

**REPORT OF PROCEEDINGS BEFORE**

**PRIVILEGES COMMITTEE**

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

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**At Sydney on Tuesday 23 July 2013**

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**The Committee met at 11.00 a.m.**

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**PRESENT**

The Hon. T. J. Khan (Chair)

The Hon. J. G. Ajaka

The Hon. J. A. Gardiner

The Hon. M. R. Mason-Cox

The Hon. J. Buckingham

**UNCORRECTED PROOF**

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

It is worth making some brief preliminary remarks regarding the background to the inquiry. In 2008-09, the Department of Primary Industries conducted an expression of interest process for what was said to be the exploration of 11 medium and small exploration areas in New South Wales, including the Mount Penny expression of interest area in the Bylong Valley in the western coalfield. During the expression of interest process, concerns were publicly raised regarding the probity of the expression of interest process. Of note, questions were asked in the House of then Minister Macdonald by, amongst others, Ms Lee Rhiannon, in relation to the role of the Minister and the Hon. Eddie Obeid in the process. The Committee notes, in particular, the following response from Mr Macdonald to a question on notice from Ms Rhiannon on Thursday 12 November 2009. This was the answer:

This particular resource exploration licence was part of a number of small to medium resource licences that were put out for expression of interest. The process was done entirely by the department; I had no role in it. Indeed, I delegated all authority relating to those leases to the department. The whole process was overseen by the former Deputy Auditor-General of New South Wales, Mr Fennell. The decisions of the panel, including the probity auditor, were put forward to the director general, who implemented the results in relation to those coal leases.

I note on 12 November 2009 the Hon. Duncan Gay gave notice of motion for an order for the production of papers in relation to the Mount Penny mining exploration licences and tender process. On 12 November 2009, the Legislative Council agreed to the motion. The orders stated that:

Under Standing Order 52, there be laid upon the table of the House, within 14 days of the date of the passing of this resolution in the possession, custody or control of the Premier, the Department of Premier and Cabinet, the Minister for Mineral Resources and Minister for Primary Industries, the Department of Industry and Investment, the Treasurer and NSW Treasury:

- a) all documents in relation to the Exploration Licence 3771 (now Exploration Licence 7406) - Mount Penny,
- b) including any documents relating to the tender process, and
- c) any document which records or refers to the production of documents as a result of this order in the House.

A return to order was received by the Clerk from the Department of Premier and Cabinet and tabled in the House on 26 November 2009. The return consisted of one box of public documents and one box of privileged documents. It is notable that on 17 November 2009, Mr Macdonald was removed from the ministry by the then Premier, the Hon. Nathan Rees, MP. The Hon. Peter Primrose was appointed Minister for Regulatory Reform and Minister for Mineral Resources. The House's receipt of the return to order on 26 November 2009 was whilst Mr Primrose was the Minister for Mineral Resources.

On 4 December 2009, the Hon. Kristina Kenally, MP, replaced the Hon. Nathan Rees, MP, as Premier. Subsequently, on 8 November 2009, Mr Macdonald was reappointed to the ministry and appointed Minister for State and Regional Development, Minister for Mineral and Forest Resources and Minister for the Central Coast. Mr Primrose ceased to be the Minister for Mineral Resources on that date.

In late 2012, following the publication of certain documents by the Independent Commission Against Corruption, as part of Operation Jasper, concerns were raised whether the 2009 order of the House had been fully complied with. The House subsequently referred the matter for a first inquiry to the Privileges Committee in March 2013. The Committee concluded in a previous inquiry that at least 124 documents identified by the ICAC in the document comparison matrix provided to the President should, prima facie, have been provided in the 2009 Mount Penny return to order.

I note that the power of the House to order the production of State papers is fundamental to the constitutional role of the Legislative Council in holding the Government to account under the system of responsible government. The power was confirmed by the High Court of Australia and the New South Wales

Court of Appeal in the Egan decisions in the mid- to late 1990s. Since the final Egan decision in 1999, the House has passed 294 orders for the production of papers. Whilst questions have arisen from time to time about the content of some returns to order and why particular documents have not been provided to this House, this is the first time that the House has decided that evidence before it of the non-provision of documents has warranted formal investigation and report. It is vital to the protection of the powers of the House that this matter be appropriately investigated.

Could I note that there has been discussion in the media recently regarding the process by which Mr Macdonald's attendance at today's hearing was negotiated between him and the Committee. I do not intend to allow this hearing to be a forum for members or others to discuss that process. These are matters for the Committee to examine in its private deliberations.

I also acknowledge that all present would be aware that Mr Macdonald has recently appeared as a witness as part of an extensive inquiry conducted by another organisation regarding Mount Penny. Plainly, that is the ICAC. I would like to make clear to members of the Committee, the witness, and others present today, that this inquiry has been referred to the Committee for the purposes of investigating why papers were not provided in the return to an order of the House, not for the purposes of inquiring into the Mount Penny tender process itself. I will not hesitate in ruling out of order any questions that are not appropriately related to the terms of reference.

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

With respect to photographers, I ask any media photographers to take their photographs during these opening stages and not to disrupt the hearing whilst it is underway. Delivery of messages and documents tendered to the Committee: Witnesses, members and their staff are advised that any messages should be delivered through the Committee clerks. I also advise that, under the standing orders of the Legislative Council, any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person. At the commencement of your evidence, Mr Macdonald, I invite you to make a short opening statement. I understand you wish to make one. If you have copies that you can provide to members of the Committee, that would be appreciated. Members of the Committee will then ask you questions.

I ask everyone to turn off their mobile phones or, at the very least, to put them on silent. The return date for questions on notice: The Committee has resolved that any answers to questions taken on notice during the hearing must be provided within 14 days. Plainly, we will have a chat about that later on. Legal advisers: The Committee has agreed that Mr Macdonald can be accompanied by his legal adviser and I note that Mr Dan is at the table. However, Mr Dan is not a witness and will not be sworn in. Committees have, on occasions, agreed to allow legal advisers to sit at the table on the basis that the witness may consult the adviser prior to answering questions. However, the adviser is not acting in the role of representing the witness, so cannot intervene in the hearing or attempt to object to procedure or lines of questioning.

**IAN MICHAEL MACDONALD**, Former Minister for Mineral Resources and former Minister for Primary Industries, affirmed:

**CHAIR:** I think you would like to make an opening statement and I invite you, at this stage, to make it.

**Mr MACDONALD:** I am not quite sure where the issue is of misleading the House. I think you are trying to infer, potentially, that it relates to the answer to the question I gave to Ms Lee Rhiannon. So I am not sure what role that will play in this discussion but I stand by my words on that day entirely. In fact, all the evidence before the Independent Commission Against Corruption, when it is analysed fairly and reasonably, will indicate that.

I correct you. I resigned on 15 November, on the Sunday, during the course of the Australian Labor Party [ALP] conference. It was not on 17 November; it was, in fact, three days after the notice of motion or the call for papers went through the House in the morning of the session on that Thursday. I just want to know what scope you are going to allow me because I can talk for the next two hours if you like.

**CHAIR:** There is no limit to the amount of time that you wish to speak and there is no limit to the amount of time that we may sit here. So it is a matter of you having your head.

**Mr MACDONALD:** At the start I point out that I did not attend that debate and I do not think it was even a debate when the resolution was put to the House. I did not seek anyone's support in defeating that. I think members who have been around a long time would know that I was very successful in being able to get resolutions defeated or carried in this House. That was my role for many years. If I had sought fit to do that, I would have given it a good run, but I did not. I also want to make it clear that I was not the Minister at the time that the papers were handed over and I had no idea what was handed over. I never sought to know what was even held by the House after the production of them. My whole political scenario at that stage was dealing with the tip-offs that I had received about certain events going on at the conference and my mind was rather more on that than on the production of papers.

I also want to make it clear—and this stems from questions that were asked of Mr Gibson about my reaction to this—that it was said, in a sense, that I was not concerned about the papers that he had just mentioned and went through. I think, in questioning, if my memory serves me correctly, he indicated that I had not shown any concern or made any point about it. The reason why I would have taken that position at the time, and indeed still do, is the fact that all of the key issues relevant to Mount Penny and indeed the other 11 exploration licence applications [ELAs] that were released under the expression of interest process were not determined by me; that all the core decisions—the creation of the exploration licence applications in one instance, the determination of which ones go in the list—were in effect done by the department. I could go into that in detail although I understand we are sort of getting perhaps close to the edge in terms of the terms of reference.

Also I did not reopen the process; I did not play any role in the process; and one of the most irksome things that one of the journalists around this town keeps repeating is that I actually granted the licences. That is even repeated over and over again. I did not grant the licences. That was all delegated. The licences were awarded based on a process undertaken by a panel of experts from the department and the Premier's department as well as an independent—as you referred to it—probity officer. They made the recommendation to the department. The department made the decision. The director general awarded those licenses. At no point did I have any say whatsoever in who was granted those licences.

I could detail a lot more. I have submissions here I would love to hand to you. If the Committee wished to look at my detailed response to the issues that have been canvassed in that extensive Independent Commission Against Corruption [ICAC] inquiry, I would be quite happy to hand them over under privilege and on a confidential basis to the Committee; but it would need you to ask me to do that. I have a clear conscience about it and still do, and I am willing to answer any questions in relation to it. Just to reiterate: At no point did I interfere in any shape or form with this process. This was a process taken forward by the department. I suggest it probably would have been rather difficult for them, given that one Minister had a temporary stay on his appointment and another Minister came in. I doubt if he would have known which way to turn and what day it was. That was the circumstance in which this particular set of papers was determined to be put before the Council. I guess I will leave it at that and take questions.

**CHAIR:** You may or may not have read the transcript, but different from the process that has been adopted in, say, budget estimates where we run on strict time frames—

**Mr MACDONALD:** Oh yeah.

**CHAIR:** We have a bit more of a kumbaya experience in privileges.

**Mr MACDONALD:** Lovely. I am used to this.

**CHAIR:** We will start with questions from the Government and we have only Jeremy here at the moment, so we will see how it all flows along and see how we go.

**Mr MACDONALD:** Sure, sure. I have had 22½ years of this.

**CHAIR:** Yes. I just want to indicate that it is slightly different in that regard.

**The Hon. JENNIFER GARDINER:** Mr Macdonald, you said in your opening statement that you did not attend the debate on the notice of motion on the call for papers when it went through the House, but you were the Minister at the time that Mr Gay moved the notice of motion. As a Minister, you would be paying attention to such a matter that directly affected your duties as a Minister to be accountable to the Parliament.

**Mr MACDONALD:** I was not taking a great deal of notice of it. I was more occupied with other events at the time which transpired over the next three days.

**The Hon. JENNIFER GARDINER:** You have said that you were not the Minister at the time that the papers were tabled. That is correct, but you have just confirmed, have you not Mr Macdonald, that you were the Minister for several days that are material to the time line that this Committee is looking at and trying to find out the answer to the question as to why—

**Mr MACDONALD:** Yes, for the Thursday afternoon and Friday, and I guess Saturday and lunch-time Sunday.

**The Hon. JENNIFER GARDINER:** So it went to lunch-time Sunday.

**Mr MACDONALD:** Yes.

**The Hon. JENNIFER GARDINER:** Mr Macdonald, have you turned your mind to trying to find an explanation at all as to how the discrepancy occurred between the documents that were tabled ultimately in relation to the Mount Penny matter and the much larger scope of documents that found their way to the Independent Commission Against Corruption?

**Mr MACDONALD:** No, I have not. I have allowed—you know, I thought the Committee might be able to ascertain that by interviewing the people that actually conducted that process. I have never conducted, as a Minister, a section 52 process. That went on independent of me and, as I understand it, by Premier's and the relevant department.

**The Hon. JENNIFER GARDINER:** Are you saying that you never got involved as the Minister in calls for papers while you were a Minister, notwithstanding the fact that there were a number of calls for papers—

**Mr MACDONALD:** Yes.

**The Hon. JENNIFER GARDINER:** —that occurred, when you were a Minister, in various portfolios; that you never got involved in handling the response to the Legislative Council as to what documents should or should not be tabled.

**Mr MACDONALD:** Yes, I understand. There are two issues here: One is the issue of the debate about the section 52. In the past I have successfully opposed a number of section 52s but that—I would have to check the record—was somewhat earlier than 2009. But in terms of actually the production of papers, what actually went in that file, I have never seen one, for a start. No, I did not play a role in that.

**The Hon. JENNIFER GARDINER:** You have never seen a file that is the bundle of papers—

**Mr MACDONALD:** No, that is correct.

**The Hon. JENNIFER GARDINER:** —that would come back to the Legislative Council.

**Mr MACDONALD:** That is correct. It went directly, as I understand it, from the department to the Council.

**The Hon. JENNIFER GARDINER:** Your former chief of staff, Jamie Gibson, has told the Committee that he would have alerted you to the fact that the standing order had gone through, that the notice of motion had been carried by the House, and that you would have been—I think his words were—almost certainly advised that it had happened. Do you recall that?

**Mr MACDONALD:** No, I do not recall it. I was quite busy. I had meetings on at the time. I had then question time and then I went into a meeting for, I think, about an hour and a half with Martin Ferguson, who was then the resources Minister in the national Parliament. Straight after that I had consular duties with one of the consul generals, and then after that I had an awards ceremony—industry awards of some sort. He may well have said something to me. I do not recall it. It is just it was not top of the pops to me then, or at any other time.

**CHAIR:** That is not really the relevant time frame. Notice of the call was made on the Tuesday.

**Mr MACDONALD:** Yes, well?

**CHAIR:** Mr Gay gave notice on the Tuesday that there was to be a notice of motion. So you would have been alive to it, could I suggest, on the Tuesday or the Wednesday.

**Mr MACDONALD:** That is possible, but it was not an issue of any great importance to me.

**The Hon. JENNIFER GARDINER:** So a call for papers by the Legislative Council, given that as you have pointed out you were a member of the Legislative Council for 22 years or so and that you were in the Legislative Council the whole time that the debates and the so-called Egan cases went through the High Court and the Court of Appeal in New South Wales establishing the power of the House to call for papers as a very important means of keeping the Executive Government accountable to the Legislature and to the people and notwithstanding the power of the House and the critical role that you played for years in the goings-on in the place, it was not an urgent or an important matter that the House had resolved to call for the Mount Penny papers.

**Mr MACDONALD:** No. You are misconstruing what I have said to you. I would in the past have taken an interest in whether the House passed the resolution or not, and the record would show over the years that on a number of occasions that I opposed various resolutions that have been moved for papers and had successfully gathered the numbers to achieve a defeat of the resolution, but in terms of the actual papers that was to be done by the department in conjunction—there was process—with the Premier's office; not the Premier's office, the Premier's department. They gathered the papers and presented them.

**The Hon. JENNIFER GARDINER:** And the Minister's office—

**Mr MACDONALD:** I never—

**The Hon. JENNIFER GARDINER:** The Minister's office also was involved, was it not?

**Mr MACDONALD:** Well I do not know if my Minister's office was involved. I do not think so.

**CHAIR:** You were alive, were you not, at the time when this call for papers or when notice was being given—

**Mr MACDONALD:** Very much alive, Trev.

**CHAIR:** —that an article had appeared in the *Australian Financial Review* in which it was being alleged that one of the exploration licence areas actually covered Eddie Obeid's property in the Bylong Valley. You were alive to that, were you not?

**Mr MACDONALD:** Yes. I knew that land owned by their family, according to that article, had been in that particular exploration licence application [ELA].

**CHAIR:** So you were alive to a potential scandal that could engulf the Labor Government because of the connection between the exploration licence and a potential windfall for Eddie Obeid.

**Mr MACDONALD:** No. I did not. I did not think that at all.

**CHAIR:** Oh, come on.

**Mr MACDONALD:** I am sorry, Trevor. I did not.

**CHAIR:** That is stretching the—

**Mr MACDONALD:** No, no. Trevor, at that time I had nothing—and that has been the case right through the inquiries—to do with the decision-making process. The core decision-making process that put everything together in terms of those exploration licence applications [ELAs]—

**CHAIR:** That is not the issue.

**Mr MACDONALD:** No, sorry.

**CHAIR:** Ian, that is not the issue that is being put. The issue is this: There is a call for papers coming up in respect of an exploration licence where it covers Eddie Obeid's property. Now, that is dynamite, is it not? That is an absolute bombshell that is going to blow up underneath that Government, and you are saying you are not concerned about it?

**Mr MACDONALD:** I did not see it that way: nor did I see it that when, you know, Tony Windsor's property is in one of the exploration licence applications [ELAs] and gets—he was able to sell that at considerable benefit.

**CHAIR:** But Tony Windsor was not in the New South Wales Labor Government that was racked with scandal at the time, was he?

**Mr MACDONALD:** No, but he was a critical member of the Federal Parliament. I just did not—did not—because of my view in the decision-making I made think that I had anything to be concerned about, and I still do not.

**The Hon. JENNIFER GARDINER:** Mr Macdonald, can you tell us, in terms of preparing returns for orders for papers, who you delegated that to? Who was in your office and who was in the department that would be dealing with making sure that the required documents were presented in a timely way?

**Mr MACDONALD:** I do not know if I formally knew who was the person responsible for it, but I would presume the director general.

**The Hon. JENNIFER GARDINER:** And how about in your office?

**Mr MACDONALD:** Well, I do not know if they actually did much in relation to it other than to perhaps, you know, send the motion on.

**The Hon. JENNIFER GARDINER:** Surely from a political point of view, because the Minister's office is a political office, you would have somebody in charge of providing whatever needed to be provided that was held in the Minister's office in an appropriate way?

**Mr MACDONALD:** Well I think that you will find that if anyone was responsible, it would have been the chief of staff. But the department generally, with the Premier's Department, were in charge of these processes.

**The Hon. JOHN AJAKA:** Mr Macdonald, you said earlier that when you have taken an interest in a Standing Order 52 as to whether or not it should be passed, I take it that if you considered it should be opposed, you opposed it; and from what you have said, you have had some success over the years in relation to opposing Standing Order 52. Am I correct in that?

**Mr MACDONALD:** Yes. I think most governments would be interested in section 52s.

**The Hon. JOHN AJAKA:** Let us focus on you. Forget most governments. Let us just focus on you, if we may. When you became aware that there was a Standing Order 52 and it affected you, I would assume from what you have said that you would have looked at it. If you felt it should be opposed, for whatever reason, that you would then get up, do the battle, speak to the crossbench members and then do your very best to ensure that it was opposed because you might have considered it was a waste of time, for example.

**Mr MACDONALD:** Yes, I was trying to say to you in 2009, John, I had—I do not think you will find me opposing any section 52s in 2009 and 2008. I had stopped doing that.

**The Hon. JOHN AJAKA:** So as soon as someone from the Opposition gave notice of a section 52, you would have either been in the Chamber to hear it or you would have been in your room listening to it, or I take it one of your staff would have brought it to your attention straightaway, if it came within your Ministry.

**Mr MACDONALD:** Not necessarily. Not necessarily at all, and I certainly would not be in my room listening to it. If I was in my room, I was in a meeting and I would not be listening to it.

**The Hon. JOHN AJAKA:** So far as this specific Standing Order 52 that was moved by Duncan Gay is concerned, you were made aware of it on that day.

**Mr MACDONALD:** I knew it was going to be presented to the Parliament on the Thursday and I knew it had gone through.

**The Hon. JOHN AJAKA:** And you knew, as has been put to you before, that it was in relation to what has to be classified at the very minimum as a very contentious issue to you as Minister and to your Labor Government.

**Mr MACDONALD:** Yes, but I believed that the record would have shown—and indeed does show—that I had nothing to do with the granting of those licences in that area, or indeed any of them.

**CHAIR:** But what it does show is that, if there had been a proper return, you told Jamie Gibson to go off to the department and get a briefing, for instance, on Mount Penny.

**Mr MACDONALD:** I did not.

**CHAIR:** You did not?

**Mr MACDONALD:** Why would I do that?

**CHAIR:** Is that right?

**The Hon. JOHN AJAKA:** All right. Maybe we can leave it. Let us go back to a little bit of history.

**Mr MACDONALD:** Can we just have the question and answer again. What was the question?

**The Hon. JOHN AJAKA:** Let me put some things to you from a historical point of view. We are aware from the evidence you have given in front of the Independent Commission Against Corruption that sometime in May 2008 you did speak with Moses Obeid about the Obeid property, and you accepted that.

**Mr MACDONALD:** About the Obeid property?



**The Hon. JOHN AJAKA:** About the Obeid property.

**Mr MACDONALD:** It was about an Anglo licence. Are we now going to go into the issues that were before the Independent Commission Against Corruption?

**The Hon. JOHN AJAKA:** Well, I am going to go back into a bit of history because of what you have recently said.

**Mr MACDONALD:** Oh well, if you want to, that is good.

**The Hon. JOHN AJAKA:** You accept that at some time in May 2008 you had spoken to Moses Obeid about the Obeid property?

**Mr MACDONALD:** No, my evidence was that it was earlier than that.

**The Hon. JOHN AJAKA:** I will say early May. We also know that on 8 May 2008 you met with two people: Beres Lang, a businessman in relation to, as you put it, restarting an abattoir in Mudgee and the mayor of the Mid Western Regional Council, Percy Thompson.

**Mr MACDONALD:** Yes.

**The Hon. JOHN AJAKA:** We also know from your evidence that Eddie Obeid was present at that meeting?

**Mr MACDONALD:** Yes. Do you want me to say something about that now?

**The Hon. JOHN AJAKA:** The answer was yes. I think you have already answered the question. So clearly as of at least 8 May you knew that the Obeid family owned property within the Mount Penny area?

**Mr MACDONALD:** Not the Mount Penny area. I knew they were at Bylong. Now in relation to the meeting on 8 May we are going to canvass the inquiry which I am happy to do to some degree but we could be going for hours and I have things to do.

**The Hon. JOHN AJAKA:** We have all day.

**Mr MACDONALD:** I have not.

**CHAIR:** We will see.

**Mr MACDONALD:** On 8 May it is interesting that the ICAC did not call either of those witnesses whose names you have just mentioned, that is, the mayor and the proponent of a proposal to reopen the abattoir.

**CHAIR:** We actually do not know that. You know how the process works and there is a process of compulsory examinations, for instance.

**Mr MACDONALD:** Okay.

**CHAIR:** Just hold on. We do not know which witnesses have been before the ICAC. All that we have available to us is the public transfer.

**Mr MACDONALD:** Thank you very much, Trevor.

**CHAIR:** Any time; I am here to help.

**Mr MACDONALD:** Yes, but hold on a second. There were four or five people at this meeting—

**The Hon. JOHN AJAKA:** One of them being Eddie Obeid.

**Mr MACDONALD:** One of them being Eddie Obeid, the mayor, the proponent and I think someone from State Development if my memory serves me correctly and my staff, and I am not sure which ones were there.

**The Hon. JOHN AJAKA:** Eddie would have mentioned to you, and you knew from your discussions with Moses, that he had property in that area, or the Obeid family had property?

**Mr MACDONALD:** We did not discuss his property, as far as I can recollect.

**The Hon. JOHN AJAKA:** So why was Eddie Obeid there?

**Mr MACDONALD:** Yes, okay. He organised the meeting with my staff so that the mayor and the proponent could put to me as State Development Minister a proposal to try to get the abattoir reopened. Interestingly, at the public hearings neither of those people was called. So if the ICAC is going to allege that there was some discussion of the Obeid property at that meeting—which it has done—surely it should have called those witnesses to the public hearing. I am not sure whether they are being called to a private hearing but they certainly were not called to the public hearing. And that is characteristic of several key witnesses throughout that inquiry.

**CHAIR:** I am sorry, I do not wish to—

**Mr MACDONALD:** He is now opening up this whole area. I am happy to get a chance to put my side of the case.

**CHAIR:** I absolutely understand that but I will encourage the Hon. John Ajaka to move on through his various propositions.

**The Hon. JOHN AJAKA:** Moving along, on 9 May, the very next day—I am leading on from what I asked earlier when you instructed Mr Gibson to seek information in relation to coal reserves in the Mount Penny area and in Bylong Valley and you have been shown that email—you accepted that that was the case.

**Mr MACDONALD:** Yes.

**The Hon. JOHN AJAKA:** The very next day, after this meeting on 8 May, you instructed Mr Gibson to seek that information.

**Mr MACDONALD:** So at the same very time, which is in the evidence—

**The Hon. JOHN AJAKA:** When did you give him the instruction—on 8 May or 9 May?

**Mr MACDONALD:** I think his email is on 9 May. I do not recall when I gave him the instruction as to do something. It was not an instruction. I asked him could he find out what the resources were. I have explained that in great detail.

**The Hon. JOHN AJAKA:** You then note, and you have been made aware of, emails that were exchanged between Jamie Gibson and Graham Hawkes. I think they also include other documents that have been obtained again in relation to information referring to Mount Penny on 9 May, on the same day.

**Mr MACDONALD:** Yes, there are two or three emails on that date.

**The Hon. JOHN AJAKA:** Ultimately on the same day, 9 May, you end up with a ministerial briefing that is prepared by the Department of Primary Industries headed, "The Mount Penny—Bylong Valley"?

**Mr MACDONALD:** Yes.

**The Hon. JOHN AJAKA:** You have a meeting on 8 May with Eddie Obeid present, you spoke to Moses Obeid before that about the family property, and lo and behold on 9 May all of these documents were suddenly created by way of emails to end up obtaining a ministerial briefing for you on that exact same day—9 May?

**Mr MACDONALD:** I am not sure it was 9 May but around that time they said that there are some coal resources in that region.

**The Hon. JOHN AJAKA:** Those documents were brought to your attention immediately?

**Mr MACDONALD:** I do not know if I actually saw the emails but I certainly was appraised that there were some resources in that area.

**The Hon. JOHN AJAKA:** And you were given the ministerial briefing as soon as possible?

**Mr MACDONALD:** I am not 100 per cent certain of that.

**The Hon. JOHN AJAKA:** You asked Mr Gibson to ascertain information on 9 May, and according to the evidence of Mr Gibson, as soon as possible. To Mr Gibson's credit, on 9 May he did exactly that. The emails are sent, he obtains the information, sends a couple of emails and, in fact, as soon as possible the very same day he got the briefing.

**Mr MACDONALD:** Yes.

**The Hon. JOHN AJAKA:** Do you seriously tell the Committee that Mr Gibson did not rush to you and hand you that briefing since you wanted that information as soon as possible?

**Mr MACDONALD:** He did not rush and give it to me. He would have just told me, "Yes, there are resources there." That is the way it worked. He did not rush in with some piece of paper at all.

**The Hon. JOHN AJAKA:** I will move along. On 14 May—

**Mr MACDONALD:** This is all going to be canvassed next week—

**The Hon. JOHN AJAKA:** On 14 May you again request Mr Gibson to obtain more information on Mount Penny and Bylong Valley.

**CHAIR:** You say it is being canvassed next week. What is happening next week?

**Mr MACDONALD:** Well my understanding is that the ICAC is telling all the media the reports are out next week.

**The Hon. JOHN AJAKA:** Do you agree that on 14 May, within a few days after the report, you asked Mr Gibson to obtain more information on Mount Penny?

**Mr MACDONALD:** I will assume that you are right, okay. I have not got the documents here.

**The Hon. JOHN AJAKA:** Let us jump ahead a bit. From 9 September 2008, we have been informed, the EOIs are released by the Department of Primary Industries in relation to 11 licences?

**Mr MACDONALD:** What date?

**The Hon. JOHN AJAKA:** If you will accept that the correct date is 9 September.

**Mr MACDONALD:** Yes.

**The Hon. JOHN AJAKA:** On 24 November 2008 the EOI process is closed and two companies have submitted an EOI in relation to Mount Penny. In late November, the crucial time, as Minister you made a policy change to again look at opening up the process.

**Mr MACDONALD:** Are you just going to read this all out?

**The Hon. JOHN AJAKA:** I will go through the dates and you can answer.

**Mr MACDONALD:** Can I answer some of the questions?

**The Hon. JOHN AJAKA:** Absolutely, I have two more dates and then you can speak. The process is reopened in January 2009 and on 20 October 2009 the exploration licence is granted to Mount Penny Coal Pty Ltd. After Mr Gibson made all the inquiries on your direction the process proceeded, you reopen it, and lo and behold a licence is granted to a different company?

**Mr MACDONALD:** The point you make about me reopening, I did not reopen it. The evidence is clear that it was reopened by the department. I did not direct the department to reopen anything. My office and the department had a number of companies contacting them saying, "We would like to be part of this process. Could we get access to it?" Interestingly enough, the letters from Cascade, and ones we now know are associated with Cascade, did not seek in those letters to be a part of this current EOI. All those letters say is, "We would like to be on the register for the future to be considered." They were not even asking to be in that particular EOI. The department produced a draft minute which I do not think went to my office. We have got to be very careful; there are a lot of documents in these briefs that are not sent to my office. They are draft briefs that are prepared which then go nowhere. Within the department the decision is made not to send them in any particular direction.

Interestingly enough, there is a draft minute in the department which I believe was not sent to my office which calls for a reopening of the process to allow the people that are contacting the department to go in. This is like six weeks before we have the subsequent discussion. So that is quite a significant fact. The officer who wrote that report was not called to give evidence in the public hearings at all about why that officer decided to present that within the process of the department. All I was seeking was whether it could be reopened. That is all I sought. I did not then say that it should be, or direct anyone. The evidence is clear-cut before the ICAC that I did not do that. Unfortunately it was not printed in the papers like several other things, now that you are going into it.

**The Hon. JOHN AJAKA:** I want to stop you there Mr Macdonald.

**Mr MACDONALD:** Why?

**The Hon. JOHN AJAKA:** I will tell you why. What I am interested in—

**Mr MACDONALD:** Give me a go. I have not had a go yet.

**CHAIR:** How many days have you been in the witness box? I would have thought you have had a go.

**Mr MACDONALD:** No, you know, Trevor, you do not get a chance to say what you really want to say there. It jumps in on top of you every second.

**CHAIR:** It is cruel, is it not?

**The Hon. JOHN AJAKA:** Let us go to 10 November. I am interested in why these documents were not produced under Standing Order 52.

**Mr MACDONALD:** I have no idea.

**The Hon. JOHN AJAKA:** On 10 November the Hon. Duncan Gay gives notice of Standing Order 52 and you become aware of it?

**Mr MACDONALD:** Presumably so.

**The Hon. JOHN AJAKA:** We presume that you are aware of it. Are you aware that your office prepared your response to the SO 52 in relation to where it appears you were going to oppose it—

**CHAIR:** No, fairly you cannot put that. It was prepared by the department.

**Mr MACDONALD:** Yes, that is wrong. I was just about to say it myself, Trev.

**The Hon. JOHN AJAKA:** Were you aware of that response? Had you seen that response?

**Mr MACDONALD:** No.

**The Hon. JOHN AJAKA:** At no time did you see that response?

**Mr MACDONALD:** No.

**CHAIR:** It would form part of your briefing folder, would it not?

**Mr MACDONALD:** The briefing folder I mainly carried around and used was a question time one, right? I do not think I carried notes to whatever other issues were on. I only recall having a fat question time folder which I rarely used.

**The Hon. JOHN AJAKA:** Which was prepared by your staff, I take it?

**Mr MACDONALD:** No, the way it worked was the department would prepare everything and my staff might want to finesse it a bit, or change it a bit, and they would do that in discussion with the department. That is the role of that folder and how it arose.

**CHAIR:** You have said repeatedly that you did not oppose SO 52s in 2008-09?

**Mr MACDONALD:** Yes, I do not think I did.

**CHAIR:** The problem was by that stage that you had essentially lost the Shooters—or Nathan had lost the Shooters?

**Mr MACDONALD:** Sorry, I had not lost the Shooters.

**CHAIR:** You had lost the conservative crossbench. Your Government had lost the Shooters?

**Mr MACDONALD:** No, not really.

**CHAIR:** Not really?

**Mr MACDONALD:** No.

**CHAIR:** So they were siding with the Coalition at that stage—

**Mr MACDONALD:** They lived in hope.

**CHAIR:** Lived in hope?

**Mr MACDONALD:** I was still able to seek their support for various things.

**The Hon. JOHN AJAKA:** The SO 52 was moved on 10 November and we all know that it was agreed to by the House on 12 November. In those two days, from what you said before, you would have considered it and if you wanted to oppose it you would have opposed it. You would have done the necessary work to oppose it because you were fairly successful at opposing if you put in a fight.

**Mr MACDONALD:** Yes, I could have done.

**The Hon. JOHN AJAKA:** I take it you would have made a decision not to oppose it and that is why it went through?

**Mr MACDONALD:** No. I think you are ignoring the context of those few days. My mind was not on section 52s; my mind was on my survival because I was being stalked—

**CHAIR:** By the Premier?

**Mr MACDONALD:** And his friend who is currently in there having taken my position. I have been stalked by him since 2006. He had leaked heavily against me throughout 2007-08. The arrangement I had with

my colleagues was in the course of the next eight-year period I would retire and another person—Phil Morgans was his name; I think he is a current worker for Senator Doug Cameron—would then take over from me at some point. However, just two days before the Cabinet ballot in 2007 an article appeared out of the blue by Mr Hildebrand in the *Daily Telegraph*, which said that I was going in a couple of years and that Luke Foley, lo and behold, would replace me. I could go on about this at great length but I will not.

**The Hon. JENNIFER GARDINER:** You were being stalked by Mr Foley?

**Mr MACDONALD:** Correct. The thing was that in that week, and this is the week we are talking about, I had been informed that I was not going to have a very good conference—

**CHAIR:** That was pretty plain because everyone else knew that too.

**Mr MACDONALD:** —which duly came to pass. I was more concerned in that week about how I was going to handle the process.

**CHAIR:** But there was more context than that, was there not? We have already talked about the previous *Australian Financial Review* article that identified Eddie Obeid; you were also having discussions at various times with your mate Alan Fang who had also been out visiting Eddie's property—you knew that.

**Mr MACDONALD:** Yes but you are putting a lot of things together in there that I did not see in that, that I did not see as a problem.

**CHAIR:** What, a smart political operator like you with all these tentacles hanging off you?

**Mr MACDONALD:** The trouble, Trevor, is you have not, I do not think, read the actual transcripts nor looked at the exhibits. You might have done a little bit but I do not think you have read very many, because if you read Mr Fang's evidence it starts off with a Chinese translator and there is a series of answers to questions that I believe, and still believe, were quite loaded, then they take the translator away, because he could clearly speak some English, and when you look at the answers there is a completely different complexion.

**CHAIR:** Ian, I am dealing with the context of the call for papers. In the lead-up to the call for papers not only did you know that Eddie Obeid's name was rattling around as having a connection with this call for papers but you knew a mate of yours in the form of Alan Fang, who you had been asked countless questions about at various times, including in the House, had been out to Eddie's property.

**Mr MACDONALD:** So? So what? Read the last part—

**CHAIR:** So what?

**Mr MACDONALD:** Read the last part of his evidence. You are going on what you have read in the papers; you have not looked at what he actually said once he got to speak in English and the answers that he gave in the questioning.

**CHAIR:** What I am talking about is what you knew. You knew as at 10 November, did you not, not only that there had been an article in the *Financial Review* with regard to the exploration licence, with regard to Eddie Obeid, and you also had a mate in the form of Alan Fang, who was also having dealings with Eddie Obeid and had been out to the property? You knew that as at 10 November, did you not?

**Mr MACDONALD:** But so? So what?

**CHAIR:** So a smart political operator like you would put two and two together and know this is a hot potato surely?

**Mr MACDONALD:** No, I disagree.

**CHAIR:** Fair dinkum?

**Mr MACDONALD:** Yes, totally. You have got to read his evidence, Trevor. You have come in here with an impression that has been given to you by perhaps the Fairfax media—I am just guessing—and in that impression are some facts which when you read the full evidence get totally turned on their head.

**The Hon. JOHN AJAKA:** Let us take the very next day almost after what the Chair was raising with you, and that is a question by Lee Rhiannon on 12 November 2009, where she clearly asks you, as the Minister, about your involvement in the exploration processes of Cascade Coal and Mount Penny and considering the involvement of Mr Obeid, which you answer. So even at 12 November not only has it been put to you from reports you are reading in the media but also it is being very specifically put to you by one of the members of the Legislative Council about your involvement in relation to this mining tenement and Eddie Obeid's involvement. So you at least knew that was definitely occurring.

**Mr MACDONALD:** I have said I read the *Financial Review* article. There is no question; I have not said I have not. But I did not see the sort of major consequences of it that you are trying to read into it.

**The Hon. JOHN AJAKA:** This question was asked of you two days after the notice of the SO 52 papers. So you have got notice of the SO 52, you have got notice of what is occurring in the media, you have got notice by Lee Rhiannon putting a question to you and you are aware of these documents, these emails, and at least the briefing paper that occurred on 9 May. You were aware of the existence of those papers.

**Mr MACDONALD:** I was not aware of those emails. I ask questions of people I do not know in my staff, I do not follow what they actually do to obtain information. So I was not aware of the vast majority of the documents that were tabled by the Independent Commission Against Corruption, I was not aware of that at all.

**CHAIR:** John, do you want to have a breather?

**The Hon. JOHN AJAKA:** Yes, I am happy to do that.

**CHAIR:** Jeremy?

**The Hon. JEREMY BUCKINGHAM:** You said that your relationship with members of the Labor Left was not good in other places. You just said before that there were people leaking against you. Do you believe that those people were Luke Foley and Nathan Rees? Do you believe that you were being undermined in your role in 2009?

**Mr MACDONALD:** I will only give you one example, and I think it is illustrative. An article by Simon Benson attacked my wife, Anita, in September 2008 within a week of Nathan becoming Premier. Despite the fact that Anita had worked for many, many years, including a stint working for him when he took over the Water ministry, the article was an attack on her because she had gone from, I think it was called, Water and Electricity, Energy and Water—it was previously Natural Resources—and she switched across to DPI by applying for a job and was successful in getting that job. The article attacked her for working with me, coming in to work in my department. Unfortunately, the person who leaked it from Mr Rees's office forgot to say, "This is off the record" and Mr Benson, who is a titan of this place in the past, put in that a spokesman for the Premier said whatever, and it was not nice. So he came and apologised to me at that time.

**The Hon. JEREMY BUCKINGHAM:** So you clearly believed that you were being undermined by members of your own party and by Nathan Rees at that time. You said that you resigned, that you were in the gun basically after the State conference—

**Mr MACDONALD:** It was not after; I resigned during the conference, on the Sunday.

**The Hon. JEREMY BUCKINGHAM:** During the conference, but you believed you were about to be sacked.

**Mr MACDONALD:** Well, he gave me an option, basically. It was like, "Resign or I'll throw you out. I'll go to the Governor", so I said, "I'll resign, thank you, Premier."

**The Hon. JEREMY BUCKINGHAM:** That is the former Premier Nathan Rees?

**Mr MACDONALD:** Yes, correct.

**The Hon. JEREMY BUCKINGHAM:** So the former Premier Nathan Rees has said that your handling of the tender process and allocation of the Mount Penny coal licences was one of the factors that led him to decide to remove you as Minister. How do you respond to that?

**Mr MACDONALD:** Rubbish. He was for a year and a quarter, from the moment he became Premier—in fact, I might as well, this is turning into a Labor Party session, which I did not particularly want it to do, but take yourself back to the Sunday night after he was elected by caucus as Premier. He rings me and says, "Ian, these are your portfolios, but I want you to do one thing: I want you to resign for Luke Foley" within a year it was; he gave me a year. I then had quite a debate with him over the issue and he dropped it at that point. But that did not stop the constant leaking that was going on and the failure of him to defend a Minister on many things that I thought were totally defensible. I can go into that in quite detail.

**CHAIR:** You are only responding to the questions that you are asked but I invite you not to respond to that.

**Mr MACDONALD:** I think I am going to cancel my stuff this afternoon because I have got a lot more to say.

**CHAIR:** I would like us to keep generally to the terms of reference as opposed to a dissertation on the inner workings of the ALP.

**The Hon. JEREMY BUCKINGHAM:** I certainly understand that, Chair, but the key thing is that you accept that the former Premier has said that it was one of the reasons that he removed you—he gave you the option to leave—

**Mr MACDONALD:** I disagree with that. He wanted me out for Luke. He wanted Luke to be—

**The Hon. JEREMY BUCKINGHAM:** That is his assertion, that that was one of the excuses. Do you recall the *Australian Financial Review* article entitled "Labor powerbroker hits a rich seam", which was published on 28 October 2009? It has been mentioned before. Do you recall that?

**Mr MACDONALD:** I recall it. We have talked about this.

**The Hon. JEREMY BUCKINGHAM:** What was your reaction to the article?

**Mr MACDONALD:** It was the first time I knew the name of his property, if I remember rightly, and that it was actually in that ELA.

**The Hon. JEREMY BUCKINGHAM:** It was the first time you knew the name of Eddie Obeid's property?

**Mr MACDONALD:** That it was in it, because we take it back to Anglo, the questions about Anglo—I believed that his property was in the Anglo area, because they wanted to know about the licences held by, I think, Peabody at that time.

**The Hon. JEREMY BUCKINGHAM:** So the first time you knew that and that there was an issue around this was—

**Mr MACDONALD:** Held by Anglo, sorry.

**The Hon. JEREMY BUCKINGHAM:** —when you actually read it in the newspaper?

**Mr MACDONALD:** Yes.

**The Hon. JEREMY BUCKINGHAM:** So you were never contacted, your office was never contacted by the journalist who wrote the story inquiring as to any role you had in it?

**Mr MACDONALD:** I do not know. I do not recall being asked any questions about it. My office may well have been but I do not know.



**CHAIR:** If somebody rang up your office, a journalist rang up your office asking about a connection between an exploration licence and Eddie Obeid, are you saying that Mr Benson would not have come and waved his arms and said, "The bomb is going to go off"?

**Mr MACDONALD:** You keep putting it in that way, Trevor. It is not necessarily right at that time.

**The Hon. JEREMY BUCKINGHAM:** Mr Macdonald, you just said the first time you knew about it was when you read it in the *Australian Financial Review*, but now you are saying—

**Mr MACDONALD:** Was it the *Australian Financial Review*? The *Australian Financial Review* said they had a property, yes. I have not seen the articles for years.

**The Hon. JEREMY BUCKINGHAM:** But prior to the article actually being published did you talk to Eddie Obeid about the article, about the fact that there may be a story about that emerging?

**Mr MACDONALD:** No, I do not think I did.

**The Hon. JEREMY BUCKINGHAM:** After the article was published did you talk to Eddie Obeid about it? Did you talk to him about the issues arising from it?

**Mr MACDONALD:** I do not recall actually having a discussion with him, no.

**The Hon. JEREMY BUCKINGHAM:** You did not talk to him at all about it?

**Mr MACDONALD:** I do not recall. At that time I was in another dispute that was going on—it was a party one—and that was occupying my mind the most. But I do not recall—

**The Hon. JEREMY BUCKINGHAM:** I am interested why you keep saying you think that the two issues were not connected—the fact that you were about to be removed from office as a Minister and your handling of this coal licence. You do not think that those two things were connected, that they were happening at exactly the same time?

**Mr MACDONALD:** No.

**The Hon. JEREMY BUCKINGHAM:** When there were articles emerging about your handling of the exploration licence?

**Mr MACDONALD:** No.

**The Hon. JEREMY BUCKINGHAM:** You had SO 52s being moved in Parliament, questions in Parliament and you were being removed from office and the Premier is saying one of the reasons he removed you from office was because of your handling?

**Mr MACDONALD:** He did not say that at the time; he has done this three years later. A bit of hindsight analysis on his part, I would have thought—programmically hindsight.

**The Hon. JEREMY BUCKINGHAM:** Did you discuss with any of your Cabinet or caucus colleagues the issues raised in the *Australian Financial Review* at the time?

**Mr MACDONALD:** No, not that I recall.

**The Hon. JEREMY BUCKINGHAM:** Did the Premier or his representatives raise the article with you or seek a briefing or, alternatively, did you volunteer one to the Premier or his representatives?

**Mr MACDONALD:** All no, no, no.

**The Hon. JEREMY BUCKINGHAM:** Prior to the *Australian Financial Review* article being published, the former Premier Nathan Rees requested his senior staff and Director General of Premier and Cabinet to conduct an audit—

**CHAIR:** Jeremy, you can slow down. We have got plenty of time.

**The Hon. JEREMY BUCKINGHAM:** Sorry, I have got lots of questions.

**Mr MACDONALD:** When did he ask?

**The Hon. JEREMY BUCKINGHAM:** I will start again. Prior to the *Australian Financial Review* article being published, the former Premier Nathan Rees requested his senior staff and Director General of Premier and Cabinet to conduct an audit and make inquiries into how you and your department were handling the allocation of the Mount Penny coal exploration licences. Do you recall those inquiries?

**Mr MACDONALD:** No, none whatsoever.

**The Hon. JEREMY BUCKINGHAM:** None of the Department of Premier and Cabinet staff or none from the Premier's office contacted your office, or you were not made aware of them contacting the department at any stage?

**Mr MACDONALD:** No, this is the first I have heard of this.

**The Hon. JEREMY BUCKINGHAM:** You did not think at any stage that Nathan Rees was sniffing around on this issue, making inquiries?

**Mr MACDONALD:** I was aware he was sniffing around on anything he could find at the time. I did not know this though. This is all new to me.

**The Hon. JEREMY BUCKINGHAM:** In terms of the *Australian Financial Review* story and the coal licences, you do not think he had any role in leaking that story?

**CHAIR:** Just before you answer that question, because I am sure I know what the answer is going to be, how do we draw this into the terms of reference?

**The Hon. JEREMY BUCKINGHAM:** I am just about to do that, sorry, Chair.

**Mr MACDONALD:** Am I going to answer now what you have asked me?

**CHAIR:** No, I think we will get him to come to the terms of reference, because I think we know what you are going to say.

**The Hon. JEREMY BUCKINGHAM:** I just think it is interesting that such a significant story would elicit such a paltry response from you in terms of discussing it with your Cabinet colleagues, your caucus colleagues, but I will take—

**Mr MACDONALD:** But, Jeremy, I am not aware of what you are talking about that there were any discussions going on in Mr Rees's office.

**The Hon. JEREMY BUCKINGHAM:** Okay, fair enough.

**Mr MACDONALD:** They certainly did not tell me what they might have told the *Australian Financial Review* or vice versa. I do not know. I have no idea about it.

**The Hon. JEREMY BUCKINGHAM:** Fair enough. You said something contradictory before that you had the numbers to oppose SO 52s and that you were good at getting the numbers to oppose them and herding the cats in the Legislative Council, as it were.

**CHAIR:** I have been called many things, but not that.

**The Hon. JEREMY BUCKINGHAM:** But you had a policy in 2008 and 2009 of just allowing all SO 52s through?

**Mr MACDONALD:** I do not know if it was a policy, but I generally took the view that I did not take much notice of the paperwork going out.

**The Hon. JEREMY BUCKINGHAM:** Why? Why was that the case? Why did you not oppose SO 52s?

**Mr MACDONALD:** Why do I have to oppose SO 52s? I do not think there is a rule saying I had to.

**The Hon. JEREMY BUCKINGHAM:** No, but generally there could be sensitive information in those. Are you saying that you did not oppose—

**Mr MACDONALD:** For instance, when I was a Parliamentary Secretary I had hours to spend herding the cats, to use Trevor's expression.

**CHAIR:** No, it was not mine.

**Mr MACDONALD:** Jeremy's, sorry.

**CHAIR:** I was objecting to the term.

**Mr MACDONALD:** Sorry, my confusion. I had plenty of time to do all of that, and when I had lighter duties I would concentrate and be able to do that. But at this time we are talking about I had four director generals reporting to me and four major departments, which included sections that were former departments.

**The Hon. JEREMY BUCKINGHAM:** You opposed some and you let some through, but surely—

**Mr MACDONALD:** Earlier, but what I said to you was that I do not think I opposed any in 2008-09. I have not checked the record but I do not think I opposed many, if any.

**The Hon. JEREMY BUCKINGHAM:** The speech that was prepared that was in opposition to the SO 52—that spoke against the SO 52—your office and you had no role in drafting that; you did not request it?

**Mr MACDONALD:** No.

**The Hon. JEREMY BUCKINGHAM:** It was just done as a fait accompli; it was just something the department did?

**Mr MACDONALD:** As rote, yes, as formula.

**The Hon. JEREMY BUCKINGHAM:** You did not lobby any of the crossbenchers or talk to any of the crossbenchers or The Greens or any other party about this issue?

**Mr MACDONALD:** No.

**CHAIR:** In terms of that document that was prepared, that is the speech in opposition—

**Mr MACDONALD:** I have never seen it, so?

**CHAIR:** I am not doubting you in that. That was prepared by Mr Brad Mullard?

**Mr MACDONALD:** Yes, his department would have prepared it.

**CHAIR:** He was not the director general.

**Mr MACDONALD:** But he was head of mining.

**CHAIR:** If there were issues relating to mining, which is where I am going, in terms of making an inquiry, would you or your chief of staff or deputy chief of staff go through the Director General, Mr Sheldrake, or would you go directly to Mr Mullard to deal with matters?

**Mr MACDONALD:** I do not know if there was a specific policy in relation to that.

**CHAIR:** I am not asking you what the policy was; I am asking you what the practice was.

**Mr MACDONALD:** I am not sure, from looking at thousands and thousands of pages of the Independent Commission Against Corruption [ICAC] documents, going back over decisions in the past, it seemed to be pretty—

**CHAIR:** I am not asking you about looking at ICAC documents. What I am asking you about is what your practice was as the Minister with regard to who were you going to with regard to issues relating to, for instance, exploration licence matters?

**Mr MACDONALD:** Probably Brad most of the time you would go to on a mining-specific matter. But, the head of mining.

**The Hon. JEREMY BUCKINGHAM:** Did the department provide a briefing note suggesting it should be opposed?

**Mr MACDONALD:** I have not seen the briefing note and no-one said to me to oppose it or to do anything in relation to it.

**The Hon. JEREMY BUCKINGHAM:** I assume you are aware that many of the documents that are central and have been relied on by ICAC in their investigations—Indus, Acacia and Jasper investigations—were not provided in the return in response to the order for papers.

**Mr MACDONALD:** I do not think Indus papers would have been relevant. Do you mean Jasper?

**The Hon. JEREMY BUCKINGHAM:** Yes, the Jasper one.

**Mr MACDONALD:** I am aware of that now, but I was not aware of it until it was raised in the papers in the last few months.

**The Hon. JEREMY BUCKINGHAM:** I would just be interested in your response to that. Do you think that is just coincidence, or do you think that there was a deliberate attempt to cover up this exploration licence?

**Mr MACDONALD:** No, I do not believe—what? You are suggesting Mr Primrose's office engaged in a cover-up?

**The Hon. JEREMY BUCKINGHAM:** I am asking.

**Mr MACDONALD:** I am shocked.

**The Hon. JEREMY BUCKINGHAM:** Well, it is a good question. Do you believe that—

**CHAIR:** No, you cannot go there. You have no basis for it.

**Mr MACDONALD:** What are you trying to influence, Trevor? I am answering Jeremy.

**CHAIR:** I am happy for you to give evidence about what you know. I am not actually inviting you to give an opinion about a former colleague about what he may or may not have done without there being any—

**The Hon. JEREMY BUCKINGHAM:** It goes to the motivation. Surely this issue, and you in actual fact, have turned out to be an albatross around the Labor Party's neck. Do you think there was a motivation from the former Premier, and potentially his Minister, to have your mess cleaned up?

**Mr MACDONALD:** Let us put it this way: If you read the evidence, if you read my submission in relation to these matters, you will get an entirely different picture.

**The Hon. JEREMY BUCKINGHAM:** You do not think there was a mess? You do not think this is a big mess?

**Mr MACDONALD:** I do not think it is a big mess, no. It is a political mess, there is no question of that, but, in terms of the decision-making that occurred in those days at that particular point of time, I was not supplied with any information about landholdings in any ELA anywhere in the State, nor, indeed, the shareholdings of proponents.

**The Hon. JEREMY BUCKINGHAM:** That is clearly something that is being dealt with by ICAC, but, politically, the fact that we are having that investigation and the fact that this is a scandal—some would describe it as a scandal—is real. Do you think there could have been a motivation on behalf of the Government to not reveal everything that had been occurring in your office?

**Mr MACDONALD:** No. Well, I do not know what any particular person outside my office was doing. I am glad you have mentioned some things about the former Premier Mr Rees. I certainly was not aware of that. It was never raised by me, by any of my colleagues and—

**The Hon. JEREMY BUCKINGHAM:** Mr Obeid never raised it?

**Mr MACDONALD:** Never raised the article? Not that I recall, no. Mr Obeid kept his counsel, and I think that has been quite clearly demonstrated in the course of several inquiries now. He did not go around saying—he never said to me, "I own shares in this," or, "I own this." It was never the discussion.

**The Hon. JEREMY BUCKINGHAM:** You do not think it was in the former Government's interest and the former Premier's interest, seeing as you had been either sacked or resigned, to move on from this, to not have all of these documents tabled in Parliament?

**Mr MACDONALD:** You will have to call Mr Rees and his office to ascertain what role, if any, they played in this. I am sure you have—I do not know. Has Mr Primrose appeared? I have not seen his name in the papers.

**CHAIR:** Yes.

**Mr MACDONALD:** In a public hearing?

**CHAIR:** There is a transcript on the site.

**Mr MACDONALD:** Was it an open, public hearing?

**CHAIR:** I am not really here to answer the questions, but the answer is it was—

**Mr MACDONALD:** So he had a private hearing. I get it now.

**CHAIR:** We would have listened to any reasonable submission you would have put, Ian.

**Mr MACDONALD:** I would suggest that if you want to pursue this aspect of it that you do indeed call some other people, but I do not think there was a conspiracy on this issue at all. I think that, given the amount of documents we have finally seen in relation to the matter, like thousands and thousands and thousands of pages, that—

**The Hon. JEREMY BUCKINGHAM:** The key incriminating ones were not included just by luck?

**Mr MACDONALD:** Not incriminating. I do not know what was included or what was not. I have not even looked at what was included and what has not been.

**The Hon. JEREMY BUCKINGHAM:** Why not? Should you not have taken an interest in that? You have not looked at the matrix of documents that ICAC has relied upon and that were not provided?

**Mr MACDONALD:** No.

**The Hon. JEREMY BUCKINGHAM:** Why not?

**Mr MACDONALD:** If ICAC thought there was something untoward done by me I am sure they would have been trying to highlight this as much as they possibly could. They have obviously referred it to higher minds here to try to delve into these matters.

**The Hon. MATTHEW MASON-COX:** Mr Macdonald, good to see you.

**Mr MACDONALD:** Good to see you, Matthew.

**The Hon. MATTHEW MASON-COX:** I am just wondering about a couple of things. If the Premier at the time, Mr Rees, and Mr Foley were stalking you, who was protecting you?

**Mr MACDONALD:** I was protecting myself quite ably I can tell you.

**The Hon. MATTHEW MASON-COX:** There was no-one that you were seeking counsel from in relation to what was coming up on the Saturday and Sunday?

**Mr MACDONALD:** No. The person I would talk to most was John Della Bosca, who was my closest friend in the place.

**The Hon. MATTHEW MASON-COX:** He was informing you of what might happen at the conference on the Saturday and the Sunday that was coming up, the Labor Party conference?

**Mr MACDONALD:** I am not going to disclose the source of my information but, illustrative, you might recall when there were documents released about my office and my expenses on entertainment from a previous couple of years, just before that came out, my expenses, a total of around \$10,000 over two years, I think 2006-07, it was a period before this actual release—

**CHAIR:** These are the ones you paid, I take it?

**Mr MACDONALD:** Yes. Or my office paid, yes.

**CHAIR:** As opposed to others paid?

**Mr MACDONALD:** Yes, correct. It was about \$8,000 or \$9,000. Mr Benson had received those papers and was going to do a marvellous job on me. However, someone from the then Premier's office, Mr Nathan Rees's office, supplied me with Mr Stoner's expenses, which had not been supplied to me, nor had what had been released been supplied to me, it had gone to Mr Stoner's office. It showed that Mr Stoner in fact spent twice as much as I had over the same period. His was \$19,000 for the two years and mine was \$8,000 or \$9,000. I was State Development Minister, amongst other things, and had to take the consular corps in regular exchanges. You know, they would take me somewhere and I would take them. That went through that period. I am just saying that fortunately at times there is a God who can provide one with some information. Of course, needless to say, Mr Stoner became the focus of that story.

**The Hon. MATTHEW MASON-COX:** I am just trying to get a flavour at the time.

**Mr MACDONALD:** You would get some information.

**The Hon. MATTHEW MASON-COX:** You have put to us that there was this conference coming up, you were worried about your future, you have got this important Standing Order 52 that you are really not focusing on because you are worried about what is about to happen. Obviously, you talk to your colleagues, you sort of speculate about what is coming up. Those colleagues would include Mr Della Bosca, Mr Eddie Obeid and probably Mr Hatzistergos, all in that Chamber with you.

**Mr MACDONALD:** I am not sure about Mr Hatzistergos.

**The Hon. MATTHEW MASON-COX:** Mr Obeid and Mr Della Bosca would be people that you discussed politics with and would discuss the flavour of the day, if you like, or the issue of the day.

**Mr MACDONALD:** The Ministers would generally chat about that.

**The Hon. MATTHEW MASON-COX:** It was collegiate in that sense. I wanted to ask, in that context, obviously you have got the Premier, who you are very wary of, who is stalking you at the time.

**Mr MACDONALD:** No, I have said Mr Foley was stalking me.

**The Hon. MATTHEW MASON-COX:** Mr Foley is stalking you. Let us go to the Premier for a moment. So the Premier, at that time, was concerned about the way you were administering your portfolios. You were not aware of that but that is evidence that has been put to this Committee. The Premier also put to us, in relation to your submission and I would like to put this to you and get your response to it.

**Mr MACDONALD:** I am sorry, who put this to you?

**The Hon. MATTHEW MASON-COX:** I want to put this to you: Your submission states that you had no discussions with any Minister, ministerial officer or departmental official relating to Mr Gay's resolution on 12 November 2009 at that time or subsequently.

**Mr MACDONALD:** Yes, in essence that is right.

**The Hon. MATTHEW MASON-COX:** We put that to the Premier at the time, Mr Nathan Rees, and his response to that submission made by you is, "That is either a lie or it demonstrates a cavalier and reckless approach to Standing Order 52." What is your response to that?

**Mr MACDONALD:** He obviously has not been in our House dealing with section 52s over the period 2008-09. They were not seen in the light of significance that they had previously done to us. So Mr Rees has been here, is that right?

**The Hon. JEREMY BUCKINGHAM:** Sure has.

**Mr MACDONALD:** He would want to say plenty.

**The Hon. JEREMY BUCKINGHAM:** He did.

**Mr MACDONALD:** I did not know he was here.

**The Hon. MATTHEW MASON-COX:** So what I am stating to you is that clearly it was a serious matter considered by the Premier at the time in relation to how one deals with Standing Order 52s but to you, as the Minister responsible, it was something you simply were not focused on at the time?

**Mr MACDONALD:** Absolutely. I think he was the cause of my lack of focus, the Premier at that point, yes.

**The Hon. MATTHEW MASON-COX:** At the same time, the flavour of the times was you, with John Della Bosca and Eddie Obeid, were looking at, if you like, the State conference coming up on that weekend.

**Mr MACDONALD:** Yes, it was widely discussed.

**The Hon. MATTHEW MASON-COX:** Widely discussed and at the same time you were also aware that Eddie Obeid had land in the Mount Penny area that had been the subject of newspaper articles.

**Mr MACDONALD:** One or two articles, I do not know if there was a second one but yes.

**The Hon. MATTHEW MASON-COX:** We had the Lee Rhiannon question as well and Eddie Obeid would have known about that, being a member of the House as well. I just want to clarify whether Eddie Obeid spoke to you at all in those days, leading up to that conference, about this issue?

**Mr MACDONALD:** I cannot recall if we did; I cannot recall that.

**The Hon. MATTHEW MASON-COX:** You cannot recall that Eddie Obeid, who stood to make tens of millions of dollars in relation to this issue—

**Mr MACDONALD:** I did not know what he was going to make at all.

**The Hon. MATTHEW MASON-COX:** He held land. You would be aware, as Minister, that if you held land in an area which was going to be the subject of an exploration licence which was looking like being an area which was very much a coalmining and prospective area, that you were likely to make a lot of money if that coalmine were to proceed and that exploration licence—

**Mr MACDONALD:** I was not aware of his holding. Secondly, I had nothing to do with the creation of the boundaries about the ELA, nor indeed the S.

**The Hon. MATTHEW MASON-COX:** But you were aware that he held land in the area. You have said that—

**Mr MACDONALD:** Yes but I thought that was in the Anglo area you see. Well, in fact, the property is in both.

**The Hon. MATTHEW MASON-COX:** Right, it is in the area, naturally.

**Mr MACDONALD:** Yes but if it is not within the boundaries I do not think, you know, you could argue that it is going to be worth anything.

**The Hon. MATTHEW MASON-COX:** But you were aware that he was holding some land in a prospective coalmining area that is the subject of the questioning from Lee Rhiannon and is the subject of the Standing Order 52 from the Hon. Duncan Gay on the Tuesday before that State conference. Okay?

**Mr MACDONALD:** Yes.

**The Hon. MATTHEW MASON-COX:** So you are saying to this Committee that you had no discussion with Eddie Obeid, your political friend, in relation to land that he held that could be land that would produce millions of dollars to him if this were to proceed. He never raised with you and you had no discussions whatsoever about a call for papers that, if you like, would produce all this information about the tender process?

**Mr MACDONALD:** I certainly did not have a discussion with him.

**The Hon. MATTHEW MASON-COX:** Eddie never raised it with you? He never said, "Don't worry about that"?

**Mr MACDONALD:** We certainly never had a discussion about that call for papers.

**The Hon. MATTHEW MASON-COX:** Zero?

**Mr MACDONALD:** Zero.

**The Hon. MATTHEW MASON-COX:** I put it to you, Mr Macdonald, that that just beggars belief.

**Mr MACDONALD:** I am telling you, I did not have a discussion with him about the section 52.

**The Hon. JEREMY BUCKINGHAM:** What about the *Australian Financial Review* article? Are you saying that you and your colleagues did not discuss the probity or political sensitivities of that *Australian Financial Review* article that said that a decision of the Government was going to create a windfall worth hundreds of millions of dollars to a Minister?

**Mr MACDONALD:** Hundreds of millions of dollars?

**The Hon. JEREMY BUCKINGHAM:** Potentially.

**Mr MACDONALD:** Where? In the article it said that?



**The Hon. JEREMY BUCKINGHAM:** Yes. Are you saying you did not have a discussion on the probity or the political sensitivities with anyone in the Government?

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

**The Hon. JEREMY BUCKINGHAM:** Well then, you are a liar.

**Mr MACDONALD:** You cannot just say I am a liar.

**The Hon. JEREMY BUCKINGHAM:** I just did.

**Mr MACDONALD:** The point is, at the time I did not believe and I still hold this position entirely. Okay, going through it, I did not create the "S" and that is in the evidence. I did not create Mount Penny and that is in the evidence by the chief geologist. So you can go and read the chief geologist's evidence, Leslie Wiles. She created both, without direction from the department and certainly no direction from me.

**The Hon. JEREMY BUCKINGHAM:** That was not the question. The question was whether or not you talked about the *Australian Financial Review* article and, as politicians, when an article like that runs, with a scandal of monumental proportions breaking across the State, you would talk to your colleagues, you would talk to your Premier and you would talk to Eddie Obeid. To say otherwise is an affront to all of us here.

**Mr MACDONALD:** Oh, you know, I know The Greens are grandstanders of the greatest order but the fact is I did not speak to Rees. Did Rees say I spoke to him or he spoke to me?

**CHAIR:** Well, we are not going to go there. But what you are saying is that this was created by Ms Wiles, is that the case, this tender area?

**Mr MACDONALD:** I am happy to go back to the facts of the situation.

**CHAIR:** But are not the facts of the situation that what you say is that you look up some atlas?

**Mr MACDONALD:** Yes.

**CHAIR:** You come upon this area and it is as the result of your interpretation of some atlas that is in your office that you referred to from time to time, that we end up with you instructing Mr Gibson to go off and get a briefing on an area that you create or identify as Mount Penny?

**Mr MACDONALD:** Yes and I stand by that evidence. But also the fact is that Mount Penny is on all the departmental maps as the feature next to the Anglo licence area. Secondly, it is in the profile—

**CHAIR:** But you are the inspiration for this.

**Mr MACDONALD:** But hear me out.

**CHAIR:** You are the inspiration for this. It is as a result of your contemplation of an atlas that this comes into existence.

**Mr MACDONALD:** Because that was in the gap area. I had, with the Ulan seam, been invited to open up the new mine by Xstrata at Ulan. I was there—

**CHAIR:** But this was—

**Mr MACDONALD:** Wait a minute; listen to me.

**CHAIR:** This was to be, at the creation of exploration licences over small to medium areas. Small to medium areas was the terminology.

**Mr MACDONALD:** No, that is later on. You are getting your sequence out, quite dramatically so. The fact is that my initial asking, effectively, was, "What is in that gap between Anglo and Wilpinjong? I had just

extended the Wilpinjong mine that had been sold from Excel to Peabody. I had just done that in the six months or so beforehand and there was a gap between that and the Anglo. All I did was identify what was a feature in that gap. Now go and have a look at the 2008 mining industry profile and you will find not, you know, a page or so from me that gap highlighted in a map of the Ulan seam. I spent a lot of time answering questions in relation to this to the ICAC.

I am quite happy to continue on but the plain fact of the matter is that Ms Wiles identified the S and created the S that is in the evidence with Brad, the head of the department, just saying, "Find us some more exploration licence applications [ELAs] that we can put out to public tender." That is all he says to her. So she goes and identifies and creates the S. She creates it without any influence from me and calls it, I think, North Bylong, or something of that nature. She created the S. She then, in relation to the Mount Penny ELA itself, creates the smaller area in the S and it coincides with the Eddie Obeid properties or property, which is already in the S. The ICAC did not present that.

**CHAIR:** It is properties, is it not, because of the interests they owned in the surrounding area.

**Mr MACDONALD:** Yes but that was subsequent. It is already in the S when Leslie Wiles had put it up as one of the three large tenements that were going to go onto the block. So he was already in the big S and at that time probably would have gone to someone like China Coal and they would have paid, like the Shenhuas paid in the Watermark area, up to 10 times market value.

So she creates the S. Brad comes back to her some time down the track, another six weeks later or so and says, "We need to get some smaller ones out", because they had gone through the three large ones. I just kept pressing for Benalabri to go out because it had not been released at that stage and we had just got \$300 million from Watermark as an up-front payment and another \$375 million to come in, if the licence is ever granted. So \$675 million in one licence.

**CHAIR:** But you never got that for Mount Penny.

**Mr MACDONALD:** Yes but I did nothing in relation to whoever paid what for Mount Penny.

**CHAIR:** If you are talking about what was got from Watermark and the like—

**Mr MACDONALD:** Well, they are different resources. I am not even bothering—

**CHAIR:** Different resources?

**Mr MACDONALD:** Yes, one is humungous, like a billion tonnes of coal and one is, according to the evidence at ICAC, maybe 100 to 150 million tonnes.

**CHAIR:** Small beer? Is that your description?

**Mr MACDONALD:** No, I am not saying small beer but much smaller. Let me finish this. The actual Mount Penny area was created by Leslie Wiles, without direction as to where it would be within that area. It is a large area, it could have been at the other area, it could have been in the middle site—you name it, it could have been anywhere in that area. She determined the boundaries of that new ELA and why did she do it, as she told the commission? Because that was the worst bit of coal in that area and she wanted to keep the rest of that area available for a large ELA process in the future. That is why she created Mount Penny; nothing to do with me. I could go on.

The reopening I did not do. That was done, in the end, by the department. The department had already contemplated that six weeks or eight weeks before any such discussion occurred. And all I asked was, "Is it possible?" Because there was a large number of people or companies pressing, pressing to go on that list. I did not sign off in relation to the reopening; I was informed of the reopening. The panel did its work over a five- or six-month period. They did not report to me and seek my advice in relation to what they proposed. They reported to the department and the department concurred with their findings. So when this resolution comes along, even with the inconvenience that may be generated by the political issue of the Obeid family having an interest in an area, I was totally of the opinion—and I still am—that what occurred was legal and proper.

**CHAIR:** Fair dinkum?

**Mr MACDONALD:** Yes. Well, you have got to jump over the fact that I did not create the S, nor did I create the Mount Penny licence area, nor did I reopen the process.

**The Hon. JEREMY BUCKINGHAM:** You initiated the reopening though.

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

**The Hon. JEREMY BUCKINGHAM:** You just said you did.

**Mr MACDONALD:** No, I asked, "Is it possible?" I did not say, "Open it."

**The Hon. JEREMY BUCKINGHAM:** So the Minister says, "Is it possible to reopen it?"

**Mr MACDONALD:** Yes.

**The Hon. JEREMY BUCKINGHAM:** And that is not reopening it?

**Mr MACDONALD:** No.

**The Hon. JEREMY BUCKINGHAM:** You are kidding.

**Mr MACDONALD:** He says I did not direct him to do it.

**The Hon. JEREMY BUCKINGHAM:** Oh no, you just asked.

**Mr MACDONALD:** No, I just said, "Is it possible?"

**The Hon. JEREMY BUCKINGHAM:** Yes, "Is it possible?"

**Mr MACDONALD:** Hold an inquiry into some of the other stuff; I would love to get into it as well.

**The Hon. MATTHEW MASON-COX:** Coming back to the terms of reference—

**Mr MACDONALD:** Well, I am going to thank the Committee for giving me an opportunity to say some of this, because this is all in the evidence. It is in the submission that, if you ask me for it, I am happy to give it to you under parliamentary privilege if you request it and you will see that, by a proper analysis of the documentation, that I did not and I am not responsible for the creation of that particular area. The process we were part of, we had a discussion about the process, no doubt about that, but I did not create the Mount Penny area. No amount of articles in the *Sydney Morning Herald* can ever prove that. I did not grant the licences, et cetera, et cetera.

**CHAIR:** Mr Macdonald, can I tell you that with regard to your invitation, we will consider that after today.

**Mr MACDONALD:** Yes, that is fine.

**CHAIR:** And we will communicate with Mr Dan with regard to that.

**Mr MACDONALD:** Yes, sure.

**CHAIR:** Because I know of the circumstances in which you put that down.

**Mr MACDONALD:** Sure. I am happy—

**CHAIR:** I hear what you are saying.

**Mr MACDONALD:** —because I have only covered a few. I can cover virtually everything that has been put forward by the Independent Commission Against Corruption.

**CHAIR:** Sure. But we will deal with that and communicate with Mr Dan in due course.

**Mr MACDONALD:** Thank you.

**The Hon. MATTHEW MASON-COX:** We have had the State Labor Conference on the Sunday. You have got the call from Nathan; it happened in the morning, you said, at about—

**Mr MACDONALD:** Eleven o'clock, 12 o'clock.

**The Hon. MATTHEW MASON-COX:** Eleven o'clock. You were probably having breakfast at that stage, or whatever. So you have got the call.

**Mr MACDONALD:** I was waiting for the call.

**The Hon. MATTHEW MASON-COX:** What do you do next?

**Mr MACDONALD:** What do I do next?

**The Hon. MATTHEW MASON-COX:** Yes.

**Mr MACDONALD:** I informed Jamie, or I think I did, or someone did, that we were no longer in the Ministry and then I rang a couple of media outlets and went to work.

**The Hon. MATTHEW MASON-COX:** "Went to work"? What does that mean?

**Mr MACDONALD:** Well, I went to work to rectify the situation. Well, I did—I think the record shows that I was on Channel Nine that night and I think on Channel Ten making certain statements.

**The Hon. MATTHEW MASON-COX:** So you rang Jamie, and did Jamie come over to your home and have a discussion with you?

**Mr MACDONALD:** I do not think so. I do not—I do not think so, but he may have, I do not know.

**CHAIR:** Just going back to you rectifying the situation, do I take that to mean that you were working towards your return to the Ministry as from essentially the moment that you were defenestrated.

**Mr MACDONALD:** Correct. And that became the centre of my activity. I think it is reasonably well documented.

**CHAIR:** So I take it that when you meet with Jamie and others at your house, I think it is on the Sunday morning—

**Mr MACDONALD:** Did he come over, did he? I am not aware of that.

**CHAIR:** I think that is his evidence.

**The Hon. MATTHEW MASON-COX:** That is his evidence, yes.

**Mr MACDONALD:** Well, that is okay.

**CHAIR:** The message that you are giving, whether it is at home or somewhere else, is essentially, "Don't worry, fellas. We'll be back."

**Mr MACDONALD:** I was not that presumptuous at that stage.

**CHAIR:** Were you not?

**Mr MACDONALD:** But I had said I was not going to take it.

**CHAIR:** Right.

**The Hon. MATTHEW MASON-COX:** Did you speak to anyone else like Della or Eddie, who obviously were in it with you, so to speak?

**Mr MACDONALD:** I spoke to everyone who would listen; whether I spoke to—I probably spoke to everyone.

**The Hon. MATTHEW MASON-COX:** You probably spoke to Eddie.

**Mr MACDONALD:** Yeah, yeah. I probably would have spoken to Eddie.

**The Hon. MATTHEW MASON-COX:** You probably spoke to Della.

**Mr MACDONALD:** Yeah, I did.

**The Hon. MATTHEW MASON-COX:** You spoke to Jamie. You had a meeting at your home. Do you remember what you discussed at that meeting?

**Mr MACDONALD:** I do not think I discussed all that much at that point. I did not have a pathway at that point, only a sense of injustice.

**The Hon. MATTHEW MASON-COX:** But you knew you had resigned from the Ministry because you had no alternative. So you had to draft a document—a letter of resignation, if you will. I presume that you drafted that yourself, do you remember?

**Mr MACDONALD:** I cannot quite remember how we did it, but it had got done.

**The Hon. MATTHEW MASON-COX:** It is a really important document. Do you remember signing it?

**Mr MACDONALD:** Yes. Unfortunately, I remember signing it.

**The Hon. MATTHEW MASON-COX:** It is always a sad moment, is it not?

**Mr MACDONALD:** You may get a chance one day.

**The Hon. MATTHEW MASON-COX:** One day.

**Mr MACDONALD:** I would have thought Trevor would have been there by now.

**The Hon. MATTHEW MASON-COX:** I am very surprised, but one day.

**Mr MACDONALD:** Duncan, after his thirty-fifth year in the Parliament, might stand aside for Trev.

**CHAIR:** Nuh.

**The Hon. MATTHEW MASON-COX:** Then you have had the meeting with Mr Jamie Gibson, your chief of staff. Jamie informed us then that he went to the ministerial office with other staff members.

**Mr MACDONALD:** I am not aware of what he did.

**The Hon. MATTHEW MASON-COX:** You are not aware. You do not remember? It would be a fair expectation you would have had a chat to him about, "Well, we have to deal with the ministerial office and ensure that document relevant is all sorted", as it has to be when a Minister resigns or leaves office.

**Mr MACDONALD:** No.

**The Hon. MATTHEW MASON-COX:** Did you have any discussion about, "What do we do next, Jamie?"

**Mr MACDONALD:** Well, I think he was going to talk to Premier's about what is done. That was my understanding.

**The Hon. MATTHEW MASON-COX:** Right.

**Mr MACDONALD:** Because I had not been through this situation previously.

**The Hon. MATTHEW MASON-COX:** Okay.

**Mr MACDONALD:** Other than in 1988.

**The Hon. MATTHEW MASON-COX:** So you were hitting the phones. You sent Jamie off to the office. Did you instruct him to go through the documents at all?

**Mr MACDONALD:** "Talk to Premier's. Sort it out."

**The Hon. MATTHEW MASON-COX:** So you delegated that responsibility to Jamie. Is that what you are saying?

**Mr MACDONALD:** Yes. I delegated every administrative matter that I could. I was more interested in policy and the issues.

**The Hon. MATTHEW MASON-COX:** Okay. It appears that that resignation was not accepted until the Tuesday. Is that your understanding?

**Mr MACDONALD:** No. I was out that day. I do not know what—

**The Hon. MATTHEW MASON-COX:** You were out that day: In your mind, you were gone.

**Mr MACDONALD:** Yeah, yeah, yeah—absolutely.

**The Hon. MATTHEW MASON-COX:** The office itself took some time to sort through the documentation and the like, which brings us to some of the issues in relation to missing documentation. We have a situation—

**Mr MACDONALD:** Are you suggesting there is missing documentation additional to what the Independent Commission Against Corruption has, or?

**The Hon. MATTHEW MASON-COX:** No, no, just missing documentation in relation to Standing Order 52.

**Mr MACDONALD:** You are talking about what is not in the matrix.

**The Hon. MATTHEW MASON-COX:** Yes. Can I clarify just one other issue before I move on: It has been put to this Committee that one of the likely occurrences or what actually happened was that you, as the Minister, asked for documentation to be destroyed or removed in relation to Standing Order 52—

**Mr MACDONALD:** No, no.

**The Hon. MATTHEW MASON-COX:** —before you actually left the office.

**Mr MACDONALD:** Oh, that is nonsense—absolute nonsense.

**The Hon. MATTHEW MASON-COX:** I just want to put that to you.

**Mr MACDONALD:** Totally. And whoever said that, that is a total lie.

**CHAIR:** Mr Macdonald, I know what Mr Mason-Cox has said with regard to other documents, but for instance when you answered the question on 12 November before the House to Ms Rhiannon, I suggest to you that during the answering of that question you were handed a briefing note to answer the question.

**Mr MACDONALD:** Yes, well I may have. I always had briefing notes about just about every issue.

**CHAIR:** Right. So this is after the call for papers has gone through the House. You are handed a briefing note, which no doubt was for assistance in answering the question from Ms Rhiannon, and that document does not form part of the Independent Commission Against Corruption matrix. Yet plainly there were documents in your briefing folder that have gone somewhere.

**Mr MACDONALD:** I did not take them. I never held my briefing folder.

**CHAIR:** Right. The document that you held in your hand on 12 November was a briefing document relating to Mount Penny that does not form part of the Independent Commission Against Corruption matrix and was not produced in the call for papers. Can I suggest to you that that is an example of a document which has, for instance, been destroyed in your office.

**Mr MACDONALD:** Well, it cannot be destroyed.

**CHAIR:** Can it not?

**Mr MACDONALD:** No. It would require someone destroying the computers. It would be generated and it would be based on a departmental brief, so to think that it is destroyed is impossible because they have restored everything.

**CHAIR:** You would agree with me that if it does not form part of the call for papers—

**Mr MACDONALD:** Then I do not know. I do not know.

**CHAIR:** —and does not form part of the matrix that it is, for a start, another document that is in existence somewhere there.

**Mr MACDONALD:** Well, I do not know. I presumed it would have been prepared by the department and forwarded through, as all the other documents were. My officers may have altered it, but they would have done it on their computers and I have no idea what has happened. I did not use it. I just said as I saw it.

**CHAIR:** Okay.

**The Hon. MATTHEW MASON-COX:** So we are still here on the Sunday. Your office is being sorted by Mr Gibson.

**Mr MACDONALD:** With—he was meant to go to—

**The Hon. MATTHEW MASON-COX:** Your mental state at that moment was injustice, you had been duded, you are going to rectify the situation, you will do whatever it takes to make sure you get the job back that has been stolen from you by Premier Rees. Right, pretty much?

**Mr MACDONALD:** Well, no. I do not think I adopted that step at that point but I was going to—

**The Hon. MATTHEW MASON-COX:** You had hit the phones, you had gone to the media, you know—

**Mr MACDONALD:** I went to the media and I maybe talked to two or three, but—

**The Hon. MATTHEW MASON-COX:** Yes. You know what you wanted to do. You wanted your job back, all right? It is as simple as that. You felt like you had been completely duded.

**Mr MACDONALD:** Yeah, absolutely. Well, on the Friday—

**The Hon. MATTHEW MASON-COX:** That is only human nature.

**Mr MACDONALD:** On the previous Monday all the media staff are presented with a summary of the positive media for Ministers and the Premier over the previous year, and I was well and truly clear of the pack and second was Steve Whan.

**CHAIR:** Fair dinkum?

**Mr MACDONALD:** Yeah, absolutely. That is despite a few—

**The Hon. MATTHEW MASON-COX:** You were the leader of the pack.

**Mr MACDONALD:** It is in black and white. We kept a copy of it.

**CHAIR:** A gold star performer.

**Mr MACDONALD:** But in terms of metro and country media I was—

**CHAIR:** Top of the pack?

**Mr MACDONALD:** —the number one Minister for positive media for the department. Now, I had a few little articles here and there from Andrew Clennell and one or two others.

**The Hon. JOHN AJAKA:** Yes, in like the *Australian*.

**Mr MACDONALD:** But overwhelmingly, there was an overwhelming positive.

**CHAIR:** It is like doing a favourability rating without taking into account the negatives, is it not?

**Mr MACDONALD:** Well, no. Your Ministers would probably have similar documents being prepared currently.

**CHAIR:** I would not know that, as you well know.

**Mr MACDONALD:** No, you would not know that. I felt I had been working hard all that year—

**The Hon. MATTHEW MASON-COX:** Yes, terrific, great.

**Mr MACDONALD:** —getting things done, so yes I did feel duded.

**The Hon. MATTHEW MASON-COX:** Excellent. But the general political climate was one of a shadow, if you like, over the Australian Labor Party in the way it was conducting itself and there were corruption issues.

**CHAIR:** It was a big black cloud, actually.

**Mr MACDONALD:** No, it was not.

**The Hon. MATTHEW MASON-COX:** Oh, come on. Come on, Macca.

**Mr MACDONALD:** No. You are quite wrong—absolutely wrong. The shadow over the party, it was not any of that. The shadow over the party was we had destroyed our government in an act of gross cannibalism over the issue of privatisation of energy resources.

**The Hon. MATTHEW MASON-COX:** The privatisation of electricity.

**Mr MACDONALD:** The privatisation of electricity resources. Out of that debate within the party, numerous friendships and alliances were destroyed. The party normally would have contained an issue such as this and managed their way through it, but we did not.

**The Hon. MATTHEW MASON-COX:** You needed some clean air, right? I mean, what I am saying is that—



**Mr MACDONALD:** What I am trying to say to you is that the issues that you are talking about are later, much later.

**The Hon. MATTHEW MASON-COX:** Okay.

**Mr MACDONALD:** At that time, the whole problem with the party and the Government was the, how shall we say, the fallout from the energy debate—

**The Hon. MATTHEW MASON-COX:** I understand.

**Mr MACDONALD:** —the resignation of an elected Premier, the installation of a new Premier, and the fact is that a lot of members—in fact the vast majority—after a period of time wanted a change. Now, you had the Frank Sartor forces and there were even bits of Della. That was what the problem in the party was at that time. So do not try and reorder things.

**The Hon. MATTHEW MASON-COX:** You were dismissed. Joe Tripodi was dismissed.

**Mr MACDONALD:** I was dismissed so that I would resign—

**The Hon. MATTHEW MASON-COX:** Can I—

**Mr MACDONALD:** No, I am telling you what happened. I was dismissed, or asked to resign, because he wanted to bring Luke Foley in, there and then, and put him in the Cabinet.

**The Hon. MATTHEW MASON-COX:** You had the daggers out. You wanted to rectify the situation with the Premier at the time, Nathan Rees. This is, if you like, the colourers of the time. That is human nature. We all understand that.

**Mr MACDONALD:** I have to save some of this stuff for my book, please.

**The Hon. MATTHEW MASON-COX:** Well, you do. Let me put something to you: The last thing you would want is a scandal to erupt with your name in the middle of it in relation to a mining exploration licence at Mount Penny involving your good mate Eddie Obeid, and it is likely to colour the Government and perhaps your return to the Ministry some weeks later. That is the last thing you would want, is it not?

**Mr MACDONALD:** Well, I did not see it at the time that that was a scandal of any nature.

**The Hon. MATTHEW MASON-COX:** Let us consider this hypothetically. The last thing you would want is yourself in a scandal when you are trying to retrieve the situation or to become the Minister again in a portfolio that you loved, walked and enjoyed, and all the rest of it, right?

**Mr MACDONALD:** So what are you leading to? I am a bit lost by you.

**The Hon. MATTHEW MASON-COX:** I am saying that the last thing you would want is a scandal: Just yes or no.

**Mr MACDONALD:** But it was not—

**The Hon. MATTHEW MASON-COX:** Okay. The answer is self-evident.

**Mr MACDONALD:** It was not an issue to me at that point. It became an issue in 2011-12 when resolutions were passed in the House.

**The Hon. JEREMY BUCKINGHAM:** But it was an issue for Nathan Rees in 2009, was it not?

**Mr MACDONALD:** He never raised it with me.

**The Hon. JEREMY BUCKINGHAM:** But he was raising it with his staff, he was raising it with his director general, and so are you saying there were no rumours whatsoever going on at all—

**Mr MACDONALD:** No, none.

**The Hon. JEREMY BUCKINGHAM:** —that Nathan Rees and Luke Foley were sniffing around about Mount Penny.

**Mr MACDONALD:** No.

**The Hon. JEREMY BUCKINGHAM:** You did not think that they had leaked the *Australian Financial Review* story?

**Mr MACDONALD:** Now that you are saying this, now it possibly answers some things; but, no, I did not at the time.

**The Hon. MATTHEW MASON-COX:** Well, it has been put to this Committee—

**Mr MACDONALD:** And they did not want to tell me. Let us get it right.

**The Hon. MATTHEW MASON-COX:** Mr Macdonald, it has been put to this Committee, and I am putting it to you now because I think that is the only fair thing to do, that you actually instructed your staff to ensure that documents and emails that were not provided under Standing Order 52 were destroyed or not provided so that you would not be put into the eye of a storm in relation to a scandal over Mount Penny and your actions when you were the Minister so that you could return to become Minister when you and your cohort knifed the Premier at the time, Nathan Rees. That is what has been put to this Committee and I would like your response.

**Mr MACDONALD:** It sounds like it was put by Nathan Rees. That is a total lie. There was no order whatsoever to destroy any documents whatsoever, and I just want to bring you back: You cannot destroy these records. These records are all flowing through computers and they are logged.

**The Hon. JOHN AJAKA:** Yes, but you cannot produce them.

**Mr MACDONALD:** What do you mean you cannot? No, that is not right.

**The Hon. JOHN AJAKA:** You cannot produce them?

**Mr MACDONALD:** You do not know the system.

**The Hon. JOHN AJAKA:** I do actually.

**Mr MACDONALD:** The system goes through the computers and the Premier's department has access to everything that flows through, as I understand it, the ministerial offices. Go and ask John Della Bosca; he will tell you.

**The Hon. JEREMY BUCKINGHAM:** If those documents were not provided are you suggesting there was a deliberate move to not provide all the documents? Are you suggesting that that could only be done through the Premier's department?

**Mr MACDONALD:** What I am saying is the record is indelible, as I understand it, and that the resolution of the House was for what turned out to be a very, very large file that flowed through a number of my staff and many officers in the department over a period of 12 months or longer. And to have a two-week period to be able to extract that from everyone's computer was an impossible task. It was not a conspiracy, it was just technically impossible to do. ICAC spent millions of dollars, and had years to put the documentation together. It could not even get some basic documents relevant to Jasper in time to be put down within that inquiry. Those documents which happen to have supported my position on some things were actually contained in the Acacia file later on.

If ICAC cannot get all the documents tabled, released or presented within the three- four- or five-month period of the inquiry then to expect a department to get 6,000 or 7,000 pages of documents together in two weeks when there is turmoil in the Government—I do not think that necessarily had anything to do with it but

there is a change of Minister. I bet the department was scrambling to try to brief that new Minister about the area, and just did not have time to get the documentation together.

**The Hon. JEREMY BUCKINGHAM:** It was just negligence?

**Mr MACDONALD:** No, it is not negligence, Jeremy. It is just the physical impossibility of doing some things in a very short period of time. There were 8,000 pages of exhibits.

**CHAIR:** There is the capacity, is there not—and I invite you to consider this—when documents are found not to have been produced to do a supplementary return?

**Mr MACDONALD:** I do not know. There may be, but I do not know. No-one raised it with me.

**CHAIR:** I refer to your recent statement with regard to the reasons why, after you returned to the Ministry, you did not undertake any investigation in the Mount Penny matter. Did you?

**Mr MACDONALD:** No.

**CHAIR:** So in a sense what you say with regard to the reason why the department did not produce the documents is, on your part, pure conjecture, is it not?

**Mr MACDONALD:** I would say it is conjecture. There is no question. I am guessing a bit but I just know the volume of documentation that ICAC has put out. I think Jasper was 8,000 pages or something like that. They were presenting us with papers like 1,000 pages overnight and witnesses in the next morning.

**CHAIR:** Sure, but the answer we will get with regard to why the department did not produce the documents will be a matter that is answered, will it not, by going to the department?

**Mr MACDONALD:** Yes.

**CHAIR:** You not having made an investigation in a sense would be shooting the breeze on that subject. That would be right, would it not?

**Mr MACDONALD:** Yes, by and large. I am only going on what I have seen before ICAC and then it is a two-week period or so to present this. How on earth the department would have gone through all the officers' files. It is going back a period of 18 months prior to the order to get those documents together. It would have been an immense task, I would believe.

**CHAIR:** I am alive to the proposition that you are putting.

**The Hon. JENNIFER GARDINER:** I refer to the Labor conference weekend. You resigned—

**Mr MACDONALD:** Have I not said enough?

**The Hon. JENNIFER GARDINER:** Did you ever go back to the ministerial office after you resigned, for example, to collect your possessions?

**Mr MACDONALD:** No.

**The Hon. JENNIFER GARDINER:** Somebody else cleaned out the office?

**Mr MACDONALD:** Both times I did not. The second time when I tapped the mat the second time I just went bush basically.

**The Hon. JENNIFER GARDINER:** Somebody else got your possessions, documents, diaries and so on?

**Mr MACDONALD:** Yes, unfortunately they brought home several boxes of old socialist Left documents. I was secretary of it for about a dozen years or so. I have still got it.

**CHAIR:** They have not asked for it?

**Mr MACDONALD:** I do not think many people want copies of the old socialist Left records but I guess I should forward them to the National Library as soon as I can.

**The Hon. JENNIFER GARDINER:** Did you have any State records in your personal possession, say, in your home office that needed to be returned?

**Mr MACDONALD:** No. My wife, Anita, hated accumulation of material around the place.

**The Hon. JENNIFER GARDINER:** So it was all pristine?

**Mr MACDONALD:** It is called clutter; you would know that Jenny.

**The Hon. JENNIFER GARDINER:** Yes. In his evidence Jamie Gibson said that you were not a technical person. He reckoned that he had only received two emails from you in seven years. Would that be right?

**Mr MACDONALD:** Yes, I started to learn how to use a computer many years ago when I was in Parliament in 1988-89 because they gave us these old laptops you would probably recall, Jenny. I then did a typing course on it, you know, the flying fox jumps over, and all that sort of stuff. But then they decided to give us secretarial assistance and I decided that I would not continue with my typing or my computer skills. So I did start using a computer right near the end of my ministerial office. I was very slow.

**The Hon. JENNIFER GARDINER:** Right near the end? Which end?

**Mr MACDONALD:** The last end—June 2010. ICAC, I think, had looked at my computer and if there was anything relevant I am sure it would have been ably presented to the Chair.

**The Hon. JENNIFER GARDINER:** With respect to the history of the DPI, for example, and the portfolios for which you were responsible, do you believe there is any reason to think that there were any other instances where there was not a complete return to order after the House had resolved in a particular manner?

**Mr MACDONALD:** I would not have a clue, Jenny, because I never ever looked at those documents—never. So I would not have checked it and no-one has ever raised with me any issues in relation to it.

**The Hon. JENNIFER GARDINER:** Do you still maintain that you never ever looked at the documents before they were handed over to the DPC, to the Legislative Council?

**Mr MACDONALD:** That is correct, forwarded from the department for tabling.

**The Hon. JENNIFER GARDINER:** Earlier you talked about computers—

**Mr MACDONALD:** Can I just say one thing, Jenny? All the key documents were there; they were on the computers. Everything was on the computers. Do you follow what I mean? It is not as though anything was destroyed; it is all there. It takes a long time to extract it all.

**CHAIR:** That is one explanation.

**Mr MACDONALD:** To me that would be the explanation, for sure.

**The Hon. JENNIFER GARDINER:** Did I understand you earlier to believe that the DPC could actually access computers of any Minister, if the DPC wished so to do?

**Mr MACDONALD:** I think it goes through a central system, yes. But there are other Ministers who are far more—

**The Hon. JENNIFER GARDINER:** Did you operate on that basis, that anything that you put onto a computer could be looked at by DPC?

**Mr MACDONALD:** No, I did not operate on that basis. You cannot. Everything is running like crazy. I have 22 staff and I am not sitting in any particular office monitoring what they are doing in any shape or form. I only found this out about two months before.

**The Hon. JENNIFER GARDINER:** Two months before what?

**Mr MACDONALD:** Before all the incident when Mr Della Bosca resigned.

**The Hon. JENNIFER GARDINER:** That his computers were being monitored?

**Mr MACDONALD:** I may be wrong but it would be interesting to find out. My understanding is that it is a central system and it is possible to access by people who have got the authority to do it.

**The Hon. JENNIFER GARDINER:** So Mr Della Bosca was stalked as well?

**Mr MACDONALD:** Well, I am not saying he was stalked. I think he had a clash of opinion, okay?

**The Hon. JEREMY BUCKINGHAM:** Did you instruct any of your staff to look at the documents that had been returned in the call for papers once you resumed office?

**Mr MACDONALD:** No.

**The Hon. JEREMY BUCKINGHAM:** None of your staff, no representative—

**Mr MACDONALD:** Well, not to my knowledge.

**The Hon. JEREMY BUCKINGHAM:** Not to your knowledge?

**Mr MACDONALD:** No.

**The Hon. JEREMY BUCKINGHAM:** In the period between resigning and resuming your office as the Minister did you discuss the Mount Penny issue with any departmental staff?

**Mr MACDONALD:** No.

**The Hon. JEREMY BUCKINGHAM:** Or did you discuss the SO 52 with any departmental staff?

**Mr MACDONALD:** No, none whatsoever.

**The Hon. JEREMY BUCKINGHAM:** You did not talk to them at any stage?

**Mr MACDONALD:** No, not at all.

**CHAIR:** Thank you for your evidence today and thank you for appearing before the Committee.

**Mr MACDONALD:** It was a pleasure.

**CHAIR:** The transcript of your evidence today will be sent to you shortly along with any questions on notice. I do not think you have taken any questions on notice at this stage but if there are any questions on notice they will be put to you.

**Mr MACDONALD:** Lovely.

**CHAIR:** Again, as I have indicated to you, with regard to your further submission the Committee will consider that and consider whether we ask for that on the terms that you have put.

**Mr MACDONALD:** Okay.

**(The witness withdrew)**

**(The Committee adjourned at 12.57 p.m.)**