

E12/2107/0821PUB01285
03/04/2014

CREDO/SPICER
pp 01285-01364

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION CREDO AND SPICER

Reference: Operation E12/2107/0821

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 3 APRIL, 2014

AT 10.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes, Mr Watson.

MR WATSON: Commissioner, I think Mr Feller of Senior Counsel has an application.

MR FELLER: Yes, yes, thank you, Commissioner.

THE COMMISSIONER: Yes.

10 MR FELLER: Yes, my name is Feller of Senior Counsel.

THE COMMISSIONER: Yes, Mr Feller.

MR FELLER: I seek authorisation pursuant to section 33(1)(a) of the Independent Commission Against Corruption Act to appear for Mr de Aboitiz and Mr Karam who currently have Mr Kostopoulos appearing by authorisation. Could I just say one brief matter. I'm not here today to replace Mr Kostopoulos in these proceedings and Mr Kostopoulos conveys that he doesn't intend to show any discourtesy by not appearing, however,
20 he's a prominent leader of the Hellenic Diaspora and he finds it personally difficult to be here for this stage of the proceedings and he will return after this phase is completed.

THE COMMISSIONER: Thank you, Mr Feller, you have leave to appear.

MR FELLER: Thank you.

THE COMMISSIONER: Yes, Mr Watson.

30 MR WATSON: I call Arthur Sinodinos.

THE COMMISSIONER: Yes. Just take a seat, Mr Sinodinos. Do you appreciate - I know Mr Bannon you appear for Mr Sinodinos. Do you appreciate, Mr Sinodinos, that I can make an order under section 38 of the Act which operates as a blanket objection and relieves you of the obligation to take objection to each and every question - - -

MR SINODINOS: Yeah.

40 THE COMMISSIONER: - - - and because your answers are given under compulsion then the order protects you from the use of your answers against you in civil or criminal proceedings but not in relation to any false or misleading evidence you might give. You understand that?

MR SINODINOS: Yes.

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this

witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

10 **PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY THIS WITNESS AND ALL
DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS
DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS
PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN
GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY
THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION
IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR
DOCUMENT OR THING PRODUCED.**

20 THE COMMISSIONER: Would you like to be sworn or affirmed,
Mr Sinodinos?

MR SINODINOS: Ah, sworn thanks.

THE COMMISSIONER: Thank you.

MR WATSON: Are you Arthur Sinodinos?---Yes, I am.

Now, Senator, I think you worked for Mr Howard twice, the first was between 1987 and 1989?---Yes.

When you were an economic advisor?---Yes.

10

And then you came back to work for him between March 1995 and December 2006?---Yes.

And I think during that time you, you were his Chief of Staff?---March 1995 I rejoined his office as senior economic advisor, I carried that position into Government where I also became policy director and in October 1997 I became the Chief of Staff.

20

Thank you. When you left Mr Howard's office you went to work at Goldman Sachs?---JBWere, yes.

And, sorry, so it's clear, Goldman Sachs JBWere is the name of the company?---Yes.

And that lasted between December 2006 and August 2007?---Yes.

And you were there, you might be described as an investment banker? ---Um, I was an advisory director in the investment bank, yes.

30

And then you went to work for the National Australia Bank from August 2007 until October 2011?---Yes.

40

And there again you were involved in investment banking?---Um, no, I began in the ah, the Business Bank um, overlooking a number of management areas, back office if you like, as well as a private wealth section that was within that, some financial planners. I then moved on to look after the Government in education, banking sections of, of the Business Bank. I also took on responsibility for the carbon solutions group which was looking to expand into carbon marketing and then finally I was in the Institutional Bank where I was a, a senior advisor advising in part on banking to do with the public sector but also with the resources area I started to spend quite a bit of time on resources related projects.

Yes, thank you. And you've been a senator since 13 October 2011?---Yes.

Also during a period you were Treasurer of the New South Wales Division of the Liberal Party?---Yes.

When was that?---That was from about I think the middle of '09 or '08. I, I think it was '09.

Until when?---Until I became President of the Party in about the middle of 2011.

And you were President of the New South Wales Division of the Liberal Party from mid 2011 until about mid 2012?---I think it was around October/November 2012. They kept putting off the meeting.

10

You were a Director of Australian Water Holdings Pty Limited from the 21 October 2008 until 9 November 2011?---Yes.

You were the Deputy Chairman of Australian Water Holdings from October 2008 until November 2010, is that right?---Yes, yes.

And you were Chairman of Australian Water Holdings from November 2010 until November 2011?---Yes.

20 Now the fact is that before coming to Australian Water Holdings you had no experience in the area of the delivery of water infrastructure, is that right?
---I'm not an engineer, no.

Well I'll just ask the question again so it's question and answer are clear?
---No, the answer is no.

And similarly with sewerage Infrastructure, is that right?---No.

30 Now you were introduced to Mr Di Girolamo we understand by Paul Nicolaou?---Yes, that's right.

And how did you know Mr Nicolaou?---Mr Nicolaou was Executive Chairman of the Millennium Forum, I dealt with him when, from my time in Canberra.

And the Millennium Forum is what?---Fundraising arm of the Liberal Party.

And is it the fundraising arm of the Federal Party or of a State division?
---Both.

40

And what role did Mr Nicolaou have in it?---He was the head of it, the Executive Chairman.

And so you would have known him well?---Yes.

Well Mr Nicolaou introduced you to Mr Di Girolamo?---Yes.

Why?---I think at that stage it was actually '07 and not '08 when I was still at Goldman Sachs JBWere and it was in the context of AWH's expansion objectives around water infrastructure, public private partnerships.

Well so why did Nicolaou introduce you to Di Girolamo?---Well I knew him well and he would have known that I was looking to build a business career, I'd turn my back on politics in '06 and was wanting to build a career in banking and finance.

- 10 So this would have been a means whereby Mr Nicolaou could assist you in building that business career?---I believe so.

And did Nicolaou explain to you before you met Mr Di Girolamo how he, Mr Nicolaou knew Mr Di Girolamo?---I don't remember but I assumed they knew each other through Liberal Party events or functions.

Mr Di Girolamo was connected with the Liberal Party, is that right?---That was my impression.

- 20 Could the witness be shown Exhibit C15, Commissioner.

Senator, would you open that to page 2831?---Yes.

You'll see that this a file note which was created by Mr Di Girolamo and dated 24 April 2007. You'll see that?---Yes.

And it follows a meeting which had occurred between yourself, Mr Di Girolamo and Mr Nicolaou at the - - -?--Yeah.

- 30 - - - office of, I'm going to call - - -?---Yes.

- - - it Goldman Sachs for short, is that okay?---Yes.

And you'll see that Mr Nicolaou is identified as a director of Solutions R Us. What is Solutions R Us?---I think that was his private consultancy firm.

You'll see in the body of the note there's a reference in the last major paragraph to Rod de Aboitiz. Do you see that?---Yes.

- 40 I get the feeling that what happened was that Di Girolamo was proud to have Mr de Aboitiz aboard as an investor. Is that right?---Yes.

And was promoting to you the idea that an astute investor like de Aboitiz - - -?---Yes.

- - -would be an attractive feature of a company like Australian Water Holdings?---Yes.

Now, you'll see that, well, if, Senator, you would turn to page 2838?
---38?

38. I was going to say to you, from the previous note there's some evidence that a meeting involving Mr de Aboitiz would be encouraged, and I'll show you this note. You'll see from the top right-hand corner that it's a meeting on 3 May, 2007 and those present were yourself, Mr de Aboitiz, Mr Di Girolamo and Mr Nicolaou. Do you see all of that?---Yes, I do.

10 Now, what was it that you were doing or were going to do or could do for Australian Water Holdings?---Well, I was going to help them to find cornerstone investors and help develop the Public Private Partnership proposal. That was my main interest in the company.

Now, I was careless just then, I said Australian Water Holdings, I should have perhaps used it more neutrally to say Australian Water, because there were two companies, did you know that at the time?---I don't remember whether I knew that at this particular time.

20 And certainly as you understood it you were being involved because of the potential for a PPP?---Yes, that was my, from my perspective that was my interest, my main interest in the matter.

And at that time were you told between whom the PPP might be formed?
---You mean as between Government and the private sector, is that what you mean?

Yes. It was to be between Australian Water Holdings, was it, the PPP, and the Government?---You mean what entity- - -

30 Yes?--- - - -from the point of view of the company?

Yes?---Ah, no, I don't remember whether I was told that.

And were you told the subject matter of the PPP?---That would be to roll out the infrastructure in the North West Growth Centre.

40 Were you told anything else about potential to expand the business of Australian Water into other areas beyond the North West Growth Centre?
---I don't recall that at that stage.

Eventually when you came onto the board at Australian Water Holdings, was the real purpose behind your appointment to encourage the PPP or to put it through?---In my mind, yes, that was the exciting opportunity that this company seemed to suggest or imply to me.

And what about exploring new business opportunities?---Well, inherent in the concept of building up the first sort of private sector water utility would

be other opportunities, but I saw the PPP particularly interesting building as it did on my interest in banking and finance where I was seeking to build my career.

Well, in any event you were invited to join the board of Australian Water Holdings and you agreed to do so. Is that so?---Yeah, that, that is correct.

I just want to go through your commitments as a result of that appointment. There were board meetings held once every month or maybe once every two
10 months. Correct?---Yes.

Around about nine a year?---It, it went up and down, yeah.

And those board meetings would take between two or three hours?---Yes, the actual meeting, yes.

Apart from that you were asked to attend ad hoc meetings with the CEO, Mr Di Girolamo?---And cornerstone investors or outside people that might have an interest in investing in the company.
20

One thing at a time. You were asked as one of your duties to hold meetings on an ad hoc basis with Mr Di Girolamo?---Yes.

And those meetings with Mr Di Girolamo could be anything from 10 minutes up to an hour?---Yes.

And they might be held once every month or once every couple of months? ---Yes.

30 And they might be - - -?---Well as required.

As required. And they might be so informal as to be over a cup of tea or coffee at a local café close to your office?---Yes, they could be, yes.

And then in addition you mentioned your involvement with potential cornerstone investors - - -?---Yes.

- - - you were invited on the few occasions that there were presentations made to such investors. Is that right?---Yes.
40

And that might have occurred during the time that you were there once every few months?---It, it could have been earlier or more frequently than that depending on whether we were chasing a particular investment, investor at the time.

Well averaging it out over the period you were there it would have been once every few months?---Well I remember at the beginning we set up a list

of potential investors, Credit Suisse we looked at, we looked at Lend Lease, we looked at Transfield, we looked at Tenix, we, we went through a list - - -

Yes. I'm not sure that's an answer to my question, Senator?---No, no, but I'm giving you the background. So - - -

Yes. Well I prefer an answer to the question --- - - - there was a work program and then we would work through and then depending how quickly we could get to them there would be meetings.

10

All right, okay. Now to go back to my question, those meetings with these cornerstone investors might take place once very few months?---Yes, or it could be more frequently than that depending on when we made contact.

Or even less frequently than that?---Well it could be.

And they would take an hour to an hour and a half?---Hour and a half possibly two hours. It might be done over a lunch with a number of senior people from the other side present.

20

I mean there's no secret between you and me that we've met before and had discussion about your activities there?---Yes.

And we nailed down these details at an earlier occasion between the two of us?---Sure.

I've done a calculation, based upon those commitments it seems to me that in a year you might be spending between 26 hours or 45 hours a year on Australian Water Holdings work. That's right, isn't it?---Sorry, can you run that by me again.

30

I've tallied up the commitments you were asked to make at Australian Water Holdings and it seemed to come to between, I'll give you the precise numbers 25.5 hours and 45 hours per annum. Does that sound right?---Does that include travel time when the meetings were held at Bella Vista?

No. It wouldn't include travel time but you would add that in would you? ---Well I would because there was an opportunity cost at that time, I was being taken away from other things I was doing.

40

Well that would add - - -?---And does that also include um, a record of the meetings that I attended?

Yes. So you would add, what would it take you to drive you to Bella Vista, an hour?---Oh, hour and a half I think if, if we're observing the speed limits.

Well they may take it up a little and really - - -?---An hour and a half to get there, an hour and a half to get back. It would take a considerable amount

out of the day and on top of that um, there was a practise that the board papers be circulated um, before meetings, I think we, we had a standard practise about two days, so there would also be reading and preparation time.

All right. But that was the full extent of your commitment of Australian Water Holdings? We've traced the whole of it now haven't we?---And you've included the investor presentations and meetings and the like?

- 10 Absolutely, absolutely. No, didn't, won't forget those?---And, and also any incidental meetings where for example I might bump into someone and it wasn't programmed to be about Australian Water Holdings and I might mention for example that this was a company looking to do things.

That would be included amongst the commitments that you rely upon in justifying your - - -?---No, no, I'm saying - - -

- - - pay, is that right?---No, no, with respect I'm saying in addition to what you are putting there.

20

All right? For example if I - - -

So if you bump into somebody in the street and say to them hey, I know this great company Australian Water Holdings you would include that in the hours that you were working for Australian Water Holdings?---I, I would include that as an example of the fact that when I was not specifically on Australian Water Holdings work there may be opportunities I would take to mention them. Can I give you an example?

- 30 Go for your life?---Um, I was at a function at someone's house and there was someone there from Leighton's and I mentioned the matter to them and they asked me to follow up by sending through materials. So this would be an example of where in the course of my other work I might be keeping a look out for how I would promote the interests of the company.

And so that would need to be added on, what should we add on, 90 seconds over a gin and tonic to the other 45 hours a year.

MR BANNON: I object.

40

MR WATSON: Well, sorry, I'll withdraw that Senator, you don't need to answer that. The director's salary you took was \$200,000 per annum. Is that right?---Yes.

And there was also a share package involved?---That, that was later. I think you have to divide the period into two.

All right. So the share package was not promised to you from the start, is that what you say?---No.

When was the first time that the share package was offered to you?---I believe it was around the time that I was offered the chairmanship.

Could I ask you then just about the salary, the \$200,000 per annum. In the circumstances, and given the nature of the business of Australian Water Holdings, did that seem like a lot to you?---Ah, the salary?

10

Yes?---When I was first offered it?

I'll ask the question again in case it's got lost. That director's salary of \$200,000 per annum, given the circumstances of Australian Water Holdings, did that seem like a lot to you?---Um, the fact that I took the salary indicated it was reasonable from my point of view.

20

Well, I don't think that's an answer to the question so I'll put it again. That director's salary of \$200,000 per annum given the circumstances of Australian Water Holdings, did that seem like a lot to you?---What do you mean by given the circumstances of the company?

I've tried three times, are you going to refuse to answer that question?

MR BANNON: I object.

30

THE COMMISSIONER: Well, look, I think there's a, a short point here really, Senator. Do I take it that up until the time that you took this directorship that you hadn't previously worked on boards of companies? ---That's right.

So was this the first directorship - - -?---Yes.

- - - that you ever took?---Yes. The first commercial - - -

First commercial one?--- - - - directorship.

40

And at the time as I understand it you were employed fulltime with the NAB were you not?---Yes, yes.

Right. And you've talked about the kind of work that you were doing? ---Yes.

Were you familiar with the rates of remuneration in, in private companies at that time?---Um, more familiar - - -

For directors I mean?---More familiar with the rates in, in public companies.

But you hadn't seen in the course of your work for the NAB the kinds of rates that were - - -?---Well, this was a private, a privately held company and the shareholders were the directors, it was a different beast to publicly listed companies in that sense.

MR WATSON: Well, where did you think the money was coming from to pay your salary?---Well, from the business of the company.

10 And who was paying that?---That was through principally the, it would be their contract with Sydney Water.

What do you mean principally? Are you saying that there was some other source of income for Australian Water Holdings?---Well, I think at that time there would have been convertible note holders in the company.

They invested into a company called Australian Water Pty Limited didn't they?---Yes, they did.

20 Your, your money was paid by Australian Water Holdings wasn't it?---Yes, I was on the board of Australian Water Holdings, that right.

Well, I'll ask my question again. Your money was paid by Australian Water Holdings wasn't it?---Yes.

So I'll ask you to clear this up?---Yes.

30 Are you saying that there was any source of income in Australian Water Holdings except for that money that they acquired from Sydney Water Corporation?---Ah, not, not that I'm otherwise aware of.

Well, then in essence that money was, that you were receiving was being paid from money received from Sydney Water Corporation.

MR BANNON: I object, the two propositions don't follow.

MR WATSON: Well, I won't press that.

THE COMMISSIONER: All right.

40 MR BANNON: There's a difference between income - - -

MR WATSON: I won't press that.

MR BANNON: - - - and available cash as we know.

MR WATSON: Did, did you see the evidence of Dr Tom Parry, the former Chairman of Sydney Water Corporation?---Ah, which specific aspect.

It's a general question, Senator, I think it's able to be answered yes or no. Did you see the evidence of Dr Tom Parry, the former Chairman of Sydney Water Corporation?

MR BANNON: Certainly did he read the transcripts?

THE COMMISSIONER: Did he, did he - did you have it made available to - - -?---I don't remember whether I read Tom Parry's transcript.

10 MR WATSON: We've heard evidence from Dr Parry that he felt his obligations as Chairman of Sydney Water meant that he would be spending one and a half days per week working wholly and solely on Sydney Water matters at its offices. Are you aware that he gave that evidence?---Um, I may have seen that reported.

Did you see that he also gave evidence of the size of the operation of Sydney Water, the number of employees and the billion dollar turnover that it had, did you see that?---Ah, yes.

20 It was a pretty stark difference between Australian Water Holdings and Sydney Water, don't you agree?---In size?

Yes?---Yes.

Well, I mean one had several thousand employees and one had 10 employees. Is that right?---Um, well, they managed outside workforces, but yes, they were a project management operation.

30 Yes, thank you. Did you see how much Dr Parry was paid for his chairmanship at Sydney Water?---Was it um, I don't remember, was it around 100,000 a year?

Yes. Really what I'm getting down to is this, is that that was a lot of money that you were being paid, \$200,000 per annum for that work commitment, wasn't it?---Well, I thought it was reasonable in the circumstances.

40 Look, whether you thought it was reasonable or not, would you agree with the proposition that the salary carried with it an implication that you would be closely and intimately involved in the affairs of Australian Water Holdings?

MR BANNON: I object.

THE COMMISSIONER: Well, what's wrong with the question?

MR BANNON: I don't, it's not - - -

THE COMMISSIONER: I beg your pardon?

MR BANNON: It doesn't (not transcribable) an answer.

THE COMMISSIONER: Well, I don't know.

MR BANNON: Sorry, carry an implication.

THE COMMISSIONER: It's a proposition. I think the senator can
comprehend the proposition and it's not inherently objectionable, Mr
10 Bannan. Senator, can we get an answer to the last question, whether or not
you thought it was reasonable, did the size of the salary indicate to you that
you were expected to have an intimate and as Counsel Assisting said, a - - -

MR WATSON: Close involvement.

THE COMMISSIONER: Close involvement?---It carried for me the
implication that I should take seriously my duties as a member of the
company, as an officer of the company

20 MR WATSON: Oh, good. Now I'll return to my question. Did a payment
of \$200,000 per annum convey to you that that required you to have a close
and intimate detail, detailed knowledge of the operations of Australian
Water Holdings?

MR BANNON: I object.

THE COMMISSIONER: Your objection is noted, Mr Bannan.

THE WITNESS: No, no. My, my mindset was that I should come to grips
30 with understanding the company and what it did and contribute to the
company in areas where I had a comparative advantage.

MR WATSON: Are you saying that you did not feel obliged, despite the
size of that salary, to have an intimate knowledge of its affairs?---I wanted
to have a knowledge of its- - -

MR BANNON: I object again, Your Honour.

MR WATSON: Intimate's the wrong word.

40

THE COMMISSIONER: All right. Perhaps- - -

MR WATSON: It might be straying into- - -

THE COMMISSIONER: All right. Well, that's withdrawn.

MR BANNON: (not transcribable) there's a classification of directors'
duties and what their obligations are.

THE COMMISSIONER: That's, that's withdrawn, Mr Bannon.

MR WATSON: I, I put it badly, I- - -

MR BANNON: If everyone did the same job in a company- - -

THE WITNESS: I can't see how- - -

10 MR BANNON: - - -nothing would happen.

THE WITNESS: - - -I can answer any more than that.

MR WATSON: Well, I'm so sorry, Senator, but I'm going to go on. Let's just put it this way. Did you think that the idea of your appointment as Deputy Chairman and a salary of \$200,000 per annum would require you to have a close knowledge of the financial condition of Australian Water Holdings?---Yes.

20 And in terms of having a close knowledge of those financial conditions at Australian Water Holdings, what did you do?---Well, I attended diligently at board meetings ah, read the material before us and where necessary asked questions at the meetings.

Did you ever make an appointment to speak to the Chief Financial Officer, Bruce Chadban?---Ah, not separately to the CEO.

Well, what do you mean by that, did you or did you not- - -?---Um- - -

30 - - -make an appointment- - -?---A separate appointment with Mr Chadban?

Yes?---No.

Did you ever make an appointment for you to meet with the subsequent Chief Financial Officer, Robert Groom?---No, but they came to board meetings.

All right. So- - -?---I didn't have to make an appointment to see them.

40 And did you ever ask to look at the primary material which lay behind the accounts?---Can you define the primary material?

Well, books and records of Australian Water Holdings, the company of which you were successively Deputy Chairman and Chairman?---Um- - -

Did you ever ask to have a look at their books and records?---Are you talking now about ledgers or are you talking about um, invoices?

I'm talking about ledgers?---No.

THE COMMISSIONER: Or profit and loss statements, or documents of that kind that were part of the CFO's - - -?---Commissioner, thank you. CFO reports included profit and loss statements, balance sheets, and that was the form in which I expected the information to come forward. And that was the information on which I relied. If you're asking me did I go through individual invoices or check the ledgers - - -

10 MR WATSON: I didn't ask that but I'll come back to my question?---Well what are the primary documents?

No, I'm, sorry. Don't drag me back too far, we've moved on. I said I'm talking about ledgers?---The ledgers of the company?

Yes?---No.

Balance sheets?---The ones presented in the CFO report, yes.

20 Only those?---Yes.

Financial summaries?---The ones in the CFO reports.

Transaction summaries?---Only in so far as they were reflected in the CFO report.

All right. So you made no commitment beyond reading the board papers and listening to what was said at the board meetings?---And examining the, the papers therein, exactly.

30

Did you ever go to the site to see where the excavation was occurring and the pipes were being laid?---Yes.

And how many times did you go there?---Um, before I started there I did an inspection just to verify what they did and how they did it, the dual reticulation, the sewage treatment plants.

I think you must have misunderstood my question. How many times did you go to actually look at the place where Australian Water Holdings did its work?---Ah, only that time in terms of physical location.

40

That was once, once ever?---At, at the beginning, yes.

And I think that may have occurred before you were even a director?---Yes, that's right.

That was part of a promotional tour to encourage you on-board wasn't it?---Well you could also call it an information and education tour, yes.

Yes. And apart from that you never actually went out to see what work Australian Water Holdings did?---Well it wasn't my role. That, Bill MacGregor Fraser and Carlo LoGiudice and so on were managing the works.

When you were of Australian Water Holdings from the start you would have known that the business really depended upon a single contract with Sydney Water, is that right?---Yes.

10

And you would have also known that that single contract was for works in the North West Growth Centre?---Yes.

MR BANNON: I object, I object.

THE COMMISSIONER: Well he's, he's - - - - -

MR BANNON: Can I just say something to my learned friend about - - -

20 THE COMMISSIONER: Yes.

MR WATSON: Oh, I see. Mr Bannon's pointed out quite correctly when I say single contract I'm being a little bit fast and loose. I'm, the fact is that - - -

MR BANNON: I wasn't accusing you of that though (not transcribable).

THE COMMISSIONER: God forbid, Mr Bannon.

30 MR WATSON: That's, that's what he really meant. There were numerous contracts, I mean there were the, there was stage 1, stage 2, stage 3, package 1, package 2, so that there were - - -?---But if I just, yeah.

- - - different contracts but they were all emerging under the so called Other Stages Deed?---Yeah, but you were talking a single primary relationship, is that right?

Yes. Yes?---Yeah, I understand.

40 Did, were you told about the reimbursement model under which Australian Water Holdings had functioned?---When the issue of a dispute around what's broadly described as RH3 came up and we were briefed on elements of this at the board level I asked for clarification about the difference between the RH3 cost reimbursement model and the model under the package 1 works which was a fixed price contract model and which succeed the RH3 model.

So you, you were told about what has been the reimbursable - - -?---Yes.
Yes.

Were you ever told about any change in Australian Water Holdings that had emerged from being a not-for-profit entity and became a full profit entity?---
I don't remember specific discussion until the very end when the issue blew up in the Cole mediation.

10 So nobody had explained that to you before at least Mr Cole was involved?--
--Not, not, not that I can recollect in detail.

Well after it blew up as a result of observations made by Mr Cole - - -?---
Yes.

- - - that it must have been a matter of significant interest to you?---Ah, I
remember Nick Di Girolamo saying that Cole didn't have all the papers
before him to be able to make that particular assertion.

20 Well simply at this stage I wish to establish it must have been a matter of
significant interest and it must have been because according to Mr Cole's
view Sydney Water could have just torn up the contracts and Australian
Water Holdings would get nothing?---But all the way through when I was -
- -

No. I'm just making an observation. You'd accept - - -?---Sorry.

30 - - - that's what Mr Cole said?---Yes, yeah. This would have been a really
very important issue for the board at Australian Water Holdings Pty
Limited?---Yes.

Now what did you find out, what did, were you told were the circumstances
in which Australian Water Holding, Holdings altered itself from a not for
profit entity and became a for profit entity?---I don't recollect the specific
discussion but it was asserted that this happened at some time in the late 90s
I think.

How was that done in the late 90s? Did they explain to you?---Ah, I, I don't
remember the details.

40 Was it ever asserted that Sydney Water had been a participant in that
process?---I, I don't remember.

Well when you say you don't remember – I imagine that this must have
been a hell breaking loose moment that Australian Water Holdings the
observations by Mr Cole surely people tried to get to the bottom of it
because they had to try and prove that proposition wrong?---The context of
the Cole mediation is that very soon after that Australian Water and Sydney

Water actually sat down to try and finally resolve their situation by terminating the company, so in a sense that - - -

Yes, I'm sorry. You must have misunderstood my question. When Mr Cole made his observation it would have been a devastating blow for Australian Water Holdings, correct?

MR BANNON: I object. The observation?

10 THE COMMISSIONER: Well - - -

MR BANNON: It wasn't correct anyway.

THE COMMISSIONER: Well I don't know. Can it, can I ask an intermediate question.

Senator, given that your primary motivation as you said for taking the directorship at Australian Water Holdings was your desire to move into business?---Yes.

20

You must have been given the information when you took the position that it was a profit making company otherwise there would have been no attraction to you in taking on the position?---Um, can you rephrase that? I don't quite - - -

Well you, you were, you said your primary motivation for taking a directorship on the board - - -?---Yes.

30

- - - was your desire to move into business - - -?---Yes, that's right.

- - - to, to build a business career?---That, that's right.

You must have been told that it was a profit making entity otherwise there was no point really in you taking a directorship on something that was on a, on a not for profit model. I mean it would not contribute to your business experience one jot if it was not a profit making entity?---Yeah, I understand what you're saying. Um - - -

40

Isn't that what you were told when you went there?---I don't remember who specifically told me but that was the view that it was a profit making entity and that's why, just to close the circle when Cole raise this issue in 2011 towards the end of my time there there was, as, as the Counsel Assisting has rightly indicated concern within the company well you know this is not the basis on which we've been operating.

Well it must have been a shock to you then?---Yes.

Right.

MR WATSON: Well I want to know what you did to try and get to the bottom of it. For example did you ever see a document, that's what we're after, some document which reflects this event occurring, the transfer from not for profit to for profit?---Um, not in my time there I don't believe.

Well you said to us before and this is I think close to the actual words, "Nick said Cole didn't have the papers in front of him"?---Mmm, I recollect that.

10

Well - - -?---That was in 2011.

Well then surely Nick produced some papers which may have been or could have been laid in front of Mr Cole to convince him that he was wrong?---I don't remember that happening. As I say things quickly moved onto dealing directly with Sydney Water to terminate the relationship.

I appreciate you're keen to get there but I'm pretty keen to stay where we are.

20

Well, did you ever see Nick produce the papers which Terry Cole should have had in front of him?---Ah, I don't recollect so, no.

Do you know whether there were or whether there were not any such papers?---Not at that time. I mean there are papers which have since been produced but not at that time, no.

Well, have you seen something since?---In terms of exhibits?

30

What, in this, these proceedings? No, I'm asking you, you just said "Not at that time," and I rather thought it was - - -?---No, no, no, no.

- - - it was near the end of your period at Australian Water Holdings wasn't it?---No. Yeah, that's right.

So has somebody got in touch with you to say here they are, Senator, here's the documents that we should have had in front of Cole?---No.

40

So let's just get down to tin tacks. Have you ever seen anything which establishes how Australian Water Holdings moved from being a not for profit entity to become a full profit entity?---Ah, no, not that I've seen.

Now, you mentioned before you that you were familiar with the dispute over money. Do you remember that?---Over money in, in, in which case?

Well, claims have been - - -?---There were several disputes.

Claims have been made by Australian Water Holdings for sums and Sydney Water protested saying they wanted more information, do you remember that dispute?---Yeah, that was in, you're referring to a dispute in 2009?

Yes, it bubbled along for quite some time?---It sure did.

10 And what was, what was the guts of that dispute, what was it about?---Um, Sydney Water were disputing some of the amounts they should pay RH3 which was the, the entity that was doing the um, stage 3 works in the North West Growth Centre.

Yes. And what, what was their complaint?---There was a complaint about which costs should be attributed to the project I think.

And well, what did you understand by that?---Just what I said.

20 Well, what detail did you know about the nature of the complaints that they were making?---I think at one stage during the board discussion there was a reference to management and administrative costs as part of that.

And what was the complaint about them?---I think they were trying to verify um, those costs.

And why did you understand they were trying to verify them?---I guess they were trying to figure what was attributable to the project and what wasn't.

And how could that have been an issue?---How could that have been an issue?

30 Yes?---Um, you mean between, between RH3 and Sydney Water?

No, I mean how could there have been any trouble about the attribution of costs? How did the dispute arise?---Well, I was a bit puzzled by that too because I would have thought they have all the relevant invoices and certifications and it could just be a matter of mechanically sorting that out.

40 You said that you thought that. Why did you think that?---Well, because as I understood it was a cost reimbursement model so you show your costs and if they think they're appropriate they pay them.

And did anyone lead you to believe that such accounts and receipts have been provided to Sydney Water?---I understood there was a process going on of, of talking to Sydney Water and then there was a dispute resolution committee and then an expert determination to try and get to the bottom of that.

Did anybody lead you to believe that accounts and receipts were being provided to Sydney Water?---There was discussion at the board level about that.

What was the discussion?---That um, Australian Water Holdings was providing material.

10 So at board level it was said that Australian Water Holdings was providing material?---Yes, and then there was debate about whether Sydney Water had expanded the scope of the audit to ask for information they would otherwise not be entitled to.

Well, let's just deal with those things separately. What material was Australian Water Holdings providing to Sydney Water?---Well, I assume it would have just been the costs that they wanted reimbursed or a further - - -

What do you mean by that?---Or a further breakdown of those costs.

20 Right. Well, what do you mean by that? Are you saying that the accounts and receipts which you had earlier thought should be provided had not been provided?---Sorry, can you repeat that?

Earlier you told us that you thought that accounts and receipts would have been provided to Sydney Water because it was a reimbursable model, remember that?---Yeah, yeah, yeah.

30 Now you went to a board meeting and you were told that materials were being supplied in respect of administration costs, do you remember that evidence you gave?---Ah, yeah.

Now, what materials were being supplied?---I don't remember in specific terms.

Why was it necessary to provide that materials if the accounts and receipts had already been provided to Sydney Water?---Well clearly there was some debate between them about what should be provided.

40 Well hold on, what do you mean by them?---Well a debate between Australian Water Holdings and Sydney Water.

What do mean - - -?---RH3.

- - - calling Australian Water Holdings them, weren't you deputy chairman?---Well I'm not now.

Well, but I'm talking about at the time?---We're talking about the past. Yeah, yeah, sure, sure.

Yeah. This dispute lay in effect between you and Sydney Water didn't it?

MR BANNON: I object.

THE COMMISSIONER: Well, he was part of, he was part of the, a significant part of the entity but - - -?---Commissioner, I'm not contesting that I was in Australian Water Holdings at that time.

Right.

10

MR WATSON: When I say you appreciate you were a board member - - -?---Yes.

- - - and you were voting on what should or should not be done?---Yes. Yes.

So when it comes down to it you would have cast a vote one way or the other - - -

20 MR BANNON: I object.

MR WATSON: - - - on this issue?---Well we didn't have a vote.

Well, I'm so sorry, I thought you said it was raised at board level?---Yes, but I'm saying, you're saying I would have cast a vote um - - -

All right. Perhaps I shouldn't have put it that way. It was raised at board level?---Yeah.

30 What was your contribution?---Sorry?

What was your contribution at the debate at board level?---To listen to the discussion, ask questions including about differences between RH3 and package 1. And also there was legal advice being tendered about what we could and could not provide.

40 No, I, I, I appreciate that your contribution would be listening and reading but what did you contribute to the debate, what did you say?---Um, well I mentioned the issue I raised just in the last question ah, and, and also the legal advice.

I'm sorry, what did you say?---Ah, I asked principally to understand the difference between RH3 and package 1.

And so that's a reference to the change from the reimbursable model - - -?---To the fixed - - -

- - - to the fixed price model?--- - - - price model, yep.

But you knew that this dispute principally lay between Sydney Water and RH3 didn't you?---Yep.

Now, what I want to know is what did you do as a director of the company to get to the bottom of this dispute?---If you're asking me did I go through all the invoices of RH3 - - -

10 I didn't ask you that?---Well - - -

I'm asking what did you do. If you did nothing tell us?---I participated in - - -

If you did something tell us?---I participated in the board discussion.

Well, what did you do beyond participating in the board discussion?---That was it.

20 Did you do anything to determine whether or not there was truth in the position taken by Sydney Water Corporation?

MR BANNON: Perhaps my friend could clarify what position.

THE COMMISSIONER: Yes.

MR WATSON: Well you, you do know that Sydney Water Corporation's position, well I, we've used an expression - - -

30 MR BANNON: (not transcribable) the amount or something.

MR WATSON: All right, sorry. I'll, I'll clear it up. This was the guts of it wasn't it, Sydney Water said that inconsistently with their anticipation costs, administration costs were ballooning in respect of the North West Growth Centre, that was what they were saying wasn't it?---Um, yeah that would have been part of it, yeah.

What else was in it?---Well that was the major part of it.

40 All right. Well let's deal with the major part of it?---Ah hmm.

Sydney Water was saying that this shouldn't be occurring because stage 3 works were practically complete?---Yep.

And they said contrary to anticipated costs of \$200,000 per month - - -?---Month.

- - - the costs were 300, 400, then 600, then \$800,000 per month?

MR BANNON: I object. I need to ask that the questions be clarified. Is my friend referring to the matter which was the subject of the arbitration dispute about which - - -

THE COMMISSIONER: No, I think, well this follows on from your previous objection, Mr Bannon.

MR BANNON: Well it should be clarified (not transcribable).

10 THE COMMISSIONER: Well, well I don't know that it's been put in other than general terms at this stage.

MR BANNON: Oh, maybe that's, maybe that's the answer.

MR WATSON: I'm only operating on the general here but I, I think you were about to agree with me that you were aware that Sydney Water was complaining because these very large administration expenses were being raised?---That, that was part of it. There was also an issue about drawing down for the next stage of works. There were a number of complications.

20

Well let's just stick to the first one?---And cross currents.

Let's just stick to the first one - - -?---Yes.

- - - about these administration costs, costs - - -?---Yeah.

- - - increasing. What did you do to get to the bottom of why those costs were increasing?---The management and the administration costs?

30 Yes. What did you do - - -?---Was this - - -

- - - to get to the bottom of why management and administration costs were increasing?---Are you talking about in 2008?

I'm talking at any time. What did you do to get to the bottom of why management and administration costs were increasing?

40 MR BANNON: I do object. If the context is a dispute with Sydney Water then that should be clarified. If it's some other context then that should also be clarified.

THE COMMISSIONER: Well no, I think, well I thought that ground work had been laid.

MR WATSON: Perhaps I should ask another ground laying question.

Senator, why were the administration costs increasing?

THE COMMISSIONER: Can I just, can I just add to that, Senator, you realise that that question, that question follows upon what Counsel Assisting earlier said which was that Sydney Water was primarily objecting because the costs were increasing at a time when the work was drawing to a close and on past experience they expected the costs to be declining - - -?---To be going down.

10 - - - or well to, to at least stay stable if not reduce and contrary to expectations they escalated so that's the context of the question. Do you understand that?---Sure, sure. Um, I do recollect though that through the beginning of '09 some of those costs under RH3 were going down again, they went up and they went down.

MR WATSON: You're not saying there was a dispute between Sydney Water that they were complaining that your costs were too low are you? ---No, no.

20 Let's stick to the, let's stick to the issue - - -?---No, no, I'm just, I'm just giving you - - -

We've only got limited time?---Sure.
Let's talk about the ones - - -?---I'm giving you the context. Yeah.

- - - where they were complaining about the cost going up. I want to ask you, why were the administration costs going up at a time when the field work was diminishing?

30 MR BANNON: In fairness to the witness he just gave a time period which was an answer to the question.

THE COMMISSIONER: Well look can we, can we cut to the chase. This is at the end of stage 3 is it not?

MR WATSON: Yes.

THE WITNESS: Yeah.

40 THE COMMISSIONER: Well you understand that, Senator, because you yourself said that you asked for clarification between the RH3 - - -?---Yeah, yeah.

- - - and package 1 arrangement?---Yes.

Well at the end of RH3 which is stage 3 - - -?---Yeah.

- - - this is when Sydney Water started to complain that the costs were going through the roof. You understand that?---Yes.

That was the subject of dispute?---Yes, yeah, yeah, yeah, yes.

What Counsel's asking you is why was that occurring.

MR WATSON: Why were the costs going through the roof?---Well what I don't understand is whatever the costs were they were either attributable or attributable to RH3 and that would be determined under the, either the dispute resolution process or the expert determination.

10 Thank you for - - -

THE COMMISSIONER: No. But we're, but we're not talking about that. We're asking for your view which was the subject of this discussion at board level. Your understanding of why the costs were going up at the end of stage 3?---I don't know the full answer to that.

MR WATSON: This was at a time that you were either Deputy Chairman or Chairman?---Deputy Chairman.

20 Deputy Chairman, and you knew that there was a hot dispute with Sydney Water, is that right?---I was informed of that after I joined, yes. And you knew that Sydney Water was the only client of Australian Water Holdings, is that right?---At that stage, yes.

And you knew that Sydney Water's complaint was that costs were ballooning, escalating in an unanticipated fashion. Is that right?---Yes, that was their view, yes.

30 Now you tell us what did you do to find out why those costs were escalating?---Well those costs seemed to be incurred before I got there.

Well does that mean that you did nothing?---What to question those particular costs?

Does it mean you did nothing?---No, it doesn't mean that.

Well what did you do?---Well we had legal advice about what was discloseable and not discloseable.

40 That's a different issue altogether. I'm asking you why, why were the costs escalating?---But because we had such advice about our position it didn't seem to be an issue that I should be investigation separately. Because it came to what rights - - -

You've got to be careful here, Senator. I might - - -

MR BANNON: Did he finish off?

MR WATSON: I'm so sorry, go on?---No, no, I was just going to say because it came down to the question of what rights we and the other party had under the arrangement.

Well, I'm not asking you about that. I'm asking you about the costs, the administration costs that Australian Water Holdings were escalating?
---Sure, sure.

10 Why, why were they escalating?---I assume it was because the salary and related costs were going up.

And when you say assume did you do anything to verify that?---No.

So in respect of Australian Water Holdings and its contract with its single customer - - -?---Yeah, yes.

- - - and a hot dispute between the two - - -?---Yeah.

20 - - - you did nothing to get information as to why the costs were escalating, is that right?---That is right but can I elaborate?

Go for your life?---Because at that stage we also had legal advice about what we could and could not respond to in that regard from Allens.

Well, thank you, I don't see how that's got - what does that have to do with escalating costs?---Well, because in any dispute you have to protect - - -

30 That's got a lot to do with if you wanted to disguise escalating costs - - -?
---No.

MR BANNON: He answered the question.

MR WATSON: All right?---Because in any dispute you have to protect your rights.

40 All right. Okay. Well, I think we've got the position. With knowledge of the dispute your position as a director you did nothing to ascertain the facts behind the escalation of Australian Water Holdings' costs?---But even if I had would I be - - -

No, just answer the question. Did you or did you not do something?---Not specifically, no.

Well, when you say not specifically what non-specific thing did you do?
---Only through the discussions we had at the board level.

And so did anybody at board level reveal why the costs were escalating?
---No.

Why didn't you ask a question, let me just frame a simple one for you. Hey, Mr Di Girolamo, why are the costs escalating? Why didn't you ask that? ---Because we're working in a world where the issue was what costs were properly attributable to the contract as opposed to what the costs might otherwise be.

10 Well, can I just remind you that we've had evidence in this inquiry from Dr Kerry Schott, you know of her don't you?---I do and I admire her.

Well, according to Dr Schott in early 2009 she had a meeting with you where she raised this very issue about escalating costs.

MR BANNON: I think she said they came down afterwards.

THE WITNESS: Um, I think we discussed the matter in general terms. I mean, it wasn't a very specific discussion, it certainly didn't have paperwork or anything with it.

20 MR WATSON: Well, was the subject of - - -

MR BANNON: In, in fairness to the witness my friend should put - because I have objected a few times about the time period of escalating costs. Your Honour will recall, I mean, the Commissioner will recall that Dr Schott said after the meeting the costs came down so when - the witness earlier indicated he understood the higher costs were in an earlier period of time and it's been shouted down (not transcribable)

30 MR WATSON: No, sorry, I'm talking about what was said in the conversation.

THE COMMISSIONER: Yes, sorry, this is about the, this is about the meeting though, regardless of what happened afterwards - - -

MR BANNON: I appreciate that but, but I think the tone, the question and direction is to say what did you do about escalating costs. The, the time period - - -

40 MR WATSON: Well, if - - -

MR BANNON: - - - of escalating costs is the key.

THE COMMISSIONER: Well, look, we'll, we'll get there but can I just um - - -

MR BANNON: I'm not trying to slow it down, I just want to make sure it's precise.

THE COMMISSIONER: Can I just go back a step. Senator, the dispute with Sydney Water in relation to these escalating costs was what prompted Sydney Water to ask Australian Water Holdings for the requisite information which they said they didn't have to enable them to be satisfied that the costs were being properly incurred - - -?---Sure.

- - - under the RH3 contract, isn't that the position?---Yeah, Sydney Water's position?

10 Yes?---Mmm.

Well, Sydney - the escalating costs was what prompted, motivated Sydney Water - - -?---Yeah.

- - - to say to Australian Water Holdings we can't discern - - -?---Yeah.

- - - if these costs relate to RH3, you need to give us more information, that was the dispute in effect?---Mmm.

20 And you said that essentially the legal advice that you received persuaded you that Australian Water Holdings was not obliged to give them that information, is that right?---Yes.

Leaving that to one side - - -?---Yes.

- - - right - - -?---Sure.

- - - you're the deputy chairman of a company that you understood to be a profit-making entity - - -?---Mmm.

30

- - - and you're there because you want to grow the company and, and particularly develop the PPP?---Yeah, sure.

Right. You would have to be concerned would you not with the financial health of the company?---Yes.

And a critical part of the financial health of the company is whether or not you can manage your costs?---Yes.

40 Right. So leaving to one side the dispute were you not at any stage concerned about this rather rapid and alarming increase in the costs of the company, forget about the dispute with Sydney Water, was that something that concerned you?---You've always got to be concerned about your costs base but this was a company where the executive directors were also the shareholders and it was not in their commercial interest to drive the company into the ground but - - -

Well, that might just say that those who were running the company were not particularly good at it. You see, my question is was it not your concern that the costs were escalating and whether or not the shareholders were the people who were ultimately running the company?---Sure.

You're a deputy chairperson?---Yeah, yeah.

10 Were you not concerned about the costs base?---Commissioner - yeah. But, Commissioner, the paradox was that we were running this dispute in tandem with the package 1 works being worked through where we'd come to an agreement on a fixed price contract. So you had all these things going on so this was a dispute from the past that had to be settled but we were in effect moving on to this package 1 works and the philosophy which underpinned that which was the fixed price contract.

20 I understand all of that but you see my question wasn't premised on, on, on what was happening with Sydney Water, my question was much more broadly based, that is as a deputy chairman of the company were you not concerned about the escalating costs? Leave to one side whether or not you were in a dispute which you hoped would resolve in your favour and would overcome the problem but at its heard you were looking at seemingly inexplicable escalating costs and I'm just wondering whether or not you were concerned about that?---Yes, but I'm giving you my state of mind at the time.

All right. Thank you.

30 MR WATSON: Commissioner, I'll tell everybody here Dr Schott has by various means sent through to us material that she has found subsequent to her evidence which are diary entries. I'll have it put up on the screen now and, Senator, I'll show you a hard copy. I'll tender this, Commissioner. Consistent with her evidence it seems as though the meeting which Dr Schott attended in the company of Mr Brown occurred on St Patricks Day, 17 March, 2010.

THE COMMISSIONER: That shall be Exhibit C62.

40 **#EXHIBIT C62 - ELECTRONIC DIARY MEETING NOTE BY
KERRY SCHOTT, ARTHUR SINODINOS & JOHN BROWN
DATED 17 MARCH 2010 4:25 PM TO 5:25 PM**

THE WITNESS: Sorry, which meeting are you talking about?

MR WATSON: Well, this is what I'm going to come to. Do you remember there was a meeting where Kerry Schott was accompanied by John Brown from Sydney Water?---Yes.

And John Brown you knew personally I think?---Ah, no, I met him through Paul Nicolaou.

All right. Well, I think that means you might have known him at least before the meeting does it?---I'm not sure I met him before the meeting.

All right. That's okay. In any event Mr Brown and Dr Schott came along and Dr Schott spoke to you about ballooning costs.

10

MR BANNON: Sorry, can I - I do object.

THE WITNESS: Well, where's that in this note?

MR BANNON: I object to that. The meeting about which Dr Schott gave evidence was a meeting she said in early 2009 with - - -

THE WITNESS: Yeah, this 2010.

20

MR BANNON: - - - with present only Brown, Schott and Sinodinos.

THE COMMISSIONER: I think, Mr Bannon, there were some questions that were asked of Dr Schott about another counsel that clarified that her time was wrong and that she ultimately I think acknowledged that it was early 2010.

MR BANNON: I don't recall that but the, but the participants are different.

THE WITNESS: Yeah, there, there were two meetings, yeah.

30

MR WATSON: There were two meetings no doubt but the timing of it - - -

MR BANNON: I see, I'm looking at the wrong piece of paper, I'm sorry.

MR WATSON: See I put to you before about early 2009 and I got that out of part of the transcript and Mr Bannon's quite correct, there was a meeting, it was early 2010 and Mr Brown came along. Do you remember that meeting?---Yeah.

40

Now, during it Dr Schott raised with you the concerns which Sydney Water had as to the ballooning expenses, the escalating expenses at Australian Water Holdings, is that right or wrong?---No I, I don't remember ballooning costs being the issue at this meeting.

Sorry, I didn't ask you that. I asked you whether she raised it with you, Dr Schott - - -?---I don't, I don't remember whether - - -

- - - raised with you - - -

MR BANNON: He answered that question.

MR WATSON: Sorry?

MR BANNON: Already answered that question?---I don't remember whether she did or not.

10 MR WATSON: All right, well are you saying you don't recall?---Ah, whether she did or not, no, not at this meeting.

Well we have evidence from Dr Schott that she went to a meeting with you and Mr John Brown was present and she went to a meeting with the purpose of raising with you the concerns about these escalating costs?---In March, 2010?

Well, she went to a meeting. Put the date out of your mind. I've put that up and tendered it so that there is some evidence about it?---No, I'm sorry - - -

20 I'm talking about a meeting with, do you remember a meeting, Dr Schott and Mr Brown?---Yes.

Three of you, face to face?---Yes. Yes.

Let's just talk about that and let's not care whether it happened this century or last century, just that meeting. During that meeting Dr Schott explicitly raised with you concerns over escalating expenses charged by Australian Water Holdings, correct?---I don't remember that she did.

30 Really? You don't remember?---March, 2010.

No, I told you, I'm really - - -

THE COMMISSIONER: Don't worry about it, Mr Sinodinos - - -

MR WATSON: Can you give that piece of paper away because I think it's providing a terrible distraction for you. I'm just going to get the staff to collect it from you.

40 THE COMMISSIONER: Can I just, can I just ask though for clarification, sorry Mr Watson, there was, there were two meetings with Dr Schott. The meeting that you're referring to as I understand it was only Dr Schott, Mr Brown, and the Senator.

MR WATSON: Correct.

THE COMMISSIONER: And Mr Di Girolamo was not there. So you're talking about that meeting.

MR WATSON: That meeting.

THE COMMISSIONER: Thank you.

MR WATSON: Now - - -?---No, I understand that, Commissioner.

10 All right. Well let's just talk about that meeting. At that meeting just you, Mr Brown, Dr Schott. Dr Schott explicitly raised Sydney Water's concerns over escalating costs charged by Australian Water Holdings didn't she?---I don't remember whether she did.

Well what was she there for?---I think it was John Brown's initiative, Mr Brown from the board ah, and I think it was to give them I suppose their perspective on Australian Water Holdings.

On what, what, were they interested in investing?---No.

20 What were they there for, what was their perspective - - -?---No but - - -
- - - of, on Australian Water Holdings?---Well, I think they were wanting to develop a better relationship.

And how were they going to do that, what sort of things did they say? "We've got to invite each other around for a barbeque." What was it?---I mean, I don't remember the specifics um, but, but I, I think they just wanted a better relationship.

30 So are you denying that Dr Schott raised with you escalating expenses - - -?---I'm - - -

- - - of Australian Water?---I'm saying I don't recollect in the context of that time that she did.

Well then - - -

MR BANNON: This is after the first determination, you know, the arbitration.

40 MR WATSON: I'm so sorry. My learned friend wants to have a say.

MR BANNON: In fairness to the witness it should be pointed out that if the meeting is now in March, 2010 that is after the first determination with the arbitration.

THE COMMISSIONER: No, no, no. Mr Bannon, can we just, can we just stick to what this witness understands to have been a meeting solely with Dr Schott and Mr Brown. That's all we're concerned with at this stage.

MR BANNON: I understand but the basis, it's the premise of which he is putting is a, is a premise which wasn't explored with Dr Schott and has the difficulty that its after an arbitration, the first element of the arbitration dispute so it's a bit - - -

THE COMMISSIONER: Well at this stage I think Counsel's just - - -

MR BANNON: - - - unclear why that would be raising.

10

THE COMMISSIONER: Well I, the question wasn't put in that context at all. It was just a question about the nature of the discussion between Dr Schott, Mr Brown and, and the Senator. He said it, they wanted a better relationship with Australian Water Holdings. The next question was how were they going to do that and what was the proposal. So can we move on?

MR BANNON: Yes.

MR WATSON: Well for example what was the problem with the relationship?---Well there'd been disputes through 2009.

20

And what were those disputes about?---Including over RH3 um - - -

And what about RH3?---In terms of the, the cost base. That was - - -

Escalating costs?---But that was, this is why the context is important. By about March 2010 most of that had been settled.

Well, Senator, I'm not worried about the context I'm worried about the words?---Well - - -

30

You do know what Dr Schott said don't you?---I don't have a clear recollection of them.

But, sorry. You know what she said in this inquiry, you would have read that transcript wouldn't you?---Yes, yeah.

You know that she says that she spoke to you about escalating costs charged by Australian Water Holdings?---Yeah, but I don't remember that specific discussion.

40

All right. So you're just saying you just can't recall it?---No.

And, Dr Schott, raised with you very sensitively a concern she had that you should distance yourself from the people at Australian Water Holdings because she felt that they were to use a word "dishonest"?---I don't remember her using the word dishonest, that's a pretty heavy word to use about people.

Don't worry about the word but what she said - - -?---Well I'm sorry - - -

- - - implied that those with whom you were dealing at Australian Water Holdings were dishonest wasn't it?---Sorry, you're saying she implied they were dishonest?

Yes. Well you've read her evidence, you know what I'm putting to you.

10 MR BANNON: I don't think that's a fair question.

THE COMMISSIONER: Well - - -

MR BANNON: To put a question that way.

THE COMMISSIONER: Look, right.

MR BANNON: Either my friend puts a proposition - - -

20 THE COMMISSIONER: Can we, can we just take the word dishonest out of it for the present purposes.

Senator, do you recall at that meeting that Dr Schott expressed her concern to you about you having the relationship that you did have with Australian Water Holdings? She was concerned about that because she felt that it was not in your interest to be so involved. Do you recall that or not?---No.

You don't?---No.

30 MR WATSON: All right. Do you deny that, do you deny that she said it?--
-Well I just don't recollect that. The whole purpose of the meeting was to build - - -

Do you deny that she said it?---I can't recollect whether she said it or not.

Do you deny that she said it?

MR BANNON: Well I object. That's a technical - - -

40 THE COMMISSIONER: I think that means that he can't deny it.

MR WATSON: All right. Well as a result of Dr Schott and Mr Brown's attendance can you recall going back to the board and reporting on that meeting?---I don't remember whether I did.

Well what's your best recollection? Did you or did you not report - - -?
---No, I don't believe I did.

Why not?---It was a private meeting and I treated it as such.

Who said it was a private meeting? I mean it was held in an office but they were from Sydney Water you're from Australian Water Holdings. Is that right?---Yes, yeah.

Who did you owe your duty to?---Well I had a duty to Australian Water Holdings but I'm an independent Director and I'd been approached I believe in that context.

10

Well the point it's no reason to keep what was said at that meeting private was there?---Well it may have informed how I approach matters at the board level as an independent Director.

Well what do you mean? If somebody came to you according to your version of this meeting and said gee, we'd like to encourage a better relationship between Sydney Water and Australian Water Holdings you felt that you had to keep that secret did you?---Well that would have informed the approach I might take but it didn't - - -

20

Well I'm asking you why you wouldn't raise the, the occurrence with the board?---I don't know.

Well just think about it now, think about your duties as a Director?---Sure. And think about your obligations as a Director. You've just been approached by two pretty heavy people from Sydney Water, the sole client of Australian Water Holdings?---Yeah.

Why wouldn't you report on that occurrence with the, to the board?

30

---Because my duty as a Director is how I conduct myself on the board, that may be informed by meetings I have outside including with our major stakeholder but that doesn't mean I necessarily have to disclose that to my own board.

Well why wouldn't you do it?---It may inform my approach but that was a matter for me.

Why wouldn't you inform the board?---That was a matter, a judgement I made at the time.

40

MR BANNON: I object. This, this question is proceeding on a basis which is not supported by the Schott evidence. The Schott evidence was, the question as, as, Commissioner, you rightly recall was raised by another Counsel Mr McGrath suggesting to her that it was in 2010 2010 and she said specifically "I think as I mentioned earlier it occurred probably early in 2009 at which point he must still have been Deputy Chairman." If she had said it was 2010 my questions would have been quite different because it's illogical to be talking about ballooning expenses and a thing which is

already all over and which at that point was the subject of an arbitration, we had two arbitration decisions at law it was going on between - - -

MR WATSON: Sorry.

MR BANNON: - - - between the parties.

MR WATSON: Sorry, I'm not sure what my learned friend - - -

10 THE COMMISSIONER: No.

MR WATSON: - - - is doing (not transcribable) planning to recall Dr Schott.

THE COMMISSIONER: But look - but - - -

MR BANNON: No, I'm not trying to recall Dr Schott but I'm saying it's been, this has put on a basis - - -

20 THE COMMISSIONER: But Mr Bannon - - -

MR BANNON: - - - which is quite false.

THE COMMISSIONER: But Mr Bannon - well, I don't know that that's the case.

MR BANNON: I shouldn't say false but an assumption which is not borne out by the evidence today.

30 THE COMMISSIONER: Well, I don't know that any assumption is being put. I mean, at the moment we're dealing with a series of questions as to why the Senator didn't think it was appropriate to inform the board about the meeting. Now, we know the meeting occurred and we're exploring his understanding of what was said so - - -

MR BANNON: But, but just when it occurred could have, could have a big bearing on the, on the topic of exploration, that's, that's my point.

THE COMMISSIONER: Oh, well - - -

40

MR BANNON: And the question could be just fairly put, that's all.

MR WATSON: Sorry, I've asked it neutral of a date.

THE COMMISSIONER: Yes, I don't.

MR WATSON: It doesn't matter, words are what I'll ask about.

THE COMMISSIONER: Can we just, can we just move on a bit from this.

MR WATSON: Well, I had actually, Mr Bannon's dragging us back but I don't really want to go back there, I was on why Mr or Senator Sinodinos didn't report it to the board but, Senator, we'll move on. Well, you said one of the matters which was influential with you was that you had legal advice on the subject of revealing information to Sydney Water?---Mmm.

Do you remember giving that evidence?---Mmm.

10

Sorry, it's being sound recorded so you've got to say yes or no. Do you recall giving that evidence?---Yeah, yes.

Now what was the point you were trying to make about that?---That in these sort of disputes you also take into account the legal advice that you receive.

All right. Well, how was that relevant to this dispute?---Well, it's relevant in the terms we talked about before.

20

No, sorry, you just explain to me what was the legal advice that you were talking?---I think it was advice from Allens.

Thanks very much for that but what was the advice you were talking?
---Around what was disclose-able and not disclose-able.

Did Allens give you advice that Australian Water Holdings was prohibited from disclosing the information sought by Sydney Water?---I think it was around the scope of the audit and, and what information could and could not be provided.

30

Well, are you saying that they were giving you advice which prevented Australian Water Holdings, even if it wanted to, from giving information to Sydney Water?---I, I, I don't - - -

Is that what you're saying?---I don't recollect that.

Well, is it, isn't this the tenor of the advice, that Australian Water Holdings was in a legal position where it could withhold providing Sydney Water with information. Wasn't that the tenor of the legal advice?---Mmm.

40

Is that answer yes?---I think so, yes.

And so that wouldn't stop Australian Water Holdings from providing the information if it wished to do so?---Well, I can't speak for others but I'm also wary about going beyond one's legal advice and what precedence that creates for the future.

Just answer my question if you don't mind. That legal advice would not have prevented Australian Water Holdings from giving the documents to Sydney Water Corporation would it?---You mean as a voluntary gesture?

Yes?---No, I suppose not.

Well, then why didn't you give the documents?---Because the directors didn't want to.

10 Thanks, and why was that?---Well, they - well, as I recall the, the situation it was based on that advice.

Well, but why? Why didn't they want to give the documents?---That was the advice.

Well, sorry, you've just told us that on a voluntary basis Australian Water Holdings could have given the documents sought by Sydney Water didn't you?---Sure. Yeah.

20 Well, why wouldn't you do it?---They didn't want to do it.

Earlier in your evidence you said that you thought Sydney Water would have received the accounts and receipts because Australian Water Holdings was working on a reimbursable model, do you remember giving that evidence?---Yes.

Well, what changed your mind as to the way in which a reimbursable model should work?---Sorry, can you, can you repeat that?

30 What changed your mind - - ?---Mmm.

- - - in respect of the way that a reimbursable model should work?---I was not against them getting whatever was appropriate for them to be provided.

And that would be the accounts and receipts breaking up the, the invoice upon which they were asked to reimburse?---Subject, subject to what was legally appropriate as well.

40 Well, legally appropriate or not you could have given the documents that Sydney Water was seeking couldn't you?---Sorry, what was that last bit?

You could have given the documents to Sydney Water, the documents that they were seeking, couldn't you?---Yes we could have.

And I take it this was discussed at board level?---Yes.

What did you say, were you in favour of giving the documents or withholding the documents?---I was in favour of following the legal advice.

And why?---Because I thought that was the most appropriate, prudent position to take.

Well this seems inconsistent with your earlier evidence that you felt that under a reimbursable model Sydney Water would be receiving accounts and receipts doesn't it?---I, I don't think that follows.

10 All right. Okay. So you're saying that on a reimbursable model what, Sydney Water should just pay out on a one line invoice without being given accounts and receipts, is that what you're saying, Senator?---No. They should go through whatever were the processes for certification.

MR BANNON: Commissioner, I object to this. This, the subject matter, as my friend knows is in the context, and the board papers are there, they've got them and the context of a matter which is in arbitration in relation to old costs which are the subject of debate.

20 MR WATSON: This is long before arbitration. I'm sorry - - -

MR BANNON: No it's not. It's here. This is exactly the things you've got, you've got, it's an MFI.

MR WATSON: It's, it - - -

MR BANNON: And I'll take the witness to it if you don't.

THE COMMISSIONER: In any event, Mr Bannon - - -

30 MR BANNON: In other words he's being asked questions on a general basis which is, it's the context of litigation and which there, as we know from a different, other Counsel asking questions further material was provided.

THE COMMISSIONER: Well, can I just, can I just then - - -

MR BANNON: Why this - - -

40 THE COMMISSIONER: - - - perhaps, perhaps put a completely different question to the Senator. Senator, the, the legal advice arose in the context of this dispute with Sydney Water about the escalating costs didn't it?---I think it did, yes.

Well, at the time at which Dr Schott and Mr Brown came to see you Australian Water Holdings and Sydney Water were already in dispute weren't they?---Ah, in March, 2010?

Well, whenever it was that you had this meeting Sydney Water and Australian Water Holdings was already in dispute were they not?---With respect, the puzzle for me is March, 2010 I think there was some, there may have been something ongoing but I thought there'd been at least one expert determination.

Well, that's not the question, with respect. They were already in dispute because you said that the subject matter of the meeting was Dr Schott and Mr Brown wanting a better relationship with Australian Water Holdings.
10 So the context must have been the relationship was not good. And the relationship was not good because you were in dispute?---But I can recollect through that period including early 2010 people from Sydney Water coming through to Australian Water Holdings, it was reported to the board, to look at further materials. So there was an ongoing process of discovery if you like.

Well sorry, but that's not my question. My question, my question is the meeting that you had with Dr Schott and Mr Brown you recall being generally about Sydney Water wanting a better relationship with Australian
20 Water Holdings. And that must have been in the context of the dispute that had already arisen, isn't that right?---Ah, yes.

Well that's, as you understood, the purpose of the meeting. They, you were in dispute with them and they were saying what can we do to cut through this problem?---And, and what I took out of the meeting with Kerry Schott and John Brown was that we should take a softly/softly approach to dealing with this expense matter - - -

Sorry. Who should take a softly/softly approach?---Australian Water
30 Holdings. In order that we might be able to make sure we don't throw the baby out with the bath water as it were around other matters to do with the relationship between Australian Water Holdings and Sydney Water including the relationship around progressing the PPP. Because the context was that the 8 August, 2008 letter which was meant to be a settlement of previous disputes between Sydney Water and Australian Water which also included the commitment by both sides to progress a PPP, very early on after that letter was signed Sydney Water was starting to walk back from that process. So when I walked into the company, into Australian Water Holdings I'm walking into a situation where there are disputes on several
40 fronts going on and where there is with respect to Sydney Water potential evidence of bad faith on their part in terms of not willing to proceed with the 8 August letter, 2008. So I've got a situation where I've got both parties as it were through '09 and the early part of '10, including the March, '10 meeting saying, giving me their sides of the story and me recognising that well, we've got to try and find a way through this so we don't imperil the PPP and the other matters. That's the context of March, 2010 in my view.

Well I mean at some stage the evidence will establish the chronology but I understand why you'd give that explanation. But can I come back to my question. The meeting that you had with Dr Schott and Mr Brown was in the context of this dispute and what you said you took away from that meeting was that you needed to do something to prevent as you said it throwing the baby out with the bath water?---And we discussed at the board level making sure that the approach we took to mediation everything else did not imperil those broader objectives of the company.

10 All right. I'm just trying to get to my question. That seems to suggest to me that you did report back to the board about that meeting with Dr Schott and Mr Brown because you had a specific message that you took away from the meeting and it must have been reported to the board for you then to take a particular strategy, that's what I'm asking?---But I don't remember reporting to them specifically on that meeting, so I don't want to say something - - -

Oh I see --- - - - that I can't attest to.

20 But you may well have reported it and that may well have been the context of, of your strategy - - -?---It may well have been the context but I'm not wanting to mislead you by saying something I don't, I can't recollect.

All right. Well - - -

MR ALEXIS: Commissioner, can I just raise in the context of the discussion that is occurring with respect to the existence of the dispute. Mr Easton delivered his first expert determination we know there were two but the first importantly having regard this discussion about context - - -

30 MR WATSON: What business has Mr Di Girolamo got in this part of the debate?

THE COMMISSIONER: I don't know.

MR WATSON: I'd ask Mr Alexis to sit down.

MR ALEXIS: It was handed down on 16 January 2010.

40 THE COMMISSIONER: Look Mr, Mr Alexis, we just, we just - - -

MR ALEXIS: With respect, Commissioner - - -

THE COMMISSIONER: No, Mr Alexis, we want to move ahead with this witness. We've already got to the point where he has been allowed to give an explanation of the context, it's his evidence not yours. Mr Di Girolamo does not figure so far in the questions that have been asked of this witness in relation to the meeting of Dr Schott and Mr Brown. I want to move on. Thank you. Yes, Mr Watson.

MR WATSON: But that long answer to the Commissioner's question that seems to me to suggest that Dr Schott and Mr Brown did raise escalating costs and that particular dispute with you, is that right?---I can't recollect the specific matters.

Well I'm only asking you to recollect the answer you gave to the Commissioner one minute ago?---Yes.

10 It's – you said that they, you used the expression throw the baby out with the bath water in respect of the dispute over the escalating costs.

MR BANNON: No, he didn't say escalating.

MR WATSON: Oh you didn't use the word escalating but - - -

THE COMMISSIONER: No. He said, he said it was the context within which I put the question to him, Mr Bannon, he agreed that the meeting took place - - -

20

MR BANNON: I'm sorry, I didn't (not transcribable)

THE COMMISSIONER: - - - in the context of a dispute with Sydney Water and that dispute was in relation to escalating costs. But anyway. We're never going to, we're never going to get anywhere unless we, we actually get to question and answer rather than people making pronouncements. Go on, Mr Watson.

30 MR WATSON: You answered the Commissioner by saying that Schott and Brown raised the issue of the costs dispute didn't you?---Come again, sorry?

You answered the Commissioner referring to the fact that Mr Brown and Dr Schott came to you and referred to the costs dispute didn't you?---I thought the context was more broadly around the relationship - - -

40 I'm asking you about the answer you gave to the Commissioner a minute ago. Will you concentrate? Really. We've got to move forward, Senator, you want to get back to work no doubt so do I. The point is you answered the Commissioner a moment ago referring to Mr Brown and Dr Schott coming to you and referring to the costs dispute didn't you?---All I can say is that may have been part of the context but not the full context.

I didn't ask you that. Do you accept that that's what you told the Commissioner or not?---Yes.

So when Dr Schott came to you you accept do you she raised the issue of problems over the costs?---I don't have a specific recollection.

Why then did you tell the Commissioner what you told the Commissioner?

MR BANNON: Commissioner, I, I think - - -

THE COMMISSIONER: I think we can, I think the record will speak for itself, Mr Watson.

MR WATSON: Yes, we'll move on. Now - - -

10 MR BANNON: I think there's an ambiguity but the record as the Commissioner says - - -

MR WATSON: All right, we'll move on. I want to talk to you about problems at Sydney Water, sorry at - I'll start again. I want to go now to problems at Australian Water Holdings with cash flow. Were you ever aware that there was a cash flow crisis?---I was aware of cash flow issues.

Issues?---Yes.

20 Were the issues that we've got to much cash?---No.

Right. What were the issues?---It was around the cash flow of the organisation between contracts, the impact of disputes on the holding up of money for contracts and so on and so forth.

Well, was there a deficiency in the cash flow?---There were at various times, yes.

30 And were they serious?---Well, they were never serious enough to bankrupt the company or, or cause it to be put into liquidation because the directors were always willing to stand behind the company, the executive directors.

All right. But I'll ask my question again. Were the cash flow problems serious?---They were at various times, yes.

Were they so serious that at times Australian Water Holdings was unable to pay its tax to the Federal Commissioner.

40 MR BANNON: I object.

THE WITNESS: It, it - - -

THE COMMISSIONER: As and when it fell due.

MR WATSON: As and when it fell due?---It had to come to payment arrangements for some of these, yes.

Were they sufficiently serious so that Australian Water Holdings had to enter into a programme with the State authority in respect of its payroll tax?
---Yes.

Were they so serious that Australian Water Holdings was not able to set aside an allocation to provide for the superannuation of its own employees?
---That was brought to the directors' attention and action was taken, yes.

10 Well, just so the cash flow crisis at one stage was so serious that Australian Water Holdings could not put aside an allocation for the superannuation of its own employees, is that right?---Yes, and that was brought to the directors' attention for rectification.

And when you say directors were you one of those directors?---Yes.

That is extremely serious isn't it?---Well, all cash flow deficiencies are serious.

20 Well, answer my question, that is - and I'm referring to the superannuation - that is extremely serious isn't it?---Yes.

Were they so serious that Australian Water Holdings had to go to the Obeid family to secure a \$400,000 loan to meet its tax obligations?---When was that?

In September 2011 while you were chairman of the company, Senator Sinodinos?---Not that I'm aware of.

30 You didn't even know, is that it? You say you don't know about that?---No.

Are you aware that around that time, September 2011 Australian Water Holdings was in such dire straits that it needed to borrow money to pay its tax?---In 2011?

September 2011?---No, I, I don't remember. I was on - that was the, the time I was transitioning to go to the Senate.

40 Well, you were still chairman and a director of Australian Water Holdings weren't you?---Yes, yeah.

You still owed it a duty didn't you?---Yes.

You still owed its creditors a duty didn't you?---Yes.

All right. Well, are you not saying that it's an excuse because I didn't turn my mind to that because my mind was on other things?---No but I'm, I'm giving you the context.

All right. Thanks, you're good at giving context but the point is that are you saying you did not know that in September 2011 things had got so bad that Australian Water Holdings had to borrow \$400,000 to pay its tax?---Who did it borrow it from?

I've asked you a neutral question?---No.

10 You didn't even know that. Just for your own info it was the Obeid family but there'll be other evidence or there's already been evidence of that. There was always while you were a director at Australian Water Holdings a question of its solvency, is that right?---Not to the point of it becoming insolvent.

That's right. Because solvency was resolved by relying upon the word of two of the directors who said that in the event that the company became unable to pay its debts as and when they fell due they would meet those debts, is that right?---Yeah, that was part of it, yes.

20 And those two directors were Mr Rippon and Mr Di Girolamo?---Yeah.

And what did you do as a director of the company to ascertain the financial capacity of either of those men to make good that promise?---I took them at their word.

Does that mean you did nothing?---I didn't check their bank accounts, no.

Do you remember Rod de Aboitiz?---I do.

30 Now, he was a fellow who was obviously commercially savvy?---Yep, absolutely.

And we've had him here, an intelligent man. You would have respected him?---He was highly intelligent.

Now, Mr de Aboitiz went to meet with you didn't he?---Ah, which date?

40 Well, do you need a date, well there, there was an early meeting in company of people I've shown you with Mr Nicolaou (not transcribable) but he sought out a separate meeting with you, just you and he man to man, your room. Do you remember that?---In 2010?

I just can't give you the date at the moment. I will in a moment. But are you saying that there was more than one meeting?---I'm just trying to place it.

Well, did, are you saying you can't recall the meeting that I'm referring to?---No, no, I can recall the meeting with Rod.

Well just, let's just call it a meeting with Rod. We'll put on a date in a moment?---Sure.

During that conversation, sorry, I withdraw that. Mr de Aboitiz wanted the meeting with you, is that right?---Yes.

Why?---He wanted to talk to me about the company. He was a convertible note holder.

10 And what did he want to talk to you about in respect of the company?---I think it was the state of the company at that time.

And what did he mean by that?---The state of the company at that time.

Well, what did he mean by that? Did he mean the state meaning it's located in New South Wales?---No, the ordinary meaning implied by what I said.

Yes, well what was that?---The condition of the company.

20 Condition meaning financial condition?---The health of the company.

The, well do you mean financial health?---It would include that, yeah sure.

Well what else apart from financial health? Was he not interested in its physical health or the health of the employees?---Well, the health of the potential PPP for example and discussions with the Government.

30 Okay, so he came and spoke to you about the PPP, is that what you say?---No, but I'm saying that he had a general interest in the company that went beyond the strictly financial.

This meeting occurred just to, I promised you the date, in May, 2010 probably on 25 May, 2010?---Yes. Yep.

So that's, that's the meeting we're talking about?---Yep.

40 So putting aside the PPP what did he say to you regarding the financial health of the company?---Well it was ah, a general discussion. He didn't bring any papers to it, I didn't bring any papers to it.

I didn't ask you what papers he had. I did ask you what did he say to you?--
-Ah - - -

Anything, or just gaze into each other's eyes?---No. We, we talked about ah, the company. He was concerned about the financial health of the company. Um, I remember him specifically raising the chairman's remuneration as an issue.

What did he raise about that?---He thought it was too high.

And who was the chairman at that stage, Rippon?---Yes.

And so what did de Aboitiz say about the detail of that?---Um, I don't remember the detail but what stuck in my mind is that he was concerned about it.

10 Well what, did he tell you how much Mr Rippon was getting?---I don't remember whether we discussed numbers.

Well didn't you think to say, what, "You're concerned about how much he's earning? Incidentally, how much is he earning?" Did you know how much Rippon was getting?---Um, I did around that time.

All right. Did you know it at the de Aboitiz meeting?---Not in precise terms, no.

20 What do you mean not in precise terms, that means to me - - -?---Well - - -
- - - you either did or didn't know?---If he had, if he had asked me the question I don't think I could have given him the answer at that meeting.

Meaning you didn't know how much Rippon was getting?---Not in total terms, no.

30 All right. Apart from Rippon's remuneration what else did he raise with you which were concerns of his over the financial health of the company?---That, that's, that's what I recollect.

So he just came in, burst in and sat down and said Rippon's getting too much and then had a chat about the PPP and left, is that what you're telling us?---No, it would have been a longer discussion than that.

Yeah, and - - -?---But I, I can't recollect many specific details.

Right. Okay. Did it turn to - - -?---I didn't take notes.

40 - - - issues of the failure by the company to be able to meet its statutory obligations? By that I'm talking about tax, I'm talking about pay, I'm talking about superannuation. He raised that didn't he?---Well I can't recollect for sure but I, I take what he said on that.

Well you accept what he said on that?---I accept what he said on that, sorry.

And he raised with you the issue of soft costs didn't he?---I don't remember the term soft costs being used.

Well, don't worry about the term. He raised with you the substance of a matter which would be covered by the terms soft costs didn't he?

MR BANNON: I object to that, I'm not sure what that questions means.

THE COMMISSIONER: Well, perhaps it should be put in particular terms.

MR WATSON: He raised with you money that was being expended unnecessarily by the company on what included limousines, consultants and the like, didn't he?---No, I don't remember that.

He also raised with you - - -

MR BANNON: May be (not transcribable) specific about it.

MR WATSON: He raised with you specifically the fact that these sorts of costs had to be cut, didn't he?---No, I don't remember that sort of detail.

He raised with you the issue of Liberal Party donations, didn't he?---No, I don't remember him raising donations.

Don't you remember even at one stage he was quite specific about it, he said, Senator, he said that, owing money to the Liberal Party is one thing, they just won't invite us to another diner, owing money to the Tax Office means the company will be wound up?---No, I don't remember that at all.

Do you deny that?---I don't recollect that one way or the other.

Well, what else do you recall of the meeting?---I've mentioned - - -

Apart from the one matter you'd mentioned?---Sure, I mentioned what I believe was the substance of the matter.

What, Mr Rippon's salary and that's all?---(No audible reply)

THE COMMISSIONER: Senator, does it assist your memory if I tell you that Mr De Aboitiz said that he specifically referred by way of comparison to the company Abacus that he was then employed by, as I understand it, and he compared the size of that company and its turn over with the size and turnover of Australian Water Holdings by way of comparing the salary structure, does that assist your memory?---I don't remember him talking about Abacus in detail but look, I'm not ruling it out I'm not - - -

It doesn't jog your memory?---No.

All right.

MR WATSON: Well, you're saying the substance of the reason why this busy man, Mr De Aboitiz came to see you, the substance of the reason was to complain about Mr Rippon's remuneration, is that what you're telling us? ---I'm telling you that's what stuck in my head.

Well, you just told us a moment ago, you said that's the substance of it, so that was wrong was it?---Well, because as far as I'm concerned, that is the thing I took out of the conversation.

10 All right. So he's come to see you with this matter about Mr Rippon and you didn't think at the same time that you should ask a question along the lines of, incidentally, what is Mr Rippon earning, is that what you're telling us?---That's, if I was going to do that I'd directly talk to Rippon and the others.

So you made a deliberate choice while De Aboitiz in the room not to inform yourself about how much Mr Rippon was earnings?---Look, it's possible he mentioned a figure I would go back and clarify.

20 No, I'm asking about you and what you did?---At the meeting?

Would you approach that meeting by saying, well hold on, I'm not going to ask you how much Rippon is earning, I won't ask him that, is that the way you're approaching it?---Approaching the meeting with De Aboitiz.

Yes.---Are you saying what I thought before I went to the meeting?

30 No, during the meeting, he's come in, you've said the substance of the meeting was to complain about Rippon's earnings and you told us earlier that you didn't know how much Rippon was getting and you didn't ask De Aboitiz how much he was earning, it seems odd?---No, no, it's possible the figure was discussed but I can't sit here and say for sure that that was the case.

40 Well, what have you ever done – what did you do while you were the chairman, while you were the deputy chairman, what did you do in respect of executive salaries?---Well, after I reported back on the meeting with Rod, we discussed the transition of the chairman and it was in that context we were going to work out how to, as it were, transition him out of the position having regard to the fact that he'd been there a long time and he had a significant interest in the enterprise.

Well, what I might just do to you now, perhaps save a bit of time is show you some evidence that you've given on an earlier occasion.
Commissioner, may I have relief from any suppression order that would apply to pages 868 line 13 through to 869 line 14.

THE COMMISSIONER: Yes. The suppression that was made in relation to that portion of the witness's evidence on a previous occasion is presently lifted.

THE SUPPRESSION THAT WAS MADE IN RELATION TO THAT PORTION OF THE WITNESS'S EVIDENCE ON A PREVIOUS OCCASION IS PRESENTLY LIFTED.

10

MR WATSON: I'll make a hard copy available to you, Senator, and also to your barrister but it'll be available on the screen, page 868.

THE COMMISSIONER: You want it tendered, Mr Watson, or not, no?

MR WATSON: I will tender it. So I might as well do that now while it's coming up on the screen so others can follow.

20

THE COMMISSIONER: C63.

#EXHIBIT C63 - EXCERPT FROM TRANSCRIPT FROM COMPULSORY EXAMINATION OF ARTHUR SINODINOS ON 6 FEBRUARY 2014-PAGES 868.13 TO 869.14 PT

MR WATSON: You'll see that this is transcript, Senator, and it's dated 6 February 2014. Do you see that?---Yeah, yes.

30 And what you'll see is down the left-hand side, there are numbers - - -?
---Yeah.

- - - they're line numbers?---Yes.

So this is line 13, you'll see that I asked you, "How much Di Girolamo was taking a salary?" and you said you'd never discussed it with him?---Mmm.

Do you see that?---Ah hmm.

40 Is that answer yes?---Yes, sorry.

Then at line 19 I asked you about Rippon but you said you didn't talk to him but you remember - - -?---I don't recollect but I, I do remember that he was transition from being Chairman, yeah.

Yes. Well we won't read it all out but if you look about line 25 you couldn't recall a precise figure but you felt it was relatively high. What did

you mean by that, relatively high for a 10 man company?---This is in the context of Rippon?

Yes. Line 25. Relatively high figure?---Well I think we, we discussed it at the time when we were looking to transition him out.

No. What did you mean by relatively high figure in the context of a 10 man company?---Um, well it was over one million, it was around 1.6 at one stage I think.

10

And where was the money coming from to pay Mr Rippon?---Well it would have been coming out of the, the context the company had.

Well when it was the reimbursable model reimbursed by Sydney Water, is that right?---Yes.

What do you think about a salary of, or payment with Mr Rippon of \$1.6 million in that context?---You mean in what context though?

20

Context of Australian Water a 10 man company?---Well it depends what you're comparing it to.

Okay. Well I'm going to compare it with what I'll call the real world. What do you say then?---Well when I say compare I mean people who might have similar expertise.

Did you think it was too small or too high?---Well he was both a Director and a shareholder.

30

So he was receiving part of his pay as a shareholder was he?---I believe he was.

That seems odd to me. Were the other shareholders being allocated rewards along those lines?---I'm not sure but I recollect him making this point at some stage.

So he, his pay reflected the fact that he was a shareholder in the company, not just his work but also the fact that he was a shareholder?---It was like a quasi dividend.

40

Right. And was that something he raised with you?---It was mentioned in discussion.

Right. So just to make it clear this is quite important, his remuneration was fixed by reference to the fact of his shareholding apart from and in addition to his remuneration for work?---I don't know how it was fixed but that's how it was described at one stage.

Well tell me why should Sydney Water reimburse Mr Rippon for that?

MR BANNON: I object. Assumes that Sydney Water was reimbursing for that.

MR WATSON: They were.

10 THE COMMISSIONER: Well I think he's, I think he agreed in about three questions back that they, they, they were doing that under the reimbursable model.

MR BANNON: I've got - - -

THE COMMISSIONER: What, what - - -

MR BANNON: It depends on the time period, it may have been before because RH3 – if we're talking 2010 then RH3 is finished.

20 MR WATSON: No, no, don't worry.

MR BANNON: And we're into the (not transcribable)

MR WATSON: We're talking about the time under the reimbursable models, Senator, just assume that - - -?---Which was before my time there.

30 Yes. But just – we've got to get to the bottom of this it's part of our inquiry and can ask people questions apparently not without some considerable interruption but, Senator, the – why should Sydney Water reimburse on that basis?---That essentially comes down to the conditions under which they were reimbursing RH3.

When would, when would you have drawn the line? Could, for example, Mr Rippon have said well, bugger it, I'm going to put myself on 10 million, would that be okay?

40 MR BANNON: I object. I object because when you say when would you have drawn the line - the Senator just explained this is before his time, this is a dispute about old costs and now my friend is asking him when would you have drawn the line, that would only be in a hypothetical situation when he wasn't there, that's not going to assist - - -

MR WATSON: Well, all right, sorry, I'll withdraw that.

MR BANNON: That's not going to assist the - - -

MR WATSON: I'll come, I'll come, I'll lay a bit more groundwork. Have a look down at line 27, I asked you a question, "What was MacGregor Fraser taking as salary," and you said you didn't know. And then at 29 I

asked you what Robert Groom was taking and you said you thought it was 180, in fact it was well over that, Senator, you didn't know that?---I subsequently checked the employment agreement and it was 300, yeah.

Well, then what I want you to do is have a look at the question that I asked you at line 37, "What does a chairman of a company do that's more important than monitoring the pay of the executives," and then you gave an answer which may not have been to the point, at line 42 I repeated the question. Do you see that?---Yes, yeah, I, I do.

10

Well, what did, what did you do as deputy chairman and then chairman over three years to find out how much the executives were being paid?---We had the transition commenced in the middle of 2010.

That's the Rippon transition?---The Rippon transition which took a long time to effect I, I admit, but that was an important action in starting to get I think the costs base under proper control but I was dealing with people who were also the shareholders as well as directors so it was not as if I could - - -

20

But you - - -?--- - - - unilaterally change the, these measures and then when Robert Groom in 2011 was on board we worked on a business plan, he was asked to work on the business plan which would further reduce the costs base.

Just go back to page 868 line 27. Was that right or wrong, you didn't know how much MacGregor Fraser was earning?---That's right.

And if you look at line 13 you didn't know how much Di Girolamo was earning while you were there did you?---Not, not at that stage, no.

30

While you were at Australian Water Holdings - - -?---Yeah, yeah.

- - - you did not know how much the CEO was earning did you?---No, not precisely, no.

40

Well, what did you understand was going to be your role for which, for which, with respect, you were well paid, what did, were you doing at Australian Water Holdings if you weren't looking at this?---Well, I mean this is one, one aspect of the role including the costs base but there were resolving disputes with Sydney Water, trying to get the public private partnership going, there was a whole host of work. I mean, the place was just dominated by seeking particularly, Commissioner, to get some of those disputes resolved because when it came to the issue of cash there were amounts outstanding like under the RH3 determination about 1.6 million which needed to be resolved one way or the other. In the end we got 1.1 million out of that determination. We shaved \$1 million out of the costs of the package 1 works, admittedly mainly through reducing the use of external consultants.

Was that through your work, Senator?---What?

What you're just describing now, these tremendous victories?---I was involved, yes.

All right. You were involved?---As a member of the board.

As a member of the board?---Directly and indirectly, yes.

10

I've asked a few times about - - -

THE COMMISSIONER: Sorry, could I just - I'm sorry, Mr Watson, I just wanted to make sure I understood the last answer. You said, you said that the board shaved \$1 million from the costs by, what did you say, not employing outside contractors?---Of, of the, of the package, of the package 1 works.

By?---External consultants.

20

Yeah. By, by not employing external consultants?---Yes, that's right.

Sorry, Mr Watson, go on.

MR WATSON: Did you go at this same time that you're shaving things to save money in relation to consultants - - -?---External consultants.

30

External consultants, did you go and look at the books of accounts sufficiently which would give you some idea about money being spent upon a box at Stadium Australia?---I was aware at a board meeting that the issue of um, getting use of a box was raised and we were told at the board meeting um, people would come back with further details. This was in 2010.

Are you saying that you didn't know that Australian Water Holdings had a box at the Olympic Stadium?---We were to be told at a subsequent meeting whether that was the case.

40

Are you saying that you never knew that Australian Water Holdings had a box out at the Olympic Stadium?---No. Because I never went there. Certainly not with anybody from the company.

All right. Well, I'll just show you this. I'll just show you this. It's a, it's a schedule that we've had prepared in respect of - - -?---Thank you.

In respect of costs of the box at the Olympic Stadium?---Yep.

And you'll see that some of these costs are incurred after your time. You ended in, as chairman in November, 2011. So two thirds of them were incurred while you were there. Can, can you explain anything about this, how this happened?---No.

Well some of this happened while you were deputy chairman and some of it happened - - -?---Yes. Yep.

- - - while you were chairman?---Yep.

10

And you can't offer us any explanation about this?---No, I haven't seen these payments, no.

And, well you're saying that you didn't even know that there was a box being paid for for Australian Water Holdings?---Well there was a board discussion and, and further information was to be provided.

20

But you're saying that you didn't even know that they had a box?---No. Well if it was every subsequently mentioned to me it in one ear and out the other.

Well I'm only here talking about your duties as a director?---Sure.

The point is that - - -

MR BANNON: I don't think we are. That's, I object.

THE COMMISSIONER: Well, I think we are.

30

MR BANNON: It's not the, but the Commission's not about the duties of directors.

THE COMMISSIONER: Well no, but see this is in the context of the witness saying that, that, that they had taken action to shave costs by not employing outside consultants.

MR BANNON: For package 1.

40

THE COMMISSIONER: I think – well, and I think Counsel's pursuing what else was done in relation to shaving costs but anyway, go on.

MR BANNON: And there's, and there's no insolvency inquiry before the Commission.

THE COMMISSIONER: No, we understand that. Go on.

MR WATSON: What I'm really asking is that at a, some of these events are occurring at a time when Australian Water Holdings wasn't paying its tax. Is that right?---Ah, which particular time?

Well, 31 May, 2010 they start and that position seemed to continue right up until you left, so the last relevant entry is 26 September, 2011. These payments are being made at a moment when the tax man is going short.

10 MR BANNON: Look, I object. The tax, Commissioner, as we know is a Government body. Nobody suggests that any arrangement of the cash, Commissioner, enters into if not anything other than a proper arrangement.

MR WATSON: Well okay, well I'll, I'll - - -

MR BANNON: And that happens all the time.

20 THE COMMISSIONER: I don't really think that's the point thought, Mr Bannon. I think the point is that if an arrangement had to be made whereby the taxation, the taxation obligations were to be, were to be put off by way of a schedule with arrangement, by arrangement with the Taxation Commissioner that that was occurring at the same time that payments were being made in relation to a box at Stadium Australian. That's the only point that's being made. He can either agree or disagree with that.

MR BANNON: Yes, but which has got nothing to do with any of the items which I've identified which are the particular payments. But anyway - - -

THE COMMISSIONER: Well - - -

30 MR BANNON: I hesitate my object's slow things down and I'm sorry but I did want to make that point.

THE COMMISSIONER: I think, I think we understand your objection. Go on.

MR WATSON: I'll make a more stark one. It doesn't seem right that those sums would be paid for a box at the football stadium at the same time superannuation allocations weren't being made does it?

40 MR BANNON: I do object. I do object to that question.

MR WATSON: Well I, I won't press that.

MR BANNON: You've just answered my question.

MR WATSON: No, well I'll withdraw it. And nobody's allowed to put that in a headline, that's fine. You see, it's, would you look at that and see that this is troubling?---Yes. I understand what you're saying.

Well what am I saying?---Well um, what's the priority of this expense over other expenses of the company.

I tender that document, Commissioner.

THE COMMISSIONER: Yes, that will be Exhibit C64.

10 **#EXHIBIT C64 - AUSTRALIAN WATER HOLDINGS PTY LTD –
ACCOUNT TRANSACTIONS [ACCRUAL] 1 JUNE 2008 TO 30
JUNE 2010 – PAYMENTS TO STADIUM AUSTRALIA
MANAGEMENT LTD- TOTAL \$167,275.82**

MR WATSON: Did you know that, well, you didn't know about a box at the Olympic Stadium?---No.

So has it been news to you that the box was shared with Obeid Corporation?
---Yes, I didn't go out there I didn't use it.

20

I'll get you to return that document to staff and I'll get you a new one. This one relates to limousines, I have a copy made available to Mr Bannon and the Commissioner. What do you know about this?---Only what I've heard through, except that I'm aware on one occasion going from Sydney to Parramatta to Australian Water, to Sydney Water and I think it was 8 July 2011 to visit Kerry Schott and Mike Watts to discuss how to take our relationship further, I remember a hire car being used on that occasion to get us from Sydney to Parramatta but it was not my practice to use hire cars. I used to use my car to go to and from meetings.

30

Who was us in that statement?---On 8 July?

Yes.---It would have been me and Mr, I think it was Di Girolamo or he may have come separately but I came from the city to Parramatta.

It seems as though there were quite a deal of expenses on limousines from this schedule, don't you agree?---Yes, there are.

40 What could they have, what proper use could there be for them in the business of Australian Water Holdings?---Well, I mentioned the one case where I believe I used a hire car - - -

But I had an impression that you didn't even think that that was preferable?
---What?

That you would use it. I mean this is, this is pretty remarkable isn't it, \$1,800 bills being run up with hire companies?

MR BANNON: I object, I don't understand this inquiries about limo (not transcribable)

THE COMMISSIONER: Well, I - - -

MR WATSON: I'll just tender that and I'll move on.

THE COMMISSIONER: Exhibit C65.

10

**#EXHIBIT C65 - AUSTRALIAN WATER HOLDINGS PTY LTD –
ACCOUNT TRANSACTIONS [ACCRUAL] 1 JUNE 2008 TO 30
JUNE 2010 – PAYMENTS TO ABSOLUTE CHAUFFEURED
LIMOUSINES PTY LIMITED – TOTAL \$28,738.09**

MR WATSON: Have a look at, have a look at this one, have a look at this one Senator if you wouldn't mind.

20

THE COMMISSIONER: Could I just establish before we go any further, in so far as C65 is concerned, Senator, do you, do you say that you had no idea about the extent of the expense that was being billed to the company for the use of limousines?---I had no idea in relation to the particular trip I was involved in - - -

Well that one.---Yes.

But I mean that schedule comes a complete surprise to you?---The full extent, no.

30

Does it?---Yes.

Yes, thank you. Yes Mr Watson.

MR WATSON: Do you see that this schedule relates to money paid to Solutions R Us?---Yes.

What was it doing for Australian Water Holdings?---So this was a retainer to Solutions R Us, is that right?

40

Well, this \$160,000 being paid to Solutions R Us?---Yes.

I'm asking you in your capacity as a director, as deputy chairman and later as chairman, what was Solutions R Us doing for Australian Water Holdings?---Well, I wasn't aware they were on a retainer, I mean if I was ever told in terms of um, Paul Nicolaou who uses this a vehicle for private consultancies it would have gone, I don't think that I remember that at all.

Well, hold on, if you're retaining Solutions R Us, what sort of services do you understand they would be providing to Australian Water Holdings?

MR BANNON: I think he just said that he didn't recall that they were.

THE COMMISSIONER: Well, no, he wasn't aware of the retain but he's aware of the company so the question was, what sort of services would they be capable of providing?---Um, connect business people, potentially do politically lobbying, I assume, I assume.

10

MR WATSON: Well, did you see any evidence at all that Nicolaou or Solutions R Us were carrying out lobbying on behalf of Australian Water Holdings?---Not that I can recollect.

Did you see any evidence at all that Nicolaou or Solutions R Us were making business connections on behalf of Australian Water Holdings Pty Limited?---Well apart from my initial introduction to, to Nick Di Girolamo in 2007 which did seem to be a business connection sort of process I wouldn't be aware, I don't recollect.

20

All right. Well so that was one instance which might have been the case but apart from that during the long time that you were on the board of this company what paper work did you see emerge in respect of the services provided by Solutions R Us?---I don't remember seeing any such paper work.

But what would have happened had you looked at a ledger and you'd see substantial sums being paid to Solutions R Us, what would you have done?---Well I would have checked what that was about.

30

And I suppose you would have gone to Di Girolamo?---And or Paul Nicolaou 'cause I know both of them, or knew both of them.

Well so if you just so much as looked at the ledgers a bit like the process undertaken ICAC for example you would have discerned this and being concerned about it wouldn't you?---Well I would have asked what it was about, yes.

40 Because you never saw anything to indicate anything of any value being provided to Australian Water Holdings by Solutions R Us did you?---I can't recall any output if that's what you're asking me.

Well that would have been a real concern if you saw this as you knew Nicolaou and you knew this was his corporate vehicle, if you'd seen it you would have put two and two together and said hold on what on earth are they doing for Australian Water Holdings wouldn't you?---Yes.

And that would have been the sort of thing which could have become apparent to you had you sat down and spent some quality time with either Mr Chadban when he was there or Mr Groom when he was there wasn't it? ---No, no, I went through the CFO reports if that's what you're asking me.

10 No, I'm asking you something a little bit different. If you had actually involved yourself at looking at what has been called as the soft costs of Australian Water Holdings this is the sort of thing you would have found isn't it?---If you're asking you if I'd gone through line by line every spending item or whatever of the organisation, yes.

I'm not saying that you had to go through every line of the organisation ever. For example - - -?---Commissioner, that's how I interpret the question, that's what I'm being asked - - -

All right. Well I'll make it clearer for you. I'm just asking you if you had -- well I'll ask you this. Do you remember when Michael Costa was going to be brought on board?---Yes.

20 He went through the books of account to look for things like this. Do you know that?---No.

Well in that respect I'm just a bit surprised at your answer. Would you look for me at this Exhibit C20?---Thank you.

Page 3988?---3900?

And 88?---88.

30 Yes. Do you see that this is an email sent by you, no, sorry, 3988?---Yeah. Yes.

Do you see that this is an email sent by you to Di Girolamo. Do you see that?---Yes.

And do you see that your email is built on a longer email from Mr Di Girolamo to you and others?---Ah hmm.

40 Is that answer yes?---Sorry, yes.

And the point is that in your email in light of that you're speaking about having had a good talk with Michael presumably Michael Costa?---Yeah.

And "He will do some more due diligence"?---Yeah.

What did you mean by that?---The latter phrase due diligence?

Yes?---Due diligence in the general sense of presumably he'll further investigate what's going on.

Mr Costa told us that before he would accept a position as a Director and Chairman at Australian Water Holdings he asked to see the books of account?---Yes.

Did you do that?---Before I joined, no.

10 Mr Costa told us that when he opened up the books of account he was horrified at how much the executives were being paid. Do you know that Mr Costa said that?---Um, I think I saw that in the paper, yes.

But you didn't know how much the executives were being paid while you were there, is that right?---Not, not at the beginning but that evolved over time as we've discussed.

Mr Costa said that when he opened up the books of account he was horrified at looking at areas to which expenditure was attributed, presumably directing his attention to what are called soft costs, did you know that he said that?---Ah, I take your word for it.

Well, did you undertake any exercise along those lines?---Of soft costs?

No, of any costs. You didn't know how much the CEO was being paid did you?

THE COMMISSIONER: Well, well, can I - - -

30 THE WITNESS: Well, no, hang on. Commissioner, I'm sorry, look - - -

THE COMMISSIONER: No, Mr - - -?--- - - - I had the CFO reports.

Yes, I know that, Senator, but that's not what you're being asked. Can I just go back a step. The term due diligence is really in corporate circles a term of art isn't it, it's an exercise that's undertaken in order to determine what the true financial position of a company and it's something that is talked about at length when people are either going to invest in a company or they're going to join a company at a board level. Would that be a fair summary of what due diligence means?---I, I viewed it more broadly than that.

Well, whether you viewed it more broadly or not but I'm - it's, what I'm asking is you - - -?---I can only go to what was in my head when I wrote what I wrote.

Yes, but I'm, what I'm asking you is did you know and did you know at the time that you joined the board of Australian Water Holdings that due

diligence is a, is a concept that is broadly, widely used in corporate circles to represent an examination of the health of a company for the purposes of determining whether or not it's a company worth investing in or a company that is in financial health?---I understand what you're saying.

Right. Well - - -?---Yeah.

- - - I think what Counsel Assisting is asking is whether or not you undertook any such due diligence exercise when you joined the board?
10 ---No, not, not in the detail that Mr Costa did.

Right. Thank you.

MR WATSON: Why not?---Well, because I was joining the board and I was going to learn about the company while I was on the board.

Well, are you saying then that you attended to matters which might fall under the description due diligence while you were on the board.

20 MR BANNON: I object. I don't see how this inquiry is related to what role one should take before one joins a board. I mean - - -

THE COMMISSIONER: But, Mr Bannon, I, I know - - -

MR BANNON: - - - due diligence has got nothing to do with 99.9 per cent of board appointments won't involve anyone doing due diligence.

THE COMMISSIONER: Mr - I beg your pardon?

30 MR BANNON: 99.999 per cent of board appointments will not involve a board member doing due diligence on a company.

THE COMMISSIONER: Well, well - - -

MR BANNON: It never happens in my experience.

THE COMMISSIONER: Well, last time I looked the company director's course actually spends quite a lot of time on due diligence but anyway, let's not go there.

40

MR BANNON: Yeah.

THE COMMISSIONER: The difficulty I think is that what Counsel Assisting is entitled to do is to explore the extent to which your client was aware of events, made inquiries about those events or undertook inquiries after his attention was directed to certain events for the purposes of determining whether or not one can draw a conclusion about his knowledge or otherwise of those events. Now, in some respects these answers might

assist you at the end of the day, Mr Bannon, but I mean he's entitled to explore it.

MR BANNON: Yeah, no, I think it was the why not question I think.

THE COMMISSIONER: All right.

MR WATSON: I won't press the why not question.

10 MR BANNON: He asked, he'd asked the question whether he did it - - -

MR WATSON: Yes.

THE COMMISSIONER: Yes.

MR BANNON: and he answered, I accept that.

MR WATSON: Could you return that folder to the Commission, Senator. Commissioner, I tender the schedule in relation to Solutions R Us.

20

THE COMMISSIONER: Yes, that's Exhibit C66.

**#EXHIBIT C66 - AUSTRALIAN WATER HOLDINGS PTY LTD –
ACCOUNT TRANSACTIONS [ACCRUAL] 1 JUNE 2008 TO 30
JUNE 2010- PAYMENTS TO SOLUTIONS R US PTY LTD- TOTAL
\$159,500.00**

30 MR WATSON: Now you know Paul Nicolaou very well, is that right?
---Yes.

And while you were Treasurer of the Liberal Party he was the head of the fundraising arm of the Liberal Party?---Yes.

You must have had weekly contact with him?---A great deal of contact, yes.

40 And I can show you the schedule again if you like but are you saying that - I withdraw that. Did Mr Nicolaou know that you had become a director of Australian Water Holdings?---I, I believe so, I wasn't hiding it.

Are you saying that in a period of three years Mr Nicolaou who was collecting \$5,000 a month never once said to you something along the lines of gee, thanks, thanks for the retainer, thanks for the money?---When, when was he retained? When did it start?

Well, I'll have you shown Exhibit C66 again. You'll see that this is only relevant to Australian Water Holdings, there's - it started well before this

but relevantly here, for example, we've got the figures he got from February 2009 until April 2011, do you see that?---I, I do but the point of my, my question to you was did the consultancy start earlier than 27 February, 2009.

Yes, it seemed to start as a result of your appointment to Australian Water Holdings?---As in when, in 2008?

Don't, don't let that worry you for the moment. I'm asking you a question?--Well - - -

10

Are you saying to us that Nicolaou not once during that period of time ever said to you, "Hey Arthur, thanks very much for the retainer"?---No.

He never said that?---No.

The subject never came up between you and he, meeting as you did on a weekly basis, the subject never came up that he was actually under a retainer from a company of which you were a director?---To the best of my recollection, no.

20

It seems even more odd if you think about it because if he truly was doing some valuable work for Australian Water Holdings that he wouldn't mentioned to you, "Incidentally, I did this or I did that on behalf of Australian Water Holdings during the week." It's odd isn't it?

MR COADY: I object to that, Commissioner. Commissioner, my name is Coady. I appear for Mr Nicolaou. That, that's assuming that this witness was the contact between Mr Nicolaou and Australian Water Holdings and in fact I think the evidence shows differently.

30

THE COMMISSIONER: No, it's, no, it's actually assuming as I understand it that they were very well-known to each other. That was the premise of this line of questioning. Whether or not, whether or not there was professional contact I think was beside the point. But anyway, you can explore it later if you wish.

MR COADY: Thank you.

THE COMMISSIONER: Go on, Mr Watson.

40

MR WATSON: I mean, does that strike you as odd if he was producing something of value to the company that he wouldn't mention it to you?---I suppose so.

I mean, you were friends with him?---Yes.

I'm going to show you another schedule. This one relates to a company called Eightbyfive. Will you have a look at this one for me, Senator. Do you know the company Eightbyfive?---I have heard of it.

And in what context have you heard of it?---Um, in my capacity as the president of the Liberal Party of New South Wales.

And was that because of the report made by Senator Heffernan?---Ah, the report made by Matthew Lusted I think it was who came forward, yes.

10

Well, if you have a look at this schedule it seems that \$183,000 was paid to Eightbyfive during the period that - - -?---Yes.

- - - you were either deputy chairman or chairman of Australian Water Holdings. Do you see that?---Yes I do.

And during the time when the tax man couldn't be paid?---Yep.

When the superannuation couldn't be paid?---Ah hmm.

20

Is that answer yes?---Yes.

And what was Eightbyfive doing for Australian Water Holdings?---I don't know. I didn't engage them.

Well you were on the board?---Yes.

Did you ask about it?---I wasn't aware of Eightbyfive.

30

At times when you can't pay superannuation surely, Senator, the obligation upon you was one to try and find where costs could be cut, unnecessary costs. Don't you agree?---Or, or income could be increased or unpaid debts including disputes with Sydney Water could be settled.

All right. But are you saying to me - - -?---So it's a matter of both cost and income.

40

- - - you're not, you were under no duty to have a look to see where costs, unnecessary costs could be cut, is that what you're saying?---We were given an assurance by the CEO at one stage that he and the CFO - - -

Oh, just answer my question, Senator, please. We'll get out of here so much more quickly if you'll do it. Are you saying you were under - - -

MR BANNON: He was answering the question.

MR WATSON: No he wasn't. Are you saying that you were under no obligation to look where you could cut unnecessary costs at a time when

you couldn't even put aside the superannuation for staff?---And what I'm saying is the obligation as a director was to ask the CEO and the CFO to do that.

So you're saying you were under no independent obligation to have a look at where the costs could be saved. Is that what you're saying?---Towards the end of my time on the board - - -

10 Oh really, that's got to be answered yes or no doesn't it?---No, no, no, well can I give some context, Commissioner?

MR WATSON: Yeah, pretty good at that.

20 THE COMMISSIONER: Yes, go on?---Um, when we looked in the second half of 2011 about, at the future of the company Robert Groom and the CEO were going to set up a business plan which would involve reviewing remuneration, the costs base, and everything else because it was clear the company would be going into a new era if you like and that was one that would require the cost base to get more attention. But if you're asking me if I did, if I knew about Eightbyfive I've given you an answer.

MR WATSON: I didn't, we've already been through that. Long before Groom came on board in 2011 there were cash flow problems, correct?---Yes.

You earlier today, I felt rather proudly said that you'd been personally involved in trimming costs of about \$1 million from the cost base, do you remember that evidence?---In relation to the Package 1 works.

30 Did you look into the accounts with sufficient detail which would have enabled you to pick up these sorts of sums leaking month after month after month out of Australian Water Holdings?---Not item by item, no.

Let's qualify it, item by item. Not at all, isn't that the case?---Not item by item, I stand by my answer.

Sorry, what did you do then?---There would have been - - -

40 THE COMMISSIONER: I think we've been over this ground.

MR WATSON: All right.

THE COMMISSIONER: I think it's not a, correct me if I'm wrong Senator, it's not at all other than relying upon the reports of the CFO at the board meetings, is that the position?---And directions being given by the board.

MR WATSON: All right. I tender that schedule. Thank you Senator.

THE COMMISSIONER: Exhibit C67.

**#EXHIBIT C67 - AUSTRALIAN WATER HOLDINGS PTY LTD-
ACCOUNT TRANSACTIONS [ACCRUAL] 1 JUNE 2008 TO 30
JUNE 2010 – PAYMENTS TO EIGHTBYFIVE- TOTAL \$183,342.50**

10 MR WATSON: Well, I will show you this and I'm sure you do know about
this one. You do remember that Mr Photios was brought on as yet another
consultant, is that right?---Yes.

And when Photios was brought on as a consultant – I'll withdraw that, I'm
going to come to that in a moment, it will be easier. Just turn it face down
on the table we'll come to it. I want to ask you about this, can I have the
Liberal Party sheet. These are records of donations made to the Liberal
Party of Australia New South Wales Division during your period as a
director, there was some more before, some more after but this schedule
focuses only on your period as it were.---Thank you.

20

What did you know about this?---The issue of donations is a matter for the
CEO and the Executive.

You must have misunderstood my question, what did you know about this?
---I did not know in precise terms what was being donated to the Liberal
Party whether through events or money donations.

30 What does precise terms mean in that answer, what did you know?---I was
aware that Nick Di Girolamo and others would attend events, political
events.

What did you know about donations apart attendances and events?---I didn't
know amounts or um, or get involved at a board level or separately,
individually in procuring donations in the company for the Liberal Party.

I didn't ask you what you didn't know, I want to know what you did know.
What did you know about donations?---Nothing in precise terms.

40 What does precise terms mean?---Well, I couldn't quote amounts at you or
over what period.

That suggests to me that you did know that donations were being made?
---I was aware that members of the company would attend events from time
to time.

Put aside the events, I'm talking about donations. Your answers indicate
that you knew donations were being made but not the precise terms of those
donations, am I right?

THE COMMISSIONER: I think we've got to be clear about this Senator, what is being put to you is donations that are coming out of the company account, not that might have been made in a personal capacity by the CEO or others, so what's being asked of you is where you aware, forget the amounts, but were you aware that donations were being made?---No, no.

No.

10 MR WATSON: You deny that do you?---Yes.

You deny knowing the company of which you were deputy chairman was donating to the party of which you were treasurer?---It wasn't a matter that was discussed at board level.

No, just listen to my question. Are you denying knowing - - -?---Yes.

- - -that the company of which you were director and deputy chairman was donating to the party of which you were the treasurer?---Yes.

20

So you didn't know at either end?---The mean at the Liberal Party end as well?

Well, either end? Did you know at the Liberal Party end that the company of which you were deputy chairman was donating to the Liberal Party?--- Any donations by the company would have been recorded at the Liberal Party end but - - -

30 I'm asking you a question. Did you know the Liberal - - -?---I didn't go, if you're, I didn't go - - -

Listen to me?---Yeah.

Let's just focus?---Yeah.

Did you know at the Liberal Party end in your capacity as Treasurer that Australian Water Holdings was making donations to the Liberal Party? ---Not that I can recollect at the time.

40 Does that mean you may have been told that you've since forgotten it?---I cannot recollect one way or the other.

Does that suggest to you that you did not know that the company of which you were Deputy Chairman was making donations to the political party of which you were Treasurer?---It was not a process I involved myself in.

I wonder whether you could answer my question. Does that mean that you did not know that the company of which you were Deputy Chairman was making donations to the political party of which you were Treasurer?---No.

By that you're agreeing with the proposition?---Yeah.

So what was discussed at board level about donations to the Liberal Party or attendants at Liberal Party events?---Nothing that I can recollect.

10 Nothing at all. Well how did you know that people were attending Liberal party events?---Well - - -

Would you see them there?---I'd see people at events or there'd be invitations to events, yeah.

Would that come as a surprise to you if you went to a Liberal Party function that you would see some of the people who you shared the board room with?---Well some of them had a pre-history with the Liberal Party.

20 Did you know - - -?---Predating my time on the board.

Are you saying that you did know that Australian Water Holdings was making money available to the Liberal Party be attending events?---Well I would have seen people from functions there, yes.

I tender that schedule, Commissioner.

30 THE COMMISSIONER: Yes. The schedule of Liberal Party donations is Exhibit C68.

**#EXHIBIT C68 - AUSTRALIAN WATER HOLDINGS PTY LTD-
ACCOUNT TRANSACTIONS [ACCRUAL] 1 JUNE 2008- 30 JUNE
2010- PAYMENTS TO THE LIBERAL PARTY OF AUSTRALIA-
NSW DIVISION- TOTAL \$72,483.00**

40 MR WATSON: Now I asked you earlier about the meeting with Mr de Aboitiz?---Yes.

And we tried to put a date on it, May, it probably - - -?---2010.

May 2010?---Ah hmm.

And so you say that you went back to the board and reported on the meeting with de Aboitiz?---Yeah. Yes.

What did you tell the board?---I confirmed that Rod was tense, um, I mentioned the issue around the Chairman and his remuneration having been raised, they were the main items I think at the board level.

Well I'll just ask that you be shown Exhibit C42.

THE COMMISSIONER: When you use the term "tense" do you mean to convey that you described Mr de Aboitiz as being somewhat dissatisfied or upset?---Concerned.

10

Concerned.

MR WATSON: Concerned about what?---The company.

Concerned about what about the company?---Concerned about the financial state of the company among other things.

In what respect?---In, in the terms I think we discussed earlier.

20

What were they?

MR BANNON: I object. We've been through this.

MR WATSON: All right. We have. Have a look at this exhibit, Exhibit C42?---Yeah.

These are minutes - - -?---Yes.

30

- - - of a meeting. Although they were described as draft minutes it seems as though these were the actual minutes of the meeting. Do you accept that?---Yes.

And it was a meeting on 27 May 2010 if you see the first page of the minutes?---Yes.

Would you turn to the third page of the minutes?---Yes.

40

You'll see right in the middle of the page there's a new paragraph?---"The situation with Rod."

I'm not going to ask you to read it aloud?---Thank you.

But it refers and it's strange it uses the exact same word that you've used here this morning. Have you read this minute?---Yeah, I'm aware of this minute, yeah.

Well you would have read on and seen that there was a reference to the fact that you'd recently met Rod de Aboitiz?---Ah hmm.

Is that answer yes?---Sorry, yes.

And what it goes onto say is that you agreed and stood behind Di Girolamo to the effect that de Aboitiz was seeking to leverage a commercial advantage for himself. Do you see that?---Yes.

That's a very serious personal attack on Mr de Aboitiz isn't it?---It could be.

10 What else could it be?---It depends what the commercial advantage was.

Well, just have a look at it, you're saying and this is something you agreed to. That De Aboitiz was seeking to leverage a commercial advantage for himself, that's a very serious things to say about him, isn't Senator?---Yes.

And what's more, you refer to the fact that you met him and you confirmed the CEO's allegation in that respect?---Concerns.

20 Now, what I should ask you is, I asked you about the meeting with De Aboitiz in your evidence here today and you didn't tell us anything which indicated that, I thought. What did Rod De Aboitiz say which told you that he was seeking to leverage a commercial advantage for himself?---I don't recollect.

Well, it's very, very important, you see it's a very serious allegation against Mr De Aboitiz, isn't it?---Yes.

30 Well, come on, it must be stick in your mind rather than Rippon's salary. What did Mr De Aboitiz say or do which indicated that he was seeking to leverage a commercial advantage for himself?---I don't remember in detail.

Do you stand by that assertion that you made in this minute?---I'm trying to remember um - - -

Well, it's not a question about trying to remember - - -?---Well, I'm trying to put myself in the context of that time because there had been discussions about Rod and the success fee, issues around whether he might succeed, Nick Di Girolamo as the CEO of the company um - - -

40 THE COMMISSIONER: You mean Mr De Aboitiz?---Yes.

Where did that suggestion come from?---I think that suggestion came from Nick Di Girolamo.

MR WATSON: Which you endorsed?---I didn't support or endorse it.

Well, that's what the minute says, it says that the CEO raised concerns that you confirmed its concerns.---I'm asking, sorry, I'm answering your question as to whether I supported the idea of the succession.

No, I'm talking about this.---Sorry.

10 You'd really want to know the details. What was Mr De Aboitiz supposed to have done which would give rise to such a serious allegation against him? ---He was potentially seeking to extract further value for himself out of his relationship with the company.

And why didn't you tell us about that when I asked you about your meeting with Mr De Aboitiz?---Well, this has prompted my recollection.

Why would he be coming to you to try and do that, why would he be coming to you Senator?---Because I was the member of the board I suppose, he was meeting me, he'd mentioned it potentially to me.

20 So you're saying that he came to you, that's De Aboitiz came to you to try and apply commercial to you, is that right?---No, no. It was a quiet - - -

All right. What did he tell you, what did he say to you?---I don't remember in precise terms.

THE COMMISSIONER: Can I just ask, what, given that he was a convertible note holder, what could that refer to, namely, in what way could he seek to leverage a more advantageous position for himself?---Potentially the terms on which he might convert.

30 MR WATSON: Well, what did he say about that?---I don't remember.

Oh come on, it's a very serious allegation against Mr De Aboitiz and his reputation is entitled to be cleared.

MR BANNON: MFI 7 addresses this question (not transcribable)

THE COMMISSIONER: Can we just deal with the Senator's recollection of the conversation first.

40 MR BANNON: Sure, I think the way my friend was putting was as if there's nothing to suggest - - -

MR WATSON: Go on, what did he say to you?---I don't remember in precise terms.

Is that because it didn't happen?---I've given you my recollection.

Is that because it didn't happen?---I've given you my recollection, sir.

Is that because it didn't happen?---Commissioner, I've given my recollection.

All right. Well, why didn't you, sorry, Senator, I've got to be blunt about it. You see, what I'm really putting to you is that De Aboitiz in his evidence told the truth and he spoke to you specifically about costs running out of control, he spoke to you about serious matters and that you made a choice not to report that back to the board, you made a choice instead to attack Mr De Aboitiz reputation, didn't you?---No, I, no.

Right. You deny that?---Yes.

Because that would be a terrible thing to do, wouldn't it, if that's what had happened to attack Mr De Aboitiz reputation, wouldn't it?---To attack anybody's reputation is a terrible thing.

Could you return that exhibit. You see, what I, what I really want to put to you, Senator, is that by the time de Aboitiz saw you your judgement was blurred because you had hoped that you would be securing a substantial personal financial benefit out of the work of Australian Water Holdings, do you accept that?---No.

Could the witness be shown Exhibit C19. Would you open that up at page 3660, 3660?---Yes.

Now, you'll see that this is an email which is sent on behalf of Greg Skehan and it's dated 20 December, 2010, do you see that?---Yes.

Well, I want you to assume that the person to whom it was sent was another lawyer in the firm of Colin Biggers & Paisley?---Yes.

And it's about your chairmanship and then there's the reference to providing you with share options?---Yes.

Now this was about the time, was it, that you first became aware that you would get share options, is that what you say?---That would be right, that, that would be after I'd become chairman.

All right. Well, if you read the third paragraph you'll see that the third sentence reads as follows, "Obviously the attracting to Senator Sinodinos is that if through his efforts the company is successfully floated or a large investor comes along he can exercise the option to purchase shares and make a profit." Do you see that?---I do.

Is that, do you think, an accurate statement?---Um, it may have been at the time, that's not the arrangement that was subsequently raised at the board level.

All right. Well, let's just deal with it at the time. That was the attraction - -
-?---Sure.

- - - which these shares held for you. A question arose did it not because of
the tax implications, is that so?---Um, where's that referred to?

Is that like inserting your finger in the wound is it? I mean, why do you
need to see a document?

10

MR BANNON: I object.

THE COMMISSIONER: I mean, Senator - - -?---I was asking whether you
were taking me to something specific to that?

No, no, no, I'm just asking you. Wasn't there a problem, a potential tax
problem, there's nothing wrong with working out your tax issues, from you
taking share options? Don't you remember that?---I don't remember to
what extent that was discussed.

20

Go to page 3669 if you would?---Yeah.

Do you see there that there's the CEO report. I want to take you to the
second page of it?---Yes.

Page 3670 has upon it item 3, "Chairman remuneration package."?---Yes,
yeah.

30

And this is the recommendation of Mr Di Girolamo in respect of the award
of shares?---Yes.

Do you see that? Now if I take you through to page 3713?---Three thousand
- - -

Sorry, I should have told you, asked you something about 3670. You'll see
there in item 3, the CEO, Mr Di Girolamo, has made a suggestion. Well,
that was subject to not diluting Mr MacGregor Fraser's holding in the
company?---Yes, that's right.

40

Now that presented an initial problem didn't it?---Ah, yes.

And then if you go to page 3713 you'll see that this is a copy of the minutes
of a meeting on 27 January, 2011?---That's, that's right.

And I really wanted to take you through to 3715 where - - -?---Yes.

- - - as item 4.3 this issue is put before the board and then an idea was raised
that Mr Skehan, that's, he's GAS, would have a look at the position of the

company's constitution and also the position of the convertible note holders?

---Yes.

Now the point is that that was the result of that recommendation made by Mr Di Girolamo wasn't it?---Yes.

10 Then if you go to 3894, you'll see that is correspondence between Mr Groom and Mr Di Girolamo about Arthur's shares and the subject is there was a resolution to provide you with that and this is Mr Groom's response. Do you see all of that?---Yes.

Now the way that this was resolved was by way of what you have called a gentleman's agreement, is that right?---I beg your pardon?

Well you know that there was a problem in allocating your shares because of these dilution issues, is that right?---Dilution issues, convertible note holder's agreement, there were a number of conditions precedent.

20 So it was resolved that you would become entitled to shares but they were going to be held on your behalf within Mr Di Girolamo's existing package?--No.

You don't agree with that?---No.

Did you ever have any rights to get shares?---No.

None?---No.

30 None?---It never proceeded - - -

Absolutely not?---It never eventuated.

Never proceeded. So never?---No.

You stake your credibility on that?---Yes.

40 Yeah. Would you have a look at Exhibit C31 for me. Would you look at page 20 of Exhibit C31?---Page 20?

It's the final I think page of the bundle the last page?---Yeah.

Do you see that that's a letter from a firm of solicitors called Maddocks?---Yes.

Do you know them?---I do.

How do you know them?---Um, I - - -

Did they act for you?---I retained Peter Keel who was then a partner at Maddocks to help me with some issues.

Well I've read this document over and over again and it's to be inconsistent with your last evidence to me, Senator.

MR BANNON: I object as to question.

10 MR WATSON: Well I'll withdraw that. Well I'll put it this way. In the second paragraph it says, "We notify you", that's Australian Water Holdings?---Yeah.

"We notify Australian Water Holding that our client relinquishes his rights to a 5 per cent shareholding in Australian Water Holdings"?---Yes.

"Which he is entitled to" - - -?---Yes.

20 - - - pursuant to the agreement which was made." Do you see all of that?---I do.

What were the rights which you were relinquishing?---Because of what was agree at that board meeting and which had not been actioned by the time I left the company I believed I had a right to that shareholding and I registered that on my Senate register when I entered the Senate. I was quite transparent about it.

30 I rather felt that you answered me a moment ago by saying that you never held any rights to shares in Australian Water Holdings. Was I wrong?---I was relinquishing - - -

Did I mishear you?---I was relinquishing the right - - -

Did I mishear you?---No, but I was relinquishing the right to pursue such a shareholding.

40 What, you were relinquishing the right to pursue something you never had, is that what you're saying?---But which I believed at the time I was entitled to.

When did your belief change? It must be some time since the 26 February 2013?

MR BANNON: That's (not transcribable) the answer the rights to shares, a conditional right to share requires two, at least two pre-conditions to full length and - - -

MR WATSON: I'm sorry ,this - - -

MR BANNON: - - -are not, is not a right to a share. There's absolutely nothing wrong with this, this is dancing on the head of the pin.

THE COMMISSIONER: Except we're, except we're dealing with the terms of the letter which I acknowledge is not under his authorship anyway.

MR BANNON: Correct.

- 10 THE COMMISSIONER: Can, can we establish this much, Senator, you thought at the time that you instructed Mr Keel that you had a right to a 5 per cent shareholding in Australian Water Holdings?---Yes.

And where did your - - -?---And by writing this letter I was relinquishing that and any other claims on the company as far as I was concerned.

All right?---I wanted to distance myself from the company and that is the basis of this letter being written.

- 20 I understand that where – if I could put it this way, on what basis did you think at that point in time that you had a right to a 5 per cent shareholding? ---Because of what had been minuted in 2011.

Well that's referring specifically to the meeting of 27 January - - -?---Yes.

- - - 2011?---But this was to relinquish any pursuit of any right and any so called gentleman's agreement, or anything else. Let me make that absolutely clear.

- 30 MR WATSON: What gentleman's agreement?---The one that was referred to in the newspapers.

- Well where did they get that expression from?---Well, I spoke to Linton Besser at the Sydney Morning Herald, because he had said to me well, you know, there's no record of these shares being issued to you even though you've registered them on your Senate Register. And what I conveyed to him was a conversation I had had with Nick Di Girolamo where he had said in order to recognise my efforts in the company he was prepared to dilute his shareholding. That was, that was I think subsequent to me being in the company but before this letter was written. And by writing this letter I was repudiating all those rights.
- 40

THE COMMISSIONER: Mr Sinodinos, I'm sorry, I might have misunderstood your evidence but I thought you said a short time ago that there was no gentleman's agreement with Mr Di Girolamo, that you would hold, that sorry, that he would hold shares on your behalf?---I mischaracterised that when I spoke to Linton Besser. So I'm conveying to you - - -

MR WATSON: Well did - - -?--- - - - the essence of what I said to - - -

Well hold on, you - - -?--- - - - to Mr Di Girolamo.

MR BANNON: I think the earlier answer related to hold on trust. I think that was it.

10 MR WATSON: What I want to know is this, who, who used the expression “gentleman’s agreement,” you?---I did when speaking to Besser.

And that’s what you told Linton Besser was the status of your shareholding was subject to a gentleman’s agreement?---But it was a mischaracterisation on my part.

How did you make a blunder like that?---On the run. Under pressure from a journalist. I’m not perfect.

20 But how could you do that, I mean it’s a pretty incredible blunder when there was not agreement at all. You’ve not only told Linton Besser it was a gentleman’s agreement, also the terms of it. How’d you make a mistake like that?---I was trying to convey to him the essence of what I believed had happened.

Well that’s, would seem to suggest that there was a gentleman’s agreement?---No, I don’t believe there was.

THE COMMISSIONER: It might be an appropriate time, Mr Watson.

30 MR WATSON: Yes.

THE COMMISSIONER: We’ll take the luncheon adjournment and resume at quarter to 2.00.

LUNCHEON ADJOURNMENT

[12.47pm]