

REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

CORRECTED

At Macquarie Room, Parliament House, Sydney on Monday, 23 November 2020

The Committee met at 1:25 pm

PRESENT

The Hon. Wes Fang (Chair)

The Hon. Catherine Cusack
The Hon. Antony D'Adam
The Hon. Greg Donnelly (Deputy Chair)
The Hon. Scott Farlow
The Hon. Trevor Khan
The Hon. Daniel Mookhey
The Hon. Rod Roberts
Mr David Shoebridge

The CHAIR: Welcome to another hearing of the 2020 review of the workers compensation scheme. Before I commence, I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respect to the Elders past, present and emerging of the Eora nation, and extend that respect to other Aboriginals present. Today we will be hearing from two witnesses: Mr Chris McCann, the former general manager of compliance, fraud and corruption control at icare; and Mr Peter McCarthy, former partner at Ernst & Young and former principal actuary for the New South Wales workers compensation system and compulsory third party insurance at the State Insurance Regulatory Authority.

Before we commence, I will make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to giving evidence to the committee, it does not apply to what witnesses may say outside the hearing. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond, they can take a question on notice. Written answers to questions on notice will be provided within 21 days. If a witness wishes to hand up documents, they should do so through the committee staff. In terms of audibility for today's hearing, I remind both Committee members and witnesses to speak into their microphones. For those with hearing difficulties who are present in the room today, please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

CHRIS McCANN, Former General Manager—Compliance, Fraud and Corruption Control, icare, sworn and examined

The CHAIR: Thank you very much, Mr McCann. Would you like to start by making a short opening statement? If so, please keep it to no more than a couple of minutes.

Mr McCANN: I would like to make a statement. It may go a little bit longer than two minutes, but I will keep it to the shortest time possible. Dear honourable members, thank you for inviting me to address this Committee in regard to the review of the workers compensation scheme and to provide you with a firsthand account of what I witnessed at icare during my tenure between July 2016 and August 2018. I spent approximately 18 years in the Victoria Police, mainly as a detective, and managed investigations from homicide to major crime, organised crime, crimes of dishonesty, fraud and crimes of violence. I am the recipient of the national police medal, the Victoria police medal and the Victoria police medal for diligent and ethical service.

Following my police career, I had a long and successful career holding executive roles establishing fraud and investigations, compliance, risk and governance functions in numerous national and international listed companies. My role at icare was the general manager for compliance responsible for fraud and corruption control, reporting to the Chief Risk Officer [CRO] Gavin Pearce, who reported to Mr Bhatia until January 2018 and later to Mr Nagle. Mr Pearce also reported directly the board and the board risk compliance and audit committee, which I refer to as the board RCAC. My responsibilities included developing the governance and compliance policies aligned to the New South Wales Public Service Commission, including what, how and when to report conflicts of interest, gifts and benefits, travel and incident reporting.

It included formulating the compliance management program; developing compliance and ethics training for directors and staff; developing the fraud and corruption control strategy; preparing reports for the board RCAC; and overseeing and managing investigations, including the Corrective Services investigation, where I identified collusion between QBE and Corrective Services to unfairly deny the claims of a number of Corrective Services officers. My testimony is consistent with information I have already provided to various bodies with powers to investigate corruption and maladministration. The information demonstrates how a number of directors, the CEOs and many of the senior managers failed to comply with icare board-approved policies, disregarded appropriate governance standards, treated risk and compliance management as a hindrance, covered up internal thefts, and completely ignored sound and fair procurement processes.

The information I have provided is based on fact. I have relied upon information which I recorded contemporaneously in diaries during meetings I attended, from disclosures given to me by employees and from the investigations I undertook. I have witnessed the testimony of the ex-CEOs Mr Bhatia and Mr Nagle, the chairman Mr Carapiet, and board members Mr Bell and Mr Plumb. In my view many responses provided to this Committee were misleading and, in a number of instances, untruthful; for example, Mr Bhatia's response into declaring his interest in Capgemini and Guidewire and the receipt of numerous gifts or benefits. In all instances, it was his responsibility—and his alone—to identify and report these matters in writing with his own signature in a prescribed format to my team.

He knew this but refused to comply with the governance, risk and compliance structures he and the board had put in place, which existed to protect him and icare and to demonstrate our people acted in the public interest. He then threw his executive assistant under the bus and inferred that she had been incompetent on at least 40 occasions. At the direction of Mr Pearce, my board RCAC compliance reports were shared with the CEO and various executive leadership team members before dissemination and tabling to the board RCAC. As a result, anything these people perceived as bad news, or that may have exposed individuals acting inappropriately or demonstrated systems were failing, had to be removed. In effect, I was stopped from reporting the truth and doing my job.

And icare used and wasted money at their own discretion—both public money and premium workers compensation income entrusted to them by New South Wales employers—and gifted themselves expensive technology assets, undertook extravagant office fit-outs, gave work and awarded contracts to friends, relatives and acquaintances, and spent money on attending awards nights to promote themselves and their so-called achievements. The money should have been used for its true purpose; that is, to care for injured workers—the people who really needed it the most. I can provide other examples which speak to the poor culture. In July 2017 I attended a board RCAC meeting where I had to endure watching a live television stream of the cardinal arriving at court and watching as one director quipped, "I bet you this is his biggest audience since he had the boys lined up outside the change rooms."

Most attendees at the meeting were aware I was the survivor of cruelty inflicted by a Catholic priest who had ties to the cardinal, yet nobody would stop it. I joined icare in good physical and mental health but over a period of nearly two years I was bullied, victimised, ignored, chastised, threatened and ridiculed, and eventually forced out of my job. They destroyed my confidence and my career. To ensure I remained quiet about what had happened at icare, I was made to sign a non-disclosure agreement and they paid me a small amount of money. In effect, icare thought they were buying my silence. But they have not, so I am happy to be here and to take your questions.

The Hon. TREVOR KHAN: Mr McCann, I am one of the Government representatives on this, but I just want to give you assurance that we do not come here with any agenda. I just want to make that clear.

Mr McCANN: No, I understand that.

The Hon. TREVOR KHAN: I am only going to ask a few questions, but they go to this question of the—we will call it the gift register. We have got before us a document that identifies all of Mr Bhatia's gifts essentially being recorded as being entered on a particular date. Now, there could be many explanations for that, but I would just like you to tell us precisely how it was; as in, the nuts and bolts of how a manager was supposed to make the declaration of the receipt of a gift and how it would then be recorded in the system.

Mr McCANN: Thank you for your question. When a person receives either a gift or benefit, it is their responsibility to ensure that they complete the declaration form on the day, or as near after that day as possible.

The Hon. TREVOR KHAN: Can I just stop you there? What did the declaration form look like? Was it a paper document or did you go onto a webpage? What precisely was it?

Mr McCANN: It was based on an internal web document, which essentially was a Word document that they would download and complete online. They would then have to print it off and sign it in their hand.

The Hon. TREVOR KHAN: And having printed and signed it, and for the purposes of this I could imagine saying to my executive assistant or whoever else, "I have just received this bottle of champagne. Will you prepare the form for me to print it out?" What happens to the form?

Mr McCANN: That may be able to occur, if the person was aware of how they came into possession of the gift.

The Hon. TREVOR KHAN: I accept that.

Mr McCANN: If proper instructions have been given about how to receive gifts, yes, it would be completed by a person if they did that; however, that was not what the policy said. They had to complete it themselves. However, I take your question. If he had handed it to his assistant then it would have been signed on the day and forwarded on to my team.

The Hon. TREVOR KHAN: Right, that is where I am going. It actually goes to your team?

Mr McCANN: Yes.

The Hon. TREVOR KHAN: In hardcopy form or PDF?

Mr McCANN: It could have been an image PDF being sent by email, but eventually we would have to get the original document.

The Hon. TREVOR KHAN: Right. And in having come to your team then what happens to it?

Mr McCANN: We record in the register on the date that we receive it. It needs to be compliant with the policy that talks about the time frames, and then it would be recorded. It would be then reported on a frequent basis to the board RCAC about gifts and benefits that have been received and by whom.

The Hon. TREVOR KHAN: Right. I have asked my questions.

The Hon. SCOTT FARLOW: Can I pick up on this? This will be all from us.

The Hon. TREVOR KHAN: This is traffic court stuff. It is the basics.

The Hon. SCOTT FARLOW: I refer to the material of Mr Bhatia. I am not sure of the timeline in your engagement at icare. We looked at some of those declarations last time and they were all uploaded on the same day. Were you still in control of that team at the time?

Mr McCANN: I was still meant to be in control of that team but I was working from home. Can I answer the question, Mr Farlow, that had just been put to me by Mr Khan? These documents were submitted four to five

months later only—and this is in my own belief—after I went to ICAC in February 2018 and I raised my concerns that conflicts of interest, the reporting of gifts and benefits, and the reporting of travel had not been made in accordance with the board's policy.

The Hon. SCOTT FARLOW: The documentation that you received all in a batch about four or five months later, were they signed with different dates or were they all signed on that one date?

Mr McCANN: I did not see them personally so I cannot tell you.

The Hon. SCOTT FARLOW: Mr Bhatia proffered that he handed it over to his personal assistant at the time; that if there was some sort of failure to declare these items, it fell with his personal assistant, effectively putting her in. I am trying to understand whether there was a paper trail that at least said, say, 11 February. Because you are saying that the documents would record the date they were uploaded to the system, not necessarily the date they were signed. Is that correct?

Mr McCANN: They would record the date that they were received by my team, and then it would have the details as to when he reported it. As I said earlier, it is unacceptable to allow somebody else to sign it on your behalf.

The Hon. TREVOR KHAN: I was not suggesting that someone else would sign on your behalf. I would accept that in the preparation of the document there may be a division of labours that leads up to the requirement for the person to sign it. I was not in any way condoning someone using somebody else's signature.

The Hon. DANIEL MOOKHEY: Thank you very much for your appearance today, Mr McCann. I have two or three questions arising from Mr Khan's line of questioning. The other step involved in an icare executive making a declaration would be for them to have a superior or the person to whom they report concurrently sign and approve it, is that correct?

Mr McCANN: That is correct.

The Hon. DANIEL MOOKHEY: So in Mr Bhatia's case that would be Mr Carapiet, would it not?

Mr McCANN: Yes, it is.

The Hon. DANIEL MOOKHEY: So it is not just as though Mr Bhatia has to cause the form to be in existence, printed out and signed. It is his responsibility to ensure that the person to whom he reports is provided the form?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: And signs the form?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: And it is his responsibility to collect it and then send it on to you?

Mr McCANN: Yes, and I should add that it should contain other supporting documents if they wish to rely on those.

The Hon. DANIEL MOOKHEY: Do you recall, in the time in which you were allowed to do your duties, receiving any forms from Mr Bhatia approximate to the time that he received a gift or benefit?

Mr McCANN: I never received anything from Mr Bhatia at any point.

The Hon. DANIEL MOOKHEY: So you have no recall whatsoever of receiving the 42 decorations?

Mr McCANN: Not in relation to any gifts or benefits, or any conflicts of interest.

The Hon. TREVOR KHAN: Can we just be clear: Is it that you do not recall? I am not being rude but you know how courts work. Is it that you do not recall all that you did not receive?

Mr McCANN: I did not receive any signed documents from Mr Bhatia, and any signed document from Mr Bhatia and countersigned by Mr Carapiet at any point.

Mr DAVID SHOEBRIDGE: The spreadsheet that has been produced by icare shows that all of the declarations were made on the same day in either late April or early May—

The Hon. TREVOR KHAN: I am accepting what the document says. I am just trying to work out whether or not there was an explanation.

The Hon. DANIEL MOOKHEY: I refer to one more detail that you mentioned in your earlier answer. You said that you believed this process was undertaken in April 2018, four months after Mr Bhatia had departed the organisation, because in February that year you made a report to ICAC?

Mr McCANN: I believe that it occurred three to four months after I had already made a report to ICAC. I made that report to ICAC in February 2018.

The Hon. DANIEL MOOKHEY: And was this a part of your complaint or report to ICAC?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: You clearly reported to ICAC, which was your duty at the time, that there was an issue to do with the gifts received by Mr Bhatia in February that year?

Mr McCANN: That is correct.

The Hon. DANIEL MOOKHEY: And then two months later you are working from home and all of these forms come in bulk?

Mr McCANN: No, I was informed by people from my team that it had occurred.

The Hon. DANIEL MOOKHEY: Do you remember who from your team precisely?

Mr McCANN: No, I do not.

The Hon. TREVOR KHAN: How would a person who has already left the organisation make a declaration of the receipt of gifts?

Mr McCANN: I do not know how they would ever do that. It is impossible.

The CHAIR: Were the forms your team received signed by Mr Bhatia and co-signed by Mr Carapiet?

Mr McCANN: I would have to take that on notice and that would have to be a question answered by the people at icare now.

The Hon. TREVOR KHAN: I take it that you would have been somewhat surprised that there was suddenly a dump of 42 decorations in light of what had happened. Did you make any inquiry as to how this had come about? This is not a criticism of you at all.

Mr McCANN: No, but I have to say that I had been treated like an outcast from February that year, in 2018. In fact, by late April or May, despite me still being an employee of the company and being paid, they cut me off from the email system.

The Hon. TREVOR KHAN: I suspected it was something like that. That is why I said that there was no criticism at all. You did not really have any input into what was going on by that stage?

Mr McCANN: No, but I was talking to people internally about what was happening.

The Hon. TREVOR KHAN: That was more on a casual basis. It was not in a management sense.

Mr McCANN: Not in a management sense.

The CHAIR: I am going to pass to Mr Roberts now. I thank him for his patience.

The Hon. ROD ROBERTS: Thank you, Chair. I have a very simple question, Mr McCann. You will know where I am going with this.

The Hon. TREVOR KHAN: This is one cop to another.

The Hon. ROD ROBERTS: Yes, one investigator to another. We are ticking off the proofs of an offence, so you will know where I am coming from when I say it is fairly significant. We will use Mr Bhatia as an example. How does Mr Bhatia know that he is obliged to report gifts and benefits to the register? There would be documents somewhere. There would be a policy somewhere. Everybody would have acknowledged the existence of a policy. A person could not say, "Oh, I didn't know I had to do that. I wasn't aware of the policy." What documents were in place?

Mr McCANN: I can even take that one step further. In October or November 2016, I drafted the conflicts of interest, the gifts and benefits, the travel incident reporting, fit and proper policies that were all approved. They firstly went to the CEO and the executive leadership team. They approved the policies. These policies went to the board. It was very clear what the process was: that the CEO and directors and senior

managers—in fact, all employees—had to sign these documents. Not only was then the policies made available to the staff; I then prepared ethics and culture training for the entire organisation which directors, the CEO and the senior managers undertook, which clearly spelt out what they were responsible for. The executive leadership team and the CEO completed the training and it set out that he understood what he had to do.

The Hon. ROD ROBERTS: Thank you. That is my one and only question on this matter.

The Hon. TREVOR KHAN: Mr McCann, is your opening address available in hard copy?

Mr McCANN: Yes. It has some writing on it because I changed some of my words, but it is available.

The Hon. TREVOR KHAN: Could we possibly get a copy of it?

The Hon. DANIEL MOOKHEY: Do you mind tabling it, Mr McCann?

Mr McCANN: I do not mind tabling it at all.

Mr DAVID SHOEBRIDGE: Mr McCann, thank you for your evidence and for coming in today. Thank you for your work in icare and for seeking to put in place those integrity measures. I genuinely mean that.

Mr McCANN: Thank you, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I will take you to one of the concerns you raise in your statement that I think you provided to the State Insurance Regulatory Authority [SIRA]. You raised concerns about a relationship with ITNewcom, which was a consulting company that was effectively put in place to manage the contract between icare and Capgemini. You had concerns about ITNewcom and Capgemini and potential conflicts of interest. Do remember having a discussion with a _____ in relation to that?

Mr McCANN: Yes, I had a conversation with—

Mr DAVID SHOEBRIDGE: We might just say

Mr McCANN: —_____. If I could go back perhaps some months, I attended an ICAC seminar on procurement and contracting in August 2016. This is one month after I started with icare. At that meeting— sorry, following the end of the presentation given by ICAC, I was approached by an employee who worked in the IT area of icare, _____, who said that she was concerned about the procurement practices that were ongoing in icare. She was the one that raised with me that day her concerns about Capgemini and her concerns about the relationship with Guidewire, the relationship with ITNewcom and the fact that we had additional contractors being paid separately—so four different groups of people responsible for implementing the system. Her concerns were about the wasted resources and the fact that people in icare were not monitoring the costs of these. At the same time, in that same conversation or the very next day, _____ then also raised with me the fact that the CEO had a close personal relationship with people from Capgemini and Guidewire.

The Hon. TREVOR KHAN: Can you clarify if she used the term "close personal relationship"? What was the description?

Mr McCANN: I could refer back to my notes, but from my recollection—I keep a diary of all my notes. I have five books like this: diary notes where I have taken contemporaneous notes that date back to when I was—as Mr Roberts would understand, when you are a young policeman, you take notes of everything that occurs. I will have a record of the conversation that I had with _____ and I believe she said "close personal relationship".

The Hon. TREVOR KHAN: But if there is anything more, you can take it on notice and let us know in due course?

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: That was her concern about the relationship between Vivek Bhatia and Capgemini. But then ITNewcom was also brought into the picture to manage the Capgemini contract.

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: Can you say what, if any, concerns _____ raised about that?

Mr McCANN: The concerns that she raised at the time were the fact that there were just so many people overseeing a project, and people were falling over one another and being paid exorbitant fees to manage something that had initially been, I think, raised as a project that was going to cost \$120 million and it was just blowing out of proportion from that time.

Mr DAVID SHOEBRIDGE: Were any concerns raised about there being a relationship with senior management from icare and this ITNewcom?

Mr McCANN: I would have to take that question on notice to go back to my notes.

Mr DAVID SHOEBRIDGE: In terms of the concerns about a conflict of interest between the CEO and Capgemini, did you undertake any further investigations following that initial discussion with _____ ?

Mr McCANN: Yes, I did.

Mr DAVID SHOEBRIDGE: What were they?

Mr McCANN: I spoke to the head of procurement, _____ h. I also spoke to one of his staff members, _____ . I also spoke to other people internally. It was very clear from the people that I had spoken to that Mr Bhatia had a relationship with Capgemini and Guidewire. I spoke to the chief risk officer, Mr Pearce, and I asked him what he knew about the relationship and whether or not there had been any report of a conflict of interest, because I had gone back and checked the register and clearly nothing had ever been reported.

Mr DAVID SHOEBRIDGE: What was your conversation with Mr Pearce?

The Hon. TREVOR KHAN: Before that, can we get some further detail as to what _____ and whoever else it was actually said that led to the conclusion? I am not doubting Mr McCann's evidence, but it would be nice to know, if we can, just precisely what these people were saying.

Mr DAVID SHOEBRIDGE: What, if any, details were said to you about the nature of the conflict of interest or the relationships?

Mr McCANN: Can I refer to some notes that I have, please?

Mr DAVID SHOEBRIDGE: You can, Mr McCann.

The Hon. DANIEL MOOKHEY: Could I put to you, Mr McCann, that one of the concerns raised with you was that the company was wasting millions of dollars and that they were engaging friends and relatives?

Mr McCANN: Yes, absolutely. That is correct.

The Hon. DANIEL MOOKHEY: Did you make a record of that conversation at the time?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: Those two concerns specifically prompted you to make further inquiries. Is that correct?

Mr McCANN: Yes, that is correct.

The Hon. DANIEL MOOKHEY: Did the other issues _____ raised with you include invoices being issued and paid before contracts were signed?

Mr McCANN: Yes, that is correct.

The Hon. DANIEL MOOKHEY: Did he raise with you concerns about approval of items without scrutiny?

Mr McCANN: That is correct, yes.

The Hon. DANIEL MOOKHEY: And about the order of engagement not being followed?

Mr McCANN: Correct, yes.

The Hon. DANIEL MOOKHEY: And about the time frame for engaging services not being followed?

Mr McCANN: That is correct, yes.

The Hon. DANIEL MOOKHEY: And about not getting competitive quotes prior to letting a contract?

Mr McCANN: That is correct, yes.

The Hon. DANIEL MOOKHEY: And about business technology supply and management?

Mr McCANN: That is correct, yes.

Mr DAVID SHOEBRIDGE: And double payment of invoicing?

Mr McCANN: Yes.

The Hon. TREVOR KHAN: Mr McCann's evidence is very important, but can we break any of that down into some greater detail?

The Hon. DANIEL MOOKHEY: I think we are about to.

Mr DAVID SHOEBRIDGE: I would like to do it bit by bit. There is a lot there.

The Hon. TREVOR KHAN: Yes. I just do not want an over-gloss; otherwise, it is essentially assertion. The actual specifics are important.

Mr DAVID SHOEBRIDGE: Yes. Mr McCann, can you remember what, if any, specific details were given you about the conflicts of interest involving Mr Bhatia? I think you were referring to some notes.

Mr McCANN: ?

Mr DAVID SHOEBRIDGE: Yes.

Mr McCANN: In that initial discussion back on 27 October he referred to his concerns about a person in the Nominal Insurer called Pescott who contracted his son for MPS. We discussed a contractor by the name of Frank Zimmerman, who had no delegated authority to sign off on either contracts or to approve invoices and he was doing so. He had been allowed to continue to do what he wanted without even sighting any invoices. Service providers had been engaged with unsigned contracts. A senior employee, it was alleged at that meeting, had been double-dipping on work that he was performing. He was performing work for both icare and had come from a company called Internal Consulting Group. Project managers did not have any delegations—contractors cannot have delegations. And his concern was that there was wasted money and no-one was paying attention.

I think it was prior to that particular meeting on the 27th, I had an earlier meeting with where he had raised his concerns directly—and I would need to go back because I have got pages here of notes—where he has said that his concern was, and he supported the assertions that had been made by that Mr Bhatia had a relationship, a close relationship, with people at Capgemini, and it was referred to internally as Cap, and with Guidewire.

Mr DAVID SHOEBRIDGE: And indeed, had given you some further details I think on 29 August 2016 in a conversation you had with her after hours. She called and was distressed and upset.

Mr McCANN: Yes, called me after hours and was distressed and upset. I took notes of the conversation that reads:

Ongoing issues in business technology in relation to wasted resources. No procurement framework in place. Nobody knows how to contract in line with NSW Procurement. People going direct to friends and acquaintances. No declaring conflicts. Millions of dollars of contracts, including Capgemini. Vivek Bhatia knows people from Cap. Knew them from previous role. Brought them in. I've heard about VB's friendship with Cap people.

Those were the notes that I made.

Mr DAVID SHOEBRIDGE: You obviously raised those concerns with , is that right?

Mr McCANN: Yes, I did.

Mr DAVID SHOEBRIDGE: Did he validate those concerns?

Mr McCANN: Yes, he did.

Mr DAVID SHOEBRIDGE: You then took it up the next level. Who did you talk with after in raising it internally within icare?

Mr McCANN: Well, strangely, the three—internally, as you would know, in a government institution you have protected interest disclosure people. The four protected interest disclosure people in our business were Vivek, Gavin Pearce, and Greg Barnier, the head of people engagement. I raised my concerns directly with Mr Pearce, and also with .

Mr DAVID SHOEBRIDGE: What did Mr Pearce say when you raised these concerns with him?

Mr McCANN: He said that "We already know about it"—something along those lines. I would need to go back and refer to my notes, but he said—

The Hon. TREVOR KHAN: Is it in that book?

Mr McCANN: Yes, it will be in this book.

The Hon. TREVOR KHAN: It may not be that easy to find.

Mr McCANN: It will not be that easy to find.

The Hon. ROD ROBERTS: There is a fair bit of contemporaneous notes there.

Mr McCANN: I have to say I am very good at taking contemporaneous notes, and they are quite detailed.

Mr DAVID SHOEBRIDGE: Finding them is another matter on the spot.

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: If you want to give more detail about that on notice, please do.

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: Did he say, "These are serious. I will investigate it of course. We've got a problem here." Anything like that?

Mr McCANN: Not at all, completely the opposite. He told me basically to shut it down, and "There is nothing to see here."

Mr DAVID SHOEBRIDGE: What about _____, when you raised it with him?

Mr McCANN: Well, _____, he reported to Mr Pearce. He was a colleague of mine in the audit risk and compliance area, and he chose not to take the matter up and investigate the matter as well.

The Hon. DANIEL MOOKHEY: Before we go too far in time beyond this point, did Mr Pearce tell you not to raise this with the regulator?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: Did he say not to mention this to SIRA?

Mr McCANN: Not to mention what was happening at icare to SIRA generally.

The Hon. DANIEL MOOKHEY: Specifically the procurement concerns raised by _____ and _____?

Mr McCANN: Not in particular. It was a comment made about not declaring information to SIRA when we went up to have a discussion with them about the activities that were happening and the concerns that I had about what was going on at icare.

The Hon. DANIEL MOOKHEY: This was despite, effectively, a continuous disclosure obligation that icare owed to SIRA as its regulator?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: And so the chief risk officer instructed you prior to a meeting not to raise it?

Mr McCANN: Yes. We were going to meet Mr Darren Parker.

The Hon. TREVOR KHAN: Did you make a note of that?

Mr McCANN: I certainly did. I made a note to say, "You are not to make mention of what is happening in the business."

The Hon. TREVOR KHAN: That is in that book there?

Mr McCANN: It is in my notes, yes.

Mr DAVID SHOEBRIDGE: In the middle of October—the notes I have here say 19 October 2016—you spoke with _____, who at the time was icare's general counsel, about some of these matters.

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: asked you if you had received a conflict of interest report from . Is that right?

Mr McCANN: Yes, she did.

Mr DAVID SHOEBRIDGE: Can you detail what happened?

Mr McCANN: I can refer to my notes here:

At 5.15 p.m. 19 October 2016 I spoke with , icare's general counsel. asked me if I had received a conflict of interest report from Rob Craig because he thought he was brought into icare on contract from Internal Consulting Group to work with/for Vivek. said Rob Craig was still working at the consulting company and he then brought in another employee from Internal Consulting Group. said there was double-dipping, that icare was paying Rob Craig directly as an employee and also as a director-consultant at Internal Consulting Group. said she raised this issue with Gavin Pearce and C said Gavin Pearce ignored it. told me that I needed to make inquiries.

Mr DAVID SHOEBRIDGE: Did you?

Mr McCANN: I attempted to make inquiries but each time I tried to make inquiries I would just be shut down. I would not be provided any information. And I would generally go back to speak to Gavin Pearce who, as the person who is responsible for managing the risks and the compliance of an organisation, has responsibility and should have unfettered access to information and unfettered access to the board so that he can report what is actually happening. And in fact that was just never happening.

The Hon. DANIEL MOOKHEY: Can I pick the story up there, Mr McCann? You might not be aware of this, but earlier this year, as part of its Government Information (Public Access) Act remediation program, icare published a contract that was issued without tender to the value of \$500,000 to the Internal Consulting Group, which coincided with the time period that you are describing. I am sorry, I have not got the contract with me, otherwise I would provide it. Equally on notice in response to some of the questions that Mr Shoebridge and I were asking in an earlier hearing, icare seems to confirm that received referral fees. Were you aware of that?

Mr McCANN: No, but then as the general manager for compliance, as I have already given in my opening address, I was ignored a lot of the time and was not provided information when I asked for it. So I am not surprised that it was ongoing. In fact, in 2016 when I first arrived I asked for a copy of all contracts, all service providers, that existed at the time I arrived in August 2016, and there were some 915 service providers receiving in excess of \$150,000 per year providing services to icare. I understand that not all of these services were contracted.

The Hon. DANIEL MOOKHEY: That is very helpful. There was a policy in place for conflicts of interest to be managed and disclosed and you wrote it, is that correct?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: If any group executive is receiving remuneration from another organisation, under that policy are they meant to disclose it?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: Are they meant to get approval for it?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: If they are a direct employee, certainly at the group executive level?

Mr McCANN: Yes.

The Hon. TREVOR KHAN: You would not need a policy for that, would you?

Mr DAVID SHOEBRIDGE: I was just thinking the same myself.

The Hon. ROD ROBERTS: Clearly you do.

The Hon. DANIEL MOOKHEY: I take the cue from Mr Roberts. Let us be abundantly clear: There was a clear policy that would prohibit such an arrangement without disclosure and approval, is that correct?

Mr McCANN: That is correct.

The Hon. DANIEL MOOKHEY: Was that disclosure meant to be made to you?

Mr McCANN: Yes, it was.

The Hon. DANIEL MOOKHEY: Do you recall receiving any such disclosure from any group executive?

Mr McCANN: No, in fact at the board risk and compliance committee meeting in February 2017, after I had been there for approximately six months I raised my concerns because I had heard of so many conflicts of interest yet we had three in our register at that point. That was completely inconsistent with what I had been told.

The Hon. DANIEL MOOKHEY: You attended a meeting of the audit and risk committee in February 2017, is that correct?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: And that meeting would have been chaired and attended by Mr Plumb and Mr Bhatia and all the other standing members of that committee, is that correct?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: And you say you disclosed your concerns to that committee at the time?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: Do you recall what he said to them?

Mr McCANN: I do not recall exactly, but my initial draft report that I intended to table at the committee had been watered down from what it was where it actually outlined my concerns about the lack of reporting. There was a conversation at that particular committee meeting about the lack of reporting of conflicts. However, what was clear to me after being at the business for nearly six months, as I said before, the business only wanted to paint a rosy picture of what was going on, not of any inconsistencies and issues that were happening in respect to people not following board policy, for example. There will be a discussion that would have been minuted about the conflicts on that date, 22 February 2017.

The Hon. DANIEL MOOKHEY: As a reader of minutes of the audit and risk committee I cannot find any such reference to such a discussion. I will go back and check as well now that you have mentioned the date of that particular committee meeting. You just said one thing there, which was that your reports tended to be watered down. Is that because you had to submit your reports through Mr Pearce to the audit and risk committee?

Mr McCANN: They had to go to Mr Pearce first, who sat on the executive leadership team and then it went to the CEO and the entire executive leadership team. As I said in my opening address, if there was any commentary in there which was unfavourable then it would be removed. What made it then to the board audit and risk committee, or the compliance and audit committee I should say, was a portion of what the real truth was.

The Hon. DANIEL MOOKHEY: You did not have the capacity to provide an independent report yourself to the audit and risk committee outside the process you just described?

Mr McCANN: No, and I have been an executive in large companies. It was the first time that I was not allowed to present the actual truth to that committee.

The Hon. TREVOR KHAN: Does that mean that you presented a partial truth or you did not actually present anything directly to the committee?

Mr McCANN: I still made presentations to the committee, but it was really partial compared to what the actual facts were.

Mr DAVID SHOEBRIDGE: Maybe we will go to your first audit committee. You had only been at the company a short time and you attended the audit committee at the end of July 2017. You have attended a number of audit committees, is that right?

Mr McCANN: Yes, I have.

Mr DAVID SHOEBRIDGE: Was there a point where you were told to not attend audit committees?

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: When did that happen?

Mr McCANN: I think it was some time—I believe it was sometime around late 2017. The board risk, compliance and audit committee made an executive decision to remove and drop the word "compliance" from the committee and therefore I was uninvited almost immediately.

Mr DAVID SHOEBRIDGE: When was that decision made?

Mr McCANN: I believe it was made between— This is only information that has been given to me by Mr Pearce. That decision had been made by him in consultation with the chair of the board risk, compliance and audit committee to drop me off. I think it was some time around about November 2017. At that point it was very clear I was raising serious concerns about what was happening internally and, because of that, my view was that was why I was dropped off and uninvited to that committee meeting.

Mr DAVID SHOEBRIDGE: The board risk, compliance and audit committee [RCAC] had had concerns raised with them by the Auditor-General's report, is that right? So they were put on notice that there were concerns about procurement, there were concerns about inconsistent compliance practices and they were put on notice.

Mr McCANN: Sorry, Mr Shoebridge, I started with the company on 4 July. I think I attended my first board RCAC meeting probably 20 or 22 days after I started.

The Hon. TREVOR KHAN: That was 4 July?

Mr McCANN: This is in July 2016. I started on 4 July 2016. I attended my first meeting of the committee—if I can refer to my notes. I did attend the meeting on 26 July 2016 and at that meeting of the board RCAC in attendance was the Auditor-General represented by a person—and I cannot pronounce his last name, I apologise—his name was

Mr DAVID SHOEBRIDGE: The surname is _____ from the Auditor-General's office, is that right?

Mr McCANN: That sounds about right; I just cannot pronounce it. He raised concerns about the fact that there were GIPA Act breaches back then in access and use of data, noncompliance with the Privacy Act and other key Acts and regulations, inconsistent compliance practices across various divisions of icare, significant procurement issues and issues with management of contracts. That was raised at the committee that day. I had only been there for 22 days.

Mr DAVID SHOEBRIDGE: It was in that context that you then had the conversations with _____ and Mr Pearce in the weeks and months that followed that? The Auditor-General's report put the context for all those conversations?

Mr McCANN: Yes. In addition to meeting _____ on the day of the ICAC seminar.

Mr DAVID SHOEBRIDGE: I took you to that conversation you had with icare's general counsel and asking about the conflict of interest with _____ and double-dipping. Do you recall about a week after that whether you had a meeting with the CEO, Vivek Bhatia?

Mr McCANN: Yes, I did.

Mr DAVID SHOEBRIDGE: Do you want to tell us what happened?

The Hon. TREVOR KHAN: Actually what was said as opposed to what happened, if you do not mind?

Mr McCANN: If I can refer to my notes? It was a 9 o'clock meeting on 26 October 2016. "What is going well, what is not, any issues. Discussed current compliance plan. What is happening in compliance. Discussed issues with the procurement framework and my concerns"—and the fact that I was working with

I said that there were issues with the procurement framework; in fact, one did not exist. "Discussed the concerns that had been raised also by _____, what was reported" and the fact that I was trying to undertake an investigation and what the outcome at that point was of my investigations.

At that point I also raised the fact that Mr Bhatia had a relationship with Capgemini. At that point he yelled, thumped his fist into the table and, swearing at me, told me that I was fucking useless. "If you're an investigator, go and investigate." I made additional notes about that conversation on 27 October and I relayed the conversation that I had had the previous day with Gavin Pearce. I said I was concerned about the incident that happened with Mr Bhatia—that he refused to submit any type of conflict of interest regarding Capgemini. I said, "I have never been sworn to like that by any person—I don't think even criminals, in some instances." I was told, "He always does that—swears and gets angry at the situation. He shoots the messenger. He's done it to others, too."

I said, "I've never heard anyone swear like that. 'Fucking useless. You're a fucking manager—a senior leader. Is it corrupt because I know the owner of Capgemini and use them?'" I said, "At the very least, a conflict must be disclosed." I told Gavin. He said he will not report it and he will bring in whoever he wants to work at

icare. Gavin said he will forget about it. I said, "It has made me feel sick. I can't face him again. He thinks I'm hopeless."

Mr DAVID SHOEBRIDGE: And this is your fourth month in the job at icare?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: Just to be clear, Mr Bhatia was not speaking to you in a respectful or collaborative tone?

Mr McCANN: Not at all.

The CHAIR: Do we need that clarified?

Mr McCANN: That is pretty clear.

The Hon. TREVOR KHAN: Where are you going with that?

The Hon. SCOTT FARLOW: I think he is using terminology that may have been used in the last hearing, and I think it was "reconciliatory and collaborative".

The Hon. DANIEL MOOKHEY: Well, was it a reconciliatory tone?

Mr McCANN: Not at all.

The Hon. DANIEL MOOKHEY: Did you see Mr Bhatia's evidence at this Committee?

Mr McCANN: I watched it three times, yes.

The Hon. DANIEL MOOKHEY: And so you saw us ask him directly about that meeting?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: You saw him deny that meeting directly?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: Was his evidence truthful, in your eyes?

Mr McCANN: No, not at all.

Mr DAVID SHOEBRIDGE: Mr McCann, it might be useful—we have limited time—to move on to issues about the Pescott conflict of interest. Now, this conversation you had with Mr Bhatia and Mr Pearce was in October. Do you remember on 11 November 2016 whether or not you had a conversation with Mr Barnier about the Pescott conflict of interest?

Mr McCANN: I had a meeting at 13:30, it says here. "Meeting with Greg Barnier. Raised concerns about Pescott, Craig conflicts. Discussed operation project seven." I cannot recall what that was about now. Given that Mr Barnier was a person that was to receive protected interest disclosures, I expected him to take some action with respect to the Pescott and Craig conflicts issues and he did not.

Mr DAVID SHOEBRIDGE: And one of the concerns about the Pescott was that that contract where there was a conflict of interest produced the net promoter score matrix—

Mr McCANN: Yes, it did.

Mr DAVID SHOEBRIDGE: —which was then used to determine executive bonuses, amongst other things.

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: And so, pretty much everyone in senior management had an interest in the net promoter score being done in such a way that it produced executive bonuses?

Mr McCANN: That it produced a positive result and would in turn result in a bonus, yes.

Mr DAVID SHOEBRIDGE: And everybody you were reporting this to had an executive bonus at play. Is that right?

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: Do you remember on 18 November 2016 having a further discussion with Gavin Pearce about this issue?

Mr McCANN: Yes, I did.

Mr DAVID SHOEBRIDGE: Can you tell us what happened in that conversation?

Mr McCANN: I met with him at 11.00 in the morning and I raised my concerns about the Pescott matter. I asked him about whether or not he was aware of this matter and he was, but at that point he told me not to focus on fraud or corruption or the net promoter score [NPS].

Mr DAVID SHOEBRIDGE: Do you remember the words he used?

Mr McCANN: Yes. He told me not to focus anymore on fraud or corruption. He told me not to further investigate the net promoter score issue. This related to the Pescott matter. I raised with Gavin Pearce the net promoter score and Pescott issue. Pescott was an icare staff member contracting services with his son. I said, "The NPS is a significant conflict of interest and has never been reported." Gavin told me to drop it. For the months following, I kept pressing for a conflict of interest form to be completed. I asked Mr Pearce that this issue should be raised at the icare board audit, risk and compliance committee. Mr Pearce told me that it was insignificant and would not be raised.

Mr DAVID SHOEBRIDGE: In your experience as a senior police investigator then as a corporate compliance and risk officer, how would you characterise that direction from your superior at that point?

Mr McCANN: It just did not make any logical sense to me. Mr Pearce, as I said earlier, is responsible for managing the risks of the organisation. This is a significant risk to the organisation when you are contracting services out to a relative—in another country, not in Australia. This is contracting out to a company in New Zealand and it is Mr Pescott's son. Mr Pescott had a financial interest, I believe, in the company.

Mr DAVID SHOEBRIDGE: And you were told to drop it?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: And you were told to drop it by the Chief Risk Officer?

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: Would it be unfair to characterise that direction as a direction to tell you to ignore corruption?

Mr McCANN: Almost every time I went to Mr Pearce or others that were responsible for upholding the ethics and the culture in the organisation, being told to drop things clearly demonstrated to me that this business did not want to know about any bad news to deal with corruption and did not want any bad news reaching outside of the organisation.

Mr DAVID SHOEBRIDGE: I am sorry we have to move on, Mr McCann, in this discussion. In organisations—particularly the large corporate or government agencies that you have worked with—there is normally a property register. Would that be right?

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: You include computers, iPads, office furniture and the like on a property register. Did icare have one of those?

Mr McCANN: No. They did not keep an asset register.

Mr DAVID SHOEBRIDGE: Were issues raised with you about the theft of property from icare?

Mr McCANN: Yes. Numerous reports were made to me about the theft of property from icare over a period of time.

Mr DAVID SHOEBRIDGE: What kinds of thefts are we talking about?

Mr McCANN: Thefts have been occurring since July 2016, after they had gone through this major refurbishment of the building in Kent Street. It is hard to believe but overnight, property such as tables, chairs, cushions, microwave ovens, television sets, iPads, toasters, kettles, crockery, knives and forks were going missing. At that time, there were only—

The Hon. TREVOR KHAN: Sorry. Again, do not take this as that I am doubting what you are saying. How did you know that that was happening?

Mr McCANN: Because people came to tell me. When I started to dig deeper into what was happening in the organisation—it started, really, with the theft of some Cabcharges over a Christmas period. When I traced those back, the Cabcharges led to the Hills district. Then I managed to also find out—

The Hon. TREVOR KHAN: So these were Cabcharges like they used to have in the old days—like from the blue book?

Mr McCANN: Yes.

The Hon. ROD ROBERTS: Vouchers. You get a voucher.

Mr McCANN: Vouchers. At the same time, I also discovered that credit cards had been used out in the Hills district. And so there was a connection. I found out that the credit card had been used at an Indian restaurant and I drew a conclusion that the people that had access to the office overnight and that were staying there, working on the Capgemini project, had access to all these areas. And I believed—

The CHAIR: Sorry, just noting that we probably do not need names at this stage.

Mr DAVID SHOEBRIDGE: I do not think we are getting them yet.

Mr McCANN: I am not giving names.

The CHAIR: Thank you.

Mr McCANN: Thanks, Chair. I believed that people from that organisation that were working there overnight were the people removing the property. I attempted to investigate it and I said at the time that these matters need to be reported to the police because it is theft—it does not matter if it is \$1 or \$10 or \$100. At that time I then gathered enough information to determine that there had been somewhere between 47 and 50 thefts over a period of six months.

Mr DAVID SHOEBRIDGE: This included laptops, cushions, tables and chairs just walking out the door?

Mr McCANN: Yes.

The Hon. TREVOR KHAN: Toasters, microwaves—

Mr DAVID SHOEBRIDGE: It was basically like a free department store, in some regards, working at icare. You could just take out what you want without a register?

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: Who did you report that to?

Mr McCANN: I reported it once again to Mr Pearce and I was told to drop it. I was told not to investigate it, not to waste my time on it; it was a waste of time and the amounts were of no consequence. They were of low value. I said, "But it is not about the value; it is about what it is doing to the culture of this company internally. People are having money stolen out of their drawers overnight."

The Hon. DANIEL MOOKHEY: Can I turn quickly to another matter, Mr McCann? You made reference in your opening statement to a report that you received from corrections officers. Do you recall that part of your opening statement?

Mr McCANN: Yes

The Hon. DANIEL MOOKHEY: And this was to do with the incidence of collusion between Corrective Services NSW and QBE who, at the time, was a scheme agent for the Treasury Managed Fund [TMF], is that correct?

Mr McCANN: Yes.

The Hon. DANIEL MOOKHEY: You were contacted by some of the workers affected?

Mr McCANN: Yes, I was.

The Hon. DANIEL MOOKHEY: And you formed a reasonable suspicion that there was collusion taking place?

Mr McCANN: I read through nearly 2,000 pages of evidence, including evidence that had been presented to the Industrial Relations Commission. I formed the view that people had altered statements to suit the facts in order to deny the claims of these people that had claims that should have been approved.

The Hon. TREVOR KHAN: Were those people within QBE or people within icare?

The Hon. DANIEL MOOKHEY: Or both?

The Hon. TREVOR KHAN: Or both?

Mr McCANN: I believe the statements had been altered by those that worked in Corrective Services and were then submitted to QBE as part of their claim investigation.

The Hon. DANIEL MOOKHEY: Very quickly, you caused the KPMG investigation into that matter to take place?

Mr McCANN: Yes, I did.

The Hon. DANIEL MOOKHEY: And you participated in that KPMG investigation whilst you were still an employee. Is that correct?

Mr McCANN: I remained involved in that investigation until, once again, Mr Pearce said, "You need to drop this. You need to sit back and let somebody else take over."

The Hon. DANIEL MOOKHEY: To cut to the chase in the one minute that we have left, throughout your period of involvement in that did you witness or form any reasonable suspicion that icare or any icare executive was putting pressure on anyone in KPMG or associated with that investigation to water down the findings of the KPMG investigation and to otherwise engage in a cover-up?

Mr McCANN: I have to admit that I was totally surprised with the outcome. I had met with KPMG in November and December 2017. They clearly were of the opinion at that time when they were conducting the investigation that there had been collusion and it was clear that there was collusion between QBE and Corrective Services HR. They were in no doubt because they had listened to conversations. What I was concerned about is that it went from that they had no doubt and they were nearly, I think at that time, 99.9 per cent certain that there had been collusion, and then three months later or four months later when the final report was released it is a completely different—

The Hon. DANIEL MOOKHEY: It is a whitewash.

Mr McCANN: It is a completely different outcome.

The CHAIR: Order! Please do not put words in the witness's mouth.

The Hon. DANIEL MOOKHEY: I am asking him. Did you think it was a whitewash?

The CHAIR: We have reached time.

Mr DAVID SHOEBRIDGE: Could we finish the evidence with two minutes of your indulgence, Mr Chair?

The CHAIR: We have another witness waiting. We have now gone over time.

Mr DAVID SHOEBRIDGE: I accept that, but I ask for two minutes.

The Hon. TREVOR KHAN: All of Mr McCann's evidence is important. The best evidence that Mr McCann has given is when he has quoted conversations, not shorthand. The book is the secret here. It is a contemporaneous note of conversations. But asking Mr McCann for conclusions is less weighty than what is in his book.

Mr DAVID SHOEBRIDGE: I accept we have limited time, as you would be aware, and we need to conclude, but I ask for just two minutes to conclude, Mr Chair.

The CHAIR: I will allow time for one more question.

Mr DAVID SHOEBRIDGE: It is going to take two questions.

The CHAIR: One question in two parts.

Mr DAVID SHOEBRIDGE: Mr McCann, when you left the organisation, that had followed some pretty appalling behaviour towards you, and part of your leaving was a deed of release, is that right?

Mr McCANN: Yes.

Mr DAVID SHOEBRIDGE: One of the terms of the deed of release was effectively a gag provision?

Mr McCANN: Yes.

The Hon. TREVOR KHAN: It is a non-disclosure provision.

Mr DAVID SHOEBRIDGE: Or the non-disclosure provision. Was it explained to you why that non-disclosure provision was being required by icare?

Mr McCANN: It was not explained to me. I read between the lines as to why that was in there.

Mr DAVID SHOEBRIDGE: What was that? What did you read?

Mr McCANN: That they did not want this evidence to come out of what was actually happening at the business. That was the conclusion I drew and that comes from working as an investigator for so many years and understanding how things operate. They did not want me to talk. They did not want me to say what was actually happening. They would never have wanted me to be here today to explain what was going on in that organisation.

The Hon. DANIEL MOOKHEY: Just finally, do you mind—

The CHAIR: No, no, no.

The Hon. DANIEL MOOKHEY: Chair, please. I am just going to ask him to, if possible, table the book or take on notice whether he can provide us with a copy of the book on his departure. That is all.

The Hon. TREVOR KHAN: I am comfortable with that. I would not like Mr McCann to give up his book. I think he should hold onto his book.

The Hon. DANIEL MOOKHEY: Mr McCann, is it possible that, on notice, you could provide us with a photocopy of your diary to the extent to which they are to do with the subject matter of what you have been asked today?

Mr McCANN: I have four or five diaries. I will take it on notice and I will provide you with copies of the diaries.

Mr DAVID SHOEBRIDGE: To the extent that they overlap with what we have asked you.

The CHAIR: I call an end to the hearing. The questioning has concluded. Mr McCann, thank you for attending the hearing today. You have taken a number of questions on notice and the Committee has resolved that answers to questions on notice will be returned within 21 days. The secretariat will contact you in relation to those questions. Thank you very much.

(The witness withdrew.)

(Short adjournment)

PETER McCARTHY, former partner, Ernst & Young and former principal actuary, NSW Workers Compensation System and CTP, SIRA, sworn and examined

The CHAIR: I welcome our next witness, Mr McCarthy. Would you like to start by making a short opening statement? If so, please keep it to no more than a couple of minutes.

Mr McCARTHY: Thank you. I have 35 years' experience in personal injury schemes as an actuary, a manager of the business and an advisor, especially in claims management. Before I retired in early 2018, I was the principal actuary to the State Insurance Regulatory Authority [SIRA] for workers compensation and compulsory third party [CTP]. I was the principal advisor to Treasury in its review that led to the creation of icare and SIRA. What has happened at icare since 2015 should never have been allowed to happen. It is an unmitigated social and financial disaster. Icare has lost the trust of injured workers and employers. It has squandered billions of dollars of employer money. Icare has a long record of poor operational performance, poor governance, lack of transparency and extensive non-compliance with legislation.

Do not be fooled by the message that the workers compensation scheme today is better than it was. The evidence indicates it is in substantially worse shape. The icare disaster was caused by appointment of board members who had no experience in personal injury or workers compensation, who then appointed management with no experience in workers compensation or personal injury. Icare launched a new, unproven claims operational model with a single provider, bringing key decision-making in-house and under-resourcing claims management functions. This was disastrous and resulted in poor return-to-work rates and a major deterioration in the claims performance and financial position of the Nominal Insurer. I am speaking out and have been for some time due to the terrible damage icare has inflicted on injured workers and because icare's performance is at the extreme end of a worst possible case. I know firsthand from my charity work the devastating impact they are having on injured workers. The only way to get to the bottom of icare's mismanagement, the many questionable contracts awarded to mates, a culture of burying bad news and poor governance is a royal commission to ensure this does not happen again.

From my experience working in the system, the five key actions to be immediately implemented are: one, to restore trust, icare and its Minister must be honest and admit they got it very wrong—you do not fix it unless you know and admit it is wrong; two, the rest of icare's board must be replaced with at least two people with extensive and successful experience in personal injury, one with claims management and one an actuary; three, icare executives must be replaced with people having successful experience in workers compensation, especially claims management; four, icare needs to abandon the new operational claims model—the premium system needs a complete overhaul; five, SIRA must commission an independent actuarial assessment of the Nominal Insurer claims liabilities to assess the full potential financial impact on the scheme. My last comment is that the benefits of workers should not be further eroded. They should not have been eroded in 2012. The Government should instead have focused on improving claims management. Do not let workers again be the punching bags. Thank you.

The Hon. DANIEL MOOKHEY: Thank you, Mr McCarthy, for your opening statement. Can we have that tabled?

The CHAIR: You have it on your table.

The Hon. DANIEL MOOKHEY: Ms McCarthy, you are retired currently?

Mr McCARTHY: Yes, I am retired.

The Hon. DANIEL MOOKHEY: But you still pay attention to icare's performance?

Mr McCARTHY: Yes, I do.

The Hon. DANIEL MOOKHEY: You have been monitoring its performance this year?

Mr McCARTHY: Yes, since I retired, actually.

The Hon. DANIEL MOOKHEY: You have been monitoring its performance since the Dore review was handed down?

Mr McCARTHY: Definitely, yes.

The Hon. DANIEL MOOKHEY: Should the Committee be confident that icare is turning around its experience?

Mr McCARTHY: No.

The Hon. DANIEL MOOKHEY: Why should we not accept it at face value when it says that the scheme is improving?

Mr McCARTHY: A few reasons. First of all, it is my view that icare has been coming out with misleading information since it started. It has been, in my view, misleading the public and everyone. The second reason is that despite some resignations, a majority of people at icare who created this mess are still there. I would not have any faith in these people to fix it when they caused it. None of them who are still there—they still do not have experience in personal injury or workers compensation claims.

The Hon. DANIEL MOOKHEY: Can I turn to—

Mr McCARTHY: Sorry, I need to say that to date—and I looked at SIRA's statement at the end of August—there is really no sign of any improvement.

The Hon. DANIEL MOOKHEY: There are two aspects of icare's performance that you might be in a unique position to provide some commentary on. You see that SIRA publishes a dashboard of return-to-work performance?

Mr McCARTHY: Yes, and open data. Yes.

The Hon. DANIEL MOOKHEY: You have monitored that recently?

Mr McCARTHY: Yes.

The Hon. DANIEL MOOKHEY: That data shows that return-to-work performance for the Nominal Insurer for 26 weeks is about 80 per cent to 81 per cent, from memory.

Mr McCARTHY: I cannot remember the figure.

The Hon. DANIEL MOOKHEY: Either way, it is not what it was prior to the claims model. Would you agree?

Mr McCARTHY: No, that is right. Yes.

The Hon. DANIEL MOOKHEY: What are the long-term implications to the finances of the scheme of such a depressed return-to-work rate?

Mr McCARTHY: It is a long answer I have to give on that one.

The Hon. DANIEL MOOKHEY: In layman's terms, perhaps.

Mr McCARTHY: If people do not return to work, they do not return to work for a reason. Normally they have a permanent impairment. Some of them will have serious permanent impairments. We have seen a big increase in medical costs, particularly around surgery. Surgery is an indicator that a lot more people have permanent injuries that need fixing. If people are not returning to work, they have permanent impairment. What that normally means is that there are going to be a lot more people who are going to get through the 10 per cent, 15 per cent and 20 per cent whole person impairment [WPI] thresholds. I assume you understand what I am talking about.

The Hon. DANIEL MOOKHEY: Yes.

Mr McCARTHY: One of the key changes to the legislation in 2012 was the cut-off of weekly benefits at five years if you have a WPI impairment of 20 per cent or lower. It is clear—and I have spoken to lots of claims people, doctors, lawyers—that everyone is expecting a big blowout in the number of people who are going to get over the 15 per cent and 20 per cent impairment thresholds, which means they will be entitled to a lot more benefits, common law and ongoing weeklies. If that happens, the liabilities of the scheme are going to go up substantially.

The Hon. TREVOR KHAN: What interests me is that the collapse in return-to-work rates seems to have coincided with the change in management of claims. That seems to suggest that there is actually a correlation between the poorer return to work and the change in management. They are causally connected, yes?

Mr McCARTHY: Yes, absolutely. Correct.

The Hon. TREVOR KHAN: What concerns me is that whilst you say they are going to get over the WPI threshold of 15 per cent or 20 per cent, what we are seeing because of a failure to interact with injured workers at an early stage is that people are falling through the net and not returning to work. They may actually

get cut off at the five-year point, but it is that extended period of time arising from poor claims management. That is really what has gone on, is it not?

Mr McCARTHY: Yes, that is right. That is exactly right. It is poor claims management.

The Hon. TREVOR KHAN: So we are not at odds in regard to that?

Mr McCARTHY: No, absolutely. I have done lots of reviews around a number of these workers compensation schemes.

The Hon. TREVOR KHAN: Yes, I know.

Mr McCARTHY: It all comes back to the quality of claims management.

The Hon. TREVOR KHAN: So you fully accept the Dore report and its analysis—in essence it is probably one of your points here; point 4—that essentially because they have gone down this track they have produced an outcome which is damaging, both to the health of the scheme and also to the health of workers?

Mr McCARTHY: Absolutely correct, yes.

The Hon. TREVOR KHAN: Sorry, I do not think we are at cross purposes.

The Hon. DANIEL MOOKHEY: Just to identify the features of the claims management model, which you say or might believe is causing this, is this the model that means that an injured worker and an employer cannot speak to a case manager for what was up to six weeks?

Mr McCARTHY: Sorry, can you repeat that?

The Hon. DANIEL MOOKHEY: Was one of the features of the claims management model, of the new claims operational model—I will work through this step by step. Was one of the issues to do with the new claims operational management, the introduction of one IT platform, the Nominal Insurer Single Platform [NISP]? Do you consider that to be part of the reason why the scheme deteriorated?

Mr McCARTHY: The new IT platform is not the core of the problem.

The Hon. DANIEL MOOKHEY: What is the core of the problem?

Mr McCARTHY: It starts with the triaging. The triaging does not work. When you find that—

The Hon. DANIEL MOOKHEY: This is the algorithm that allocates people to a category and means that some of them do not see case managers for up to six weeks?

Mr McCARTHY: Yes, or even longer.

The Hon. DANIEL MOOKHEY: That is what you believe is the issue?

Mr McCARTHY: That is the core of the problem. Look, it is not the whole problem, but it is the core of the problem.

Mr DAVID SHOEBRIDGE: It is not the software itself that is the problem; it is the fact that at the time icare brought in that new software solution and IT solution that coincided with its new triaging model. Is that right?

Mr McCARTHY: Well, what actually happened is the new model came in in January 2018. They did not have their new IT system operational. My understanding is that they put the details of the claim through an algorithm separately, and that triaged the claim. In, I think, February 2019, they did their algorithm through the IT system.

Mr DAVID SHOEBRIDGE: And it is the algorithm itself and the thinking behind that that you maximise the automation of claims management, rather than having human involvement.

Mr McCARTHY: Yes.

Mr DAVID SHOEBRIDGE: Is it your understanding that that is what led to the blowout?

Mr McCARTHY: Yes. If you go and have a look at the, I think it was the EY claims management report that supported the Dore report, one of the things that actually came out of that was quite clear. It was very clear the whole intention of this new claims model was that 80 per cent of claims would have minimal intervention, or minimal contact with a claims person. Eighty per cent of claims would have almost no contact with a claims officer. They were basically left to their own devices.

Mr DAVID SHOEBRIDGE: Does this come back to what you raised in your opening statement, that there just are not the skills and experience in workers compensation and personal injury insurance on the board to pick up these kinds of problems?

Mr McCARTHY: On the board and in management, absolutely. The first time I looked at this in around the last quarter of 2017, I said, "I think this is bizarre. There is no way this is going to work." Anyone who understood a workers compensation claims project knew this was not going to work. At the time I spoke to other people and said, "It's got no hope of working."

Mr DAVID SHOEBRIDGE: But this might work in a kind of general insurance model about car insurance or home and contents insurance?

Mr McCARTHY: Yes, it could.

Mr DAVID SHOEBRIDGE: But translating it into what is often an emotionally charged and complicated environment like a workers compensation claim, that was the problem, was it?

Mr McCARTHY: Yes. There were too many unknowns that the algorithm could not consider. They could not consider whether it was a good employer or not, whether the employer was actually willing to help the person get back to work. It did not look at your own personal loss—life actually—whether you were depressed at home, whether you had marriage breakdowns, and a whole lot of issues. And they all impact how people react to claims.

The Hon. DANIEL MOOKHEY: In your interaction with other personal injury and workers compensation schemes in Australia or internationally, are there examples of where 80 per cent of people were able to manage their own claims? Is there any example of this working in any other jurisdiction that you can think of?

Mr McCARTHY: Not in Australia, not in workers compensation, CTP or personal injury. I do not know about overseas.

The Hon. DANIEL MOOKHEY: But no like scheme in Australia has even tried this?

Mr McCARTHY: No, no-one. To my knowledge no scheme has even tried it.

Mr DAVID SHOEBRIDGE: But when you are talking tens of thousands of claims a year, what kind of risk analysis do you think should be undertaken before you have an experiment like this with tens of thousands of claims a year?

Mr McCARTHY: One of the things they did not do that they should have done with this, if they thought it was going to work they should have actually trialled it on a thousand claims, or whatever, to see what the outcomes were, to trial it to see if it was actually going to work in practice. They did not do that.

The Hon. DANIEL MOOKHEY: The record shows that they had committed to this model circa February to March 2015, prior to them actually coming into being. Is there any example of any other workers compensation insurer effectively making such a radical change to their operational model in such a short time that you can think of?

Mr McCARTHY: Not that I am aware of, no.

The Hon. DANIEL MOOKHEY: Would that strike you as reckless?

Mr McCARTHY: I think that is a very good description actually.

The CHAIR: I make an observation, Mr Mookhey. I ask that the witness be asked his opinion as opposed to a leading question such as that.

The Hon. DANIEL MOOKHEY: I think we are allowed to put a proposition to the witness and he can either agree or disagree. That is usually the way that it works.

The CHAIR: I accept that. It would be my preference—

Mr DAVID SHOEBRIDGE: I would not have said reckless; I would have said dangerously reckless experimentation with real people's lives. But we can live with reckless.

The Hon. DANIEL MOOKHEY: I have gone soft.

The CHAIR: Mr Shoebridge, I ask you to refrain from that sort of commentary and allow the witness to provide his evidence without being led.

The Hon. DANIEL MOOKHEY: Thank you for your guidance, Mr Chair. Can I turn to another matter, which you might be in a unique position to help us with? You are familiar with the concept of an underwriting loss, are you not?

Mr McCARTHY: Yes.

The Hon. DANIEL MOOKHEY: An underwriting loss is a scenario in which the amount that is being paid out in claims exceeds the amount that is being collected in premiums.

The Hon. TREVOR KHAN: No, that is not entirely right, is it?

Mr McCARTHY: No, it is not quite right.

The Hon. DANIEL MOOKHEY: Hence the actuary. Can you give us the definition of an underwriting loss?

Mr McCARTHY: It is premiums, less your expenses, less the cost of claims. It is not just paid claims.

The Hon. DANIEL MOOKHEY: Right, it is fair. You have to pick up the operational expenses.

Mr DAVID SHOEBRIDGE: Paid and payable.

Mr McCARTHY: Yes, that is right, paid and payable.

Mr DAVID SHOEBRIDGE: It is payable often that is the kicker in workers compensation.

Mr McCARTHY: Yes, that is right.

The Hon. DANIEL MOOKHEY: Are you aware that icare has been running an underwriting loss for a number of years?

Mr McCARTHY: Yes.

The Hon. DANIEL MOOKHEY: Are you aware that the underwriting loss I believe after this year's figures comes in at circa \$5.6 billion to \$5.7 billion, from memory?

Mr McCARTHY: Underwriting loss?

The Hon. DANIEL MOOKHEY: For the past few years, if you accumulate it all?

Mr McCARTHY: Oh, yes.

The Hon. DANIEL MOOKHEY: For 2017-18, 2018-19 and 2019-20, I think, it is around \$5.5 billion?

Mr McCARTHY: Yes, you are probably right. I would have to check, but yes, it sounds right.

The Hon. DANIEL MOOKHEY: Within that range.

The Hon. TREVOR KHAN: Could Mr McCarthy take it on notice? You essentially put the proposition that it was for one year and now it has blown out for three years.

The Hon. DANIEL MOOKHEY: Sorry, I will clear it up. It is fair. Over a three-year period an underwriting loss that is circa \$5.5 billion, does that strike you as being around the right figure?

Mr McCARTHY: Of that level, about that, yes.

The Hon. DANIEL MOOKHEY: Is that sustainable?

Mr McCARTHY: Absolutely not.

The Hon. TREVOR KHAN: Can you just clarify with Mr McCarthy whether this is an underwriting loss which is increasing year by year in the sense that each year is getting worse?

The Hon. DANIEL MOOKHEY: Perhaps I can put some figures to you. Was it the case that, I believe it was \$1.7 billion for 2019-20—I think we heard that from Treasury officials. I believe it was about the same for the year before, but slightly less, and the earliest year there was an underwriting loss of \$1.4, I believe. Again, I am going off memory from a couple of months ago now.

Mr McCARTHY: I have got a chart in my submission.

The Hon. DANIEL MOOKHEY: Do you want to take this further?

Mr DAVID SHOEBRIDGE: I do.

Mr McCARTHY: It was about \$2 billion last year, it looks like about \$1 billion the year before, about \$1.3 to \$1.4 billion in 2017, and about \$1.5 billion in 2016.

The Hon. DANIEL MOOKHEY: Since icare's inception in late 2015, it has reported underwriting losses in practically every year that it has been in existence. Is that correct?

Mr McCARTHY: In every year.

The Hon. DANIEL MOOKHEY: Is that sustainable?

Mr McCARTHY: At the current levels, no.

The Hon. DANIEL MOOKHEY: Can you tell us what are the risks of persisting with such underwriting losses?

Mr McCARTHY: The first risk is that the funding ratio is going to fall below 100 per cent, and it will continue to decline. They are relying so much more on good investment returns to plug that underwriting loss. If you go back and have a look at the history of the scheme—back to 1997—there have been occasions when they have had large underwriting losses and that has had a big impact on the solvency of the scheme.

The Hon. DANIEL MOOKHEY: Is the persistence of underwriting loss likely to put upward or downward pressure on premiums?

Mr McCARTHY: Upward.

The Hon. DANIEL MOOKHEY: What magnitude of premium increase do you think is necessary to correct the underwriting loss?

Mr McCARTHY: If I go to the scheme actuary's report—and I think this is in my submission—to reduce the underwriting loss so that the premium rates today are adequate based on the scheme actuary's advice, you would need to increase premiums, I think, by about 40 per cent, or an additional \$1 billion a year. If the liabilities are understated, that amount will be a lot bigger.

The Hon. DANIEL MOOKHEY: But you think a 40 per cent increase in premiums is required to close the underwriting loss?

Mr McCARTHY: To reduce it to a more sustainable level, yes, if you accept what the actuary says.

Mr DAVID SHOEBRIDGE: I have the underwriting result of the last annual report for 2018-19 that is on the icare website. For the Nominal Insurer the underwriting result is \$-2,391 million, or \$-2.391 billion. That is a hell of a bad result, is it not, Mr McCarthy?

Mr McCARTHY: It is a terrible result. If that was an insurer the insurer would have some serious questions being asked by the Australian Prudential Regulation Authority [APRA].

Mr DAVID SHOEBRIDGE: I was going to ask you this: If a board of a private insurer was in charge of a corporate loss that returned a net underwriting loss of \$-2.4 billion, what would be the discipline on that board in the private sector?

Mr McCARTHY: I would expect that it would be bad news for the board but the senior management would be putting to the board that they would have to increase premium rates significantly by major amounts or, in a private insurer sense, they would probably want to get rid of all the poor risks that they would have substantially under price. So they would shrink their premium income quite a lot for two reasons: one, they would want to get rid of the risk because they are poor risks; and the second one would be because of the increase in the premium rates so they will go to a competitor.

Mr DAVID SHOEBRIDGE: If you are a statutory monopoly insurer, such as in workers compensation, you cannot off-load bad risks, can you?

Mr McCARTHY: No. The only option is to increase premium rates. That is the first part. The second part is that you would have to have a serious look at your claims manager to understand if that was causing the problem.

Mr DAVID SHOEBRIDGE: Indeed the Dore report seems to point the finger primarily at this appalling claims management response.

Mr McCARTHY: Yes, that is correct.

Mr DAVID SHOEBRIDGE: So this is not a technical discussion or a hypothetical discussion; it is billions of dollars of wealth being squandered.

Mr McCARTHY: Yes.

Mr DAVID SHOEBRIDGE: Could I ask you then—and you may or may not be able to answer this—given it is a public board appointed by Ministers, and the primary Minister responsible here is the Treasurer, what role would you expect someone like the Treasurer to take when they see this kind of result from the scheme?

Mr McCARTHY: That is a very interesting question. In the past what has happened in this scheme throughout its 30 year history is that they immediately go round to make changes to legislation to erode the benefits of workers. That is what they have done for the past 30 years. What they should be doing is having a very close interrogation and investigation of the actual performance of the entity and how it is managing its business—managing claims and the premium system. That is what they should be doing.

The Hon. TREVOR KHAN: And that is why you make a recommendation that, in essence, says: sack the board and get rid of those senior managers. That is essentially what you are saying, is it not?

Mr McCARTHY: It is and I do that for a very good reason because I have seen—I will give you two examples and I will name them; they are not individuals, they are companies. I led at EY a review of the motor accidents scheme in South Australia—their CTP scheme basically, I think in 2013. The results of that claims management review were clearly that the claims were being very poorly managed. We said, "We think if you improve your claims management you can reduce the cost of your scheme by 20 per cent"—the cost of claims. However, to do that we said, "You need to go and recruit some people who know claims management very well and have a good reputation of succeeding in that." They went and recruited a very good person from Victoria, who then sought to improve claims.

He did not have a big team; it was basically only a few people and they outsourced claims. I remember speaking to him a few years later and he said to me, "We have already saved the 20 per cent and we have a lot more to go." In 2014 or 2015 at Comcare we did the same thing—reviewed it and found that the claims management was atrocious. We said, "These are the things you need to do. To be able to improve claims management you need to go and find people who understand this business and who have a good record of processing claims very well." They did that and I think the results speak for themselves. I have not seen the results but I gather that they saved more than 20 per cent of their claims costs, and premiums have come down a lot, too.

Mr DAVID SHOEBRIDGE: So especially in a statutory monopoly insurance space, claims management should be the first go-to when you are looking to rein in costs and improve the effectiveness of the scheme?

Mr McCARTHY: Yes, it should be the first thing you look at. I have seen that so many times where it can have such a big impact.

Mr DAVID SHOEBRIDGE: There is a substantial decision that will have to be made by the board of icare in the next few months, which is the appointment of a new CEO. Given your evidence, do you think it would be critical that that CEO comes with the knowledge and experience from handling workers compensation claims or other personal injury claims as a non-negotiable element?

Mr McCARTHY: In the current state that icare is in, I would say that it is absolutely essential that that person has that.

Mr DAVID SHOEBRIDGE: And doing anything else, given what we have seen with the numbers and through the Dore report, if the decision was made to recruit somebody without that experience, how would you characterise that?

Mr McCARTHY: I think that would be a pretty stupid decision, actually.

Mr DAVID SHOEBRIDGE: Hope over experience?

Mr McCARTHY: Yes.

The Hon. DANIEL MOOKHEY: Just to be clear, we are talking about a person with personal injury workers compensation experience who is required?

Mr McCARTHY: Personal injury, I think.

The Hon. DANIEL MOOKHEY: Life insurance?

Mr McCARTHY: No, not life insurance. Their history around disability is really poor.

Mr DAVID SHOEBRIDGE: Would it be fair to say that the pool you are looking at is motor accidents, workers compensation—that part of the insurance industry?

Mr McCARTHY: Yes.

The Hon. TREVOR KHAN: It is not really even motor accidents, is it? Because the direction and emphasis in motor accidents are slightly different, are they not?

Mr McCARTHY: Look, I agree that it is different. In New South Wales it is more lump sum based; however, if the CEO has good personal injury experience, they most likely would have had some workers comp experience. I would prefer to see someone who has some claims management experience. I do not think it is essential as long as the CEO then employs someone in charge of the Nominal Insurer who has very good workers comp claims management experience.

The Hon. DANIEL MOOKHEY: The implication of your opening statement, in which you say that existing managers should be removed, is that you believe that probably the person who takes over the organisation should be external?

Mr McCARTHY: It should be external. There is no one inside icare that has the requisite experience in my view.

The Hon. TREVOR KHAN: You know who the senior managers are in icare when you make that observation.

Mr McCARTHY: I know some of them and I have looked at their CVs and I have been told by other people that none of them have any of the required experience. I am not suggesting that the HR manager has to have years of experience or the IT person. I was not suggesting that.

The Hon. TREVOR KHAN: I am not suggesting that you are either. You have had a sufficient look and you are speaking in an informed sense.

Mr McCARTHY: Yes, that is right.

The Hon. DANIEL MOOKHEY: Can I just turn to some of the arguments that have been made by various icare officials for why there is no need to worry about the finances of the scheme? We have had the now former CEO of icare appear before this Committee and he has made the same argument publicly as well. He said the risk of ruin for icare is nil in the next 10 years. I believe it is a view that he has articulated publicly as well and it is a view that has been repeated by other icare officials since—both publicly and in this Committee forum. Can I ask you to reply to that by firstly explaining what is the risk of ruin and, secondly, whether or not that is the right metric for us to plan the scheme?

Mr McCARTHY: It is the wrong metric. The risk of ruin means that they will go out of business. That is what it means effectively. When you are dealing with a government entity it is just a garbage argument really.

The Hon. TREVOR KHAN: Why?

The Hon. DANIEL MOOKHEY: Yes, why?

Mr McCARTHY: Because the long and short of it is that it is not going to go out of business, is it? It is a government entity. Yes it may end up with zero per cent assets and all it needs is to charge premiums to pay the claims and it will still continue. It does not need to be necessarily solvent.

Mr DAVID SHOEBRIDGE: At the end of the day either through State Government influx of funds or by a statutory change to benefits, it is going to carry on in some form or another.

Mr McCARTHY: That is right.

Mr DAVID SHOEBRIDGE: It might be ugly, it might be unpleasant but it is not going to go into ruin.

Mr McCARTHY: That is right.

The Hon. DANIEL MOOKHEY: So the other argument that has been articulated to this Committee was that icare is actually quite conservative in that it sets its funding ratio at 80 per cent probability of adequacy, not 75 per cent probability of adequacy. In fact it made a great big deal on that distinction at this Committee hearing and equally has done so publicly. Can you explain to us whether or not you accept that argument?

Mr McCARTHY: The difference between 80 per cent probability of adequacy and 75 per cent is basically about 3 per cent funding ratio. That is all it is.

The Hon. DANIEL MOOKHEY: So if they are saying—and to be fair we put these questions to them—the funding ratio was 101 per cent at 80 per cent probability of adequacy but they never actually said that it is about 97 per cent at 75 per cent probability of adequacy.

Mr McCARTHY: Yes.

The Hon. DANIEL MOOKHEY: In your view does anything fundamentally turn on that distinction?

Mr McCARTHY: No. We have seen about a 10 per cent reduction in the funding ratio in one year based on testimony before this Committee in the past year. My prediction is that not this current financial year but the next financial year the scheme will be below 90 per cent funding ratio which is worse than it was in 2012.

The Hon. DANIEL MOOKHEY: icare has made a great deal of what it describes as its independent actuary, who was Finity. It makes the point, "It is not just us who says this; it is our actuary that we hire as well." We have also had the State Insurance Regulatory Authority [SIRA] come before us and say that it is reviewing how good icare's actuary actually is and whether it is doing its job properly. I am not going to lie to you; I struggle when actuaries have a fight. But my question is—

The Hon. TREVOR KHAN: Mr McCarthy rolled his eyes so—

The CHAIR: I am going to—

The Hon. DANIEL MOOKHEY: Can you provide us with your views? You have seen Finity's estimate I believe?

Mr McCARTHY: For 19 December, yes.

The Hon. DANIEL MOOKHEY: Yes, you have.

Mr McCARTHY: And their report, yes.

The Hon. DANIEL MOOKHEY: Can you tell us whether or not we should accept that work and, if not, why not?

The CHAIR: Mr McCarthy, you are able to take questions on notice and provide them to us in writing with detailed responses.

The Hon. TREVOR KHAN: No, he wants to tell us.

Mr McCARTHY: Ernst & Young provided the Committee via SIRA with a report on the risk in the—

The Hon. DANIEL MOOKHEY: In the 19 December valuation, yes.

Mr McCARTHY: Yes, 19 December is right, yes. There are a couple of paragraphs in there at the beginning which are actually very telling. They basically said we are looking at—I will paraphrase basically—the assumptions where the actuary has not followed the recent poor claims experience. In other words, they have come up with what I call optimistic assumptions. If you go and have a look at the sensitivity analysis that is in the scheme actuary's report it is not hard to envisage a situation that if they had followed the claims experience their reserves may be \$2 billion or \$3 billion higher. The issue that was not flagged in the EY report was what we discussed earlier today where the scheme actuary has not allowed for one single additional claim to exceed the 10, 15 and 20 per cent WP thresholds arising from the obviously substantial deterioration in return to work.

The Hon. DANIEL MOOKHEY: Just to distil that—because I think I understood some of it—you are saying that the assumptions that Finity used in the 19 December valuation ignored the claims history of icare for that time and it preferred instead the assumptions that it was previously relying on.

Mr McCARTHY: What they effectively assume in the 19 December valuation is that by the end of 2020 things would be almost back to the way they were back in 2017.

The Hon. DANIEL MOOKHEY: Right. The consequence of that assumption is that it understated the liability by \$2 billion to \$3 billion. Is that what you are saying?

Mr McCARTHY: If the experience does not improve, and there is no evidence that it really has improved to date, then they will have to revise their assumptions—what actuaries call they will have to strengthen the assumptions that will increase the liabilities significantly.

The Hon. DANIEL MOOKHEY: And that will cause it to have to recognise an additional liability of what could be \$2 billion to \$3 billion?

Mr McCARTHY: Yes.

The Hon. DANIEL MOOKHEY: And that was all before COVID-19?

Mr McCARTHY: Yes.

The Hon. DANIEL MOOKHEY: So after COVID-19 you said that you expected the funding ratio to get to 80. Do you have any views as to what we can expect the results to be now that COVID-19 has hit the scheme?

Mr McCARTHY: The claims experience will deteriorate because, with unemployment up, it will become harder to get people back to work.

The CHAIR: I indicate that we have only a minute or so left.

The Hon. SCOTT FARLOW: Thank you, Mr McCarthy. In the assessments that you are making, how much information do you not have that you would have had, for instance, when you were actually doing these assessments internally?

Mr McCARTHY: Look, I only have a summary of the claims experience. When I was doing the work for SIRA we would have had details on every single individual client and every single policy.

The Hon. SCOTT FARLOW: So it is flying blind in a sense, is it not, when you are making these assessments compared to what the current actuaries would have some information on?

Mr McCARTHY: I would not say it is flying blind. What I would say is that my estimates are approximate. For example, if I say that they could be under-reserved by \$3 billion to \$6 billion, I would have no problem if they came out and they were \$1 billion to \$2 billion less than that. They would be within the area I would be talking about.

The Hon. SCOTT FARLOW: That is the sort of margin of error you are talking about—\$1 billion to \$2 billion.

Mr McCARTHY: Yes.

The Hon. SCOTT FARLOW: I think—probably following the *Four Corners* report—Finity made a media statement concerning some of the information that was published on that program. Did you see that at the time? I think it was around July.

Mr McCARTHY: I think I did see something.

The Hon. SCOTT FARLOW: Did you have any response to that and its claim that its assessments have also been checked by the Auditor-General and other actuarial firms to ensure that the numbers are correct?

Mr McCARTHY: Yes, I do have a comment about that. One of the things I did in my career is I looked at the profitability of the insurance industry for each product over many years. As part of that, I did a bit of research overseas. It is in my submission. A number of studies have been undertaken about the causes of private insurance failures. The key ones are under-pricing and under-reserving. That has happened in Australia. You need to go back to the HIH royal commission. The thing you will note is that HIH Insurance has been in existence for a long time—for decades. They ended up with a \$5 billion deficit. They had an independent actuary and auditors. This is the same thing overseas. Just because you have auditors and actuaries does not mean that you are not under-reserved.

The CHAIR: With that I am going to conclude the hearing today. Thank you for attending the hearing, Mr McCarthy. The Committee has resolved that any questions taken on notice will be returned to us within 21 days. The secretariat will contact you in relation to the questions that you have taken on notice. Thank you.

Mr McCARTHY: Thank you.

(The witness withdrew.)

The Committee adjourned at 15.17.

***IN-CAMERA* REPORT ON PROCEEDINGS BEFORE**

STANDING COMMITTEE ON LAW AND JUSTICE

*Resolved to be published by the committee on
2 December 2020*

CORRECTED

2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

At Macquarie Room, Parliament House, Sydney on Monday, 23 November 2020

The Committee met in camera at 13:25 pm

PRESENT

The Hon. Wes Fang (Chair)
The Hon. Catherine Cusack
The Hon. Antony D'Adam
The Hon. Greg Donnelly (Deputy Chair)
The Hon. Scott Farlow
The Hon. Trevor Khan
The Hon. Daniel Mookhey
The Hon. Rod Roberts
Mr David Shoebridge

LAW AND JUSTICE COMMITTEE

*IN CAMERA (Resolved to be published by the committee on
2 December 2020)*

The CHAIR: Welcome to the in-camera session of today's hearing. Before we commence, I would like to make some brief comments about the hearing today. Please note that this is an in-camera hearing and you are bound by the confidentiality of today's proceedings. Depending on the matters raised today, including the confidentiality and the sensitivity of the issues discussed, the Committee may choose to publish today's evidence. If the Committee wishes to publish some or all of the transcript, the secretariat will contact you about what is to be published, taking into account your privacy; however, the decision as to what is or is not published ultimately rests with the Committee.

Before we get started, I will cover a few key procedural points. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness in accordance with the procedural fairness resolution adopted by the House in 2018. If you are unable to answer a question today and want more time to respond, you may take a question on notice. Written answers to questions on notice are provided within 21 days. If you wish to hand up documents, you should do so through the Committee staff.

Evidence in camera by **NIGEL FREITAS**, Former Chief of Staff, NSW Treasurer, sworn

The CHAIR: I welcome our witness, Mr Freitas. I note you have tabled your opening statement, so I will give you an opportunity to provide that now.

Mr FREITAS: I thank the Committee for the opportunity to appear today. I joined the Minister's office in May 2014 and became chief of staff in March 2016. During my tenure, all my decisions were motivated by my best intentions to achieve strong public policy outcomes—such as a fair and sustainable workers compensation scheme—for my Minister and ultimately the people of New South Wales. From March 2016, in addition to ministerial staff, I also managed departmental liaison officer [DLO] and secondment arrangements—a long-standing practice and routine part of government. These are provided to assist the agency and the office with liaison activities, issue resolution and workload. They also provide benefits to the home agency in the form of skills, knowledge, and relationships the resource brings back with them. In our ministerial office, there would typically be between three to five staff supplied by different agencies at any one time.

From when I first joined the office in 2014, there was generally always a resource present who had responsibility for dealing with worker compensation matters supplied and paid for by the agency—a practice under both Coalition and Labor governments. Their responsibilities included day-to-day liaison, managing correspondence, fielding and escalating concerns from injured workers and other stakeholders, actioning incoming briefs and providing general advice. From around early 2016 until August 2020, responsibility for dealing with workers compensation matters in the office was allocated to Mr Edward Yap. Mr Yap is a highly capable and hard-working policy adviser, who first joined our team in October 2015. He had three separate staffing arrangements. These included his initial hire into the office, then an arrangement facilitated by the Department of Premier and Cabinet [DPC] and lastly a role with icare, which included a secondment. All these arrangements were based on advice from relevant agencies.

In August 2020, after a media inquiry, icare advised me that, due to an administrative oversight on their part, they could not locate paperwork related to any secondee or DLO provided to our office. I understand the Treasury audit report in August 2020 also found three staff members could not technically be assigned as DLOs or secondees as they were contractors—a factor of which I was not aware at the time. Given the wide-ranging responsibilities of my role, it was my practice to rely on the advice and expertise of agencies for all staffing arrangements. Had I been advised at any time that any proposed employment arrangements were not compliant, they would not have been implemented. As I am no longer employed in the Treasurer's office and I have not had the opportunity to refer to any records, this statement and my evidence today are based on my best recollection of what occurred. I greatly respect the work of the Committee and am happy to answer any questions it might have.

The Hon. DANIEL MOOKHEY: I note for the record, which we may or may not publish at one point in time, that you appeared voluntarily at the first request and were very cooperative with the Committee as well. I certainly appreciate that from my perspective, so thank you for your appearance today and for providing an opening statement. That is a good move.

The Hon. TREVOR KHAN: A rarity.

The Hon. DANIEL MOOKHEY: A rarity. Perhaps this speaks to someone who has some experience with parliamentary committees. It makes things a lot easier. I just wanted to start by exploring some of the details around your engagement as the Minister's chief of staff. Forgive me but when did the Minister become the Minister?

Mr FREITAS: I believe sometime early in 2014. I cannot recall the exact date.

The Hon. DANIEL MOOKHEY: You joined his office in May 2014.

Mr FREITAS: Yes. It was about six weeks after he became the Minister that I joined—or maybe a bit longer than that.

The Hon. DANIEL MOOKHEY: What role did you play at first instance?

Mr FREITAS: I was his media adviser first.

The Hon. DANIEL MOOKHEY: You were his media adviser for two years until March 2016 or thereabouts.

Mr FREITAS: I was his media adviser and then at some point along the way I was also deputy chief of staff. Then in March 2016 I was chief of staff.

The Hon. DANIEL MOOKHEY: Mr Perrottet was the only person for whom you ever worked in the New South Wales Government.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: In total, you worked for Mr Perrottet in various capacities for six years.

Mr FREITAS: That is right.

The Hon. DANIEL MOOKHEY: You were his chief of staff from March 2016 until August this year.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Can you explain what your duties as chief of staff were?

The Hon. TREVOR KHAN: Are you going to relate this to what our terms of reference are?

The Hon. DANIEL MOOKHEY: Yes, I am. I am trying to understand precisely exactly what he did and therefore his role in the scheme, to be blatantly honest.

The Hon. TREVOR KHAN: You always are.

The Hon. DANIEL MOOKHEY: To be abundantly clear, I would just like to know what the responsibilities of the chief of staff were.

Mr FREITAS: I always saw my role as, first and foremost, supporting the Treasurer in whatever he wanted to do, supporting the office and putting a good team on the park so that the Treasurer could achieve the public policy outcomes that he wanted and, thirdly, managing and dealing with external stakeholders. That included other Ministers, other offices and people outside government. Those were the three kinds of buckets that I saw myself in.

The Hon. DANIEL MOOKHEY: Broadly speaking, administrative, political and supportive—is that the right way of characterising your functions?

Mr FREITAS: Sure.

The Hon. DANIEL MOOKHEY: You agree?

Mr FREITAS: When you say "political", what do you mean?

The Hon. DANIEL MOOKHEY: Providing the Treasurer with advice as to various positions on stakeholders and on various issues—

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: —and assistance with Parliament as well, I presume.

Mr FREITAS: Yes.

The Hon. DANIEL MOOKHEY: Can I concentrate on the administrative side of your role? At the time you operated under the Premier's guidelines for ministerial staff. Is that correct?

Mr FREITAS: Yes.

The Hon. DANIEL MOOKHEY: But under that policy the obligations to comply with that policy belonged to the Treasurer, did it not?

Mr FREITAS: I cannot recall that particular detail.

The Hon. DANIEL MOOKHEY: The policy, for example, sets out how staff are to be engaged, to your recollection—

Mr FREITAS: Right, yes.

The Hon. DANIEL MOOKHEY: —and what processes need to be followed.

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Mr FREITAS: I cannot recall what that policy says, Mr Mookhey. I have not seen it for some time.

The Hon. DANIEL MOOKHEY: Are you aware that it places the primary obligation to comply on the Minister?

Mr FREITAS: If you say so, Mr Mookhey, but I cannot recall that specifically.

The Hon. DANIEL MOOKHEY: It is fair if you do not recall it. That is fine.

Mr FREITAS: I do not recall it.

The Hon. DANIEL MOOKHEY: Did the Treasurer effectively delegate his responsibilities under that policy to you?

Mr FREITAS: My understanding is that I had responsibility for staffing matters in the office, yes.

The Hon. DANIEL MOOKHEY: Why did you have that understanding?

Mr FREITAS: Because I recall—

The Hon. TREVOR KHAN: Point of order: There are some specific issues that relate to workers compensation, right? But you have not got there yet, and I think we should get there.

The Hon. DANIEL MOOKHEY: To the point of order: I accept that, and I will be getting there. I am just trying to understand the foundation so I can properly understand Mr Freitas' answers on the workers compensation matters, which is reasonable.

The CHAIR: I take on board Mr Khan's points. However, I will allow Mr Mookhey a little more latitude, but I really do want you to get there too.

The Hon. DANIEL MOOKHEY: Yes, that is fine. I have got two more questions on this front—or three, actually, on this front. Mr Freitas, why did you have the understanding that you were responsible for staff? To be clear, did he tell you? Was there a formal instrument of delegation, a letter? How did you acquire that responsibility?

Mr FREITAS: Yes, I believe there was a formal instrument of delegation.

The Hon. DANIEL MOOKHEY: Okay. Was that your appointment letter?

Mr FREITAS: No, I do not think so. I recall another brief.

The Hon. DANIEL MOOKHEY: Another brief that specified that it was your responsibility?

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: On notice, if you could provide any further detail on that it would be helpful—namely, when was it signed, who provided the brief would be useful.

Mr FREITAS: Sure, okay.

The Hon. DANIEL MOOKHEY: Presumably you were responsible for the office budget as well? That was part of your administrative functions?

Mr FREITAS: That is right.

The Hon. DANIEL MOOKHEY: Did you have discussions with the Treasurer about staffing arrangements and/or the budget?

Mr FREITAS: From time to time I would have discussions with the Treasurer about staffing generally, but he was pretty high-level and not engaged in the details or granular details of staffing, is how I would put it. He was more interested in staffing when a new ministerial staffer would join the office. That is when I would generally talk to him about staff, and that is when he generally would have an interest, because he might be at the end of that process interviewing that person. We had a three-step interview process for ministerial staff joining the office. At that point, the Treasurer would take an interest in who was joining. But he was pretty high-level; he delegated staffing to me.

The Hon. DANIEL MOOKHEY: The three-step process was what, exactly?

Mr FREITAS: A primary interview with me, first, for new ministerial staff. Secondly, there would be a second interview with myself and our head of policy or head of media—or head of Parliament, depending on

where the person came into the office. The third step would be an interview—or a brief chat—with the Treasurer at some point to get his thoughts on someone joining the office.

The Hon. DANIEL MOOKHEY: He would come in basically at the third step?

Mr FREITAS: Correct—when I was chief of staff, that is right.

The CHAIR: Mr Mookhey, I am just going to—

The Hon. DANIEL MOOKHEY: I am fine. I am just going to table this document, if it is possible, and then move on.

The Hon. SCOTT FARLOW: What is the document?

The Hon. DANIEL MOOKHEY: It is just the report that Treasury did. I have got a copy for you, and I have got a copy for—

The Hon. SCOTT FARLOW: No, I was just asking what it was, that was all.

The Hon. DANIEL MOOKHEY: Mr Freitas, in your discussions with the Treasurer, in the budget aspect of the office under the members of Parliament staff [MOPS] budget, did you provide him a copy of the budget every year or—

Mr FREITAS: No.

The Hon. DANIEL MOOKHEY: Did he ever see it?

Mr FREITAS: No.

The Hon. DANIEL MOOKHEY: You would purely see the budget and decide whether it was in the allocation?

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: To be fair to you, that is not exceptional to ministerial offices.

Mr FREITAS: I do not know how other ministerial offices work, Mr Mookhey, but I can tell you that the Treasurer had his mind on the \$80 billion State budget and the quarter of a trillion-dollar economy, and he left me to deal with the office budget.

The Hon. DANIEL MOOKHEY: For the four years he never once asked?

Mr FREITAS: No. I never showed the office budget to the Treasurer in the entire time I was in the office, to the best of my recollection.

The Hon. DANIEL MOOKHEY: Okay. You have seen this report before, have you not, Mr Freitas?

Mr FREITAS: This is the Treasury audit report, is that right?

The Hon. DANIEL MOOKHEY: Yes.

Mr FREITAS: Yes, I have.

The Hon. DANIEL MOOKHEY: Do you accept its findings?

Mr FREITAS: What are those findings, Mr Mookhey?

The Hon. DANIEL MOOKHEY: They are multiple. The core of those findings is finding No. 1:

Finding 1: There were three staff members who were identified as contractors of the relevant agencies ... and who were purported to be assigned as Department Liaison Officers ["DLO"] or seconded to the Minister's Office under clause 35 of the Government Sector Employment ["GSE"] Regulations during the Relevant Period. However, under the relevant requirements, only employees of agencies—

Mr FREITAS: Yes. If that is what they say, I accept that.

The Hon. DANIEL MOOKHEY: It goes on:

Finding 2: There were instances of administrative process deficiencies across the hiring arrangements where requirements were partially met or administrative processes were incomplete reflecting inconsistent application of process and controls.

Do you accept that finding?

Mr FREITAS: Yes.

The Hon. DANIEL MOOKHEY: I am going to move on from that, because we do not need to talk about that any further. Let us turn now to Mr Yap and his engagement. I believe you have probably been following some of the Committee's inquiries into Mr Yap's employment?

Mr FREITAS: I have been, yes.

The Hon. DANIEL MOOKHEY: Can you give us your chronology as to when Mr Yap started working for the Treasurer?

Mr FREITAS: Yes, I think—

The Hon. DANIEL MOOKHEY: Because it is complicated, I accept that.

Mr FREITAS: He had a number of staffing arrangements, is how I would put it. I think, as I have got in my opening statement, he first joined our team in October 2015.

The Hon. DANIEL MOOKHEY: How was he identified as a person who could work for the Treasurer?

Mr FREITAS: I am not sure about that, Mr Mookhey, because I was not the chief of staff at that time.

The Hon. DANIEL MOOKHEY: When did you first become aware that Mr Yap was working for the Treasurer? Was it the day he started up, or was it in the early part—you were the head of media at the time?

Mr FREITAS: I was head of media.

The Hon. DANIEL MOOKHEY: Did you come into that second step of the process?

Mr FREITAS: Yes, that is correct. There was an interview, I recall, with our then chief of staff. I think it was a Skype interview of some form. I attended for about half an hour at that interview, I think.

The Hon. DANIEL MOOKHEY: Was it on Skype because Mr Yap was overseas?

Mr FREITAS: That is correct, yes.

The Hon. DANIEL MOOKHEY: Was he in the United States?

Mr FREITAS: I believe he was, yes.

The Hon. DANIEL MOOKHEY: The office had identified—and I accept that you are not the chief of staff at this point in time.

Mr FREITAS: Yes.

The Hon. DANIEL MOOKHEY: But the office had identified him as a suitable candidate—

The Hon. TREVOR KHAN: Point of order: This is a long way from workers compensation. I know why we are here, but what the arrangements were for interviewing Mr Yap in 2015 is a light-year away.

The Hon. DANIEL MOOKHEY: No, that is a misstatement of the question. The question was: How was he identified as a candidate to work for the Treasurer?

The Hon. TREVOR KHAN: Indeed. That is a light-year away from what we are here to deal with.

The Hon. DANIEL MOOKHEY: It is not, Mr Chair, because we need to explore each of the three arrangements and how they change. It is therefore relevant for us to establish what the first arrangement was.

The CHAIR: I think Mr Khan actually makes a very valid point, in that what Mr Yap's engagement was initially is not related to the workers compensation scheme. Mr Yap's engagement in relation to the workers compensation scheme would certainly come under the terms of reference. However—

The Hon. DANIEL MOOKHEY: It is a related matter, Mr Chair.

The CHAIR: I have a point of order from Mr Khan and I am of the mind to uphold that point of order. Now, I understand—

The Hon. DANIEL MOOKHEY: What part of the questioning can I not ask, Mr Chair?

The CHAIR: I think Mr Yap's engagement, where it relates to the workers compensation scheme, is certainly within order. But I think Mr Yap's history before his engagement on the workers compensation scheme is technically outside the terms of reference.

The Hon. DANIEL MOOKHEY: Except for—

The CHAIR: I have had a point of order raised and I need to rule on it.

The Hon. DANIEL MOOKHEY: I still do not understand the practical guidance you are giving, Chair. If the Government is taking a point of order on the original arrangement by which Mr Yap was employed, which is central to this—and how it has changed—I seek guidance, therefore, as to precisely what I can ask. I understood that we were here to understand and get Mr Freitas' evidence on the Yap engagement. The questions are well and truly related, and related to other matters that we have been asking of other witnesses. It would strike me as highly odd for the Government to object to our ability to ask this of the Minister's now chief—

The Hon. TREVOR KHAN: You understand that it is Trevor Khan who is taking order and not the Government, so do not try and paint me with that, Daniel. What I am asking for is relevant questioning.

The Hon. DANIEL MOOKHEY: The relevant question is—

The Hon. TREVOR KHAN: Simply going through the inner guts of Edward Yap is not part of—

The Hon. DANIEL MOOKHEY: No, the question is: How was Mr Yap identified as a candidate to work for the Treasurer? Then we will be getting onto what role he was playing for the Treasurer prior to him joining icare, because there is a lot of confusion around that issue.

The Hon. TREVOR KHAN: Whatever your confusion is, I say that whatever the purpose is of identifying Edward Yap to work in the Treasurer's office has bugger all to do with the workers comp scheme. Get on to the workers comp scheme.

The CHAIR: I am going to rule in favour of Mr Khan in this instance. I have been attempting to give wide latitude on this and not constrain the questioning; however, when a point of order has been raised—

The Hon. DANIEL MOOKHEY: No, we are constraining it. But we will move on, Mr Chair; you have ruled. Mr Freitas, what were his duties when he was employed at the time? Are you aware?

Mr FREITAS: I recall, Mr Mookhey, that Mr Yap was employed as a policy adviser when he first joined our office.

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The Hon. DANIEL MOOKHEY: The implication in your opening statement is that at some point he became a DLO. Am I right in assuming that or have I misread your evidence?

Mr FREITAS: When he joined icare he became an icare employee and he was then seconded back to us. That was some years later.

The Hon. DANIEL MOOKHEY: So when do you say that he becomes a DLO?

Mr FREITAS: That arrangement happened in August 2017.

The Hon. DANIEL MOOKHEY: So from the period of his engagement in 2015 until 2017, he was working as a senior policy adviser.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: In the middle of that period, did it come to your attention that Mr Yap had a visa restriction?

Mr FREITAS: Yes. Mr Yap was hired into the office in October 2015. The then chief of staff departed in March 2016 or thereabouts. One of the items that he advised me of when he departed was that Mr Yap had some kind of visa that had a six-month limit, as I understand it. I cannot recall what type of visa it was. That was expiring in a matter of a month or less. He handed that over to me to resolve because he had expressed to me that the intention was to retain Mr Yap in the office.

The Hon. DANIEL MOOKHEY: So to be clear, he formed the judgement that he should be retained.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: That was not your judgement.

Mr FREITAS: It was not my judgement; it was his judgement.

The Hon. DANIEL MOOKHEY: What did you do when you were advised that there was an issue with the visa?

Mr FREITAS: I believe from recollection that the previous chief of staff had already started speaking to Department of Premier and Cabinet [DPC] HR about this matter. At that point I picked up those discussions as well. Can I just go back to the question when you said that it was the previous chief of staff's decision? As a deputy chief of staff, I supported that decision. I should just be clear about that.

The Hon. DANIEL MOOKHEY: Thank you. Were you aware of it at the time, prior to becoming the chief of staff? Did you have knowledge of the visa issue when you were deputy chief of staff?

Mr FREITAS: I do not recall. I do not think so because I remember that this was handed to me during the handover process.

The Hon. DANIEL MOOKHEY: So you had conversations with the DPC. What did the DPC then resolve to do?

Mr FREITAS: This was a process of some couple of weeks. It was not a one-and-done conversation. I communicated to DPC HR that we had a desire to retain Mr Yap in the office, which they already knew because they were dealing with the then chief of staff. From memory, they initially informed me that that could not occur. I cannot recall why. I recall that it looked at some point like we would have to let Mr Yap go. But then DPC HR came back to me and said words to the effect that they thought that there was another method of retaining Mr Yap in the office. That was through a labour hire firm and a 457 visa.

The Hon. DANIEL MOOKHEY: So your evidence is that it was the initiative of the DPC to use a labour hire firm to effectively sponsor Mr Yap.

Mr FREITAS: That is correct. I did not know what a labour hire firm was.

The Hon. DANIEL MOOKHEY: You did not know what a labour hire firm was?

Mr FREITAS: No, I am not an HR recruitment expert. They provided that advice to me.

The Hon. DANIEL MOOKHEY: That is fair. You accepted that advice, I presume?

Mr FREITAS: I did, yes.

The Hon. DANIEL MOOKHEY: Can I table this document and provide it to the witness? It is the labour hire agreement that takes place and is effectively then continued by icare. It is relevant in that sense.

The Hon. TREVOR KHAN: I have not taken a point of order. This is getting closer to the guts.

The Hon. DANIEL MOOKHEY: I am just explaining context. Do you recall seeing that document?

Mr FREITAS: I did see it and I signed it, but I did not recall it until now.

The Hon. DANIEL MOOKHEY: This is a contract, which as you say you signed, to effectively hire Mr Yap through labour hire firm Robert Walters as a senior policy adviser.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: That accords with your account that it was the DPC's initiative to use a labour hire company to maintain Mr Yap's engagement with the Treasurer's office.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Did you sign that on advice from the DPC?

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Do you recall if it was accompanied with a brief of any form that would describe the legality or otherwise of the arrangement?

Mr FREITAS: I do not recall that, no.

The Hon. DANIEL MOOKHEY: You do not recall or there was not one?

Mr FREITAS: I do not recall if there was one. There may or may not have been. I do not recall.

The Hon. DANIEL MOOKHEY: I can only assume that there was no such arrangement like this for any other staff of the Treasurer at the time.

Mr FREITAS: Not that I can recall. I do not think that anyone else was in this situation.

The Hon. DANIEL MOOKHEY: You can see from that document that the daily rate for Mr Yap's engagement was \$743 a day.

Mr FREITAS: Yes.

The Hon. DANIEL MOOKHEY: And that was coming out of the Members of Parliament (Staff) [MOPS] budget at that point in time.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Did you notice that in the MOPS budget? Was it explicitly identified?

Mr FREITAS: I think it just would have been in the budget. I cannot recall how.

The Hon. DANIEL MOOKHEY: But you never discussed this arrangement with the Treasurer.

Mr FREITAS: No. I did advise the Treasurer when DPC HR proposed the labour hire firm arrangement to me. I recall discussing that with the Treasurer.

The Hon. DANIEL MOOKHEY: So you disclosed to the Treasurer that Mr Yap would stay on through a labour hire arrangement.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Do you recall when you disclosed that? I presume that it would have been roughly the same time that you signed it, around April 2016.

Mr FREITAS: No, I think that it would have been before that.

The Hon. DANIEL MOOKHEY: Okay, prior to you signing it.

Mr FREITAS: From memory I think that the DPC provided me with the advice earlier, before this was done. I recall speaking to the Treasurer about it then.

The Hon. DANIEL MOOKHEY: So prior to you signing this, you had already had the discussion with the Treasurer.

Mr FREITAS: I think so, yes. That is correct.

The Hon. DANIEL MOOKHEY: I will move forward in time now to June 2017. At that point in time Mr Yap's arrangements changed again, did they not?

Mr FREITAS: Yes.

The Hon. DANIEL MOOKHEY: What happened?

Mr FREITAS: At some point in quarter two of 2017, after the budget, I had a catch up with Mr Yap. It was my practice to meet with my staff after the budget—those who had survived the budget. I met with Mr Yap at that point. It is probably important context that Mr Yap was the icare adviser in the office from early 2016.

The Hon. DANIEL MOOKHEY: That is important context.

Mr FREITAS: Yes. Some three months after joining, he took over all responsibilities for icare matters in the office.

The Hon. DANIEL MOOKHEY: What else was he responsible for, by the way? How much of that was his job?

Mr FREITAS: His responsibilities changed from time to time, but his core and primary responsibility was always icare for the duration of his time in the office. I recall that he also dealt with insurance matters generally and also State-owned corporations, but his other responsibilities would be dialled up and down depending where we were. When we were in Finance I recall that he had responsibility for resources, mining and energy. In

Treasury, it was our custom that policy advisers would rotate through different areas for the budget or according to their interests. At times he advised on regional policy and sometimes on health or education. Those would change from time to time.

The Hon. DANIEL MOOKHEY: And it was not atypical for a Minister's office that you would adjust people's responsibilities to deal with whatever the Minister was doing at the time.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: I want to be very fair to you; that is not an unusual arrangement.

Mr FREITAS: No, not at all. There were seven policy advisers in the office at any one time. They all had seven or eight different responsibilities. As part of their career development they would all seek to cycle through those and build up their skills and knowledge in different areas, but Mr Yap's core and primary responsibility in the office from early 2016 until his departure in August 2020 was always icare.

The Hon. DANIEL MOOKHEY: Okay. In June 2017, the Minister was still the Minister for Finance.

Mr FREITAS: No.

The Hon. SCOTT FARLOW: No, he was Treasurer.

Mr FREITAS: He was promoted to Treasurer in January 2017, so that was our first six months in Treasury.

The Hon. DANIEL MOOKHEY: Okay. Six months into his tenure as Treasurer, Mr Yap's arrangement changed.

Mr FREITAS: That is right. I had a catch-up with Mr Yap after the budget and he had had a pretty difficult time in the first six months in Treasury. We were under a lot of pressure for various reasons and the workload of the office had increased markedly from Finance to Treasury. We had inherited a lot of policies from the previous Treasurer and previous Ministers. We had just done our first budget. There were a number of issues going around, but he had had a pretty tough time of it.

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During that catch-up Mr Yap was, I guess, expressing his frustrations with his role. I asked him at the time, "What do you enjoy about working here still?" He said the one thing he really enjoyed was working with icare and dealing with the agency. In the time that he had picked up responsibility for that he had built up skills, relationships, knowledge of the agency, its issues, the people there, the progress. At that time at least—I understand things have changed now—but at that time there was a lot of energy and enthusiasm for that project. So Mr Yap, as the conversation developed—and I am just giving you the gist of it, Mr Mookhey, as you can appreciate.

The Hon. DANIEL MOOKHEY: Of course. Yes. I understand.

Mr FREITAS: He told me that his career plan eventually was to join the agency and pursue a career in financial services, become an executive and go down that path. And the other kind of context to that is that when Mr Mookhey first joined the office—I am sorry, Mr Yap.

The Hon. DANIEL MOOKHEY: Don't worry. I did that to you.

Mr FREITAS: "I don't think Mr Mookhey ever joined our office "?

The Hon. DANIEL MOOKHEY: Yes. You have standards.

Mr FREITAS: When Mr Yap first joined our office in 2015, he had come from more of a communications and campaign background, but he pivoted to more of a policy focus when he joined and had built up his knowledge and experience as a policy adviser. This was part of that kind of development so he was changing from communications and campaigning to policy and then to working somewhere different. That was kind of his indication to me.

The Hon. DANIEL MOOKHEY: He indicates to you that he has a desire to work from icare. What happens then?

Mr FREITAS: I raised with him my intention then, if he was okay that I would raise that, to raise that with the agency because he was keen on that. At some point after that I did raise that with the agency and he was referred through for an interview process with icare.

The Hon. DANIEL MOOKHEY: When you say "raise that with the agency", with whom did you raise it?

Mr FREITAS: I recall raising that with Mr Bhatia.

The Hon. DANIEL MOOKHEY: So what? You called him? He called you?

Mr FREITAS: No. I recall this was at the end of a—we used to have regular catch-ups in the Minister's office with Mr Bhatia. My recollection is this was a side conversation at the end of one of those meetings. I said to him—and he knew Ed—I am sorry, he knew Mr Yap because Mr Yap had responsibility for icare matters and responsibility for State-owned corporations, so he knew Mr Yap from that engagement. I mentioned to him Mr Yap's interest in joining the agency at that point.

The Hon. DANIEL MOOKHEY: So you mention that to Mr Bhatia?

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Mr Bhatia's evidence to Treasury and to our Committee is that he identified him as a talent and he wanted to employ him in the strategy area, so was it his initiative or your initiative?

Mr FREITAS: No. That was my initiative. Mr Bhatia may have been—I am sorry, I should not speculate on what Mr Bhatia is referring to—but my recollection is that this came from Mr Yap.

The Hon. DANIEL MOOKHEY: So Mr Yap raises the idea with you.

Mr FREITAS: Yes.

The Hon. DANIEL MOOKHEY: And then you notify Mr Bhatia and Mr Bhatia acts. That is your recollection of events?

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Because Mr Bhatia's recollection of events is that he identified him as a talent, he initiates the conversation with Mr Yap, they have a coffee or a catch-up, and then he asks his chief people officer to continue forward.

Mr FREITAS: Yes and he would have said that, Mr Mookhey, because—

The Hon. DANIEL MOOKHEY: After you?

Mr FREITAS: Yes, because I would have indicated Ed's interest in joining the agency with him but it is up to him to make a hiring decision. So he then would have met up with Ed and put him through a process to see if he is suitable for the organisation.

Mr DAVID SHOEBRIDGE: That is your speculation, though, Mr Freitas, or did you know he did that?

Mr FREITAS: I recall, Mr Shoebridge, that Mr Yap went through an interview process but that is my speculation, yes.

The Hon. DANIEL MOOKHEY: Okay. So Mr Freitas, icare decides to employ Mr Yap, and then what happens?

Mr FREITAS: So at some point, yes, icare decides to employ Mr Yap. At some point during the process I requested, if it was possible, that Mr Yap continue on in our office for some time to finish some matters that were still assigned to him and the agency said they would seek advice on that and come back, and they came back with advice, and that advice was provided in a written brief to our office. That brief was signed and returned to the agency.

The Hon. DANIEL MOOKHEY: Okay. Just to unpack that step by step, you requested he return.

Mr FREITAS: I requested that he not join immediately because he still had some matters assigned to him in the office.

The Hon. DANIEL MOOKHEY: But then he is engaged, and returned.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: So it is not like this was him finishing up his service and then leaving. He was formally engaged by icare and then returned.

Mr FREITAS: That is right.

The Hon. DANIEL MOOKHEY: And the dominant purpose of that arrangement was to fit—well, that arrangement was conditional on him completing his duties. That is your understanding?

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Okay. To be fair to you I am going to table a document that does accord with your recollection in that it clearly states that your assumption was it was a transition arrangement as well.

Document tabled.

The Hon. DANIEL MOOKHEY: This is an email that I believe you sent to an icare person, I think, but I want to be fair to you as well that that accords with your documents at the time.

Mr FREITAS: Right.

The Hon. DANIEL MOOKHEY: And as well. But it still raises the question as to: How does a transition arrangement last for three years?

Mr FREITAS: That was not the intention at the start, Mr Mookhey. I am just reading this email. This was to DPC HR and cc-ing my deputy chief of staff at the time. That is correct. So the intention was always for Mr Yap to have a short-term secondment but those activities that he was working on extended for longer. Then there was a series of different events that significantly increased the workload of the office at the time, and so I kept Mr Yap on for an extended period. And that was not unusual because there were a number of DLO and secondment arrangements. They were also extended in that period well beyond their initial time frame as well.

The Hon. DANIEL MOOKHEY: So I will just unpack that a little, Mr Freitas. When the decision had been made for him to go you said that your intention was that he be allowed to complete his duties in the office, which I think is the language reflected in that email as well. That is your understanding?

Mr FREITAS: He had—

The Hon. DANIEL MOOKHEY: You say he will be—

Mr FREITAS: My recollection is that there was still a number of items that he was working on that he had to finish before he left.

The Hon. DANIEL MOOKHEY: But you say that on 19 July 2017 he will be seconded back as a DLO. It is not like he is continuing in his existing role. It is clearly to function as a departmental liaison officer, not as a senior policy adviser.

Mr FREITAS: Sorry, Mr Mookhey. I would have used DLO as an umbrella term. It is actually a secondee, but he was seconded back in as it is a secondment.

The Hon. DANIEL MOOKHEY: But you are aware that DLO has a specific meaning, are you not?

Mr FREITAS: I would have used it as an umbrella term, Mr Mookhey, as I indicated. It is a secondment, was my intention.

Mr DAVID SHOEBRIDGE: When you say "umbrella term" do you want to tell us what you mean?

Mr FREITAS: I would refer sometimes to agency arrangements, whether they are DLOs or secondees, an umbrella term as a DLO. Because there are so many of these, Mr Shoebridge, in government, you call them DLOs.

The Hon. DANIEL MOOKHEY: But there is a distinction under the ministerial policy—

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: —guideline between a secondee and a DLO, is there not?

Mr FREITAS: No. There is Mr Mookhey. Absolutely.

The Hon. DANIEL MOOKHEY: Do you accept it was an error to assume that a person who was a secondee could function as a DLO or a person who was a DLO could function as a secondee?

The CHAIR: I am going to just ask you to reword that question.

The Hon. DANIEL MOOKHEY: Given that icare was at this point in time engaging him as a strategy manager for icare, but the arrangement back to your office was recognised as a DLO arrangement when in fact he was functioning as a secondee, do you accept that therefore there was an administrative error of some form?

Mr FREITAS: I am not sure what that question means, Mr Mookhey. I guess what I am saying to you is that it was always clear in my mind that Mr Yap was a secondee. That is why I referenced seconded. He was seconded back and DLO was an umbrella term that I would have used at the time.

The Hon. DANIEL MOOKHEY: Do you accept that you made an error in using the term "DLO" then?

Mr FREITAS: Right. Yes, I do.

Mr DAVID SHOEBRIDGE: At the time, Mr Freitas, were you aware of the distinction between somebody as a departmental liaison officer and the legal regime that saw them work in your office compared to a secondee outside of that? Were you aware of the distinction at the time?

Mr FREITAS: I was generally aware, Mr Shoebridge, that a secondee could do more than a DLO, which had a very specific function, but I am not a lawyer by background so I did not know the legal ins and outs of that. But I was generally aware a secondee could do more.

Mr DAVID SHOEBRIDGE: So you knew there was a distinction between the two types of engagement.

Mr FREITAS: Yes.

Mr DAVID SHOEBRIDGE: Would it be fair to say that one of the distinctions you saw was that a DLO had a much clearer set of railway lines that they stuck to just with that agency.

Mr FREITAS: I will just go back a step. When you say "engagement", I did not know there was a difference in how to engage them at the time, so just to be clear on that. But, yes, my sense was that a DLO—my knowledge at the time was a DLO had a more specific agency-only function and they were seen to be non-political in the office.

Mr DAVID SHOEBRIDGE: And a secondee could go more across the gamut of the work you did and needed.

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Mr FREITAS: That is correct.

Mr DAVID SHOEBRIDGE: And you saw Mr Yap as a secondee?

Mr FREITAS: That is correct, as a secondee.

The Hon. DANIEL MOOKHEY: Notwithstanding that he was described as a departmental liaison officer [DLO]?

Mr FREITAS: I understand that, Mr Mookhey, yes.

The Hon. DANIEL MOOKHEY: In the last line of your email you say:

Can you please arrange for Ed's existing contract to be extended to 31 July 2017, after which he will no longer be employed by DPC. Just to be clear, you are referring to the contract that I just gave you? That was his engagement as a senior policy adviser?

Mr FREITAS: What date was this up until?

The Hon. DANIEL MOOKHEY: Because that would align. It is a small point, but you say, "Can you please arrange for Ed's existing contract to be extended to 31 July," and that is three lines after you say that he has decided to take up an arrangement with icare from 1 August 2017. I want to be clear that that contract from Robert Walters expired on 31 July, to the best of your recollection.

Mr FREITAS: I cannot see an expiry date on this contract.

The Hon. DANIEL MOOKHEY: Neither can I, hence that is why I am asking.

Mr FREITAS: My understanding of the Department of Premier and Cabinet [DPC] arrangement, to be clear, with Robert Walters is that when Mr Yap entered into the labour hire agreement, he became an employee of DPC and was seconded back to us from DPC as well immediately.

The Hon. DANIEL MOOKHEY: Yes.

Mr FREITAS: So DPC had engaged Robert Walters, and Mr Yap was a DPC employee. Reading through this contract, there seems to be an email before that where DPC have asked me about a contract extension. If this is the contract then, yes, it would be extended until 31 July, which is another two weeks, and then the icare arrangements commenced on 1 August.

The Hon. DANIEL MOOKHEY: I ask because the other records show that icare effectively assumes that contract and continues it under its guise.

Mr FREITAS: Right.

The Hon. DANIEL MOOKHEY: That is why I wanted to be clear about when the dates formally changed over, because that is when who pays Mr Yap changes as well.

Mr FREITAS: Yes.

The Hon. DANIEL MOOKHEY: To be very clear here, are you aware that any secondment or DLO arrangement had to be approved by the Premier's chief of staff?

Mr FREITAS: I was not aware of that at the time.

The Hon. DANIEL MOOKHEY: So my next question is whether or not you notified the Premier's chief of staff?

Mr FREITAS: No, did not. I was not aware that I had to.

Mr DAVID SHOEBRIDGE: Is there an office manual, a DPC manual or some kind of manual to give to chiefs of staff so that they know what their obligations are in staffing?

Mr FREITAS: There is a Minister's handbook, but the way that government works—because the responsibilities are so broad ranging and the regulations are so specific—rather than sit down and read handbooks you go to the agency for advice. My practice was when I wanted to do something I would go to the agency which is the HR expert and I would say, "I would like to do this. Can I do it? Is it possible? Can it happen?" They would come back with the advice in terms of if it was possible and if it could happen, and if not, how it could happen—if that makes sense.

Mr DAVID SHOEBRIDGE: Did you have that conversation with icare when the arrangements with Mr Yap were changing?

Mr FREITAS: I had that conversation with Mr Bhatia, I recall, where I said, "Can Mr Yap be seconded back to the office?" My recollection is that he said that he would check. I cannot recall what happened after that, but a written brief was provided to our office, which was then signed and returned to the agency.

The Hon. DANIEL MOOKHEY: Your recollection of that brief is that you signed it?

Mr FREITAS: It was signed by the Treasurer.

The Hon. DANIEL MOOKHEY: There is no record of that brief anywhere.

Mr FREITAS: I know, Mr Mookhey.

The Hon. DANIEL MOOKHEY: To be clear about this, your evidence is that the Treasurer was provided a brief outline that this arrangement would continue under icare?

Mr FREITAS: The office was provided with a brief, and I was comfortable with the contents of the brief—I remember that—because it was written advice from the agency. I cannot recall the actual contents, because it was three years ago.

The Hon. DANIEL MOOKHEY: Of course.

Mr FREITAS: But a brief came up, and I advised the Treasurer at that point that this was the arrangement and that there was written advice from the agency. On that basis and on my advice, he signed the brief.

The Hon. DANIEL MOOKHEY: I accept that.

Mr DAVID SHOEBRIDGE: To be clear, was it in the form of a brief to the Treasurer or was it in the form of advice from icare?

Mr FREITAS: I do not think that it was advice. Sorry, I do not think—I do not recall it being advice, because advice briefs are more generic briefs.

The Hon. DANIEL MOOKHEY: This was a formal recommendation type of brief.

Mr DAVID SHOEBRIDGE: I am asking—

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: That is okay. We will get Mr Freitas to tell us.

The CHAIR: Again I ask members to speak one at a time.

Mr FREITAS: I do not want to speculate, because I am not sure. I cannot recall what it was, but it did require a signature and approval.

Mr DAVID SHOEBRIDGE: Would it be fair to say that there was some kind of recommendation in relation to Mr Yap that was adopted by the Treasurer? Is that your understanding of what the document produced?

Mr FREITAS: All I recall is that there was a document that came up for written advice, and there was a place to sign. I went in and I spoke to the Treasurer, and I advised him that this was the arrangement. The agency provided advice, and then he looked at it, signed it and gave it back to me. That is all I recall.

Mr DAVID SHOEBRIDGE: What you can say is that following that, Mr Yap was employed by icare but was working in the Treasurer's office?

Mr FREITAS: That is correct. In my recollection, that was the enabling paperwork for that to happen.

Mr DAVID SHOEBRIDGE: I imagine that if the Treasurer is penning his signature to something like that it would ordinarily be recorded somewhere and that document would be stored in a document management system. What is the situation in the Treasurer's office?

Mr FREITAS: The practice with briefs from agencies that came up was when a brief came up that required a signature, it was signed and then given to the agency to store and they would have the master copy. I do not believe that we kept a copy if that was the master copy. The agency kept the master copy of that document.

Mr DAVID SHOEBRIDGE: Would you email a signed PDF back or you would hand them a hard copy of the PDF?

Mr FREITAS: There would be multiple ways that it could get back. My practice if I had a brief to return was to put it in an envelope and give it to the executive assistant, and that would go back in the mail. Sometimes they would email it if it was urgent, but it went to the agency.

Mr DAVID SHOEBRIDGE: But the signed brief with the Treasurer's signature would go back to the agency for proper record keeping in the agency?

Mr FREITAS: That is correct. And clearly it got there, because the arrangement happened.

The Hon. DANIEL MOOKHEY: That clears up the events of 17 June. Could I go forward to two other events of some significance in Mr Yap's engagement. To be very clear, from 17 June onwards, Mr Yap is functioning as a secondee notwithstanding that he is described as a DOO?

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Depending on your perspective this is either good or bad, but the Government is re-elected in April 2019.

Mr FREITAS: That was a good thing, Mr Mookhey, yes.

The Hon. DANIEL MOOKHEY: I am sure!

The Hon. ROD ROBERTS: It was in March 2019.

The Hon. DANIEL MOOKHEY: It was in March 2019, but actually government is formed on around 1 April, I believe, when the caretaker period expires and everyone is sworn in, and therefore the Minister's office has to be reappointed. Do you recall?

Mr FREITAS: It rings a bell, but I cannot recall specifically. I think that you are right; the Minister's office is reappointed.

The Hon. DANIEL MOOKHEY: The ministerial handbook says that at that point all ministerial—and, to be fair, under the Members of Parliament Staff Act [MOPS] Act, the legal procedure is that all ministerial staff have to be appointed to their jobs, and that takes place once the Minister is sworn in. That is usually routine, particularly when there are new Ministers, which at the time there were, and thus ministerial duties had changed. Therefore, the obligation to resubmit all paperwork to the Premier's chief of staff arises. But more important for our consequences is the ability to renew DLO and secondment style arrangements is probably triggered.

Mr FREITAS: Sorry, just to go back a step—I do not recall in April 2019 sending a whole bunch of new office contracts to DPC. I am not sure if they were just rolled over—

The Hon. DANIEL MOOKHEY: It is possible that they were, because your Minister did not change.

Mr FREITAS: Yes, we did not change. I do not recall if that happened specifically.

The Hon. DANIEL MOOKHEY: Do you recall the original brief of June or July 2017 having an expiry date on Mr Yap's arrangement as a secondee?

Mr FREITAS: I do not recall.

The Hon. DANIEL MOOKHEY: We are now 14 months beyond the original arrangement, and Mr Yap has not returned to icare.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: At any point did icare call you and say, "Can we have our strategy manager back?"

Mr FREITAS: No, I do not recall receiving any calls from icare. I will just go back a step. That was not unusual in the sense that I had a number of other DLOs from Treasury and other agencies in the office at the time. I recall that there was someone else from Treasury who joined at the same time as Mr Yap, or within a similar time frame. She joined for a six-month initial assignment, which I then extended from six to 12, from 12 to 18 and then from 18 to 24 months. I did that through her directly. Someone from the Treasury reached out to me, I recall, at about the two year and two month mark and said, "Can this DLO assignment conclude?" But I do not recall speaking to anyone before that. There were also other DLO arrangements in the office that would routinely extend.

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I think the Treasury audit report mentions 42 DLO or secondee arrangements and most people would initially join for six months, but only a handful of people or less would stay for the six months, and a lot of people would be extended for a long period.

The Hon. DANIEL MOOKHEY: We will get to some of the other people who have been seconded from icare, but to your recollection, your evidence is effectively that there was not an expiry date but that is not exceptional.

Mr FREITAS: My evidence is that I cannot recall the expiry date on the original agreement because I cannot remember what that original agreement said, but it was not unusual to have long-term DLO or secondment arrangements. There were other ministerial offices, Mr Mookhey, that had long-term DLO and secondment arrangements as well, so that is just the environment you operate in in government; these things are pretty common.

The Hon. DANIEL MOOKHEY: After the election there is no discussion and Mr Yap just continues in his role. Is that correct?

Mr FREITAS: No, that is not correct. I had a conversation with Mr Yap about him returning to the agency in April 2019, but I asked him to stay on post that period because the Treasurer had originally agreed with the office that we would deliver a budget in September 2019 to give ourselves five months of time, but then he changed his mind and decided that he would deliver the budget in mid-June. Then from mid-April, when I think

the Cabinet was sworn in as you said, we had eight weeks to do what would usually take us five months, so I asked Mr Yap to stay on at that point in time. There was a discussion about him returning to the agency.

The Hon. DANIEL MOOKHEY: Was he performing the work of a secondee or a DLO at that point in time?

Mr FREITAS: A secondee, but as I said he had responsibility for icare during his entire period in the office.

The Hon. DANIEL MOOKHEY: But he was also discharging other responsibilities to State-owned corporations and others as well. Is that correct?

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Did it occur to you at any point to ask yourself, or the Treasurer for that matter, whether it was appropriate for Mr Yap to be doing that work while being paid by a workers compensation scheme?

Mr FREITAS: Mr Mookhey, these secondment arrangements happen all of the time in government—that is what a secondment arrangement is—and when agencies second staff to a Minister's office, they do that on the understanding that it is a broader remit than just a DLO and that comes from agency funds. To give you an example of that, in the two months before I left, I sought another secondee from another government State-owned corporation. I was looking for a particular skillset, which I had advertised for externally, and I could not find that. Then I was advised of a particular individual in another State-owned corporation who had that skillset, and I was told they might be interested in a secondment. At that point, they were in a different cluster to the Treasury cluster. We have three agencies in our cluster, which are Treasury, icare and TCorp, but this was a State-owned corporation outside of the cluster. I guess I can name it; it was Sydney Water, so it was in the planning cluster.

I did not know the process or if it was possible to second someone from outside my cluster, so I then went and called the Department of Premier and Cabinet's [DPC] human resources [HR] and said, "I would like to bring this person on. I have spoken to them; they are interested. Is it possible for me to second someone from outside my cluster?" DPC HR responded with, basically, yes it was and here are the steps to do it. I think the term they used was that it was a section 35 secondment and you need the approval of the Premier's chief of staff, the Minister's chief of staff, the agency chief and obviously the individual.

I then went ahead and lined all of those things up, and I received the relevant approvals from the different chiefs of staff. Then I spoke to the agency head and I gave him details about the role that this secondee would be undertaking, and as part of the process, you agree on who will bear the cost of that resource. During that conversation with the agency head, I made it clear that Sydney Water would be bearing the cost of that engagement, and he was comfortable with that. We had an in-principle agreement to action that particular secondment. Then I left the office, so I do not know if that eventuated, but the very clear understanding was that this resource would be working in our office on a range of matters and a particular project for the Treasurer. I think the notion that someone will be doing broader things is inherent to the idea of a secondment.

Mr DAVID SHOEBRIDGE: Did you have a conversation with Mr Bhatia at any point about the nature of the duties that Mr Yap would be doing?

Mr FREITAS: I cannot recall having that conversation, Mr Shoebridge, no.

Mr DAVID SHOEBRIDGE: Did icare know that the staff member they would be providing would be doing work well beyond issues relating to icare?

Mr FREITAS: I believe—well, I cannot speculate, but when I spoke to Mr Bhatia, I recall telling him that Mr Yap needed to finish up items that were assigned to him in the office, and so that was his original role. I cannot tell you what icare knew or did not know.

Mr DAVID SHOEBRIDGE: There is quite a difference between finishing up some things and then getting on to doing work with icare to what I think eventuated, which is that Mr Yap had a roving brief throughout the time.

The Hon. DANIEL MOOKHEY: For three more years.

Mr DAVID SHOEBRIDGE: Do you accept that they are quite different things?

Mr FREITAS: Sorry, I am not sure what you mean.

Mr DAVID SHOEBRIDGE: If I understand you correctly, your conversation with Mr Bhatia was that you wanted Mr Yap to finish up on some things, and the context you gave us is this eight-week period you had to get a budget together.

Mr FREITAS: No, that was a separate—

The Hon. SCOTT FARLOW: They are different times.

Mr FREITAS: That was a very different time. That was in April 2019. The items that Mr Yap had to finish off or complete—my recollection was that they were going to take some time to do. That was a different period to 2019 in terms of the budget.

Mr DAVID SHOEBRIDGE: So the conversation you had with Mr Bhatia at the time you were renegotiating having Mr Yap in the office, was around Mr Yap finishing up some things.

Mr FREITAS: He had to finish off a number of critical items that were assigned to him—that is correct.

Mr DAVID SHOEBRIDGE: Did you ever have a conversation with Mr Bhatia to the effect that Mr Yap would not be limited to icare but would be having this roving brief of work across all of the Treasurer's portfolios?

Mr FREITAS: Mr Bhatia knew that because he knew that Mr Yap was already advising on insurance matters at State-owned corporations, which were beyond icare, so he knew Mr Yap's role in the office was broader than just icare.

Mr DAVID SHOEBRIDGE: Did you ever sit down and do a review with icare about Mr Yap's work and about his performance? Did you ever do a performance review?

Mr FREITAS: No I do not recall doing a performance review with icare and Mr Yap, but I did not do a performance review with any of the DLOs in my office with their home agencies.

The Hon. DANIEL MOOKHEY: What about secondees?

Mr FREITAS: No, I never did any performance reviews, Mr Mookhey, on agency staff with agency people.

Mr DAVID SHOEBRIDGE: Did you ever report back to icare about the quality of Mr Yap's work?

Mr FREITAS: I do not recall doing that, but I do not recall doing that for anyone in the office.

Mr DAVID SHOEBRIDGE: Did Mr Yap get pay increases throughout the period? I am not trying to be difficult. Given the employer is at some distance, how was that employment relationship managed? Did you effectively take on the job of a manager or was that still being done by icare?

Mr FREITAS: The way I describe it is that Mr Yap reported through to our head of policy for day-to-day matters and then ultimately through to me as the chief of staff for the engagement, but he also had a contact that he was reporting to at icare—I am not sure who that was—and he also went through the government relations teams at icare I believe as well. But in terms of pay rises: Yes, Mr Yap did receive, I think, two pay rises, and I think he approached me on that matter because I think everyone in the public sector was getting 2.5 per cent at that time, but Mr Yap's contract was fixed, so there was no 2.5 per cent pay rise at that point in time. So he approached me and said, "Everyone in the office and everyone in the public sector is receiving a 2.5 per cent pay rise. I am doing all of this work and I am putting in all of these hours for the office. Can you please see if you can raise this matter with icare to see if that is something that they would want to do and provide your feedback to them?" So I raised that matter with icare's government relations team and said, "Mr Yap has this arrangement and there is no 2.5 per cent pay rise, so is that something that you can look at?" I believe they looked at it and came back and said that, yes, they would approve a 2.5 per cent pay rise.

The Hon. DANIEL MOOKHEY: To be fair to you, Mr Freitas, I want to table a document that proves your point. Can I table this correspondence? It is an internal icare email, which you would not have seen because you were not a party to it, but it does say that the head of employee relations on 1 November writes to a person who I think is handling Mr Yap's technical employment relationship. It reads, "Dear Anna, Do we know when they intend to make this payment to Ed? The Minister's chief of staff is chasing up Kary Petersen on this matter."

Mr FREITAS: Right.

The Hon. DANIEL MOOKHEY: Does that accord with your recollection that Mr Yap had approached you for a pay rise and you then raised it with the government affairs team?

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Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Mr Kary Petersen was at this time the general manager of government and communications, I believe.

Mr FREITAS: I am not sure what his role was at the time but he was our point person at government relations, I think, at that point.

The Hon. DANIEL MOOKHEY: Did you speak to him regularly?

Mr FREITAS: He was my contact person, so I would speak to him occasionally—I am not sure "regularly" is the right word—but he would also attend the monthly catch-ups or bi-monthly catch-ups that we would have with icare at different points. But if I had a matter raised that was not of relevant importance to the CEO I would go through Mr Petersen, that is right.

The Hon. DANIEL MOOKHEY: I am just wondering why you were raising this with the head of government relations at icare and not HR at icare or the person who was the respondent, and why you were going through Mr Petersen.

Mr FREITAS: The way that agencies interface to us is they usually have a contact point that we go through for everything, and for us that was Mr Petersen. So when the chair and CEO came up for the icare meetings with the Treasurer, Mr Petersen was with them and he was the point person for all things icare. So to stop Ministers' offices going around different agency departments you have one central point of contact, and Mr Petersen was that point of contact.

The Hon. DANIEL MOOKHEY: Okay, so that was just your usual communication and you would probably not know who else to call. Is that fair?

Mr FREITAS: He was the only person I went to.

The Hon. DANIEL MOOKHEY: In April 2019 you say that you made a decision that you wanted to continue Mr Yap's arrangement to effectively assist with the State budget that year.

Mr FREITAS: Correct.

The Hon. DANIEL MOOKHEY: Did you disclose that to the Treasurer, that you were seeking to have him continue?

Mr FREITAS: I do not recall that, no.

The Hon. DANIEL MOOKHEY: After the Government was re-elected and the Treasurer had to appoint his staff, did you draw to the Treasurer's attention that Mr Yap was continuing on to icare?

Mr FREITAS: No, I do not recall doing that.

The Hon. DANIEL MOOKHEY: At any point after the initial engagement of Mr Yap did you bring it to the attention of the Treasurer that Mr Yap is continuing on, paid for by icare?

Mr FREITAS: We had a conversation towards the end of 2019—I think it was in December at that point—it was after the end of the year, after the half-year review, and we were putting our plans for 2020, of which none eventuated given what has happened, but as part of that conversation I had told the Treasurer that Mr Yap will be returning to icare in quarter one of 2020. That, I recall, was the only time I raised Mr Yap's secondment with the Treasurer.

The Hon. DANIEL MOOKHEY: So Mr Yap continues on after quarter one of 2020. Why?

Mr FREITAS: Because in January we had the bushfires and that was a pretty intense period for the team. So I called everyone back in the first week of January and I cancelled leave and I pulled people in. As the Treasurer's office we play a significant role in the bushfire response because we handle all the funding and all the rescue packages and all the assistance packages that went out, and there is also an insurance element to that with the Treasury Managed Fund [TMF] and State-owned assets, and that continued through January and through most

of February. Then in March we had the pandemic and I told everyone that everyone was staying and everyone was working on the pandemic.

The Hon. DANIEL MOOKHEY: Did Mr Yap ever disclose to you at that time or at any time afterwards that his visa was due to expire in April 2020?

Mr FREITAS: No.

The Hon. DANIEL MOOKHEY: Was any aspect of the decision to terminate his secondment arrangement related to his visa eligibility?

Mr FREITAS: What do you mean terminate his secondment arrangement, sorry?

The Hon. DANIEL MOOKHEY: You said that it was your intention for him to return to the agency.

Mr FREITAS: Right—no, it was not.

The Hon. DANIEL MOOKHEY: Did icare ever discuss with you its choice to sponsor Mr Yap for permanent residency?

Mr FREITAS: No, I do not recall that.

The Hon. DANIEL MOOKHEY: Did icare ever raise with you that there was an issue with Mr Yap continuing on because of his visa?

Mr FREITAS: No, I do not recall that.

The Hon. DANIEL MOOKHEY: Did they ever say to you that icare needed to initiate a new selection process for a strategy manager because Mr Yap effectively ceased to be—

Mr FREITAS: No. Mr Mookhey, these were all operational details handled by the agency. I did not get involved with any of it.

The Hon. DANIEL MOOKHEY: To be fair, I am not suggesting that you would, I am just being clear because we have to put these questions to them next week as well, so it is only fair that we get your account.

Mr FREITAS: To the best of my recollection, I did not have any involvement in that process at all.

The Hon. DANIEL MOOKHEY: Did they ever say to you that they were intending to engage in a public advertisement position to fill Mr Yap's role but privately they had already agreed to hire Mr Yap for that job?

Mr FREITAS: No, never.

The Hon. DANIEL MOOKHEY: No discussions whatsoever?

Mr FREITAS: Never.

The Hon. DANIEL MOOKHEY: I wish to move on to non-Yap matters but if the Committee has any other issues to do with Yap? No? Great. Mr Freitas, I want to move to some other staff that icare seconded to your office. Just to be clear, I am going to refer to one of them by name so you can identify the person. I am only going to refer to this person once and then we will refer to them by the function that they played, and that is more to protect them and make Hansard's job of redaction a lot easier as well. Did the Treasurer's office ever engage in any capacity a person by the name of _____ ?

Mr FREITAS: Yes, we did.

The Hon. DANIEL MOOKHEY: And what was her responsibility?

Mr FREITAS: She was our receptionist and I think at times she swapped between reception and departmental liaison officer [DLO] manager.

The Hon. DANIEL MOOKHEY: Henceforth I will refer to her as a receptionist. Is that fair?

Mr FREITAS: That is fine with me, Mr Mookhey.

The Hon. DANIEL MOOKHEY: So you know who I am referring to?

Mr FREITAS: I do.

The Hon. DANIEL MOOKHEY: When was she engaged as a receptionist?

Mr FREITAS: I cannot recall specifically, but it would have been 2018, I think. I cannot recall specifically. I mean there were a number of receptionists and I cannot recall specifically.

The Hon. DANIEL MOOKHEY: I might be able to help you there. Was it circa June or July 2018, that year?

Mr FREITAS: It may have been.

The Hon. DANIEL MOOKHEY: And for six months was it the case that she was functioning as a receptionist on the Members of Parliament Staff [MOPS] budget?

Mr FREITAS: It may have been. I cannot recall.

The Hon. DANIEL MOOKHEY: But that took place while you were chief of staff.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Did you identify Ms _____ as a person to work as the Treasurer's receptionist?

Mr FREITAS: Yes.

The Hon. DANIEL MOOKHEY: The receptionist, did you identify the candidate to do that job?

Mr FREITAS: What is probably important context here is the receptionist was an icare employee originally and she worked for icare as an admin assistant and then at some point she was seconded from icare to our front desk for four to five weeks, I think, to fill in a leave vacancy position and that is how we met her. She went back to icare after that. Then when a vacancy arose in our office I approached her for that vacancy.

The Hon. DANIEL MOOKHEY: I believe, working through that time scale, the receptionist lists herself as working for icare in 2016 and then leaving and undertaking other work for other organisations.

Mr FREITAS: Right, that might be correct.

The Hon. DANIEL MOOKHEY: And then returning to your office around 2018.

Mr FREITAS: Right.

The Hon. DANIEL MOOKHEY: Is that your recollection?

Mr FREITAS: That may be true, if that is what she says, but how we met her was through her being seconded to our office. I am not sure that was in 2016 because that was pretty early on in the piece.

The Hon. DANIEL MOOKHEY: It is possible that she was also re-engaged by icare afterwards and has not listed it. That is fine; I am not suggesting that there is an inconsistency.

Mr FREITAS: That sounds pretty early to me.

The Hon. DANIEL MOOKHEY: You say that there was a short-term leave position for the receptionist.

Mr FREITAS: That is right.

The Hon. DANIEL MOOKHEY: And then icare filled it with the receptionist.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: So why did icare fill that as opposed to you using your casual budget?

Mr FREITAS: It was our custom that whenever there was a short-term vacancy on reception for a leave, I would go to an agency and ask them to provide a resource to cover that position.

The Hon. DANIEL MOOKHEY: Why?

Mr FREITAS: Because agencies are there also to help supplement a Minister's office and help the Minister's office where they could and in the past we had done that for numerous agencies. Where we had a short-term vacancy in the office we would go to the agency and ask them to help fill that. That was pretty common.

Mr DAVID SHOEBRIDGE: It was not icare's job to staff the Treasurer's office. How did you form the view that it was icare's job to staff the Treasurer's office?

Mr FREITAS: That is a fair question and I should give you the context here. It is very common in ministerial offices to have the front desk position covered by an agency.

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If you go to the Premier's office, for example, you will see a secondee there from Service NSW. In fact, this receptionist started off life in Service NSW and during her time there she was seconded to the Premier's office as a receptionist for six to 12 months and then went back to Service NSW. If you go to the health Minister's office, you will often see a Health person on the front desk there. It is very common and routine for agencies to cover that front desk position.

Mr DAVID SHOEBRIDGE: But do you accept that there is a distinction where a staff member is paid for by consolidated revenue in one way or another, compared to where a staff member is paid for by a distinct, separate, statutory fund that is not government money?

The CHAIR: I am going to disallow that question—

Mr DAVID SHOEBRIDGE: Do you accept the difference?

The CHAIR: No, I am going to disallow the question because I think you are implying something on Mr Freitas there that is outside of—

The Hon. DANIEL MOOKHEY: Maybe I can ask—

Mr DAVID SHOEBRIDGE: No, I am going to press the question. I do not understand the ruling. I am not trying to hide anything here from Mr Freitas. The Health and Service NSW staff members' wages come out in one form or another of consolidated revenue, which is quite distinct from someone from icare, where their wages almost certainly come from the nominal insurance fund, which is expressly not public money and dealt with in that way by the budget.

The CHAIR: I accept that but I am ruling the question out of order because what you are implying through the question is that Mr Freitas made the decision.

Mr DAVID SHOEBRIDGE: I am not implying anything; I am simply trying to get an answer. I think Mr Freitas is being honest with us.

The Hon. DANIEL MOOKHEY: He is being very straight.

The CHAIR: I accept that.

Mr DAVID SHOEBRIDGE: I am not implying anything, I just want an answer. I will be clear that I missed the first part of Mr Freitas' evidence but he seems to be a straight-up witness trying to answer the questions and I just want him to answer this one.

The CHAIR: He has been.

Mr DAVID SHOEBRIDGE: I am giving him the opportunity because I have concerns and I would like his answer.

The CHAIR: Mr David Shoebridge, I would prefer if you re-asked the question without any inferences to Mr Freitas having due regard to the funding of the organisation with whom they are providing the front desk person.

The Hon. ROD ROBERTS: Perhaps I could ask a question along similar lines?

The CHAIR: You could, but I do not want questions on the record that imply—

The Hon. ROD ROBERTS: I will not imply anything, I will just ask a straight out question. If it is out of order, the Chair can rule it out of order or someone can take a point of order. I agree with the veracity of the witness; he has been very helpful. Mr Freitas, are you aware that icare funding comes from insurance premiums from the private sector?

Mr FREITAS: I am aware that that is one of the sources of funding for icare.

The Hon. ROD ROBERTS: It is the primary source.

Mr FREITAS: It may well be, Mr Roberts, yes.

The Hon. ROD ROBERTS: People from Service NSW and other areas you talk about are on the public sector purse.

Mr FREITAS: Yes, I understand.

The Hon. ROD ROBERTS: Would you would agree that there is a distinction between the two?

Mr FREITAS: Yes.

The Hon. ROD ROBERTS: The receptionist in question, though, without putting words in your mouth, comes primarily from a private source of money?

Mr FREITAS: I understand what you are trying to say, Mr Roberts. What I would say to you is that I did not necessarily see that distinction at the time because icare had provided the office with resources for many years from that same pool of funds. Any icare resource provided to our office, or previous Ministers' offices or offices of Ministers in the previous Government would have come from that pool of funds. In that sense, I did not think of that being any different, if that makes sense.

The Hon. ROD ROBERTS: Hindsight is a wonderful tool, Mr Freitas. When you look back at it, in hindsight, can you see the anomaly here?

Mr FREITAS: I can. I understand now that this arrangement was funded from the agency, so I accept Mr Shoebridge's points. Having said that, Mr Roberts and Mr Shoebridge, I do not make the secondment decision, the agency does, and I do not make the decision to second them back. If the view from the agency was that this should not have occurred because that was a different source of funds, then I would have accepted that advice. There was never a time in government that I did not accept the advice I received on human resources matters. If I had been advised that icare's view was that it could not provide those resources because they were from a different source of funds that are different to consolidated revenue, as you said, then I would have accepted that advice and gone to a different agency, such as TCorp or Treasury, for example.

The CHAIR: Can I confirm that icare, also being the Nominal Insurer, was handling the Treasury Managed Fund's self-insurance component, as well?

Mr FREITAS: Yes, that is correct. There were multiple sources of funds.

The CHAIR: icare does not only receive premiums from workers compensation as its only source of funds.

Mr FREITAS: That is correct.

The Hon. TREVOR KHAN: It is not only that, it receives funds for CTP—

The Hon. DANIEL MOOKHEY: And the Home Building Compensation Fund.

The CHAIR: I objected to the question that Mr Shoebridge asked—and it has happened on a number of occasions in these hearings—because the implication was that the witness was doing this and drawing money away from injured workers—

The Hon. DANIEL MOOKHEY: You have already ruled, it is fine.

The CHAIR: I am just explaining the situation.

The Hon. DANIEL MOOKHEY: Yes, we get it. You have already ruled. To cut to the chase, Mr Freitas, why did you not just use the ministerial budget?

Mr FREITAS: It was and is common practice to have agencies fulfil roles in Ministers' offices, Mr Mookhey. You can see from the Treasury audit report that there were 42 agency arrangements and only 38 ministerial staff budget arrangements. So this happens all the time. I am in an environment where every single ministerial office taps into agencies for help with resources all the time. There was absolutely nothing unusual about that.

The Hon. DANIEL MOOKHEY: To be fair to you, Mr Freitas, I am not suggesting that it is unusual. But that is not an answer to my question. The question was why you did not use the ministerial budget, not whether it was a common practice. Was there a budget shortfall, no budget available or did you not budget for the receptionist or the diary manager? Why was it that all of a sudden that any agency was paying for the Treasury's diary manager?

The Hon. TREVOR KHAN: Point of order: There are two points of order. The first one is that we are looking at icare, rather than the operation of the Minister's office. The Minister's office is only a peripheral side to this.

The Hon. DANIEL MOOKHEY: I accept that.

The Hon. TREVOR KHAN: Your question is directed at the ministerial arrangements as opposed to—

The Hon. DANIEL MOOKHEY: Because I would like to put the proposition—

The Hon. SCOTT FARLOW: Let Mr Khan finish his point of order.

The Hon. TREVOR KHAN: My second point of order relates to the guidelines on procedural fairness. There is a point where the questioning goes beyond what is fair to this witness because the questions relate to matters of policy. This witness does not do that so I think there is a reining-in point here where we are asking too much of this witness and his opinions when he is not really the person to ask.

The Hon. DANIEL MOOKHEY: I will rephrase because I would not want to accuse anyone between the Chair and the Government of trying to take time. Was this a scheme to obtain additional resources for the Treasurer's office from the workers compensation scheme?

Mr FREITAS: No, it was not. I reject that totally.

The Hon. DANIEL MOOKHEY: Thank you. You said that you contacted the agency and requested that it provide a supplemental resource to function as a receptionist to replace a person who was on leave, effectively.

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: Who did you have that conversation with at icare?

Mr FREITAS: That would have been the government relations team.

The Hon. DANIEL MOOKHEY: Is that Mr Petersen?

Mr FREITAS: Or the other person in the team whose name I cannot recall.

The Hon. DANIEL MOOKHEY: What did you say?

Mr FREITAS: I would have said, "We have a position in the office where someone is going on leave and we do not have a receptionist for a period of two, or four or six weeks. Would it be possible for icare to cover that role at that point in time?" As I said, that is fairly routine; it happens all the time. I would put that to the government relations team at icare and they would go away and work out if there was a receptionist or someone available to cover that front desk role and they would provide that resource to us.

The Hon. DANIEL MOOKHEY: In respect to this receptionist, so that we can align the dates, you said they were engaged for a short time and then a longer time. Is that your recollection?

Mr FREITAS: I said that the receptionist was first seconded to us for four to six weeks—is my best recollection. When a role arose in our office I then offered her that role because we knew her from that secondment.

The Hon. DANIEL MOOKHEY: Okay, so let us just work through that date by date. Was the original engagement, which was effectively filling the leave, between 6 May 2019 and 11 July 2019?

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Mr FREITAS: Sorry, so that is 6 May 2019 to 11 July 2019.

The Hon. DANIEL MOOKHEY: Yes, as in the original period for which—

Mr FREITAS: No, that does not sound right.

The Hon. DANIEL MOOKHEY: Okay. And then the permanent or the longer engagement, was that from 12 July 2019 to 5 August 2020?

Mr FREITAS: No, that does not sound right.

The Hon. DANIEL MOOKHEY: Okay. I am going to table this and give it to you so you can see it as well. I might need it back to ask you the next set of questions but for now it is easier to just give this to you. This

is the evidence that has been provided directly by icare to this Committee in which it lists every person who it thinks has secondment to the Treasurer's office.

Mr FREITAS: Right.

The Hon. DANIEL MOOKHEY: It lists the receptionist as having two engagements, 6 May 2019 to 11 July 2019 and then 12 July 2019 to 5 August 2020—

Mr FREITAS: Sorry, can you say those dates again Mr Mookhey?

The Hon. DANIEL MOOKHEY: From 6 May 2019 to 11 July 2019—

Mr FREITAS: Right.

The Hon. DANIEL MOOKHEY: —is the first engagement.

Mr FREITAS: Right.

The Hon. DANIEL MOOKHEY: Then it says a re-engagement takes place on 12 July 2019 to 5 August 2020 and that aligns with the two periods that you just described. There was a short period in which they were effectively filling in for someone and then a longer engagement. I will just give that to you so you can see it.

Mr FREITAS: Mr Mookhey, to be frank with you, these are agreements for receptionists. I cannot recall the specific details of that. There were 80 staff arrangements in the office so—

The Hon. DANIEL MOOKHEY: I accept that.

Mr FREITAS: —I am not necessarily accepting what you are saying because I do not know if that is true.

The Hon. DANIEL MOOKHEY: That is fine. I accept that you might not accept it but that is the evidence that icare has provided to us on notice.

Mr FREITAS: But what I am saying to you is I cannot recall if that first period is that short term period I am talking about or if it was earlier than that. It may have been.

The Hon. DANIEL MOOKHEY: Okay, that is fine. I agree. You are allowed to disagree with them and that is fine as well.

The Hon. TREVOR KHAN: Because we probably would as well.

The Hon. DANIEL MOOKHEY: Yes, I am not going to blame you if you do.

The Hon. SCOTT FARLOW: Just to that point, Mr Mookhey, you were talking about a 2016 arrangement as well?

The Hon. DANIEL MOOKHEY: Yes.

The Hon. SCOTT FARLOW: Could that potentially be what Mr Freitas might be referring to there as well?

The Hon. DANIEL MOOKHEY: I do not believe it is but if you want to put that to Mr Freitas, you can. Can I just table another document?

Mr FREITAS: Is this the same document I have here?

The Hon. DANIEL MOOKHEY: No.

Mr FREITAS: Okay.

The Hon. DANIEL MOOKHEY: The document I am tabling now is the letter of engagement that icare enters into with the receptionist. It makes her a letter of offer, 17 May 2020, which is five days after she notionally has commenced work in your office.

Mr FREITAS: Sorry, 17 May—

The Hon. DANIEL MOOKHEY: In 2020.

Mr FREITAS: On 17 May 2020, right.

The Hon. DANIEL MOOKHEY: And if you turn the page you will see the receptionist signs it on 22 May 2020.

Mr FREITAS: That says 22 May 2019.

The Hon. DANIEL MOOKHEY: Yes, you are right. Sorry, my mistake. It was 17 May 2019 and then the receptionist signs it on 22 May 2019. You see that?

Mr FREITAS: Yes.

The Hon. DANIEL MOOKHEY: And then icare provides her with a job description that says "departmental liaison officer" yet this person is functioning as a receptionist. Now I accept you will not have seen that before.

Mr FREITAS: No.

The Hon. DANIEL MOOKHEY: At any point did icare tell you that it had effectively employed this person to work directly for your office having never engaged them for a number of years?

Mr FREITAS: Sorry, Mr Mookhey. Where does it say departmental liaison officer? Right; I have it. No, I have never seen this document before.

The Hon. DANIEL MOOKHEY: So at no point did icare disclose this to you that this person was not working for it at the time before they arrived in your office? That it hired this person specifically to work in your office is the implication of all these documents.

Mr FREITAS: No, sorry Mr Mookhey, I think I see what has happened here. The receptionist was already in our office at this point and I recall that her contract was coming to an end. I did not have the capacity to keep her on because she was outside my budget so her contract was finishing. At that point I reached out to icare and said, "I have got this receptionist. She used to work for you. Can we have a secondment arrangement? I do not have the capacity to keep her. Can we have a secondment arrangement where she will be with our office in the short term and join you in the long term? Can I get advice on that? If not, that is fine; I will just seek another receptionist from icare to fill that position anyway." That is the conversation I would have had.

The Hon. DANIEL MOOKHEY: I just want to be very clear here. There is no implication directed at you—

Mr FREITAS: I just want to make sure that I get the facts right.

The Hon. DANIEL MOOKHEY: That is right and it is very helpful. There is no implication that you would have had any knowledge of that arrangement and there is no implication that you would have had to consent to that arrangement because fundamentally it is a matter for icare as to how it engages the person and what it told them their duties were.

Mr FREITAS: I understand that, Mr Mookhey, but what I want to make clear is it would be incorrect to say that icare simply picked her up from her last place of employment. She was currently in our office at that time.

The Hon. DANIEL MOOKHEY: I accept that but icare effectively established a role for her after a request was received—

Mr FREITAS: Sure.

The Hon. DANIEL MOOKHEY: —and it called her a departmental liaison officer—

Mr FREITAS: Right.

The Hon. DANIEL MOOKHEY: —and then seconded her back to work as a receptionist. That accords with your recollection?

Mr FREITAS: That is correct. I do not know what role she had. I remember from speaking to her she told me that when she returned to the agency she was going to be put in the ministerial liaison team, which would interface with our office from the other side. I know that icare also used these reception positions or reception assignments, Mr Mookhey, as part of their leadership development. I think there was one candidate who came up to our office, who was on a particular rotation and they used her assignment to our office as part of that rotation because what they saw—

The Hon. TREVOR KHAN: As a familiarisation role.

Mr FREITAS: That is correct because what they saw as a benefit was someone in the office who knew how the Minister's office worked, who knew the processes and procedures. They could then go back to the agency and provide that insider knowledge to the agency.

The Hon. TREVOR KHAN: And knew the people who worked in the office.

Mr FREITAS: That is correct.

The Hon. TREVOR KHAN: Nothing suspicious there.

The Hon. DANIEL MOOKHEY: To be procedurally fair to the other witnesses I ask you this: You never discussed this at all at this level of detail with anyone from icare?

Mr FREITAS: When you say "this level of detail", do you mean this contract?

The Hon. DANIEL MOOKHEY: Yes.

Mr FREITAS: No, I did not.

The Hon. DANIEL MOOKHEY: Okay. Did you have any discussions with the Treasurer about the arrangements that were struck for the receptionist?

Mr FREITAS: No, Mr Mookhey, I did not bother the Treasurer with receptionist arrangements.

The CHAIR: We have five more minutes.

The Hon. DANIEL MOOKHEY: I am fairly positive I have only two more.

The Hon. TREVOR KHAN: There will not be any questions from me.

The Hon. DANIEL MOOKHEY: In that document that I tabled with you earlier, that lists the staff that have been seconded at various points. I am only going to mention this person once to identify that we are talking about the right arrangement and then we will continue with the same arrangement we had before. We will just refer to the title that they played.

Mr FREITAS: Yes.

The Hon. DANIEL MOOKHEY: You see that there is a person there that is engaged who is

Mr FREITAS: That is correct.

The Hon. DANIEL MOOKHEY: What was her function in the Treasurer's office?

Mr FREITAS: Receptionist. Exactly the same situation as the other candidate.

The Hon. DANIEL MOOKHEY: So that was the person who was on leave that the second receptionist filled in for because the dates seem to align?

Mr FREITAS: That was the person who the second receptionist filled in for.

The Hon. DANIEL MOOKHEY: As in the second person who we have been talking about extensively?

Mr FREITAS: Yes. It may have been that person or what would happen sometimes is that our diary manager would go on leave in which case I would put our receptionist as the diary manager and then have someone come up to cover the reception role. So it may have been her or it may have been someone else on leave at that time; I cannot recall.

The Hon. DANIEL MOOKHEY: The only reason I ask is that once you talk about the arrangement of the person I just referred to, it becomes clear that this pattern of icare providing resources for a receptionist was ongoing and long-term from what it seems?

Mr FREITAS: As I said, Mr Mookhey, it is very common for agencies to provide front desk resources and I do not see anything untoward about that at all. The agency did not either because they provided them. I would simply deal with this as a resource request and put a call in to the agency and they would—as any agency would—support their Minister's office and that is how I saw it.

The Hon. DANIEL MOOKHEY: Given that you did not see any issue with it, why was the arrangement terminated on 5 August 2020?

Mr FREITAS: Because when I offered my resignation to the Treasurer that was around that date and the view was that the paperwork for these secondments could not be located and as such they were not valid and therefore they needed to be terminated. That is my recollection.

The Hon. DANIEL MOOKHEY: Was there any accompanying written brief akin to that arrangement to authorise any of this?

Mr FREITAS: No, all the receptionist arrangements were just done verbally. There was never a brief that I recall.

The Hon. DANIEL MOOKHEY: In terms of some of the other functions—

Mr FREITAS: Sorry just to add to that, Mr Mookhey, in terms of context. Whenever someone would come up from Treasury or Treasury Corporation [TCorp] or other agencies, as you can see from the Treasury audit report, sometimes people would come up with paperwork and sometimes they would not. Different agencies would generate paperwork or sometimes they would not, so that was not necessarily unusual.

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The Hon. DANIEL MOOKHEY: I am complete there. I just want to say that I appreciate the frank and honest way in which you have answered the questions, and the fact that you again made your time available to us at request.

Mr FREITAS: Sure.

The Hon. ROD ROBERTS: Mr Freitas, we talked about the Treasurer not being granular because he is an extremely busy man. I am assuming—well, I should not assume at all. I put it to you that the Treasurer would not have been involved in deciding whether Mr Yap was a DLO or a secondee.

Mr FREITAS: No.

The Hon. ROD ROBERTS: He would not have been involved in whether Mr Yap was seeking pay rises.

Mr FREITAS: No.

The Hon. ROD ROBERTS: I am assuming that the Treasurer was not involved in and did not care who his receptionist was at the office.

Mr FREITAS: No. The Treasurer left all that to me. It would not be unusual, Mr Roberts, for an agency resource to be in our office for a week before the Treasurer noticed them.

The Hon. ROD ROBERTS: Exactly.

Mr FREITAS: That kind of stuff is not—

The Hon. ROD ROBERTS: How many staff were there again? Eighty-odd or something?

Mr FREITAS: There were 80 in total.

The Hon. DANIEL MOOKHEY: Eighty over what period?

Mr FREITAS: The Treasury audit report references—

The Hon. DANIEL MOOKHEY: So not 80 people at one point in time, but 80 people over—

Mr FREITAS: I wish I had 80 people at one point in time but, no, it was 80 over five years.

The Hon. SCOTT FARLOW: I will pick up on a couple of the points raised by Mr Mookhey. With respect to the receptionist role particularly, it was a fairly transferable skill, so to speak, in somebody coming into that receptionist or diary assistant role. Is that correct?

Mr FREITAS: Yes, we had receptionists come and go all the time. It was a pretty generic kind of role—answering the phone, keeping the office fridge stocked and supporting the team at busy times. As I said, I had seen this in the Premier's office and other Ministers' offices. Agencies often provide front desk staff. That is just a routine part of government.

The Hon. SCOTT FARLOW: You mentioned that, in the advice from icare that you sought, if it had said that it would not be able to, you would have gone to TCorp or Treasury or any other agency that was responsible to the Treasurer at the time. Is that correct?

Mr FREITAS: That is correct.

The Hon. SCOTT FARLOW: Did you do that for any other roles? Were any people brought up from TCorp or Treasury?

Mr FREITAS: Yes, at any one time there would be three to five people in the office from different agencies. I think when I started there would usually be two or three from Treasury and one from TCorp and one or two from icare. I would try to manage the load on different agencies. Treasury ended up supporting a number of different Ministers, such as Minister Tudehope, Minister Barilaro and Minister Ayres. So its capacity to provide more resources was constrained. I think I scaled back my Treasury resources and had icare do reception and policy and then had TCorp do policy. It would just go up and down depending on what agencies were doing and what the demands of the office were.

The Hon. SCOTT FARLOW: Effectively, you were trying to utilise all the agencies that were answerable to the Treasurer in a fair and balanced way.

Mr FREITAS: That is correct.

The Hon. SCOTT FARLOW: Let us go back to the beginning. In respect to the discussions about the ministerial office handbook, that was something that you might have been familiar with but did not necessarily rely on in regard to staffing arrangements.

Mr FREITAS: Yes. As I mentioned, given the range of responsibilities, chiefs of staff do not sit at the desk reading memos and circulars and handbooks. We short-circuit that and go to the agency for advice. I would go to the agency and request advice on every single staff engagement that I entered into. The agency would provide advice and then that advice was acted on.

The Hon. SCOTT FARLOW: So you believed at all times that you were operating under the advice of DPC HR and in accordance with that?

Mr FREITAS: For Mr Yap's engagement, at all times DPC advised me those arrangements were in order. I advised the Treasurer that those arrangements were in order based on that advice.

The Hon. SCOTT FARLOW: And that was confirmed by icare's HR as well—even in the form of a written brief, as you recall it.

Mr FREITAS: That is correct. I only ever advised the Treasurer based on the agency advice that I received. At all times my understanding of the arrangements was that they were in order. I accept the findings of the Treasury audit report, where they said that technically, because they were contractors, some people could not be seconded. But that was not just icare; that was also Service NSW, which seconded a contractor to us. Clearly, there is a lack of knowledge in agencies around how these processes work in terms of the contractor kind of requirement. But at all times, even for the Service NSW one, they advised me at that time that this contractor could be seconded. I acted on that advice. Clearly, the agency at all times thought this would happen because they all happened.

The Hon. DANIEL MOOKHEY: Mr Farlow, you put a question to him that it was "icare's HR". But the previous evidence was "icare". There is a distinction.

The Hon. SCOTT FARLOW: I am happy to seek Mr Freitas' clarification on that. I had taken it down as icare HR, but if it was icare in some broader remit through the ministerial and parliamentary—

The Hon. DANIEL MOOKHEY: The evidence was that it was icare and Vivek. It is a meaningful distinction.

The Hon. SCOTT FARLOW: Okay. So the advice had come from icare in some form in regard to that.

Mr FREITAS: The advice came from icare. I cannot recall who it came from, but there was a written brief supporting that advice.

The Hon. SCOTT FARLOW: With respect to these arrangements as well, you had a conversation with Mr Bhatia where you told him that Mr Yap had interest in joining icare as a staff member. Soon after that time, Mr Bhatia left icare after Mr Yap was engaged. Is that correct?

Mr FREITAS: I cannot recall Mr Bhatia's time of leaving, but yes—

The Hon. SCOTT FARLOW: It all sort of happened around the same time. On Mr Bhatia's departure did you have any further point of contact within icare or did that remain just with the ministerial and parliamentary liaison team?

Mr FREITAS: I would deal and meet with the CEO and chair in the meetings with the Treasurer, but for day-to-day activities I would go through the government relations team. That was my primary point of contact.

The Hon. DANIEL MOOKHEY: Mr Farlow, you put to the witness that was around the same time when Mr Bhatia left, but the record shows that there was a six-month period from the engagement of Mr Yap and Mr Bhatia's departure. You need to be fair to the witness.

The Hon. SCOTT FARLOW: I consider that to be around the same time.

The Hon. DANIEL MOOKHEY: That is what you have to be clear about. You cannot imply it was the day of, the week of, or the month of when there was a six-month period.

The Hon. SCOTT FARLOW: But that transition period also coincided with Mr Bhatia's departure from icare at that time.

The Hon. DANIEL MOOKHEY: I am not sure that is a fair reflection. I will not take a point of order but, given that we have established that there was an understanding that the arrangement would terminate circa 31 July 2017 and Mr Bhatia did not leave until 1 January 2018, you should, to be fair to this witness and the other witnesses, be quite precise if you are going to put that to him.

The Hon. SCOTT FARLOW: Okay. With respect, just going through the discussion about the visa as well and the visa expiry, that again was something you were never informed of at all by either Mr Yap or icare.

Mr FREITAS: I do not recall being informed of that. Mr Yap's return to the agency was not driven by his visa. It was driven by the fact that he had been in the office for a period of time. We always intended Mr Yap to go back to icare and the first quarter of 2020 seemed like a reasonable time to do it. We did not predict the bushfires and the pandemic, which then meant it was all hands on deck for that period of time.

The Hon. DANIEL MOOKHEY: Just to be clear again, there was an April 2020 visa. We are talking about three visas in this period. You have to be clear about which one.

The Hon. SCOTT FARLOW: I am talking about the visa expiring April 2020. With respect to Mr Yap's responsibilities in that office as well, you mentioned that you had recalled all staff because of the bushfires in January 2020. It was the case that Mr Yap had responsibility for insurance matters at the time. Is that correct?

Mr FREITAS: That is right. Mr Yap had responsibility for icare and insurance matters during his entire time in the office. I recall his role in the bushfires involved the Treasury Managed Fund advice and brief that came up because I think there was a \$1 billion support package at that time—or \$1 billion worth of cover provided. He was involved in that process. I cannot recall specifically what the number was, but Mr Yap covered the insurance elements of that.

The Hon. SCOTT FARLOW: So Mr Yap had a significantly demanding role in the office during that period.

Mr FREITAS: We all had very demanding roles and Mr Yap was one of the hardest-working people that I have ever come across. He is exceptionally intelligent and diligent. I will just say that I feel very strongly about what has happened to him. It is profoundly unfair to him. It is a grave injustice because he turned up every single day and gave his absolute all in every single task that was assigned to him, whether it was the drought, which he assisted in, or bushfires or the pandemic or the insurance-related matters that he dealt with or dealing with State-owned corporations, he added significant value both to icare and to our office generally. He was a fantastic employee at all times. I really feel that the workload and the amount of effort he put in has not been reflected in what is out there currently.

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He lived and breathed his job. He was one of the hardest-working—and when I say "one of the hardest-working", I think Mr Yap was employed for 37 hours a week or something, but that was a vacation to him. He was 50, 60, 70 hours a week regularly. He gave his all to that job, and he is one of the most outstanding people I have met.

The Hon. TREVOR KHAN: Mr Freitas, I suspect the reference you just gave for Mr Yap is probably applicable to you.

Mr FREITAS: Thank you, Mr Khan.

The Hon. TREVOR KHAN: I am sorry this whole affair has had the impact upon you that it has. I do not think there is anything more gratuitous I can say than best wishes.

Mr FREITAS: I appreciate that, Mr Khan. I just add for the record that my experience serving for the Treasurer was the greatest professional privilege I have had.

The CHAIR: On that note, Mr Freitas, I also add my thanks for you coming today and appearing, and for being as frank and honest as you were. The Committee has resolved that any answers to questions on notice will be returned within 21 days. The secretariat will contact you in relation to the questions that you have taken on notice. That concludes the in-camera hearing this afternoon.

The Hon. DANIEL MOOKHEY: Sorry, just before Mr Freitas leaves, we probably should avoid what happened last time, which is—

The CHAIR: I am going to make a note as soon as we conclude to ask him for the documents to remain behind.

The Hon. DANIEL MOOKHEY: But, equally, insofar as other people who are present with our permission that their obligation is explained about their requirement to keep matters confidential until otherwise resolved by this Committee.

The CHAIR: Yes. For all attendees to the hearing, there is a confidentiality requirement until the Committee has resolved one way or the other.

(The witness withdrew.)

(Evidence in camera concluded.)