

INQUIRY INTO THE CENTENARY HOUSE LEASE

Before the Hon David Hunt AO QC

Held at Level 5,
55 Market Street, Sydney

On Thursday, 7 October 2004 at 10am
(Day 30)

1 THE COMMISSIONER: In relation to the evidence of
2 Mr Glenn, at one particular stage, I think it would be
3 safer to take the evidence in camera, to ensure that if
4 anything does come out that should not come out, we can
5 exclude it before it becomes public. That is in relation
6 to paragraph 21 of his statement where he says he attended
7 the offices of the APG and reviewed files relating to the
8 Centenary House lease.

9
10 As I understand it, the purpose of that evidence is
11 to demonstrate what was on record before Mr Morling.
12 Gaudron J makes it perfectly clear that that does not
13 breach any judicial immunity. So provided the evidence,
14 as it comes out, is restricted to what was and what was
15 not, in effect, in evidence before Mr Morling, it will be
16 okay. Would you keep that in mind, please, Mr Foster?

17
18 MR FOSTER: Yes. I think Mr Burmester may wish to
19 ventilate some of the remaining objections.

20
21 THE COMMISSIONER: Are there some new ones? I have
22 considered all the other ones.

23
24 MR FOSTER: They may be, I am not sure.

25
26 MR BURMESTER: There is a letter sent on 5 October to the
27 solicitor. I was not sure whether you had seen that.

28
29 THE COMMISSIONER: Yes.

30
31 MR BURMESTER: I was proposing to make some brief remarks
32 about that.

33
34 THE COMMISSIONER: Only if they are going to be in
35 addition. May I say, the problem I have with all of your
36 submissions is that you seek to make the judicial immunity
37 against disclosure co-extensive with the judicial immunity
38 against suit. That's just not so.

39
40 All of the cases, despite the width of some of the
41 expressions which you have extracted, are concerned with
42 two things: the process of reasoning a particular
43 decision, and the matters that were taken into account in
44 coming to that particular decision. You have looked at
45 this as if the decision encompasses the whole of the Royal
46 Commission, and that is simply not right.

1 It would exclude evidence of any decision he gave if
2 it wasn't on the record, for example. But we are not
3 after that sort of thing. None of this material goes to
4 the reasoning that Mr Morling used to come to any
5 particular decision he came to. None of it goes to any
6 particular weight he placed upon any of that material, or
7 what material he took into account when he came to that
8 decision. That is, so far as I'm concerned, the extent of
9 the judicial immunity against disclosure. All of the
10 cases say that.

11
12 MR BURMESTER: Commissioner, I have set out in that
13 letter the various authorities, and we make the point
14 that --

15
16 THE COMMISSIONER: Yes, but, if I may say so, you have to
17 convince me, if you can, that the decision-making process
18 encompasses the whole of proceedings so that it becomes
19 co-extensive with the judicial immunity against suit. I
20 can see where you got it from, from Fitzgerald J's
21 decision in Wentworth's case, but he was dealing with
22 immunity against suit.

23
24 I accept everything he says, but nowhere does he
25 suggest that that relates to the judicial immunity against
26 disclosure.

27
28 MR BURMESTER: I don't think I can elaborate on what is
29 in the letter which contends that it does extend broader
30 than just the deliberations or processes of reasoning, but
31 it is for you to rule on the matter, and I won't take --

32
33 THE COMMISSIONER: I will give you a formal decision or
34 reasons at some stage when I get a chance to do so, if I
35 can get my head above the public interest immunity
36 decisions which seem to be rolling along.

37
38 I will give you some reasons for it for the sake of
39 the record, but that is my approach to it, and I have read
40 and reread again yesterday all of the decisions that you
41 have referred me to, and others, and I have no doubt in my
42 mind that that is the extent of the judicial immunity
43 against disclosure.

44
45 MR BURMESTER: I don't wish to press it beyond what's on
46 the --

47

1 THE COMMISSIONER: Look at what Gaudron J says when she
2 says a judge may be compelled to answer what was on the
3 record before him. If you were right, then that is wrong.

4
5 MR BURMESTER: I would contend that our submissions don't
6 lead to that result. We were concerned that some of the
7 wording of the statement disclosed consultations, thought
8 processes, or conversations that the Commissioner may have
9 had with other people in relation to discharging his
10 duties.

11
12 THE COMMISSIONER: You see, this is where you are, if I
13 may say so, going astray. In relation to performing his
14 duty, you look at that as being everything that happens in
15 the tribunal, before the Commission, its establishment,
16 everything like that. I don't propose in any way to seek
17 to obtain directly or indirectly anything from Mr Morling
18 as to why he made decisions, but the decisions he made
19 must be admissible.

20
21 I should hasten to add, just in case there is any
22 doubt about it, I do not believe that the judicial
23 immunity against disclosure is co-extensive with public
24 interest immunity, in the fact that I believe that
25 judicial immunity against disclosure is absolute, whereas
26 public interest immunity against discovery by government
27 departments, et cetera, is not absolute. So there is no
28 question of relying upon the terms of reference. I'm not
29 relying upon them at all.

30
31 I also accept statements in some of these cases that
32 if the evidence is available elsewhere that is admissible,
33 it should be obtained other than through Mr Morling,
34 because I think it is inappropriate for any judicial
35 officer to have to give evidence where it can be given
36 elsewhere.

37
38 I'm sorry, I'm afraid you and I have completely
39 fundamentally different views as to the extent of judicial
40 immunity against disclosure. Unless you can produce some
41 other authority which says quite categorically that it is
42 co-extensive with the judicial immunity against suit, then
43 I am going to stick to my views. I am afraid I believe
44 they are right.

45
46 MR BURMESTER: I understand that, Commissioner. I don't
47 wish to produce any further authorities. Can I just say

1 in relation to the immunity that, in our opinion, it does
2 extend to persons in the position of Mr Glenn. In other
3 words, one can't seek through Mr Glenn to get information
4 and to ask questions that could not be asked of Mr Morling
5 himself.

6
7 THE COMMISSIONER: I agree with that entirely, but it is
8 not right to say that the immunity extends to Mr Glenn.
9 It is simply, as was made clear by Samuels JA in
10 Zannattas's case, I think, that you can't get indirectly
11 what you can't get directly. I can assure you that
12 nothing will be obtained from Mr Glenn which could not
13 have been obtained from Mr Morling. But I have thought it
14 wise, just in case something slips out at that time when
15 we are dealing with that particular paragraph, to take
16 that evidence in camera, and then we can release it if it
17 is safe or edit it if it is not safe.

18
19 MR BURMESTER: I appreciate that, Commissioner.

20
21 THE COMMISSIONER: In relation to Mr Sedgwick, I haven't
22 had any opportunity to give the same consideration to his
23 affidavit, but that is the approach I'm going to take
24 tomorrow in relation to him as well.

25
26 MR BURMESTER: I understand that.

27
28 THE COMMISSIONER: I will identify those particular
29 passages where perhaps it might be wiser to take his
30 evidence in camera.

31
32 MR BURMESTER: I appreciate that. I have no further
33 submissions to make.

34
35 THE COMMISSIONER: Thank you very much. You may
36 certainly interject by objection if you see any problems
37 arising in relation to the evidence.

38
39 MR BURMESTER: I will, Commissioner.

40
41 THE COMMISSIONER: Thank you.

42
43 MR FOSTER: May I just inquire through you, Commissioner,
44 whether Mr Burmester has any difficulty with the statement
45 being tendered on a basis which is not confidential?

46
47 MR BURMESTER: I don't think I have seen the revised

1 statement. For some reason, the version provided to other
2 parties, I don't think I have actually --
3
4 MR FOSTER: I apologise to you for that.
5
6 THE COMMISSIONER: In my view, there is nothing in the
7 statement itself which infringes the rule. My only
8 concern in relation to that particular paragraph is that
9 something may slip out.
10
11 MR BURMESTER: In the light of your ruling, Commissioner,
12 I agree that it's the logical consequence, that's right.
13 So I don't press for it to be maintained.
14
15 THE COMMISSIONER: All right.
16
17 MR FOSTER: I call Mr Glenn, Commissioner.
18
19 <GRAHAM GLENN, sworn: [10.10am]
20
21 <EXAMINATION BY MR FOSTER:
22
23 MR FOSTER: Q. Would you please tell the Commissioner
24 your full name, address and current occupation?
25 A. My name's Graham Glenn. My address is 20
26 Couvreur Street, Garran, in the ACT. I describe myself as
27 a company director.
28
29 Q. Have you signed a revised statement for the purposes
30 of this Inquiry?
31 A. I have.
32
33 Q. Do you have the original of that with you?
34 A. I do - I'm sorry, I sent the original to the Inquiry.
35
36 Q. I don't think it has been received yet. Can I show
37 you a copy of that. Is that a copy of the statement you
38 signed and of which you sent the original to the Inquiry?
39 A. That's correct.
40
41 MR FOSTER: I tender that.
42
43 **EXHIBIT #93 STATEMENT OF GRAHAM GLENN, DATED 4/10/2004,**
44 **BARCODED WITS.031.0001 AND DOCUMENTS REFERRED TO IN**
45 **STATEMENT**
46
47 MR FOSTER: Commissioner, I should have placed on record

1 that we notified both Mr Beech-Jones and his instructing
2 solicitors that we were reconvening this morning, and that
3 they are not represented at the Bar table, although I see
4 Ms Gregory is sitting in the body of the hearing room.

5
6 THE COMMISSIONER: Were you expecting Mr Beech-Jones to
7 be here?

8
9 MS GREGORY: No, Commissioner.

10
11 MR FOSTER: Q. Mr Glenn, you were the secretary of the
12 Department of Administrative Services from July 1987 until
13 February 1989; is that right?

14 A. No, it was earlier than that - well, in October '86 I
15 was secretary of the Department of Administrative Services
16 and Local Government, and the Department of Administrative
17 Services from July '87, correct.

18
19 Q. I think in March 1989 you moved away from that
20 department into the Department of Industrial Relations; is
21 that right?

22 A. That's correct.

23
24 Q. Before your appointment as secretary of the
25 Department of Local Government and Administrative
26 Services, what was your position in the public service?

27 A. I was a Commissioner of the Public Service Board.

28
29 Q. And had you occupied that position for some years?

30 A. For several years, yes.

31
32 Q. And before that what was your position?

33 A. In the same organisation I was the deputy
34 Commissioner.

35
36 Q. May we take it that your involvement with the
37 Property Directorate, which ultimately became the
38 Australian Property Group, commenced in October 1986?

39 A. That's correct.

40
41 Q. When you came to the position that you did in October
42 1986, did you meet Mrs Morris fairly soon thereafter?

43 A. Yes, I did.

44
45 Q. I think you have said in your statement that she was
46 the head of that Property Directorate at the time you came
47 to your position?

1 A. Yes.
2
3 Q. Was she, in effect, the chief public servant in
4 respect of that particular part of your department?
5 A. Yes, she was.
6
7 Q. You were, in effect, the chief public servant for the
8 whole department; is that right?
9 A. That's correct.
10
11 Q. Did she report directly to you?
12 A. Yes, she did, although I did have a deputy secretary
13 who took an interest in property matters as well.
14
15 Q. Who was that?
16 A. Mr Tony Hillier.
17
18 Q. In the time that you dealt with Mrs Morris, which,
19 may we take it, was about 12 months from October 1976 to
20 about November 1987, did you come to know her well?
21 A. As a senior executive of my department I did, yes.
22
23 Q. When she left, towards the end of 1987, to go into
24 the private sector, did she maintain contact with you?
25 A. I saw her several times, I would think, over the next
26 few years.
27
28 Q. Did she maintain reasonably regular contact with you
29 between 1987 and 1992?
30 A. I wouldn't call it regular, Mr Foster. I think it
31 was perhaps once a year.
32
33 Q. You would get together for a meal or coffee or a
34 social interaction of that kind?
35 A. We had a cup of coffee, on a few occasions, yes.
36
37 Q. Did that contact cease at some point?
38 A. It ceased when I left the public service.
39
40 Q. When was that?
41 A. 1992?
42
43 Q. Did you live in Canberra throughout this period, 1986
44 to '92?
45 A. I do.
46
47 Q. You still do, of course?

1 A. I do.
2
3 Q. You have done so continuously from 1992 to the
4 present?
5 A. Yes.
6
7 Q. When you met with Mrs Morris in the period 1987 to
8 1992, was the contact entirely social or was there some
9 other business or professional matter discussed between
10 you?
11 A. Well, I'd say it was principally social. I did
12 discuss with her individuals; I was always on the look-out
13 for talented people for my department, but basically it
14 was social.
15
16 Q. Did she, in that period, ever discuss with you the
17 proposal that she commenced dealing with towards the end
18 of 1990 concerning Centenary House?
19 A. No, she did not.
20
21 Q. Was it ever discussed with you in that period '87
22 to '92?
23 A. No, it was not.
24
25 Q. Never mentioned at all?
26 A. No, sir.
27
28 Q. Have you got a copy of that statement handy?
29 A. I have it in my bag, yes.
30
31 Q. Would you mind just retrieving that, please,
32 Mr Glenn. Do you have it handy?
33 A. I do.
34
35 Q. Can I just take you forward in the statement to
36 paragraph 11.
37 A. Yes.
38
39 Q. I just ask you to have a look at that, read it to
40 yourself and then I want to ask you about it.
41 A. Yes.
42
43 Q. I think you know that the letters patent that were
44 signed by the Governor-General in respect of the 1994
45 inquiry were signed in May 1994 originally?
46 A. That's correct, yes.
47

1 Q. This phone call that you refer to in paragraph 11,
2 was that a phone call that was made before May 1994 or
3 after May 1994, being the reference point for the signing
4 of the letters patent, or can't you tell us?
5 A. I can't answer that. I don't know.
6
7 Q. What did Mr Sedgwick say to you when he made that
8 phone call?
9 A. You are testing my memory. He told me that there was
10 to be an inquiry, and asked whether I would be interested
11 in assisting the Royal Commissioner in relation to it.
12 Beyond that, I can't really remember.
13
14 Q. Well, did he identify who it was who was to be Royal
15 Commissioner?
16 A. I can't recall.
17
18 Q. Did he say any more to you about what it was that was
19 expected of you?
20 A. I can't recall.
21
22 Q. Well, did he give you any idea what it was that you
23 were to do in relation to this Inquiry?
24 A. He indicated to me that I was to assist - provide
25 administrative assistance to the Royal Commission.
26
27 Q. Did you ask him what that might mean, in terms of the
28 detail of the work?
29 A. I'm not sure whether I did on that occasion, but I
30 certainly did later.
31
32 Q. Did you ask him on that occasion - I will come back
33 to the later in a minute - what resources would be made
34 available to the Royal Commissioner?
35 A. No, I didn't. I was actually in Darwin when he rang
36 me.
37
38 Q. So you are meaning to convey by that that it wasn't a
39 long telephone call?
40 A. That's correct.
41
42 Q. Did you then have a subsequent conversation with him
43 about what your role was to be?
44 A. Yes, I did.
45
46 Q. How long after the first one was that?
47 A. Probably a week or so. I can't really recall.

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Q. What was said between you on that occasion?

A. Well, much the same, that I was to provide administrative advice and assistance to the Royal Commissioner, that I had some experience in government and that would be seen as being of assistance to the Royal Commissioner, and that I should assist him in explaining the way the public service and government operates.

Q. Did Mr Sedgwick tell you what the Department of Finance and the Department of Prime Minister and Cabinet had in mind in terms of resources, other than you, for the Royal Commissioner?

A. He told me that if there was any need for additional resources, then I could request it and it would be provided.

Q. Was the question of whether or not there would be counsel assisting discussed with you?

A. No, it was not.

Q. Did you ever raise that with Mr Sedgwick?

A. No, I did not.

Q. Did you understand that Mr Sedgwick was the public servant charged with the responsibility of establishing this Royal Commission and making sure Mr Morling had what he wanted?

A. Yes.

Q. Did you have any further discussions with Mr Sedgwick about resources that might or my not be made available for the Commission?

A. I don't believe so.

Q. Did he tell you in either of the discussions you have mentioned, that the inquiry was going to be conducted on an informal basis?

A. No, he did not. Mr Morling told me that.

Q. Could there be brought up on to the screen a document which is DOFA.044.0206. This is a note for file in the Department of Finance material that we have obtained, Mr Glenn. Could you have a look at it and, in particular, have a look at this page and the next page, which is 0207. When you have had a chance to do that, would you let me know.

1 A. Yes.
2
3 Q. Did you prepare that note?
4 A. No, I did not.
5
6 Q. Does that bring to mind an occasion when the people
7 indicated in the note got together and had a preliminary
8 meeting about the 1994 Commission?
9 A. Well, I do remember going to the meeting, but I,
10 until this moment, didn't recall who was there.
11
12 Q. It would appear that this is a note of a meeting
13 which took place some time before 17 May; would you agree?
14 A. Yes.
15
16 Q. Having read the note, are you able to recollect that
17 there was such a meeting at which various persons were
18 present, and at which Mr Morling outlined the matters
19 contained in the note?
20 A. Look, I recall the meeting. I don't really recall
21 who was there and I can't really recall what was
22 discussed.
23
24 Q. Mr Gavin is shown as being present. Do you see that?
25 A. Yes.
26
27 Q. What position did he hold in the public service in
28 early May 1994?
29 A. I would think he was an assistant secretary in the
30 Department of Administrative Services.
31
32 Q. What was his function in that capacity?
33 A. Look, I don't know.
34
35 Q. Well, did he, for example, liaise with the Department
36 of Prime Minister and Cabinet on matters affecting your
37 department, or that department, I should say?
38 A. He could have, I don't know.
39
40 Q. Would you agree that this meeting seems to have taken
41 place before the letters patent themselves were actually
42 executed?
43 A. Yes, it does appear that way.
44
45 Q. Does the substance of what's recorded in the note
46 accord with your recollection of what Mr Morling said at a
47 meeting around about this time, about how he would conduct

1 the Royal Commission?
2 A. Well, I don't really recall the substance of this
3 meeting.
4
5 Q. Do you recall him outlining how he proposed to
6 conduct the Royal Commission at a meeting at some stage?
7 A. He did inform me that he was going to conduct it in
8 an informal manner.
9
10 Q. Right. Did he do that with you and he present and
11 no-one else, or --
12 A. That's correct.
13
14 Q. Right. Was it around about early May when he did
15 that?
16 A. I think so.
17
18 Q. Can you recall what he said to you?
19 A. I don't think he said much more than those words.
20
21 Q. Did you understand, when you took on this role with
22 earlier inquiry, that you had any investigative or
23 inquiring role to play?
24 A. No, I didn't understand that to be my role.
25
26 Q. Did you understand your role to be one of assistance
27 and advice, when sought, as far as Mr Morling was
28 concerned?
29 A. That's correct.
30
31 Q. Did you understand that the content of what
32 assistance and advice you might give would depend upon
33 what he wanted from time to time?
34 A. That's correct.
35
36 Q. Was your attitude to your role one of, "I will
37 provide such assistance and advice as is sought, when and
38 if required"?
39 A. That's correct in part. I think I also, on
40 occasions, thought that I should tell Mr Morling about
41 something that was related to his - related to his inquiry
42 of me.
43
44 Q. So you did take a proactive role on some occasions?
45 A. Some occasions, yes.
46
47 Q. Did you tell Mr Morling that you had previously been

1 the secretary of the Department of Administrative
2 Services?
3 A. He knew that --
4
5 Q. How do you know that?
6 A. -- when I met him. I assume he was told by
7 Mr Sedgwick.
8
9 Q. You assume; is that right?
10 A. That's correct.
11
12 Q. Did you tell him that?
13 A. I did.
14
15 Q. When did you tell him that?
16 A. The day I first met him.
17
18 Q. Did you tell him that that was the Department within
19 which was then located the Australian Property Group?
20 A. Yes, I did.
21
22 Q. Did you see any difficulty with you taking on the
23 role that you were asked to take on with the 1994 inquiry,
24 in the circumstance that you had been the secretary of the
25 Department within which this group resided?
26 A. I saw that as being an advantage, that that was what
27 was being sought, someone with some knowledge of
28 government and that department.
29
30 Q. So the answer to my question is you saw no difficulty
31 in that?
32 A. That's correct.
33
34 Q. You are quite sure you told Mr Morling what your
35 position had been?
36 A. Yes.
37
38 Q. Is that right?
39 A. Yes.
40
41 THE COMMISSIONER: Q. Does that mean that the advice
42 you saw yourself giving him was of the nature of some sort
43 of expertise in the way government departments were run?
44 A. That's correct, and in the management and
45 administration of departments.
46
47 MR FOSTER: Q. At the time Mr Sedgwick approached you

1 and you commenced to deal with Mr Morling in relation to
2 the 1994 inquiry, did you make any contact with persons
3 within the Department of Administrative Services about
4 this matter?
5 A. No, I did not.
6
7 Q. Did that remain the case during the course of the
8 inquiry, except when you, if I may put it, made contact in
9 your official capacity?
10 A. That's correct.
11
12 Q. So what I am getting at is, you did not, did you,
13 have discussions with persons within that department other
14 than officially in your capacity as assistant to
15 Mr Morling?
16 A. That's right.
17
18 Q. Mr Morling undertook what I will call interviews
19 which he had, I think, in rooms that he had and which were
20 attended by a stenographer, the person he was interviewing
21 and, may I take it, you?
22 A. Yes.
23
24 Q. I will call them interviews. When those took place,
25 were you, he, the stenographer and the witness the only
26 people present?
27
28 MR BURMESTER: Commissioner, I'm concerned that this sort
29 of questioning gets into how the Commissioner went about
30 conducting his hearings, taking evidence --
31
32 THE COMMISSIONER: That is absolutely vital to this case,
33 Mr Burmester, as long as we do not ascertain his reasons
34 for conducting it in that way. Apart from that, it's
35 already disclosed in both the document that's been shown
36 to the witness and in other correspondence, and, indeed,
37 in Mr Morling's opening remarks on the transcript of his
38 inquiry.
39
40 MR BURMESTER: Yes. It's --
41
42 THE COMMISSIONER: I see your concern, that we don't
43 stray further than that, but the basis of the objection is
44 overruled, provided it doesn't go further to reveal the
45 reasoning for him having adopted that particular approach.
46
47 MR BURMESTER: I have made my point.

1
2 MR FOSTER: Q. Were you, Mr Morling, the stenographer
3 and the witness the only people present during the course
4 of that interview?
5 A. No, there were others there on occasions,
6 representing the parties.
7
8 Q. And just to be clear, I'm only asking you about the
9 occasions when he had interviews, rather than the public
10 hearings in a hearing room in Canberra or elsewhere?
11 A. Yes, I understand that.
12
13 Q. All right. So there were occasions when
14 representatives of the witness or other parties were
15 present; is that right?
16 A. That's right.
17
18 Q. There were other occasions when there were what I
19 might call public hearings; would you agree?
20 A. Yes.
21
22 Q. And on those occasions, commonly, there were the
23 witness, appropriate recording personnel, Mr Morling,
24 yourself and perhaps representatives of not only the
25 witness but other parties; is that right?
26 A. That's right.
27
28 Q. Did you, yourself, take any part in, first of all,
29 the interview process?
30 A. I was present.
31
32 Q. You did not ask any questions?
33 A. I did not.
34
35 Q. In the public hearings, is that the similar position,
36 that you were present but did not take an active role?
37 A. Yes.
38
39 Q. Was it your decision as to whether a witness would be
40 interviewed or taken to a public hearing, or was it
41 Mr Morling's?
42 A. Mr Morling's.
43
44 Q. Could I just take you to your paragraph 21. Before I
45 do that, could you have a look at paragraph 19. Do you
46 see that?
47 A. Yes.

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Q. You say all witnesses attended voluntarily there, do you see that?

A. Yes.

Q. May we take it there was absolutely no occasion when any summons requiring the attendance of a witness was issued?

A. That's correct.

Q. Did you decide which witnesses would be asked to attend or did Mr Morling?

A. Mr Morling did.

Q. So when you say all witnesses attended voluntarily, you mean all witnesses that Mr Morling decided should come attended voluntarily?

A. That's correct.

THE COMMISSIONER: Q. There were, I assume, advertisements published before the hearing began, inviting anyone, any body, who had an interest in the matter to let the Commission know?

A. Yes, there were, Commissioner.

MR FOSTER: Q. Just looking at paragraph 21, you describe Mr Gavin there as the contact officer for the Inquiry within the Department of Administrative Services; do you see that?

A. Yes.

Q. You say in your paragraph that you recall telephoning him and asking to obtain access to the original files of the Australian Property Group?

A. Yes.

THE COMMISSIONER: At this stage, I think it should be in camera - at this stage. It may be not later on. If there is anybody here not associated with the parties, who obviously have the right to remain, they had better leave. You are associated with the party, Ms Gregory. In fact, you are probably representing them at the moment, so you may stay. Just stop anybody coming in through the doors, thank you.

EVIDENCE TAKEN IN CAMERA

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MR FOSTER: Q. You go on in the paragraph and say:

I recall that subsequently I attended the offices of the APG and reviewed files relating to the Centenary House lease.

Do you see that?

A. Yes.

Q. And you say they were contained in a four-drawer filing Cabinet?

A. Yes.

Q. Let me ask you this: when you telephoned Mr Gavin, what did you ask of him?

A. I asked that he provide for me all the files of the Australian Property Group relating to Centenary House.

Q. Did he agree to do that?

A. Yes, he did.

Q. Then you went to the office of the APG and had a look at some files, is that what happened?

A. Yes.

Q. Now, how many files were there that you looked at?

A. Well, I can't recall that. I refer to them being within a four-drawer filing Cabinet, and that's as close as I can recall.

Q. You are not suggesting there were, as it were, four drawers full of files in relation to Centenary House?

A. I don't think there were, but I can't recall.

Q. Did you sit there and read these files, is that what happened?

A. Yes.

Q. Did you extract any material from the files either by way of note or photocopy?

A. I did take some notes, yes.

Q. Did you get any photocopies?

A. No.

Q. Were your notes ever tendered to the Inquiry, into

1 evidence?

2

3 MR BURMESTER: Commissioner, that question, in my
4 opinion, seeks to intrude into the decision-making
5 processes actually followed by the Commissioner. In my
6 view, it is inappropriate.

7

8 THE COMMISSIONER: I'm sorry, the question was, "Were
9 your notes ever tendered to the Inquiry, into evidence".
10 That demonstrates what was on the record, or what was not
11 on the record, and that is well within what Gaudron J says
12 in the case upon which you place so much reliance.

13

14 MR BURMESTER: I took that case as indicating that what
15 material was read or not read, or provided, was not to be
16 in.

17

18 THE COMMISSIONER: That's not the question at all - was
19 it put into evidence, was it on the record. It does not
20 seek to have the witness say whether Mr Morling read it,
21 or what weight he placed upon it, or how he dealt with it,
22 and that is the only part of the judicial immunity that
23 you seek that I'm going to uphold. So I don't mind you
24 objecting, but I don't want the same argument every time.
25 If you want in some way to take a global objection against
26 anything that this witness is going to say about what
27 happened to that material, I'm happy for you to do so, but
28 none of it so far invites the witness to say anything in
29 relation to what Mr Morling did in relation to those
30 notes. Were they tendered in evidence; that's all.

31

32 MR BURMESTER: Thank you, Commissioner.

33

34 THE COMMISSIONER: Yes, I allow that.

35

36 MR FOSTER: Q. Mr Glenn?

37 A. Were they tendered in evidence?

38

39 Q. Yes.

40 A. No.

41

42 Q. Can you tell us how many pages of notes you had?

43 A. There weren't many notes taken at all. I can't
44 recall how many pages, but not many.

45

46 Q. Can you tell us what was the guide that you had in
47 your mind in terms of what it was you would make a note

1 about and what it was you would not make a note about when
2 you inspected these files?
3 A. I think that's really, Mr Foster, getting into what
4 Mr Morling was requiring of me.
5
6 Q. Well, I will ask you a question and see if it is
7 objected to, I think. Did Mr Morling ask you to telephone
8 the Department and go and looking at the files?
9 A. Yes.
10
11 Q. Without impinging, I hope, upon the wrong area, did
12 he give you instructions - don't tell me what they were -
13 as to what it was he wanted you to do?
14 A. Yes.
15
16 Q. And was that what was guiding you when you made your
17 notes?
18 A. Yes.
19
20 Q. But you did not make photocopies or have any
21 photocopies made of anything; is that right?
22 A. No, I did not.
23
24 Q. When was it, during the course of the inquiry, that
25 you had this visit to the Department?
26 A. I can't be precise, but it would have been towards
27 the end of the Inquiry.
28
29 Q. After a good deal of interviewing and public hearings
30 had taken place?
31 A. That's correct.
32
33 Q. And after the Department had made its submission,
34 together with the documents that the Department wished to
35 place before Mr Morling?
36 A. Yes.
37
38 Q. Did you make only one visit for the purpose of
39 inspecting files and taking notes?
40 A. No, I did - I went more than once.
41
42 Q. How many times?
43 A. Well, I can't recall, but several.
44
45 THE COMMISSIONER: Q. This is to the APG, is it?
46 A. Yes, Commissioner.
47

1 MR FOSTER: Q. May we take it that on each occasion you
2 were, in effect, instructed to do that by Mr Morling; is
3 that right?
4 A. No, I had one instruction, and that was to read the
5 files. It took me more than one --
6
7 Q. I see.
8 A. -- go to do it.
9
10 Q. So there were several visits to accommodate the
11 original instruction?
12 A. That's right.
13
14 Q. Would you agree that you did not make a similar visit
15 either to the Audit Office or to the Australian Valuation
16 Office?
17 A. That's correct.
18
19 Q. Would you agree that you did not ever inspect the
20 files held by the Australian Valuation Office in relation
21 to Centenary House?
22 A. That's correct.
23
24 THE COMMISSIONER: Before you pass on and we open the
25 court again, I have made no decision in my own mind about
26 this, but would you not be entitled to ask Mr Glenn
27 whether those notes were given to Mr Morling, because it
28 would be part of the record, would it not?
29
30 MR FOSTER: I may well be.
31
32 THE COMMISSIONER: Mr Burmester, you may want to object
33 to that, I suppose.
34
35 MR BURMESTER: I would, Commissioner.
36
37 THE COMMISSIONER: Do you see any distinction between
38 that and being part of the record? A Royal Commissioner,
39 of course, is not bound by the precise material before
40 him.
41
42 MR BURMESTER: No. I see it in the category of, as it
43 were, asking a judge what books or what material the judge
44 might have read, and in that sense I would think it
45 inappropriate to ask --
46
47 THE COMMISSIONER: He may or may not have read it, we

1 don't know. We are not going to ask that.

2

3 MR BURMESTER: Whether he was provided with material
4 other than in open court, so to speak, in a formal
5 submission.

6

7 THE COMMISSIONER: That's the problem. We are dealing
8 with a Royal Commission which is not strictly bound, as a
9 court is, by the material which is placed on a formal
10 record, and, indeed, Gaudron J takes that into account in
11 relation to the tribunal with which she was concerned, by
12 saying that everybody knows what the record is of a court,
13 but in relation to that particular tribunal, it was fair
14 enough to ask these people whether that was, in effect, on
15 the record. I'm happy to listen to any argument you want
16 to put on it, but it strikes me as being precisely the
17 same situation.

18

19 MR BURMESTER: In my submission, it's analogous with
20 asking what material was read or taken into account in
21 making a decision.

22

23 THE COMMISSIONER: No, it's not asking whether Mr Morling
24 read it or not. One can't assume that I have read the, I
25 think, 70,000-odd pages presently before this Commission.
26 I can search for things on it, and everything, but I don't
27 think that anybody would have expected me to read them.

28

29 MR BURMESTER: The principle, in my submission, goes
30 beyond simply whether the tribunal member or the
31 Commissioner read the material, it's rather whether they
32 sought access to it, they went off and had research done
33 on their behalf, which they may or may not have relied
34 upon. It's a broader principle, in my submission.

35

36 THE COMMISSIONER: I still believe it demonstrates what
37 the record was before the Commissioner, in the sense of
38 what was formally tendered or what was otherwise put
39 before the Commissioner. It says nothing of what his
40 reasoning was or whether he took it into account in coming
41 to the decisions he came to.

42

43 We are concerned not to challenge any final findings
44 that Mr Morling made on the basis of the material before
45 him. It's not like an appeal when you do challenges.
46 This is simply a question of whether the way in which the
47 inquiry was conducted was suitable. It's an objective

1 test, not having counsel assisting, not exercising the
2 powers of compulsion.

3
4 Now, it's a good illustration that he sent somebody
5 off to read something, and for that person to decide what
6 was relevant, not a lawyer, as I understand it, and come
7 back and report to him. Was that something which, if he
8 had had counsel assisting him, might have been done
9 differently? I'm not seeking even to criticise Mr Morling
10 for it. We have been asked to determine whether it could
11 have been conducted in a different way if he'd had counsel
12 assisting, and it is clear, from what Mr Glenn has said,
13 that it would have been dealt with differently if he'd had
14 counsel assisting, rather than Mr Glenn acting, in effect,
15 as counsel assisting and investigative officer and
16 administrative officer, and no doubt organising his plane
17 trips and everything else.

18
19 That's all that this goes to. Now, I don't want it
20 to be left up in the air that it wasn't actually placed
21 before Mr Morling, but we are not going to draw any
22 inference from the fact that it was placed before him.
23 And it's the purpose for which the evidence is being led
24 which is important here. One of the cases, I have
25 forgotten which, says that it doesn't matter where it
26 comes from, it's the purpose to which you are going to put
27 it. Now, this is not put in any way to challenge the
28 findings which Mr Morling made.

29
30 MR BURMESTER: I accept that, Commissioner. Apart from
31 that, I think it goes back to the disagreement between
32 your ruling as to the scope of the immunity. So I take it
33 no further.

34
35 THE COMMISSIONER: I was interested to hear your views
36 because I thought myself it is a difficult area, but
37 provided it is going to be used solely to demonstrate that
38 it was in fact put on the record, in an informal way, and
39 that's the only purpose for which it will be put, then it
40 closes off one criticism that could have been made of the
41 process which was followed. I am here not to run a case
42 against the way Mr Morling ran his Commission, but to
43 determine whether it could have been done in a better way.
44 That's one of the terms that I am given. It's not a
45 pleasant task, to be looking at those sorts of things,
46 but, nevertheless, if it doesn't infringe judicial
47 immunity against disclosure, I have got to do it.

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MR BURMESTER: Yes.

THE COMMISSIONER: I don't believe here it does infringe that judicial immunity.

MR BURMESTER: I note that and, in particular, your statements about the reliance that might be placed on it.

THE COMMISSIONER: Thank you. Proceed, Mr Foster. After that, we will formally open the court again.

MR FOSTER: Q. Did you give the notes to Mr Morling?

A. No, I did not.

Q. Did you have a meeting with him?

A. I did.

Q. Did you report to him as to what you had learnt?

A. Yes.

Q. Did you do that by reference to the notes?

A. Yes.

Q. Did you meet with him more than once in that regard, or only once?

A. Only once.

THE COMMISSIONER: Q. None of the material that you looked at was extracted or copied in any way and then subsequently shown to Mr Morling, was it?

A. No, sir.

MR FOSTER: Q. What happened to the notes?

A. I don't recall, but I don't have them.

Q. No. They weren't packed up and archived, were they?

A. I don't know.

Q. Well, I think you told us that you didn't give them to Mr Morling, so did you retain them?

A. I can't recall whether I kept them or whether they were left in the documents for archiving.

THE COMMISSIONER: Q. Are you able to tell us any particular specific phrase that might have been used in the notes so that we could do a search on the material

1 which was archived?
2 A. I don't think I can recall that - anything that would
3 be helpful, Commissioner.
4
5 Q. Did you have your name on the document at all?
6 A. I don't think so.
7
8 MR FOSTER: Q. They were handwritten notes, were they?
9 A. Handwritten notes, yes.
10
11 THE COMMISSIONER: All right. We are passing on to
12 something else now, are we?
13
14 MR FOSTER: I just want to ask something else.
15
16 THE COMMISSIONER: Sorry, go ahead.
17
18 MR FOSTER: Q. Did you make a note of material in
19 documents being documents that had not, up to that point,
20 been tendered by the Department to Mr Morling?
21 A. I don't believe so.
22
23 Q. Just so that we are clear, I think you understood the
24 question, but are you telling us that you did not convey
25 to him information through your notes and your discussion,
26 which was additional to what he already had?
27 A. That's right.
28
29 THE COMMISSIONER: Q. Do you mean you learnt nothing
30 new beyond what had been provided by the Department with
31 its submissions?
32 A. That's correct.
33
34 MR FOSTER: Q. Did you want to say something more? You
35 look like you do.
36 A. I think I'm getting into that dangerous territory.
37
38 MR FOSTER: Don't worry about that, Mr Burmester looks
39 after that.
40
41 THE COMMISSIONER: He's looking after it very well, don't
42 you worry.
43
44 MR FOSTER: Q. Don't you worry about that. You tell us
45 what's on your mind?
46 A. I was looking for facts, checking facts.
47

1 Q. Checking facts; is that right?

2 A. Yes.

3

4 THE COMMISSIONER: Q. But, in doing so, you looked no
5 further than the material which had already been provided
6 to the Commission?

7

8 MR FOSTER: I'm not sure - I don't think that's what he
9 said.

10

11 THE COMMISSIONER: I want to get that clear.

12

13 THE WITNESS: I was looking at files belonging to the
14 Australian Property Group, that had not been tendered, but
15 from which documents had been taken and tendered.

16

17 THE COMMISSIONER: Q. You didn't see anything of
18 importance in those other documents so as to tell
19 Mr Morling of their contents?

20 A. No, I didn't. I told him what he already knew.

21

22 MR FOSTER: Q. But is it fair to say that it was your
23 judgment, made at the time you inspected the files, as to
24 what it was you would make a note of and ultimately report
25 back to him on?

26 A. Yes.

27

28 Q. As far as you know, you were the only person within
29 the Inquiry at that time who undertook any inspection of
30 any files outside of what had been put up by the
31 Departments to the Inquiry voluntarily?

32 A. Yes.

33

34 THE COMMISSIONER: The proceedings are now being held in
35 open court. Is there anything in that material so far,
36 Mr Burmester, that should be excluded from the transcript?
37 I can see nothing myself.

38

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1 EVIDENCE TAKEN IN OPEN COURT

2
3 MR BURMESTER: I don't think, in accordance with your
4 rulings, no.

5
6 THE COMMISSIONER: Very well. The whole transcript will
7 remain public.

8
9 MR FOSTER: Q. Did you meet Mr Fenwick?

10 A. Yes, I did.

11
12 Q. He provided a report to Mr Morling, didn't he?

13 A. Yes.

14
15 Q. Did he give to you any of his working papers or
16 research notes or anything like that?

17 A. He did not.

18
19 THE COMMISSIONER: By the way, I don't know if there is
20 anything formally on the record, but he is no longer able
21 to give evidence: he's dead, isn't he?

22
23 MR FOSTER: Yes, we tendered his certificate, I think, a
24 while ago.

25
26 THE COMMISSIONER: It got lost somewhere in my mind.

27
28 MR FOSTER: Q. I'm just wondering whether any of his
29 back-up material came to you at any stage during the 1994
30 inquiry?

31 A. No, it did not.

32
33 Q. Are we correct in assuming that none of that
34 material, therefore, was archived when the 1994 Inquiry
35 material was packed up and archived?

36 A. Well, I didn't see it, and I don't think it was
37 archived.

38
39 Q. So the only Fenwick material that Mr Morling had
40 tendered in evidence was his report, plus his oral
41 evidence?

42 A. That's my recollection.

43
44 MR FOSTER: Commissioner, could I substitute Mr Glenn's
45 original statement? It arrived in the mail this morning.

46
47 THE COMMISSIONER: Very well.

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MR FOSTER: Q. Did you speak with Mr Gavin, as the inquiry period wore on, and inform him as to the state of progress of the Inquiry?

A. No, I didn't.

Q. Did you speak to any person at the Department of Prime Minister and Cabinet and inform such a person of the progress of the Inquiry?

A. Not that I recall.

Q. Did you ever convey to anyone, either directly or indirectly, in the Department of Prime Minister and Cabinet, what you understood the outcome of the inquiry was going to be?

A. I don't believe so.

Q. Well, you say you don't believe so. How sure are you of that?

A. Well, you asked me whether I did it indirectly or directly.

Q. Yes, I did.

A. I don't believe I did it either way.

MR FOSTER: I have no further questions.

THE COMMISSIONER: Mr Sackar?

MR SACKAR: We have no interest in asking any questions of Mr Glenn.

THE COMMISSIONER: Mr Burmester?

MR BURMESTER: No, Commissioner.

THE COMMISSIONER: Thank you very much, sir, thank you for coming. You are free to leave. If we need to get you back, we will let you know, but we hope that won't be necessary.

<THE WITNESS WITHDREW

MR FOSTER: Can I tender, Commissioner, the documents referred to in the statement of Mr Glenn, as well as the document I took him to this morning.

1 THE COMMISSIONER: Do you mean the material which is in
2 what we have been calling the bundle?

3
4 MR FOSTER: Yes.

5
6 THE COMMISSIONER: That should be part of exhibit 93.
7 You say there is some further document?

8
9 MR FOSTER: Yes, what I will do is I will tender the
10 material in a folder which we have labelled "The
11 Establishment of the Morling Commission." I hope my
12 friends have a copy of that, do they? Yes. I tender the
13 material in that folder, Commissioner, which is identified
14 in an index in the front.

15
16 **EXHIBIT #94 FOLDER OF MATERIAL ENTITLED "ESTABLISHMENT OF**
17 **THE MORLING COMMISSION"**

18
19 THE COMMISSIONER: It should perhaps be noted here, so
20 that everybody keeps it in mind, that material which is
21 presently in exhibit 92, which is a confidential exhibit,
22 has been extracted from it, because exhibit 92 dealt with
23 the same subject matter, but that was the subject of one
24 of the rulings on public interest immunity and it was
25 agreed, at the request of Mr Burmester, or perhaps
26 Mr Howe, I don't remember which, that it should be a
27 confidential exhibit.

28
29 MR FOSTER: Commissioner, we had programmed Mr Turner, if
30 required, and have been informed that Mr Turner is not
31 required for questioning. We don't have any questions for
32 him. We have a statement from him by way of supplement,
33 but it hasn't arrived in its original form, so I will
34 tender that tomorrow.

35
36 Tomorrow we have programmed Mr Joyce, who is coming
37 from New Zealand, at 10am. Mr Sackar wishes to ask him a
38 few questions. Then I think we are working towards 3.30
39 for Mr Sedgwick. That's an odd time because of the
40 circumstances in which he finds himself in Manila. Then
41 that will be tomorrow's evidence.

42
43 THE COMMISSIONER: So we may be sitting a little later
44 than usual?

45
46 MR FOSTER: We may be. And it is at a different venue,
47 that is, the video-link.

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THE COMMISSIONER: Yes, the Waterfall Inquiry room down the road. You did mention that there was one document that you had shown to Mr Glenn.

MR FOSTER: It's in the bundle, Commissioner, so it's not a problem.

THE COMMISSIONER: That statement, exhibit 93, will be the statement and bundle of documents.

MR FOSTER: Commissioner, if we can adjourn until tomorrow.

THE COMMISSIONER: All right. We will adjourn until tomorrow. I will let you know, Mr Burmester, about the affidavit of Mr Sedgwick, about whatever passages I feel it wiser to take in camera. I have not had the opportunity, I am afraid I have had other things to do, to look at it as closely as that.

MR BURMESTER: Thank you.

THE COMMISSIONER: I shall adjourn.

**AT 11.05AM THE COMMISSION WAS ADJOURNED TO FRIDAY,
8 OCTOBER 2004 AT 10AM**