

REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

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At Jubilee Room, Parliament House, Sydney on Friday, 13 November 2020

The Committee met at 10:05 am

PRESENT

The Hon. Wes Fang (Chair)

The Hon. Catherine Cusack

The Hon. Anthony 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

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The CHAIR: Welcome to another hearing for the 2020 review of the workers compensation scheme. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land and I also pay respects 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 Mr Vivek Bhatia, a former chief executive officer of icare. Before I commence, I 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 are reminded they must take responsibility for what they publish about the Committee's proceedings.

I welcome our witness, Mr Bhatia. I note Mr Bhatia that your attendance today was compelled by summons in accordance with the Committee's power under the Parliamentary Evidence Act 1901. Accordingly, under paragraph 12 (b) of the procedural fairness resolution of the House, witnesses appearing under summons may be required to answer questions if the Committee so decides and failure to do so may constitute a contempt of Parliament punishable under section 11 of the Parliamentary Evidence Act 1901.

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VIVEK BHATIA, former CEO icare, affirmed and examined:

The CHAIR: Would you like to start by making a short opening statement and, if so, please keep it to no more than a couple of minutes.

Mr BHATIA: Thank you, Chair, for the opportunity. I thank the Committee for inviting me here to appear at the review. I would like to make a short statement at the outset to draw a number of matters to the Committee's attention which may impact on the extent to which I am able to assist the Committee today. Firstly, I received the summons to appear on Wednesday and I have not had the opportunity or the time to prepare for the session as I would have liked to discharge my responsibilities. I have been at this Committee a number of times and I have always been open, transparent and diligent in my attendance and hopefully the Committee records would show that.

I had previously declined an invitation to appear at this time because of a number of reasons, the most predominant being my personal circumstances where my 80-year-old mother is on life support in India at the moment and I am imminently due to fly out at any point in time. As such, I am in no head space to be preparing for a hearing for events that happened three to five years ago. I am a lone child of a first generation immigrant and my parents, who live with me, happened to go to India for personal circumstances earlier in the year and are stuck due to COVID. It pains me that my 92-year-old father, who is legally blind, is now the sole carer for my mother in India at the moment. I have been up in the wee hours of the night every night coordinating with my extended family to offer the support to them.

Secondly, from professional circumstances, I started a new role last week as the CEO and managing director of Link Group, which is an ASX 100 listed company, which also happens to be under a potential takeover bid announced four days before I started my job and as such, is undergoing a due diligence process in a short period of four to six weeks, for which I have daily board meetings and stakeholder meetings, which require my utmost attention. So the combination of my personal and professional circumstances at this point in time and my inability to discharge my responsibilities as a son has been of grave consequence to me and as such, my declining nature was due to that. However, now that I am here, I will fully cooperate, as I always have, with this Committee and discharge my responsibilities. I do say that I have no access to information, documents, but I will do my best to recall the events that have happened between 2015 and January 2018 when I was at icare. Thank you very much.

The CHAIR: Thank you Mr Bhatia and our thoughts are with you and hopefully the recovery of your mother. I will open up to questions now. Mr Mookhey, would you like to commence the questioning?

The Hon. DANIEL MOOKHEY: Yes please, thank you Chair, and thank you for your appearance Mr Bhatia. Of course, the Committee has nothing but good will and best wishes for your mother and all hopes for her recovery as well. We appreciate the time that you have made available to us. Can I establish a loose chronology of your involvement with icare and its predecessor organisation? You were at the SRWS were you not?

Mr BHATIA: I was. I joined SRWS in August 2014 as its CEO and then in, I think September 2015 when icare was formed, became the CEO and MD there. I resigned in December 2017 and left the organisation in January 2018.

The Hon. DANIEL MOOKHEY: Thank you, that is a useful chronology Mr Bhatia. Do you by any chance recall what your remuneration was when you left icare?

Mr BHATIA: I will be relying on memory but I would say it was probably 750 or 800 fixed pay.

The Hon. DANIEL MOOKHEY: For the record, I formally table those documents now. Mr Bhatia, a copy of all the documents have been provided to you in that folder, but forgive us for not necessarily delimiting them clearly so you can follow.

Mr BHATIA: That is okay.

The Hon. DANIEL MOOKHEY: In the event that you cannot find a document that I refer to, I will ask you questions based on my document and then make sure my document is provided to you, so you can see it on that basis.

Mr BHATIA: Thank you, I appreciate that.

The Hon. DANIEL MOOKHEY: All the documents that I will be asking you about and I believe my colleague will be, are provided in that folder.

Mr BHATIA: Thank you.

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The Hon. DANIEL MOOKHEY: When you say that you think your remuneration was between 750 and 850, is that your best recollection?

Mr BHATIA: That is.

Mr DAVID SHOEBRIDGE: Mr Bhatia, I think you said fixed remuneration.

Mr BHATIA: Fixed remuneration, that is right.

The Hon. DANIEL MOOKHEY: Do you remember in addition to your fixed remuneration what you were entitled to?

Mr BHATIA: I had a short-term incentive and I had a long-term incentive. I do not recall the percentages, I am sorry.

The Hon. DANIEL MOOKHEY: Do you remember the quantum by any chance?

Mr BHATIA: Sorry, the quantum?

The Hon. DANIEL MOOKHEY: The quantum, not the percentage.

Mr BHATIA: No, I do not recall the percentages.

The Hon. DANIEL MOOKHEY: I am asking about the quantum, not necessarily the percentages, but the actual dollar amount?

Mr BHATIA: The short-term incentives and the long-term incentives were a percentage of the fixed pay, so I do not recall that, sorry.

The Hon. DANIEL MOOKHEY: Was it the case that when you left icare your fixed remuneration was \$820,000?

Mr BHATIA: Maybe.

The Hon. DANIEL MOOKHEY: Was it the case that your annual performance incentive was \$410,000?

Mr BHATIA: That would be 50 per cent of the thing, potentially.

The Hon. DANIEL MOOKHEY: And was it the case that you were enrolled in and entitled to a long-term performance payment of an additional \$410,000?

Mr BHATIA: Potentially.

The Hon. DANIEL MOOKHEY: Does that mean that your total potential earnings in your final year as CEO was \$1.64 million?

Mr BHATIA: I think that maths is right.

The Hon. DANIEL MOOKHEY: Formally I am obtaining these figures from a document that is provided. You are welcome to see it. It is a memo from Mr Gavin Bell to the icare board. Mr Gavin Bell was the head of the remuneration committee at the time.

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: This was commenting on what arrangements should be struck by your successor. At \$1.64 million, to the best of your knowledge, would that have made you the highest paid public servant in New South Wales history?

Mr BHATIA: I am not aware.

Mr DAVID SHOEBRIDGE: Mr Bhatia, did you receive a similar remuneration each year you were at icare?

Mr BHATIA: No, there were reviews done in every year.

Mr DAVID SHOEBRIDGE: And it went up each year I assume?

Mr BHATIA: Yes, either it went up or stayed the same, I cannot recollect, but yes, it was revised every year.

Mr DAVID SHOEBRIDGE: But you received something in the order of \$1.64 million as your total package over the course of your remuneration?

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Mr BHATIA: No because I did not get the long-term incentive. I was not there long enough to get a long-term incentive.

Mr DAVID SHOEBRIDGE: Could you provide us on notice if you have not got the recollection now, about what you actually received each year?

Mr BHATIA: Yes, sure. I will have to go back to icare because I do not have the records of that.

Mr DAVID SHOEBRIDGE: You would keep it for your own tax purposes, would you not, the remuneration you received?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: That would be available to you, would it not?

Mr BHATIA: I will give you my tax return if you want that, that is fine.

Mr DAVID SHOEBRIDGE: You must have kept records of how much money you have received over the last four years. You will not have to go to icare to find out how much money it paid you.

Mr BHATIA: Well, I will have to go to my accountant maybe or icare. I do not keep a record.

Mr DAVID SHOEBRIDGE: Do you recall receiving additional payments in addition to your actual contract entitlements when you left?

Mr BHATIA: No.

Mr DAVID SHOEBRIDGE: Are you sure about that?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: Did you seek to get an additional annual performance payment made to you when you left?

Mr BHATIA: Did I seek to get?

Mr DAVID SHOEBRIDGE: Yes, that is my question.

Mr BHATIA: I asked the board whether they would give me a pro rata annual performance payment and which they said no to. It is very typical in good leaver status to be asking for a pro rata payment.

Mr DAVID SHOEBRIDGE: You were not entitled to a pro rata payment, were you? You had no contractual entitlement to a pro rata payment?

Mr BHATIA: Pro rata payments of incentives are always at the discretion of the board.

Mr DAVID SHOEBRIDGE: You had no contractual entitlement to an annual performance payment Mr Bhatia, did you?

The CHAIR: Mr Shoebridge—

Mr BHATIA: I am not quite sure whether I am answering your question not right, Mr Shoebridge but incentives are always—there are no contractual things on incentives. Incentives are always at the discretion of the board.

The Hon. TREVOR KHAN: I wish to take a point of order.

Mr DAVID SHOEBRIDGE: I will show him a document, which might fast-track this.

The Hon. TREVOR KHAN: I will take the point of order and then we will hear.

The CHAIR: I will hear the point of order.

The Hon. TREVOR KHAN: I can understand why the question of the salary received by the executives at icare is a relevant issue and it has been hot in this inquiry, but there is a limit to this. There is a law of diminishing return but what Mr Bhatia's termination arrangements are is starting to get a long way from what the terms of this inquiry are. I think there are some serious issues which I do not seek to prevent being asked, but this is a long way from the nub of the problem.

The CHAIR: I uphold the point of order. I was asking Mr Shoebridge at the time that the witness had answered the question and the continual questioning of the witness over the same point is beginning to become problematic. I ask Mr Shoebridge to move the questioning on.

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Mr DAVID SHOEBRIDGE: All right. Moving on from whatever your contractual rights are, Mr Bhatia, you asked for an additional payment of \$216,000 as a pro rata-ed annual performance payment when you left, did you not?

Mr BHATIA: I asked for the board to consider—

Mr DAVID SHOEBRIDGE: Mr Bhatia—

Mr BHATIA: Please let me answer. I asked for the board to consider whether they would pro rata pay me for the seven months of the year that I served at icare, based on my performance as they deemed appropriate. It is very regular—

Mr DAVID SHOEBRIDGE: Mr Bhatia—

Mr BHATIA: Please let me complete my sentence.

Mr DAVID SHOEBRIDGE: I thought you had.

Mr BHATIA: I had not. Please afford me the same respect that I afford everybody in the Committee. That is all I ask for. I am not sure that is a big ask. I asked that and that is a very normal practice in remuneration in good leaver status and it is the board's discretion whether they choose to make it or not and they chose not to make it.

Mr DAVID SHOEBRIDGE: Mr Bhatia, you knew, did you not, that the \$126,000 that you were seeking as an additional payment would have come out of funds that were set aside for injured workers. Did you think that was an appropriate request from the chief executive officer of icare, given your remuneration to date?

The CHAIR: Mr Shoebridge, I ask you to move the questioning along. I have upheld the point of order.

Mr DAVID SHOEBRIDGE: That is my final question.

The CHAIR: I upheld the point of order from Mr Khan. I think we are now delving into issues that are not relevant to our review of the workers compensation scheme and I disallow that question. Mr Shoebridge, do you want to continue questioning or does Mr Mookhey?

The Hon. DANIEL MOOKHEY: Mr Shoebridge will continue but Mr Shoebridge will obviously move on.

The Hon. CATHERINE CUSACK: I thought Mr Shoebridge said it was his last question.

The CHAIR: On that issue.

Mr DAVID SHOEBRIDGE: On that issue.

The Hon. DANIEL MOOKHEY: We are moving on.

Mr DAVID SHOEBRIDGE: Mr Bhatia, are you aware of a company called Capgemini?

Mr BHATIA: I certainly am.

Mr DAVID SHOEBRIDGE: What is your connection with Capgemini?

Mr BHATIA: What is my connection with Capgemini? I have used Capgemini in various roles in the past to deliver services that they do. They are one of the world's biggest professional services companies.

Mr DAVID SHOEBRIDGE: When you say in the past, that was prior to your engagement with either SRWS or icare?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: Would you accept that you had a friendship with one or more senior executives from Capgemini?

Mr BHATIA: I knew them. I had worked with them before and I also knew them outside work.

Mr DAVID SHOEBRIDGE: That would include Deepak Nangia?

Mr BHATIA: That is correct.

The Hon. DANIEL MOOKHEY: Just pausing there, Mr Bhatia, when you say that you knew them outside of work, are you saying that you knew them in a social context?

Mr BHATIA: In a social context.

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The Hon. DANIEL MOOKHEY: How long have you known them in a social context prior to any professional engagement or parallel to it?

Mr BHATIA: No, I was introduced, I met them in a work environment.

The Hon. DANIEL MOOKHEY: But then you have developed a social friendship?

Mr BHATIA: That is correct. I did not know anybody here. Most of the friends that I have, the people that I meet outside are all people that typically I have met during the course of work.

The Hon. DANIEL MOOKHEY: There are no inferences being drawn. How long did you have that social friendship prior to your engagement at icare?

Mr BHATIA: Maybe three or four years.

Mr DAVID SHOEBRIDGE: When did you become aware that Capgemini was tendering for the IT transformation project, which ended up being a \$360 million icare project?

Mr BHATIA: When the steering committee said who were the people who had submitted tenders and the tender was submitted by Guidewire. So we were selecting a software system, not an implementation partner and the recommendation was to go with Guidewire. Guidewire was asked to choose who the implementation partner would be.

Mr DAVID SHOEBRIDGE: Are you saying Guidewire chose Capgemini?

Mr BHATIA: That is correct.

Mr DAVID SHOEBRIDGE: Did you have any discussions with Capgemini or anyone from Capgemini about their role prior to the tender being awarded?

Mr BHATIA: About their role in that particular tender, no.

Mr DAVID SHOEBRIDGE: About their potential to have a role with icare?

Mr BHATIA: No.

Mr DAVID SHOEBRIDGE: When you became aware that Capgemini were tendering for work with icare, did you disclose that you had friendships with senior executives from Capgemini?

Mr BHATIA: I recused myself from the steering committee.

Mr DAVID SHOEBRIDGE: Did you disclose a conflict of interest?

Mr BHATIA: As I said, I recused myself from the steering committee by saying that.

The Hon. DANIEL MOOKHEY: Is that your best recollection, Mr Bhatia?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: Did you do that in writing?

Mr BHATIA: I cannot recollect.

Mr DAVID SHOEBRIDGE: Did you ever put a conflict of interest into icare in relation to your—

Mr BHATIA: I was not—

Mr DAVID SHOEBRIDGE: Let me finish, Mr Bhatia. I will let you finish.

Mr BHATIA: Please do.

Mr DAVID SHOEBRIDGE: Did you ever put a conflict of interest form in that detailed your friendship with these senior executives from Capgemini?

The Hon. TREVOR KHAN: He has not given that evidence. He has given evidence that he had some form of social relationship outside. He has not used the term "friendship", to be fair.

The Hon. DANIEL MOOKHEY: To be fair, I did put the proposition to him about a social friendship.

Mr DAVID SHOEBRIDGE: Yes.

The Hon. DANIEL MOOKHEY: But if Mr Bhatia wishes to re-characterise that, it is open to him to re-characterise.

Mr DAVID SHOEBRIDGE: My understanding was—

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The CHAIR: Order!

Mr DAVID SHOEBRIDGE: Point of order: My understanding was—

The CHAIR: I request that—

Mr DAVID SHOEBRIDGE: To the point of order: My understanding was that the witness has already, without any difficulty, adopted the characterisation of having a friendship.

The Hon. TREVOR KHAN: I do not believe that is the case at all.

Mr DAVID SHOEBRIDGE: There is an easy way of dealing with this. Mr Bhatia, do you wish to further explain in some way the evidence you gave in answer to Mr Mookhey about your connections with senior executives from Capgemini?

Mr BHATIA: No, I do not wish to.

The Hon. DANIEL MOOKHEY: I will just go back in time, Mr Bhatia, you said the first you became aware of Capgemini's involvement with this project was when you found out that they put a bid in. Is that still your position, did I understand that correctly?

Mr BHATIA: Well, when they did the initial RFI, yes.

The Hon. DANIEL MOOKHEY: In your recollection, did that take place in late 2015, or mid to late 2015?

Mr BHATIA: I think so.

The Hon. DANIEL MOOKHEY: Your evidence is that you did not have any knowledge or awareness of their interest in this project before that point in time?

Mr BHATIA: Interest in the project, well, I think that that is not the question.

The Hon. DANIEL MOOKHEY: I am asking you that question now.

Mr BHATIA: I am sure, I think the nature of the project, every single professional services firm was interested in the project.

The Hon. DANIEL MOOKHEY: Your evidence is that Capgemini had no special engagement with icare or the SRWS prior to it lodging a bid?

Mr BHATIA: That was not the question.

The Hon. DANIEL MOOKHEY: Did Capgemini have any involvement or engagement with SRWS or icare prior to them lodging a bid?

Mr BHATIA: Yes, absolutely.

The Hon. DANIEL MOOKHEY: What was its engagement and/or knowledge of the process prior to it putting in a bid?

Mr BHATIA: So Capgemini and Guidewire were involved in the HBCF scheme long before icare was formed and before I was involved in that part of the business.

The Hon. DANIEL MOOKHEY: HBCF being the Home Building Compensation Fund?

Mr BHATIA: That is correct and so they already had a standing within the organisation. There were pieces of work that had been done on a single IT platform long before I started and so given Capgemini was in the organisation, we asked them to look at the feasibility of a technology solution.

The Hon. DANIEL MOOKHEY: For the Home Building Compensation Fund [HBCF]?

Mr BHATIA: No, for the nominal insurer.

The Hon. DANIEL MOOKHEY: Were Capgemini involved in producing advice to the SRWS board for the preparation of a business case for the single platform?

Mr BHATIA: Yes, I think so, they were.

The Hon. DANIEL MOOKHEY: There is a document in your bundle that is entitled SRWS and Sitecore Technology Business Case to the SRWS board 31 March 2015 and that is a document that has Capgemini's logo on it.

Mr BHATIA: Okay.

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The Hon. DANIEL MOOKHEY: This is three months in time prior to the commencement of the formal market tender.

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: That Capgemini would then participate in. So was it the case that Capgemini prepared the business case for this project?

Mr BHATIA: I think they were involved in the investigation and exploration of the feasibility of technology platform is I think what I said.

The Hon. DANIEL MOOKHEY: The document here—and if you need me to provide you this, if you cannot find it, I can.

Mr BHATIA: That would be great, thank you.

The Hon. DANIEL MOOKHEY: I might just ask you my question, if that is possible.

Mr BHATIA: Please do.

The Hon. DANIEL MOOKHEY: Then I will find it again in that pile. The document here is extensive. It is the full case for this project lodged three months prior.

The Hon. TREVOR KHAN: Just show him the document first.

The Hon. DANIEL MOOKHEY: I have it there; it is that one. If you can find it, it will make my life a lot easier, but if you cannot, I will give it to you.

Mr BHATIA: I will find it. Please ask the question, I can listen and do this at the same time.

The Hon. DANIEL MOOKHEY: Sure, thank you, I appreciate that Mr Bhatia. The document is actually copyrighted Capgemini, which means that the ownership at the time was Capgemini, which gives rise to the implication that the business case was produced and owned by Capgemini and then given to the board and then the board subsequently endorses it and three months later runs a tender. Is that an unfair characterisation?

Mr BHATIA: It is probably right.

The Hon. DANIEL MOOKHEY: Do you not think perhaps as a result of Capgemini owning the business case that is presented, presenting the business case and then participating in the tender, that they would have had an unfair advantage and prior knowledge that they could have used in their bid that was not available to any other bidder? Do you accept that?

Mr BHATIA: No.

The Hon. DANIEL MOOKHEY: Why not?

Mr BHATIA: Because there was an express undertaking given by Capgemini about Chinese walls and conflict of interest management within the organisation and it is—

The Hon. DANIEL MOOKHEY: So what formal undertaking—

Mr BHATIA: Can I please complete?

The Hon. DANIEL MOOKHEY: Sure, Mr Bhatia.

Mr BHATIA: Thank you. It is extremely common in professional services firms and legal firms—in professional services firms, auditing firms, accounting firms—where it is very common for people to have Chinese walls between one side of the organisation and the other side of the organisation. It happens in banks, it happens in professional services institutions and we asked for an explicit confirmation from Capgemini. Capgemini is not a corner shop; it is one of the largest professional services organisations in the world. They have more than 300,000 people working all around the world. We trusted the undertaking that they have given about Chinese walls and a complete partition between the consulting fork who do the work on providing advice and the technology bit of their organisation, which were partnering with Guidewire for the tender. They are two separate parts of the organisation.

The Hon. DANIEL MOOKHEY: I think I understand Mr Bhatia, but why then was Capgemini chosen to present the original business case?

Mr BHATIA: Because they were doing the advisory work upfront.

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The Hon. DANIEL MOOKHEY: My point therefore is that if they were doing the advisory work upfront, that would have given them prior knowledge and your evidence is that the Chinese walls meant that the risk was mitigated. Am I right in saying that?

Mr BHATIA: That is correct.

The Hon. DANIEL MOOKHEY: You say that you explicitly asked for undertakings to be given.

Mr BHATIA: Yes, that is correct. It was part of the process.

The Hon. DANIEL MOOKHEY: To whom did you ask that undertaking to be given and in what form was it given?

Mr BHATIA: I think it was asked by our property advisers to Capgemini during the process and Capgemini provided it in writing.

The Hon. DANIEL MOOKHEY: To whom?

Mr BHATIA: To the procurement process, the procurement committee.

The Hon. DANIEL MOOKHEY: From whom? Was it Deepak Nangia who signed that off?

Mr BHATIA: I do not know Mr Mookhey. I was told—

The Hon. DANIEL MOOKHEY: Do you not know or do you not recall?

Mr BHATIA: I do not know. But I know that we explicitly had that conversation and that undertaking was provided about Chinese walls. It is not uncommon, Mr Mookhey.

The Hon. DANIEL MOOKHEY: I accept that. Just to be precise about your evidence Mr Bhatia, you keep referring to the term "we". When you say "we" are you referring to yourself?

Mr BHATIA: icare; I mean as icare, yes.

The Hon. DANIEL MOOKHEY: Not yourself?

Mr BHATIA: I do not think I am in the royal family Mr Mookhey.

The Hon. DANIEL MOOKHEY: Hence I am trying to understand precisely so we have some precision—to be fair to you, Mr Bhatia—who exactly you are referring to.

The CHAIR: Mr Mookhey, I appreciate the line of questioning and I appreciate that Mr Bhatia is giving evidence to the best of his recollection. I think we can keep this very civil and very calm. We just need to—

The Hon. DANIEL MOOKHEY: I think we are.

The CHAIR: I want to keep temperatures very low here.

The Hon. DANIEL MOOKHEY: I am fine. I think Mr Bhatia is fine too.

Mr DAVID SHOEBRIDGE: Mr Bhatia, you said "we insisted upon that Chinese walls provision", that was something you insisted upon I assume as CEO?

Mr BHATIA: The icare process.

Mr DAVID SHOEBRIDGE: You were part of that process?

Mr BHATIA: The icare process. I was not part of the procurement process. Let me kind of sit back and reflect. The procurement process had an undertaking from Capgemini which very clearly articulated that they had Chinese walls operational and the people and the personnel were involved in that advisory were not involved in the tender management process. I am sure you are 110 per cent aware this is a very common practice in legal firms, in professional services firms, in accounting firms, in tax matters, in banking practices. Organisations have Chinese walls in between to ensure that information is not shared where the client has asked for.

Mr DAVID SHOEBRIDGE: Mr Bhatia, Mr Mookhey was asking you how you knew about this and I am going to again ask you how you knew that these Chinese walls were in place, as you say?

Mr BHATIA: Because when we looked at all the documents as part of the recommendation it was very clear.

Mr DAVID SHOEBRIDGE: So when you looked at the documents as part of the recommendation, you saw that?

Mr BHATIA: That is correct.

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Mr DAVID SHOEBRIDGE: As part of what recommendation?

Mr BHATIA: As part of the recommendation of who the selected party was.

Mr DAVID SHOEBRIDGE: As part of the recommendation to accept the tender at the end of the day?

Mr BHATIA: That is correct.

Mr DAVID SHOEBRIDGE: Mr Bhatia, I thought you earlier said that you recused yourself from that process.

Mr BHATIA: Yes, I recused myself from the steering committee and I recused myself to the valuation committee. I was at the board meeting and received the papers.

The Hon. DANIEL MOOKHEY: Do you remember in time when you recused yourself from the participation committee and the evaluation committee?

Mr BHATIA: From right up front.

The Hon. DANIEL MOOKHEY: Your evidence is that you were never involved in either the steering committee or the evaluation committee?

Mr BHATIA: That is correct.

The Hon. DANIEL MOOKHEY: Is that to your best recollection?

Mr BHATIA: This is absolutely correct.

Mr DAVID SHOEBRIDGE: But you were at the board meeting when the tender was accepted?

Mr BHATIA: I was at the board meeting when the steering committee and the evaluation committee put forward their recommendation.

Mr DAVID SHOEBRIDGE: And it was at that meeting that the board accepted the tender?

Mr BHATIA: It was at the meeting that the board accepted the recommendation of the steering committee.

Mr DAVID SHOEBRIDGE: Can you show us the conflict of interest that you provided to the board consistent with your position of not having involvement in the steering committee?

Mr BHATIA: I do not understand the question Mr Shoebridge. Please dumb it down for me.

Mr DAVID SHOEBRIDGE: I do not wish to be obtuse.

Mr BHATIA: Please dumb it down for me, seriously.

Mr DAVID SHOEBRIDGE: If you had a conflict of interest that said you couldn't be involved in the assessment of the tender, how could you possibly be in the board meeting when the tender is accepted?

Mr BHATIA: I still do not understand the question.

Mr DAVID SHOEBRIDGE: Mr Bhatia, if you had a conflict of interest that precluded you from being part of the assessment process—

Mr BHATIA: That is correct.

Mr DAVID SHOEBRIDGE: —how could you be in the board meeting when the tender was accepted in relation to that same entity for which you had a conflict of interest? How did you allow yourself to remain the board meeting?

Mr BHATIA: It is very normal practice to be in a board meeting, there are nine members of the board and they were looking at a recommendation from a rigorous process that had involved procurement advisers, property advisers, evaluation committee of very trusted professional people in the organisation. A steering committee of some of the most senior people in the organisation and so when they put a recommendation in front of the board, it was the job of the board to look at the recommendation and make an assessment whether they would like to approve it or not.

Mr DAVID SHOEBRIDGE: Mr Bhatia, you never put a conflict of interest form in at any point with icare in relation to Capgemini, did you? You never once put a document to icare that identified the conflict of interest, did you?

Mr BHATIA: I am not sure whether I have not answered this question before Mr Shoebridge, I think I have and I am not quite sure whether you asking it in different ways is going to make me change my answer.

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Mr DAVID SHOEBRIDGE: Mr Bhatia, will you answer the question?

Mr BHATIA: I have already answered the question.

Mr DAVID SHOEBRIDGE: My understanding is—and you can correct me if I am wrong—you never once put in writing and put a document to icare that identified your conflict of interest with Capgemini?

Mr BHATIA: I do not recollect putting it in writing.

Mr DAVID SHOEBRIDGE: Who did you tell?

Mr BHATIA: I recused myself from the process. I do not understand, when you say that, what do you mean? I have disclosed that I am not going to be part of the process.

Mr DAVID SHOEBRIDGE: Who to?

The CHAIR: Mr Bhatia, for clarity, when you recused yourself from the committees involved in assessing and evaluating the tender, did you recuse yourself in writing, whether it be by letter or email, to the board to say that you had a conflict of interest and you would be recusing yourself from those committees? I would imagine that—

The Hon. TREVOR KHAN: Let him answer that; do not add commentary.

Mr BHATIA: I do not recollect whether it was in writing.

The Hon. DANIEL MOOKHEY: Mr Bhatia, you are adamant that you recused yourself from the evaluation committee and from the selection committee?

Mr BHATIA: Yes, there are documents to prove that. I am sure you have gone through all of them.

The Hon. DANIEL MOOKHEY: Indeed. Can I just present this please? You have got it but it might just be quicker if I can have this presented to you. This is a report that was prepared by the procure group. I believe that these are the independent probity advisers that you referred to just then in your answer to Mr Shoebridge.

Mr BHATIA: I think so.

The Hon. DANIEL MOOKHEY: Do you recollect this report?

Mr BHATIA: No, I do not.

The Hon. DANIEL MOOKHEY: So you have no recall of ever seeing this report before?

Mr BHATIA: Five years ago a single report, no.

The Hon. DANIEL MOOKHEY: That is fine, no judgement on your memory. You are entitled to say that it is five years ago; I accept that.

Mr BHATIA: You asked me the question three times, that is why I am wondering.

The Hon. DANIEL MOOKHEY: I appreciate your answer. It was prepared on 2 September 2015, so thereabouts at the time that the contract was entered into with Capgemini and well and truly after the tender had closed. Does that align with your understanding of the time frame?

Mr BHATIA: If it is here, it must be right.

The Hon. DANIEL MOOKHEY: Can you please turn to page 8? Just to be clear, the procure group are independent probity advisers that were retained by icare at the time to ensure that the probity checks were completed. On page 8 of their report they say at dot point number 3:

Governance As noted in 3.1, the procurement governance includes a role for the CEO outside of the role of the steering committee and the evaluation committee. It is important that the committee decision making roles prescribed in the RFP evaluation strategy are maintained.

They flagged this as a risk at the time, but you had an involvement.

Mr BHATIA: I do not think that is what it says. That is not how I read it.

The Hon. DANIEL MOOKHEY: I am just reading to you word for word what it says and you are open to tell me if you disagree with this interpretation.

Mr BHATIA: I disagree with the interpretation.

The Hon. DANIEL MOOKHEY: The inference is here that you did have a role and in fact it says, "outside of the role of the steering committee and the evaluation committee". This was prepared by the

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independent probity advisers at the time and provided to the icare board, we are told. Do you not think that this creates the impression that you were involved—

Mr BHATIA: I was not involved.

The Hon. DANIEL MOOKHEY: Just let me finish the question.

Mr BHATIA: Okay.

The Hon. DANIEL MOOKHEY: That you were involved and that was of sufficient concern to the probity advisers, that they flagged it as a risk that they provided to the board.

Mr BHATIA: I am not sure what you are getting to, but I was not involved in any process.

The Hon. DANIEL MOOKHEY: Did the board ever question you about this?

Mr BHATIA: No.

The Hon. DANIEL MOOKHEY: Did the board ever draw this to your attention, that this risk was identified?

Mr BHATIA: No.

The Hon. TREVOR KHAN: You are making an assertion of the risk. He does not agree with the—

The Hon. DANIEL MOOKHEY: I agree, but I am asking whether the board ever discussed it with him. It is a slightly different question.

The Hon. TREVOR KHAN: Yes, but you roll into it an assertion which he has already rejected.

The CHAIR: Order!

The Hon. DANIEL MOOKHEY: But your view is—

The CHAIR: Is there a point of order?

The Hon. DANIEL MOOKHEY: I take the Hon. Trevor Khan's question. Basically, are you rejecting this concern?

Mr BHATIA: Yes.

The Hon. ROD ROBERTS: Going back to your evidence, you say that you recused yourself from that process and whether it is in writing or email, I do not know and nor do I care. Did anybody on the board say to you, "Hey, Vivek, why are you recusing yourself from this? Why are you removing yourself from this process?" Did they ask you at all, because it would be unusual for you not to be involved in this process. You say you have taken a step back, which I accept, but did they not say to you, "Hey, mate, why aren't you on this?" Did they ask?

Mr BHATIA: No, because we had the right people on it, I did not need to be on it.

The Hon. ROD ROBERTS: You sit in on other processes though, other selection processes, apart from this one?

Mr BHATIA: No.

The Hon. ROD ROBERTS: None at all, never, no involvement?

Mr BHATIA: No. I sit on steering committees, not on selection processes.

The Hon. ROD ROBERTS: You sit on steering committees—

Mr BHATIA: Yes.

The Hon. ROD ROBERTS: But you chose not to sit on this one for the reasons you have stated.

Mr BHATIA: Yes, that is correct.

The Hon. ROD ROBERTS: Did anybody not ask, "Hey, this is unusual. Why are you not on this steering committee?"

Mr BHATIA: No, I had said to the board that I know a lot of these people who are part of the process. I have worked with a number of these providers. For example, Guidewire.

The Hon. ROD ROBERTS: When—

Mr BHATIA: Can I please complete my question?

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The Hon. ROD ROBERTS: Yes, sure.

Mr BHATIA: Thank you. So I had worked with Guidewire for 10 years before this. I had been instrumental in implementing the Guidewire systems at QBE and at Wesfarmers during my times there. So I knew the vendors quite well, much more than I knew Capgemini. I had worked with Guidewire for a much, much longer time than I had worked for Capgemini and so I did not want to be part of the process and I had made that clear.

The Hon. ROD ROBERTS: Your evidence just a minute ago was you told the board this.

Mr BHATIA: I had said that I do not want to be part of the process. We have got the right people on it, I do not want to be part of the process.

The Hon. ROD ROBERTS: I agree, you just told us that. How did you tell the board this, was it in writing and which board member did you tell?

Mr BHATIA: I would have told the board as in the collective.

The Hon. ROD ROBERTS: How?

Mr BHATIA: By saying that.

The Hon. ROD ROBERTS: At a board meeting.

Mr BHATIA: Probably.

The Hon. ROD ROBERTS: So, we assume this would be recorded in minutes of the board meeting somewhere?

Mr BHATIA: Maybe.

Mr DAVID SHOEBRIDGE: Could I suggest to you Mr Bhatia it is not recorded on a single occasion at any point in any board meeting that you attended that you had a conflict of interest or a prior relationship with either Capgemini or Guidewire?

Mr BHATIA: Or FINEOS? Mr Shoebridge, I led technology for some large insurance companies in my previous life. All these systems that we are talking about are people that I have worked with in the past. It would be very odd if I had not worked with them in the past, having led technology for large insurance companies, especially given that Guidewire is the world's number one insurance technology platform used by more than 400 insurers, big, large and small all over the world.

The CHAIR: Mr Bhatia, can I ask you for another point of clarification in that case? If a CEO had recused himself from a process and it was not recorded in the board minutes, would you find that concerning?

Mr BHATIA: I am not sure why it was not recorded.

The Hon. TREVOR KHAN: What Mr Shoebridge has put to the witness was not that it is not recorded that he recused himself, but the reasons for that recusal. Mr Shoebridge might want to clarify that, but do not make the assumption that Mr Shoebridge is putting all of what is or is not in the minutes.

Mr DAVID SHOEBRIDGE: Mr Bhatia, you never told the board that you recused yourself from the evaluation process, did you?

Mr BHATIA: That is your point, not mine.

Mr DAVID SHOEBRIDGE: You say you told the board that you recused yourself?

Mr BHATIA: Yes, I do.

Mr DAVID SHOEBRIDGE: I put to you it is never recorded at any point in the board minutes that you advised them of that. Can you explain how that happens?

Mr BHATIA: I cannot explain that because I am not responsible for writing board minutes.

Mr DAVID SHOEBRIDGE: But you attend the next board meeting where the minutes are adopted, did you ever raise the absence of your asserted declaration?

Mr BHATIA: I may have not.

Mr DAVID SHOEBRIDGE: Mr Bhatia, the more persuasive conclusion from the evidence is that you never told anybody at the board about this.

Mr BHATIA: I strongly dispute that.

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Mr DAVID SHOEBRIDGE: Mr Bhatia, this issue was raised with you. This conflict of interest with Capgemini was raised with you by your own employees, was it not?

Mr BHATIA: No, it was not.

Mr DAVID SHOEBRIDGE: Mr Bhatia, do you recall having a skip meeting with Chris McCann?

Mr BHATIA: I certainly do.

Mr DAVID SHOEBRIDGE: Can you tell me what Chris McCann's role was in icare?

Mr BHATIA: He was head of compliance.

Mr DAVID SHOEBRIDGE: If I said to you that you had a meeting with Chris McCann on 26 October 2016, even if you cannot recall the specific date, you would have had a meeting on or about that time?

Mr BHATIA: Yes, I generally do skip meetings towards the second half of the year. Sorry, I do skip meetings post the performance reviews, which would have finished in July and so in August, September, October is when I do skip meetings with all the people who do not report to me but report to my executive team.

The Hon. TREVOR KHAN: For the purposes of the transcript Mr Shoebridge and for me, can we avoid the acronyms so that we know what we are talking about.

Mr DAVID SHOEBRIDGE: What is a skip meeting?

Mr BHATIA: A skip meeting is a meeting that I have with a direct report of my direct report without my direct report being present.

Mr DAVID SHOEBRIDGE: You are skipping one level of management basically.

Mr BHATIA: That is correct.

Mr DAVID SHOEBRIDGE: In that meeting on 26 October 2016, Mr McCann raised with you serious concerns about the absence of conflict of interest reports within icare, did he not?

Mr BHATIA: No, he did not.

Mr DAVID SHOEBRIDGE: Mr McCann provided you with an example of a conflict of interest, which was your relationship with Capgemini and he raised that directly in that meeting with you, did he not?

Mr BHATIA: He did not.

Mr DAVID SHOEBRIDGE: I am going to put this to you Mr Bhatia—

Mr BHATIA: Please do.

Mr DAVID SHOEBRIDGE: Mr McCann has provided this evidence to SIRA. He says that in the course of that meeting, after raising the conflict between yourself and Capgemini, you raised your voice and you shouted at him. You thumped your fist on the table, you yelled at him and you said to him, "You are fucking useless. You're an investigator, go investigate."

Mr BHATIA: I definitely did not say that. As you also know, on your record as well, in these hearings you have already heard that I have denied saying that.

Mr DAVID SHOEBRIDGE: Mr Bhatia, you were angry about anybody raising concerns with the selection of Capgemini, were you not?

Mr BHATIA: Of course not.

Mr DAVID SHOEBRIDGE: Mr Bhatia, you told your senior management team that you would not be restricted to using companies chosen through a tender process, you would choose who you wanted and you would not follow the New South Wales Government procurement processes?

Mr BHATIA: Not at all.

Mr DAVID SHOEBRIDGE: You said that to your whole senior management team, did you not?

Mr BHATIA: No, I did not.

The Hon. DANIEL MOOKHEY: Mr Bhatia, in Mr McCann's evidence to SIRA he also says that upon your departure as CEO you took with you a new iPhone from icare, that you kept it and this was a discretionary choice that you made. What do you say to that?

Mr BHATIA: That I took an iPhone?

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The Hon. DANIEL MOOKHEY: Yes, a new iPhone X.

Mr BHATIA: I do not recollect doing that.

The Hon. DANIEL MOOKHEY: Do you recall taking your iPhone X from icare with you or did you get a new phone at the time, because Mr McCann's evidence is that this was not undertaken with the permission of icare and he sought to investigate it?

Mr BHATIA: No. If I had taken something, it would have been with the express consent of the board. I would not just walk out with a piece of—

The Hon. DANIEL MOOKHEY: So you reject it?

Mr BHATIA: Mr Mookhey—

The Hon. DANIEL MOOKHEY: It is okay; I am just putting it to you, Mr Bhatia.

The Hon. TREVOR KHAN: Let him answer.

The CHAIR: He is attempting to answer.

Mr BHATIA: You know very well the role I went in from icare; it is public knowledge. My remuneration there is public knowledge.

The Hon. DANIEL MOOKHEY: Have you completed your answer?

Mr BHATIA: Yes, I have.

The Hon. DANIEL MOOKHEY: Thank you.

Mr DAVID SHOEBRIDGE: Mr Bhatia, how many gifts did you receive from Capgemini while you were working with icare?

Mr BHATIA: I probably recall wine during Christmas a couple of years.

The Hon. DANIEL MOOKHEY: Did you receive from Capgemini five gifts?

Mr BHATIA: No, I did not.

The Hon. DANIEL MOOKHEY: Did you receive two red wine bottles?

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: Do you recall a breakfast meeting at Parodies Terrace with Capgemini?

Mr BHATIA: Yes, I do, I recall that, along with Michael Carapiet and Michael Pratt as the chairman and the deputy chairman of the board and we were meeting with the global CEO of financial services from Capgemini, who had flown in from New York.

The Hon. DANIEL MOOKHEY: And that was on 14 December to the best of your recollection?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: That was paid for by Capgemini, was it not?

The Hon. DANIEL MOOKHEY: It was a gift from Capgemini?

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: Do you recall equally attending a lunch at The Establishment restaurant with Capgemini on 29 June 2016 with Mr Carapiet?

Mr BHATIA: With Mr Carapiet?

The Hon. DANIEL MOOKHEY: Yes, do you recall?

Mr BHATIA: It would have been with Luc-Francois Salvador, who was the CEO of Asia Pacific who had come down from Hong Kong.

The Hon. DANIEL MOOKHEY: So yes, you recall?

Mr BHATIA: Sorry?

The Hon. DANIEL MOOKHEY: You do recall that?

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Mr BHATIA: Yes, I do recall that much, yes.

The Hon. DANIEL MOOKHEY: And do you recall a dinner at The Malaya on 18 August 2016 with Mr Craig, Mr Nagle and Capgemini?

Mr BHATIA: I think it was the entire executive team.

The Hon. DANIEL MOOKHEY: And a French champagne gift hamper from Capgemini at Christmas 2016?

Mr BHATIA: So two Christmases, yes, that is right.

The Hon. DANIEL MOOKHEY: You recall that?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: On two separate Christmases you received that?

Mr BHATIA: On two separate Christmases.

The Hon. TREVOR KHAN: Point of order: Mr Mookhey is asking a series of questions. I think it is unfair to this witness if what we see is a team up. We are not seeking to use up time, but Mr Bhatia is entitled to answer the questions, concentrate on one and not have a good cop-bad cop routine going on here. That is unfair and unreasonable on the witness.

The CHAIR: I uphold that point of order. I accept that there will be times when perhaps one questioner has oversighted something and another person will intercede. However, I uphold the point of Mr Khan that when there is detailed questioning Mr Bhatia is entitled to actually—

The Hon. DANIEL MOOKHEY: It is a fair point. Just to complete Mr Bhatia, separate from Capgemini, do you recall receiving a dinner at the Casa Ristorante Italiano from Guidewire on 2 April 2016 with Mr Pratt and Mr Nagle?

Mr BHATIA: Must be.

The Hon. DANIEL MOOKHEY: Do you equally accept that you were taken to a dinner with Guidewire on 26 June 2017 with Mr Carapiet?

Mr BHATIA: If you have it, then it must be true, because I would have declared it in the gifts and benefits register. That is where you are reading it from, right?

The Hon. DANIEL MOOKHEY: Could I ask you on that question: When did you disclose it on the gifts register?

Mr BHATIA: I do not know. It would have been disclosed as part of the normal process, which is my assistant enters the gifts and benefits register based on my entries in the diary.

The Hon. DANIEL MOOKHEY: And your clear recollection is that it was disclosed contemporaneously or closer to the time?

Mr BHATIA: I do not know. I do not know, Mr Mookhey. I do not want to sound disrespectful Mr Mookhey.

The Hon. DANIEL MOOKHEY: You are not, Mr Bhatia. To be clear, you are not sounding disrespectful.

The CHAIR: Please allow him to finish his answer.

Mr BHATIA: But if you are expecting that I would be checking whether my assistant has entered the gifts and benefits entries contemporaneously, I think there is probably a difference of—

The Hon. DANIEL MOOKHEY: The issue Mr Bhatia is—

The CHAIR: Mr Mookhey, I do not believe Mr Bhatia had finished his answer.

The Hon. DANIEL MOOKHEY: Sorry, I thought you had completed.

Mr BHATIA: There is a different expectation about the role that I played at icare.

The Hon. DANIEL MOOKHEY: But Mr Bhatia, the policy that icare had at the time was it was the responsibility of the recipient of the gift to ensure that the gift was disclosed. Do you recall that?

Mr BHATIA: Yes, absolutely.

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The Hon. DANIEL MOOKHEY: In your eyes you followed that policy?

Mr BHATIA: Yes, I asked my assistant to do it.

The Hon. DANIEL MOOKHEY: The policy I believe, although I might be mistaken about this, is that a person who is entering it in must have that gift effectively signed off on or endorsed by the compliance team or their superior, in your case, Mr Carapiet. Is that your recollection, that Mr Carapiet had to sign off or at least receive knowledge or am I misinterpreting the policy?

Mr BHATIA: I do not know.

Mr DAVID SHOEBRIDGE: Mr Bhatia, you did not once declare a single gift in the time you worked for icare, did you?

Mr BHATIA: Me myself entering into the register?

Mr DAVID SHOEBRIDGE: You never once fulfilled your obligation to declare a single gift in the time you worked for icare, did you Mr Bhatia?

Mr BHATIA: So how did they get into the gift and benefits register?

Mr DAVID SHOEBRIDGE: Perhaps rather than ask me a question, can you answer that question. Is that true?

Mr BHATIA: No, it is not true.

Mr DAVID SHOEBRIDGE: Is it not true that every single gift that you received was disclosed by Michael Carapiet some four months after you left?

Mr BHATIA: No.

Mr DAVID SHOEBRIDGE: Can you explain how it is that not one of those Capgemini gifts that Mr Mookhey took you to was disclosed during the time of your employment with icare?

Mr BHATIA: That is very strange for me to know because my assistant is very efficient and she registers all lunches or gifts, Christmas hampers that come through on Christmas, on the register.

Mr DAVID SHOEBRIDGE: Given that Capgemini was receiving tens and tens of millions of dollars of icare's money while you were the CEO, do you not think you should have fulfilled your personal obligation and ensured that the receipt of gifts to you by Capgemini was recorded?

Mr BHATIA: I had assured that. I had made sure that my assistant knew that and she was fulfilling her responsibilities.

Mr DAVID SHOEBRIDGE: Mr Bhatia, you substantially failed in your obligations as a CEO to disclose gifts you received from not just Capgemini but a series of companies that were successful tenderers with icare.

Mr BHATIA: I completely refute that.

The Hon. DANIEL MOOKHEY: Mr Bhatia, I have just given you—

The CHAIR: That is the perfect example of what Mr Khan was eluding to. Mr Khan and I both—

The Hon. DANIEL MOOKHEY: He was finished.

The CHAIR: I accept that, but while Mr Bhatia is completing his answer to Mr Shoebridge you then—

The Hon. DANIEL MOOKHEY: Sorry, I literally thought he had finished, because he said, "I reject it."

The CHAIR: I accept that, but it is the—

Mr DAVID SHOEBRIDGE: Mr Chair, I have just one more question and then I think Mr—

The CHAIR: Okay, but I again draw to your attention that I have upheld Mr Khan's point of order.

Mr DAVID SHOEBRIDGE: I understand.

The CHAIR: Please allow the witness procedural fairness.

The Hon. CATHERINE CUSACK: Point of order: Questions are meant to be directed through the Chair.

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The CHAIR: At the Chair's discretion. I am happy that the askers direct them to Mr Bhatia at the time, but I accept that that is correct.

The Hon. CATHERINE CUSACK: It is important for the witness as well.

The CHAIR: I accept that. That is why I have asked Mr Mookhey to allow a little bit of procedural fairness to the witness. I will allow Mr Shoebridge to continue his last question.

Mr DAVID SHOEBRIDGE: Mr Bhatia, the reason the declarations are made by Mr Carapiet is because you were meant to go through a conflict of interest process on the receipt of each gift and have them signed off by your superior. I suggest to you Mr Bhatia you did not do that on a single occasion with Mr Carapiet in relation to the gifts you received, did you?

Mr BHATIA: No, I refute that.

Mr DAVID SHOEBRIDGE: Did you raise the conflict of interest in relation to any one of the gifts that you received and accepted with Mr Carapiet?

Mr BHATIA: Well as you can see, Mr Carapiet was with me at lunch and dinner, so if that is what you are saying—I am not quite sure where the line of questioning is, Mr Shoebridge. Can I just make a statement, if I may? I put every single piece of gift that comes in or a lunch or a dinner, they are all recorded by my assistant in the gifts and benefits register. That is part of her responsibilities and she discharges them. It is the same process that is followed by everybody else in the organisation. I am not quite sure any executive is going down and entering a gift benefit register themselves.

Mr DAVID SHOEBRIDGE: Mr Bhatia, what we can be very sure of though is that on each Christmas when you received a French champagne gift hamper from—

Mr BHATIA: I did not receive on each Christmas, on one of them.

Mr DAVID SHOEBRIDGE: On two Christmases you received—

Mr BHATIA: On one of them. On two Christmases, one is a red wine set as you say and the one is the wine champagne hamper, whatever.

Mr DAVID SHOEBRIDGE: On the two Christmases you received a French champagne gift hamper from Capgemini, who was benefiting from a contract worth tens and tens of millions of dollars from your company, you did not raise that with Mr Carapiet and you did not ensure that the receipt of that gift was entered on the gift register.

Mr BHATIA: I refute that.

The Hon. ROD ROBERTS: Mr Bhatia, just going to that point, you refute that and you say that it was on the gift register. I accept your evidence there; I am not disputing that at all. You tell us your assistant enters it and I understand, there is no way a CEO is going to sit on the gift register and put it in. You tell her to put it in. How does she know what to put in though? How does she know you have been to lunch, whether it is with Capgemini or whether it is with anybody else. How does she know? You tell her, "Listen, I have been to lunch today. Can you put it in the register for me?"

Mr BHATIA: It is in my diary.

The Hon. ROD ROBERTS: Sure. Then when you receive a gift, the same thing, "Listen, I have got this champagne. It has come from Capgemini. Put it on the register for me."

Mr BHATIA: She has carriage of receiving everything and doing it. Just to make it clear, I do not drink wine or champagne.

The Hon. ROD ROBERTS: I am not suggesting you do.

Mr BHATIA: I just want to make sure that the characterisation of this and the demonisation that is happening is extremely unfair.

The Hon. ROD ROBERTS: Mr Bhatia, I am not trying to demonise anything. If you look at the way I have been questioning you, I have accepted your evidence. I am just trying to clarify this picture in my own mind and maybe for the rest of the Committee as well. You tell her, "I have been to lunch with Rod Roberts from Parliament. Put that in the register", for example?

Mr BHATIA: Yes.

The Hon. ROD ROBERTS: Why do you tell her that?

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Mr BHATIA: Because it needs to be recorded.

The Hon. ROD ROBERTS: It needs to be recorded.

Mr BHATIA: Absolutely, that is our policy.

The Hon. ROD ROBERTS: Going back to your evidence earlier this morning though about recusing yourself from the things because there appears to be a conflict of interest or the perception could be there is a conflict of interest, why is that not recorded though?

Mr BHATIA: I have said that. If it is not recorded, I am not quite sure—

The Hon. ROD ROBERTS: But you make sure that she puts in the register the wine and the lunches and all that; you make sure because you understand that this could be a perception that this might be looked at by Mr Mookhey for instance, as not being kosher.

Mr BHATIA: Yes.

The Hon. ROD ROBERTS: You did not ensure though the other stuff was recorded anywhere.

Mr BHATIA: I had said that to the people who mattered and if it was not recorded, I apologise that it did not come to my attention at that point in time. I did not check the minutes and see whether it was exactly recorded or not. If that is my mistake, then yes.

The Hon. DANIEL MOOKHEY: Mr Bhatia, just to complete on this line of questioning, I have just provided you an excerpt from the gifts register—you have got it in front of you. It shows that all of the entries took place two years later from the point of receipt of the gift and four months after you left icare. That is in respect to 42 gifts you received, all of which were entered on the same day after you left the organisation. Do you understand that that creates a perception that you were derelict in your obligation to provide a disclosure, especially when it involved contractors to icare?

Mr BHATIA: That is when it was signed by Mr Carapiet or that was when it was entered in the register?

The Hon. DANIEL MOOKHEY: That was when it was entered. Both.

Mr BHATIA: I do not know. I am surprised at the evidence that it was entered not contemporaneously or at least occasionally over the period of time.

The Hon. DANIEL MOOKHEY: The gifts register also shows that of all the people who ever worked at icare, you have received the most gifts. No-one else has received anywhere near as much and your successor as CEO, Mr Nagle, did not receive anywhere the number of gifts that you received. Are you able to explain—

Mr BHATIA: Are you talking about the lunch and the breakfast as well, right?

The Hon. DANIEL MOOKHEY: I am talking about all 42 that you have received.

Mr BHATIA: Right, okay.

The Hon. DANIEL MOOKHEY: Mr Nagle did not receive anywhere near this number. There certainly was not a pattern that there seems to be here of—

The Hon. TREVOR KHAN: Well—

The Hon. DANIEL MOOKHEY: I am putting it to him, I am well allowed to.

The Hon. TREVOR KHAN: No. You can put to him that Mr Nagle has not recorded them. They are not recorded on the register.

The Hon. DANIEL MOOKHEY: We might recall Mr Nagle and ask, but can I just say, there is a pattern—

The CHAIR: It is over—

The Hon. DANIEL MOOKHEY: Can I just get my question out, Mr Chair?

The CHAIR: Mr Khan has—

The Hon. DANIEL MOOKHEY: Provided commentary.

The Hon. TREVOR KHAN: He knows what I am eluding to.

The CHAIR: I accept that.

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The Hon. DANIEL MOOKHEY: There is a pattern here of contractors who win contracts with icare providing you with social gifts, to be fair to you, social occasions—Korn Ferry, QBE, McKinsey, JLT Re. Do you understand that that can create a perception that there was a pattern of conflicts of interest that you had and that the culture that was operating whilst you were the CEO at the time was not in best keeping with the practices of the New South Wales public sector?

Mr BHATIA: I do not agree.

The Hon. DANIEL MOOKHEY: Under the icare gift disclosure policy—

Mr BHATIA: Because there are lots of others as well that you have chosen to very conveniently ignore, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Which ones are not there?

Mr BHATIA: TCorp, Pacific Equity Partners, NSW Police Service—

The Hon. DANIEL MOOKHEY: The reason they are not there is that they are not disclosed.

The CHAIR: Order!

The Hon. SCOTT FARLOW: They are on the list. They are on the register that you put.

The CHAIR: Allow Mr Bhatia to—

The Hon. DANIEL MOOKHEY: I am happy to put them to you.

The CHAIR: You put a proposal to him. Just let him address it.

Mr BHATIA: Smartgroup, State Super, NAB, Citibank, Waterman.

The Hon. DANIEL MOOKHEY: What is the point you are trying to make?

Mr BHATIA: The point you are trying to make is that—

The Hon. DANIEL MOOKHEY: I am asking you what is the point—

The CHAIR: Order!

The Hon. DANIEL MOOKHEY: Sorry Mr Chair, but he is asking me a question which is not—

The CHAIR: No, he is addressing a point that you have raised. That is a different issue.

The Hon. DANIEL MOOKHEY: He perhaps should allow me to complete my question and then he can answer.

The CHAIR: But he is addressing your previous point.

The Hon. TREVOR KHAN: Point of order: It is impossible for to record the transcript when we have the Chair, Mr Mookhey and Mr Bhatia all talking over each other.

The CHAIR: I uphold that point of order.

The Hon. TREVOR KHAN: No, no, you are talking over me now. What I am saying is, everyone has to slow down so we can understand what is going on.

The CHAIR: I accept your point Mr Khan. The point that I am trying to make is that when I have Mr Mookhey trying to put questions to Mr Bhatia while Mr Bhatia is trying to address points that Mr Mookhey has raised, as the Chair I am trying to regain a level of calm here. I am allowing for procedural fairness, the call to Mr Bhatia to address any point that he wishes to address that has been raised by Mr Mookhey before Mr Mookhey puts the next question. I believe that that is the right of the Chair and so I will allow Mr Bhatia to finish his point before Mr Mookhey continues the questioning. I accept the point of Mr Khan but again that is the prerogative of the Chair.

Mr BHATIA: Thank you, Chair. The point I was trying to make, Mr Mookhey, is that you represented names of companies that had contracts, not the ones that did not have any contracts and as a matter of course, being part of the industry, you do go to lunches and dinners and breakfasts.

The Hon. DANIEL MOOKHEY: On the basis of all the gifts that are disclosed here, there are only three that I see that I cannot identify as having a contract—NAB, the NDIA board, I do not know who John Rumpier is and potentially the police. The rest of them are contractors of icare and have been contractors of icare. It clearly shows on the record that the overwhelming majority of these were—

Mr BHATIA: There are people that you do business with, that is right.

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The Hon. DANIEL MOOKHEY: Sure. I do not think we are at cross purposes therefore Mr Bhatia.

Mr BHATIA: Sorry?

The Hon. DANIEL MOOKHEY: I do not believe therefore we are at cross purposes. The question I asked you, which you may disagree with and you are entitled to, is this was not in keeping with the best practices in the New South Wales public sector?

Mr BHATIA: I do not agree at all.

Mr DAVID SHOEBRIDGE: Mr Bhatia, you know you were dealing with either public money, which is the State of New South Wales money or money from the nominal insurance fund, which was money set aside for injured workers. They were the two pools of money that you were dealing with in your role as CEO of icare, is that right?

Mr BHATIA: And the moneys of Lifetime Care.

Mr DAVID SHOEBRIDGE: Money set aside for people who had had substantial injuries, either at work or in motor accidents?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: Or public money?

Mr BHATIA: Absolutely right.

Mr DAVID SHOEBRIDGE: Do you not understand how receiving gifts from companies that were contracting with icare and taking that public money, not disclosing them at the time you received them and having a role in awarding contracts to those companies at the same time as you received gifts from them, is a substantial conflict of interest?

The Hon. TREVOR KHAN: Point of order: There are about four propositions.

Mr DAVID SHOEBRIDGE: I will break it up. Will you accept that?

The Hon. TREVOR KHAN: Yes.

Mr DAVID SHOEBRIDGE: Mr Bhatia, do you not understand the conflict of interest about receiving a gift from company A and then your organisation, icare, entering into a contract with it where it receives millions of dollars of public money? Do you not understand the conflict of interest problem there?

Mr BHATIA: Not if you declare it.

Mr DAVID SHOEBRIDGE: But Mr Bhatia, the records show that none of this was declared until three or four months after you left employment with icare.

Mr BHATIA: And I am not aware of that. As I have said, Mr Shoebridge, I am not quite sure how would I change it again, but let me try and answer that question again. I do not enter the gifts and benefit items into the register, my assistant does and if she has not entered it at that point in time, then it is a failure on the part of my office. If you are asking me did you not enter? Of course I did.

The Hon. DANIEL MOOKHEY: Mr Shoebridge, can I just ask one question there?

Mr DAVID SHOEBRIDGE: Mr Bhatia, it was not your assistant's obligation to ensure this was done; it was your obligation and the records show you fundamentally failed. The records prove that Mr Bhatia.

The Hon. TREVOR KHAN: Point of order—

The CHAIR: I will hear the point of order.

The Hon. TREVOR KHAN: This specific question has been asked three or four times. Mr Bhatia has given an explanation. Whether Mr Shoebridge or anyone else on the Committee wishes to accept it, is another thing. But it has been asked and answered.

Mr DAVID SHOEBRIDGE: To the point of order: This witness continues to say that the failing laid with his assistant. I am putting to him and giving him a final chance to acknowledge, hat it was not her obligation, but it was his obligation. He should give a straight answer to the Committee.

The CHAIR: I uphold the point of order of Mr Khan. Mr Bhatia has answered it.

Mr DAVID SHOEBRIDGE: I will move on.

The CHAIR: I think the question has been answered. I am going to pass the question to Mr Mookhey.

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The Hon. DANIEL MOOKHEY: Just to finalise on this—and I want to be very clear on this point—the declaration form that applied at the time required your signature, did it not; not your executive assistant's but your signature?

Mr BHATIA: The conflict of interest form?

The Hon. DANIEL MOOKHEY: The gifts register declaration form required your signature, not your executive assistant's signature. Is that correct?

Mr BHATIA: I do not know.

The Hon. DANIEL MOOKHEY: Do you recall ever signing a declaration form for the gifts register in respect to any of these 42 gifts?

Mr BHATIA: She would have probably put an electronic signature in, which is what tends to happen.

The Hon. DANIEL MOOKHEY: Your recollection is if there was a document that was produced, it was likely to be through an electronic signature of yours, with your permission?

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: Mr Bhatia, when you were the CEO of icare, did you introduce a net promoter score system?

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: What was the purpose of the net promoter score when you introduced it?

Mr BHATIA: To measure customer advocacy.

The Hon. DANIEL MOOKHEY: Was there a relationship between the net promoter score and the executive remuneration whilst you were icare CEO?

Mr BHATIA: I think there was.

The Hon. DANIEL MOOKHEY: What was that relationship?

Mr BHATIA: I do not recall Mr Mookhey.

The Hon. DANIEL MOOKHEY: Annual reports at the time say that 10 per cent or thereabouts of icare executive remuneration was tied to the net promoter score.

Mr BHATIA: It must be true.

The Hon. DANIEL MOOKHEY: So 10 per cent of the executive remunerations were tied to the net promoter score.

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: Do you have any recollection as to when that started?

Mr BHATIA: No.

The Hon. DANIEL MOOKHEY: Who was engaged to measure the net promoter score?

Mr BHATIA: I do not remember the exact name of who was engaged to do it but it was in the remit of the executive team, was responsible and I think for that particular one it would have been John Nagle who would have run the process to find who the right person was.

The Hon. DANIEL MOOKHEY: That aligns with Mr Nagle's evidence as well, so I do not think there are any cross purposes. To the best of your knowledge, was a group by the name of Perceptive Group Limited engaged to provide the net—

Mr BHATIA: That rings a bell.

The Hon. DANIEL MOOKHEY: Yes?

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: To the best of your knowledge, was that a group operationally run by Mr Chris Pescott?

Mr BHATIA: I met one individual once at a board meeting but that is all I remember.

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The Hon. DANIEL MOOKHEY: Who was that individual you met, do you recall?

Mr BHATIA: I do not remember, Mr Mookhey. There was somebody from Perceptive who did come to present at the board meeting.

The Hon. DANIEL MOOKHEY: Was it Mr Chris Pescott, you do not recall?

Mr BHATIA: I do not recall.

The Hon. DANIEL MOOKHEY: Was it Mr Tony Pescott?

Mr BHATIA: I do not recall. I recall Tony Pescott, I do not recall Chris Pescott.

The Hon. DANIEL MOOKHEY: Did you engage Mr Tony Pescott as a consultant for icare in any capacity while you were CEO?

Mr BHATIA: No, I did not.

The Hon. DANIEL MOOKHEY: Was he engaged by icare?

Mr BHATIA: He was.

The Hon. DANIEL MOOKHEY: To do what?

Mr BHATIA: To set up the NPS framework.

The CHAIR: Sorry, NPS?

The Hon. DANIEL MOOKHEY: Net promoter score. To be clear, just in your recollection, Mr Pescott was engaged as a consultant by icare?

Mr BHATIA: Yes, I think by Mr Geoff Henderson.

The Hon. DANIEL MOOKHEY: Who was Mr Geoff Henderson?

Mr BHATIA: He was a general manager in John Nagle's team responsible for measuring customer satisfaction and customer relationships.

The Hon. DANIEL MOOKHEY: Were you aware at that time that Mr Pescott was engaged to provide that service?

Mr BHATIA: Not at the time of engagement, but I knew that he was— When somebody said to me we are getting the NPS framework, we had somebody to come and explain it to you, so that is when I met him.

The Hon. DANIEL MOOKHEY: Were you aware at the time that Mr Pescott had a beneficial interest in the Perceptive Group?

Mr BHATIA: I had no understanding of that.

The Hon. DANIEL MOOKHEY: Sorry?

Mr BHATIA: I had no understanding of that.

The Hon. DANIEL MOOKHEY: When did you learn about that? Firstly, are you aware that he has a beneficial interest?

Mr BHATIA: Subsequently, now. All I know is what I have read either in transcripts or in the media.

Mr DAVID SHOEBRIDGE: Mr Bhatia, icare became aware of Tony Pescott's beneficial interest in the Perceptive Group in May 2017. You were the CEO of icare. Was that when you found out about it?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: In May 2017?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: What did you do?

Mr BHATIA: We did an investigation.

Mr DAVID SHOEBRIDGE: Did you order an investigation?

Mr BHATIA: I do not know; I cannot recall.

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Mr DAVID SHOEBRIDGE: Mr Bhatia, icare only did an investigation of this extraordinary conflict of interest once ICAC raised it with you.

Mr BHATIA: Right.

Mr DAVID SHOEBRIDGE: That is when you commenced an investigation, is it not?

Mr BHATIA: I do not remember Mr Shoebridge.

Mr DAVID SHOEBRIDGE: You do not remember ICAC raising potential corruption issues with icare while you were the CEO?

The Hon. TREVOR KHAN: That is not what his answer was, Mr Shoebridge.

Mr BHATIA: I am not quite sure Mr Shoebridge, your tone is not really very reconciliatory or collaborative.

The Hon. TREVOR KHAN: I think we all agree with that.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: I am not going to disagree with you on that Mr Bhatia.

Mr BHATIA: Yes, but as I have said before, I respect the Committee, I expect the same back.

Mr DAVID SHOEBRIDGE: Mr Bhatia, even though you were aware of the conflict of interest in May 2017, it took ICAC raising the issue after an anonymous whistleblower for icare to do anything under your leadership. That is what it took.

The Hon. TREVOR KHAN: Is that a question?

Mr DAVID SHOEBRIDGE: That is right, is it not, Mr Bhatia?

Mr BHATIA: I do not know.

Mr DAVID SHOEBRIDGE: You remember—

Mr BHATIA: I do not. I have said I do not remember. You can ask me five times the same question and I will give you the same answer Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I will ask you a different question.

Mr BHATIA: Okay.

Mr DAVID SHOEBRIDGE: Do you remember ICAC raising this issue with—

Mr BHATIA: I think so.

Mr DAVID SHOEBRIDGE: You think so?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: I do not quite understand what "I think so" means.

Mr BHATIA: I do, I recollect that ICAC had raised something. There were a number of things that used to come across our desk and if you are asking me to remember every single thing that happened four years ago, three years ago, five years ago, I do not recall, Mr Shoebridge. I do not think that is unreasonable. Please do not look at me as if I am not being supportive or do not try to intimidate me by looking at me that way or having a tone.

Mr DAVID SHOEBRIDGE: Mr Bhatia, are you saying that when ICAC raised a corruption issue with your organisation that it did not stand out in any way?

Mr BHATIA: That is not what I said.

The CHAIR: I am going to disallow that question.

Mr BHATIA: Please do not put words in my mouth, Mr Shoebridge.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: I am having trouble understanding how you do not remember ICAC—

The CHAIR: Order! I am going to disallow that question because it is exactly the same question that you have asked now on a number of occasions and Mr Bhatia has provided his response. If he wants to clarify

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that evidence later, that is a point for Mr Bhatia, but he has provided the response to that, so I will ask you to move on.

Mr DAVID SHOEBRIDGE: Mr Chair, we have time limits. I find that frustrating, but I will hand over to Mr Mookhey.

The Hon. DANIEL MOOKHEY: Mr Bhatia, to bring this to a relative close, you were Wesfarmers, were you not? You worked at Wesfarmers?

Mr BHATIA: Yes, I did.

The Hon. DANIEL MOOKHEY: When did you work at Wesfarmers?

Mr BHATIA: In 2008, in January, to November 2011.

The Hon. DANIEL MOOKHEY: Mr Tony Pescott worked at Wesfarmers as well, did he not?

Mr BHATIA: Not during my time there.

The Hon. DANIEL MOOKHEY: Did you know him through that relationship?

Mr BHATIA: Not during my time there. I do not recall seeing him at Wesfarmers.

The Hon. DANIEL MOOKHEY: Did you have any relationship with Mr Pescott prior to his engagement at icare?

Mr BHATIA: Not at all.

The Hon. DANIEL MOOKHEY: And you had no interaction with him of a social nature of whatever type?

Mr BHATIA: Not at all.

The Hon. DANIEL MOOKHEY: Did you have any with his son, Mr Chris Pescott?

Mr BHATIA: Not at all.

The Hon. DANIEL MOOKHEY: That was a no, just to be clear?

Mr BHATIA: Yes, it is a no. let us carry on.

The Hon. DANIEL MOOKHEY: Just finally, you were aware that at the time for the purposes of the icare Act you were the principal officer of icare?

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: Therefore, it was your obligation to proactively report and make any references to ICAC of any suspicious corruption?

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: Did you make any reports while you were the principal officer at the time in respect to any matter?

Mr BHATIA: I do not recall.

The Hon. DANIEL MOOKHEY: You do not recall?

Mr BHATIA: I do not recall.

The Hon. DANIEL MOOKHEY: Just to be clear, you do not recall making any disclosure?

Mr BHATIA: Yes, any referral to ICAC is the question you asked me?

The Hon. DANIEL MOOKHEY: Yes, in accordance with your obligation under the icare Act.

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: To the best of your knowledge, you have no recall of making any reference to ICAC?

The CHAIR: Mr Mookhey, it is the same point that—

The Hon. DANIEL MOOKHEY: Just so it is clear, because there was a bit of a confusing interchange. Then I am going to move on, Mr Chair. I just want to be fair to the witness so his position can be on the record, because it is a serious matter.

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The CHAIR: My understanding is he has responded but if you seek one final clarification—

The Hon. DANIEL MOOKHEY: Just finally, to the best of your recollection, whilst you were the principal officer of icare for the purposes of the icare Act, you do not recall ever making a reference to ICAC?

Mr BHATIA: I do not recall.

Mr DAVID SHOEBRIDGE: I think I owe the witness a clarification, having gone through and read the documents again.

The Hon. SCOTT FARLOW: That is very reconciliatory of you.

Mr DAVID SHOEBRIDGE: Yes, indeed. Mr Bhatia, you agreed with me earlier that you were notified about Mr Pescott's conflict of interest in May of 2017.

Mr BHATIA: I do not know the exact date.

Mr DAVID SHOEBRIDGE: And you do not disagree with May 2017. It comes from—

Mr BHATIA: I cannot agree or disagree on that point when I do not recall that.

Mr DAVID SHOEBRIDGE: But you recall that in the course of your employment it was raised with you?

Mr BHATIA: I do not recall but it may have been raised. If you say so it has been raised, then it may have been raised.

Mr DAVID SHOEBRIDGE: Indeed, Mr Bhatia, it appears that ICAC raised this issue with icare on 7 June 2018 and that was five or six months after you left.

Mr BHATIA: Okay.

Mr DAVID SHOEBRIDGE: Having gone through—

Mr BHATIA: I am not sure.

Mr DAVID SHOEBRIDGE: —and looked at that chronology more carefully, I think I owe you the fairness when I said to you that you would not have remembered seeing something from ICAC. That would be because perhaps ICAC first notified icare after you left.

Mr BHATIA: And as I said before, I do not recall. According to you I was notified in May 2017. I cannot recall that.

Mr DAVID SHOEBRIDGE: Given the documents seem to show that ICAC did not raise it with icare until 7 June 2018, do you recall at any point while you were CEO doing anything to address the conflict of interest with Mr Pescott?

Mr BHATIA: I do not recall.

The Hon. DANIEL MOOKHEY: Mr Bhatia, I want to turn to another matter, if possible. Were you aware at the time about the engagement of Mr Ed Yap for the purposes of working for the Treasurer's office?

Mr BHATIA: Can I understand the question again please?

The Hon. DANIEL MOOKHEY: I might rephrase. Whilst you were CEO, did you employ a gentleman by the name of Mr Edward Yap?

Mr BHATIA: icare did.

The Hon. DANIEL MOOKHEY: icare did, yes. Was that a decision that you were aware of?

Mr BHATIA: It was a decision I was aware of, yes.

The Hon. DANIEL MOOKHEY: Did you make that decision on icare's behalf?

Mr BHATIA: No.

The Hon. DANIEL MOOKHEY: Who did?

Mr BHATIA: I do not know.

The Hon. DANIEL MOOKHEY: Were you aware that Mr Edward Yap was then seconded immediately to the Treasurer's office?

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Mr BHATIA: I knew that after we had hired Ed—let me stand back and give you a bit of context around that.

The Hon. DANIEL MOOKHEY: Just before we do Mr Bhatia—

The CHAIR: No.

The Hon. TREVOR KHAN: No.

The Hon. SCOTT FARLOW: No.

The Hon. CATHERINE CUSACK: No.

The Hon. DANIEL MOOKHEY: I ask a question, he answers a question. Then I will give him the opportunity to provide context.

The CHAIR: No.

The Hon. TREVOR KHAN: No. Point of order—

The CHAIR: I will hear the point of order.

The Hon. TREVOR KHAN: You ask a question, he is seeking to answer it. You may then ask a further question after he has answered. I take that point of order.

The CHAIR: That was the point I was about to raise. You have asked the question, he is providing an answer and then he wishes to expand on that answer. I am going to allow him the procedural fairness to do so. Mr Bhatia, you have the call.

Mr BHATIA: Thank you, Chair. Ed Yap used to work in the Treasurer's office and was the point person on all State-owned corporations and public financial corporations. Through that is the first time I met Ed, because he was the point person to deal from the Treasurer's office with everything icare and the other SOCs and PFCs. At a point in time Mr Yap expressed interest in working for icare and was contemplating life beyond the Minister's office and said that his interest was in an organisation like icare. The chief people officer and I met with him and then the chief people officer referred him into the organisation for a role within our strategy function.

The Hon. DANIEL MOOKHEY: Just to be clear, the chief strategy officer at the time was Mr Greg Barnier?

Mr BHATIA: That is correct.

The Hon. DANIEL MOOKHEY: You are saying that technically the decision to employ him was by Mr Barnier, was that the inference?

Mr BHATIA: I am not quite sure who the decision was made by, Mr Mookhey is what I am saying.

The Hon. DANIEL MOOKHEY: To be clear, you do not believe you made the decision?

Mr BHATIA: To hire him?

The Hon. DANIEL MOOKHEY: Yes.

Mr BHATIA: No, I did not.

The Hon. DANIEL MOOKHEY: That is the employment decision of icare. What about the secondment arrangement? How did icare decide to second him back to the Treasurer's office?

Mr BHATIA: My understanding was that it was a secondment to complete transitional handover responsibilities that Mr Yap still had in the Treasurer's office. That was my understanding.

The Hon. DANIEL MOOKHEY: How long do you believe that transition period was meant to last for?

Mr BHATIA: I do not recollect what the exact timeframe was.

The Hon. DANIEL MOOKHEY: But your clear expectation was that his service would terminate in the Treasurer's office and he would work permanently full-time at icare?

Mr BHATIA: That was my understanding.

The Hon. DANIEL MOOKHEY: That was the basis upon which you did not object to the arrangement?

Mr BHATIA: Yes.

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The Hon. DANIEL MOOKHEY: Did you alert your board to this decision?

Mr BHATIA: To the decision of?

The Hon. DANIEL MOOKHEY: Did you notify the board in any respect whatsoever that either Mr Yap was employed or he was seconded?

Mr BHATIA: No.

The Hon. DANIEL MOOKHEY: Did you have any conversations with anybody in the Treasurer's office about the secondment of Mr Yap?

Mr BHATIA: I did not.

The Hon. DANIEL MOOKHEY: Just to be clear, you are saying you had no conversation with anyone in the Treasurer's office about Mr Yap's secondment?

Mr BHATIA: As I said, it was basically on transitional basis and it was a conversation that was had—I am just trying to recall whether it was a conversation we had with Nigel to say that we had hired him and I think the question was can he complete his responsibilities and the answer was okay.

The Hon. DANIEL MOOKHEY: Did the Treasurer's office request the transition period?

Mr BHATIA: I cannot recall how it came about. To be really honest, I really do not recall exactly who said what, but the gist of the matter was that Ed Yap was a talented professional. We thought there was a great role for him at icare. He had some responsibilities he needed to complete at the Treasurer's office and that transitional arrangement was to work out. That is all I know. You can ask me the question as many times, that is the answer I have.

The Hon. DANIEL MOOKHEY: I am not intending to repeat any questions, Mr Bhatia, but just to be clear, when you were interviewed by Treasury officials in their audit, Treasury officials record saying that you spoke to Nigel Freitas on the matter.

Mr BHATIA: So that is what I just said, yes.

The Hon. DANIEL MOOKHEY: You do not recollect the conversation with Mr Freitas, is that what you are saying?

Mr BHATIA: No, what I said is I remember the gist of the conversation, I do not remember the who says what, yes.

The Hon. DANIEL MOOKHEY: Sure, but I am asking you a specific point.

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: Did you request the transition period or did the Treasurer's office?

Mr BHATIA: As I said, I do not remember who requested what.

The Hon. DANIEL MOOKHEY: I will accept that point and I will move on. Were you aware at the time that Mr Yap was engaged by the Department of Premier and Cabinet on a labour hire arrangement with Robert Walters?

Mr BHATIA: I was not aware.

The Hon. DANIEL MOOKHEY: Were you aware at the time that when icare employed Mr Yap, icare did not employ him directly?

Mr BHATIA: I was not aware.

The Hon. DANIEL MOOKHEY: Were you aware at the time that icare chose to continue paying a labour hire company to hire Mr Yap?

Mr BHATIA: I was not aware.

The Hon. DANIEL MOOKHEY: Did you have any discussions with your chief people officer about why a labour hire company was engaged?

Mr BHATIA: I do not recall.

The Hon. CATHERINE CUSACK: Point of order—

The CHAIR: I will hear the point of order.

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The Hon. CATHERINE CUSACK: The witness just said that he was not aware.

The CHAIR: If Mr Mookhey wishes to continue this with the obvious evidence from Mr Bhatia, then that is Mr Mookhey's point. It is a different question.

The Hon. CATHERINE CUSACK: The question presumes that he was aware and he has literally just told him, "I was not aware."

The CHAIR: I accept that. However, if Mr Mookhey wishes to use his time down this line of questioning when Mr Bhatia has indicated that he was not aware, that is Mr Mookhey's choice. Given that it is a different question, I will allow it. If he continues to ask the same question over and over again, that is a different issue.

The Hon. DANIEL MOOKHEY: Mr Bhatia, were you aware that a choice to use a labour hire company was much more expensive for icare?

Mr BHATIA: I do not know.

The Hon. DANIEL MOOKHEY: Mr Bhatia, did you ever ascertain whether it was legal for icare to employ Mr Yap and second him back to the Treasurer's office?

Mr BHATIA: Personally, I did not.

The Hon. DANIEL MOOKHEY: The Treasury has now found that such an arrangement was prohibited. Did you at any time cause any inquiry to be made into the legal status of whether this arrangement was possible?

Mr BHATIA: At that point in time I did not personally make any inquiries, but it was very typical for people to be seconded or posted as DLOs and there was a process that the organisation ran to ensure that it was legal. I personally did not investigate or explore whether it was the case or not.

The Hon. DANIEL MOOKHEY: While you were CEO, was it the case that in addition to Mr Yap, icare was also paying for an office manager for the Treasurer through secondment arrangement?

Mr BHATIA: I do not recall.

The Hon. DANIEL MOOKHEY: Evidence has been provided to us by Treasury that shows that there was.

Mr BHATIA: Okay.

The Hon. DANIEL MOOKHEY: Do you know why or how that arrangement was entered into?

Mr BHATIA: I do not know.

The Hon. DANIEL MOOKHEY: Did you ever have any discussions with Mr Nigel Freitas about any of the secondment DLO arrangements?

Mr BHATIA: No.

The Hon. DANIEL MOOKHEY: Did you have any conversations with the Treasurer directly about it?

Mr BHATIA: No.

The Hon. DANIEL MOOKHEY: Did you have any conversations with your chairperson about any of these arrangements?

Mr BHATIA: No.

The Hon. DANIEL MOOKHEY: To the best of your knowledge, how is it possible that the Treasurer could get staff seconded from icare without the CEO knowing?

Mr BHATIA: DLOs and secondments were pretty common in organisations, so from my perspective, it was there before even I started. It was always the case and it continued to be the case. We were not the only organisation where people were in offices as DLOs and secondees.

The Hon. DANIEL MOOKHEY: Benchmarking icare to other agencies that were in the Treasury's cluster or for that matter, the finance Minister's cluster at the time, icare was seconding more than any other.

Mr BHATIA: Okay.

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The Hon. DANIEL MOOKHEY: You have no explanation how it is possible that such an arrangement can be entered into without the CEO of icare knowing?

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: Just a final question before I hand over to Mr Shoebridge, Mr Yap had never worked in the insurance industry. He brought no special expertise to the insurance industry. Why did you think he would be an appropriate person to be a strategy manager?

The Hon. TREVOR KHAN: That is two questions at once.

The Hon. DANIEL MOOKHEY: The question is: Why do you think he was appropriate to be a strategy manager, given he had no experience whatsoever in the insurance industry?

Mr BHATIA: A lot of the people in our strategy function do not have insurance expertise. That is the whole point of having people with different experiences and exposures trying to work out so that you can see the wood from the trees and are not captive to practices that have always happened without challenging them. I do not understand the relevance of the question.

The Hon. DANIEL MOOKHEY: Mr Yap's predominant experience was as a communications consultant to mainly US republican congress people.

Mr BHATIA: As I said—

The Hon. DANIEL MOOKHEY: I will just finish the question.

Mr BHATIA: Please do.

The Hon. DANIEL MOOKHEY: Was that of any relevance to his service of icare, because it is not like his only—

The Hon. TREVOR KHAN: Now you are asking another question.

The Hon. DANIEL MOOKHEY: I am just going to finish it. The only experience that he had was as a communications consultant for republican congress people in the United States.

The Hon. TREVOR KHAN: That is not true, because he worked in the Treasurer's office.

The Hon. DANIEL MOOKHEY: I am asking the witness. He can make the point if he so wishes.

The CHAIR: No, no.

The Hon. CATHERINE CUSACK: He has already indicated he did not know.

The CHAIR: Order! Mr Mookhey you did ask a question and then Mr Bhatia was about to start responding when you then started to include extra information. That is when Mr Khan—

The Hon. CATHERINE CUSACK: No, give a speech, that is what he was doing.

The CHAIR: I will allow Mr Bhatia to provide a response.

The Hon. DANIEL MOOKHEY: Sure.

The CHAIR: If you want to then challenge that through the further information—

The Hon. DANIEL MOOKHEY: No, that is fine; just do it.

The CHAIR: Then I will allow that too. Mr Bhatia, you have the call.

Mr BHATIA: Thank you. We believed that he had the skills and the experience and the ability to think through strategy issues and problem solving.

The CHAIR: Mr Shoebridge has the call.

Mr DAVID SHOEBRIDGE: Thank you Mr Chair. Mr Bhatia, Mr Yap's wages and the labour hire payment that was also required to have Mr Yap employed, all came from workers compensation funds?

The Hon. TREVOR KHAN: That is not true.

Mr BHATIA: You yourself explained, Mr Shoebridge, the different pools of money that icare had, so they came from those funds.

Mr DAVID SHOEBRIDGE: Correct. What possible benefit did injured workers get from having Mr Yap work in the Treasurer's office?

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The CHAIR: Mr Shoebridge, I ask you to rephrase that question because—

Mr DAVID SHOEBRIDGE: I will phrase it again.

The CHAIR: Yes. My concern with the question is that, given your first question was around the funding from injured workers and Mr Bhatia has challenged that proposal, you have then gone on to ask a question that presumes your first question was accurate when Mr Bhatia actually rejected that assertion. Unless you have another way of asking the question, I will have to disallow it.

Mr DAVID SHOEBRIDGE: Mr Bhatia, what benefit did icare get from having Mr Yap in the Treasurer's office?

Mr BHATIA: icare employed Ed to be in the strategy function of icare.

Mr DAVID SHOEBRIDGE: Sorry Mr Bhatia?

Mr BHATIA: icare employed Ed Yap to be in the strategy function of icare.

Mr DAVID SHOEBRIDGE: But he was in the Treasurer's office, so what benefit did icare get from having Mr Yap in the Treasurer's office?

Mr BHATIA: Can I say something that I have said a couple of times now? He, in my view—and I have said that to the Treasury, you have read it out, you have the record, but you want to ask me again and I will answer the question again—had handover transition responsibilities and my understanding was that that is why he was in the Treasurer's office, to finish his handover responsibilities.

Mr DAVID SHOEBRIDGE: Mr Bhatia, is it not the case—

The CHAIR: Mr Shoebridge I bring to your attention and to Mr Mookhey and other members' attention that it is five minutes before Government questions start. You have five more minutes.

Mr DAVID SHOEBRIDGE: Mr Bhatia, is it not the case that Mr Yap's arrangement was an arrangement whereby icare could fund additional political operatives in the Treasurer's office? That was Mr Yap's experience and that is why he is there. That is the case, is it not, Mr Bhatia?

Mr BHATIA: I refute that completely.

The Hon. DANIEL MOOKHEY: Mr Bhatia, I turn to another matter in our remaining time. We had some evidence from Mr Nagle about the arrangement that led to a contract being issued to his wife. Did you see his evidence by any chance?

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: In his evidence he says he made a disclosure to you.

Mr BHATIA: Yes, he did.

The Hon. DANIEL MOOKHEY: Will you describe that disclosure to us?

Mr BHATIA: He came to me and let me know that his wife had secured contractor employment with icare through whatever process had been followed and so wanted to let me know. I let the chief people officer know to ensure that there were clear lines of separation on reporting so that there is no conflict.

The Hon. DANIEL MOOKHEY: And he disclosed this to you after his wife had secured a contract?

Mr BHATIA: I cannot remember the exact, whether it was while she got it, as soon as she got it, after, before.

The Hon. DANIEL MOOKHEY: Did you approve the engagement or were you not required to approve it?

Mr BHATIA: I was not required to approve it.

The Hon. DANIEL MOOKHEY: Did you cause Mr Nagle to document the declaration to you?

Mr BHATIA: I cannot recall.

The Hon. DANIEL MOOKHEY: Did you by any chance document the declaration yourself?

Mr BHATIA: I let the chief people officer know.

The Hon. DANIEL MOOKHEY: You verbally let them know?

Mr BHATIA: Yes and so which we put—

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The Hon. DANIEL MOOKHEY: To be fair to you, you were not under any obligation to document it yourself.

Mr BHATIA: No. Thank you for letting me know, because at the moment I feel I have an obligation to do everything, but can I say that when I was informed we made sure that there were the right protocols put into place so that Mr Nagle's wife was not in the same part of the organisation and reported through to Mr Nagle.

The Hon. DANIEL MOOKHEY: Mr Bhatia, the Project Stanley Investigation Report that was undertaken after you left as CEO, but I believe you were interviewed by Gilbert+Tobin in preparation.

Mr BHATIA: Yes, I was.

The Hon. DANIEL MOOKHEY: Their finding is—this is available to you but in the limited time I probably should just read it to you and you can check if afterwards if you so wish.

Mr BHATIA: Sure.

The Hon. DANIEL MOOKHEY: They say on page 8 in paragraph 7 that when the wife was offered the role at icare, John Nagle told the icare CEO Vivek Bhatia of the offer and the potential conflict of interest. In paragraph 7 it says:

Bhatia knew highly of the person and thought highly of her capability having worked with her at Wesfarmers. Bhatia approved the engagement and management of the conflict by means of structural and reporting separation between Nagle and was positioned within icare's people engagement team and assigned back.

That broadly speaking accords with your recollection.

Mr BHATIA: Yes.

The Hon. DANIEL MOOKHEY: But it does say here that you approved it. That was a finding of Gilbert+Tobin in their project Stanley report. Do you accept that finding?

Mr BHATIA: When I said I approved it, I was not required to approve it.

The Hon. DANIEL MOOKHEY: Just to be clear, you approved the structure of separation and reporting lines but not the engagement?

Mr BHATIA: Yes. I asked that the condition of employment was on the structural separation.

The Hon. DANIEL MOOKHEY: But you worked with this person at Wesfarmers?

Mr BHATIA: Sorry?

The Hon. DANIEL MOOKHEY: You worked with this person at Wesfarmers?

Mr BHATIA: She used to work at Wesfarmers, yes.

The Hon. DANIEL MOOKHEY: With you or at the same time that you were at Wesfarmers?

Mr BHATIA: Yes, during the time that I was at Wesfarmers.

The Hon. DANIEL MOOKHEY: Elsewhere in the report it says that interviewees had different recollections regarding whether the issue regarding her engagement by icare was first raised at a senior management level. At paragraph 35 it says:

It was suggested by Mr Nagle that Mr Bhatia was not entirely comfortable about the engagement proceeding.

Were you uncomfortable with the engagement proceeding?

Mr BHATIA: No, as long as the separation was done, I was okay.

The CHAIR: Mr Mookhey, this will be the last question.

The Hon. DANIEL MOOKHEY: Mr Nagle is saying that he thought you were uncomfortable but you were not in fact, you were fine with this arrangement occurring. Do you not think that there was an issue with this arrangement, that one of your group executives having engaged in his team a direct family member was a conflict of interest or at least would create the perception of a conflict of interest?

Mr BHATIA: If it was part of the team, absolutely correct, which is why the structural separation.

The CHAIR: I will now pass to Mr Farlow.

The Hon. SCOTT FARLOW: Thank you very much Mr Bhatia. I will try to take a more reconciliatory and collaborative approach to the questioning.

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The Hon. TREVOR KHAN: That is why I am not allowed to ask any questions.

The Hon. SCOTT FARLOW: That is why the Hon. Trevor Khan is staying silent. In regard to the engagement of Mr Yap into icare, did you often engage with people who were prospectively looking at employment at icare you might have been meeting around the traps?

Mr BHATIA: Absolutely.

The Hon. SCOTT FARLOW: This would be something in your regular course of activity as the CEO of icare?

Mr BHATIA: A lot of people have been contracted with different parts of the Government, express interest about working at icare. I know at the moment what the narrative is, but please look at the history of icare and look at the culture engagement surveys, which icare did not conduct—the public sector conducts. I do not know the PMS service now, but in my time there we were either first, second or third highest engagement agency in the entire New South Wales public sector.

The Hon. SCOTT FARLOW: Please explain what that means in respect of the highest engagement agency?

Mr BHATIA: The public sector measures employee engagement, which is an index which says how engagement motivated you are to come into work and discharge your responsibilities. It is an indicator worldwide used of the culture of an organisation, which is why the public sector measures it across all its agencies every year. icare was always in the top quartile, if not in the top decile, of all agencies in the New South Wales public sector. As such, a lot of people within the sector but outside icare wanted to work at icare. We used to get a lot of people saying, "I am a director at X" or, "I am an executive director at Y. I am a deputy secretary here; is there an opportunity for icare?"

The Hon. SCOTT FARLOW: When you are referring to the sector, you are referring to the government sector?

Mr BHATIA: That is correct and also the industry at large.

The Hon. SCOTT FARLOW: With respect to Mr Yap, it has been pointed out by Mr Mookhey that he did not have experience in insurance but you outline that there were lots of people who did not necessarily have experience in insurance in icare. How many would you say in respect of a percentage would there be at icare that came from non-insurance backgrounds?

Mr BHATIA: I probably would not want to hazard a guess.

The Hon. SCOTT FARLOW: But there were a substantial number of people?

Mr BHATIA: There were reasonable amounts of people, especially in functional roles, not in the claims areas or underwriting areas or the product areas, but in the functional areas such as HR, finance, strategy, customer. For instance, the person that we brought on to manage our customer interaction and to create customer insights did not come from the insurance sector because we thought that some other sectors do it much better, so why not learn from their insights and their expertise into that?

The Hon. SCOTT FARLOW: With respect to Mr Yap, you outlined that he was responsible in the Treasurer's office for both public finance corporations and State-owned corporations.

Mr BHATIA: That is correct.

The Hon. SCOTT FARLOW: Was that something you saw as beneficial in respect of having that sort of understanding across other similar organisations within government?

Mr BHATIA: Absolutely.

The Hon. SCOTT FARLOW: Was that one of the determinants in why you thought he would be a good fit for the role in the strategy team?

Mr BHATIA: Absolutely.

The Hon. SCOTT FARLOW: With respect to that engagement that was undertaken, after identifying him as a person who would fit will in icare, you of course had that meeting with Greg Barnier, is that correct?

Mr BHATIA: That is correct.

The Hon. SCOTT FARLOW: Was that the gentleman you had the meeting with as well?

Mr BHATIA: Correct.

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The Hon. SCOTT FARLOW: After leaving that meeting, you effectively thought that any engagement or role was his responsibility to implement and organise within the organisation, is that correct?

Mr BHATIA: Absolutely. With due respect, Mr Yap was three or four levels below in the organisation and from my perspective, I was not needed to be involved any further.

The Hon. SCOTT FARLOW: He was not a direct report?

Mr BHATIA: No, or a direct report of a direct report, or a direct report of a direct report.

The Hon. SCOTT FARLOW: There was no skip meetings, for instance?

Mr BHATIA: There were no skip meetings with Mr Yap.

The CHAIR: Are there any other questions from Government members? If not, thank you for attending the hearing today, Mr Bhatia. The Committee has resolved that any questions you have taken on notice—and I am not sure that any have been—should be returned within 21 days. The secretariat will contact you in relation to the questions you have taken on notice, if there are any. Thank you very much.

Mr BHATIA: Can I make a statement? Can I just do a quick one second, if that is okay, if that is all right?

The Hon. CATHERINE CUSACK: I am happy to ask—

Mr DAVID SHOEBRIDGE: It is fine by me

The Hon. CATHERINE CUSACK: Can I ask a question?

The CHAIR: I am happy to accept the statement, Mr Bhatia.

Mr BHATIA: I am deeply saddened today. I am deeply saddened today because over 3½ years in the New South Wales Government one of the people that I respected the most in these committees was Mr Shoebridge and I believe Mr Shoebridge has a great level of insight and knowledge into workers compensation. I tremendously enjoyed my conversations with you Mr Shoebridge during my 3½ years there. I am saddened to have the interactions that we have had today. The day I left icare Mr Shoebridge sent me a very nice email and it is one of the few things that I did carry out of icare as a good memory, in which Mr Shoebridge acknowledged that I was one of the very few people, who despite institutional barriers in the compensation system, had made a positive difference in my 3½ years in the system. He wished me well and also said that the icare approach has been refreshing because now it is focused on injured workers as people. Mr Shoebridge and I had this conversation multiple times about how we needed to remove the stigma of workers compensation from injured people and treat them as equals, as people. All my time that I spent in the stewardship of the organisation was dedicated to doing that.

Mr DAVID SHOEBRIDGE: With fairness, Mr Bhatia, it has been a reluctant journey that I have found myself here with material that has come to light since then. I did not come here rapidly, Mr Bhatia.

The CHAIR: I think at that point Mr Shoebridge—

Mr DAVID SHOEBRIDGE: It has been a reluctant journey that I found myself here.

The CHAIR: —I will call the hearing to a close. I appreciate your appearance Mr Bhatia. As I said, questions taken on notice will be returned within 21 days. The hearing is concluded. Thank you.

(The witness withdrew)

The Committee adjourned at 11.54 a.m.