

TRANSCRIPT OF PROCEEDINGS



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INDEPENDENT COMMISSIONER AGAINST CORRUPTION

COMMISSIONER LANDER

PUBLIC HEARING - EVALUATION OF SAFEWORK SA

ADELAIDE

10.00 AM, WEDNESDAY, 4 JULY 2018

Continued from 2/7/18

MS H. STANLEY appeared as counsel assisting

COMMISSIONER: You are Rodney John Murray?

MR MURRAY: Correct.

5 COMMISSIONER: Thank you, Mr Murray, for coming today, and I'm grateful for you participating in this evaluation. Can I just explain the process to you before you make your submission.

MR MURRAY: Yes, please.

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COMMISSIONER: At the end of your submission I'll probably ask you some questions in relation to that which you have put to me and possibly Ms Stanley, who is sitting on your right-hand side, will also ask you some questions in relation to your submission. It's a matter for you how you wish to answer those questions and it is indeed a matter for you whether you wish to answer those questions. If you don't wish to answer those questions, then you say so and I won't press.

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MR MURRAY: Mm'hm.

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COMMISSIONER: When making your submission, which I've had the advantage of reading, please keep in mind the scope of the evaluation. This is an evaluation of the practices, policies and procedures of the regulatory arm of SafeWork SA and it's not an investigation into the conduct of any particular person and certainly not an investigation into corruption, misconduct or maladministration.

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So I therefore discourage you from making reference to any particular person or to the conduct of any particular person. You should also be aware that, because this is not a court, there is absolute immunity from liability in respect to anything that you say in this hearing. So you should be careful about what you say.

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The media and members of the public are permitted to attend today's hearing and the media will be permitted to film your submission, and my office may also film the submission. As this is a public hearing, I consider that in general anything which is said at today's hearing ought to be able to be published. However, I do have power under section 56F of the Independent Commissioner Against Corruption Act to prohibit publication of information disclosed during today's hearing.

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I may exercise that power in respect of information the disclosure of which I consider might be defamatory or offensive to a particular person or persons or might compromise the operations of SafeWork SA or another agency of the government or arguably be a contempt of court or relate to issues of national

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security. For that reason, I've asked that this hearing not be streamed live and that information disclosed during this hearing not be published until the hearing has concluded so as to allow me time to determine whether it's necessary to prohibit publication of anything said during the hearing.

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One other matter I should mention. Section 56D of the ICAC Act prohibits publication of information that might enable a person who has given or may be about to give information under the Independent Commissioner Against Corruption Act to be identified or located without my authority. Section 56E of the Act prohibits publication of the fact that a person has given or may be about to give information under the Act without my authority. However, I will authorise the publication of your identity as a person who has made a submission during this evaluation.

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15 Again, thank you very much for coming forward, Mr Murray. Would you please make your submission.

MR MURRAY: Yes. I'd just like to reiterate what I've already had published on the web site. Commissioner, my name is Rodney John Murray. I have a graduate diploma in occupational health and safety management from UniSA. I was employed by Workplace Services, now SafeWork SA, in the period 1999 to 2001 as an inspector, occupational health and safety. I might add it was the best job I ever had. As a result of an inspection it was usually the case that the workplace would be safer, thus creating a safer, better environment for the workers.

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During that employment I experienced efforts to influence my decisions on several occasions, all of which were resisted. I might add to that that there was no other reporting system nor training for such issues.

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An inspector's decision-making process is influenced by many factors: having to take into account the legislation or legislations covering the incident; whether to expiate, which was only under the Dangerous Good Act in my time, which could mean multiple expiations for the same offence - the driver, the transport company, the consigner - what appeared to be the attitude of the employer or manager to his or her staff; the general appearance of the work site or sites; how many obvious breaches of safety; whether breaches are life-threatening; whether to issue an improvement or prohibition notice; whether to seize equipment; et cetera.

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When initial contact was made at a workplace often an inspector would be attending alone, which is definitely not best practice. One of the reasons for this at the time was that there were insufficient numbers of staff and also the assessment of the complaint leading to the visit. A complaint was usually laid either by telephone or by writing to Workplace Services, and it was written

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down obviously by whoever took the complaint if it was a telephone call. A complaint on paper could appear innocuous but on inspection could prove otherwise.

5 We seldom cold-called during my period; in other words, inspecting premises without a prior complaint. This is a very effective method of ensuring that compliance with the legislation was occurring. This lack can be attributed to insufficient inspectors and the overall policy of Workplace Services at that time.

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Prior to being employed by Workplace Services I had been the acting manager safety at the Royal Adelaide Hospital; had been an occupational health and safety representative, as well as a radiation safety officer. My profession is a radiographer.

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During my employment Workplace Services never used my health industry experience to either investigate or assist other inspectors to investigate complaints in the health sector. It was their policy to round out inspectors in other areas. I served in the retail and transport team and also in the manufacturing team and also served for a period of time in the country with regards a field office at Berri.

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In 2001 the government decided to offer older inspectors packages to bring in fresh blood. Some of those newcomers were very short on life experience let alone work experience. Naturally the overall expertise of the department was reduced.

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I have read in the Advertiser on Tuesday, 3 July that vehicles had been removed from personal use of the inspectors by the Executive Director SafeWork SA Martyn Campbell. During my employment we inspectors went through a similar process, when we were unable to take vehicles home. Eventually that practice ceased when it was apparent the deficiency was reduced because the inspector first had to get to work and in many cases retrace their journey to attend to their duties. I would like obviously to add to some of those comments apart from the written ones that I have.

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COMMISSIONER: Sorry, I can't hear.

MR MURRAY: I would like to add further to those comments.

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COMMISSIONER: Yes.

MR MURRAY: With regards to the "efforts to influence my decision on several occasions" I think - well, I believe it happened quite often with most inspectors in that - - -

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COMMISSIONER: Just speak up please, Mr Murray.

MR MURRAY: Sorry?

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COMMISSIONER: Would you mind speaking up, I'm just having trouble hearing you.

MR MURRAY: Yes. Sorry, I've got a bit of a cold that's suddenly come on.

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COMMISSIONER: So have I.

MR MURRAY: I believe it was reasonably common from one point of view in that you would get a hint perhaps whilst you were doing the inspection or something, you might make some comment, for argument's sake, at a furniture manufacturing facility, "It likes you've got good furniture here," and they would turn around and say, "We can do a good price on the furniture." That's certainly happened to me and it is hearsay, but in conversations with other inspectors I believe that that was also the case that offers of that type would be made.

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COMMISSIONER: Yes.

MR MURRAY: Now, whether or not that was a deliberate choice of that person or person at the time to try and influence the decision could only be taken, as far as I was concerned, as perhaps that was the case and, therefore, was to be resisted. There was certainly one case that I tended where one of the persons in the room at that time stared at me fixedly to obviously perhaps try to unsettle me or whatever in my job and also possibly to influence any decision that I was about to make.

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COMMISSIONER: You've said then that there were hints that you might receive benefits from persons who were in control of work sites. On how many occasions, without identifying those who might have these hints, during the time that you were an inspector approximately did you receive such hints?

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MR MURRAY: I'd say about five or six times.

COMMISSIONER: During the same time, as I understand your recent submission, when the person stared at you fixedly, did you take that to be a threat?

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MR MURRAY: It was certainly intimidating at the time and I would consider it to be a threat per se.

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COMMISSIONER: On how many occasions during your time as inspector then were their occasions where you thought persons were seeking to intimidate you?

5 MR MURRAY: There would be three or four occasions at least and certainly - when you attend to do an inspection often - obviously it's unexpected and obviously dependent on the mood of the person who you're speaking to at the person, whether the manager or the owner of the premises they can often feel aggrieved because of your presence and, therefore, obviously get a little bit
10 upset and I have been shouted at on a few occasions, yes.

COMMISSIONER: Well, I suppose in a sense it's a tricky position. An inspector visiting a work site could be perceived by the person in control of the work site to be a threat to them.

15 MR MURRAY: Yes.

COMMISSIONER: You would accept that. So that the inspector really has to conduct himself or herself in a way that ameliorates that threat or perception of
20 threat.

MR MURRAY: As much as possible. There was one occasion when it would appear obvious that the person concerned was not going to calm down immediately so I said to him that I was going to go and have another cup of
25 coffee and come back in 20 minutes time and perhaps whilst I was away he could ring his solicitor and get his advice from his solicitor as to whether or not I was able to enter his premises.

COMMISSIONER: Yes. I raised with Mr Campbell on Monday the concept
30 of grooming, that is to say, where either those representing the owners of workplaces or those representing workers might try to groom inspectors, to have inspectors conduct themselves in a way that suits those who are doing the grooming. Did you experience any grooming in your time, that is to say, people trying to subtly influence you in the way in which you'd carry out your
35 duties?

MR MURRAY: I can't recall any particular incident but there is always the opportunity in, shall we say, national companies perhaps whereby - as an
40 example, I went on an investigation once and they had a lovely stack of folders et cetera with regards to the Occupational Health and Safety compliance and the manager was very positive that this was a good thing et cetera and all that sort of thing. But I had looked in that particular warehouse prior to actually meeting with the manager and I said, "How much time do you give your people to read these documents?" and they said, "Well, they had an induction course
45 usually in one day," and I said, "Well, how much is devoted to the reading of

those?" and he said, "Oh, we give them about an hour and a half, two hours,"
and my answer to that was, "Well, it would be very difficult, I believe, for a
person who is brought up with the English language to read all of those but
most of the employees you had in the warehouse were of, I believe,
5 Vietnamese descent."

COMMISSIONER: Mr Murray, prior to starting with Workplace Services, as
it then was, you'd had considerable experience in work, health and safety, I
think. Is that right?

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MR MURRAY: Well, I was reasonably well qualified, yes.

COMMISSIONER: When you started what sort of induction did you
undergo?

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MR MURRAY: Actually we went through the first, I believe, coordinated
induction process that Workplace Services or previously Department of Labour
and Industry had ever conducted. As an example, we attended Fort Largs
Police Academy for a week and did a basic investigation course with them and
20 gained a certificate in that. We went through several lecture processes et cetera
as well as undertaking practical experience, obviously going out with already
gazetted inspectors et cetera. So it was a reasonable process but it is one which
I think definitely could be improved on and also with regards to all of the
inspectorate we always needed ongoing training but it never - it occurred
25 occasionally but it was difficult to bring all the inspectors together obviously at
one time.

COMMISSIONER: Yes.

30 MR MURRAY: However, with the more modern approach et cetera and that
sort of thing obviously with computers now and being able to do lessons online
et cetera obviously I believe that they should be able to conduct training
sessions very easily now without having to, as we had to, drag all the
inspectors in to one site at the one time.

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COMMISSIONER: How long did the induction training process last when
you started with - - -

MR MURRAY: A bit over four months.

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COMMISSIONER: Right. Did you think that was adequate in terms of
training for the purpose of carrying out your job as an inspector?

45 MR MURRAY: Not if you were going to appear at a workplace alone, no.
Certainly if you were with another inspector and, shall I say, a more

experienced inspector, then obviously it wasn't.

5 COMMISSIONER: Was that the practice at that time that after you'd completed your four months' training you did visit work site with a more experienced inspector?

10 MR MURRAY: Most of the time, yes, initially but then obviously depending on the expertise exhibited by individual inspectors or the assessment thereof you were allowed to inspect premises on your own which, of course, is not best practice. It's exactly the same as SAPOL, in that, you know, obviously it's far better to have two on site and therefore you have a witness to the other person's behaviour.

15 COMMISSIONER: I was going to come to that, but when you were with Workplace Services it was the practice for inspectors to attend at sites once they became - - -

MR MURRAY: Once you were gazetted.

20 COMMISSIONER: - - - fully trained.

MR MURRAY: Yes, once you were gazetted, obviously, because you couldn't go to any workplace site.

25 COMMISSIONER: Once fully trained and gazetted, the inspectors would attend alone?

MR MURRAY: Yes.

30 COMMISSIONER: Were there circumstances where the inspector would ask that another inspector accompany them?

MR MURRAY: It would depend on the initial report - - -

35 COMMISSIONER: Yes.

40 MR MURRAY: - - - or whether it was a follow-up inspection. With regards to most of the inspections that I ended up doing, it was seldom that two of us went on the initial inspection.

COMMISSIONER: And you say that's not best practice because it would be better to have someone with you to witness whatever occurred at the time of the inspection.

45 MR MURRAY: Yes, and also - look, the legislation that an inspector covers

is huge.

COMMISSIONER: Yes.

5 MR MURRAY: Absolutely huge, and obviously each of us have strengths in certain areas.

COMMISSIONER: Yes.

10 MR MURRAY: Therefore it's far better that two be there, because what one might see the other one may not and vice versa.

COMMISSIONER: At the time that you were employed, I think the
15 organisation was operating under the Occupational Health, Safety and Welfare Act.

MR MURRAY: That's correct, 1986. Yes.

COMMISSIONER: Yes, which had the same functions, I think, or similar
20 functions, to the present legislation.

MR MURRAY: Yes. The principles are exactly the same.

COMMISSIONER: As you say, there are very comprehensive regulations
25 under the Act - - -

MR MURRAY: Yes.

COMMISSIONER: - - - which identify safe work practice, which are not easy
30 to be completely across. Would you agree?

MR MURRAY: It is. You can't - nobody is perfect, and I would suggest that
it is quite onerous to be cognisant of everything that there is within those
35 regulations.

COMMISSIONER: Yes.

MR MURRAY: Of course, in our day we did not have computers or tablets or
anything like that to carry with us, so therefore it was all in the head.
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COMMISSIONER: Yes, or not.

MR MURRAY: Yes, or not.

45 COMMISSIONER: When you were carrying out an investigation - and I

think you carried out investigations as an inspector.

MR MURRAY: Yes.

5 COMMISSIONER: Was it then the practice for two persons to accompany each other on an investigation?

MR MURRAY: Usually on a direct investigation. If you're going to do a taped record of interview, obviously there were always two inspectors.

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COMMISSIONER: Yes.

MR MURRAY: However, parts of those investigations would often be carried out by the initial inspector. We didn't have investigation officers per se when I was working there. You know, an inspector became an investigating officer as soon as there was obviously either a prohibition notice or an improvement notice to be issued.

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COMMISSIONER: Yes. You've mentioned in your submission that there wasn't a practice of cold-calling or what I'd call, say, an unannounced visit.

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MR MURRAY: Mm'hm.

COMMISSIONER: You would advocate for the unannounced visit or cold-calling?

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MR MURRAY: I think 100 per cent - a thousand per cent. If we are to protect workers - and by protecting workers we are protecting managers and owners from being prosecuted as well - it is definitely, as far as I'm concerned, the best way. Prevention is far better than cure. Why not get out there more often and do it? An ideal situation would have been - as an example, you take a government car home. On the way home you could do an inspection. On the way back to work in the morning you could do an inspection, instead of wasting all that time coming in and then picking up somebody else to go off and do something.

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Admittedly that's a one-person inspection, but I can't particularly see a problem with that, unless of course you walk into a place and then you see something and you go, "No," so you get on the phone and say, "Right, I need somebody else here as back-up."

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COMMISSIONER: So do I understand then you to be advocating for unannounced visits by one inspector, who ought to be joined by another inspector if in fact the circumstances warranted it?

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MR MURRAY: Definitely.

COMMISSIONER: When you were with Workplace Services, did it provide an education function?

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MR MURRAY: No. No, that was done by WorkCover at the time.

COMMISSIONER: So Workplace Services in your time was purely regulatory?

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MR MURRAY: Yes.

COMMISSIONER: Approximately how many inspectors were there on the staff at the time you were there?

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MR MURRAY: I can't remember, to be quite honest, but it was around the 60s mark.

COMMISSIONER: Yes.

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MR MURRAY: But also we had industrial inspectors there as well, and of course they're now covered under Fair Work or whatever it's called these days.

COMMISSIONER: Yes, the Fair Work Act.

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MR MURRAY: Yes, and there was a double-over in some areas, in that some of those were also occupational health and safety inspectors as well but obviously didn't normally get involved in those processes.

30 COMMISSIONER: Mr Murray, you said that it was the best job you had and you had it for two years. Was the reason for your leaving relevant to my evaluation?

MR MURRAY: No, it's not.

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COMMISSIONER: Okay. I won't ask you then. Thank you. Ms Stanley, do you have questions of Mr Murray?

MS STANLEY: I do, Commissioner.

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COMMISSIONER: Yes, thank you.

MS STANLEY: Mr Murray, you mentioned that your background profession was radiology.

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MR MURRAY: Radiographer.

5 MS STANLEY: Radiography - I apologise - and that those skills were not specifically used by Workplace at the time. Would it have been beneficial for them to tap into that resource, do you think?

10 MR MURRAY: I believe it would. I suppose - and this was part of their reasoning at the time, was that they didn't want to be seen to be using persons who came out of a particular industry to, shall we say, look for the bad guys or take revenge or whatever. But on the other hand they were employing building - for argument's sake, building - carpenters, plumbers, electricians, et cetera, and all that sort of thing for the building and construction team, and yet - so they're using specialists within that area but they weren't using my expertise into what was then the health and hospitality team, I believe it was.

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MS STANLEY: Okay. Did you ever find it difficult as an inspector to determine contraventions at workplaces where there was particular technical knowledge required to actually identify those - the identifying issue?

20 MR MURRAY: There was difficulty, yes, but the best - and the training that we'd received was that if you don't understand something, well, then you contact somebody who does have an understanding and describe that situation to them. There is a written submission on the web site from an ex-manager of Workplace Services and SafeWork SA which highlights, I believe, that there
25 have to be persons of particular expertise employed by SafeWork SA to ensure that the appropriate result is obtained. So these can be electrical engineers, mechanical engineers. This particular person who has put in a submission was an explosives - I believe was a chemical engineer.

30 So that sort of expertise I think is vital. Perhaps within the current framework it might be possible to have persons like that available on call as a consultant or something like that, but realistically, without that particular expertise, then at times any inspector would not be able to do their job properly.

35 MS STANLEY: You mentioned attending a large national company that appeared, at least at face value, to be very well organised with respect to work health and safety. Is there a risk that safety issues within the larger well-organised companies can be missed because of the resources that they can put into those matters?

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MR MURRAY: Well, in this particular case with this logistics company, one of the things I noticed in the warehouse was - as I said to the manager, I said, "With your supervision, et cetera, and all those good books and all that sort of thing, how do you think you're going?" and he said, you know, "I think we're
45 doing quite well." I said, "Well, I can already pick that there is a dangerous

situation occurring in the warehouse at the moment." He said, "What's that?" and I said, "You stop that forklift." He stopped that forklift, then I turned around and said, "What's wrong with it?" All the lights were working, et cetera, and all that sort of thing. The worker was sitting there, et cetera.
5 And he looked at it and looked at it and couldn't pick it. He's sitting on his seatbelt.

I believe the biggest problem we have in many cases with, shall we say, the shiny side of things is that not enough emphasis is placed on the supervisors, the immediate supervisors, to ensure that workplace health and safety occurs, and they are not encouraged perhaps to do so.
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MS STANLEY: You mentioned to the commissioner that you undertook about a four-month training process - - -
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MR MURRAY: Yes.

MS STANLEY: - - - when you were first appointed. Was it after that four months that you were officially gazetted?
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MR MURRAY: Yes.

MS STANLEY: During your time at SafeWork SA were you aware of any process which audited the inspections that you did?
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MR MURRAY: There was only a review of cases that were put up for prosecution and there was no general - we used to have team discussions and obviously we had - in my time we had senior inspectors who were cognisant of what we were doing, the general inspectorate, but there wasn't a direct audit process as such.
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MS STANLEY: Thank you, Commissioner, I have no further questions.

COMMISSIONER: Mr Murray, is there anything further you wish to add other than that which we've elicited from you in these questions?
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MR MURRAY: The only other thing I would add would be that the written submissions of both that previous manager and also the written submission from the Public Service Association - I can agree with most of what both of those submissions have put forward.
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COMMISSIONER: Thank you. Thank you for mentioning that. Mr Murray, I'm grateful for you having made a submission and I'm grateful that you made yourself available this morning to speak to it. It's been very helpful.
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MR MURRAY: Thank you.

5 COMMISSIONER: Thank you very much. I've already authorised the release of your name to be published and I make no order as to the prohibition of the publication of any of the information you provided, which means that all of the information you provided this morning may be published.

MR MURRAY: Thank you.

10 **MATTER ADJOURNED AT 10.32 AM ACCORDINGLY**