARD:** No.

**The Hon. JEREMY BUCKINGHAM:** Was it sometime in 2011 or 2012?

**Mr MULLARD:** I do not have a memory of this whole exercise, if you know what I mean, like the SO 52. I do not recall seeing it. I was surprised I did not recall, but when I went back and checked the email chains and looked at the Maddocks report, it appears, in essence, I was not effectively part of the process.

**The Hon. JEREMY BUCKINGHAM:** But you cannot recall when you found out that an SO 52 and a response—

**Mr MULLARD:** The only recollection I have is when it was pointed out—I think you pointed it out—that there was a mismatch between the Independent Commission Against Corruption documents and what was in the order. That is when I became aware that there was an order that did not produce the emails.

**The Hon. JEREMY BUCKINGHAM:** At that time did you go back and look at your emails?

**Mr MULLARD:** I think I did go back and looked at whether or not I had received any emails, yes.

**The Hon. JEREMY BUCKINGHAM:** That is when—

**Mr MULLARD:** That is when I found I was cc'd in a final response.

**The Hon. DAVID CLARKE:** Did you have a close working relationship with then Minister Ian Macdonald?

**Mr MULLARD:** I would not say it was close. I certainly had a reasonable relationship. I did not meet directly with Ian Macdonald. I would not say it was a close working relationship. Most of my dealings, as I said previously, were with his staff. Quite often my communication was with Jamie Gibson. There would be very few times that the Minister would ring me. Maybe I could count on one hand during the period when he actually rang me with a question. I may have met him a number of times at various meetings that he requested, but I was not in his office regularly or anything like that.

**The Hon. DAVID CLARKE:** Thank you.

**The Hon. JENNIFER GARDINER:** Did you have any meetings with him about "Mount Penny"?

**Mr MULLARD:** There were some meetings where Mount Penny was discussed, yes.

**The Hon. JENNIFER GARDINER:** Will you give us an idea what those meetings were about specifically?

**Mr MULLARD:** I think specifically it was about the time the Minister wanted to release a number of tender areas. One he was keen on was Mount Penny. There were discussions taking place at that time where we were arguing that there was not sufficient information to release those areas.

**The Hon. JEREMY BUCKINGHAM:** Did that make you nervous?

**Mr MULLARD:** We were concerned, yes.

**The Hon. JEREMY BUCKINGHAM:** You were concerned. You were alive to the fact that there were probity issues there?

**Mr MULLARD:** I would not say we were alive to the fact there were probity issues. The probity issues came much later. At the time, what we were concerned about was the fact that we were undervaluing the resource, so without the exploration being undertaken, we did not really know what was being tendered and, therefore, we believed the State would not maximise its return. At the time, we had no idea that there were landholders in the area that had a relationship with Ian Macdonald.

**The Hon. JENNIFER GARDINER:** When you say "we were concerned", do you mean you and fellow officers in the Department of Mineral Resources, as a team?

**Mr MULLARD:** That is correct, yes.

**Reverend the Hon. FRED NILE:** What was the amount—roughly in round millions—in your mind that you think was being lost to the State if it had gone ahead?

**Mr MULLARD:** Well, it was tens of millions, if not hundreds of millions.

**CHAIR:** It would have been hundreds, would it not, in the context of what had occurred with Shenhua?

**Mr MULLARD:** It probably would not have been that much, because Shenhua was a much larger open-cut resource. Mount Penny was a much smaller resource, but it would have been—

**CHAIR:** Is that the Macdonald cut-down version of Mount Penny or the initial version? It is the case, is it not, that Mr Macdonald intruded into the process, not only to the extent of getting the briefing organised and the like but also defining the boundaries of the exploration licence area? That is right, is it not?

**Mr MULLARD:** Yes, he wanted Mount Penny to be a smaller area; that is correct.

**CHAIR:** But moved it into a medium-sized area as opposed to medium-to-large? Is that right?

**Mr MULLARD:** Yes.

**The Hon. DAVID CLARKE:** With regard to mineral resources, who was in the chain of command above you?

**Mr MULLARD:** Well, what period of time? Are you talking at the time of the order?

**The Hon. DAVID CLARKE:** Yes.

**Mr MULLARD:** Mark Duffy and then Richard Sheldrake.

**CHAIR:** Had you, in your time in the department, ever had a circumstance where a Minister had not only named and specified an area for an exploration licence but also then, in essence, defined the area of the exploration licence?

**Mr MULLARD:** It was certainly unusual. It was not unusual in the sense that Ministers had expressed interest in particular areas after talking to mining companies. That was not unusual.

**The Hon. JENNIFER GARDINER:** How many Ministers did you report to in the Department of Mineral Resources?

**CHAIR:** Does Mr Macdonald count as one or two?

**Mr MULLARD:** Quite a large number since I have been in the department. I joined the department in December 1980, so I would have to add up Ian Causley and Bob Martin, Ian Macdonald, Kerry Hickey.

**The Hon. JEREMY BUCKINGHAM:** Eddie Obeid?

**Mr MULLARD:** Eddie Obeid was there, that is right.

**The Hon. JENNIFER GARDINER:** You have got a sense of perspective on the different types of demeanour of the Ministers getting involved in the specifics of a particular exploration licence?

**Mr MULLARD:** They were all interested, because they had all been lobbied by companies. To a certain extent there were a number of areas that were put out following companies talking to the Minister.

**CHAIR:** But the rules had changed after Carooona and Shenhua, had they not?

**Mr MULLARD:** The difference was that earlier on—Ministers have been involved in defining areas and putting them out, or granting them. What had changed was the realisation that the price of coal had gone through the roof. Global demand for coal was enormous and people were prepared to pay hundreds of millions of dollars for the resource. When that had happened, we became very concerned that we wanted to make sure the State was not missing out on an adequate return on what were its resources.

**The Hon. DAVID CLARKE:** Was that a concern shared with Mr Duffy and Mr Sheldrake?

**Mr MULLARD:** Yes.

**The Hon. DAVID CLARKE:** What was the reaction of those superiors?

**Mr MULLARD:** Sorry, I think they agreed. I should say Mr Duffy was not there at the time we were doing the tenders. That was Alan Coutts, but Alan Coutts certainly was aware of that issue.

**The Hon. JEREMY BUCKINGHAM:** Mr Mullard, I find it surprising that you would have a Minister clearly taking an interest, an involvement in an allocation or a tender of an incredibly valuable resource. The suggestion is that it was not unusual, but he was heavily involved to the point of requesting the size of the exploration licence and the shape of it. Then there was a further anomaly—I will put it like that—where he sought the expression of interest process to be reopened. That is the case, is it not?

**Mr MULLARD:** Yes.

**The Hon. JEREMY BUCKINGHAM:** Further, there were questions raised in Parliament by way of questions without notice. There were media reports and then there was a significant article in the *Australian Financial Review*. With all that happening, an SO 52 was passed by the House regarding this very matter and you were completely unaware of it?

**Mr MULLARD:** I was unaware at the time. It was never referred to me.

**The Hon. JEREMY BUCKINGHAM:** You cannot recall when you finally found out about it?

**Mr MULLARD:** No.

**The Hon. JEREMY BUCKINGHAM:** Did you ever talk to Eddie Obeid about coal resources in the Bylong Valley? Did he receive a briefing from you—

**Mr MULLARD:** No.

**The Hon. JEREMY BUCKINGHAM:** —on coal resources in the Bylong Valley? You never asked for maps to be drawn up?

**Mr MULLARD:** No.

**Reverend the Hon. FRED NILE:** Mr Paterson made an explanation of the department. He thought papers meant non-emails. You do not give that impression. You understood it quite clearly. I am puzzled why Mr Paterson was speaking on behalf of the staff.

**Mr MULLARD:** I think that was a reference in the Maddocks report. I can only speak for my interpretation of it. It appears, reading the Maddocks report, that when a number of staff were interviewed they communicated that they thought it was related to papers.

**CHAIR:** We do not quite know how many actually did that.

**Mr MULLARD:** No, I do not know either. Basically I think he was just referring to what was in the Maddocks report.

**Reverend the Hon. FRED NILE:** Were you absolutely clear about it?

**Mr MULLARD:** I am clear that if was asked under SO 52 for documents or papers I would be checking my emails.

**CHAIR:** One matter that concerned me in that Maddocks report was a suggestion that because of the possibility that emails requesting information with regards to a SO 52 would be picked up by the SO 52, that people were reluctant to send emails to each other on that subject. Do you hold that view?

**The Hon. MATTHEW MASON-COX:** At 4.3.

**Mr MULLARD:** I think the correct interpretation of that was there was a general view that they did not want to generate a whole lot of irrelevant emails. So people clearly sent emails but they were trying to be specific, or surgical, I suppose, rather than just create an endless exponential growth of emails. What that meant, I think, was cc'ing everything into emails that did not need to be cc'd into. It was not a policy or anything like that. I think it was a view that you kept emails to the essential communication.

**CHAIR:** Indeed, it may be that process of keeping it to the essential that may be the root cause of you not being told of the SO 52 and, therefore, you responding to it. I am putting to you that if there is a culture within your division and within the department in which you lie of avoiding emails so that they do not get captured by the Standing Order 52, this is in the context of a SO 52 having been made, that may very well have led to a considerable disservice to the people of New South Wales.

**Mr MULLARD:** I doubt very much whether it would stop an email coming to me. People would not say "We had better not email Brad". I do not believe that is the case. I cannot explain why I was not copied in. I do find that very odd.

**CHAIR:** Had you dealt with Mr Taylor before in freedom of information and the like?

**Mr MULLARD:** Yes.

**CHAIR:** Is it right to say that in terms of minerals and licensing issues you were, in essence, the go-to man?

**Mr MULLARD:** I would certainly be, I would have thought, a critical player. Having said that, if I was not around or available, it would normally go to other players. Normally it would come to me because we

do have a system in our office whereby if I am not around people like Trish Madden and others would actually pick up my emails and action them. There are about three people in my unit that actually monitors my emails.

**CHAIR:** Who are those three people?

**Mr MULLARD:** My personal assistant.

**CHAIR:** Trish Madden.

**Mr MULLARD:** No, Trish Madden was operations officer. At the time we had a research officer, I am not sure whether she was there at that time or not, and that was Victoria Lehman. I am not sure whether she was there at the relevant time. It might have been someone else. My personal assistant at the time would have been—

**CHAIR:** Was it Shirley Hibbs?

**Mr MULLARD:** Yes, Shirley Hibbs she may have been there at the time.

**CHAIR:** Would it be safe to say that in terms of Ms Hibbs that you would have expected her, in responding to freedom of information or an order to produce that she would have checked your inbox for you?

**Mr MULLARD:** Probably not her. She may have brought to attention. It is possible she could have done it but Trish Madden would have been more likely to have done.

**CHAIR:** Between the two of them?

**Mr MULLARD:** Between the two of them, that is right.

**CHAIR:** You would have been comfortable with them essentially going through your inbox?

**Mr MULLARD:** Only after they spoke to me and they told me what they did. They had access to my inbox so they could send emails and search. They can effectively do everything I could do with my mail. So I give them essentially access to it because if I do not things will be missed because I do spend a lot of time out of the office and I would get hundreds of emails a week.

**The Hon. JENNIFER GARDINER:** Would they be used to following up on things while you were out of the office and bringing them to your attention?

**Mr MULLARD:** Yes.

**The Hon. JENNIFER GARDINER:** Apart from the time frame issue and the fact that you were out of the office on the road you cannot find any other explanation as to why you were out of the loop on this matter?

**Mr MULLARD:** No.

**The Hon. JEREMY BUCKINGHAM:** Does Ms Madden still work for you?

**Mr MULLARD:** No.

**The Hon. JEREMY BUCKINGHAM:** When did she cease working in that department and for you?

**Mr MULLARD:** Recently, it might have been 2012. She now works for the Office of Coal Seam Gas.

**The Hon. JEREMY BUCKINGHAM:** I am glad. I probably created that bureaucracy. Did you have any discussion with her? Did she ever bring that email to your attention?

**Mr MULLARD:** No.

**The Hon. JEREMY BUCKINGHAM:** Did she miss it as well?

**CHAIR:** There is nothing for her to have necessarily missed at this stage. Is this the email of the 23rd?

**The Hon. JEREMY BUCKINGHAM:** Yes, 23 November so that was one that went to the inbox but she has not seen it either?

**Mr MULLARD:** I cannot talk for her. What I would say is that because I was cc'd into it—I get hundreds of emails—and unless it is something that was seen as an action-item that would not necessarily trigger a response.

**CHAIR:** You have handed the Committee a document which has been described as the email of 23 November 2009. Do you have a copy there?

**Mr MULLARD:** Yes.

**CHAIR:** It does not look like an email to me, but is something else.

**The Hon. JENNIFER GARDINER:** It does not have a subject line either.

**CHAIR:** To be perfectly honest it looks like some re-creation of something and I am not quite sure what.

**Mr MULLARD:** It is extract from the archive. What happens is that our emails are not held in the main email account but are actually transferred to the archive account. If you look it has "in archive".

**CHAIR:** Yes, I can see that. As Hon. Jennifer Gardiner has already pointed out there is no subject line. On the face of it there appears to be no message either.

**Mr MULLARD:** That is what I accessed effectively.

**CHAIR:** You do not know actually what was in the original message?

**Mr MULLARD:** No.

**CHAIR:** In terms of the annexures, there is a letter to Lee Sanderson, delivery by hand, and then essentially a claim for privilege two-page document, but what is not there is, for instance, the actual index or anything else. Do you know whether the original email of 23 November included the index?

**Mr MULLARD:** No, I do not. It could have.

**CHAIR:** Because you would agree with me that if you were sent that, simply a letter for the claim for privilege not only would not invite a response from you but it is also largely nonsensical in terms of it going to anyone?

**Mr MULLARD:** I would agree. The only thing I can suggest is, I do not know whether you have access to the relevant periods, but I can only give you what I can access, but our IT might be able to provide more information.

**CHAIR:** The Committee got a CD from Mr Paterson late on Friday afternoon. I had a look at some of it over the weekend just for light reading but I must admit I did not find that. We will have to look at it more closely.

Thank you for giving evidence today and I must say it has been helpful, if not determinative, of the issues if I can describe it that way. As previously indicated, the transcript of your evidence today will be confidential. However, after review the transcript the Committee may decide at a later date to make some or all of your evidence public. I indicate in that regard that the process will be the transcript will be prepared, the Secretariat will, no doubt, make some suggestions as to what should be redacted from it and bring it before the Committee. We will then resolve what we think is to be done with it and it will then be sent to you for your consideration and further comment. It will then come back to us and we will give whatever weight we think fit to your comments with regards to the transcript. We have with some witnesses adopted their views entirely. If

you can recollect something any evidence you have given today that you would particularly like the Secretariat in drawing up the initial redaction to be taken into account, you are most welcome to comment now?

**Mr MULLARD:** No, I do not recall anything.

**CHAIR:** Frankly, nor can I. There are occasion when we can think of material that, for instance, is of a personal nature which is best not disclosed. We are walking a fine line between ensuring that this process is transparent but at the same time trying to protect some people's interests.

**Mr MULLARD:** The only thing I would perhaps just say is that I can only speak about what happened to me. I cannot comment on other people's motivations or what they did or did not do. I do not think I said anything about other people.

**CHAIR:** You can safely say you have not defamed anyone today, so it should be fine.

**Mr MULLARD:** That is all because I really only can comment from my knowledge of it.

**(The witness withdrew)**

Evidence in camera by **PATRICIA MADDEN**, Operations Manager, Office of Coal Seam Gas, NSW Trade and Investment:

**CHAIR:** Ms Madden, the first thing you should do is relax, there is no reason for you to be concerned. Do not in any way worry that anyone is pointing a finger at you but we need to go through the process of asking some questions. It will not take long and you will leave with all your teeth so it should be fine. If at any stage you have any questions or any concerns just let us know, but it is not like being in a courtroom.

Have you been provided with a copy of the Maddocks report before today and have had the opportunity to read it?

**Ms MADDEN:** Yes, I have.

**CHAIR:** This morning the Committee resolved to publish the Maddocks report, so it has gone on the website. Despite a request the Committee received that the annexures—that is, the section identifying people—be suppressed, the Committee has decided because of the nature of the inquiry and the terms of reference to put that on the website as well. So all of the Maddocks report will be on the web for the public to see.

I welcome you to this hearing of the Legislative Council Privileges Committee inquiring into the 2009 Mount Penny return to order. My name is Trevor Khan and I am the Chair of the Committee. Before we commence this hearing, I would like to address some procedural matters. The Committee is holding this session of the hearing in camera. This means that at no time will any media or members of the public be present in the room. The transcript of your evidence today will also be confidential. However, after reviewing the transcript, the Committee may decide at a later date to make some or all of your evidence public. Normally the Committee would do so in consultation with you. The Committee will forward you a copy of the transcript with proposed redactions of material and invite you to comment on how comfortable you are with the remaining evidence being there. It would then come back to the Committee and we would decide whether or not to take up your further redactions, if that is what you request. That is the sort of process we adopt.

Witnesses appearing before parliamentary committees are protected by parliamentary privilege. This means that what is said cannot be used against them later in court proceedings. Our terms of reference require the Committee to inquire into and report on the failure to provide documents in the return to order tabled in Legislative Council on 26 November 2009 concerning the Mount Penny mining exploration licence and tender process. This includes documents identified in the document comparison matrix provided by the Commissioner for the Independent Commission Against Corruption and tabled in the Legislative Council on 14 March 2013. At the commencement of your evidence, I will invite you to make a short opening statement if you wish. If you have any copies of the opening statement that you can provide to members of the Committee then that would be appreciated although it is not compulsory. Members of the Committee will then ask you questions. If you have a mobile phone, I ask that you turn it off.

The Committee has resolved that any answers to questions that you may take on notice—that is where you are asked a question that you do not know the answer to now but you may have the answer available somewhere else then you can take it on notice—be provided within 21 days. Would you like to make an opening statement?

**Ms MADDEN:** No.

**The Hon. JEREMY BUCKINGHAM:** Ms Madden, when did you first become aware that the Legislative Council had supported a call for papers, an SO 52, in regards to the Mount Penny exploration licence area?

**Ms MADDEN:** I do not recall. Certainly it was not at the time because I was not involved at all in doing a response. I think it was only when I heard that there was going to be an inquiry into it this year.

**The Hon. JEREMY BUCKINGHAM:** It was only at that time?

**Ms MADDEN:** I believe so. I do not recall it being any time previous to that.

**CHAIR:** As at November 2009, what did you do?



**Ms MADDEN:** I was manager of operations to Brad Mullard. Basically my job was to run the office. There was me and a program assistant.

**CHAIR:** Who was that?

**Ms MADDEN:** I think at that stage it was Shirley Hibbs. We used to check his emails when he was out, because typically Brad would be on the road probably three days of the week and we would have to keep the office ticking over while he was away.

**The Hon. JEREMY BUCKINGHAM:** What would you normally do in the office in responding to an SO 52? What were the normal procedures? How would you find out about it and what would happen?

**Reverend the Hon. FRED NILE:** Do you know what an SO 52 is?

**Ms MADDEN:** Yes, I do know what an SO 52 is. I have responded to Standing Order 52 requests subsequent to this one. I know I did one on Shenhua Watermark. Typically I would talk to Ron Taylor.

**CHAIR:** And you would have done one on Doyles Creek?

**Ms MADDEN:** Yes. If I got one then I would typically talk to Ron Taylor about the scope of what was required. If I had some doubt about what exactly was being sought—for instance, start dates, finish dates and what sort of documents would fall into the ambit of it—then I would talk to Ron and do the full search and coordinate the input if it was wider than my office.

**The Hon. JEREMY BUCKINGHAM:** Do you recall ever seeing an email sent from Ron Taylor cc'd to Brad Mullard on 23 November 2009 regarding a draft response to the SO 52?

**Ms MADDEN:** No, I do not.

**The Hon. JEREMY BUCKINGHAM:** Have you been told that that email exists?

**Ms MADDEN:** I saw it in the report when I was sent the report last week.

**The Hon. JEREMY BUCKINGHAM:** So that was the first time you saw that?

**Ms MADDEN:** Yes.

**The Hon. JEREMY BUCKINGHAM:** Did that surprise you?

**Ms MADDEN:** Are you asking if it surprised me that there was an email?

**The Hon. JEREMY BUCKINGHAM:** Yes, did it surprise you that there was an email?

**Ms MADDEN:** No, not necessarily. Brad typically gets 50 to 70 emails a day. If it was cc'd—and I do not even remember seeing it—and if I had seen it then typically I would just note that it was there for information. Probably I would not have done anything with it because at that stage we had a new Minister and we were fully taken up with that.

**The Hon. JEREMY BUCKINGHAM:** So you might have seen it at the time?

**Ms MADDEN:** I may have seen it because I was in and out of Brad's inbox. If I saw it and did anything with it then I would typically have put a note on it within the inbox saying what I had done with it—for example, "discussed it with Brad", "sent a copy to someone else" or something like that. At this stage I have no idea.

**The Hon. JEREMY BUCKINGHAM:** So you may have put a note on that email to flag it for further action?

**Ms MADDEN:** Yes, if I had seen it; but I do not recall seeing it at all.

**The Hon. JEREMY BUCKINGHAM:** What is your view of the fact that there was no request from Mr Taylor to Mr Mullard for documentation and that Mr Mullard was not informed of the SO 52 and the requirement to respond? Is that unusual? What do you make of that?

**Ms MADDEN:** I would say it was unusual that Brad was not consulted. Typically Ron would have discussed freedom of information matters or whatever. He would normally at least keep us advised if he was sending it to someone under Brad's control. From my perspective, I always thought the EOI process commenced when they put out the tender documents or the EOI documents. So typically I would have thought that was something that William Hughes would handle. Like I said, if I had been aware of it then I would have had a discussion with Ron Taylor just to see if there was anything more.

**CHAIR:** There was a call for papers in June 2010, so after this one but certainly before any controversy over it arose, relating to NuCoal. Were you involved in that one? I think you could essentially say that that may well have been the Doyles Creek one?

**Ms MADDEN:** Was that one about papers relating to John Maitland?

**CHAIR:** I think you could safely say that that was the case.

**Ms MADDEN:** Yes, I was involved in that one. I did all of the searches and we provided emails.

**CHAIR:** Who approached you or Brad about that?

**Ms MADDEN:** It would have been Ron Taylor. I typically dealt with Ron or people from his office directly.

**CHAIR:** You referred to the Shenhua Watermark one. That was in May 2011, again before the controversy over this arose. How did you become aware of that one?

**Ms MADDEN:** It would have been in the same way—through Ron or someone from his office. Typically they would call me and give me a heads up, and then I would get an email and start work from there.

**CHAIR:** What do you mean when you say you would start the work from there?

**Ms MADDEN:** Doing all the searches, having a look at what has been requested and if I need to consult with anybody else in other parts of the mineral resources area to make sure I get a full list of documents to go back.

**CHAIR:** Let us be specific here: what searches do you do?

**Ms MADDEN:** I would search TRIM, emails and files—as broadly as possible. For NuCoal I had to search under the terms NuCoal, Doyles Creek, John Maitland and every other term I could think of that it might have been filed under.

**CHAIR:** So it is an intuitive process that you have to go through?

**Ms MADDEN:** It is. Doyles Creek is a very good example. When it started it was called the training mine. Then it became Doyles Creek, then it became NuCoal, and then it became EL 7270 or something—and there was an Exploration Licence Application [ELA] number in there as well. So in a way you have to remember the history to be able to do a full satisfactory search.

**CHAIR:** And you would do that on both TRIM and email?

**Ms MADDEN:** Yes, and anywhere else that I could think of.

**CHAIR:** Where else would you think to look?

**Ms MADDEN:** Hardcopy files. Sometimes you would go through hardcopy files because sometimes people send stuff in hardcopy that may or may not get onto TRIM depending on what it is—for instance, if they are large maps then they may be too large to scan. So you would do as large a search as possible.

**Reverend the Hon. FRED NILE:** You are obviously very thorough. Have you any explanation for why the emails were not included in the SO 52?

**Ms MADDEN:** They did not ask us.

**Reverend the Hon. FRED NILE:** So if you had had a request then you would have automatically included them?

**Ms MADDEN:** Absolutely.

**The Hon. DAVID CLARKE:** But do you not automatically include the emails and anything relating to the case?

**Ms MADDEN:** I do, but for this one they never asked Brad's office.

**The Hon. JENNIFER GARDINER:** Have you come up with any theory as to why they did not ask?

**Ms MADDEN:** I am surprised. It is very unusual. I was shocked, quite frankly, because I did not know anything about it until I got the Maddocks report last week. I read it and I thought, "Why did Brad not get sent an email early on." I think we had been involved in drafting the opposition speech against the granting of the order, and then nothing else. So it is very unusual. Having said that, I believe there was a very short timeframe involved and I have had a look at the week involved, from 17 to 20 November. That was a week when Brad was essentially out of the office and we got a new Minister. Brad was halfway up to Gunnedah and got called back to Sydney. I was doing House folder notes and briefings for the new Minister. We were absolutely flat out that week. Perhaps somebody in head office decided, "Brad is not available. We will just do this without consulting him." They may have tried to call him while he was on the way to Gunnedah, an area which is notorious for mobile phone blackspots.

**CHAIR:** Yes, we know that.

**Ms MADDEN:** I have had the Minister's office ring me before and not understand that they cannot get to him. So that is all I can think of. It is very unusual.

**The Hon. DAVID CLARKE:** If you were to be asked, who would ask you?

**Ms MADDEN:** Ron Taylor, usually.

**The Hon. DAVID CLARKE:** When you say usually, does that mean all the time?

**Ms MADDEN:** Sometimes if Ron was away I used to get phone calls from other members of his staff, I do not remember their names.

**The Hon. DAVID CLARKE:** But it would be from his office?

**Ms MADDEN:** Yes, directly to me.

**The Hon. JEREMY BUCKINGHAM:** I think you said Brad's office helped draft the Opposition's speech to the SO 52?

**Ms MADDEN:** I think we did.

**The Hon. JEREMY BUCKINGHAM:** And after that there was no other discussion and you had no idea that there was any issue with the SO 52 until you read the Maddocks report?

**Ms MADDEN:** That is right—well, until I heard the parliamentary inquiry into it.

**The Hon. JEREMY BUCKINGHAM:** So you were aware of that as well?

**Ms MADDEN:** It was in the newspapers.

**The Hon. JEREMY BUCKINGHAM:** Yes, that is right, but previously you said you did not hear of it until—

**Ms MADDEN:** Until the inquiry was announced.

**The Hon. JEREMY BUCKINGHAM:** So it was not when you received the Maddocks report?

**Ms MADDEN:** No, I was aware that this inquiry was going on because I was invited to make a submission. I looked into it and I thought, "I don't remember this at all" and I went looking to see if I had any emails or anything on it, and I hadn't.

**The Hon. JEREMY BUCKINGHAM:** Did you discuss it with Mr Mullard?

**Ms MADDEN:** At the time, because I told him that I had been invited to make a submission, yes, and I said, "I don't remember this one at all."

**The Hon. MATTHEW MASON-COX:** What did he say to you?

**Ms MADDEN:** I think he did not either, as far as I recall.

**The Hon. JEREMY BUCKINGHAM:** You do not remember the SO 52 at all?

**Ms MADDEN:** No.

**Reverend the Hon. FRED NILE:** Is that the only time you have been left out of the loop that you know of? It sounds like all the others you got, except this one for some reason?

**Ms MADDEN:** I have been left out of the loop and Brad sometimes gets left out of the loop. It depends what is going on, how busy people are, where he is. Somebody sometimes will make a decision at a higher level to just move things on and they will go directly to Will Hughes and have Will do work for them rather than go through Brad, so it does happen.

**The Hon. MATTHEW MASON-COX:** Why does that happen?

**Ms MADDEN:** Expediency.

**Reverend the Hon. FRED NILE:** But not SO 52s?

**Ms MADDEN:** Not SO 52s, no.

**Reverend the Hon. FRED NILE:** That is unusual, that is exceptional?

**Ms MADDEN:** Yes.

**CHAIR:** And FOIs, however called?

**Ms MADDEN:** No, Ron will typically go to the area concerned for the matter because they tend to be more a specific incident. They are much more incident specific.

**CHAIR:** Defined?

**Ms MADDEN:** Yes. But if he is in doubt he would ring me, yes, and so we would have a discussion and I would say, "That would be more appropriate—you can send that straight to Environment or Titles". We make those calls as they come in.

**CHAIR:** So if it was put to Mr Taylor that he had rung you over this one—just as entirely hypothetical—and you said, "No, give it to William Hughes. Don't give it to Brad", that would be wrong? I am not suggesting anyone suggested that.

**Ms MADDEN:** I would probably send it to Will in the first instance but I would also talk to Ron about the content and what would be required in terms of doing a search in Brad's office because the actual putting together of the documents and everything else was done in Will's area so the majority of that work was Will's area so he would take the lead.

**CHAIR:** Were you aware of what happened in the early stages of this, the May, June 2008, toing and froing over the creation of this?

**Ms MADDEN:** Yes, I was a little on the peripheral. I was involved in the very early stages in typing some of the emails and submissions to the Minister's office. To be frank, I did not necessarily connect that with the expression of interest [EOI] process. To me the EOI process was when the brief went up to "Let's have expressions of interest", but, yes, I was aware of those earlier toing and froing but less involved in that. Brad was dealing more with that directly with Will Hughes and Julie Maloney. It was very much on my peripheral. I was dealing with other matters.

**CHAIR:** But you were alive to the existence of documents per se?

**Ms MADDEN:** Yes.

**CHAIR:** Even if you had applied your mind to it, you may have had a view as to whether they fell in or outside?

**Ms MADDEN:** Yes. And I would have discussed that. That is typically what I do. If in doubt I have a discussion with Ron to say, "Would this fall in or would it fall out or do we"—what is the term to seek some disclaimer or something about releasing those. You put them up but you say we are seeking—

**The Hon. MATTHEW MASON-COX:** Privilege.

**Ms MADDEN:** Yes, privilege. Typically if in doubt I always have a discussion with Ron.

**CHAIR:** But you are clear that that did not occur on this occasion?

**Ms MADDEN:** I am not clear but I do not recall it; I guess that is the best I can say. It is a long time ago.

**CHAIR:** That is a fair answer.

**The Hon. MATTHEW MASON-COX:** Can I ask you in relation to Ron Taylor. How did you see his role in relation to the Standing Order 52s?

**Ms MADDEN:** Just as a coordinator. We provide the documents to him. When I was dealing with them I would typically fill in the table and make sure I gave him all of the documents and then he would go through what I had given him. It was up to us to make sure what we gave him was everything.

**The Hon. MATTHEW MASON-COX:** Then he would pass it on to the director general to sign off to send it on to the Premier and Cabinet?

**Ms MADDEN:** Yes.

**CHAIR:** I am sorry to cut across, but in terms of the Maddocks report, at least in your mind any suggestion that there is some confusion as to emails being included in a call for papers is nonsense, would that be fair?

**Ms MADDEN:** Yes. I have included emails in other ones I have completed.

**CHAIR:** And in terms of confusion as to roles, that is your responsibility in terms of accumulating the documents and handing them on to Mr Taylor—

**Ms MADDEN:** Exactly.

**CHAIR:** —the Maddocks report suggestion that there has been some, if one could describe it, stuff-up because of a confusion as to roles, there is no confusion in your mind as to what your responsibilities were on matters such as this?

**Ms MADDEN:** No. I took Ron's advice as the person who sees more of these documents than I do but it was my role to make sure that what I gave him was as complete as it possibly could be so that his job was then just to check and make sure I had filled in all the forms correctly.

**CHAIR:** Indeed, and perhaps to cull?

**Ms MADDEN:** Yes. And if I had sought privilege on some that were not appropriate or had not sought privilege on others that he thought were appropriate, that is what he would do from his depth of experience in doing these matters.

**CHAIR:** So in a sense, in terms of the Maddocks report, the one area where you do agree is the potential for this to have occurred because of a lack of time?

**Ms MADDEN:** Yes.

**CHAIR:** I apologise to the Hon. Matthew Mason-Cox.

**The Hon. MATTHEW MASON-COX:** That is okay. You have asked a few of the question I was going to ask; that is the Chairman's prerogative. I wanted to ask also in relation to the general understanding of the role of Mr Taylor, was there any confusion about what his role was in the department when a Standing Order 52 came into the department for action?

**Ms MADDEN:** Not in my mind.

**The Hon. MATTHEW MASON-COX:** So he was the go-to man; he was the man who was going to make it happen; he would liaise with the various areas to bring the information together to develop a departmental response?

**Ms MADDEN:** Yes.

**The Hon. MATTHEW MASON-COX:** That is pretty much it?

**Ms MADDEN:** Yes.

**The Hon. MATTHEW MASON-COX:** Are you aware how long he had been doing that job?

**Ms MADDEN:** No, I am not but because I was new at doing things like freedom of information [FOIs] and Standing Order 52s I certainly deferred to him for advice.

**The Hon. MATTHEW MASON-COX:** How long have you been with the department?

**Ms MADDEN:** I started in 2005.

**The Hon. MATTHEW MASON-COX:** How would you characterise his capacity to do his job?

**Ms MADDEN:** I found him terrific to work with. He seems to be very knowledgeable, very approachable and professional in every step of the way.

**The Hon. MATTHEW MASON-COX:** He is a very competent departmental officer?

**Ms MADDEN:** Absolutely.

**The Hon. MATTHEW MASON-COX:** He prides himself on doing his job well?

**Ms MADDEN:** Absolutely.

**The Hon. DAVID CLARKE:** But you are quite sure you were never asked by him to assist in this particular job?

**Ms MADDEN:** I cannot be quite sure. It is too long ago.

**The Hon. DAVID CLARKE:** As far as you can recall?

**Ms MADDEN:** I believe that if I had been asked to do a search of documents I would have done so. That is the best I can do. The fact that I have not done a search of documents to me indicates that I have not been asked.

**CHAIR:** And the evidence will show in due course that in fact you did not make any inquiry; did not do a TRIM search, for instance?

**Ms MADDEN:** I do not know, do I?

**CHAIR:** I will tell you; it absolutely does show that. You did not do a TRIM search.

**Ms MADDEN:** Okay.

**The Hon. MATTHEW MASON-COX:** Were you aware of any procedures in relation to responding to a Standing Order 52 at that time?

**Ms MADDEN:** No.

**The Hon. MATTHEW MASON-COX:** Are you aware of procedures now in relation to that standing order?

**Ms MADDEN:** I know new procedures have come out, yes. I am in a different role now.

**The Hon. JEREMY BUCKINGHAM:** Just to be clear, you would search, accumulate the documents and present them to Mr Taylor?

**Ms MADDEN:** Yes.

**The Hon. JEREMY BUCKINGHAM:** And it was his responsibility to cull them, in effect, to say, "This is in, this is out, this should be a privileged document" or did you do that collaboratively; did you do that together?

**Ms MADDEN:** Typically we would do it together. I would typically provide everything.

**The Hon. JEREMY BUCKINGHAM:** You would say, "Do I need this map, do I need this, do I need that?" and he would say, "In, out"?

**Ms MADDEN:** Yes.

**The Hon. JEREMY BUCKINGHAM:** Was it his responsibility? Would he sign off on that? Was there a procedure for saying, "These are the things that the department believes are within the scope of the call for papers?"

**Ms MADDEN:** There is a table that you fill in. I am not sure where it went after it went to Ron.

**The Hon. JEREMY BUCKINGHAM:** But that table does not include "definitely in" and then over here another section for maybes or not at all. There was no process for saying, "These things were considered but were ruled out"?

**Ms MADDEN:** I am not sure what you are getting at. We fill in the tables of everything and what I would do is typically I would phone Ron and say, "Look, is this required? Does this fit the scope?" And he would say, yes or no, and we would discuss it because I would know the document and he would know the process and procedures. I would defer—

**The Hon. JEREMY BUCKINGHAM:** Sure, but if he says no to a document, that is not recorded anywhere, it is just not included and it basically never sees the light of day?

**Ms MADDEN:** I do not think he has ever said no to a document. All we have ever done is claim privilege on something.

**CHAIR:** That is a very good answer.

**Ms MADDEN:** We have never excluded a document as such.

**The Hon. JEREMY BUCKINGHAM:** It is important to get an understanding of whether or not there is a culling process.

**Ms MADDEN:** Where we do have a discussion typically is if it comes in and I have some doubts about what is actually required because you have to interpret some of these things. I will say, "Ron, do you think it is this or is it that?" or "If I provide everything to do with X, Y, Z, is that right?" We would have that sort of thing and we try to interpret because he would also have a bit more understanding of what Parliament is actually seeking. If I only see the paperwork I might have a much narrower interpretation of what is required than Ron.

**The Hon. JEREMY BUCKINGHAM:** And it may be the case that you may have talked to Mr Taylor and referred him to Mr Hughes?

**Ms MADDEN:** It may have been the case, yes.

**CHAIR:** Just one final thing so I cut off this possibility: Mr Duffy came into the department in July 2009. Are you able to say as to whether there was any change in approach as to who Mr Taylor communicated with after Mr Duffy came in? I will lay out what I am thinking because clearly one of the things that is very concerning is that the place where the work is done, that is the Maitland office, is not the subject of the approach with regards to a mining exploration licence where the work was done in that office. I am wondering whether the introduction of Mr Duffy made some difference to how the department and Mr Taylor approached issues?

**Ms MADDEN:** It was not just about Mark Duffy. When I started with the department we had a deputy director general that reported directly to the then head of Department of Primary Industries [DPI] and that was Alan Coutts. I started working for Brad at a time where a senior NCS officer left from Minerals, so his job was rolled into Brad's job. Then when Alan Coutts left, Brad's two previous jobs were rolled into Brad's new job. Essentially he was doing three senior jobs and then he was reporting through Mark Duffy when the Water-Energy portfolio moved in. Mark was new and coming to grips with the job so, yes, there was a change so that instead of Brad going directly to the director general, he then went through a deputy director general to go to the director general or to go to the Minister. So there were confusions where sometimes the Minister's office would come directly to Brad, sometimes they would go through Mark. There are always confusions and especially when Mark Duffy was not at that stage as knowledgeable about the minerals side of the House. He was still in a learning process.

**CHAIR:** To be fair, he was a novice at it?

**Ms MADDEN:** Yes. He was thrown in the deep end. He had a very steep learning curve and he became quite knowledgeable quite quickly, but it still was difficult for him to come to grips with a lot of the procedures and the way the minerals side of the House worked.

**CHAIR:** Was it the case that the Minister's office, as a preference, continued to go directly to Brad Mullard?

**Ms MADDEN:** Yes.



**CHAIR:** Because that is what the Minister's office found to be the easiest way to cut out the middle man, so to speak, and deal with the one who knows.

**Ms MADDEN:** Sometimes the Minister's office went down to the clerks.

**CHAIR:** I think we saw that almost in terms of the Mount Penny issue.

**Ms MADDEN:** We had difficulties, so we tried to make it clear to the Minister's office that they should—I was not even at a director level. I am a relatively low-level clerk compared to most others in the Maitland office. It was simply a function of my job that I ended up dealing with the Minister's office on an almost daily basis simply because it was the best way to ensure that the message going out from the department was consistent. You typically have problems where in the quest for information they will phone whoever will answer the phone.

**The Hon. JENNIFER GARDINER:** Why did they go down to the lower clerks?

**Ms MADDEN:** Desperate for an answer.

**The Hon. JENNIFER GARDINER:** You mean because of the time frame thing, they wanted answers now?

**Ms MADDEN:** Yes. I once had a time where four of us were running around doing the same brief. It was only that I went round and talked to the desk officers that I discovered that each of them had been phoned separately by the Minister's office. We instituted a policy that you do not take calls from the Minister's office; they had to come through Brad Mullard's office or through a director level person.

**The Hon. JENNIFER GARDINER:** Did they adhere to that?

**Ms MADDEN:** Most of the time.

**CHAIR:** They did not in Mount Penny, did they?

**Ms MADDEN:** No, but the staff became savvy enough. We put the word out that if you get the phone call you come round and tell us. That way we could ensure that the information going back was consistent, that Brad Mullard was aware of it and that it met the departmental guidelines.

**CHAIR:** Is that why Brad Mullard is cc'd into so many of the missing emails?

**Ms MADDEN:** Yes. That would be the case.

**CHAIR:** That was an attempt by departmental officers—

**Ms MADDEN:** To ensure he is kept informed.

**The Hon. JEREMY BUCKINGHAM:** Would you characterise that as interference by the Minister's office?

**Ms MADDEN:** No, not necessarily interference. It is just this desperation to get an answer as quickly as possible.

**The Hon. JEREMY BUCKINGHAM:** There was a direct line, as it were, between Maitland and Macca's office or the staff. There was a lot of dialogue and communication going on.

**Ms MADDEN:** No, it was more that Macdonald's office would call Maitland.

**The Hon. JEREMY BUCKINGHAM:** Yes, I appreciate that. Was the Maitland office aware of the building controversy around the Mount Penny tender process? Were you aware in the office? Were you preparing briefs around the questions that were being asked in Parliament, responses to answers and those types of things?

**Ms MADDEN:** Yes, but I was tracking mostly the media. If I saw something in the media that I thought was potential for briefs I would keep that in the back of my mind. We were doing briefs but, from our point of view, who owns property is not a question that comes in when granting an exploration licence.

**CHAIR:** It should not.

**Ms MADDEN:** It just does not. From my point of view, until I saw everything that came out of the Independent Commission Against Corruption [ICAC] I did not know any of that backstory. None of us did. We were just simply doing our job to the best of our ability.

**CHAIR:** I am not suggesting anyone at your end was trying to do Eddie a favour, but when that story came out in the *Australian Financial Review*, which I think you have referred to, did it not even prick your interest that what you had was not only an exploration licence being granted over land that was owned by a member of Parliament but an exploration licence that was being granted over land of a former mining Minister? Did you not think that there was something crook in Tallarook at that point?

**Ms MADDEN:** From my point of view, I was horrified. But I knew that we had done everything correctly and I could not understand how it had happened.

**CHAIR:** I am not accusing you or anyone in the Maitland office of having done anything wrong, but in May 2008 and June 2008 there are requests for briefings on Mount Penny by the Minister. I suspect the people in the Maitland office were saying, "What's this Mount Penny? We have never heard the term before." There is concern that it is being issued over an area that has not been properly explored and assessed, and all of that is happening in May and June. You are agreeing with me on that, are you not?

**Ms MADDEN:** Yes, that all happened.

**CHAIR:** Then in the following year a story appears dealing with that very same mining exploration licence area and it involves land owned by the former mining Minister in New South Wales. Does that not accumulate to be not only a matter of concern but also start getting into hair-raising territory?

**Ms MADDEN:** To be perfectly frank, I was more worried about Doyles Creek.

**CHAIR:** That might be one explanation.

**Ms MADDEN:** Because, like I said, I was on the peripheral of Mount Penny. I was not intimately involved in the expression of interest [EOI] process or anything else. I saw the initial toing and froing about areas for tender where the Minister got an idea of let us release some small areas, and we all sort of went, "Why? We've got large areas." That was as far as that concern went.

**CHAIR:** True, but Mount Penny was not a small area, was it? It was added in.

**Ms MADDEN:** I did not know. I am not a geologist; I am a businessperson. Brad Mullard would be the person to—and I think Brad Mullard was concerned. But, like I said, I was not across Mount Penny. That was really why I did not get called to ICAC. I was very much on the peripheral of the whole Mount Penny issue, other than the typing of the briefs and so on.

**The Hon. JEREMY BUCKINGHAM:** You have said that you were horrified when those stories were emerging. Clearly, there was a long process that involved the office and you had some initial involvement and then less later on. There were briefings prepared and a speech was prepared by the office opposing the SO 52. Are you asserting that after the brief was prepared no-one in the office ever asked what happened to that SO 52 and if it got up? There was no other discussion about it whatsoever?

**Ms MADDEN:** I do not recall there being any other discussion. Like I said, that week I was flat out. The last thing I would have been doing was worrying about an SO 52 when I had a new Minister, I had 30 House folder notes to do in less than 24 hours and speeches for a Minister to open a new thing at university. He was also supposed to be visiting Maitland on the Friday morning. I set up a visit program. That got cancelled at 4.00 p.m. on Thursday afternoon. I am sorry, but the SO 52 was right off my agenda at that point. I had not been asked for it. I had no time to chase anything up other than what was on my desk at that moment.

**CHAIR:** Unless anyone is going to violently object I think that is a perfect spot to end on. I have to go through some formalities, but in an informal sense I thank you very much for the frankness of your evidence. As with a lot of other evidence we have received, the way people have approached giving their evidence today has been refreshing.

Thank you for giving your evidence today. As previously indicated, the transcript of your evidence today will be confidential; however, after reviewing the transcript the Committee may decide at a later date to make some or all of your evidence public. I can tell you from my perspective, subject to some vehement opposition from you, I suspect that almost all if not all of your evidence will be made public. To be frank, it speaks well of you and your competence and your approach to doing your job generally. I certainly do not think it will do anyone harm, including yourself. It is up to all the Committee members to come to this decision, but my view is that your evidence go up and go up quickly because it does speak well of you. With the Maddocks report being published, it is better that the evidence that helps explain some of the Maddocks material be out there sooner rather than later.

If there is any evidence that you have given today that you can think of that you would prefer not to publish, I invite you to say so now. Otherwise, as I indicated to you earlier, the process will be that the transcript will come to us I suspect sometime this week. We will hold a meeting either later this week or next Tuesday. We will look at the transcript and then the Secretariat will be in touch with you. They will provide you with a copy of the transcript with any redactions that we think are appropriate and invite you to make comment in reasonably short order so that it goes from there. That is the process, but if you can think of anything now that you really would hate to see published you can I say so if you like

**Ms MADDEN:** No, I do not think so. I will have a look at the transcript

**CHAIR:** I do not think you took any questions on notice, so you will not have problems there. I am most appreciative that you have come along and most appreciative for the evidence you have given.

**(The witness withdrew)**

**(Conclusion of evidence in camera)**

**The Committee adjourned at 3.15 p.m.**

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**IN-CAMERA TRANSCRIPT RESOLVED TO BE PUBLISHED BY THE  
COMMITTEE ON 31 OCTOBER 2013.**

## **PRIVILEGES COMMITTEE**

### **INQUIRY INTO THE 2009 MOUNT PENNY RETURN TO ORDER**

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**At Sydney on Monday 26 August 2013**

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**The Committee met in camera at 3.15 p.m.**

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#### **PRESENT**

The Hon. T. J. Khan (Chair)

The Hon. D. Clarke

The Hon. G. Donnelly

The Hon. J. A. Gardiner

The Hon. M. R. Mason-Cox

Reverend the Hon. F. Nile

The Hon. J. Buckingham

Evidence in camera by **RONALD DALLAS TAYLOR**, Manager Governance and Information Requests, NSW Trade and Investment, sworn and examined:

**CHAIR:** Mr Taylor, I think you heard some of the goings on this morning so you will have some idea as to where we are going and where we are not. Before I go through the formal material, from the time when you were here earlier today you are aware that we have been referring to the Maddocks report. I am hopeful that you have been provided with a copy of the Maddocks report and had an opportunity to read it.

**Mr TAYLOR:** I have.

**CHAIR:** Welcome to this hearing of the Privileges Committee inquiry into the 2009 Mount Penny return to order. Before we commence the hearing I will address some procedural matters. The Committee is holding this session of the hearing in camera, which means that at no time will any media or members of the public be in the room. The transcript of your evidence today will also be confidential; however, after reviewing the transcript the Committee may decide at a later date to make some or all of your evidence public.

Normally, the Committee would do so after consultation with you and, indeed, that will be the process that is adopted. In due course you will be sent a copy of the transcript with proposed redactions, if any, and you will receive an invitation to comment on whether there should be further redactions or the like. Once we have received your comments we will make a decision as to the way forward. We generally attempt to be accommodating in terms of the redactions, but nevertheless you might eventually hit bone and find that we are going to go ahead notwithstanding your view.

Witnesses who appear before parliamentary committees are protected by parliamentary privilege. This means that what is said cannot be used against you later in court proceedings. Our terms of reference require the Committee to inquire into and report on the failure to provide documents in the return to order tabled in the Legislative Council on 26 November 2009 concerning the Mount Penny mining exploration licence and tender process. This includes documents identified in the document comparison matrix provided by the Commissioner of the Independent Commission Against Corruption and tabled in the Legislative Council on 14 March 2013. It feels like yesterday but time flies.

For your information I indicate that at a deliberative meeting held prior to the commencement of this hearing today the Committee resolved to make public the report by Maddocks lawyers provided by New South Wales Industry and Investment and, as I have said, we have described that as the "Maddocks Report". The Committee also resolved to publish the annexures. As you have seen there is annexure A and annexure B. Annexure A includes a range of witnesses including your own name. Please be alive to the fact that that has been published and lest you are not aware I have already seen one report on eClips indicating that there has been a reporting of the Maddocks report during the day and I suspect there will be more by tomorrow.

**Mr TAYLOR:** Just to clarify, that report has already been published?

**CHAIR:** Yes. It went up on the web by mid-to-late morning. The reason that that was done was not out of malice, but it was impossible to ask witnesses questions with regards to the contents of the Maddocks report without publishing the Maddocks report. It is impossible to question someone without identifying what we are asking the questions about. That was the reason behind the publication of it. I need to indicate that if you have a mobile phone could you turn it off.

**Mr TAYLOR:** I have turned it off.

**CHAIR:** The Committee has resolved that any answers to questions taken on notice during the hearing must be provided within 21-days. There have not been a lot of questions that witnesses have had to take on notice, but if there is and if there is a matter you are not certain of but you may have the information somewhere else please feel free to indicate that you would prefer to take it on notice rather than having a guess and finding out later it is wrong. This is not 20 questions, so do not worry about it from that point of view. Would you like to make an opening statement?

**Mr TAYLOR:** I did not intend to but after hearing my director general speak this morning I would like to put something in context if I could. I was going to prepare an opening statement but I got caught up finding out further information. One of the comments Mr Paterson made was that this matter was the second Standing

Order 52 matter that I have been involved with. That was information I believed to be correct at the time I put that forward. Bearing in mind that the interest I had in the policy development side of it, after the question this morning I went back to look through some of my records and I found a draft policy I did in 2006 which seemed a bit querulous to me. I then went back and found I did have involvement with Standing Order 52 matters from 2006. When I was initially looking at being interviewed by Maddocks I made a cursory examination of my bits and pieces. I went back to 2009, 2008, nothing in 2007, so I drew the conclusion that must be the first involvement but that was not the case.

**CHAIR:** Can you remember which one it was in 2006 you were involved in?

**Mr TAYLOR:** This is probably one of the ones that made me query because I could not see it on the list that I originally pulled up. There were Asian elephants at Taronga zoo in September 2006; there was Boral timber in October 2006; Hunter development in October 2006; power coal cable snap in November 2006; and the Gretley mine disaster in November 2006. It went quiet in 2007-08. I want to say that up-front. I think it is better to fess up rather than be caught out later on. I do not think much will turn on it.

**CHAIR:** I think the Boral timbers call for papers was a matter that was hotly contested in the House because there was a significant issue that arose over commercial-in-confidence material, was there not?

**Mr TAYLOR:** Possibly, yes. It was a while ago.

**CHAIR:** How long have you been in the role that you are currently in?

**Mr TAYLOR:** In terms of responding to Standing Order 52 or GIPAs [Government Information (Public Access) Act 2009]?

**CHAIR:** GIPAs and SO 52s and the like?

**Mr TAYLOR:** My background is in human resources and industrial relations. I moved from there to being the officer-in-charge of the Port Stephens Fisheries Institute when it was still part of Fisheries. When we merged with Agriculture, Minerals and Forests to form the DPI [Department of Primary Industries] Agriculture had 3,000 staff and Fisheries had 300 so they were putting their own managers in those various locations. I was given the opportunity to go to Orange in 2005 or do something else. The only option available at the time was to go to Cronulla and look after FOI [freedom of information] matters. That is how I came into that role. There really was not a choice; it was the only option available at the time. From 2005 I took on the role. It was called corporate projects because it was basically anything that nobody else wanted to do.

**The Hon. JEREMY BUCKINGHAM:** Rather than go to Orange—you made a big mistake.

**Mr TAYLOR:** It started off looking after freedom of information, and privacy is a part of that. I then subsumed into public interest disclosures and complaints and recently, certainly since those matters took a life of their own, responding to ICAC [Independent Commission Against Corruption] and ombudsman inquiries.

**Reverend the Hon. FRED NILE:** You have confirmed you have now participated in five SO 52s?

**Mr TAYLOR:** They are the ones from 2006.

**Reverend the Hon. FRED NILE:** Three or four then—so it is now five or six?

**Mr TAYLOR:** The other ones were the carbon pollution reduction scheme, Tillegra dam, marine parks, coal seam gas, Illawarra Advantage Fund and a few others.

**Reverend the Hon. FRED NILE:** Would you be surprised to know that since 1999 there has been nearly 300 SO 52s?

**Mr TAYLOR:** Across the public sector, no.

**Reverend the Hon. FRED NILE:** Do you currently have sufficient guidance from the Department of Premier and Cabinet on the extent of documents required to be included in a return and how they are to be

provided? Was this true in 2009? Has the information or guidelines changed? This is because of the omission of emails and some argument emails are not papers or documents.

**Mr TAYLOR:** I heard some of the discussion this morning about papers and documents and that is a bit of a furphy. It actually says in the order "to produce documents in the possession", it does not refer to "papers", it is documents.

**Reverend the Hon. FRED NILE:** That would automatically include emails?

**Mr TAYLOR:** Not necessarily. At the time, in 2009, emails were possibly viewed differently.

**Reverend the Hon. FRED NILE:** As an officer-in-charge of collecting material you have omitted emails then?

**Mr TAYLOR:** I would not have omitted emails but I would not necessarily have actively sought them. My role at the time was to refer the order for documents out to the relevant deputy director generals and get their responses back.

**Reverend the Hon. FRED NILE:** When Director General Richard Sheldrake signed off saying that to the best of his knowledge all documents held by the Department of Industry and Investment had been provided, he honestly believed it included all the documents which would have included emails?

**Mr TAYLOR:** I cannot state that emails were necessarily seen as part of that return.

**Reverend the Hon. FRED NILE:** You never included those in the earlier SO 52s you did?

**Mr TAYLOR:** No.

**Reverend the Hon. FRED NILE:** Did that seem strange to you? They could have important information in them.

**Mr TAYLOR:** To put it into context: There may be a swathe of emails that are not relevant to the issue at hand. Anything of importance I would expect to have been put into TRIM or some permanent record and they would be captured by the order.

**Reverend the Hon. FRED NILE:** Can you recall any conversations you had with Mr Mark Duffy and Mr Brad Mullard during the processing of the return?

**Mr TAYLOR:** I cannot recall any specific conversations. Again to put that into context, this was in November 2009 and my recollection was that what was the former Department of Water and Energy came across to us in June 2009. Mark had only been a part of our executive structure for a few months. I do not recall a lot of interaction with him. I do not know if I had spoken with him at that stage. There was certainly, in other governance type matters, intent that there would be a level of responsibility attributed to people at deputy director general level for various actions, not only Standing Order 52 but various other management actions.

**Reverend the Hon. FRED NILE:** It would seem strange that as Brad Mullard was Executive Director of Mineral Resources, and this was dealing with a mineral matter, licences, exploration and so on, that you never contacted Mr Mullard and inquired if he had any relevant documents?

**Mr TAYLOR:** Again it is difficult to make a black letter answer. My understanding has been confused by other actions in the meantime. My understanding would have been when I became aware of the order I would have rung Phil Anquetil, who was the director of the Sydney office and basically the chief of staff for the director general, and said, "We have this standing order." I can only assume there was a direction, "Send it out to Mark Duffy"—Will Hughes would have been the guy actually doing the Mount Penny stuff—"Send it to him so he can get started with it". But it is really Duffy's responsibility to make sure the process is followed.

**Reverend the Hon. FRED NILE:** You did not see that as a direct responsibility of yours, but rather it would go through Duffy to Mullard?

**Mr TAYLOR:** I would have spoken to Phil Anquetil on the phone at the time and I do not know if Brad was away or not available on the day or two that we had to get things done.

**Reverend the Hon. FRED NILE:** The Maddocks report refers to you accessing one document on Trim four times, are you now aware which document it was and why you appeared to have difficulty deciding whether you should provide it to include it?

**Mr TAYLOR:** I do not know which document that was.

**Reverend the Hon. FRED NILE:** Can you take that on notice and see if you can find out?

**Mr TAYLOR:** I have asked because I was curious about that myself.

**The Hon. GREG DONNELLY:** This issue of 2009 and the policy guidelines associated with the provision of papers for a return, casting your mind back, were you aware of any specific policies or guidelines that existed that provided you with an understanding of what your obligations were in terms of meeting a Standing Order 52?

**Mr TAYLOR:** The only documentation I was aware of at the time is the notice that comes out from the Premier's Department. That gives an example of how to run through it and that example has not changed in the last eight years.

**The Hon. GREG DONNELLY:** To clarify, there was a letter from the Premier's Department which provided some insight into what to provide for if a Standing Order 52 was required to be met?

**Mr TAYLOR:** I am assuming that you would have had a copy in your bundle of documents, it is a note from Leigh Sanderson dated 13 November 2009.

**CHAIR:** We have seen it.

**Mr TAYLOR:** Yes, that is the only direction we get.

**The Hon. GREG DONNELLY:** Other than that, you had no other specific guidelines or policies that you were obliged to follow in terms of fulfilling the obligations with respect to meeting an SO 52 order?

**Mr TAYLOR:** That is correct.

**The Hon. GREG DONNELLY:** To clarify with respect to the position now, what is that position in terms of specific policies and guidelines that operate that you are obliged to meet?

**Mr TAYLOR:** There is a revised policy the director general put out, and that quite clearly puts the onus on the division heads to sign off that they are satisfied that appropriate search has been done, and that includes email searches.

**The Hon. GREG DONNELLY:** Just one final question: In terms of if you found yourself in a situation back in 2009 with only having that letter to guide you about how to deal with a matter, did you have a person you would speak to, to seek some counsel or some guidance on what to do?

**The Hon. JEREMY BUCKINGHAM:** B.

**The Hon. GREG DONNELLY:** Or was it left to you to essentially make that judgement call?

**Mr TAYLOR:** It would depend on the nature of the query. Phil Anquetil was the person I reported to on this sort of thing. I do not know if it occurred this time, but certainly on one or two other occasions I had rung up the legal area of the Premier's Department and spoken to them about something that may have arisen.

**The Hon. GREG DONNELLY:** That letter you have got there—I just do not have it in front of me presently—but that letter does not make any reference to emails as being part of what ought be provided for in terms in meeting a section 52 order?



**Mr TAYLOR:** No. It just says, "All documents in the possession, custody or control of", although regarding Mount Penny, including any documents relating to the tender process.

**The Hon. GREG DONNELLY:** The reading of documents, at the time you say, did not include in your mind emails.

**Mr TAYLOR:** No.

**The Hon. MATTHEW MASON-COX:** Can I just come in there, Mr Taylor. I have an email in front of me that you sent to Mr Duffy on 19 November 2009 at 11.18 a.m., which is mentioned in the Maddocks report in annexure B in the wonderful time line they have put there. That email is addressed, "Dear Mr Duffy." That is your signature block, and it says, "Please note the order includes a requirement to provide all documents produced as a result of this order. This means all emails sent/received in satisfying the order, including for example this email message."

**Mr TAYLOR:** Yes.

**The Hon. MATTHEW MASON-COX:** How is that consistent with what you just said?

**Mr TAYLOR:** I suppose it goes back to taws in that my understanding of that requirement—and it is put in all Standing Order 52s—is you want to be able to reconstruct the process if necessary, and find the smoking gun if there is any attempt to try and subvert the process.

**CHAIR:** Yes, well we will get onto that.

**Mr TAYLOR:** Emails are part of that.

**CHAIR:** That is not what that is talking about. That is talking far wider than the trail.

**Mr TAYLOR:** All right. The—

**The Hon. MATTHEW MASON-COX:** That specifically refers to emails, does it not?

**Mr TAYLOR:** It does.

**The Hon. MATTHEW MASON-COX:** So, in the light of that, how do you reconcile what you just said: That you did not think emails were included in Standing Order 52 requests for documents?

**Mr TAYLOR:** I saw that as responding to a specific part of the Standing Order 52 where we are required to be reopening the process in actually responding to the order. It looks awkward when compared with that previous interpretation, I grant that.

**CHAIR:** It does. It does.

**The Hon. JENNIFER GARDINER:** Does that mean that in relation to all those other S O 52s that you mentioned from 2006 and subsequently that emails would not have been provided—

**Mr TAYLOR:** Not as a matter of course.

**The Hon. JENNIFER GARDINER:** —for any of those as well?

**Mr TAYLOR:** Not as a matter of course, unless the order specifically said emails.

**CHAIR:** You see, what you are going to force us to do, Mr Taylor, is to go back through those. I will bet London to a brick, using an old phraseology, that none of the terms of the orders specifically refer to emails. All of them will refer to documents. But we will now have to trawl back through each of those calls for papers or the returns to see the presence of emails. I suspect we will find that there are emails there.

**Mr TAYLOR:** Possibly, yes.

**CHAIR:** Do you want to reconsider your evidence with regards to emails not being included in an S O 52 as at 2009?

**Mr TAYLOR:** Right.

**CHAIR:** Because I am very discomforted by it, I have to tell you.

**Mr TAYLOR:** Right. I might have overstated my role in it. My role is to collate documents, right, not to search for or make decisions about what should or should not be included, right? The email to Mr Duffy was, "Here is the order. I need the response so we can collate the response to Parliament in the appropriate format." Now, if that included emails, well and good. If it did not include emails, it is not part of my purview to question that.

**CHAIR:** Is that right? Do you not give advice to people with regards to what should or should not be included in a call for papers?

**Mr TAYLOR:** If they ask for it, yes.

**CHAIR:** All right. If they produce up a bundle of documents and say, "Should we include these?", and it includes emails, what would you have said as at November 2009?

**Mr TAYLOR:** I would have said, "Well, you've already produced them as part of part C of that order anyway, so they're included."

**CHAIR:** Oh, no. No, no, no.

**Mr TAYLOR:** Yes, well—

**CHAIR:** No, that cannot be right because if they had produced up Cabinet-in-confidence documents, your answer would not be, would it, "Ah, well, seeing you've produced them up, away they go." You would be absolutely derelict in your responsibilities, would you not, if you allowed Cabinet-in-confidence documents to go in?

**Mr TAYLOR:** Cabinet-in-confidence documents, yes; but in terms of emails, if there was a query on anything other than Cabinet-in-confidence documents, "Should we produce this information?", the answer is yes, if it is caught by the tail-end provisions, "All documents produced in satisfaction of the order". Even though they might not have been within scope, the fact that they were queried as part of that—

**CHAIR:** No, we are speaking at cross purposes. If emails are produced—and you are aware from the Independent Commission Against Corruption [ICAC] inquiry that there were emails produced dated 9 May 2008 to the Independent Commission Against Corruption [ICAC], which clearly showed the origin of this Mount Penny exploration licence—they are not documents in the course of compliance with the S O 52. They are documents which came into existence that Bret Walker, SC, has set forward in the terms of the call for papers, and yet they were not produced. From your evidence, one explanation would be that it is because it was an email, and notwithstanding its profound relevance, it is not included because it is an email. If that is what your evidence is, we are at serious cross purposes, and I will tell you that your evidence is quite inconsistent with a number of other witnesses who have given evidence here today. What I am asking is this: Do you genuinely hold the view that as at November 2009, a relevant document, which just so happens to be an electronic document in the form of an email, would not have been included in the call for papers?

**Mr TAYLOR:** Given the information that has come since, yes, it should have been included. At the time, I do not know, and it is not my role to search for those emails. If I was asked whether these things should have been included, I would have said, "Yes." But it was not necessarily the default position to search email records for all requests for information.

**CHAIR:** All right. Let me ask you this: You get an FOI because you were doing FOIs daily, I take it—

**Mr TAYLOR:** Yes.

**CHAIR:** —or at least weekly. Are you saying that FOIs that sought all documents relating to a particular thing would not have included emails?

**Mr TAYLOR:** Unless they were specifically asked for in the FOI, no.

**CHAIR:** Fair dinkum?

**Mr TAYLOR:** Yes.

**CHAIR:** That would profoundly mean that every FOI that has been issued essentially under your name since 2005 or thereabouts is now the subject of considerable doubt, I would suggest.

**Mr TAYLOR:** There is a difference between FOI and the Standing Order 52 process in that in FOI there is some discretion. We talk with the applicant, "What do you really want? What do you want it for?", and negotiate some of the terms.

**CHAIR:** With respect, on my FOI applications, I did not get too much negotiation. I either got, or I did not. If that be the case, then I did not get on my FOIs because an officer such as yourself, if this is to be accepted as the case, simply ruled that emails which, even in 2009, were the stock-in-trade for correspondents were not covered by FOI because it was electronic.

**Mr TAYLOR:** The—and this might sound self-serving—it depends on how relevant; like the officers that provide the information are aware of an email that is particularly crucial to the substance of the FOI investigation, I would expect to be provided. But I would not necessarily expect them to do an email search on every FOI application they receive. If there was some crucial piece of evidence, I would expect that to have been put into the TRIM system as being a permanent record. Ephemeral stuff like exchanges—"We need this by Friday", "Yeah, fine. That's okay. Let's have lunch."—that is not necessarily—

**CHAIR:** You are reliant, in terms of doing your job, on people entering material into the TRIM system in the first place. Is that right?

**Mr TAYLOR:** I am reliant in doing my job on people providing me with information within the scope of the request.

**CHAIR:** But you are saying that that is satisfied by doing a TRIM search.

**Mr TAYLOR:** The people at the other end in the operational areas are the ones best placed to search whatever records are available—whether that is a hard copy file or a TRIM record, or whatever else is about.

**CHAIR:** All right. My final question is this: On 23 November 2009, some four days after you issued your letter to Mr Duffy and cc'd it to Hughes, Heffernan, Anquitel and whoever else—

**The Hon. JEREMY BUCKINGHAM:** Biviano.

**CHAIR:** Yes—you issued a further email, and it included the draft response to the call for papers. You did not send it to Mr Duffy, but one of those that you did send it to was Mr Mullard. Why did you send it to Mullard and not to Duffy, if we are to accept your evidence that the persons that you had to direct your inquiries to were deputies and directors general?

**Mr TAYLOR:** I cannot answer that, I am afraid. I cannot recall.

**CHAIR:** Just think about it for a second. This is fairly important in the scheme of things. You have finally got Mr Mullard in the frame. Mr Mullard was the recipient, or the initiator, or cc'd into 50-odd emails that Bret Walker has found relevant to this call for papers. Now, I want to know why you would finally have dialled him into this exercise and not Duffy.

**Mr TAYLOR:** Right. Is there a copy of that email available?

**CHAIR:** No.

**The Hon. JEREMY BUCKINGHAM:** No. We have not seen it. Chair, can I ask a question?

**CHAIR:** Yes.

**The Hon. JEREMY BUCKINGHAM:** While you are thinking about that, Mr Taylor, the other thing that seems strange to me is that clearly there was a lot of activity on 19 November 2009, and it looks like a few things were happening in parallel with Phil Anquitel, Julie Moloney talking with William Hughes. David Agnew sends out an email at 10 o'clock on the nineteenth of the eleventh to you, cc'g William Hughes, Tracey Goodwin and Julie Moloney. But the key juncture in this—and I suppose that is when it became a live issue for you—at 10.18—in actual fact our document says "10.18", but I am assuming it is one here that is actually 11.18 a.m. and I think that Maddocks has got that wrong—you sent an email to Mark Duffy, William Hughes, Sara MacWilliam, Tony Heffernan and Phil Anquitel requesting this information. From what we have been provided from Maddocks, you never hear from Mark Duffy again.

**Mr TAYLOR:** Yes.

**The Hon. JEREMY BUCKINGHAM:** How could that possibly be? How could you send this document in this form to the deputy director general of energy and minerals and not receive a response?

**Mr TAYLOR:** I can only respond to that by saying that there was a request. Information went out. I got information back. It was not through Duffy. We were under a fairly tight time frame to get things done. There was a response collated and referred up the process.

**CHAIR:** But without Duffy's response, you might have found that you had only got a fraction of the relevant documents and you did not follow up with him.

**The Hon. JEREMY BUCKINGHAM:** You have got a call for papers over an exploration licence area and, in effect, you have requested that information and had no response from the person in charge of that area.

**CHAIR:** That is the person you say is the one you have to direct the request through. How did you provide a response to that without having got even an acknowledgement from Mr Duffy, yet alone a document or anything else from him? Tell me how you did it.

**Mr TAYLOR:** When it is phrased like that, I can see the angst.

**CHAIR:** I am not trying to be angry. But this is at the absolute nub of this inquiry. With the greatest of respect, we did not expect to be asking these questions of you. I was expecting another explanation. You have put yourself plainly in the frame in ways that other witnesses have not.

**Mr TAYLOR:** I am trying to be as candid as I can.

**CHAIR:** Please do. Tell me how you prepared a response to an SO 52 without having got a response, in turn, from the person that you say was the one responsible for preparing the response, in essence. You were only the cipher, according to you.

**Mr TAYLOR:** Mr Duffy was the Deputy Director General of Minerals and Energy.

**CHAIR:** He was.

**Mr TAYLOR:** He was quite often missing in action, in that you would not get a response from him. Responses would come back through his minions. I am not sure why Brad Mullard would not have been included in the first round of emails—

**CHAIR:** You tell us that, because we were not there. You had dealt with Patricia Madden, had you not, or Brad Mullard, on frequent FOIs previously?

**Mr TAYLOR:** Yes.

**CHAIR:** You knew, did you not, that Brad Mullard was the go-to man in terms of minerals in New South Wales?

**Mr TAYLOR:** Yes.

**CHAIR:** So if anyone was going to have information that was relevant to this inquiry Brad Mullard had to be at the top of the list, would he not?

**Mr TAYLOR:** Yes.

**CHAIR:** Knowing that he is at the very pinnacle of the information and management of minerals in New South Wales, tell me why you did not tell him of this SO 52? I am assuming that you did not; you will have to make that clear to us, first.

**Mr TAYLOR:** I can only go by the records available. Brad was not included first—

**CHAIR:** This is very important. Is there a possibility that you did it by phone?

**Mr TAYLOR:** If I had spoken to him on the day I would have included him in the email. I cannot see any reason not to.

**CHAIR:** Then the question becomes: why did you not send the SO 52 to the go-to man for minerals in New South Wales, knowing—I will add this in brackets—that Duffy goes "missing in action", to use your words?

**Mr TAYLOR:** This is possibly a reconstruction—it might be a convenient reconstruction—but when I became aware of the standing order 52 I would have rung Phil Anquetil, "We have got this in. We have a day to get it done." My assumption is we would have been directed, "Refer it to Duffy because he is the relevant deputy director general. We have some protocols for these new people coming in. They have to take responsibility for whatever else." In terms of the Mount Penny stuff, Bill Hughes did the Mount Penny tender so he would be the one getting together the information which, at the time, was sought. Certainly my understanding was that the interest was in the tender for Mount Penny rather than the processes that preceded it. Will did the Mount Penny tender process and evaluation. So we cc'd him into it so that he could start getting his bits and pieces together. There was no response back from Mr Duffy; I only got answers back from other people. From that the response was prepared.

**CHAIR:** Let us talk about the responses from other people. How did you get those responses from other people?

**Mr TAYLOR:** I am not sure. I cannot recall. They do not appear on the email trail. I would have been quite punctilious in including that in the return if they came by email. I do not know if they sent them to me by CD via express post. I cannot recall.

**The Hon. JEREMY BUCKINGHAM:** Who told you? Did you just know that? Is it just corporate knowledge?

**Mr TAYLOR:** Sorry, what is that?

**The Hon. JEREMY BUCKINGHAM:** How did you know to go to William Hughes on this issue?

**Mr TAYLOR:** It would have been from Phil Anquetil.

**The Hon. JEREMY BUCKINGHAM:** So Phil Anquetil told you that you should go to Will Hughes on this issue?

**Mr TAYLOR:** I believe so; yes. That is my recollection.

**The Hon. JEREMY BUCKINGHAM:** And Brad Mullard or just him? Was there a direction to go to just him?

**Mr TAYLOR:** I can only assume that Brad, for some reason, was not available on the day.

**CHAIR:** But Patricia Madden was there.

**The Hon. JEREMY BUCKINGHAM:** You never had a conversation with Patricia Madden?

**CHAIR:** Not that I can recall.

**The Hon. JEREMY BUCKINGHAM:** But you might have?

**Mr TAYLOR:** Possibly.

**The Hon. JENNIFER GARDINER:** How do you explain the gap, particularly given your experience with responding to SO 52s? I just do not understand how this one has so many gaps in terms of lines of communication and the documentation that was included in the response—or rather, was missing from the response.

**Mr TAYLOR:** I am not sure how to respond to that. There is a format that has to go back to the Department of Premier and Cabinet. We get the documents in from the operational areas. They are put into the format and sent off. My role is not to search for records or comment on what should or should not be included unless I am asked: is this relevant or not? I do not know if that was the case. I am not involved in minerals things. The information that came back from minerals was put in the format required and processed up the line.

**The Hon. JENNIFER GARDINER:** So you are just a process guy. You are not a proactive person?

**Mr TAYLOR:** In much of this stuff, yes. That has changed over a period of time. I am starting to take a bit more responsibility—particularly with the Independent Commission Against Corruption responses and the Ombudsman responses, where there is more of a quality assurance role. At this time it was put to me, "You can look after standing order 52s. They are like FOIs. The request comes in, you send it out to the areas, the information comes back and you put it together in the format required and process it through the line."

**CHAIR:** Who did the "format required"? You used that terminology. There was obviously a list of documents that was prepared, was there not?

**Mr TAYLOR:** I am sorry?

**CHAIR:** There must have been a list of documents that were prepared that form the index for the return.

**Mr TAYLOR:** I would have put the index together.

**CHAIR:** You would have put that together. So that is on your computer?

**Mr TAYLOR:** Yes.

**CHAIR:** Are you able to take on notice to get us—

**Mr TAYLOR:** This is the index. It is the attachment to the response to the Department of Premier and Cabinet. Is that what you are talking about?

**CHAIR:** You did that, did you?

**The Hon. JEREMY BUCKINGHAM:** The Maddocks time line that we have indicates that you sent a draft to Phil Anquetil, William Hughes, Brad Mullard and Janine Biviano. I am just assuming that you did not get a response to that, and that Phil Anquetil then sent it off to the director general for approval. Did you get any feedback from any of those people? It appears you got feedback from William Hughes. He sent you an email saying, "You had better include this attachment—the Loyal Coal withdrawing its expression of interest." Did you get any feedback from those people?

**Mr TAYLOR:** Sorry, I am not sure that there was a draft document sent out to those people.

**The Hon. JEREMY BUCKINGHAM:** It says there, "Email attaching draft response to order," so I am assuming that that is the draft response. It went out to Phil Anquetil and the like. William Hughes responded. Surely you must have got an email back saying, "Yes, that looks to be in order. That is okay." Did you have a discussion with Phil about it? Clearly, he is the next person up the line. At that stage you had documents from William Hughes but you had not heard back from Mark Duffy and you had not heard from Brad Mullard. Did you discuss with Phil at that stage that there may be some issues or may be some deficiencies?

**Mr TAYLOR:** I am just trying to find that.

**CHAIR:** Mr Taylor, if you go down to the second last line on that document—down at the bottom—there is, on the left-hand side, at about point 8 of the page, "Louise Nobbs, likely EA to Janine Biviano." Can you see that?

**Mr TAYLOR:** Yes.

**CHAIR:** If you go to the right—about half way across the page—there is "Ron Taylor" and a line that says, "Email attaching draft response to order." You will see—we are gleaning this—that you sent that to Phil Anquetil. For reasons you have not explained yet, you cc'd William Hughes, Brad Mullard and Janine Biviano into that. Do you see that? Are you still looking at it, Mr Taylor?

**Mr TAYLOR:** Yes.

**CHAIR:** If you go further to the right you will see "William Hughes" and an arrow with, over it, "Email attaching letter from Loyal Coal withdrawing EOI. 10.31 on 23.11.09." It is to you. What that means is that you, on 23 November 2009 at 10.23, made a considered response—I think we can safely assume that—of sending to Mr Anquetil, with cc's to three people a draft response. So you prepared a draft response.

**Mr TAYLOR:** Yes.

**CHAIR:** You will see on that document that you get a response back fairly quickly—in eight minutes—from Mr Hughes saying, in essence, "Amend your draft response."

**Mr TAYLOR:** Yes.

**CHAIR:** Have you got that?

**Mr TAYLOR:** Yes.

**CHAIR:** It is a bit unclear but that leads to the next line. Phil Anquetil then sent on the response on director general letterhead at 11.44. Have you got that?

**Mr TAYLOR:** Yes.

**CHAIR:** What we do not have, with respect, Mr Taylor, for a start, is any of the connecting dots—that is, we do not know whether Mr Anquetil does it by telepathy. That is unclear. Certainly, for some reason there is a coincidence in your preparation of a draft response and his sending a response an hour or an hour and a half later. You might be able to help us about whether there was a phone call. What happened? What was the process?

**Mr TAYLOR:** The interpretation of this time line is that there was a draft response sent out to the parties involved for comment—or at least to let them know what was there—in the expectation that if there were any dramas with it they would buy into the process. Will Hughes did that. He sent a further email.

**CHAIR:** I am sorry to cut across you, but was it good enough, in the context of your sending that email at 10.23? I have to assume that some time shortly before 11.44 you have not only amended the draft response but you have told Phil Anquetil that it is right to send off. That is the conclusion that we can draw, is it not?

**Mr TAYLOR:** If this time line is correct, yes.

**The Hon. JEREMY BUCKINGHAM:** How does Phil Anquetil know that?

**Mr TAYLOR:** Possibly through a phone discussion.

**CHAIR:** Would you not have thought it was better to put it in an email so that everyone's tail was covered by saying, "It's right to send off, Phil."

**Mr TAYLOR:** In hindsight, yes. At the time we were trying to get the response out quickly.

**CHAIR:** If you did not send it to him by email it means that you have prepared it and trotted it around to his office.

**Mr TAYLOR:** I was based at Cronulla at the time.

**CHAIR:** Then there is a missing email, is there not, because Phil Anquetil has sent this on and he only had your draft response, and the Loyal Coal letter was included in the return.

**Mr TAYLOR:** Okay, all right.

**CHAIR:** So you have somehow from Cronulla got him the amended response?

**The Hon. JEREMY BUCKINGHAM:** And that amended response has got no feedback from Brad Mullard, no response from the Deputy Director General of Energy and Minerals, and no emails?

**Mr TAYLOR:** I do not have it with me, but one of the documents I gave Maddocks was my flex sheet, my time sheet for that period, and there may have been an entry on there that said that I was in the Sydney office on the Monday and might have taken it in for the Standing Order 52.

**CHAIR:** Do you still have that time sheet?

**Mr TAYLOR:** I can get it. I will take that as a question on notice, if you like.

**CHAIR:** Thank you.

**The Hon. GREG DONNELLY:** During this period of time, did Mr Ian Macdonald or anyone purporting to represent Mr Ian Macdonald make contact with you to provide some advice or guidance about the types of documents to be incorporated in a return to order?

**Mr TAYLOR:** No, certainly not, I can categorically state that.

**The Hon. JENNIFER GARDINER:** Did he ever do that on any of the Standing Orders 52?

**Mr TAYLOR:** Standing orders, no.

**The Hon. JENNIFER GARDINER:** Freedom of information?

**Mr TAYLOR:** On one occasion, and it was probably prior to this, it was very strongly put to me that the Minister's office did not want some documents released, and my response was that you need to get somebody else to do the FOI determination because I think it should be released.

**The Hon. JENNIFER GARDINER:** Was it released?

**Mr TAYLOR:** Yes.

**The Hon. MATTHEW MASON-COX:** Did Mr Gibson ever contact you in relation to the Standing Order 52?

**Mr TAYLOR:** No. Reverend Nile is not here at the moment, but I remember one of his questions to my Director General was whether Standing Orders 52 are taken lightly by the department. They certainly are not. The description I give to people when I attend briefings of staff or branch heads, whatever, is that Standing



Order 52 is GIPA or FOI on steroids. With an FOI there is a certain discretion. With Standing Orders 52 there is none—you provide everything, full stop.

**CHAIR:** Including emails, I take it?

**Mr TAYLOR:** From now on they will include emails.

**The Hon. JEREMY BUCKINGHAM:** You say that you provide everything, but there was no discussion with anyone at any time of any discretion that may be applied to this SO 52.

**Mr TAYLOR:** No.

**CHAIR:** Are you able to tell us now why Brad Mullard was added on as a cc to the email that included the draft response?

**Mr TAYLOR:** In hindsight, nothing should have been included with that.

**CHAIR:** I am not asking that; I am asking why Mullard was included.

**Mr TAYLOR:** He was the go-to guy for Minerals. That was the response that was going to be issued. I cannot explain why he was not included in the first one; I can only assume he was not available on that day.

**CHAIR:** If you had applied your mind to it by 23 November and had come to the conclusion that Mullard was the go to guy for Minerals, and we will all agree that was the correct conclusion, how did it come about that, having finally included him in the process at 10.23 on 23 November 2009, you did not actually get a response from him before submitting or having Phil Anquetil submit the response on Director General letterhead at 11.44 a.m. on 23 November 2009?

**Mr TAYLOR:** Again it would be better if there was an email trail for that, or it was possibly a phone call—possibly, I do not know.

**CHAIR:** Who would you have phoned on 23 November between 10.23 and 11.44?

**Mr TAYLOR:** Possibly Brad. I cannot recall.

**The Hon. JEREMY BUCKINGHAM:** Did you say "Possibly Brad"?

**Mr TAYLOR:** Possibly Brad Mullard, like I said, "Here is the draft response." It was already a day overdue. "We need to get a response out quickly. This is what is intended. If there is any problem with it, we need to know straight away."

**CHAIR:** It was not a day overdue. Your email of 19 November says that the response is due by 20 November. The return was due by the 26th.

**Mr TAYLOR:** From Premiers. Our response to the Department of Premier and Cabinet was due on the 20th.

**CHAIR:** That is right, but you were already overdue by the 23rd. You knew that.

**Mr TAYLOR:** Yes.

**CHAIR:** Sending out an email and then not waiting for a response hardly—

**Mr TAYLOR:** There may have been a response by phone or an exchange of views by phone.

**The Hon. JEREMY BUCKINGHAM:** What seems remarkable to me is that you have said that Brad Mullard may have been unavailable that day, he might have been out of the office, and therefore you did not send him an email. It seems strange that you would not send him an email, just presuming that, unless you had rung him or rung the office to determine that.

**Mr TAYLOR:** Possibly, yes.

**The Hon. JEREMY BUCKINGHAM:** If he is the go to guy for Minerals, why would you not just send him an email?

**Mr TAYLOR:** In hindsight, he should have been included.

**The Hon. JEREMY BUCKINGHAM:** But was he not included because you had rung him or rung his office?

**Mr TAYLOR:** Possibly. I cannot state—

**The Hon. JEREMY BUCKINGHAM:** Possibly?

**Mr TAYLOR:** Yes.

**The Hon. JEREMY BUCKINGHAM:** Is it possible that you were told to send all the documents to William Hughes?

**Mr TAYLOR:** The likely chain of events was talking to Phil Anquetil, who was my main contact on the executive side of it: "Look, Brad's not in today, we know he is in"—wherever. "Will Hughes did the Mount Penny stuff. Duffy's a DG. Send it to Duffy, but include Will Hughes because then we can start getting information together."

**The Hon. JEREMY BUCKINGHAM:** Do you get that sort of level of direction from Phil Anquetil?

**Mr TAYLOR:** At that stage, yes.

**The Hon. JEREMY BUCKINGHAM:** Is that your recollection, or is that just—

**Mr TAYLOR:** That is supposition, I cannot recall specifically, but that was I would think a reasonable assumption of the events at the time.

**The Hon. JEREMY BUCKINGHAM:** That Phil Anquetil would have known that Brad Mullard was not in the office today and therefore was going to be incapable of doing a search of his emails?

**Mr TAYLOR:** Possibly, yes.

**CHAIR:** Then would you not have said, "But Patricia Madden is there; she does it anyway"?

**The Hon. JEREMY BUCKINGHAM:** She does it anyway. Brad Mullard is a busy man; he is an executive director of the whole division. It does not make sense, to be frank.

**Mr TAYLOR:** My understanding at the time, and things have obviously moved on since then, but the order was assumed to be about the tender process for Mount Penny. Will Hughes looked after the tender process for Mount Penny.

**The Hon. JEREMY BUCKINGHAM:** It was much broader than that.

**Mr TAYLOR:** That has now been decided, yes, it is much broader than that. Reading that at the time—

**The Hon. JEREMY BUCKINGHAM:** Who made that assumption?

**Mr TAYLOR:** That was taken to be what it was after at the time with the various people I spoke to.

**The Hon. JEREMY BUCKINGHAM:** Who took that position, which I believe is like a narrowing of the terms of the order? Was it you who took that position?

**Mr TAYLOR:** I would have read it that way, to do with the Mount Penny tender.

**CHAIR:** Are you able to go back through your system and determine when you received from Mr Sheldrake's office the letter from Leigh Sanderson regarding the SO 52?

**Mr TAYLOR:** The referral? Sorry, this document?

**CHAIR:** Yes. We have six days or thereabouts where this thing goes to sleep.

**Mr TAYLOR:** Yes.

**CHAIR:** There has been considerable support taken by some that there was only 24 hours in which to respond. What I want to know is did this letter sit in the in tray-out tray of Richard Sheldrake's office, and that includes obviously his administrative staff, or frankly was it sitting in yours?

**Mr TAYLOR:** The first I was aware of it was when it came up on the TRIM system and was referred to me on the 19th. If you look at the TRIM records there was a notation of something done on the 13th or the 16th and then there was a further document added on the 19th. That further document was this document.

**CHAIR:** By you?

**Mr TAYLOR:** No, not by me. Sorry, I am point and shoot with TRIM at the moment; in 2009 I had no idea how it worked. You get an email notification saying, "There is something for you to do in TRIM", poked around, found this document—"Crikey, it's an order for papers. It is due tomorrow. I'd better ring Phil and find out what's going on."

**CHAIR:** That means there is an email to you on 19 November indicating that you have some work to do on this SO 52?

**Mr TAYLOR:** There is a notification from TRIM. I am not sure if it is an email notification or not—sorry, it must be, yes.

**CHAIR:** Will you take on notice that you produce to this Committee evidence that demonstrates when you received the Leigh Sanderson letter?

**Mr TAYLOR:** Yes.

**CHAIR:** Could I invite you to do a search of your emails and find all emails relevant to this SO 52, that is, any email with anyone during the relevant period?

**Mr TAYLOR:** I will need to get the IT people involved in that because we have changed email systems in the meantime.

**CHAIR:** If there are any problems, let us know and we will write to Mr Paterson.

**Mr TAYLOR:** No, I just wanted to make sure I was not breaching any confidentiality rules.

**CHAIR:** You are not breaching any confidence at this stage. What we are trying to do is find out—and I think it is for your benefit as well—the entirety of your actions in this. If there are more emails, I think that would be helpful because otherwise we are reliant upon—

**Mr TAYLOR:** Reconstruction, yes.

**CHAIR:** Yes, with the best will in the world, the reconstruction that you are having to make now.

**Mr TAYLOR:** Okay. There is one other matter—

**CHAIR:** One final thing: In this report, which I raised with Mr Paterson this morning and I think you were here at the time, paragraph 4.3 states, "Further, one of the departmental staff interviewed suggested that it was quite deliberate to limit emails sent about the order as it was known that these would then need to be

produced (adding to the burden of complying with the order)." Am I safe in assuming that the departmental staff who made that suggestion was you?

**Mr TAYLOR:** Yes, and to clarify, it was not the intent to not create any emails in tracking it down but to minimise superfluous emails.

**CHAIR:** Can I suggest that that process of minimising superfluous emails leads precisely to the position that you have found yourself in today where you have taken on perhaps a greater burden of responsibility in terms of the failure of this SO 52 because of the absolute absence of emails that justify what occurred.

**Mr TAYLOR:** The context of the discussion I had with Maddocks at the time was that if there were, and if you like I will use the example in the timeline, emails sent out to four different people—Mullard, Anquetil, Biviano, whatever—and if each of those had sent out emails to 15 other people saying, "What have you got on this" or "What do you think about this", you then have an email chain of who knows how many hundreds of things and it does not add any value to the process, it just complicates matters in terms of doing the return.

**CHAIR:** Is that right?

**Mr TAYLOR:** Yes.

**CHAIR:** On the Millennium trains there were 100 boxes of documents. If you are are talking about 100 pages of emails that demonstrate who did what searches—

**Mr TAYLOR:** I am talking about inconsequential things like "Have you heard about this?" or "What do you think about that?" There is a process we need to go through when we do searches, that is fine; have an audit trail to show what you have done, that is great—

**CHAIR:** But you do not have an audit trail. You have far from an audit trail. Did you keep telephone records?

**Mr TAYLOR:** No.

**CHAIR:** So you did not make file notes?

**Mr TAYLOR:** If there were they would have been caught by the Auditor as well, so no.

**CHAIR:** So do I take your answer to be "No I did not make file notes because otherwise I might have had to disclose them"?

**Mr TAYLOR:** I suppose returns to orders you respond to the order without complicating matters unnecessarily.

**CHAIR:** That is non-responsive.

**The Hon. JENNIFER GARDINER:** You were not just processing stuff, you were acting deliberately?

**Mr TAYLOR:** Sorry, I am not sure what that means.

**The Hon. JENNIFER GARDINER:** You were making a decision to not have a burden in complying with the order. You were trimming things down.

**Mr TAYLOR:** I do not normally keep file notes on much stuff anyway. Sorry, it was not a deliberate action not to make file notes on this particular matter, it is a matter of at the time we were full-on trying to respond to the order, we just wanted to get things done—make phone calls, send whatever emails are appropriate and get the return done.

**The Hon. JEREMY BUCKINGHAM:** You never had any discussion with Mr Anquetil prior to that email coming through? The first you knew that there was an SO 52 that you were going to have to comply with was when you got a notification in TRIM?

**Mr TAYLOR:** I believe so. I cannot categorically state there was not a phone call before saying "What is going on with this Standing Order 52? We have not had anything happen with that" and I said, "Well, I have not got any"—possibly, I do not know.

**The Hon. JEREMY BUCKINGHAM:** So you may have had a discussion before in regards to that?

**Mr TAYLOR:** It would have been on that day if it occurred, yes.

**The Hon. JEREMY BUCKINGHAM:** So you are not notified immediately upon it being resolved by the House? You do not get an email, a notification, someone in your office goes "We have just had an SO 52 passed in the Legislative Council"?

**Mr TAYLOR:** Ideally, yes. On this occasion it went to the DG's office and, like I said, there is an unexplained gap. I was not aware of it.

**The Hon. JEREMY BUCKINGHAM:** So normally you do get a notification?

**Mr TAYLOR:** Normally I would get either an email or a TRIM reference or something to say, "Look, that has come in. Let us start to process it".

**The Hon. JEREMY BUCKINGHAM:** Almost immediately?

**Mr TAYLOR:** Yes.

**The Hon. JEREMY BUCKINGHAM:** In your experience, how many times when you have been responding to these SO 52s has there been a six day delay?

**Mr TAYLOR:** Never.

**CHAIR:** Is it possible, in light of the interpretation that you put on this SO 52, that is, it was limited to the tender process, that what was produced up to you by some officer such as William Hughes were emails that, for instance, said, "Give us a briefing", or similar, and you, having received those emails, applied your two sets of reasoning: firstly, it is an email and, secondly, it does not fall within the scope of the call for papers and, therefore, in essence, chuck them out?

**Mr TAYLOR:** No.

**CHAIR:** Why should we accept that in the light of your other evidence?

**Mr TAYLOR:** There is a difference between what people search for and provide to me—sorry, there is no difference between what people search for and provide to me and what is provided in one form or another in response to Standing Order 52. Everything that is provided to me is forwarded on. Whether it is within the scope or not, it was a mistake. That is just part of the deal.

**CHAIR:** Who makes the decision that a document is, for instance, commercial in-confidence?

**The Hon. MATTHEW MASON-COX:** Or Cabinet-in-confidence.

**CHAIR:** I was going to get on to that as a separate one, but we can do them both together I suppose.

**Mr TAYLOR:** If it is commercial-in-confidence it has to be provided anyway.

**CHAIR:** I know that.

**Mr TAYLOR:** It is just a claim for privilege.

**CHAIR:** That is right, and that means that the document has to be separated out, does it not? It has to be separated out and is on a separate list?

**Mr TAYLOR:** Yes.

**CHAIR:** Because the Leigh Sanderson letter to you of 19 November sets out precisely the procedure to be followed. Yes?

**Mr TAYLOR:** Yes.

**CHAIR:** So it is not a question, is it, that every document that you receive is simply, in essence, bundled up and sent on, you actually go through a considered process of separating out some documents? Yes?

**Mr TAYLOR:** Separating out some documents in terms of privilege and non-privilege, not whether they are going to be forwarded on in the final return or not.

**CHAIR:** If you go and look at the Leigh Sanderson letter of 19 November it says Cabinet-in-confidence documents are not to be included at all. Yes?

**Mr TAYLOR:** Yes.

**CHAIR:** So what that means is that, in fact, some documents, if they be Cabinet in-confidence, are actually removed from the pile?

**Mr TAYLOR:** If they made it to me in the first place, yes.

**CHAIR:** I am assuming that. You would go through the process of removing the document, would you not?

**Mr TAYLOR:** If they were Cabinet documents, yes.

**CHAIR:** And, indeed, you knew that process because when you did the grey nurse shark one that is precisely the process that was gone through there. They said everything was essentially Cabinet-in-confidence in the grey nurse shark return to order, did they not?

**Mr TAYLOR:** I believe so, yes.

**CHAIR:** They said it had been annexed to a Cabinet minute and therefore did not have to be returned. So you knew that process. Yes?

**Mr TAYLOR:** I am just trying to think about the grey nurse shark stuff.

**CHAIR:** Let me go to the next one. Let us talk about Boral Timber. Boral Timber was one where the call for papers was resisted. This was one you were involved in and it was resisted on the basis that the documents were commercial-in-confidence. Yes?

**Mr TAYLOR:** Yes.

**CHAIR:** So you were aware of a process, one where it was Cabinet in-confidence and another one which was commercial-in-confidence. Yes?

**Mr TAYLOR:** Yes.

**CHAIR:** So you knew the process that you as the officer could undertake in terms of preparing lists of documents that separated documents into privileged and non-privileged—that is the commercial in-confidence business, is that right?

**Mr TAYLOR:** Yes.

**CHAIR:** And not submitting the documents at all if they were Cabinet-in-confidence. Yes?

**Mr TAYLOR:** Yes.

**CHAIR:** So your role was more than simply acting as some form of mailman along the way, was it not?

**Mr TAYLOR:** In terms of the commercial and non-commercial I rely upon the advice of the operational areas about whether that is relevant or not. In terms of the Cabinet documents, I would not expect them to be forwarded to me in the first place.

**The Hon. JEREMY BUCKINGHAM:** That is an interesting point. You would actually seek advice—you would get a document and then you would have to seek advice saying "This might be commercial-in-confidence"?

**Mr TAYLOR:** I would get the documents referred to me and there would be some concerns raised about these "documents are commercial in-confidence for these reasons".

**The Hon. JEREMY BUCKINGHAM:** And then you would get some advice and exclude them from the return?

**Mr TAYLOR:** No, they would be included in the return but there would be a claim for privilege.

**The Hon. JEREMY BUCKINGHAM:** There would be a claim of commercial-in-confidence.

**Mr TAYLOR:** Yes.

**The Hon. JEREMY BUCKINGHAM:** But you would never exclude documents from a return for a call for papers because they were just emails?

**Mr TAYLOR:** No. Whatever was referred to me as part of the return, unless they were Cabinet-in-confidence documents, I would expect that levels 3, 4, 5, 6, 7 would know what Cabinet-in-confidence documents are. The documents that come to me are sorted out; if there is a claim for privilege, I might tidy up some of the claims, identify what is relevant and submit two returns: privilege and non-privilege. If that included emails, well and good; if it did not include emails so be it as well. But certainly documents were not excluded because of their nature.

**CHAIR:** I think we are going around in circles. It has been pointed out to me that I should be quite clear that one of the documents that we would like you to find and produce to us—so you are taking this on notice—is your email of 23 November 2009, being the one that attaches the draft response. The draft response might be there but what I want you to do is find the email itself that is on your system and also—

**Mr TAYLOR:** Sorry, the email that attached the draft response?

**CHAIR:** Yes, the email that attached the draft response. It is on the second-last line in the middle of the page; it is your email sent at 10.23 on 23 November 2009. We would like that email together with the draft response that was attached. So we are also clear: specifically we request the email that you received from William Hughes on 23 November 2009 at approximately 10.31 a.m., which is the email attaching the letter from Loyal Coal. What I ask is, because I assume it is a Word document, that you also provide the copy of the draft index that would have been attached to the draft response that you provided to Phil Anquitel in some way prior to 11.44 on 23 November 2009.

But I really do encourage you, Mr Taylor—and this is not meant in a threatening way—to search your system as thoroughly as you can for every email relevant to this between, and I think we can take the dates of, 19 November 2009 and 26 November 2009.

**Mr TAYLOR:** I had better get the IT guys onto that.

**CHAIR:** Unfortunately, it is going to involve them, but I think that is necessary just to work out precisely what happened. Again, it is because we do not want to really rely—with the greatest of respect to you—upon reconstruction but rather in terms of what we can identify by way of documents.

**Mr TAYLOR:** I fully accept that.

**CHAIR:** This has gone on a bit longer than we thought and I know it has perhaps been a bit harrowing, unfortunately.

**Mr TAYLOR:** I accept there is a process that needs to be gone through.

**CHAIR:** It has got to be a process that we go through—that is very kind of you. Thank you for giving your evidence today. I note you have appeared voluntarily and we are grateful for that. As previously indicated, the transcript of your evidence today will, at present, be confidential. However, after reviewing the transcript the committee may decide at a later date to make some or all of your evidence public. Could you please indicate if there is any evidence—if you can think of any immediately now—that you have given today that you would specifically request remain confidential? I suspect, probably after the length of time you have been here, you cannot think of anything in particular now.

**Mr TAYLOR:** One thing I would like clarified—it is a separate point but it could be related: Am I able to discuss my evidence today with anybody else?

**CHAIR:** It is still in confidence. It is probably not appropriate at this stage, apart from a partner or the like.

**Mr TAYLOR:** I started off by saying if I needed to clarify about my prior involvement—

**CHAIR:** In terms of that, what we have requested, I think that is fine. Just one final thing: Were you involved in putting the documents together for the Clayton Utz review of the Mount Penny exploration licence allocation process?

**Mr TAYLOR:** No, I was not aware of that until after the process had been finished, thank goodness.

**CHAIR:** I conclude by saying that in terms of the transcript, we will probably receive it in the next few days. I suspect there will be a meeting early next week of the Committee where the secretariat will suggest to us what evidence should or should not be included from the transcript and the secretariat will then make contact with you and organise to forward to you, probably by email with an annexure, the transcript for your consideration, including the redactions, and they will invite you to make representations to the Committee as to what you think of those redactions—whether there should be more or less. We will then meet again and give consideration to that and then publish. That is the process we will go through.

**Mr TAYLOR:** The transcript is a verbatim transcript of what is said. You cannot go back and change what you have said?

**CHAIR:** No.

**Mr TAYLOR:** Is there an opportunity to make further representations to clarify any points?

**CHAIR:** It has certainly happened with clients of mine, for instance, and on one or two occasions after I gave evidence I went home and—if my wife was feeling somewhat obliging to my pain at the time—after a chat I found that I had suddenly remembered things I had forgotten. I understand that that is a process that we all go through. If there is anything of that nature, you are most welcome to make a supplementary submission and the Committee will certainly give that due regard.

**(The witness withdrew)**

**(Conclusion of evidence in camera)**

**The Committee adjourned at 4.30 p.m.**

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