

ENVIRONMENT, NATURAL RESOURCES AND REGIONAL DEVELOPMENT COMMITTEE

Inquiry into the CFA training college at Fiskville

Melbourne — 28 January 2016

Members

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Mr Mick Bourke (sworn), former chief executive officer, Country Fire Authority.

The CHAIR — We will begin the hearings for today. Welcome to everybody in the gallery, and welcome and thank you for returning today, Mr Bourke, to answer a few supplementary questions based on the evidence you provided at the last hearing. I will just go through the standard formalities before we begin. As you are aware all evidence at this hearing is taken by the committee under the provisions of the Parliamentary Committees Act 2003 and other relevant legislation and attracts parliamentary privilege. Any comments made outside the hearing will not be afforded such privilege. It is an act of contempt of Parliament to provide false or misleading evidence to the inquiry. The committee may ask for further follow-up of information if you are unable to provide it today, and of course this is your second time. All evidence is being recorded, and you will be provided with a proof transcript of that evidence prior to it becoming public.

Again, thank you for coming in. Just before we start because this is a clarification of your original evidence, we require you to take an oath. Before we begin our questioning you first came before us on 21 December. There was an issue with echoing of the microphones, and it was sometimes difficult to hear. Are you able to hear me clearly this time?

Mr BOURKE — I hear you quite well.

The CHAIR — So better than last time?

Mr BOURKE — Yes. My hearing is not great, but I will ask again if I cannot hear.

The CHAIR — Thanks. I think you have been given a copy of the transcript of your evidence from 21 December?

Mr BOURKE — I have.

The CHAIR — What we are going to do is go through some of that evidence and ask you some questions about it. First of all, could you go to page 18 of the transcript of your evidence.

Mr BOURKE — Yes.

The CHAIR — You were asked, ‘Did you have telephone calls with the Lloyds?’, and you responded:

With Beccara only. I have never spoken to Mr Lloyd ...

Is that correct?

Mr BOURKE — That is my recollection.

The CHAIR — Since that time the committee has received evidence from the Lloyds that you spoke to Mr Lloyd on the phone on a number of occasions in November and December of 2013, and specifically they said that you called the Lloyds’ landline and spoke to both of them on three occasions in November 2013. So I would like to ask you the same question again: have you had telephone conversations with Mr Matt Lloyd?

Mr BOURKE — Not to my recollection.

The CHAIR — Can you explain why they would tell us that they had spoken to you on the telephone but you are saying that you had not spoken to them on the telephone?

Mr BOURKE — Yes. I can offer a view on that, and that is that my memory tells me that I spoke to Beccara several times. I can remember speaking to her on the phone several times. I do not know whether Mr Lloyd was also on the phone or not. There is a possibility that the conversation was three-part, but I only ever heard Beccara.

The CHAIR — You only heard Beccara?

Mr BOURKE — Yes.

Mr McCURDY — Is there a chance that Matt was talking to somebody else from the CFA, not you?

Mr BOURKE — I do not really know, Tim. I would not have thought so. If it is in that sort of style of conversation, I would have thought it was something that they would have been fairly clear about it, but it was not that. But again, I do not recollect all the conversations, but there were conversations.

Mr McCURDY — Mr Bourke, we will go on to some text, or the transcript of the evidence, again. I think you have got it in front of you. You were asked:

Did you send any texts to Matthew or Beccara Lloyd saying that you could not talk to them any more once they had Slater and Gordon as their lawyers?

You responded:

No, I do not recall sending a text at any time to them.

Do you have a copy of those text messages in front of you?

Mr BOURKE — No, I do not.

Mr McCURDY — We can provide them. First of all, can you see the phone number on the top of that?

The CHAIR — For the record, the documents that were provided are copies of text messages that have been provided by the Lloyds.

Mr McCURDY — Firstly, the phone number at the top, do you recall — was that your phone number at the time?

Mr BOURKE -Yes, it was.

Mr McCURDY — I will read through the message for the purpose of the transcript. It says:

Hi Mat given the Slater and Gordon correspondence I am not in a position to speak to you as planned. Thanks Mick.

Did you send that to Matthew Lloyd?

Mr BOURKE — When I look at those words, they are my words.

Mr McCURDY — Is there are a reason why on 21 December when you spoke with us that you did not recall sending that SMS?

Mr BOURKE — At that time I did not believe that I had sent any SMSs, but quite clearly with the evidence in front of me I did send SMSs.

Mr McCURDY — Now that you have the text in front of you can you provide us with any detail as to why you would send a text of that nature?

Mr BOURKE — I am just trying to date this — 5 August 2013. There was a lot going on around the compensation process for the Lloyds throughout that year or particularly around that time. There had been discussions about the best way to handle it. We had a legal firm assisting us, and the advice that I was given verbally by that legal advisor was that given Slater and Gordon had entered the process that I should not continue to have dialogue because of the potential legal issues.

Mr McCURDY — What you are saying is that as of the time they engaged Slater and Gordon it was beyond your remit as to whether you should be speaking to the Lloyds. It was out of your remit. It would be the CFA or the CFA's legal counsel.

Mr BOURKE — It was more legal counsel to legal counsel after that — yes.

The CHAIR — I think what we are trying to establish is that there was contact between you and the Lloyds and why the discussions around compensation completely stopped, and whether it was because of them receiving legal counsel. Can you bring your mind back to that time and the texts that you have in front of you — and there are at least two or three from you to the Lloyds — and why it is you would have told them after them having got legal representation that negotiations with you would have to stop?

Mr BOURKE — Once the legal parties had been established then the legal people were advising me as to what steps we should take or should not take, so there was a cautious approach there. It had been going for a little while. Again the advice I was getting was let the legal people talk to the legal people; do not go further. Part of the discussions that were happening at the time was: how do we get enough valid evidence on the table to perhaps engender a discussion or a mediation of the issue? I can remember that being one of the key issues that we had. In the setting there was quite a bit of evidence and information, so everything from the soil assessments to the sheep assessments to the Lloyd family testing and those types of things. That sort of information was being understood across government where it needed to be, and we were basically only able to move when we got permission through that process.

The CHAIR — So the original offer of the \$350 000, you had not received permission in the first place to offer that amount, or it was withdrawn by a decision of the CFA?

Mr BOURKE — The original offer was a CFA offer, but it had not cleared the public sector processes that it needed to clear, and in going through those processes it was required that I revoke the offer.

The CHAIR — Do you know the reason why it was decided or determined that that offer should not have been made or should be revoked?

Mr BOURKE — Again, with this particular matter it would be a discussion in a cabinet committee, and out of that would come advice to me as to what I should do.

Mr McCURDY — Did you engage with the Lloyds any further after that point?

Mr BOURKE — Tim, I do not fully remember, but what I did see was that — I think Sherry Herman spent some time being a liaison on behalf of us in respect of trying to work some of those issues through that the Lloyd family had.

Mr McCURDY — So not necessarily negotiations or compensation offered?

Mr BOURKE — We did not get to a place for negotiation that I can recall. It may have occurred after I left CFA, but certainly up to that time it did not. There were a couple of things that drove that too. We were coming up to 2014, for instance, and it was still sitting there live, and we were trying to push it along, trying to get people move — we thought we were getting a bit of spirit there for something to happen, but then we ran into caretaker convention. Then as we moved past caretaker convention the new government came in, and they had to assemble themselves and build their teams and then work out which issues were more critical. In that time we were not able to get that item onto the agenda, and that is a pretty fair thing. But the bigger issue is: why, back there, could we not do something, and that is an issue that sits within that government committee.

The CHAIR — Mr Bourke, what I cannot understand though from what you have just said is — you sent texts to Mr Matthew Lloyd and in a text you said:

Hi Mat given the Slater and Gordon correspondence I am not in a position to speak with you as planned. Thanks Mick.

Now you are telling us that the reason why you could not speak to the Lloyds was not because they had received legal advice but because of decisions within the machinery of government. Which one is it?

Mr BOURKE — From a CFA perspective we are the meat in the sandwich. You have got a parliamentary committee that is giving a lot of attention to this matter, you have got legal advisers — because basically the understanding I had is that if there was compensation paid, CFA would have to pay that, right? So we have got a vested interest from that perspective — and in terms of the legal advisers,

they are saying to me, 'Don't talk to the clients; let's do it legal to legal'. In terms of the government, they are working their way through in a committee and then sending out an advice as to what I might be able to do or might not. It is not a very easy setting to conduct business in.

The CHAIR — So in terms of the question there were a whole lot of difficulties around you continuing the negotiations with the Lloyds?

Mr BOURKE — Very difficult, yes, and it was not the Lloyds that made it difficult.

The CHAIR — You just said then that the CFA would have had to pay the compensation. Why would you need approval from the government, then, if it was going to come out of CFA funds?

Mr BOURKE — Because the government owns us and they can tell us what to do, and they did.

The CHAIR — Okay. Thank you.

Mr RICHARDSON — Just one follow-up question, Mick, in relation to the discussion around compensation. The evidence that was provided by the Lloyds was that there was an offer made to them around their kitchen table for \$350 000, but if with that offer they were to seek legal counsel, then that would be revoked. Was that an unsolicited offer, or was that an authorised offer coming from you?

Mr BOURKE — At no time did I make an offer to the Lloyds.

Mr RICHARDSON — So there was no consultation with you in relation to that offer?

Mr BOURKE — An offer was made by one of my executives, who was acting as CEO of CFA while I was away on leave. He did what I think was a pretty reasonable thing: he made an offer.

Mr RICHARDSON — In that reasonability was there consultation with government for that offer forthcoming, based on the words that you have said about liaising with government and that being the offer put forward?

Mr BOURKE — The simple answer is that the offer that had been made had to be rescinded because we did not go through the processes within government.

Mr RICHARDSON — To clarify, was the process breached because the offer put to the Lloyds was only subject to them accepting on the night and in the absence of any legal consultation with their legal counsel?

Mr BOURKE — Sorry Tim, the offer was made initially in good faith; right?

Mr RICHARDSON — But is good faith — —

Mr BOURKE — Then we withdrew it, which is not good faith; right? The reason we withdrew it is because it did not appease the processes that are needed.

Mr RICHARDSON — So would you say that good faith is that if you speak to your level counsel and get that advice — and independent advice, is it good faith to say the offer is rescinded if you take on that advice? Is that good practice or good faith?

Mr BOURKE — It is not good faith at all. On a personal level or at a public servant level — I have been a public servant in Victoria for 33 years, and we do business on a handshake most of the time — it was very disappointing not be able to make this happen in some reasonable way. My colleague, who also worked with the Lloyds around that offer and other things, I would think they would expect that there were no strings attached, because I did not think there were any strings attached.

Mr RICHARDSON — What do you mean by 'strings attached'?

Mr BOURKE — It meant that it was a genuine offer that we would have thought that they would have been able to take up if they wished.

Mr RICHARDSON — So in that sense to ask whether or not it covered all their liabilities or potential losses — which would be standard practice, to consult with your legal counsel.

Mr BOURKE — Yes, and that process occurred. I think there was a conversation — I was not there, but from what I have heard there was a conversation that said, ‘Maybe you need this much for stock and this much for water, and maybe that is a package or maybe it’s not’. Then it was left with the Lloyds to bring forward a package, which they did through one of their advisers.

Mr RICHARDSON — But then that \$350 000 offer was no longer on the table — because that is what was communicated to the Lloyds, that it would not be available if they did not accept and they consulted with their lawyers.

Mr BOURKE — I do not have knowledge of that, Tim.

Mr RICHARDSON — Would that be practice that you would have undertaken had you not been on leave? Is that standard practice, to railroad a family into a corner with four representatives from CFA demanding that they take an offer in a day without consultation? Do you think that is good practice?

Mr BOURKE — That would not happen if I did it. It would not happen.

Mr RAMSAY — Chair, am I under the understanding that all the committee have the opportunity to ask questions?

The CHAIR — If you have a question, that is fine, based on this area.

Mr RAMSAY — I just understood it was just to be between yourself and the deputy.

The CHAIR — That is true, but if there is something that you would like to ask — —

Mr RAMSAY — That was not the indication you gave us prior to the meeting.

The CHAIR — Thank you, Mr Bourke. We just wanted to clarify those points. Thank you very much for coming in today.

Mr BOURKE — Thank you.

Witness withdrew.